DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
LAURENCE F. JOHNSON,	:	Board Docket No. 14-BD-023
	:	Bar Docket Nos. 2009-D307 and
Respondent.	:	2012-D453
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 934398)	:	

REPORT AND RECOMMENDATION
OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent Laurence F. Johnson is charged with multiple violations of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC") arising from his handling of two separate immigration matters.[1] The Board appointed James P. Mercurio, Esquire as Special Disciplinary Counsel to prosecute these matters pursuant to D.C. Bar R. XI, § 4(e)(2), because the Office of Disciplinary Counsel could not serve as prosecutor due to a conflict of interest involving a member of its staff who was a potential witness.[2]

[1] Respondent was charged with violating the Maryland Rules pursuant to D.C. Rule of Professional Conduct 8.5, governing choice of law.

[2] Disciplinary Counsel subsequently informed the Board that the conflict no longer existed when the staff member who was the cause of the conflict was no longer employed with the Office of Disciplinary Counsel. On August 3, 2015, the Board Chair informed Mr. Mercurio that he would be relieved of his duties as Special Disciplinary Counsel once the Office of Disciplinary Counsel entered its appearance, which occurred on August 6, 2015. The Board thanks Mr. Mercurio for his assistance to the discipline system and willingness to serve as Special Disciplinary Counsel.

Respondent is charged with violating MLRPC 1.1, 1.2(a), 1.3 and 1.4 in his representation of Carlina O. Seminiano because, in or around November 2007, Respondent failed to timely submit an application necessary to obtain permanent resident status for his client. Respondent is also charged with violating MLRPC 1.1, 1.3, 1.4, 1.8(h)(1), 1.15(a), 1.15(c), 1.16(d), 8.4(c) and 8.4(d), in his representation of Secundo Jacinto Jerez Minchala because, in or around June 2011, Respondent failed to appeal a decision that denied Mr. Minchala's request for voluntary departure from the United States and ordered his "removal" (*i.e.,* deportation), continued to charge fees for the unfiled appeal, failed to inform Mr. Minchala that the appeal had not been filed, commingled client funds (an advance of unearned fees) with his own funds, had Mr. Minchala sign a statement that purported to prospectively limit Respondent's liability for malpractice, failed to provide necessary background information about the case to successor counsel, and was dishonest with his client to cover up an omission.

The Hearing Committee submitted its report and recommendation on July 14, 2015, finding that there was clear and convincing evidence that Respondent violated multiple disciplinary rules in each matter. In the Seminiano matter, the Hearing Committee found that Respondent violated MLPRC 1.1 and 1.3, but did not violate MLRPC 1.2(a) or 1.4. In the Minchala matter, the Hearing Committee found that Respondent violated MLRPC 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.8(h)(1), 1.15(a), 1.15(c), 1.16(d), 8.4(c) and 8.4(d). The Hearing Committee also found that, pursuant to *In re Kersey,* 520 A.2d 321 (D.C. 1987), Respondent was entitled to disability mitigation, for the 2007 misconduct during his representation of Seminiano. Respondent suffered from depression during that time. The Hearing Committee further found that Respondent was not entitled to *Kersey* mitigation

for his misconduct in 2011 during his representation of Minchala because Respondent did not establish that his depression prevented him from comporting himself in accord with the norms of professional responsibility when representing Mr. Minchala. The Hearing Committee recommended that Respondent be suspended from the practice of law for 30 days, but stayed that suspension in favor of a two-year period of probation with conditions. Both Respondent and Disciplinary Counsel filed exceptions to the Hearing Committee report, but later jointly withdrew all exceptions. Instead, the parties requested that the Board consider the matter on the record, without briefing or argument, pursuant to Board Rule 13.5.

The Board, having reviewed the record, concurs with the Hearing Committee's factual findings, which are supported by substantial evidence in the record, and concurs with its conclusions of law, which are supported by clear and convincing evidence.[3] We adopt the Hearing Committee's Report and Recommendation, which is attached hereto and incorporated herein by reference, except for its conclusion as to the length of Respondent's suspension from the practice of law. We disagree with the Hearing Committee's proposed

[3] The Board also concurs with the Hearing Committee's recommended denial of Respondent's motion to dismiss and subsequent objections to the admissibility of certain documentary evidence. With respect to the former issue, the Hearing Committee correctly denied the motion to dismiss because "Special [Disciplinary] Counsel did not exceed his authority by undertaking an investigation of Respondent's entire representation of Mr. Minchala when faced with two apparently similar instances of neglect" consistent with Special Disciplinary Counsel's "investigatory and prosecutorial powers under § 6 of [D.C. Bar] Rule XI." H.C. Rpt. at 49. With respect to the latter issue, the Hearing Committee correctly noted that "because disciplinary cases are not subject to the strict rules of evidence, hearsay evidence is generally admissible and may be sufficient to establish a violation of the disciplinary rules." H.C. Rpt. at 50 (citing *In re Shillaire*, 549 A.2d 336, 343 (D.C. 1988)).

suspension, and instead recommend that Respondent be suspended for 90 days, with 60 days stayed, in favor of one year of probation, with conditions.

In reaching its recommended sanction, the Hearing Committee relied on *In re Lopes*, 770 A.2d 561 (D.C. 2001), noting that "the facts and circumstances of *Lopes* are very similar to the present proceeding in terms of the types of physical and mental disabilities at issue, the testimony from the parties' respective physicians, and the broad range of disciplinary violations involved." H.C. Rpt. at 73 (citing *Lopes*, 770 A.2d at 566-68 (affirming six-month suspension followed by two years of probation with conditions for misconduct involving dishonesty and neglect of four clients where Respondent provided evidence of disability mitigation under *Kersey*)). We agree that *Lopes* is instructive with respect to the application of *Kersey* mitigation in cases involving dishonesty, but the facts of this case are distinguishable from *Lopes*.

In *Lopes*, the respondent had neglected four different clients and engaged in a number of dishonest acts. The *Lopes* Hearing Committee found that the respondent's medical condition caused his misconduct, and recommended a 60-day suspension, stayed due to the *Kersey* mitigation, in favor of a one-year period of probation. H.C. Rpt. at 72 (citing *In re Lopes*, Bar Docket Nos. 195-95 *et al.* at 20-21 (BPR June 25, 1999) (hereinafter "*Lopes 1999*")). But, the Board disagreed and limited the *Kersey* mitigation to the respondent's neglect and related violations, finding that there was no evidence that his medical condition rendered him unable to understand that he was being dishonest. *Lopes 1999*, at 24. The Board determined that the appropriate sanction would be a six-month suspension plus two years of probation. *Id.* The Court of Appeals ultimately upheld the Board's recommended sanction. *Lopes*, 770 A.2d at 566-68.

In distinguishing the six-month suspension in *Lopes*, the Hearing Committee noted several factors, including: Respondent practiced law for several decades without any prior ethics violations (H.C. Rpt. at 73); Respondent has a significant record of *pro bono* service (*id.*); and Respondent had a good reputation for professionalism and conscientious practice (*id.* at 41-42). Indeed, the misconduct in *Lopes*—four instances of neglect and dishonesty including dishonesty towards a tribunal—is more significant than the two instances of misconduct in the Seminiano and Minchala matters. And although the Hearing Committee did not recognize it as a distinguishing factor (or even evidence of mitigation), Respondent made full restitution in both matters—albeit belatedly. H.C. Rpt. at 40-41. We do not agree that these distinguishing factors support either the relatively short period of suspension recommended by the Hearing Committee or the complete stay of that suspension. Respondent's misconduct in the Minchala matter, to which *Kersey* mitigation does not apply, was serious—involving dishonesty, commingling and interference with the administration of justice, in addition to neglect—and was the second time Respondent engaged in misconduct relating to his clients. *Id.* at 51-61.

The Board must recommend a sanction that is consistent with that imposed in cases involving comparable misconduct and is not otherwise unwarranted. *See* D.C. Bar R. XI, § 9(h). The sanction must protect the public and the courts, maintain the integrity of the profession, and deter the respondent attorney and others from engaging in similar misconduct. H.C. Rpt. at 62 (citing *In re Cater,* 887 A.2d 1, 17 (D.C. 2005)). When examining other cases to determine the appropriate sanction here, the range of sanctions for comparable misconduct supports the imposition of a 90-day suspension. *See, e.g., In*

re Perez, 828 A.2d 206 (D.C. 2003) (per curiam) (recognizing multiple serious rule violations involving a vulnerable client occurring over a significant period of time in immigration case as aggravating conduct and imposing a 60-day suspension with proof of fitness);[4] *In re Knox*, 441 A.2d 265 (D.C. 1982) (three-month suspension for neglect of a single matter, in violation of DR 6-101(A)(3), in which the respondent led the client to believe he was pursuing a personal injury case against the client's employer for nine years, but unilaterally decided not to pursue the case, permitting the statute of limitations to expire, aggravated by an informal admonition previously issued for similar misconduct).[5]

[4] In *Perez*, respondent filed an immigration application that did not need to be filed and neglected to file a motion to remand and accompanying papers with the BIA before a final order of deportation was entered against his client. The Respondent then compounded the problem by not advising the client that such an order had been entered, thereby depriving him of the option of departing voluntarily.

[5] *See also In re Askew*, 96 A.3d 52 (D.C. 2014) (six-month suspension, with all but 60 days stayed, with a concurrently commencing one-year probation for violations of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), 3.4(c), and 8.4(d), where respondent failed to provide CJA client with "competent representation" or to serve him with "skill and care," because she failed to adequately communicate with him, to respond to court orders, and to meet the Court's filing deadlines for the brief); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for lack of competence, neglect, dishonesty to cover up the neglect, and serious interference with the administration of justice in one client matter, in violation of Rules 1.1(a) and (b), 1.3(a), (b), and (c), 1.4(a) and (b), and 8.4(c) and (d), where there were several compelling mitigating factors); *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (per curiam) (60-day suspension where the respondent failed to work on a personal injury case for approximately one year, missed the statute of limitations, failed to follow up with the insurance company once it brought the statute of limitations to her attention, and advised the client to file suit without telling her about the statute of limitations, in violation of Rules 1.1(a) and (b), 1.3(a), 1.4(a) and (b), and 8.4(c)); *In re Schoeneman*, 891 A.2d 279, 284-87 (D.C. 2006) (per curiam) (appended Board Report) (four-month suspension where the respondent neglected three cases over a two-year period, resulting in prejudice to each client, failed to notify clients of his suspension, and falsely told one client that his case was "fine" after it had been dismissed, in violation of Rules 1.1(a), 1.3(a) and 1.3(b), 1.4(a), 1.16(d), and 8.4(c) and (d)); *In re Whitehead*, 883 A.2d 153 (D.C. 2005) (per curiam) (60-day suspension, fully stayed in favor of two years of probation with conditions, for neglecting four CJA cases, in violation of Rules 1.1(b), 1.3(a) and (c), 1.16(d), 1.4(a), and 8.4(d), where the respondent was entitled to *Kersey* mitigation); *In re Robertson*, 612 A.2d

We thus recommend that Respondent be suspended from the practice of law for 90 days, with 60 days stayed in favor of one year of probation (for the reasons set forth in the Hearing Committee's report and recommendation) with the following conditions:

> (1) During the first six months of the probationary period, Respondent shall take at least six hours of continuing legal education coursework pre-approved by Disciplinary Counsel that include the proper drafting of client retainer agreements, the proper handling of retainers and advance payment of fees by clients, and the proper operation of attorney escrow accounts containing such retainers and fees. Respondent shall provide Disciplinary Counsel with proof of attendance at such continuing legal education within 30 days after attendance at the approved course.
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> (2) At the end of each successive 90-day period following the start of probation, Respondent shall file an affidavit with the Board and Disciplinary Counsel stating that he believes he is fully capable both physically and mentally to continue practicing law, which affidavit shall be supported by one or more letters from a physician or physicians of Respondent's choice, dated within the 30 days prior to the date of Respondent's affidavit, stating that s/he has examined Respondent and finds that Respondent is fully capable both physically and/or mentally to continue practicing law; *provided*, if either Respondent or the examining physician(s) shall believe Respondent has any physical or mental condition that may affect Respondent's continuing practice of law, the affidavit/supporting letter shall describe such condition in reasonable detail.

1236 (D.C. 1992) (120-day suspension for failure to file a client's tax returns for five years, continuously filing extension requests with the IRS without intending to file the returns, and repeatedly misleading the client into believing the returns would be filed imminently, in violation of DR 6-101(A)(3) and DR 7-101(a)(1)-(3), the former rules governing neglect and intentional neglect, aggravated by harm to the client); *In re Jamison*, 462 A.2d 440 (D.C. 1983) (per curiam) (90-day suspension for neglect and failure to carry out a contract of employment in two unrelated cases, in violation of DR 6-101(A)(3) and 7-101(A)(1), the second of which culminated in a failure to appear in court on time and an order of summary judgment against the client that later became moot); *In re Thai*, 987 A.2d 428 (D.C. 2009) (per curiam) (60-day suspension, with 30 days stayed in favor of one-year probation with conditions for violating rules 1.1(a), 1.1(b), 1.3(a), 1.3(c), 1.4(a), 1.16(a)(2), and 1.16(d), where respondent failed to prepare his client for hearings in removal proceedings before the Immigration Court); *In re Fox,* 35 A.3d 441 (D.C. 2012) (45-day suspension for violating Rules 1.1(a) and (b), 1.3(a) and (c), and 1.4(a) and (b), where a respondent, with a virtually clean record over 24 years, undertook a client's case, received supporting evidence from the client, but never took steps necessary to develop her case for presentation to a court).

> (3) Respondent shall execute an authorization form waiving any physician-patient or similar privilege to the extent necessary to permit the physician(s) to release information to the Board and/or Disciplinary Counsel, and/or to testify at a hearing regarding Respondent's disability and compliance with the terms of probation and fitness to practice law, as provided by Board Rule 18.1.
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> (4) Respondent shall not be required to notify clients of the probation.
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> (5) During the probationary period, the Board shall retain jurisdiction to require any additional action or proceeding regarding Respondent in light of information the Board receives pursuant to condition (2) and/or condition (3) specified above.
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> (6) Should Respondent violate the terms of his probation or commit any additional violation of the MLRPC or the District of Columbia Rules of Professional Conduct, he will be subject to revocation of his probation.

In addition, pursuant to Board Rule 18.1(a), we recommend that Respondent be required to accept the terms of probation within 30 days of the date of the Court's order imposing probation, by filing a statement with the Board on a form prepared by the Board's Executive Attorney or countersigning the Board order implementing the probation.[6] *See In re Mance*, 869 A.2d 339, 343 (D.C. 2005) (per curiam) (failure to file statement with the Board certifying acceptance of conditions of probation within 30 days of the Court's order of discipline would result in lift of stay and immediate institution of 30-day suspension); *In re Stow*, 633 A.2d 782, 782 (D.C. 1993) (per curiam) (same). If

[6] Board Rule 18.1(a) provides in pertinent part that

> Respondent shall accept the terms of the probation within thirty days of the date of the Court order imposing the probation either by (i) filing a statement with the Board on a form prepared by the Executive Attorney, or (ii) countersigning the Board order implementing the probation. If respondent fails to accept the terms of the probation within the thirty-day period, any underlying suspension or disbarment shall take effect.

Respondent has not filed this statement with the Board, the full period suspension shall take effect without further order of the Court. *See* Board Rule 18.1(a).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /TRB/
Thomas R. Bundy, III

Dated: July 29, 2016

All members of the Board concur in this Report and Recommendation, except Mr. Peirce, who is recused.

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

In the Matter of:	:	
	:	
LAURENCE F. JOHNSON,	:	
	:	
Respondent.	:	Board Docket No. 14-BD-023
	:	Bar Docket Nos. 2009-D307 and
A Member of the Bar of the	:	2012-D453
District of Columbia Court of Appeals	:	
(Bar Registration No. 934398)	:	

REPORT AND RECOMENDATION OF AD HOC HEARING COMMITTEE

I. PROCEDURAL BACKGROUND/SUMMARY OF ALLEGATIONS AND RECOMMENDATIONS

On March 7, 2014, Special Bar Counsel James P. Mercurio, Esq., filed with the Board on Professional Responsibility ("Board") a Petition Instituting Formal Disciplinary Proceedings and a two-count initial Specification of Charges involving Respondent's representation of Carlina O. Seminiano[1] (Count I) and Secundo Jacinto Jerez Minchala[2] (Count II) in two different immigration matters. The initial Specification of Charges alleged that Respondent had violated various provisions of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"), and/or cognate provisions of the District of Columbia Rules of Professional Conduct. On March 27, 2014, Respondent[3] filed a response denying that he had violated any ethics rules, and raising various

[1] Hereinafter sometimes referred to as Ms. Seminiano.

[2] Although the documentary evidence in this proceeding and the transcript of the hearing refer to this individual using various different last names (or combinations thereof), he is referred to throughout this Report and Recommendation using only his last surname, *i.e.*, "Minchala."

[3] Throughout this matter, Respondent was represented by Justin M. Flint, Esq., and Borislav ("Steven") Kushnir, Esq.

factors in mitigation of sanction, including a claim for disability mitigation pursuant to *In re Kersey*, 520 A.2d 321 (D.C. 1987).

By Order dated June 17, 2014, Special Bar Counsel was directed to elect, pursuant to the choice of law provisions in Rule 8.5 of the District of Columbia Rules of Professional Conduct, to apply either the District of Columbia's ethics rules or the MLRPC to Counts I and II of the initial Specification of Charges. On July 2, 2014, Special Bar Counsel filed an Amended Specification of Charges, electing to have the MLRPC apply.[4] On August 15, 2014, Special Bar Counsel filed a Third Amended Specification of Charges (hereinafter referred to as the "Specification")[5] in order to correct a typographical error, and on the same day Respondent filed an Answer to the Specification.

On July 11, 2014, Respondent filed a "Motion to Dismiss Bar Docket No. 453-12," *i.e.*, the allegations in Count II of the Specification relating to Respondent's representation of Mr. Minchala. The motion asserted that pursuant to § 11(c) of District of Columbia Bar Rule XI as amended effective August 1, 2008,[6] because Respondent had previously received only a letter of reprimand from the Attorney Grievance Commission of Maryland (hereinafter, "AGCM") in

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[4] On July 11, 2014, Respondent filed an Answer to the Amended Specification of Charges, in which Respondent again denied committing any ethics violations. Because the Amended Specification of Charges lacked a verification and contained ambiguous language that might be construed as being inconsistent with the election to apply the MLRPC, a *sua sponte* Order was entered on July 11, 2014, directing Special Bar Counsel to file a Second Amended Specification of Charges. On July 18, 2014, Special Bar Counsel filed a verified Second Amended Specification of Charges, which also eliminated the ambiguous language contained in the Amended Specification of Charges.

