OFFICE OF DISCIPLINARY COUNSEL

June 27, 2024

CONFIDENTIAL

Michael Alexei, Esquire
c/o Kristin Paulding, Esquire

Via email only to:
kpaulding@7citieslaw.com

In re Michael Alexei
(D.C. Bar Registration No.) 999055
Board Docket No. 21-BD-050

Dear Mr. Alexei:

Pursuant to D.C. Bar Rule XI, § 9(f), and the Board on Professional Responsibility's Order of May 8, 2024, the Office of Disciplinary Counsel issues you this informal admonition for revealing a confidences or secret of your client in violation of D.C. Rule of Professional Conduct 1.6(a)(1).

Sincerely,

Hamilton P. Fox III

Hamilton P. Fox, III
Disciplinary Counsel

cc: The Board on Professional Responsibility via email
CaseManager@dcbpr.org

CGD:tm

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

Issued
May 8, 2024

In the Matter of:	:	
	:	
MICHAEL ALEXEI,	:	
	:	Board Docket No. 21-BD-050
Respondent.	:	Bar Docket No. 2017-D179
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 999055)	:	

ORDER OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

I. INTRODUCTION

This matter arises from statements Respondent made about his client in a Withdrawal Notice filed with the United States Citizenship and Immigration Service (USCIS). The Ad Hoc Hearing Committee found that Respondent knowingly revealed his client's secrets in violation of D.C. Rule of Professional Conduct 1.6(a)(1) and should receive an Informal Admonition.

Disciplinary Counsel took no exception. But Respondent did, arguing that he did not knowingly reveal his client's secrets and, alternatively, that he was permitted to do so under Rule 1.6(e). Thus, Respondent reasons that he should not be sanctioned.

We agree with the Hearing Committee's Report and Recommendation, which is attached hereto and adopted and incorporated by reference, that Disciplinary Counsel proved by clear and convincing evidence that Respondent violated Rule 1.6(a)(1). We further agree that Respondent should receive an Informal

Admonition.[1]

We address two of Respondent's specific arguments below: (1) that he did not reveal anything that his client intended to keep hidden; and (2) that his client was not embarrassed by the disclosures.

II. FINDINGS OF FACT

We summarize the Hearing Committee's findings of fact, all of which are supported by substantial evidence in the record. Board Rule 13.7; *see In re Klayman*, 228 A.3d 713, 717 (D.C. 2020) (per curiam) (quoting *In re Bradley*, 70 A.3d 1189, 1193 (D.C. 2013) (per curiam)); *see also In re Thompson*, 583 A.2d 1006, 1008 (D.C. 1990) (defining "substantial evidence" as "enough evidence for a reasonable mind to find sufficient to support the conclusion reached").

Respondent represented M.T. before the USCIS in helping her extend her B-2 Visa. *See, e.g.*, FF 3-6.[2] In doing so, he submitted documents on her behalf in 2011, 2013, and 2014. FF 6, 9, 11-12. Some of these documents included letters from M.T.'s doctor, which disclosed M.T.'s medical condition. M.T. consented to these disclosures. FF 6, 12, 13.

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[1] Either Respondent or Disciplinary Counsel may challenge this Order in the Court of Appeals. *See* D.C. Bar R. XI, § 9(f). Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any prior or subsequent decisions in this case.

[2] "FF" refers to the Hearing Committee's Findings of Fact; "HC Rpt." refers to the Hearing Committee's Report and Recommendation; and "R. Br." refers to the Respondent's Brief to the Board.

In 2017, M.T. filed a disciplinary complaint against Respondent alleging that he had not sent her documents that she requested for her case. FF 14. This caused Respondent to file a Withdrawal Notice with the USCIS, in which he made the following disclosures:

- "The reasons from [sic] withdrawal are very compelling as M[.T.] is harassing my office (sending unfounded Complaint [sic]- allegations to the District of Columbia State Bar Disciplinary Office) and";
- "coming to my home residence **at 7 am and without appointment** demanding actions on her Appeal";
- "I understand she is diagnosed with [specified medical condition][3] (see her I-539 and I-290B files) and may be [sic] she is out of medication when acting inappropriately and unacceptably";
- "I am looking forward to file [sic] a civil action against M[.T.] or any other legal actions to protect my integrity and quite [sic] enjoyment of my private residence."