[5] A consent motion for leave to file the Third Amended Specification of Charges was filed on August 4, 2014, and granted by Order dated August 11, 2014.

[6] As hereinafter discussed, the amendment to § 11(c) of Rule XI was supplemented by an Amended Order (No. M-234-08) issued by the District of Columbia Court of Appeals on September 4, 2008. A copy of the Amended Order is provided as Exhibit B to "Respondent's Reply In Support of His Motion to Dismiss Bar Docket No. 453-12," which was filed on July 25, 2014, along with a motion for leave to file that Reply.

connection with his representation of Mr. Minchala (*see* SBX 20),[7] Special Bar Counsel lacked authority to pursue any further investigation or discipline of Respondent in connection with that representation, and was limited solely to publishing notice of the Maryland reprimand. On July 21, 2014, Special Bar Counsel filed an opposition to Respondent's motion, and on August 6, 2014, the Hearing Committee entered an Order deferring a recommendation on the motion until this Report and Recommendation. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991); *In re Stanton*, 470 A.2d 281, 285 (D.C. 1983) (per curiam) (appended Board Report). Argument on Respondent's motion was presented at the conclusion of the hearing in this proceeding. *See* Tr. 1,736-69.[8] For the reasons stated in Section III(A), below, the Hearing Committee recommends denial of Respondent's motion to dismiss Count II of the Specification.

Paragraph 21 of Count I of the Specification alleges that in his representation of Ms. Seminiano, Respondent violated the following four provisions of the MLRPC:

a. Rule 1.1 (competence);
b. Rule 1.2(a) (failure to consult appropriately with the client);
c. Rule 1.3 (diligence); and
d. Rule 1.4 (keeping the client reasonably informed of the status of the matter).

In his Initial Post-Hearing Brief filed on April 6, 2015,[9] as amended by an "Erratum" filed on April 14, 2015, Special Bar Counsel advised that in the Seminiano matter (*i.e.*, Count I of the Specification), he had decided not to pursue the alleged violations of MLRPC 1.2(a) (failure to consult appropriately with the client) and MLRPC 1.4 (keeping the client reasonably informed).

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[7] All references in this Report and Recommendation to documentary exhibits introduced into evidence by Special Bar Counsel are designated with the prefix "SBX"; all references to documentary exhibits introduced into evidence by Respondent are designated with the prefix "RX."

[8] All references herein to the transcript of the hearing are designated with the prefix "Tr."

[9] Brief at 2, n.1.

Despite that decision by Special Bar Counsel, the Hearing Committee is required to make findings on all charged violations. *See In re Drew*, 693 A.2d 1127 (D.C. 1997) (per curiam). Having reviewed the record in this proceeding, the Hearing Committee finds that Special Bar Counsel has failed to prove the alleged violations of MLRPC 1.2(a) and 1.4 by clear and convincing evidence. However, for the reasons set forth in Section III(C), below, the Hearing Committee finds that in the Seminiano matter (Count I of the Specification) Special Bar Counsel has proved by clear and convincing evidence that Respondent violated both MLRPC 1.1 (competence) and 1.3 (diligence).

Paragraph 32 of Count II of the Specification alleges that in his representation of Mr. Minchala, Respondent violated the following nine provisions of the MLRPC:

a. Rule 1.1 (competence);
b. Rule 1.3 (diligence);
c. Rule 1.4 (keeping the client reasonably informed of the status of the matter);
d. Rule 1.8(h)(1) (making an agreement with the client prospectively limiting the lawyer's liability to the client for malpractice);
e. Rule 1.15(a) (holding client funds in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules);
f. Rule 1.15(c) (failure to deposit legal fees and expenses paid in advance into a client trust account);
g. Rule 1.16(d) (properly protecting the client's interests on termination of the representation, including surrender of papers and property to which the client is entitled, and cooperating with successor counsel);
h. Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and
i. Rule 8.4(d) (conduct that seriously interferes with the administration of justice).

Of the foregoing allegations, only the violations of MLRPC 1.1, 1.3, and 8.4(d) were covered by the letter of reprimand issued to Respondent by the AGCM (*see* SBX 20). In his Initial Post-Hearing Brief filed on April 6, 2015, Special Bar Counsel advised that in the Minchala matter (*i.e.*, Count II of the Specification), he had decided not to pursue the alleged violation of MLRPC 1.15(a).[10] As noted above, however, pursuant to *In re Drew*, the Hearing Committee is required

[10] *See* note 9, *supra*.

to make findings on all charged violations, and because of the substantial overlap between the language of MLRPC 1.15(a) and 1.15(c), and in light of the Hearing Committee's finding as explained below that Special Bar Counsel submitted clear and convincing evidence that Respondent violated MLRPC 1.15(c), the Hearing Committee finds that Respondent violated both MLRPC 1.15(a) and 1.15(c). In addition, for the reasons stated in Section III(C), below, the Hearing Committee finds that Special Bar Counsel has proved by clear and convincing evidence that Respondent committed all of the other charged MLRPC violations in the Minchala matter (Count II of the Specification).

On August 8, 2014, Special Bar Counsel and Respondent filed a document entitled "Pre-Hearing Stipulations of Fact," relating to certain factual matters alleged in the Specification. All references herein to that document are designated with the prefix "Stip. ¶ ___."

The hearing in this proceeding was bifurcated. *See* Board Rule 11.11. The first phase of the hearing (the "violations phase") concerning the factual allegations of the Specification was held on August 18-20, 2014. During the violations phase, Special Bar Counsel called five witnesses[11] and submitted 60 exhibits for the record (SBX nos. A through D, and SBX nos. 1-56), all of which were admitted into evidence,[12] although prior to the violations phase Respondent objected pursuant to Board Rule 7.18 to the admission of SBX nos. 8, 16, 17, 45, and 56.[13] For the reasons set forth in Section III(B), below, the Hearing Committee recommends that all five of

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[11] Jonathan R. Bloom Esq. (Respondent's successor counsel in the Minchala matter); Matilde H. Farren, a certified English/Spanish translator (*see* Tr. 91:9-18); Diane McHugh-Martinez, Esq., who was permitted by the Hearing Committee to testify as an expert witness on matters pertaining to immigration law; Respondent; and Ms. Seminiano.

[12] *See* Tr. 232-33.

[13] "Respondent's Objections to Special Bar Counsel's Proposed Documentary Exhibits," filed August 13, 2014. Respondent's pre-hearing objection to SBX 23 was withdrawn during the hearing (s*ee* Tr. 242-45).

the challenged Special Bar Counsel exhibits should remain admitted as evidence in this case. Respondent called four witnesses,[14] initially designated 103 potential exhibits (Respondent began the numbering of his exhibits with RX 301), and identified one additional exhibit (RX 404) during the violations phase.[15] However, at the end of his case-in-chief Respondent moved only 79 exhibits into evidence,[16] all of which were admitted without objection by Special Bar Counsel.[17]

Also during the violations phase, at the end of Special Bar Counsel's case-in-chief[18] and after both parties had rested,[19] Respondent moved to dismiss all charges in the Specification due to insufficiency of the evidence adduced by Special Bar Counsel. Because the Hearing Committee finds that Special Bar Counsel has proved all allegations of the Specification discussed in Section III(C), below, Respondent's motions to dismiss based on insufficiency of the evidence are without merit, and the Hearing Committee recommends that both of those motions should be denied.

After Special Bar Counsel and Respondent had rested in the violations phase, pursuant to Board Rule 11.11, the Hearing Committee heard argument from Special Bar Counsel and Respondent's legal counsel and recessed in executive session to decide whether the Hearing Committee could make a preliminary, non-binding determination that Special Bar Counsel had

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[14] Nancy Barr, Esq. (Ms. Seminiano's sponsoring employer when her immigration matter was begun); Respondent; Joshua Berman, Esq. (an attorney who represented Mr. Minchala after Mr. Bloom); and Thomas Elliot, Esq., who was permitted by the Hearing Committee to testify as an expert witness on matters pertaining to immigration law.

[15] RX 404 consists of a cover letter dated January 9, 2014, from the Board of Immigration Appeals to Mr. Minchala, and a decision of the Board of Immigration Appeals, also dated January 9, 2014, involving him.

[16] RX 301-04; RX 306-10; RX 312; RX 314-63; RX 369-72; RX 374-75; RX 378-82; RX 388; RX 391-92; RX 396; and RX 403-04. *See* Tr. 819-25.

[17] On August 13, 2014, Special Bar Counsel filed a pre-hearing objection to five of Respondent's proposed exhibits. All of the objections were withdrawn by Special Bar Counsel during the violations phase.

[18] *See* Tr. 315-33.

[19] *See* Tr. 825-26.

proved a violation of any disciplinary rule. Upon resuming proceedings, the Hearing Committee Chair announced that the Hearing Committee had made a preliminary, non-binding determination that Special Bar Counsel had proved a violation of at least one disciplinary rule.

The Hearing Committee Chair then asked if Special Bar Counsel intended to present any evidence in aggravation of sanction, and whether Respondent intended to offer any evidence in mitigation. Special Bar Counsel advised (Tr. 853:11-19) that the only prior discipline of Respondent was the letter of reprimand issued to Respondent by the AGCM (*see* SBX 20), and Respondent advised that a number of grounds for mitigation of sanction would be advanced, including but not limited to a claim of disability mitigation. *See* Board Rules 7.6 and 11.13. Respondent's counsel thereupon tendered for filing a "Motion Regarding Mitigation of Sanctions Based on Disability," supported by three exhibits: two written reports from a forensic psychiatrist, Christiane Tellefsen, M.D. (dated, respectively, April 10, 2014 and July 15, 2014), and an "Acknowledgement of Disability (Or Addiction)" dated July 10, 2014, signed by Respondent and previously filed with the Office of the Executive Attorney of the Board, in which Respondent claimed that during the period from April, 2004, until May, 2011, he suffered from a disability due to "Dermatitis Herpetiformis & Major Depression."

The second phase of the bifurcated hearing (the "mitigation phase"), concerning Respondent's contentions that due to a variety of factors any sanction against him should be reduced, was held on January 5-8, 2015 and March 12, 2015. During the mitigation phase, Respondent testified on his own behalf and called 13 other witnesses including Dr. Tellefsen, whom the Hearing Committee allowed to provide expert testimony concerning Respondent's claim

for disability mitigation.[20] Respondent also submitted four additional documentary exhibits (RX 405-08),[21] all of which were admitted into evidence. Special Bar Counsel called two witnesses: Neil Blumberg, M.D., a forensic psychiatrist, whom the Hearing Committee allowed to provide expert testimony concerning Respondent's claim for disability mitigation; and Respondent. Special Bar Counsel also introduced eight documents into evidence, three of which (SBX 81-83[22]) had been designated as exhibits prior to the mitigation phase, and five of which were introduced into evidence by Special Bar Counsel during the mitigation phase (SBX 84, 91-94).[23] On August 13, 2014, the parties filed with the Office of the Executive Attorney of the Board a stipulation regarding the admissibility into evidence of RX 404-407[24] and SBX 81-83, which recited that Respondent's medical records introduced into evidence during the mitigation phase were those reviewed by Drs. Tellefsen and Blumberg in support of their opinions.

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[20] In addition to Dr. Tellefsen, Respondent called the following 12 individuals as character witnesses: Joseph Vallario, Esq.; Deborah Sanders, Esq.; Devora Palomo; David Scull, Esq.; Mary Louise Johnson (Respondent's spouse, hereinafter referred to as "Mrs. Johnson"); Rev. Maurice O'Connell; Elton Norman, Esq.; Rev. Msgr. Donald Essex; Carol Popowsky; Jaime Aparisi, Esq.; and Edward Lau, Esq.

[21] RX 405 (Respondent's medical records); RX 406 (Respondent's "Notice of Intent to Raise Disability Mitigation" and "Acknowledgement of Disability (Or Addiction)," both dated March 26, 2014); RX 407 (report from Dr. Tellefsen dated April 10, 2014); and RX 408 (report from Dr. Tellefsen dated July 15, 2014). Prior to the mitigation phase, Respondent's medical records had been designated as RX 404, but they were re-numbered as RX 405 after Respondent introduced one additional exhibit during the violations phase as RX 404.

[22] SBX 81 (letter of reprimand dated November 17, 2012, issued to Respondent by the AGCM in connection with the Minchala matter, also in evidence as SBX 20); SBX 82 (a report dated July 28, 2014, by Dr. Blumberg of his forensic psychiatric examination of Respondent); and SBX 83 (Dr. Blumberg's *curriculum vitae*).

[23] SBX 84 is a copy of the Specification; SBX 91 is a copy of "Respondent's Motion Regarding Mitigation of Sanctions Based on Disability," referred to above; SBX 92 is a letter dated July 12, 2012, from Daniel R. Hodges, Esq., to Caroll G. Donayre, Esq., Assistant Bar Counsel of the AGCM (Mr. Hodges is an attorney with the same law firm as Messrs. Flint and Kushnir, who represented Respondent during this proceeding); SBX 93 is a two-page document entitled "Character Witnesses for Larry Johnson -- Background Summary," which Respondent sent to his character witnesses prior to their testimony in this proceeding; SBX 94 is a copy of Respondent's "Notice of Intent to Raise Disability Mitigation" and "Acknowledgement of Disability (Or Addition)" dated March 26, 2014, referred to above.

[24] Later re-numbered as RX 405-08; *see* note 21, *supra*.

The sanction recommendation of Special Bar Counsel, relying on *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), is that Respondent should be disbarred because of his alleged misappropriation of payments made to him by Mr. Minchala.[25] Respondent urges, first, that any sanction against him should be stayed in favor of a period of probation pursuant to *In re Kersey*, *supra*;[26] and, in the alternative, if the Hearing Committee does not apply the *Kersey* doctrine to mitigate and stay all sanctions, Respondent urges a 30-day suspension as the appropriate sanction.[27] The sanction recommended by the Hearing Committee is that Respondent should be suspended from the practice of law for a period of 30 days, with the suspension stayed in favor of a two-year period of probation pursuant to § 3(a)(7) of Rule XI and Chapter 18 of the Board Rules, subject to certain conditions as fully set forth in Part IV of this Report and Recommendation.

II. FINDINGS OF FACT

Jurisdictional findings of fact are contained in Section II(A), below. Findings of fact with respect to Count I of the Specification (Seminiano) are contained in Section II(B). Findings of fact with respect to Count II of the Specification (Minchala) are contained in Section II(C). Findings of fact relating to Respondent's claims for mitigation of sanction are contained in Section II(D).

A. Jurisdiction

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on September 23, 1977, and assigned Bar Number 934398. At all times

[25] Special Bar Counsel's Post-Hearing Reply Brief, filed herein on May 1, 2015, at 19-20,

[26] Respondent's Post-Hearing Reply Brief Regarding Aggravating and Mitigating Circumstances, filed herein on May 1, 2015, at 30.

[27] Respondent Post-Hearing Brief In Response to Special Bar Counsel's Opening Brief, filed herein on April 24, 2015, at 62.

relevant to the Specification, Respondent was also admitted to practice before the Maryland Court of Appeals. Stip. ¶ 1.

2. By e-mail dated March 6, 2014, from Justin M. Flint, Esq., to Special Bar Counsel, Mr. Flint, as legal counsel for Respondent, confirmed his authorization to accept service of process of the Specification in this proceeding. Pursuant to that authorization, on March 7, 2015, Special Bar Counsel provided copies of the Petition Instituting Formal Disciplinary Proceedings and the initial Specification of Charges to Board staff to be served on Mr. Flint as Respondent's legal counsel. SBX B.

3. At the times relevant to the Specification, Respondent maintained his principal office for the practice of law in Maryland. Tr. 441:2-6 (Johnson).

B. Count I (Seminiano)

4. Respondent is an experienced immigration law attorney, having specialized in that field since 1977. Tr. 440:8-13 (Johnson).

5. On April 25, 2001, Ms. Seminiano entered into a retainer agreement (SBX 21) with Respondent for the following three-step process: preparation and filing with the United States Department of Labor ("DOL") of an application for labor certification, with Nancy Barr as the sponsoring employer; preparation and filing of an "I-140" petition with the United States Immigration and Naturalization Service ("INS"); and preparation of an "I-485" application for adjustment of status, including accompanying Ms. Seminiano to an interview at the INS office in Baltimore, Maryland, if needed. The ultimate goal of this three-step process was to obtain permanent residence (*i.e.*, "Green Card") status for Ms. Seminiano in the United States. Tr. 561:16-562:4 (Johnson).

6. Pursuant to her retainer agreement with Respondent, Ms. Seminiano made an initial payment to him of $2,000, but no further payments were due until after approval of the application for labor certification. SBX 21 at ¶ IV. Ms. Seminiano paid the initial $2,000 to Respondent (Tr. 292:20-293:7 (Seminiano)) in April, 2001, contemporaneously with the retainer agreement (SBX 52 at SBC-00393).[28]

7. On April 26, 2001, Respondent sent DOL the documents needed to begin processing Ms. Seminiano's application for labor certification (SBX 22), including an "Application for Alien Employment Certification" (SBX 22 at SBC-02419) signed by Nancy Barr as Ms. Seminiano's employer. By taking this action before April 30, 2001, Respondent conferred a benefit on Ms. Seminiano, because she became eligible for "adjustment of status" without having to leave the United States. Tr. 148:10-149:18 (Johnson); SBX 56 at 6.

8. Because of a very heavy volume of labor certification applications, DOL assigned the processing of such matters to two special "Backlog Elimination Centers." Tr. 203:16-204:9 (McHugh-Martinez); Tr. 488:8-16 (Johnson). Ms. Seminiano's labor certification application was assigned to DOL's Philadelphia Backlog Elimination Center ("PBEC"), and the PBEC sent Respondent a notice of this assignment dated September 27, 2005 (SBX 23; Tr. 490:1-10 (Johnson); Stip. ¶ 3), although Respondent apparently did not receive that communication (Tr. 490:13-17 (Johnson)).

9. Also because of the very heavy volume of labor certification applications, the processing of Ms. Seminiano's labor certification application by DOL was delayed for many years, and her application was even deemed by DOL to have been closed. SBX 24; Stip. ¶ 4.

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[28] Within multi-page documents submitted as exhibits by Special Bar Counsel, individual pages in most cases bear a page number beginning with the prefix "SBC."

10. In an e-mail dated August 8, 2007, Respondent was notified by the PBEC that Ms. Seminiano's application for labor certification had been re-opened, but additional information was required to continue processing the application. SBX 27.

11. By the time PBEC advised Respondent in 2007 that Ms. Seminiano's case had been re-opened, she was no longer working for Ms. Barr, whose husband had died (SBX 31 at SBC-00413) and who had moved to a smaller house. Tr. 339:2-9, 349:19-20, 387:18-388:9 (Barr).