FF 16. Respondent sent his Withdrawal Notice to Disciplinary Counsel as part of his response to his client's complaint. FF 19. Disciplinary Counsel did not bring charges based on the client's complaint. *See* FF 20.

Prior to filing his Withdrawal, Respondent did not contact nor consult with his client, and did not receive her consent to make the disclosures at issue in his Withdrawal Notice. FF 17, 25. Respondent disclosed these statements because, in his view, despite feeling "unjust and betrayed," he wanted to ensure that the USCIS would grant his withdrawal. FF 31, 33. Respondent conceded that in hindsight, he

[3] The Withdrawal Notice mentioned a specific medical condition, which is specified in the appended Committee Report's Confidential Appendix.

"maybe . . . would do [it] a little bit different" and may have made different statements. FF 33.

III. CONCLUSIONS OF LAW

A. We Deny Respondent's Motion to Dismiss

Before the Committee, Respondent sought to dismiss this matter "because the allegations are 'baseless and unsupported by the record.'" HC Rpt. at 16 (quoting Respondent's Pleading and Reply to Disciplinary Counsel's Pre-hearing Statement, ¶ 3 (Feb. 10, 2022)). The Committee recommended that we deny Respondent's request. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991) (hearing committee without authority to grant motion to dismiss). And we agree – as explained below, Disciplinary Counsel has proven that Respondent violated Rule 1.6(a)(1). Respondent's motion to dismiss is denied.

B. Respondent Violated Rule 1.6(a)(1) When He Knowingly Revealed Client Secrets Without Consent

We review *de novo* the Committee's legal conclusions and its determinations of ultimate fact. *See Klayman*, 228 A.3d at 717; *Bradley*, 70 A.3d at 1194 (Board owes "no deference to the Hearing Committee's determination of 'ultimate facts,' which are really conclusions of law and thus are reviewed de novo").

Rule 1.6(a)(1), in relevant part, provides that a "lawyer shall not knowingly . . . reveal a . . . secret of the lawyer's client," except when permitted under certain provisions of Rule 1.6(e). "Knowingly" "denotes actual knowledge of the fact in question," which "may be inferred from circumstances." Rule 1.0(f). And a "secret" is "information gained in the professional relationship that the client has requested

be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." Rule 1.6(b). Finally, a lawyer may disclose a secret with the client's informed consent (Rule 1.6(e)(1)), and when impliedly authorized in order to carry out the representation. Rule 1.6(e)(4).

Respondent revealed in the Withdrawal Notice that M.T. was harassing him (with a disciplinary complaint and visits to his home), that M.T. may have run out of necessary medication, resulting in her inappropriate and unacceptable behavior towards him, and that he was looking forward to taking legal action against M.T. to protect his integrity and enjoyment of his home. *See* FF 16. As is fully set forth in the Hearing Committee report, Disciplinary Counsel proved the information at issue constituted client secrets, which Respondent knowingly disclosed without express or implied consent, in violation of Rule 1.6(a)(1). *See* HC Rpt. at 23-26.

Respondent Misunderstands the Nature of a Secret Under Rule 1.6. Respondent quotes Rule 1.6(b)(1)'s definition of a secret, but then argues that "[t]he plain meaning of a secret is, something that is kept hidden or kept from the knowledge of others." R. Br. at 8. He uses this definition to excuse his disclosure of the fact that M.T. came to his home and office, and filed a disciplinary complaint because none of those things were done in secret. *Id.* at 8-9. We disagree.

The plain language of Rule 1.6 is broader than Respondent's proffered definition. The Court has never adopted Respondent's definition, and has instead held that an attorney's duty to preserve client secrets "exists without regard to the nature or source of the information or the fact that others share the knowledge." *In*

re Gonzalez, 773 A.2d 1026, 1031 (D.C. 2001); *see also* Rule 1.6, cmt. [8] (same); *In re Klayman*, 282 A.3d 584, 595 (D.C. 2022) (per curiam) (public disclosure of information contained in publicly-available court filings violated Rule 1.6 where the client did not provide informed consent to the publicity about her cases and her personal life). Relying on *Gonzalez*, the Board previously rejected the argument that Respondent makes here: that actions occurring in public could never constitute client secrets. *In re Osemene*, Board Docket No. 18-BD-105, at 8 (BPR May 31, 2022) ("[T]here is no merit to [the respondent's] argument that the protections of Rule 1.6 do not apply to conduct witnessed by others."), *recommendation adopted where no exceptions filed*, 277 A.3d 1271 (D.C. 2022) (per curiam). Respondent does not address *Osemene* or cite any authority that would permit us to accept his definition of "secret" in place of the definition in Rule 1.6. We reject Respondent's argument that Disciplinary Counsel was required to prove that the information disclosed "was kept hidden or kept from the knowledge of others." R. Br. at 8.