12. By letter dated August 10, 2007 (SBX 28), entitled "Recruitment Instructions," Respondent was notified by Barbara Shelly, a "Certifying Officer" at the PBEC, of the next step for obtaining approval of Ms. Seminiano's application for labor certification, *i.e.*, placing advertisements in a Washington, D.C., area newspaper for the availability of the job for which Ms. Seminiano was seeking labor certification. The Recruitment Instructions also advised Respondent that the 30-day competitive recruitment period would begin on August 27, 2007, and end on September 26, 2007.

13. By letter dated August 27, 2007 (SBX 29 at SBC-02316), Respondent sent a copy of PBEC's August 10, 2007 Recruitment Instructions letter to Ms. Barr. Respondent's letter stated that he was writing "concerning my client, Ms. Seminiano," and that, "In order to continue this application, we must place an advertisement no later than September 10, 2007, or you may advertise by your self [*sic*]." For this part of the competitive recruitment process, Respondent gave Ms. Barr detailed guidance as to the procedure required for running the advertisement for three consecutive days (SBX 29 at SBC-02317), and gave her a sample advertisement (SBX 27 at SBC-02318). Respondent's August 27, 2007 letter to Ms. Barr also advised that DOL/PBEC itself would place a notice in "America's Job Bank" regarding the employment position for which Ms. Seminiano's application for labor certification had been filed. *See also* Tr. 356:21-360:22 (Barr).

14. At the time that Respondent sent Ms. Barr a copy of PBEC's August 10, 2007 Recruitment Instructions letter, he knew that at the end of the 30-day competitive recruitment period described in PBEC's letter (and as stated in the penultimate paragraph on page 2 of that letter (SBX 28 at SBC-02414)), further instructions would be issued by PBEC regarding a "Recruitment Report" to be filed with PBEC in order to verify that the competitive job recruitment process specified in the Recruitment Instructions had been properly completed. Stip. ¶ 7.[29]

15. At the time Respondent received PBEC's August 10, 2007 Recruitment Instructions letter, as well as when Respondent later received a "Recruitment Report Instructions" letter from PBEC as hereinafter discussed, Respondent had the help of a legal assistant, Ms. Inda Setiabudi, who advised Ms. Barr as to the competitive 30-day recruitment period and other things she had to do and sign, and even, at Respondent's request (Tr. 505:15-17 (Johnson)), went to Ms. Barr's home to assist her. Tr. 348:2-6, 350:22-351:17, 352:10-12, 401:3-9 (Barr); Tr. 657:11-658:9 (Johnson). Respondent and Ms. Setiabudi were the only people in Respondent's law firm with whom Ms. Barr dealt. Tr. 401:3-4 (Barr).

16. On September 13, 2007, Ms. Setiabudi sent Ms. Barr an e-mail in which she told Ms. Barr to call either her or Respondent as soon as possible if Ms. Barr received any responses to the newspaper job advertisements that Ms. Barr placed. The e-mail also provided Ms. Barr with two contact telephone numbers (including Respondent's cell phone number), and told Ms. Barr that Respondent's office would send her an example of a response letter to any job applicant who answered the newspaper advertisements. RX 327 at 1-2. As Respondent testified, Ms. Barr was provided with his cell phone number because "I wanted to make sure that we -- that I was available

[29] The Stipulation refers to "ETA," which is an acronym for the Employment and Training Administration, a division of DOL.

to answer questions 24/7, because this was a very important case. We'd been waiting for years." Tr. 540:20-541:1 (Johnson).

17. On September 20, 2007, Respondent received from Ms. Barr copies of the newspaper advertisements she had run in The Washington Times (Tr. 411:20-412:5 (Barr)) to comply with the advertising requirement of PBEC's August 10, 2007 Recruitment Letter. SBX 30. At the same time, Respondent received a copy of proof of publication from The Washington Times showing that the job advertisements had been run on a three-day period from a "Start Date" of "09/07/2007" to an "End Date" of "09/09/2007" (SBX 30 at SBC-02457). *See also* Tr. 158:20-162:20 (Johnson) (Respondent received the proofs of advertising on September 20, 2007, and they fulfilled the advertising requirements of the Recruitment Letter).

18. On September 22, 2007, Respondent sent PBEC a certified letter and enclosures (SBX 31) that replied to PBEC's August 8, 2007 notice (SBX 27) requesting additional information needed to continue processing Ms. Seminiano's application for labor certification. On the last page of the enclosures (SBX 31 at SBC-00415), entitled "Selection of Continuation Option Letter," signed by Ms. Barr, Respondent crossed out Ms. Barr's name in the block for contact information, and wrote in his own law firm name.

19. On September 25, 2007, Respondent had a telephone conversation with Ms. Tanisha Peyton of the PBEC (records of the telephone contact are provided in SBX 32), in which she told Respondent that PBEC was sending out instructions for filing a "Recruitment Report" in connection with Ms. Seminiano's application for labor certification. Respondent was both "shocked" and "pleasantly surprised" by Ms. Peyton's telephone call, because it was so unusual for DOL to make such contacts. Tr. 166:1-16, 556:8-557:2 (Johnson). Thereafter, Respondent was "on the lookout" for receipt of PBEC's instructions for filing a Recruitment Report (Tr. 167:5-

7 (Johnson)), which he knew normally provided a 45-day time window for filing the Recruitment Report (Tr. 165:16-166:9 (Johnson)).

20. In accordance with the September 25, 2007 telephone conversation between Respondent and Ms. Peyton at PBEC, the next day -- September 26, 2007 -- PBEC sent Respondent at his address as indicated in his September 22, 2007 mailing to PBEC (SBX 31 at SBC-00415) a letter entitled "Recruitment Report Instructions" (SBX 33). PBEC's Recruitment Report Instructions letter advised Respondent:

a. That no resumes had been received by the government itself in response to its own posting of the job opportunity for which Ms. Seminiano was seeking labor certification;

b. That a "Recruitment Report" needed to be filed with PBEC regarding the results of the local newspaper advertisements placed for the job opening which was the subject of Ms. Seminiano's application for labor certification;

c. As to the detailed information that needed to be included with the Recruitment Report, the first item of which was the newspaper tear sheets for advertising the job opening, which Respondent had already received from Ms. Barr on September 20, 2007 (SBX 30); and

d. That "[f]ailure to provide this report by November 12, 2007, will result in your application being closed and it will be returned to you."

21. PBEC's September 26, 2007, Recruitment Report Instructions letter was received in Respondent's office on October 2, 2007. RX 341; Tr. 561:5-8 (Johnson).

22. With the advice in PBEC's September 26, 2007 Recruitment Report Instructions letter that no applications had been received by the government in response to its own posting for the job opening (SBX 33), and with the newspaper advertisement tear sheets and proof of publication that Respondent had already received from Ms. Barr (SBX 30), Respondent had virtually all of the

information needed to prepare a Recruitment Report. *See* RX 342: Tr. 752:12-753:10 (Elliot). The only additional thing needed was to obtain from Ms. Barr information as to any job applications she received -- and there were none (Tr. 363:10-11 (Barr)) -- in response to the newspaper advertisements she had placed.

23. If Respondent or Ms. Setiabudi had called Ms. Barr to obtain the results of the advertising, no significant amount of time or effort would have been required for Respondent or Ms. Setiabudi to prepare the Recruitment Report. Tr. 1,052:5-8 (Johnson).

24. At the time that PBEC's September 26, 2007 Recruitment Report Instructions letter was received, Respondent had a computerized case tracking system to which he had access from a computer terminal on his desk, which he reviewed approximately every week. Tr. 660:16-661:11 (Johnson).

25. Respondent testified that the November 12, 2007 deadline for filing the Recruitment Report was missed because PBEC's September 26, 2007 Recruitment Report Instructions letter was misfiled within his office. Tr. 564:6-7 (Johnson). However, notwithstanding that asserted misfiling, at some point between September 26 and November 12, 2007, Respondent became aware of the November 12th Recruitment Report filing deadline. Tr. 645:16-648:6,[30] 661:16-662:20[31] (Johnson).

26. Five months after Respondent's testimony that prior to the November 12, 2007 Recruitment Report deadline he was aware of that deadline date, and after reading the transcript of the violations phase, Respondent recanted that testimony. Tr. 965:16-967:8 (Johnson). Having

[30] Responding to questions from the Chair of the Hearing Committee.

[31] Responding to questions from Hearing Committee member Malcolm L. Pritzker, Esq.

heard Respondent's testimony and assessed his credibility and demeanor on both occasions, and bearing in mind that Respondent is an experienced immigration attorney (FF ¶ 4),[32] that on September 25, 2007, he had a telephone conversation with Tanisha Peyton of PBEC who told him the Recruitment Report instructions were coming (FF ¶ 19), that Respondent was familiar with the 45-day time window for filing the Recruitment Report (FF ¶ 19), and that Respondent had available both a computerized case tracking system (FF ¶ 24) as well as the help of an experienced legal assistant who worked with him on the Seminiano case and other labor certification applications pending before the PBEC (FF ¶ 15), the Hearing Committee finds Respondent's recantation to be non-credible. The Hearing Committee does not find Respondent's recantation to be intentionally dishonest; rather, the Hearing Committee concludes that in his recantation Respondent was misremembering events as they occurred in 2007.

27. In the approximately seven-week time span between the end of the competitive recruitment period on September 26, 2007 and the November 12, 2007 deadline for filing the Recruitment Report, neither Respondent nor anyone else from his law firm got in touch with Ms. Barr to obtain the information needed to prepare a complete Recruitment Report concerning any job applications Ms. Barr might have received. Tr. 412:21-415:8, 428:12-17, 430:10-15 (Barr); Tr. 649:16-650:12 (Johnson); Tr. 790:3-10 (Elliot).[33] During that same seven-week period, Respondent neither prepared for signature by Ms. Barr nor otherwise submitted a Recruitment

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[32] All internal references in this Report and Recommendation to the findings of fact made herein are designated with the prefix "FF ¶ ___."

[33] *See also* statement by Respondent's counsel at the outset of the mitigation phase: "[Respondent] is going to take responsibility that his firm was responsible to at least coordinate with Ms. Barr to make sure that that deadline was at least addressed." Tr. 921:11-14.

Report in connection with Ms. Seminiano's application for labor certification. Tr. 180:9-14 (Johnson).

28. Respondent's file notes for the Seminiano case also show no activity for that case in Respondent's office during the period between September 25, 2007 and December 17, 2007. SBX 53 at SBC-02492-93; Tr. 152:6-21 (Johnson).

29. In light of the telephone call that Respondent received on September 25, 2007 from Ms. Peyton at the PBEC (FF ¶ 19), Respondent, as an experienced immigration law practitioner, knew or should have known that Ms. Seminiano's case was immediately ready for the filing of a Recruitment Report. Tr. 206:11-22 (McHugh-Martinez).

30. Respondent's representation of Ms. Seminiano in connection with the timely preparation and filing of a Recruitment Report was deficient (Tr. 203:3-7 (McHugh-Martinez)). Proper representation would require a client's attorney both to communicate with the intended employer to find out the results of the newspaper job advertisement effort (Tr. 207:3-5 (McHugh-Martinez)), and to prepare and file the Recruitment Report directly with DOL -- as Respondent testified was his usual practice (Tr. 180:12-14 (Johnson)) -- rather than leaving it to a prospective employer to "go rogue" and file such a report on their own (Tr. 207:11-14, 214:9-14 (McHugh-Martinez)). *See also* Tr. 450:4-6 (Johnson) (". . . it was important to communicate with the prospective employer"); Tr. 781:15-782:15 (Elliot) (Respondent had a duty as Ms. Seminiano's attorney to "supervise the whole process" involving her application for labor certification).

31. For an experienced immigration law practitioner such as Respondent, the seven-week "gap" in attention to the Seminiano case after September 25, 2007 was a troubling example of inactivity, because even if he had not received the Recruitment Report Instructions letter from

PBEC, he could have called PBEC at any time to remind them that a recruitment report instruction letter was supposed to be issued. Tr. 207:1-8 (McHugh-Martinez).

32. Respondent's failure to ensure that a timely Recruitment Report was submitted to PBEC prior to November 12, 2007 violated the standards of care for diligence and competence for immigration law practitioners in his representation of Ms. Seminiano. SBX 56 at 11-13 (report and conclusions of Diane McHugh-Martinez, Esq.).

33. Ms. Barr also received a copy of the Recruitment Report Instructions from PBEC, but because they did not appear to require any immediate action she put them on a staircase inside her home. Tr. 370:14-16 (Barr).

34. About 12 days after the expiration of the November 12, 2007, Recruitment Report deadline, Ms. Barr, acting on her own and without the assistance of Respondent, sent PBEC a back-dated letter in an attempt to mislead PBEC into thinking that a timely Recruitment Report was being filed. Tr. 372:9-373:6 (Barr). The entire text of the letter (other than the salutation and signature) was:

> I am writing this employer report for Ms. Carlina Seminiano, #3014744010 to report that I did not receive any calls or resumes in response to the advertisement for this position. Enclosed is the tear sheet for the ad that I placed in the Washington Times that ran on September 7, 8, and 9, 2007.
> Please let me know if you have any questions or if you require anything further from me in regard to processing Ms. Seminiano's application.
> Thank you very much.

RX 342. As Respondent's own expert witness testified, the text of Ms. Barr's short letter was completely sufficient to constitute a valid Recruitment Report in Ms. Seminiano's case. Tr. 752:12-753:10 (Elliot).

35. On December 17, 2007, for reasons that Respondent at first testified he could not recall, he decided to consult DOL's case tracking system directly to determine the status of Ms.

Seminiano's application for labor certification (Tr. 175:10-16 (Johnson)),[34] although he later testified he checked on Ms. Seminiano's case on that date because he was "getting nervous" (Tr. 571:2-12 (Johnson)). Upon learning that Ms. Seminiano's case had been closed, Respondent's mind was "focusing on the fact that I had not prepared a letter for Ms. Barr as I usually do." Tr. 180:9-14 (Johnson).

36. At 3:27 P.M. on December 18, 2007, Respondent sent an e-mail (RX 350) to Barbara Shelly at the PBEC, entitled "REQUEST TO REOPEN" (capitalization in original), in which he asked PBEC to reopen Ms. Seminiano's case, stating, ". . . someone in my office made a terrible mistake for which I must take full responsibility," and further stating, ". . . when the [Recruitment Report Instructions] letter was received in my office on October 2, 2007, it was somehow put in another client's file. If I had been personally aware that we received your letter, *I certainly would have replied* by the deadline" (emphasis added). *See also* Tr. 968:3-6 (Johnson) ("I would have been on top of it, calling Ms. Barr, making sure that she either sent a letter in or that I sent it in for her").

37. Four minutes after the e-mail from Respondent described in the preceding paragraph, PBEC generated a form reply e-mail to him stating, "Case status requests cannot be provided by the BEC [*sic*]," and directing him to a DOL website. RX 351.

38. On February 25, 2008, Respondent addressed a letter jointly to Ms. Seminiano and Ms. Barr (SBX 44) advising that Ms. Seminiano's case had been closed and stating, "I hereby offer to start a new application for labor certification at a large discount . . . . Please note that I am only willing to do this if you pay an engagement fee and agree to make monthly payments."

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[34] The transcript at this point refers to "ETA," which is an acronym for the Employment and Training Administration, a division of DOL. *See* note 29, *supra*.

39. On July 31, 2009, the Office of Bar Counsel sent Respondent for comment a Bar complaint previously received from Ms. Seminiano (SBX 45), to which Respondent replied on August 11, 2009 (SBX 46).

40. On March 28, 2012, Special Bar Counsel sent Respondent a letter with detailed questions concerning his representation of Ms. Seminiano (SBX 47), to which Respondent replied on May 2, 2012 (SBX 48). On June 13, 2012, Special Bar Counsel sent Respondent a supplemental letter of inquiry (SBX 51), which Respondent (through counsel) answered on July 26, 2012 (SBX 52).

41. On the same day -- July 26, 2012 -- as Respondent's counsel answered Special Bar Counsel's inquiry dated June 13, 2012, Respondent prepared a refund check to Ms. Seminiano in the amount of $2,000 (SBX 52 at SBC-00423).

C. Count II (Minchala)

42. On May 3, 2011, the Hon. John F. Gossart, Jr., a judge of the United States Immigration Court in Baltimore, Maryland, denied a request by Mr. Minchala for voluntary departure from the United States, and ordered him "removed," *i.e.*, deported. Judge Gossart's Order stated that any appeal from the Order was due by June 2, 2011. SBX 1 at SBC-01152.

43. On May 11, 2011, Mr. Minchala met with Respondent to make arrangements for Respondent to represent him in filing an appeal from Judge Gossart's deportation order -- which Respondent knew had a filing deadline of June 2, 2011 (Tr. 133:1-4 (Johnson)) -- and signed a retainer agreement with Respondent (SBX 2).

44. The first paragraph of Mr. Minchala's retainer agreement with Respondent, entitled "Legal Services," states that the purpose of the agreement was to "Represent [Mr. Minchala] in an Appeal to the Board of Immigration Appeals."[35] SBX 2.

45. The second paragraph of Mr. Minchala's retainer agreement with Respondent, entitled "Attorney Fees," states, in pertinent part:

> **The attorney fee for the assistance described above is $2,000.00 (for up to a maximum of seven (7) hours of Firm time) including a non-refundable engagement fee of $1,000.** The engagement fee is not refundable because it includes engaging or "hiring" the Firm, Firm foregoing accepting other clients, Firm analyzing Client's situation, and helping Client in developing strategies. Client is notified that Firm's standard rates are hourly rates currently $300 for attorneys and "Of Counsels" and $125 for paralegals and legal assistants. Firm may change hourly rates at anytime [*sic*] with or without notice. Client agrees to pay the higher hourly rates if the firm raises its rates. Client hereby authorizes Firm to transfer funds from the Client Fund Account to Firm's Operating Account to pay for attorney fees and costs as they are incurred related to Client's matter.

SBX 2 at ¶ II (bolding and underlining in original). Respondent testified that the foregoing language is part of a standard form contract that he uses with clients. Tr. 118:19-119:4 (Johnson); *see also* SBX 21 at ¶ II (retainer agreement with Ms. Seminiano).

46. In addition to the $2,000 referred to above, the retainer agreement required Mr. Minchala to pay a "handling charge" of $60. SBX 2 at ¶¶ III and IV.

47. Pursuant to ¶ IV of the May 11, 2011, retainer agreement, in addition to the amount "paid today," Mr. Minchala was required to pay "$300.00 in two weeks," and $1,000 thereafter in monthly installments of $200 each on the first day of each month. SBX 2 at ¶ IV.

48. Pursuant to his retainer agreement, Mr. Minchala made payments in the following amounts, which were received on the dates stated below:

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[35] Hereinafter referred to as the "BIA."