Respondent Disclosed More Than He Had Previously Disclosed. Relatedly, Respondent argues that the USCIS already knew that M.T. was taking medication to treat a medical condition, and thus his redisclosure of that information to the USCIS could not violate Rule 1.6. R. Br. at 7-8. But Respondent did not simply redisclose information already known to the USCIS; he added his speculation that M.T. may be acting inappropriately and unacceptably because she may be out of her medication. In *In re Johnson*, 298 A.3d 294, 314 (D.C. 2023) the Court found a violation of Rule 1.6 where, like here, the information the respondent disclosed went

beyond information previously disclosed to the court. Thus, to the extent that *Johnson* recognized a redisclosure exception to Rule 1.6, it does not apply here. *Id.* at 314 (noting that the that the client's statements to the court "*neither constituted revelation of the same information* nor served to impliedly authorize Ms. Johnson's disclosures under Rule 1.6(e)(4)" (emphasis added)).

Respondent's Disclosures Were Objectively Embarrassing or Detrimental. Respondent argues next that he did not violate Rule 1.6 because M.T. did not testify that she was embarrassed by the disclosure of her medical information, but instead testified that she was offended. R. Br. at 9. First, M.T. did not say that she was not embarrassed, and for purposes of applying Rule 1.6, we see no meaningful difference between "embarrassed" and "offended."

In any event, because a lawyer can obtain a client's consent to disclose a confidence or secret before disclosure, a Rule 1.6 violation should not turn on a client's post-disclosure tolerance of the information disclosed.[4] In *Gonzalez*, the Court employed a reasonableness standard, finding a Rule 1.6 violation where it was "difficult to understand how a reasonable person could conclude" that the disclosure would not be embarrassing and not likely to be detrimental to the client. 773 A.3d at 1030. We see no reason to depart from this approach here. Although not relevant

[4] As the Hearing Committee explained, Respondent did not receive informed consent from the client under Rule 1.6(e)(1) to redisclose her medical condition in his Withdrawal Notice. HC Rpt. at 26. Nor did he have reasonable grounds to believe he had implied consent under Rule 1.6(e)(4). Implied authority only applies to disclosures necessary to carry out the representation, and here, Respondent wanted to unilaterally terminate the representation. *Id.*

to deciding whether Disciplinary Counsel has proven a Rule violation, the harm (or lack of harm) may be considered in deciding on a sanction.

IV. SANCTION

Disciplinary Counsel supports the Hearing Committee's sanction recommendation. Respondent argues that he did not violate Rule 1.6, and thus, no sanction should be imposed.

D.C. Bar Rule XI, § 3 generally permits imposition of three lesser sanctions than disbarment or suspension: censure by the court (public censure), reprimand by the Board, and informal admonition by Disciplinary Counsel. Rule XI, § 3(3), (4), and (5). Although these lesser sanctions are similar in that they all involve some degree of public disclosure, they nevertheless reflect a descending order of severity from public censure to informal admonition. *In re Schlemmer*, 870 A.2d 76, 80 (D.C. 2005). Thus, an informal admonition is the most lenient form of discipline. *In re Fay*, 111 A.3d 1025, 1032 (D.C. 2015) (per curiam).

For the reasons discussed in the Hearing Committee's Report and Recommendation, we agree that an Informal Admonition is consistent with the sanctions imposed in cases involving comparable misconduct. Pursuant to D.C. Bar R. XI, § 9(c) and Board Rule 13.8, the Board hereby directs Disciplinary Counsel to issue an Informal Admonition to Respondent for his violation of Rule 1.6(a)(1).

It is so ORDERED.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Bernadette C. Sargeant

Bernadette C. Sargeant, Chair

All members of the Board concur in this Order, which was prepared by Ms. Rice-Hicks.