Date	Amount Paid
5/11/2011	$760.00
5/23/2011	$300.00
6/21/2011	$200.00
7/22/2011	$200.00
8/19/2011	$200.00
9/26/2011	$200.00
10/25/2011	$200.00

Stip. ¶ 21.

49. None of Mr. Minchala's payments was deposited into Respondent's client trust account. Stip. ¶ 21. Instead, they were all deposited into Respondent's law firm operating account. SBX 93 at ¶ 8; Tr. 689:5-9 (Johnson).

50. On the same day (May 11, 2011) that Mr. Minchala signed Respondent's retainer agreement, Respondent also had Mr. Minchala sign the following statement on Respondent's law firm letterhead:

> I hereby acknowledge that my order of voluntary departure appeal before the Board of Immigration Appeals, has few possibilities to get approved. Therefore, attorney Laurence F. Johnson and Johnson Immigration Law, will not take any professional responsibility if it gets denied.

SBX 3 at SBC-01124.

51. Respondent testified that by having Mr. Minchala execute the document described in the preceding paragraph, Respondent did not intend for Mr. Minchala to be waiving or releasing any rights. Tr. 697:4-698:21 (Johnson).

52. Respondent's meeting with Mr. Minchala on May 11, 2011, lasted about 90 minutes. Tr. 110:4-12 (Johnson).

53. Respondent maintains that despite his failure to file an appeal on behalf of Mr. Minchala (Stip. ¶ 20; Tr. 667:6-11 (Johnson)), the initial $1,000 paid by Mr. Minchala was fully

earned. Tr. 192:4-7, 687:15-689:1 (Johnson). However, when Mr. Minchala met with Respondent on May 11, 2011, he was not accompanied by independent legal counsel (Tr. 112:20-113:17 (Johnson)), and the retainer agreement with Mr. Minchala does not contain any explanation of the risks associated with his agreeing to pay a "non-refundable" retainer of $1,000 that would be considered earned immediately upon receipt, no matter what level of effort Respondent undertook on his behalf. SBX 2. Although Respondent testified extensively about the subjects he discussed with Mr. Minchala during their meeting on May 11, 2011, nowhere in that description is there any explanation of such risks. Tr. 670:8-681:7 (Johnson).[36]

54. After his May 11, 2011, meeting with Mr. Minchala, Respondent asked another attorney in his law firm to handle Mr. Minchala's appeal, but when that attorney did not proceed with the project, Respondent undertook personal responsibility for the appeal. Tr. 129:17-130:4, 695:19-696:2 (Johnson).

55. By the filing deadline of June 2, 2011, Respondent failed to file an appeal from the Order directing Mr. Minchala to be deported (Stip. ¶ 18), nor did Respondent file it at any time thereafter (Tr. 134:12-22, 686:1-16 (Johnson)).

[36] When Respondent was examined by Special Bar Counsel, he said he discussed the retainer agreement with Mr. Minchala but could not recall any specific questions from him about the meaning of the agreement. Tr. 111:4-12 (Johnson). Later, when he was examined by his own counsel, Respondent said he explained to Mr. Minchala why Respondent thought his initial 90-minute conference with Mr. Minchala entitled Respondent to Mr. Minchala's full initial payment of $1,000. Tr. 687:15-688:3 (Johnson). In neither case, however, did Respondent testify to explaining the risks to Mr. Minchala of agreeing to make the $1,000 payment non-refundable regardless of the level of Respondent's later efforts -- or lack thereof -- concerning the principal purpose of the representation, which was filing an appeal from Mr. Minchala's deportation order.

56. Respondent prepared a letter to Mr. Minchala dated June 23, 2011, stating:

> **Re: Representation No Longer Needed**
> Our File No. 2011-0153
>
> Dear Mr. Jerez Minchala:
>
> This letter is to confirm that you no longer are in need of my services or representation. If you need any help in the future, please call my office to make an appointment for a consultation.
>
> Please call my office if you have any questions. Thank you.

SBX 4 (bolding and underlining in original). Respondent intended by this letter to notify Mr. Minchala that Respsondent was terminating his representation. Tr. 1,685:1-10 (Johnson); SBX 20 at SBC-01192; SBX 19 at SBC-01196. Respondent wrote the June 23, 2011, letter based on a "rumor" he had heard, and on his assumption that "maybe" Mr. Minchala had "changed his mind, gotten somebody else to file [the appeal]." Tr. 116:4-5; 703:14-15; 987:20-988:1 (Johnson). Respondent, however, had not at that time been approached by any other attorney to request Mr. Minchala's file (Tr. 120:9-12 (Johnson)), nor did Respondent make any effort to find out from available INS sources whether another attorney had filed an appeal on Mr. Minchala's behalf (Tr. 120:13-121:19; 1,058:20-1,059:5 (Johnson)). Respondent also denied any recollection of calling or not calling Mr. Minchala to confirm if he had hired another attorney. Tr. 1,057:12-1,058:2 (Johnson).

57. At the time Respondent wrote the June 23, 2011, letter quoted in FF ¶ 56, he was looking at Mr. Minchala's file (Tr. 699:6-7 (Johnson)) and knew that Mr. Minchala's appeal had not been filed. Tr. 699:19-701:2 (Johnson); SBX 13 at SBC-01263 ¶ 5; SBX 14 at SBC-01265 ¶ 5. Respondent's letter, however, did not advise Mr. Minchala that Respondent had failed to file a

timely appeal on his behalf,[37] nor did it advise Mr. Minchala that no further payments were due from him. SBX 4; Tr. 123:20-124:1 (Johnson).

58. Although Respondent failed to file a timely appeal on behalf of Mr. Minchala by June 2, 2011, his office continued to bill Mr. Minchala for monthly payments due under his retainer agreement; Respondent, however, failed to keep track of the invoices going out to Mr. Minchala, or the payments coming in from him. SBX 8 at SBC-01154 through SBC-01161; Tr. 123:9-19; 187:9-188:2, 987:9-10, 1,060:14-1,061:12 (Johnson).

59. Respondent met with Mr. Minchala on February 17, 2012 (Tr. 143:10-14 (Johnson)), and again on February 28, 2012. Only on the latter date did Respondent inform Mr. Minchala -- for the first time -- that Respondent had failed to file an appeal from the Order directing Mr. Minchala to be deported. Stip. ¶¶ 18, 20; Tr. 135:10-16 (Johnson). During his February 28, 2012 meeting with Mr. Minchala, Respondent claimed he had mailed him the June 23, 2011 letter discussed above, but Mr. Minchala did not receive the mailed letter (SBX 20 at SBC-01192), and he first saw it only when Respondent gave him a copy on February 28, 2012 (SBX 8 at SBC-01148 at ¶ e).

60. In the period between Respondent's June 23, 2011 letter to Mr. Minchala and Respondent's first informing him on February 28, 2012 that no appeal had been filed, Respondent's staff misinformed Mr. Minchala by telling him his appeal was being processed. SBX 20 at SBC-01192.[38]

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[37] Dr. Tellefsen also read Respondent's June 23, 2011 letter as failing to notify Mr. Minchala that his appeal had not been filed. Tr. 1,116:16-19 (Tellefsen).

[38] SBX 20 is an AGCM letter of reprimand, the terms of which were negotiated and agreed to by Respondent. *See* SBX 19. The letter of reprimand states, "In June 2011 and in or about December 2011, the Complainant [Mr. Minchala] was informed by the Respondent's staff that his appeal was being processed."

61. On February 28, 2012, Respondent gave Mr. Minchala a $2,000 check, representing the fees (but not the $60 "handling charge") that Mr. Minchala had paid. SBX 18 at SBC-01149.

62. Special Bar Counsel did not submit any evidence to the Hearing Committee establishing that the balance in Respondent's law firm operating account at any time in the period from May 11, 2011 to February 28, 2011 was less than the amount of advanced legal fees that Mr. Minchala had paid Respondent.[39]

63. Jonathan Bloom, Esq., an attorney who has specialized in immigration law since 1993, began representing Mr. Minchala on or about March 1, 2012. Tr. 54:3-56:11 (Bloom).

64. On March 1, 2012, Mr. Bloom wrote to Respondent asking him for Respondent's complete immigration file. SBX 8 at SBC-01164.

65. On March 12, 2012, Mr. Bloom wrote to Respondent again, noting that Mr. Bloom had not received Mr. Minchala's file from Respondent (SBX 8 at SBC-01166), and asking Respondent to advise if Respondent had filed an appeal on behalf of Mr. Minchala. Mr. Bloom regarded Mr. Minchala's situation as "urgent," *id.*, because without an appeal being on file, Mr. Minchala was subject to arrest and deportation at any time (Tr. 68:17-69:1 (Bloom)).

66. On March 12, 2012, Respondent faxed a letter to Mr. Bloom, stating that Respondent had given Mr. Minchala his file when Respondent gave him the refund check discussed above (*i.e.*,

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[39] *See, e.g.*, SBX 18 (Special Bar Counsel's subpoenaed records of Respondent's representation of Mr. Minchala, which contain no bank records for Respondent's law firm operating account); SBX 13 at SBC-01263 ¶ 8 (letter dated July 24, 2013, to Respondent's counsel herein, asking if the fees paid by Mr. Minchala were deposited into a trust account, and if so, asking for the records of that trust account establishing the deposit of those fees); SBX 14 at SBC-01265 ¶ 8 (responsive letter dated August 23, 2013, from Respondent's counsel, averring that no fees paid by Mr. Minchala were deposited into the client trust account of Respondent's law firm, and providing no records of that account or any other bank account of Respondent's law firm).

February 28, 2012), but Respondent did not comply with Mr. Bloom's request for advice on whether Respondent had filed an appeal on behalf of Mr. Minchala. RX 379.

67. Mr. Bloom's intention in asking Respondent for a letter stating whether Respondent had filed an appeal on behalf of Mr. Minchala was to use the letter as part of a low-key request for obtaining an extension of time to file Mr. Minchala's appeal without "having to go the *Lozada* route," *i.e.*, filing a formal ethics complaint against Respondent to establish ineffective assistance of counsel as a predicate for obtaining an extension of time,[40] a mechanism Mr. Bloom wanted to avoid. Tr. 64:7-65:19 (Bloom).

68. Mr. Bloom regarded his contemplated "non-*Lozada*" approach for seeking an extension of time as having a good chance of success. Tr. 70:17-71:3. Mr. Bloom's intended course of action was a reasonable means of proceeding: as stated by Special Bar Counsel's expert witness on immigration law, ". . . there's other times when I've said -- talked to the attorney and found out the circumstances, and then we've explained in writing in our motion [for an extension of time] why we didn't go forth with a Bar complaint." Tr. 201:6-10 (McHugh-Martinez).

69. Respondent did not provide the letter requested by Mr. Bloom because Respondent believed that doing so would harm Respondent's own interests. Tr. 713:16-22 (Johnson).

70. On March 22, 2012, Mr. Bloom once again wrote to Respondent to ask for a letter clarifying the course of Respondent's representation of Mr. Minchala. SBX 8 at SBC-01169.

71. When Respondent did not reply to Mr. Bloom's letter of March 22, 2012, Mr. Bloom telephoned Respondent -- whom he had known for many years through practicing immigration law (Tr. 67:19-22 (Bloom)) -- on a friendly basis to ask for Respondent's help in providing a letter

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[40] *See Matter of Lozada*, 19 I. & N. Dec. 637 (Apr. 13, 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Mr. Bloom's explanation of the *Lozada* decision was confirmed in Respondent's own testimony. Tr. 713:5-14 (Johnson).

concerning Respondent's representation of Mr. Minchala that Mr. Bloom could use in seeking an extension of time for Mr. Minchala's appeal. Despite two additional follow-up letters from Mr. Bloom, Respondent never provided the letter Mr. Bloom requested. Tr. 66:10-71:14 (Bloom); SBX 8 at SBC-1170-71.

72. On or about April 25, 2012, Mr. Minchala filed an ethics complaint against Respondent with the AGCM. SBX 8 at SBC-01142-68. A certified English translation of Mr. Minchala's Spanish-language complaint is in the record of this proceeding as SBX 17. *See* Tr. 92:20-94:19 (Farren). The gist of the complaint is that Mr. Minchala hired Respondent on May 11, 2011 to represent him in an immigration appeal; that Respondent charged Mr. Minchala $2,000 for the appeal, including monthly payments of $200; that Mr. Minchala made all required payments; and that when he met with Respondent in February of 2012, he was finally told by Respondent the appeal had not been filed.

73. By letter dated June 4, 2012, Carroll G. Donayre, Esq., Assistant Bar Counsel of the AGCM, forwarded Mr. Minchala's ethics complaint to Respondent for comment. SBX 8 at SBC-01141.

74. In a letter dated July 12, 2012, countersigned personally by Respondent, Daniel R. Hodges, Esq., as counsel for Respondent,[41] replied to Ms. Donayre's June 4, 2012, letter of inquiry. SBX 9 (also in evidence as SBX 92). In that reply, Respondent admits that "Minchala's matter fell off of [Respondent's] law firm docket and therefore [Respondent] failed to take the necessary steps to protect his client's interests, and in particular to file the required Notice of Appeal with the Board of Immigration Appeals (BIA) within 30 days," and that Respondent had refunded Mr. Minchala's

[41] Mr. Hodges is with the same law firm that has represented Respondent in this proceeding.

payments to him. SBX 9 at SBC-01101. The reply letter further states that "[Respondent] admittedly failed to properly track the case, resulting in a Notice of Appeal not being timely filed." *Id*. The remainder of the reply letter contains assurances that Respondent had introduced better case monitoring procedures, and describes the prolonged final illness of Respondent's mother from January through May of 2011 as a reason why Respondent "was not at his best during this time period," although "this personal tragedy is not being offered as an excuse for [Respondent's] shortcoming with regard to Minchala matter" (SBX 9 at SBC-01102). The letter concludes with a recitation of five mitigating factors[42] -- none of which relates to any claim of physical or psychological disability -- and asks for the ethics complaint to be dismissed with a warning and an admonition that Respondent violated MLRPC 1.3. *Id.*

75. In a document dated October 4, 2012, Respondent and Bar Counsel for the AGCM signed a stipulation for the purpose of waiving any further proceedings and submitting an agreed text for a letter of reprimand by the AGCM. SBX 19.

76. Pursuant to the agreement described in the preceding FF ¶ 75, the AGCM reprimanded Respondent for misconduct that violated MLRPC 1.1, 1.3, and 8.4(d).[43] The body of the AGCM reprimand (SBX 20) states, in pertinent part:

> On May 11, 2011, the Complainant [Mr. Minchala] retained Respondent's law firm to file an appeal on the Complainant's behalf with the Board of Immigration Appeals (BIA) within 30 days. The Respondent failed to file the Complainant's BIA Appeal. From May 2011 through September 2011, the Complainant paid the Respondent attorney's fees totaling $2,000.00. In June 2011 and in or about December 2011, the Complainant was informed by Respondent's staff that his

[42] (1) Membership in the Maryland State Bar since 1974 without any discipline; (2) steps taken by Respondent to ensure proper and timely handling of cases in the future; (3) refund paid to Mr. Minchala; (4) active community involvement, including with the Boy Scouts of America; and (5) reiteration of membership in the Bar since 1974. All of those considerations are also asserted by Respondent in this proceeding.

[43] MLRPC 1.1 (competence); 1.3 (diligence); and 8.4(d) (conduct that seriously interferes with the administration of justice).

> appeal was being processed. During a February 28, 2012 meeting, the Respondent informed Complainant that he had failed to file a timely appeal on his behalf. At the February 28, 2012 meeting, the Respondent claimed that he sent a letter to the Complainant terminating his representation on June 23, 2011. The Complainant never received said letter from Respondent. The Commission reprimands [Respondent] for all of the aforementioned conduct.

77. Based on the facts set forth above in FF ¶¶ 72-76, the AGCM neither considered nor ruled on the allegations in the Specification that Respondent violated MLRPC 1.4, 1.8(h)(1), 1.15, 1.16(d), or 8.4(c).[44]

78. After Mr. Minchala's ethics complaint against Respondent was filed with the AGCM, Mr. Bloom as Respondent's successor counsel filed a formal "*Lozada*" motion for an extension of time to file Mr. Minchala's appeal based on Respondent's ineffective representation of Mr. Minchala. The motion was granted. Tr. 76:12-77:5 (Bloom).

79. The appeal that Mr. Bloom filed on behalf of Mr. Minchala was ultimately denied by the BIA. Tr. 83:17-84:16 (Bloom); RX 404.

80. By subpoena dated March 28, 2013, Special Bar Counsel required the production of all documents regarding Respondent's representation of Mr. Minchala. SBX 18 at SBC-01105. By letter dated April 12, 2013, Respondent's counsel provided documents in response to the subpoena. SBX 18 at SBC-01108-76. In addition, Special Bar Counsel sent letters of inquiry to Respondent in care of his counsel, dated May 16, 2013 (SBX 11) and July 24, 2013 (SBX 13) regarding

[44] MLRPC 1.4 (keeping the client reasonably informed of the status of the matter); 1.8(h)(1) (making an agreement with the client prospectively limiting the attorney's liability to the client for malpractice); 1.15(a), (c) (holding client funds in a separate client trust account); 1.16(d) (properly protecting the client's interests on termination of the representation); and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent's representation of Mr. Minchala, to which responses were provided by letters dated June 18, 2013 (SBX 12) and August 23, 2013 (SBX 14).[45]

81. On March 24, 2014, more than two weeks after the filing of the initial Specification of Charges in this matter, Respondent refunded the $60 "handling" charge that Mr. Minchala had previously paid. RX 396.

D. Mitigation

Subsection (1) of this Section II(D) contains findings of fact relating to Respondent's claim for mitigation of sanction due to alleged disability. Subsection (2) contains findings of fact relating to Respondent's claims for mitigation based on factors other than disability, in the order in which those factors are listed in Respondent's Answer to the Specification.

(1) Disability Mitigation

82. In April 2004, Respondent developed a very painful and itchy rash, eventually diagnosed as "Dermatitis Herpetiformis" (hereinafter, "DH") (Tr. 959:9-12 (Johnson); Tr. 1,421:11-14 (Mrs. Johnson)), an autoimmune skin condition which made it uncomfortable for him to sit, caused difficulty in his concentrating on work, and led to significant loss of sleep. Tr. 937:22-938:7 (Johnson); Tr. 1,092:19-1,093:19, 1,095:7-20, 1,097:8-17 (Tellefsen).

83. Respondent's DH was treated with two drugs, a topical steroid ointment known as "Clobetasol," and an oral antibiotic known as "Dapsone." Tr. 939:2-940:17 (Johnson). A common -- and serious -- side-effect of taking Dapsone is anemia (sometimes referred to as "hemolysis" or "hemolytic anemia"), which Respondent developed. Dapsone-induced anemia causes the loss and/or non-production of oxygen-carrying red blood cells within the body, resulting in fatigue,

[45] The index to Special Bar Counsel's main volume of documentary exhibits in this proceeding describes SBX 12 and SBX 14 as "purporting to answer" Special Bar Counsel's inquiries.

which in Respondent's case exacerbated the fatigue caused by his loss of sleep due to DH. Tr. 940:17-20, 957:10-958:8, 960:17-961:1 (Johnson); Tr. 1,091:17-1,092:4, 1,096:6-1,097:5 (Tellefsen).

84. The "major part" of Respondent's DH problems occurred in 2007. Tr. 943:5-6 (Johnson).

85. Respondent's daily dosage of Dapsone varied over time depending upon how well his DH was responding to his medications and the severity of Respondent's Dapsone-induced anemia. Tr. 941:7-15, 948:7-950:21 (Johnson).[46]

86. Beginning in 2005, Respondent became involved in litigation against his former law partners. Tr. 937:15-17 (Johnson). This litigation proved to be very expensive to Respondent, leaving him with large legal bills and other debts exceeding half a million dollars. Tr. 944:4-21 (Johnson).

87. The combination of Respondent's DH and Dapsone-induced anemia also adversely affected his mood (Tr. 968:22-969:1 (Johnson)), including some fleeting suicidal ideation (Tr. 969:17-970:8 (Johnson); Tr. 1,285:8-1,286:2 (Blumberg)), his concentration and ability to devote full time and effort to his law practice (Tr. 958:9-10, 963:3-9 (Johnson)), and his relationships with his office staff (Tr. 969:1 (Johnson)).

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[46] Within multi-page exhibits in Respondent's volume of documents admitted as evidence during the mitigation phase, individual pages are designated with the prefix "DIS." *See* RX 405 at DIS-022 (1/12/06-Dapsone at 150 mg. per day), DIS-027 (2/14/06-Dapsone varying between 150mg. and 200 mg. per day), DIS-020 (3/15/06-Dapsone varying between 150 to 200 mg. per day), DIS-025 (4/7/06-Dapsone at 150 mg. per day, down from 200 mg.), DIS-026 (5/5/06-Dapsone at 150 mg. per day), DIS-036 (6/09/06-reports "mild anemia"), DIS-037 (7/10/06-Dapsone at 150 mg. per day but no anemia shown on last blood test), DIS-038 (8/14/06-Dapsone varies between 150 mg. and 200 mg. per day; "last blood tests acceptable"), DIS-039 (10/11/06-Dapsone varies between 150 mg. and 200 mg. per day), DIS-040 (1/31/07-report of anemia), DIS-043 (2/7/07-Dapsone at 150 mg. per day), DIS-044 (3/7/07-Dapsone at 150 mg. per day; DH "fairly well controlled"), DIS-045 (4/23/07-Dapsone down to 100 mg. per day), DIS-047 (5/29/07-Dapsone lowered from 150 mg. to 100 mg. per day).

88. Several times during 2006 and 2007 Respondent reported symptoms of stress to his medical providers,[47] but at no point do Respondent's medical records indicate that any of his medical providers recommend psychological or psychiatric care for Respondent, nor did Respondent seek such treatment on his own. SBX 82 at 11; RX 405 at DIS-015;[48] Tr. 957:2-6; 1,025:6-8, 1,033:7-9, 1,080:6-14 (Johnson) (Respondent resistant to admitting depression).

89. In the Spring of 2007 -- approximately five months before his misconduct in the Seminiano matter -- notwithstanding Respondent's DH and any other physical, psychological, or financial problems he was having, Respondent and his spouse traveled to Switzerland to attend the school graduation of their daughter. Tr. 1,420:13-20 (Mrs. Johnson).

90. Respondent's medical reports closest to the period of his misconduct in the Seminiano matter (September to November, 2007) show he was still experiencing mild anemia. *See* RX 405 at DIS-047[49] and DIS-069 (first column).[50] However, by December 26, 2007, all of Respondent's anemia-affected blood cell readings were within normal limits. RX 405 at DIS-069 (second column).[51]

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[47] *See* RX 405 at DIS-022 (1/12/06-aggravation of DH may be related to stress), DIS-027(2/14/06), DIS-020 (3/15/06), DIS-036 (6/09/06-report of short-term memory loss), DIS-045 (4/23/07-report of afternoon tiredness).

[48] October 7, 2011 medical form completed by Respondent denying the presence of depression.

[49] "58 y/o man with HD on 100 mg dapsone with mild hemolysis. With lowered dapsone, the rash has spread some to chest, left elbow, and other areas since lowered the dapsone from 150 to 100 per day."

[50] Respondent's blood test for September 22, 2007, shows that his red blood cell count ("RBC"), Hgb (hemoglobin), hematocrit, "MCV" (*i.e.*, "mean corpuscular volume," measuring the average volume of red blood corpuscles), and "RDW" (red blood cell distribution width), are all slightly outside the normal reference ranges for those readings.

[51] Approximately on an annual basis on January 30, 2008 (RX 405 at DIS-012), January 24, 2009 (RX 405 at DIS-086), and March 1, 2010 (RX 405 at DIS-079) one of Respondent's physicians wrote prescriptions for blood tests, but the results of those tests are not in the record.

91. During the period of his misconduct in the Seminiano matter (September to November, 2007), Respondent was affected by two non-medical factors. First, in October 2007, Respondent's litigation with his former law partners ended with settlement negotiations that he regarded as unfavorable, leaving him with substantial legal bills to pay. Tr. 444:15-19, 944:4-21, 968:16-22, 1,046:8-19 (Johnson). Second, also in October, 2007, there were significant changes in immigration law practice that required Respondent to reorient his procedures in order to handle immigration cases online. Tr. 943:12-18 (Johnson).

92. Respondent's forensic psychiatrist, Dr. Tellefsen, diagnosed Respondent's psychiatric condition during the period of his misconduct in the Seminiano matter (September to November, 2007) and the period of his misconduct in the Minchala matter (May to September, 2011) as "major depression." Tr. 1,100:9-1,101:20 (Tellefsen); RX 408 at 1. Special Bar Counsel's forensic psychiatrist, Dr. Blumberg, diagnosed Respondent's psychiatric condition during those periods of time as "unspecified depressive disorder." Tr. 1,198:7-1,199:9, 1,268:6-1,269:5, 1,272:7-9 (Blumberg); SBX 82 at 13-14. Although Drs. Tellefsen and Blumberg used different labels for diagnosing Respondent's condition at those times, the two diagnoses "have many similarities" (SBX 82 at 13), and the Hearing Committee concludes from the evidence of both psychiatrists that during those two periods of time Respondent had a significant level of depression.

93. Notwithstanding the physical, psychiatric, and other pressures on Respondent, in the period from September to November, 2007, he was conducting an active law practice, handling about 30 to 50 new cases per month, and about 800-850 cases during the course of 2007 (SBX 82 at 8), only one of which -- Seminiano -- resulted in disciplinary problems. SBX 82 at 14; Tr. 1,198:1-6 (Blumberg).

94. To establish a sufficient nexus between Respondent's 2007 misconduct in the Seminiano matter as well as his 2011 misconduct in the Minchala matter and a level of psychiatric depression that might cause him to lack the ability to comport his client representation with the basic norms of professional responsibility, there would need to be clear patterns of unethical conduct across multiple client representations at those times, and not just one isolated incident in 2007 and another in 2011. Tr. 1,199:16-1,200:11, 1,202:3-17, 1,203:20-1,204:3, 1,205:4-15, 1,206:14-1,207:16, 1,277:5-9 (Blumberg); SBX 82 at 14. However, there is no evidence in the record establishing such patterns.

95. Given the significant level of Respondent's psychiatric depression in the period from September to November, 2007, and notwithstanding the absence of other instances of unethical conduct during that period (*see* FF ¶ 94), Respondent's depression was so exacerbated and heightened by other factors operating on Respondent at that particular short period of time, including the severity of Respondent's DH (FF ¶ 84), his Dapsone-induced anemia and its effects (FF ¶¶ 83, 87, 90), and the financial and other worries resulting from the litigation against his former law partners (FF¶¶ 86, 91), it is more likely than not -- although barely so -- that Respondent's depression caused him to lack the ability to represent Ms. Seminiano in compliance with the ethical requirements of practicing law. Tr. 943:12-19 (October, 2007, was a "perfect storm"); 1,048:13-1,049:2 (Johnson); Tr. 1,107:22-1,108:7 (Tellefsen).

96. Through changes in his diet beginning in 2008, Respondent was able to manage his skin condition so that the DH was "greatly reduced." Tr. 942:16-943:7, 950:16-17 (Dapsone use continued up until 2008); 973:2-7 (Dapsone use discontinued after 2008 because of changes in Respondent's diet), 970:20-971:1 (Johnson); Tr. 1,420:22-1,422:13 (Mrs. Johnson); Tr. 1,131:11-18 (Tellefsen) (cessation of Dapsone in 2008 eliminated Respondent's anemia); RX 405 at DIS-

015 (medical form completed by Respondent on October 7, 2011, stating that his DH was being controlled/suppressed by diet); Tr. 1,197:2-19 (Blumberg); RX 407 at 3 (Dr. Tellefsen reports improvement in Respondent's condition after 2008).

97. To get a release from the substantial legal bills with which Respondent was left after the litigation against his former law partners, as well as other debts, in April 2009, Respondent filed for personal bankruptcy relief. Tr. 944:11-945:2, 1,047:10-20 (Johnson).

98. Respondent's mother entered into a final period of illness in January, 2011 (SBX 9 at SBC-01102), and, after a term of hospice care (Tr. 981:12-21 (Johnson); Tr. 1,424:9-13 (Mrs. Johnson)), Respondent's mother died on May 5, 2011. However, because Respondent's mother directed that her body should be used for scientific study, her remains were not buried until September, 2011. Tr. 988:17-22 (Johnson); Tr. 1,425:9-11 (Mrs. Johnson).

99. In responding to the AGCM complaint filed by Mr. Minchala, Respondent -- with the advice of counsel -- stated that the his mother's final illness and death did not excuse his misconduct. SBX 9 at SBC-01102.

100. In the months leading up to his mother's death, Respondent had to deal with some difficulties involving his brother Louis, who continued to reside in the same house as Respondent's mother and her caretaker, and his brother Bill, who was having conflicts with the caretaker. Tr. 982:2-984:3 (Johnson).

101. In the period around May, 2011, when he undertook representation of Mr. Minchala, the stresses of his mother's illness and death and the conflicts with his brothers caused Respondent's DH to flare (but without much pain), as well as causing the recurrence of some attendant symptoms (low and irritable mood; sleep disruption; and difficulties in relating to office staff). Tr. 984:12-985:2 (Johnson).

102. Respondent fixes the termination date of his claim for disability mitigation as the Fall of 2011. Tr. 1,039:5-12 (Johnson); *see also* Tr. 1,146:14-16 (Tellefsen).

103. At the time of his misconduct in the Minchala matter, Respondent had a significant level of psychiatric depression (FF ¶ 92), but not to the degree that it impaired his ability to comply with the ethical requirements of practicing law (Tr. 1,274:17-1,275:18 (Blumberg)). *See also* Tr. 1,340:7-20 (Tellefsen);[52] Tr. 1,276:22-1,277:4 (Blumberg) (notwithstanding the existence of depression, a depressed person can remain functional).

104. The occurrence of two periods of depression (FF ¶¶ 92, 103) increases "almost exponentially" the likelihood of further depressive episodes. Tr. 1,343:10-14 (Tellefsen).

105. After Respondent's mother died, Respondent's was distracted by the need to empty her residence and to assure that his brother would no longer live there. Tr. 982:20-983:11, 986:17-987:4 (Johnson). Respondent had the assistance of his spouse and brothers in emptying the house. Tr. 1426:15-19 (Mrs. Johnson).

106. On May 11, 2011, only six days after his mother's death, Respondent was able to meet with Mr. Minchala, discuss his case, enter into a retainer agreement with him, and obtain a release from professional liability, all evidencing Respondent's capacity for meaningful thought and action as an attorney. Tr. 1,200:17-1,201:4, 1,275:7-18, 1,290:20-1,291:17 (Blumberg).

107. During 2011, Respondent took in about 390 to 400 new cases (SBX 82 at 10), only one of which -- Minchala -- resulted in disciplinary problems (SBX 82 at 14).

108. Respondent's spouse testified that Respondent was able to deal with the various problems he experienced in 2007 and 2011 (Tr. 1,420:13-1,426:19 (Mrs. Johnson)); that even though he had "a lot on his plate" in the period from May to September, 2011, he was a hard worker

[52] Responding to questions from Hearing Committee member Curtis D. Copeland, Jr.

(Tr. 1,426:20-1,427:4 (Mrs. Johnson)); that in 2011, between his office work and visiting his ailing mother, Respondent kept "long hours" (Tr. 1,427:6-9 (Mrs. Johnson)); that Respondent frequently took cell phone calls from his clients in the evening (Tr. 1,428:18-21 (Mrs. Johnson)); and that Respondent protected her by not imposing his emotional problems on their marriage (Tr. 1,427:15-1,428:2 (Mrs. Johnson)). Nothing in Mrs. Johnson's testimony indicates that Respondent's various physical, emotional, or other concerns had a material adverse effect on their marriage.

109. Edward Lau, Esq., a friend and mentee of Respondent, has spoken with Respondent at least once a week over the past 10 years to obtain advice and counsel on immigration law matters, and Respondent has been consistently helpful to him. Tr. 1,646:17-1,647:1 (Lau). Together with Respondent, Mr. Lau has attended the annual Washington, D.C., conference of the American Immigration Lawyers Association ("AILA") in June of each year since 1990[53] -- including, significantly, June of 2011, which is proximate to Respondent's misconduct in the Minchala matter -- and has roomed together with him, shared expenses, attended church together, eaten together, and attended classes together. Tr. 1,641:15-1,647:6 (Lau). Mr. Lau described Respondent at the AILA conferences as being very personable, likeable, socially engaged, and constantly greeting and speaking with acquaintances. Tr. 1,648:11-17 (Lau).

110. In light of the evidence from Dr. Blumberg (FF ¶¶ 94, 103, 106, 107), Mr. Lau (FF ¶ 109), and Mrs. Johnson (FF ¶ 108) of Respondent's adequate level of functionality in 2011 on legal and other matters, his no longer taking Dapsone and not suffering the consequent effects of anemia (FF ¶ 96), the lowered pain level of Respondent's DH (FF ¶ 101), his release from the pressures of litigation and debt (FF ¶ 91 (litigation settled); FF ¶ 98 (bankruptcy release)), the lack

[53] Except for 1994, when Mr. Lau was ill. Tr. 1,642:4-5 (Lau).

of any claim of physical disability in Respondent's July 12, 2012 letter to the AGCM, as well as the statement in that letter that the illness and death of Respondent's mother did not excuse his misconduct (FF ¶¶ 74, 99), it is more much more likely than not that despite his psychiatric depression, the flaring of his DH, and Respondent's other personal and family problems as described in this Section II(D), during the period from May through September, 2011, Respondent's ability to represent Mr. Minchala was *not* impaired to the point that Respondent was unable to comply with the ethical requirements of practicing law.

111. As of the time of the hearing in this proceeding, Respondent was not suffering from a psychiatric condition that would impair his ability to represent clients in compliance with the ethical requirements of practicing law. Tr. 1,110:13-1,111:12 (Tellefsen); Tr. 1,191:22-1,192:1, 1,208:1-11, 1,270:11-1,271:14 (Blumberg); SBX 82 at 14; RX 407 at 3.

(2) Other Mitigating Factors[54]

(a) Restitution

112. Respondent asserts that he made adequate restitution to Ms. Seminiano and Mr. Minchala. Tr. 1,000:15-16 (Johnson).

113. Respondent did not return Ms. Seminiano's initial payment of $2,000 to her until July 26, 2012 (SBX 52 at SBC-00423), more than four years after he stopped representing her and only after Special Bar Counsel's investigation of Respondent's conduct in the Seminiano matter had begun. FF ¶ 41.

114. Although Respondent had Mr. Minchala's file in front of him when he wrote his June 23, 2011, letter to Mr. Minchala, and knew at that time that he had not filed Mr. Minchala's appeal

[54] The first and second mitigating factors asserted in Respondent's Answer to the Specification relate to his emotional and physical condition, discussed in subsection II(D)(1), above. This subsection II(D)(2) discusses claims for mitigation starting with the "Third Mitigation Factor" asserted in the Answer.

on time, Respondent did not refund any fees to Mr. Minchala until February, 2012, after Mr. Minchala had confronted him about the status of the appeal. FF ¶¶ 57, 59, 61.

115. Respondent did not return the $60 "handling" charge Mr. Minchala had paid until after the filing of the initial Specification of Charges in this proceeding. FF ¶ 81.

(b) Reputation for Professionalism and "Conscientious Practices"

116. Respondent has been an active participant in AILA, serving as Vice-Chair in 1993, serving on several AILA committees, and having received a "president's award" in 2000. Tr. 993:16-8 (Johnson); Tr. 1,364:12-15 (Sanders); Tr. 1,566:1-8, 1,569:14-1,570:2 (Aparisi); Tr. 1,641:15-21 (Lau).

117. Respondent is active in and has received several awards from the Montgomery County Bar Association, including an award for his multi-year service as the Chair of its immigration law section. Tr. 994:9-995:1 (Johnson); Tr. 1,565:16-1,566:4 (Aparisi).

118. Respondent has served on the board of a non-profit organization known as the "Jubilee Foundation of Maryland," which assists developmentally disabled adults. Tr. 995:4-14 (Johnson).

119. Respondent has been active in the Boy Scouts of America, having received its highest award for service to Scouting (the "Silver Beaver"), as well as other awards from that organization, including being an Eagle Scout. Tr. 995:15-997:16 (Johnson).

120. Respondent is highly knowledgeable in the field of immigration law. Tr. 1,352:17-19 (Vallario); Tr. 1,555:3-13 (Popowsky) (Respondent avoids taking frivolous immigration appeals); Tr. 1,566:16-1,569:14 (Aparisi); Tr. 1,643:13-1,644:15 (Lau).

121. Respondent normally takes care of business conscientiously. Tr. 1,354:4-6 (Vallario); Tr. 1,366:12-1,367:12, 1,377:13-15 (Sanders); Tr. 1,409:20-1,410:15 (Scull); Tr. 1,483:12-1,488:11 (O'Connell).

122. Respondent has provided *pro bono* legal services in the area of immigration law through various organizations over the course of many years. Tr. 1,364:22-1,366:11; 1,368:9-1,369:12 (Sanders). He has also accepted referrals to represent abused women from shelters with their immigration matters. Tr. 1,507:10-1,508:2 (Sen).