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

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

Issued
September 26, 2023 4:03 pm

In the Matter of:	:	
	:	
MICHAEL ALEXEI,	:	
	:	
Respondent.	:	Board Docket No. 21-BD-050
	:	Disc. Docket No. 2017-D179
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 999055)	:	

REPORT AND RECOMMENDATION OF THE
AD HOC HEARING COMMITTEE

Respondent, Michael Alexei, is charged with violating Rule 1.6(a)(1)[1] of the District of Columbia Rules of Professional Conduct (the "Rules"), arising from statements he made in a Withdrawal Notice. As a sanction for Respondent's alleged violation of this Rule, Disciplinary Counsel contends that Respondent should be publicly censured. Respondent denies the alleged violation, contends that Disciplinary Counsel has failed to establish the violation by clear and convincing

[1] The Specification of Charges, filed on September 7, 2021, charged Respondent with violating D.C. "Rules 1.6(a), in that Respondent revealed a confidence or secret of a client." *See* Specification, ¶ 4(a). At the June 8 hearing in this matter, and without objection from Respondent, the Chair confirmed with Disciplinary Counsel that it is charging Respondent with violating only D.C. Rule of Professional Conduct 1.6(a)(1)—knowingly revealing a confidence or secret of the client. June 8 Hearing Transcript 8-9.

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

evidence, and thus argues for no sanction. As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated Rule 1.6(a)(1) and recommends that Respondent receive an informal admonition.

I. PROCEDURAL HISTORY

After the D.C. Court of Appeals granted Disciplinary Counsel's motion to serve the Specification of Charges by regular and certified mail and by e-mail (Order, *In re Alexei*, No. 21-BG-787 (Dec. 9, 2021)), Disciplinary Counsel served Respondent on December 13, 2021. Respondent filed an Answer thereto on January 28, 2022.[2]

Before the pre-hearing conference, Respondent filed a "Pleading and Reply to Disciplinary Counsel's Pre-hearing Statement." In that submission, Respondent urged the Committee to dismiss the case, because "the charges brought against

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[2] Before Respondent filed an Answer, he requested that the Board and the Court of Appeals intervene to censure the Assistant Disciplinary Counsel for her conduct in prosecuting this matter. That request was denied by the Board and the Court. *See* Order, *Alexei*, No. 21-BG-787 (Jan. 27, 2022) (denying expedited motion for immediate intervention); Order, *In re Alexei*, Board Docket No. 21-BD-050 (BPR Feb. 14, 2022) (denying expedited motion to censure Disciplinary Counsel for possible obstruction of justice and ethical violations); *see also* Order, *Alexei*, Board Docket No. 21-BD-050 (H.C. Mar. 16, 2022) (noting that it did not have authority to grant the requested relief). Respondent filed a related "Notice" on February 25, 2022, alleging that he had not yet received copies of the investigative file, and thus had reason to believe they were lost or in someone else's possession. The Board dismissed Respondent's Notice on March 18, 2022. Order, *Alexei*, Board Docket No. 21-BD-050 (Mar. 18, 2022). Finally, Respondent filed a Motion for Prompt Intervention on January 24, 2022, which the Board denied in the January 27, 2022 Order.

[Respondent] are baseless and unsupported by the record." During the pre-hearing conference on February 15, 2022, and again at the evidentiary hearing, the Chair informed Respondent that the Hearing Committee is authorized only to recommend a disposition of Respondent's request for dismissal in its Report and Recommendation to the Board. Pre-hearing Transcript ("Pre-hearing Tr.") 18-19; June 8 Hearing Transcript ("Tr.") 25-26. Accordingly, Respondent's dismissal request, which we recommend that the Board deny, is addressed in the Conclusions of Law section of this Report and Recommendation.

On May 27, 2022, Respondent sought a protective order to prevent public disclosure of his client's medical information and to close the June 8, 2022 hearing to the public. The Board, on June 3, 2022, granted that motion in part, ordering "any of the client's medical information" to be "placed under seal and not publicly disclosed."[3] Pursuant to this order, the Committee includes the specified medical information in a Confidential Appendix, which is filed under seal along with and as part of this Report and Recommendation.