123. Respondent assisted Ms. Manjushree Sen, a victim of spousal abuse, in her immigration matters at little or no cost, and later assisted her family on a similar basis. Tr. 1,498:22-1,502:19; 1,502:20-1,504:1 (Sen). Respondent also assisted Ms. Sen's son to become involved in the Cub Scout/Boy Scout program at a time when she could not afford to pay the normal fees for the program. Tr. 1,505:1-1,506:15 (Sen).

124. Respondent takes care to ensure that his immigration clients' tax matters are properly handled. Tr. 1,516:12-21 (Norman).

(c) "Good and Virtuous Character"

125. Respondent has a strong religious faith and is active in his church. Tr. 998:1-4 (Johnson); Tr. 1,480:11-1,483:6 (O'Connell); Tr. 1,536:8-1,537:9, 1,547:13-22 (Essex); Tr. 1,558:9-11 (Popowsky).

(d) Lack of Selfish/Self-Interested Motives

126. Respondent believes that he did not act out of selfish or self-interested motives in representing Ms. Seminiano and Mr. Minchala. Tr. 1,000:4-16 (Johnson). That belief is contradicted by the following:

a. The circumstances and delays in Respondent's providing refunds to Ms. Seminiano and Mr. Minchala. FF ¶¶ 41, 57, 61, 81.

b. Respondent's insistence on a new retainer and a series of monthly payments from Ms. Seminiano to continue representing her after he had failed to ensure that the Recruitment Report in her case was filed on time. FF ¶ 38.

c. Although Respondent's retainer agreement with Mr. Minchala was expressly based on hourly fees, Respondent exacted a "non-refundable" $1,000 initial payment from Mr. Minchala for a 90-minute intake conference without explaining the risks of such payment, and while Mr. Minchala was not represented by independent counsel. FF ¶¶ 52-53.

d. Respondent's acted on self-interested motives in not cooperating with Mr. Bloom. FF ¶ 69.

e. On June 23, 2011, when Respondent had Mr. Minchala's file before him and knew that he had not filed Mr. Minchala's appeal on time, Respondent failed to notify Mr. Minchala to stop making his scheduled monthly payments. FF ¶ 57.

f. As a condition of representing Mr. Minchala, Respondent required him to sign a self-protective prospective release from professional liability. FF ¶ 50.

(e) Expressions of Remorse

127. Although as set forth in Section IV(F), below, the evidence of Respondent's acknowledgement of misconduct during the violations phase was far from convincing, to the extent that Respondent could bring himself to express remorse during the mitigation phase, his demeanor in that regard appeared genuine.

(f) Cooperation With Special Bar Counsel's Investigation

128. Respondent believes that he has fully cooperated with Special Bar Counsel's investigation. Tr. 1,004:17-1,005:8 (Johnson).

129. Respondent has submitted responses to the inquiries and the subpoena of Special Bar Counsel in both the Seminiano and the Minchala matters. FF ¶¶ 39-41; 80-81; note 45, *supra*.

III. CONCLUSIONS OF LAW

Section III(A), below, contains the Hearing Committee's recommendation concerning the denial of Respondent's motion to dismiss Bar Docket No. 2012-D453, *i.e.*, Count II of the Specification (Minchala). Section III(B) contains the Hearing Committee's recommendations concerning evidentiary rulings made during the course of the hearing in this proceeding. Section III(C) discusses the Hearing Committee's conclusions that Respondent violated all provisions of the MLRPC that remain at issue with respect to Counts I and/or II of the Specification.

A. Respondent's Motion To Dismiss Count II Of The Specification Should Be Denied

On September 1, 2006, a special committee of the District of Columbia Bar published a report entitled, "Proposed Changes in the Disciplinary System of the District of Columbia: Final Report and Recommendation" (hereinafter, the "Report"). Among its recommendations, the Report suggested that the District of Columbia Court of Appeals ("Court") should amend § 11 of D.C.Bar Rule XI, dealing with reciprocal discipline, so that upon receipt of a disciplinary order from a foreign disciplining court, the Court should issue an order directing the attorney to show cause why identical discipline should not also be imposed. Report at 39. The purposes of the suggested amendment were to relieve the Court and the Board from the routine referral of foreign disciplinary orders to the Board for a recommendation, and to allow the Office of Bar Counsel ("OBC") and the Board to be focus principally on original jurisdiction disciplinary cases. Report at 39-40.

The Report also recommended one minor change to § 6 of Rule XI dealing with OBC's powers and duties, so as to add "consent to discipline" and "diversion" to the list of actions OBC

can take after approval by a Contact member (the other actions being dismissal, informal admonition, and referral of charges). The Report did not suggest any changes to the text of § 6(a)(2) of Rule XI, which outlines the broad authority of OBC to investigate all matters involving alleged misconduct which come to OBC's attention "from any source whatsoever, where the apparent facts, if true, may warrant discipline." Similarly, no change was suggested for the text of § 6(a)(4) of Rule XI, which authorizes OBC to prosecute all disciplinary proceedings before Hearing Committees, the Board, and the Court.

After a period of public comment, the Court promulgated Order No. M-230-07 (filed April 3, 2008), effective August 1, 2008, which directed the publication of amendments to Rule XI. The Court in substance adopted the change to § 6(a)(3) of Rule XI as discussed above, but made no change to the broad statement of OBC's powers of investigation and prosecution under §§ 6(a)(2) and 6(a)(4).

With regard to reciprocal discipline, the Court streamlined the Report's suggested show-cause mechanism by creating a preamble to § 11(c) of Rule XI ("Standards for reciprocal discipline") stating:

> Reciprocal discipline may be imposed whenever an attorney has been disbarred, suspended, or placed on probation by another disciplining court. It shall not be imposed for sanctions by a disciplining court such as public censure or reprimand that do not include suspension or probation. For sanctions by another disciplining court that do not include suspension or probation, the Court shall order publication of the fact of that discipline by appropriate means in this jurisdiction.

The Court left largely intact the language in subsections (1) through (5) of § 11(c), dealing with the grounds upon which it might be demonstrated that non-identical discipline is warranted.

In order to streamline further its own process for handling foreign court disciplinary reprimands and admonitions, the Court promulgated Order No. M-234-08 (filed September 4,

2008),[55] amending Order No. M-230-07 so as to remove the Court from the process of ordering publication of foreign jurisdiction discipline. The September 4, 2008 Order stated:

> [U]pon receipt of a notice from another jurisdiction that a member of our Bar has been publicly censured, reprimanded, or admonished, Bar Counsel shall immediately publish notice of that fact in the District of Columbia Bar Magazine and cause the order of the sister jurisdiction to be published on the District of Columbia Bar website and any other publication that Bar Counsel deems appropriate. Bar Counsel shall undertake this action in all cases without having to refer individual matters to the Court for an order of publication.

The September 4, 2008 Order does not explicitly state that publication is the "only" action OBC may take, nor does that Order discuss the publication mechanism in relation to the other investigatory and prosecutorial powers of OBC under §§ 6(a)(2) and 6(a)(4) of Rule XI, which remained in effect without alteration.

In a letter dated February 13, 2013,[56] to Special Bar Counsel in this proceeding, referencing Respondent and Bar Docket No. 2012-D453 (*i.e.*, the Minchala matter), the Chair of the Board stated:

> Bar Counsel Wallace E. Shipp, Jr., has forwarded to the Board and to you a copy of a reprimand issued against the above-referenced attorney in Maryland. You are already serving as Special Bar Counsel in an unrelated matter involving Respondent (Johnson/Seminiano) (2009-D307)). The Office of Bar Counsel and the Board's Executive Attorney . . . are recused from this matter. By this letter, I am appointing you to serve as Special Bar Counsel to assist the Board in resolving the above-referenced case. As Special Bar Counsel, you are charged with the powers and responsibilities vested in Bar Counsel under D.C. Bar R. XI, § 6.

The Hearing Committee notes that if the only option available under amended § 11(c) in light of Respondent's Maryland reprimand in the Minchala matter was the purely ministerial act of

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[55] A copy of the September 4, 2008 Order is attached as an exhibit to Respondent's Reply In Support of His Motion to Dismiss Bar Docket No. 453-12, filed herein on July 25, 2014.

[56] At the request of the Hearing Committee (Tr. 1,762:19-1,764:18), Special Bar Counsel provided a copy of this letter as an appendix to his brief filed herein on April 24, 2015.

publishing notice of the reprimand, then there would be no need for OBC to be recused, nor would there be any basis for the Chair of the Board to remind Special Bar Counsel pointedly of his investigative and prosecutorial authority under § 6 of Rule XI.

On July 11, 2014, Respondent filed a "Motion to Dismiss Bar Docket No. 453-12." Respondent argues (Motion at 4) that pursuant to § 11(c) of Rule XI as amended "[reciprocal discipline] shall not be imposed for sanctions by a disciplining court such as public censure or reprimand" (emphasis in original), and pursuant to *In re Fitzgerald*, 982 A.2d 743, 745 (2009), the only action Special Bar Counsel could take in the Minchala matter was to publish notice of the Maryland reprimand.

Fitzgerald involved a September 24, 2007 "Order of Public Reprimand" from Massachusetts against an attorney admitted to the District of Columbia Bar. *Fitzgerald*, *supra*, 982 A.2d at 744. It does not appear from the Court's opinion that any other disciplinary action was then pending in the District of Columbia against the respondent attorney, or that any other disciplinary factors extrinsic to the Massachusetts reprimand existed. On January 7, 2008, the Court directed the Board to advise whether it would seek identical, greater, or lesser discipline, or whether the Board wished to proceed *de novo*. *Id*. On July 24, 2008, the Board recommended that the Court impose a 30-day suspension. *Id*.

Before discussing the actual issue raised in *Fitzgerald*, *i.e.*, whether amended § 11(c) should be applied retrospectively to that particular respondent, the Court stated in *obiter dictum*, "If the amended rule applies in the instant case, it dictates that we impose no reciprocal discipline, but that we instead order Bar Counsel to publish the fact of the Massachusetts Order of Public Reprimand." *Id*. at 745. The Court then began its discussion of the issue of retroactivity by observing that while a procedural change such as the amendment made to § 11(c) could properly

be applied to misconduct predating the amendment, the Court did *not* do so in *In re Amberley*, 974 A.2d 270 (D.C. 2009), which involved an admonition issued by the Virginia State Bar Disciplinary Board on June 13, 2008, where the Board recommended and the Court ordered a 30-day suspension. *Id*. at 745-46. The Court then undertook its established pattern of analysis to determine whether to authorize a more severe sanction than the one issued by Massachusetts,[57] and in the course of that analysis stated:

> While the plain language of Rule XI, § 11(c) places the burden on the disciplined attorney to establish by clear and convincing evidence that a lesser sanction is warranted, the Office of Bar Counsel also has standing to object to the imposition of identical discipline . . . . *In re Zdravkovich*, 831 A.2d 964, 968-69 (D.C. 2003). The authority of the Board to recommend greater discipline, and of this court to impose it, [also] is well established. *In re Amberley*, 974, A.2d at 273.

Fitzgerald, *supra*, 982 A.2d at 748 n.13 (square brackets in original; internal quotation marks omitted).

The foregoing quotation indicates that despite the 2008 amendment of § 11(c), Bar Counsel, the Board, and the Court do not have their hands completely tied behind their backs whenever a foreign reprimand or censure is received. In appropriate cases OBC can seek, the Board can recommend, and the Court can impose an increased sanction. Of particular importance in the preceding quotation is the internal reference to *Amberley*, where, as discussed above, the Court approved a 30-day suspension as increased discipline for an attorney who received only an admonition in Virginia, even though the Court stated that § 11(c) as amended could properly be applied to misconduct predating the amendment.

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[57] "First we determine if the misconduct in question would not have resulted in the same punishment here as it did in the disciplining jurisdiction . . . . If we conclude that 'the discipline imposed in this jurisdiction would be different from that in the disciplining court, we must then determine whether the difference is substantial.'" *Fitzgerald*, *supra*, 982 A.2d at 748 (internal citations omitted).

Furthermore, the facts of the Minchala matter are different from those in *Fitzgerald*. As noted above, in *Fitzgerald* there was no other disciplinary action then pending in the District of Columbia against the respondent attorney -- as there was here (*i.e.*, the Seminiano matter). Special Bar Counsel did not exceed his authority by undertaking an investigation of Respondent's entire representation of Mr. Minchala when faced with two apparently similar instances of neglect and when the Chair of the Board reminded Special Bar Counsel of his investigatory and prosecutorial powers under § 6 of Rule XI. As Special Bar Counsel persuasively observes,[58] if a member of our Bar has previously received a series of reprimands and/or admonitions from sister jurisdictions, when the next one comes along OBC has both the duty and the obligation to investigate the circumstances of the attorney's misconduct to determine why that attorney is having so many problems in so many different places. The case for undertaking such an investigation is strengthened where, as here, there was an existing disciplinary investigation against Respondent pending in the District of Columbia. Special Bar Counsel's further investigation revealed that Respondent's misconduct in the Minchala matter was far more extensive and serious than that considered by the AGCM in issuing Respondent an agreed letter of reprimand (FF ¶¶ 73-77). It was then entirely appropriate under the Court's established jurisprudence outlined in note 57, *supra*, regarding the imposition of a heightened disciplinary sanction for Special Bar Counsel to bring charges against Respondent in the Minchala matter that were commensurate with the severity of the misconduct Special Bar Counsel's investigation uncovered.

It must also be remembered that the issue raised by Respondent's motion involves the protection of the public and the court system from unethical practices by attorneys. Respondent's

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[58] Special Bar Counsel's Opposition to Respondent's Motion to Dismiss BDN No. 453-12 at 6 (filed herein on July 21, 2014).

conclusion is that upon receipt of notice from a foreign jurisdictions of the issuance of a reprimand, censure, or admonition, our disciplinary system in all cases and all circumstances is completely on "autopilot." However, it would be a misreading of *Fitzgerald*, of the Court's prior jurisprudence relating to the imposition of heightened sanctions, and of the purpose underlying the amendment to § 11(c) of Rule XI to reach such a conclusion, or to find that the Court intended such a result. As discussed above, the purpose of amending § 11(c) of Rule XI was to relieve the Board, OBC, and the Court of an administrative burden, not to protect attorneys from the consequences of their own misconduct.

B. Rulings On Evidentiary Matters

With respect to Respondent's pre-hearing objection under Board Rule 7.18 to the admission of SBX 8, 16, 17, 45, and 56, filed August 13, 2014, the Hearing Committee first observes that Board Rule 11.3 provides:

> Evidence that is relevant, not privileged, and not merely cumulative shall be received, and the Hearing Committee shall determine the weight and significance to be accorded all items of evidence upon which it relies. The Hearing Committee may guided by, but shall not be bound by the provisions or rules of court practice, procedure, pleading, or evidence, except as outlined in these rules or the Rules governing the Bar.

Furthermore, because disciplinary cases are not subject to the strict rules of evidence, hearsay evidence is generally admissible and may be sufficient to establish a violation of the disciplinary rules. *See In re Shillaire*, 549 A.2d 336, 343 (D.C. 1988) (FBI agent's affidavit was admissible hearsay evidence and the "only legitimate issue . . . [was the] weight that should be accorded to it"). Respondent's various objections to SBX 8, 16, 17, 45, and 56 (authenticity;[59] hearsay; best evidence; prejudice outweighs probative value; lack of foundation) all founder under the foregoing

[59] The authenticity of the English translation of Mr. Minchala's Spanish-language complaint to the AGCM (SBX 17) was established by a court-certified bilingual translator. *See* FF ¶ 72; Tr. 92:20-94:19.

principles. For those reasons, and for the reasons stated at Tr. 233-51 and 313-15, when each of the challenged exhibits was discussed, Respondent's objections to the admission of those exhibits into evidence should remain overruled.

Other evidentiary rulings by the Chair of the Hearing Committee during the hearing with respect to particular questions or documents, *e.g.*, denial of Special Bar Counsel's proffer of proposed SBX 87 (Tr. 1,157:22-1,161:21) and Respondent's oral objection to the admission of the written report of Special Bar Counsel's forensic psychiatrist (Tr. 1,187:22-1,193:22), should likewise be given effect for the reasons stated in the transcript of the hearing in connection with each ruling.

C. Respondent's Violations Of The MLRPC

The Hearing Committee has concluded that Special Bar Counsel proved by clear and convincing evidence that Respondent violated each of the disciplinary rules discussed in the following subsections. Within each subsection, the pertinent text of the MLRPC Rule at issue is first quoted, followed by a discussion of applicable legal principles as stated in the Comments to the Rules and/or in relevant case law, and then by the Hearing Committee's discussion of its findings of fact relating to each Rule violation.

(1) MLRPC 1.1

MLRPC 1.1 states that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

The Maryland Court of Appeals has held that an attorney violated Rule 1.1 where, among other things, the attorney filed initial pleadings and obtained an extension to respond to a motion to dismiss, but failed to file the responsive document, resulting in dismissal of the client's case.

Attorney Grievance Comm'n v. Brady, 30 A.3d 902 (Md. 2011); *see also Attorney Grievance Comm'n v. Gray*, 83 A.3d 786 (Md. 2014) (attorney violated Rule 1.1 where the attorney filed a complaint for divorce but did not timely pursue the client's claim and failed to propound discovery and respond to discovery requests in a timely manner); *Attorney Grievance Comm'n v. De La Paz*, 16 A.3d 181 (Md. 2011) (attorney violated Rule 1.1 by, among other things, failing to enter an appearance or contact the opposing party after being retained).

Respondent violated MLRPC 1.1 because of a lack of thoroughness. In the Seminiano matter, Respondent failed to ensure that a timely Recruitment Report was filed with the PBEC. FF ¶¶ 15-17, 19-32. As a result, Ms. Seminiano's application for labor certification was denied. FF ¶¶ 35-38. In the Minchala matter, Respondent did nothing for his client after an initial intake consultation, and failed to take any steps to accomplish the primary purpose of the representation: filing an appeal with the BIA. FF ¶¶ 43-44, 52, 54-57, 72-76. Respondent was reprimanded by the AGCM for violating MLRPC 1.1, and Special Bar Counsel provided the Hearing Committee with the same level of proof as the AGCM had before it in making that reprimand. FF ¶¶ 72-76; SBX 8 at SBC-01142-68. Accordingly, in both the Seminiano matter and the Minchala matter, Respondent did not meet his obligations under MLRPC 1.1.