On June 8, 2022, this Hearing Committee, consisting of Leonard O. Evans, Esquire (Chair), Ria Fletcher (Public Member), and A.J. Kramer, Esquire (Attorney

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[3] Pursuant to the Board's protective order, the Chair on August 7, 2023, ordered that Tr. 56-69 be placed under seal; that the Office of the Executive Attorney redact the client's medical information from Tr. 41 of the publicly-available hearing transcript; and that the parties review the transcript and identify any other necessary redactions by August 22, 2023. As of that deadline, neither party has identified any other necessary redactions.

Member) conducted an evidentiary hearing in this matter. Disciplinary Counsel was represented by Assistant Disciplinary Counsel Caroll G. Donayre, Esquire. Respondent was present and was represented by Kristin Paulding, Esquire.

During the hearing, Disciplinary Counsel called M.T. and Respondent. M.T. was Respondent's client and was the subject of the statements included in the Withdrawal Notice at issue in this matter.[4] M.T. testified with the assistance of a Spanish-language interpreter. Respondent did not call any witnesses. During the hearing, Disciplinary Counsel's Exhibits ("DCX") 1-11 and Respondent's Exhibits ("RX") 1-20 were admitted into evidence.[5] Tr. 60-61, 124-25.[6]

At the conclusion of the hearing, the Hearing Committee made a preliminary non-binding determination that Disciplinary Counsel had not established that Respondent violated Rule 1.6(a)(1) by clear and convincing evidence. Tr. 184. For that reason, the hearing did not proceed to the aggravation and mitigation phase. *See* Board Rule 11.11. A schedule for post-hearing briefs was set. In accordance with that schedule, Disciplinary Counsel submitted its Brief ("ODC Br.") on July 5, 2022; Respondent filed his Response Brief ("Resp. Br.") on July 13, 2022; and Disciplinary Counsel filed its Reply ("ODC Reply") on July 22, 2022.

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[4] In accordance with Board practice and to protect privacy, the client is identified only by initials in this Report and Recommendation.

[5] RX 19 was admitted over objection. Tr. 60-61.

[6] Pursuant to the Board's Order, the parties filed redacted copies of their respective exhibits for the public record and unredacted copies of their exhibits under seal.

On February 15, 2023, after considering the post-hearing briefs and relevant legal authorities, the Committee issued an Order expressing a preliminary, non-binding determination that Disciplinary Counsel had established a violation of Rule 1.6(a)(1). The Committee's Order also directed the parties to file documentary evidence in aggravation or mitigation of sanction, and permitted either party to file a motion to hold an evidentiary hearing on aggravation or mitigation of sanction. Neither party requested an evidentiary hearing.

Pursuant to the Order, Respondent filed his Documentary Evidence in Aggravation or Mitigation of Sanction ("Resp. Doc. Ev.") on February 23, 2023. Also pursuant to the Order, Disciplinary Counsel filed its Brief on Sanction on March 8, 2023 ("ODC Sanction Br."); Respondent filed his Response Brief on March 20, 2023 ("Resp. Sanction Br."); and Disciplinary Counsel filed its Reply Brief on March 27, 2023 ("ODC Sanction Reply Br.").

II. FINDINGS OF FACT

The following findings of fact are based on the testimony and documentary evidence admitted at the hearing, and these findings of facts are established by clear and convincing evidence. *See* Board Rule 11.6; *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) ("clear and convincing evidence" is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the fact sought to be established").

A. Respondent's Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on February 7, 2011, and assigned Bar number 999055. DCX 1.

2. Respondent practices immigration law. Tr. 74 (Respondent).

B. Respondent's Representation of M.T. in Immigration Proceedings

3. M.T. came to the United States in 2008 and 2010. Tr. 37. She filed for an extension of her B-2 visa (tourist-visitor visa), and that was denied. Tr. 75. She retained Respondent to assist her in responding to this denial. Tr. 76.

4. M.T. signed a retainer agreement with Respondent. In that agreement she indicated she did not need the assistance of a Spanish interpreter. Tr. 122-23. M.T. communicated with Respondent in English, and she wrote him emails in English. Tr. 38, 49-50. She also used her phone as a translator from English to Spanish and Spanish to English to assist her in communicating with Respondent. Tr. 38.

5. On August 11, 2011, M.T. signed an I-539 form for extension of her B-2 visa. On page 3 she indicated, "I can read and understand English, and have read and understand each and every question and instruction on this form, as well as my answer to each question." RX 5 at 16; *see also* Tr. 52-53. There was an option to have each question read to her in Spanish, but she did not elect this option. RX 5 at 16; *see also* Tr. 53-54 (M.T. acknowledging that she saw this option but testifying

that because the sentence was in English, she "didn't understand what was the idea behind it"). M.T. signed this form under penalty of perjury. RX 5 at 16.

6. On December 15, 2011, USCIS requested additional information from M.T. to process her application. RX 6. M.T. provided a letter to Respondent from her doctor, dated December 27, 2011. RX 7 at 21. This letter detailed her diagnosis and the treatment she was receiving. Respondent filed this letter with USCIS in St. Albans, Vermont, on January 9, 2012. *Id.* at 20. M.T. disclosed her medical condition to Respondent because he advised her it was necessary to her case. Tr. 59, 68.

7. On February 4, 2013, attorney Dan Park filed an application for an extension of her B-2 Visa for M.T. RX 8 at 23-31; *see also* Tr. 49. M.T. signed the form under penalty of perjury and advised that she could read and understand English. RX 8 at 28. A letter from M.T.'s doctor, describing her diagnosis, was attached. *Id.* at 31.

8. On March 4, 2013, USCIS requested additional information from M.T. to process her application. RX 9. M.T. provided a letter to Mr. Park from her doctor, dated March 21, 2013. This letter detailed her diagnosis and the treatment she was receiving. RX 10 at 34-35. On March 29, 2013, Mr. Park provided USCIS with this letter in response to their March 4 request. *Id.* at 34.

9. On August 30, 2013, Respondent filed an application for an extension of a B-2 Visa for M.T. RX 11 at 36-45. M.T. signed the form under penalty of

perjury and advised that she could read and understand English. *Id.* at 42. An affidavit in support of her application, signed by M.T., was attached. *Id.* at 44.

10. On March 17, 2014, Respondent filed an application for an extension of a B-2 visa for M.T. RX 12 at 46-56. M.T. signed the form under penalty of perjury and advised that she could read and understand English. *Id.* at 52. Two doctor's letters were attached detailing her diagnosis and treatment. *Id.* at 54-55.

11. On July 21, 2014, Respondent filed an application for an extension of a B-2 visa for M.T. RX 13 at 57-65. M.T. signed the form under penalty of perjury and advised that she could read and understand English. *Id.* at 62. A doctor's letter was attached detailing her diagnosis and treatment. *Id.* at 65.

12. On November 28, 2014, USCIS requested additional information from M.T. to process her application. RX 14. M.T.'s doctor sent Respondent a letter on December 4, 2014 (RX 15 at 71), which he included in his response to the request for more information. RX 15. This letter detailed her diagnosis and the treatment she was receiving, and Respondent submitted it to USCIS. *Id.* at 71. In Respondent's December 10, 2014 cover letter to USCIS, M.T.'s specified medical condition is listed. *Id.* at 69.

13. M.T. consented to the disclosure of her medical diagnosis and treatment to USCIS in connection with the above-listed B-2 visa extension applications filed in 2011, 2013, and 2014. *See* Tr. 47-49; 56-60; 115-18.

C. <u>M.T.'s Disciplinary Complaint and Respondent's Withdrawal Notice</u>

14. On April 12, 2017, M.T. filed a hand-written disciplinary complaint in Spanish against Respondent. DCX 7 at 46-49; *see also* Tr. 39-40. On May 26, 2017, Disciplinary Counsel received a typed complaint from M.T. in English. DCX 7 at 50-53. She reported that Respondent had not sent her documents that she requested for her case. *Id.* at 53.

15. On June 22, 2017, the Office of Disciplinary Counsel wrote an inquiry letter to Respondent, identifying the May 26, 2017 complaint from M.T. DCX 8. He was advised to return M.T.'s documents "as a courtesy," and to "advise this office within ten days of [his] position in this matter." *Id.* at 55; Tr. 81. When Respondent received the complaint by M.T., he "fel[t] unjust [sic] and . . . betrayed." Tr. 90-91 (Respondent).