(2) MLRPC 1.3

MLRPC 1.3 states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

Comment 1 to the Rule further provides that "[a] lawyer . . . may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Particularly with respect to the Seminiano matter, an attorney violates MLRPC

1.3 by failing to take the steps necessary to complete the process concerning immigration-related applications. *Attorney Grievance Comm'n v. Park*, 46 A.3d 1153, 1157 (Md. 2012). With regard to the Minchala matter, where Respondent took no meaningful steps to perfect a timely appeal from the Order directing Mr. Minchala to be deported, it has been held that an attorney violates MLRPC 1.3 when s/he takes no action whatsoever in representing his/her client. *Attorney Grievance Comm'n v. Shakir*, 46 A.3d 1162, 1167 (Md. 2012) (attorney's failure to pursue client's application for asylum and to appear at hearings on his client's behalf violated MLRPC 1.3); *see also Attorney Grievance Comm'n v. Bahgat*, 984 A.2d 225, 229 (Md. 2009) (attorney who did nothing whatsoever to advance the client's cause in an immigration matter violated MLRPC 1.3).

The discussion of the facts and considerations in the preceding subsection regarding Respondent's violations of MLRPC 1.1 is applicable to his lack of diligence in violating MLRPC 1.3, and that discussion is incorporated herein by reference.

(3) MLRPC 1.4

MLRPC 1.4 is now at issue only in the Minchala matter. MLRPC 1.4(a)(2) states that "[a] lawyer shall . . . keep the client reasonably informed about the status of the matter." MLRPC 1.4(a)(3) states that "[a] lawyer shall . . . promptly comply with reasonable requests for information."

With respect to MLRPC 1.4(a)(2), Comment 3 to the Rule indicates that this subsection "requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation." *See also Attorney Grievance Comm'n v. Sperling*, 69 A.3d 478 (Md. 2013) (attorney violated Rule 1.4(a)(2) by, among other things, failing to advise client that the case had been dismissed, and by misrepresenting the status of the case); *Attorney Grievance Comm'n v. Bahgat*, *supra*, 984 A.2d at

229 (immigration attorney violated Rule 1.4(a)(2) by failing to keep client informed about status of filings in the client's case).

With respect to MLRPC 1.4(a)(3), Comment 4 to the Rule states, "When a client makes a reasonable request for information . . . paragraph (a)(3) requires prompt compliance with the request . . . ." Of particular relevance with regard to MLRPC 1.4(a)(3) is *Attorney Grievance Comm'n v. Lee*, 890 A.2d 273 (Md. 2006) (attorney violated MLRPC 1.4(a)(3) by failing to respond to communications from an incarcerated client's mother, where it was clear that the client's mother was acting on his behalf).

There is clear and convincing evidence that Respondent violated both MLRPC 1.4(a)(2) and 1.4(a)(3). As to MLRPC 1.4(a)(2), the June 23, 2011, letter that Respondent drafted (FF ¶ 56) -- even if not delivered -- was a knowing attempt at obfuscation and evasion (FF ¶¶ 56-57). It did not tell Mr. Minchala the one critical fact he needed to know: that Respondent had failed to file a timely appeal with the BIA. FF ¶ 57. Indeed, Respondent did not inform Mr. Minchala of that fact until February 28, 2011 (FF ¶ 59), and in the intervening period, Respondent's staff misinformed Mr. Minchala by telling him the appeal was being properly handled (FF ¶ 58). As to MLRPC 1.4(a)(3), Mr. Bloom repeatedly asked Respondent for information concerning the status of Mr. Minchala's appeal. FF ¶¶ 64-71. A request for information from Mr. Bloom as Mr. Minchala's attorney was the equivalent of a request directly from Mr. Minchala himself (*see* SBX 18 at SBC-01165 (letter of authorization from Mr. Minchala)). Yet despite Mr. Bloom's letters and his telephone conversation with Respondent asking about the status of Mr. Minchala's BIA appeal, Respondent provided no responsive information (FF ¶¶ 64-71), thereby violating his obligations under MLRPC 1.4(a)(3).

(4) MLRPC 1.8(h)(1)

MLRPC 1.8(h)(1) states that "[a] lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement."

Comment 14 to the Rule explains that "[a]greements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement."

It is clear that the language of the ancillary agreement which Respondent had Mr. Minchala sign on May 11, 2011, violated MLRPC 1.8(h)(1). FF ¶ 50. It is likewise undisputed that Mr. Minchala was not represented by independent legal counsel when Respondent had him sign that agreement. FF ¶ 53. Respondent's description of his own subjective intent (FF ¶ 51) in attempting to establish that the plain words of the agreement did not mean what they said cannot be countenanced. Otherwise, a rule that is intended to be a "bright line" requirement of practicing law could be rendered nugatory whenever an attorney retrospectively says that s/he did not "intend" for ordinary language to be given its plain meaning.

(5) MLRPC 1.15(a) and 1.15(c)

MLRPC 1.15(a) states the general proposition that "[a] lawyer shall hold property of clients . . . that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." Particularly with respect to legal fees that are paid in advance, MLRPC 1.15(c) states that "[u]nless the client gives informed consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the lawyer's own benefit only as fees are

earned or expenses incurred." *See Attorney Grievance Comm'n v. Guida*, 891 A.2d 1085, 1097 (Md. 2006) (respondent violated MLRPC 1.15(a) by depositing advanced legal fees into the attorney's office operating account because the fees were paid for future legal services and qualified as "trust money" for purposes of the Rule); *Attorney Grievance Comm'n v. Ross*, 50 A.3d 1166, 1182 (Md. 2012) (failure to place legal fees paid in advance into client trust account violated Rule 1.15(c)); *Attorney Grievance Comm'n v. Khandpur*, 25 A.3d 165, 174 (Md. 2011) (fee payments, even if a flat fee, must be placed in escrow upon receipt if the work has not yet been performed at the time of payment). As the trial judge stated in *Guida*, *supra*, 891 A. 2d at 1085, where a disability mitigation claim was rejected in connection with the mishandling of advanced client fees, "It is a simple mechanical matter to appropriately deposit funds paid by a client. [The respondent's] depression and back troubles had absolutely no affect on his failure to properly deposit money."

Of particular relevance to the language of Respondent's retainer agreement with Mr. Minchala is the ruling of the Maryland Court of Appeals in *Attorney Grievance Comm'n v. Chapman*, 60 A.3d 25 (Md. 2013). In that case, the Court found that informed consent did not exist where a retainer agreement provided that "[t]he Retainer shall be deemed earned upon receipt by the Firm in light of the commitment in time and resources that the Firm will have to invest in the Retained Matter, because the Firm will be securing the services of one or more consultants and because such retention precludes or limits the Firm's ability to pursue other client matters." *Id.* at 42. The Court reasoned that "[t]here is no evidence . . . that the retainer agreement explained the risks associated with paying a fee that would not be held in trust − namely that the fee would be considered earned upon receipt, no matter the level of effort undertaken by the lawyer, and that return of any portion of the fee, thus, could be precluded" and that "the definition [of informed

consent] in Rule 1.0(f) makes clear that an attorney must communicate the risks associated with a fee arrangement that varies from the standard escrow arrangement." *Id.* at 48.

With respect to the Minchala matter, it is stipulated that none of the client's payments went into Respondent's client escrow account. FF ¶¶ 48-49. They were all deposited into the operating bank account of Respondent's law firm. FF ¶ 49. It is likewise clear that the purpose of the representation was the filing of an appeal with the BIA (FF ¶ 44) rather than just a 90-minute intake discussion with Respondent (FF ¶ 52). The retainer agreement specified that Mr. Minchala was being charged $2,000 for up to seven hours of attorney time, with any overage or increases in legal fee rates at any time (with or without notice) to be paid by the client. FF ¶ 45. It is also clear that Mr. Minchala was not represented by independent legal counsel in connection with the execution of his retainer agreement with Respondent (FF ¶ 53), and that Respondent provided no meaningful explanation to Mr. Minchala of the risks of signing a retainer agreement that gave Respondent an immediate right to $1,000 regardless of what level of work was provided (FF ¶ 53). The parallels between the self-serving platitudes in Respondent's retainer agreement with Mr. Minchala seeking to justify a "non-refundable" $1,000 advance fee[60] and the language of the retainer agreement in *Chapman* are evident. Thus, beginning with Mr. Minchala's very first payment (except for 90 minutes' worth of Respondent's time) Respondent violated MLRPC 1.15(a) and (c).

(6) MLRPC 1.16(d)

MLRPC 1.16(d) states, in pertinent part:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and

[60] "The engagement fee is not refundable because it includes engaging or 'hiring' the Firm, Firm foregoing accepting other clients, Firm analyzing Client's situation, and helping client in developing strategies." FF ¶ 45; SBX 2 at ¶ II.

> property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

Comment 9 to the Rule further states, "Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client."

The case law requiring an attorney to return any unearned client fee payments upon termination of a representation is clear. *See Shakir*, *supra*, 46 A.3d at 1167 (attorney violated Rule 1.16(d) by failing to refund unearned advanced fees); *Costanzo*, *supra*, 68 A.3d at 821 (lawyer who failed to take any meaningful steps in pursuit of client's interests and abandoned the representation violated Rule 1.16(d) by failing to return the client's $9,000 retainer); *Attorney Grievance Comm'n v. Zimmerman*, 50 A.3d 1205, 1218 (Md. 2012) (failure to return unearned retainer and to turn over client file).

In the present case, as of June 23, 2011, Respondent regarded his representation of Mr. Minchala as terminated. FF ¶ 56. At that time Respondent had unearned client fees on hand (FF ¶¶ 48-49, 53, 57) but he did not return them until February 28, 2012 (FF ¶ 59), a delay of many months, thereby violating MLRPC 1.16(d).

Paragraph 32(g) of the Specification also alleges that Respondent further violated MLRPC 1.16(d) by failing to cooperate with successor counsel with respect to legal proceedings brought to overcome harm to the client caused by Respondent's negligence. While Special Bar Counsel has not cited any controlling Maryland precedent interpreting MLRPC 1.16(d) in that context, Comment 9 to MLRPC 1.16, quoted above, states that even if an attorney has been unfairly discharged by the client, there is still a requirement for the attorney to take "all reasonable steps to mitigate the consequences to the client." In the present case, it was *Respondent* who, based on rumor and supposition, terminated his representation of Mr. Minchala without taking meaningful steps to confirm that Mr. Minchala had other counsel. FF ¶ 56. In such circumstances, it was

particularly incumbent on Respondent to take "all reasonable steps to mitigate the consequences to the client," which in this case was no more than providing the minimal amount of information Mr. Bloom had requested and was entitled to receive pursuant to MLRPC 1.4(a)(3). For this additional reason, the Hearing Committee concludes that Respondent violated MLRPC 1.16(d).

(7) MLRPC 8.4(c)

Under MLRPC 8.4(c), "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

The Maryland Court of Appeals has adopted the same analysis and explanation of MLRPC 8.4(c) as the District of Columbia Court of Appeals has done in construing Rule 8.4(c) of the District of Columbia Rules of Professional Conduct. *See Attorney Grievance Comm'n v. Sheridan*, 741 A.2d 1143, 1156-57 (Md. 1999) (respondent violated Rule 8.4(c) and engaged in dishonest conduct by exhibiting a "lack of probity, integrity and straightforwardness in his conduct regarding his client"). Relying on precedent from the District of Columbia Court of Appeals, the *Sheridan* Court explained:

> [T]hese four terms should be understood as separate categories, denoting differences in meaning or degree. Thus, to the extent possible, each term should be read narrowly, so as not to engulf any of the remaining three. Moreover, if any term proves more general than the others, or encompasses another, only the more general term need be applied: we will find only one violation of the disciplinary rule upon a single set of facts.
>
> The most general term . . . is "dishonest," which encompasses fraudulent, deceitful, or misrepresentative behavior. In addition to these, however, it encompasses conduct evincing a lack of honesty, probity or integrity in principle; [a] lack of fairness and straightforwardness. . . . Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

741 A.2d at 1156.

In considering Respondent's conduct in relation to the requirements of MLRPC 8.4(c), the Hearing Committee asked itself one very simple question: "What should an honest lawyer do upon

realizing, as Respondent did on June 23, 2011 [FF ¶ 57], that the attorney missed an important court filing deadline?" The answer is equally simple: an honest lawyer must promptly inform the client of the omission, and discuss with the client the means for dealing with the problem caused by the lawyer's error. Yet that is precisely what Respondent did not do in the case of Mr. Minchala. Instead, Respondent concocted a letter based on an unsubstantiated hope that somehow Mr. Minchala had hired a different attorney, and then did nothing further until Respondent was confronted with his dereliction by Mr. Minchala in February, 2012. FF ¶¶ 56-59. It only compounds the degree of Respondent's dishonesty that -- having Mr. Minchala's file in front of him when he wrote the June 23, 2011, letter terminating the representation -- Respondent also failed to advise Mr. Minchala to stop making any further fee payments, and continued collecting them. FF ¶¶ 57-58. The Hearing Committee accordingly concludes that there is clear and convincing evidence of Respondent exhibiting "a lack of honesty, probity or integrity in principle . . . [a] lack of fairness and straightforwardness," *Sheridan*, *supra*, 741 A. 2d at 1156, thereby violating MLRPC 8.4(c).

8) MLRPC 8.4(d)

Under MLRPC 8.4(d), "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice."

The Maryland Court of Appeals has stated that MLRPC 8.4(d) is violated when an attorney's conduct "has a negative impact on the profession as a whole, leaving a bad mark on all of us" or has "wasted judicial resources." *Attorney Grievance Comm'n v. Dore*, 73 A.3d 161, 175 (Md. 2013) (citing *Attorney Grievance Comm'n v. Marcalus*, 996 A.2d 350, 362 (Md. 2010) (conduct prejudicial to the administration of justice is the type of "conduct that impacts on the image or the perception of the courts or the legal profession . . . and that engenders disrespect for the courts and for the legal profession")). Accordingly, a range of misconduct has been determined

to violate MLRPC 8.4(d), *e.g.*, failure to represent and communicate with a client properly (*Attorney Grievance Comm'n v. Brown*, 725 A.2d 1069, 1076 (Md. 1999)), and failure to maintain client funds separate and apart from the lawyer's (*Attorney Grievance Comm'n v. Moeller*, 46 A.3d 407, 411 (Md. 2012)).

Respondent agreed to be reprimanded by the AGCM for violating MLRPC 8.4(d) in the Minchala matter when the AGCM had under consideration only the basic facts relating to Respondent's lack of competence and diligence. FF ¶¶ 72-74; SBX 8 at SBC-01142-68. The same facts were proved before the Hearing Committee by Special Bar Counsel (FF ¶¶ 43, 52, 54-57, 72-76), and the same conclusion follows: Respondent violated MLRPC 8.4(d). It only adds to the seriousness of Respondent's violation of MLRPC 8.4(d) that Special Bar Counsel has also provided clear and convincing evidence of Respondent's violation of MLRPC 1.15 in mishandling Mr. Minchala's advance fee payments (FF ¶¶ 48-49, 53), and Respondent's causing a waste of judicial resources by forcing Mr. Bloom to file a *Lozada* motion[61] in order to obtain an extension of time to file Mr. Minchala's appeal with the BIA (FF ¶¶ 65-72, 78).

IV. SANCTION RECOMMENDATION

For the reasons set forth in this Part IV, the Hearing Committee recommends that Respondent should be suspended from the practice of law for a period of 30 days, with the suspension stayed in favor of a two-year period of probation pursuant to § 3(a)(7) of Rule XI and Chapter 18 of the Board Rules, without the need for Respondent to notify existing or future clients of the suspension, and upon the following five conditions:

> (1) During the first year of the probationary period, Respondent shall take at least six hours of continuing legal education coursework pre-approved by Special Bar Counsel that include the proper drafting of client retainer agreements, the proper handling of retainers and advance payment of fees by clients, and the proper

[61] *See* note 40, *supra*, and accompanying text in FF ¶ 67.

operation of attorney escrow accounts containing such retainers and fees. Respondent shall provide Special Bar Counsel with proof of attendance of such continuing legal education within 30 days after attendance at the approved coursework, but in no event later than 30 days before the end of Respondent's first year of probation.

(2) At the end of each successive 180-day period following the start of probation, Respondent shall file an affidavit with the Board and Special Bar Counsel stating that he believes he is fully capable both physically and mentally to continue practicing law, which affidavit shall be supported by one or more letters from a physician or physicians of Respondent's choice, dated within the 30 days prior to the date of Respondent's affidavit, stating that s/he has examined Respondent and finds that Respondent is fully capable both physically and/or mentally to continue practicing law; *provided*, if either Respondent or the examining physician(s) shall believe Respondent has any physical or mental condition that may affect Respondent's continuing practice of law, the affidavit/supporting letter shall describe such condition in reasonable detail.

(3) Respondent shall execute an authorization form waiving any physician-patient or similar privilege to the extent necessary to permit the physician(s) to release information to the Board and/or Special Bar Counsel, and/or to testify at a hearing regarding Respondent's disability and compliance with the terms of probation and fitness to practice law, as provided by Board Rule 18.1.

(4) During the probationary period, Respondent shall not be required to notify clients of the probation unless the Board enters an Order directing otherwise, and the Board shall retain jurisdiction to require any additional action or proceeding regarding Respondent in light of information the Board receives pursuant to condition (2) and/or condition (3) specified above.

(5) Should Respondent violate the terms of his probation or commit any additional violation of the MLRPC or the District of Columbia Rules of Professional Conduct, he will be subject to revocation of his probation.

The point of the disciplinary system is not to punish an attorney. *Attorney Grievance Comm'n v. Goodman*, 43 A.3d, 988, 997 (Md. 2011) (*citing Attorney Grievance Comm'n v. Stein*, 819 A.2d 372, 375 (Md. 2003)). The appropriate sanction is one that protects the public and the courts, maintains the integrity of the profession, and deters the respondent attorney and others from engaging in similar misconduct. *See In re Cater*, 887 A.2d 1, 17 (D.C. 2005); *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). Although achieving comparability of sanctions is not an

exact science,[62] the sanction imposed should also be generally consistent with cases involving comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007); *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). The determination of a disciplinary sanction generally takes seven principal factors into account: (A) the seriousness of the conduct at issue; (B) the prejudice, if any, to the client which resulted from the misconduct; (C) whether the conduct involved dishonesty and/or misrepresentation; (D) the presence or absence of violations of other provisions of the disciplinary rules; (E) whether the attorney has a previous disciplinary history; (F) whether or not the attorney has acknowledged his or her wrongful conduct; and (G) circumstances in mitigation of the misconduct. *See, e.g., In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). Each of these seven factors is discussed below. In addition, the issue of comparability of sanction is discussed below in Section IV(H).