16. On June 27, 2017, Respondent filed a Withdrawal Notice with the USCIS office in St. Albans, Vermont. In the Withdrawal Notice, Respondent stated the following:

> a. "The reasons from withdrawal are very compelling as M[.T.] is harassing my office (sending unfounded Complaint-allegations to the District of Columbia State Bar Disciplinary Office) and";
>
> b. "coming to my home residence **at 7 am and without appointment** demanding actions on her Appeal";
>
> c. "I understand she is diagnosed with [specified medical condition][7] (see her I-539 and I-290B files) and may be she is

[7] The June 27, 2017 Withdrawal Notice identified a specified medical condition, which is noted in the Confidential Appendix.

out of medication when acting inappropriately and unacceptably";

d. "I am looking forward to file a civil action against M[.T.] or any other legal actions to protect my integrity and quite enjoyment of my private residence."

RX 2 (footnote added).

17. Before filing the June 27, 2017 Withdrawal Notice containing the four statements set forth in the preceding paragraph, Respondent did not contact M.T. or discuss with her the contents of the Withdrawal Notice. Tr. 44-45; Tr. 93-95 (Respondent).

18. Respondent mailed the Withdrawal Notice to M.T. at the address provided by the Office of Disciplinary Counsel. RX 2; DCX 9. M.T. received the Withdrawal Notice, and "figured that, since he was an attorney, everything he wrote was correct." Tr. 41. She further understood what the letter said, and "was offended." *Id.* The Withdrawal Notice offended her because it said she had a specified medical condition, yet the doctors had not come to a final conclusion on her diagnosis. *Id.* (M.T. testifying she was offended because the doctors "really have not come to a final conclusion. Every time the diagnoses changes."). However, M.T. did not file a subsequent disciplinary complaint. Tr. 50-51; *see also* Tr. 168-69.

19. On or about July 7, 2017, Respondent filed his response to the June 22, 2017 inquiry letter with the Office of Disciplinary Counsel. DCX 9 at 60-66. In that response, Respondent indicated that he already provided the requested

documents to M.T. He also attached the June 27, 2017 Withdrawal Notice. Tr. 85-86; DCX 9 at 60, 66.

20. ODC's inquiry regarding the April 12, 2017 disciplinary complaint was undocketed. *See* DCX 8; DCX 9; *see also* Board Rule 2.4 (preliminary screening of complaints). The record contains no further evidence as to that undocketed inquiry.

D. <u>Disciplinary Counsel's Inquiry Regarding the Withdrawal Notice</u>

21. In a letter dated July 20, 2017, however, the Office of Disciplinary Counsel notified Respondent that "[t]he disclosures in your [June 27, 2017] withdrawal raise questions about your conduct." RX 1 at 1. The letter further requested that Respondent provide a substantive written response "regarding the necessity to make disclosures related to your client[']s mental health in your withdrawal notice." *Id.* at 2.

22. In a letter dated August 3, 2017, Respondent responded to ODC's July 20, 2017 letter. DCX 11. In this letter, Respondent first asserted that there were no "[new] disclosures" in his Withdrawal Notice because his client's medical record "is within CIS," and that the "*disclosures* of [his] former Client's medical record comply with (c), (d), or (e) of DC 1.6 exceptions." *Id.* at 73 & n.3 (first alteration and italics in original). He then argued that his '"Withdrawal Notice"' is not equal to a public court '"Withdrawal Motion' with[in] the meaning [of] *In Re Gonzalez*, 773 A.2d 1026, 1030 (D.C. 2001)" because an applicant's file at USCIS is "***strictly confidential*** and no public has access" to the agency record. *Id.* at 74. Respondent also argued that even if the Withdrawal Notice was equivalent to a withdrawal

motion in a court, no new information not already part of the applicant's record was shared with USCIS, and that the client's medical record is nonetheless not a confidence or secret that is "prohibited by DC Rule 1.6 to be revealed to a Government agency to obtain a benefit." *Id.* at 74-75. After discussing *In re Gonzalez*, Respondent concluded by stating "that the 'Withdrawal Notice', sent to the same Government Agency in charge of client's applications for immigrant benefit, complies with permitted confidence disclosure under D.C. Rule 1.6." *Id.* at 76.

23. The record does not contain evidence of any further action concerning this matter until July 2021.

24. On July 22, 2021, the Office of Disciplinary Counsel submitted a Recommendation to Institute Formal Disciplinary Proceedings for Contact Member review, which was approved on September 7, 2021. DCX 2. As described in the Procedural History above, Respondent then was served with the Specification of Charges on December 13, 2021.