A. The Seriousness Of Respondent's Misconduct

Relying on *In re Addams*, 579 A.2d 190 (D.C. 1990) (en banc), Special Bar Counsel contends that Respondent should be disbarred because Respondent's depositing the advance fee payments made by Mr. Minchala's into Respondent's law firm operating account constituted misappropriation. However, when advance legal fee payments are deposited into an attorney's operating account rather than into the attorney's client escrow account, proof is required that during the period the client's funds were in the attorney's operating account, the balance in that account fell below the amount owed to the client. *Goodman*, *supra*, 43 A. 3d at 996 (quoting *Attorney Grievance Comm'n v. Hayes*, 789 A.2d 119, 127 n.10 (Md. 2002) (misappropriation occurs when the balance in the attorney's operating account is insufficient to cover all client funds)); *see also*

[62] *In re Edwards*, 870 A.2d 90, 94 (D.C. 2005) (*citing In re Goffe*, 641 A. 2d 458, 463 (D.C. 1994)).

In re Smith, 817 A.2d 196, 201-02 (D.C. 2003) (misappropriation and commingling are analytically distinct, and misappropriation occurs "when a commingled account 'falls below the amount due the client'") (*quoting In re Anderson*, 778 A.2d 330, 335 (D.C. 2001)).

In the present case, Special Bar Counsel has proved commingling because Mr. Minchala's advance fee payments were deposited into Respondent's law firm operating account rather than his client escrow account. FF ¶ 49. The burden of proof to establish misappropriation, however, always remains with Bar Counsel, *Anderson, supra*, 778 A.2d at 332, and there is no proof in the record that the balance in Respondent's law firm operating account in the period from May 11, 2011 to February 28, 2012 ever fell below the amount of prepaid legal fees due to Mr. Minchala. FF ¶ 62. Accordingly, the Hearing Committee does not have a basis for finding misappropriation or recommending disbarment pursuant to *In re Addams, supra*.

That said, *In re Hessler*, 549 A.2d 700, 703 (D.C. 1988), states that "in future cases of even simple 'commingling' a serious disciplinary sanction would be in order." For that reason alone, Respondent's misconduct in this proceeding must be deemed serious. Furthermore, incompetent representation of a client (FF ¶¶ 15-17, 19-32, 54-57) and causing parties and judicial tribunals to engage in unnecessary work (FF ¶¶ 65-72, 78) are also serious ethical violations. *In re Cole*, 967 A.2d 1264, 1267 (D.C. 2009). The seriousness of the conduct at issue increases when, as the Hearing Committee has found (FF ¶¶ 55-58), a respondent violates the rule prohibiting dishonest conduct. *In re Daniel*, 11 A.3d 291, 300 (D.C. 2011). Added to those concerns are Respondent's other violations of the MLRPC discussed above, including MLRPC 1.4 (failure to keep the client properly informed about the status of a matter), MLRPC 1.8(h)(1) (making an agreement with a client prospectively limiting the lawyer's liability for malpractice), MLRPC 1.16(d) (on termination of a representation, returning a client's property and cooperating with successor

counsel), and MLRPC 8.4(d) (conduct seriously interfering with the administration of justice). In short, Special Bar Counsel has established that Respondent should be sanctioned in this proceeding for serious misconduct.

B. Prejudice To The Client Resulting From The Misconduct

Viewed solely from the perspective of immigration law, the issue of client prejudice in this proceeding presents a mixed picture. With regard to Ms. Seminiano, Respondent's failure to ensure that a timely Recruitment Report was filed in 2007 (FF ¶¶ 15-17, 19-32) prejudiced her because she lost the priority date[63] associated with the 2001 filing of her application for labor certification, as well as losing the opportunity to proceed promptly toward achieving permanent residence ("Green Card") status. On the other hand, Respondent's prompt action on her behalf in 2001 provided her with a benefit enabling her to apply for "adjustment of status" without having to leave the United States. FF ¶ 7. However, because as of the time Ms. Seminiano testified in this proceeding she had not filed another application for labor certification and did not currently have permanent residence status in the United States (Tr. 309:8-15 (Seminiano)), it is uncertain whether Respondent's prompt action in 2001 was of any practical assistance to her.

With regard to Mr. Minchala, it is clear that his application for relief from Judge Gossart's deportation order was ultimately denied on the merits (FF ¶ 79), and therefore Respondent's delay in filing Mr. Minchala's BIA appeal by itself may not have caused any actual prejudice to Mr. Minchala's immigration status. A Hearing Committee, however, may also consider as an aggravating factor the potential as well as the realized harm posed to a client, *In re Kanu,* 5 A.3d

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[63] *See* Tr. 590:8-16 (Johnson) ("I checked the Visa Bulletin this morning from the State Department about the quota administration, which indicated to me that if a new application had been filed [by Ms. Seminiano] on or about February 2008 . . . she would have been eligible to submit the final step . . . to get the Green Card in probably February or March of this year [i.e., 2014] . . . .").

1, 15 (D.C. 2010), and Respondent's delay in prosecuting Mr. Seminiano's BIA appeal at least potentially exposed him to summary arrest and deportation (FF ¶ 65).

Completely aside from matters of immigration law, Ms. Seminiano was prejudiced because in the period from late 2007 until July, 2012, when Respondent refunded her initial $2,000 payment (FF ¶ 41), Ms. Seminiano had neither an approved labor certification application nor the use of the $2,000 she had paid to Respondent in 2001 to get it.

C. Presence Or Absence of Dishonesty In The Misconduct

For the reasons stated in subsection III(C)(7), above, the Hearing Committee has found that Respondent acted in a dishonest manner in connection with his representation of Mr. Minchala.

D. Presence or Absence of Multiple Rules Violations

This case presents multiple violations of the MLRPC in two different client representations.

E. Respondent's Prior Disciplinary History

Since being admitted to the Bar in 1977, Respondent has not been the subject of any disciplinary actions aside from the two periods of misconduct that are at issue in this proceeding, one in 2007 and one in 2011. The fact that an attorney has no prior disciplinary history is "highly relevant and material" to the determination of a sanction, *In re Cope*, 455 A.2d 1357, 1361 (D.C. 1983), and the Hearing Committee has given considerable weight to that consideration in arriving at its sanction recommendation, as well as to the fact that the two periods of misconduct were approximately four years apart.

F. Attorney's Acknowledgement of Misconduct

Respondent's acknowledgement of his misconduct is, at best, equivocal. During the violations phase, for example, Respondent maintained he did nothing wrong in the Seminiano

matter. Tr. 642:8-643:2 (Johnson). In the Minchala matter, despite not having informed Mr. Minchala in his June 23, 2011, letter of Respondent's *known* failure to file a timely appeal (FF ¶ 57), Respondent testified he was completely honest. Tr. 716:15-19 (Johnson). Furthermore, despite Respondent's admitted failure to file a timely appeal (FF ¶ 55) and despite having agreed to discipline from the AGCM for violating MLRPC 1.1, 1.3, and 8.4(d), Respondent argues in his brief that Special Bar Counsel -- having proved the same facts that were before the AGCM -- nevertheless failed to establish that Respondent violated those rules. *See* Respondent's Post-Hearing Brief in Response to Special Bar Counsel's Opening Brief [64] at 46-47.

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[64] Filed herein on April 24, 2015.

G. Mitigating Circumstances

(1) Disability Mitigation

In the District of Columbia, the Court of Appeals has permitted mitigation of an otherwise applicable sanction where the respondent's misconduct is shown to have been caused by a significantly disabling condition such as chronic alcoholism (*see Kersey*, *supra*, 520 A.2d at 326-27) or mental illness (s*ee In re Verra*, 932 A.2d 503, 505 (D.C. 2007)). *In re Stanback*, 681 A.2d 1109, 1114-15 (D.C. 1996) summarizes the "three-prong" analytical framework for assessing a claim for disability mitigation. First, the respondent must prove by clear and convincing evidence that s/he suffered from a recognized ground for disability mitigation at the time of the misconduct. Second, the respondent must prove by a preponderance of the evidence that the recognized ground for disability mitigation caused him/her to engage in an alleged item of misconduct. Third, if the respondent has satisfactorily established the two preceding factors with respect to an alleged item of misconduct, the respondent must show that s/he is substantially rehabilitated.

With respect to the first factor, there is clear and convincing evidence in the record that at the time of his misconduct in the period September to November, 2007 (Seminiano) and in period May to September, 2011 (Minchala), Respondent had a significant level of psychiatric depression. FF ¶¶ 92, 103. With respect to the third factor, there is also clear and convincing evidence in the record that as of the time of the hearing in this proceeding, Respondent was not suffering from a psychiatric condition that would impair his ability to represent clients in compliance with the ethical requirements of practicing law. FF ¶ 111.

With respect to reaching a determination on the second criterion -- causality -- the Hearing Committee applies the following statement from *In re Lopes*, 770 A.2d 561, 568 (D.C. 2001):

> As Bar Counsel correctly states in her brief, "it was incumbent upon [Lopes] to show that his illnesses, however labeled, deprived him of the meaningful ability to

> comport himself in his professional conduct in accordance with the basic norms of professional responsibility."

The Hearing Committee has summarized and cross-referenced in FF ¶ 95 the reasons why in the Seminiano matter, considering Respondent's depression and the exacerbating factors which heightened that depression, in the period September to November, 2007, Respondent has established causality by a preponderance of the evidence in accordance with the language quoted above from *In re Lopes*. Therefore, Respondent has a valid basis for mitigation of sanction with respect to Count I of the Specification due to reasons of disability. However, in FF ¶ 110 the Hearing Committee has summarized and cross-referenced the reasons why in the Minchala matter, considering all psychological and physical factors affecting Respondent,[65] he has not established by a preponderance of the evidence that his disability(ies) impaired him to the point that he was unable to comport himself in his professional conduct in accordance with the basic norms of professional responsibility. In making its sanction recommendation, the Hearing Committee has therefore concluded that Respondent is not entitled to any mitigation of sanction due to reasons of disability for his misconduct in the Minchala matter.

(2) Other Mitigating Factors

In subsection II(D)(2), above, the Hearing Committee has presented its findings of fact with respect to Respondent's non-disability claims for mitigation of sanction. In summary, Respondent's claim for mitigation of sanction based on "restitution" (FF ¶¶ 113-15) is weak. The same is true for Respondent's claim for mitigation based on "lack of selfish or self-interested motives." FF ¶ 126. The Hearing Committee also concludes that Respondent is not entitled to

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[65] With regard to Respondent's level of functionality, even his own forensic psychiatrist (Dr. Tellefsen) in a different disability mitigation case testified as to the relevance, for example, of the respondent attorney's being able to pay his withholding taxes when due, despite his great level of depression. *Guida*, *supra*, 891 A.2d at 1100.

much credit for "cooperation with Special Bar Counsel's investigation" (FF ¶¶ 128-29), when what he did was essentially avoid being charged with a violation of Rule 8.1(b) of the District of Columbia Rules of Professional conduct for failing to respond to a lawful demand for information from a disciplinary authority. Nor should any strong reliance be placed on Respondent's claim to his clerically-supported "good and virtuous character" (FF ¶ 125) (should an atheist or agnostic *ipso facto* be found to lack such character?) or to the changes in Respondent's attitude toward expressing remorse for his misconduct (FF ¶ 127).

From the Hearing Committee's viewpoint, the most important non-disability factors favoring a lessened sanction are his many years of work as an attorney without serious disciplinary involvements (*see* Section IV(E), *supra*), and his established record of community involvement and professional service as outlined in FF ¶¶ 116-24. These two considerations have led the Hearing Committee to recommend a structured sanction which will permit Respondent to continue assisting the immigration Bar and indigent persons in need of representation by immigration counsel.

H. Comparability of Sanction

The Hearing Committee has reviewed a number of decisions by the District of Columbia Court of Appeals where disability mitigation was a factor, including but not limited to *In re Zakroff*, 934 A.2d 409 (D.C. 2007), which was cited several times by Respondent's counsel in his closing argument (Tr. 1,715:17-1,716:4, 1,720:18-1,721:12, 1,727:2-11) and again in Respondent's final brief.[66] Having done that review, the Hearing Committee believes that the case closest to the present one in its factual and legal circumstances is *In re Lopes*, *supra*.

[66] Respondent's Post-Hearing Reply Brief Regarding Aggravating and Mitigating Circumstances at 16 (filed May 1, 2015).

In *Lopes*, the respondent attorney's misconduct arose from the representation of four different clients. In the underlying Hearing Committee report, Lopes was found to have violated Rules 1.1 (competence); Rule 1.3 (neglect); 1.4(a) (failure to communicate) and 1.4(b) (failure to explain a matter sufficiently to permit the client to make an informed decision); 1.5(b) (failure to provide a writing setting forth the basis or rate of fee); 1.16(a)(2) (failure to withdraw due to physical impairment); 3.3 (false statement of material fact to a tribunal); 3.4(d) (failure to comply with a legally proper discovery request); 4.1 (false statement of material fact to a third person); 8.4(c) (dishonesty, fraud, deceit, and misrepresentation); and 8.4(d) and D.C. App. R. XI, § 2(b)(3) (conduct seriously interfering with the administration of justice).

The Board issued an initial Report and Recommendation in 1999, *In re Lopes,* Bar Docket Nos. 195-95, *et al.* (BPR June 25, 1999) (hereinafter "*Lopes* 1999"), in which the Board recommended a six-month suspension followed by a two-year period of probation subject to certain conditions, including that twice a year during the probationary period the respondent attorney should submit a report from himself (and, if possible, from a supervising physician) regarding his medical condition. *Lopes* 1999 at 29.

In a bifurcated Hearing Committee proceeding, Lopes submitted a plea in mitigation based on two serious physical ailments, multiple sclerosis and sarcoiditis (an inflammatory lung disease that affected the respondent's intake of oxygen). *Lopes* 1999 at 13-14. The sarcoiditis was treated with Prednisone (a steroid), the side effects of which included depression, confusion, disorientation, and transient amnesia. *Id.* By 1994, during the period of the respondent's misconduct, he was taking Prednisone, Prozac (for depression), ProSom (for insomnia), and Baclofen (for leg tremors). In the respondent's words, he felt "like a zombie." *Lopes* 1999 at 16.

Lopes' claim for mitigation was supported by his physician (Dr. McKoy), who testified as to the respondent's various ailments.

To counter the respondent's claim for disability mitigation, Bar Counsel introduced the testimony of a forensic psychiatrist (Dr. Ratner), who stated that while the respondent might have been suffering from depression from 1991 to 1996, there was contrary evidence including the respondent's ability to function well in a large number of cases during the same time period, and that there was no apparent connection between the respondent's ailments in 1996 and his inability to respond to a Bar Counsel petition. *Lopes* 1999 at 19.

Crediting the testimony of respondent's physician, the Hearing Committee found that the respondent had established by a preponderance of the evidence that his medical symptoms caused his misconduct, and recommended a 60-day suspension, stayed (pursuant to *In re Kersey*, *supra*) in favor of a one-year period of probation. *Lopes* 1999 at 20-21.

On review, the Board found that the respondent's combined ailments "substantially affected" his misconduct ("he could not get out of bed to do work"), but found no mitigation was warranted under *Kersey* for the respondent's dishonesty and false statements, observing, *inter alia*, that under *In re Stanback*, 681 A.2d 1109, 1114-15 n.5 (D.C. 1996), a respondent's own testimony on the issue of causation is not entitled to great weight. *Lopes* 1999 at 22-23. Considering all factors, the Board recommended a six-month suspension followed by a two-year period of probation, as described above. *Lopes* 1999 at 25, 29.

On appeal from the Board's decision, Bar Counsel moved the Court for a remand to the Board to reconsider the recommended sanction. The motion was granted, and in 2000 the Board issued a supplemental Report and Recommendation, *In re Lopes*, Bar Docket Nos. 195-95, *et al.* (BPR Apr. 7, 2000) (hereinafter, "*Lopes* 2000"). *See Lopes*, *supra*, 770 A.2d at 566. The Board

on remand found no need for the additional "highly intrusive" sanction modifications proposed by Bar Counsel (*Lopes* 2000 at 2, 5)[67] and reiterated its original sanction recommendation (*Lopes* 2000 at 11).

After receiving the Board's supplemental Report and Recommendation, the Court noted with approval that the Board had allowed *Kersey* mitigation only with regard to the respondent's neglect and related violations, but not the dishonesty violations. *Lopes, supra*, 770 A.2d at 566-68. The Court also stated that the Board had considered all relevant testimony, including that of Drs. McKoy and Ratner (*id.* at 567 n.2), and approved the Board's recommended sanction.

The Hearing Committee finds the facts and circumstances of *Lopes* are very similar to the present proceeding in terms of the types of physical and mental disabilities at issue, the testimony from the parties' respective physicians, and the broad range of disciplinary violations involved. If no mitigating factors were involved here, the combined seriousness of Respondent's ethics violations would warrant a six-month suspension, as they did in *Lopes*. However, because the Hearing Committee has found that *Kersey* mitigation is applicable to Respondent's misconduct in his representation of Ms. Seminiano, because of Respondent's many years of practicing law without any ethics violations other than the instant misconduct, and because of Respondent's record of professional involvement and *pro bono* service, the Hearing Committee is recommending only a 30-day suspension, stayed in favor of a two-year period of probation on conditions calculated to protect the public but which do not place an undue burden on Respondent.

In structuring the recommended conditions of the probation, the Hearing Committee bears in mind that Respondent's autoimmune DH disorder is "suppressed/controlled" (FF ¶ 96), not

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[67] Bar Counsel's proposed sanction modifications included, *inter alia*, monthly monitoring of the respondent by an independent medical examiner ("IME"); verification of respondent's filling any prescriptions issued by the IME; appointment of a stand-by monitor to ascertain on a monthly basis whether Respondent had undertaken to represent any clients, and if so, to file monthly reports concerning the respondent's attention to such clients; and if no new client representations were undertaken, filing of monthly reports by the respondent so certifying. *Lopes* 2000 at 6.

cured; that time and circumstance may bring stresses to bear on Respondent which could easily cause a recurrence of his psychiatric symptoms (FF ¶ 104) and/or his DH; that Respondent tends to overlook his own emotional condition (FF ¶ 88); and that Respondent's mishandling of Mr. Minchala's advance fee payments (FF ¶¶ 48-49) and his use of a prospective release from professional liability in violation of MLRPC 1.8(h)(1) (FF ¶ 50) indicate a need for refresher training on those subjects. The conditions of probation outlined above are intended to address those concerns.

V. CONCLUSION

Respondent has been involved in serious misconduct in this case. Nevertheless, he appears to have the potential for continuing to provide legal services to persons in need of immigration law assistance, whether on a compensated or a *pro bono* basis, and to continue playing a constructive role in local and national organizations that are active in this area of the law. With a foremost concern at all times for the protection of the public, and for Respondent to practice law in accordance with the ethical requirements of the profession, the Hearing Committee's sanction recommendation is intended to give Respondent the chance to live up to that potential.

Respectfully submitted,

AD HOC HEARING COMMITTEE

/MS/
Martin Shulman, Esq., Chair

/CDC/
Curtis D. Copeland, Jr.

/MLP/
Malcolm L. Pritzker, Esq.

Dated: July 14, 2015