E. Respondent's Testimony Regarding the Withdrawal Notice[8]

[8] The Hearing Committee has made factual findings and drawn legal conclusions based on the statements included in Respondent's Withdrawal Notice, as further discussed in the paragraphs that follow. We note, however, that the actual truth or falsity of those statements is not an element that must be proven to establish a violation of Rule 1.6(a)(1). Therefore, the Hearing Committee's conclusion, further discussed below, that Respondent knowingly disclosed client secrets, did not require the Hearing Committee to determine the actual truth or falsity of the statements included in the Withdrawal Notice, and we expressly declined to make such a factual finding.

25. Respondent did not discuss the statements he made in the Withdrawal Notice with M.T. beforehand, because he did not think he had an obligation to do so. Tr. 94 ("I didn't -- I think I was not in any way -- had any obligation to discuss with her my position on this situation."). Respondent did not disclose the material risks or consequences with M.T. before filing his Withdrawal Notice, nor did he believe there were any to disclose. Tr. 94-95 ("I didn't disclose any, and I don't believe there are material risks or anything like you qualify [sic] now.").

26. With respect to the statement in the Withdrawal Notice that M.T. allegedly was "harassing my office," *see* FF 16(a) above, Respondent testified that M.T. came to Respondent's office almost every day without an appointment, even though an appointment was required to visit Respondent's office and she was told she could not go to Respondent's office without an appointment. *See* Tr. 92, 105-07.

27. With respect to the statement in the Withdrawal Notice that M.T. "has come to his home residence at 7:00 a.m. and without appointment," *see* FF 16(b) above, Respondent testified that M.T. went to Respondent's home, at 7:00 a.m., if she could not reach Respondent at his office and would knock on the front door or backyard fence for twenty to thirty minutes. Respondent further asserted that M.T. did not have an appointment when she made these appearances. *See* Tr. 92-93, 105-07.

28. With respect to the statement in the Withdrawal Notice that "I understand [M.T.] is diagnosed with [a specified medical condition]," *see* FF 16(c),

Respondent previously had revealed this specified medical condition to the USCIS in cover letters and filings, as did Mr. Park. Respondent believed that M.T. had given him consent over the preceding years to disclose her medical condition to the immigration office. Tr. 115-16. M.T., however, did not give Respondent consent to discuss and disclose her medical condition freely at any point. Tr. 68.

29. With respect to the statement in the Withdrawal Notice that "maybe she is out of medication," *see* FF 16(c) above, Respondent acknowledged that he was guessing, and he had no independent knowledge that M.T. was, in fact, out of medication. Tr. 134-35.

30. With respect to the statement in the Withdrawal Notice indicating that Respondent was "looking forward to file a civil action against M.T. or any other legal actions," *see* FF 16(d) above, Respondent did not actually have any intent to file a civil action against M.T. Tr. 134.

31. Respondent testified that, when filing a Withdrawal Notice, you must have a reason to withdraw from the representation, because the immigration office will not approve the request without a compelling reason. Tr. 92. We credit Respondent's testimony that he believed that he needed to provide a compelling reason when he was seeking to withdraw from the representation. Respondent previously has filed Withdrawal Notices for different reasons, such as the client had lost contact or moved out of the jurisdiction. But the Withdrawal Notice he filed in M.T.'s case was the first time he had to write a Withdrawal Notice like that, and he

included information that he thought would make sure his request would be approved. Tr. 92, 102, 128-33.

32. Respondent admitted that, rather than making the statements that he included in the Withdrawal Notice, he could have withdrawn by indicating that he had learned his client filed a disciplinary complaint against him, and he therefore had an irreconcilable conflict and a duty to move to withdraw, but if he did indicate something like that, then USCIS might respond that "we need to know what's going on a little bit more." Tr. 128-29.

33. Respondent further admitted that in hindsight "maybe I would do a little bit different but it's very hard -- already the file is complicated." Tr. 128. Respondent explained "it's hard to get out of this case from the immigration, they don't want another new lawyer who needs to go back to know more about this client. So they would rather work with me." Tr. 128. Citing the "events" at his residence, at his office, and the disciplinary complaint, Respondent testified, "I don't think I will [or would] change anything," but "[m]aybe I will pull out the last sentence," and then he asked rhetorically, "[H]ow [do] you get out of this representation? Representation is very complicated with these types of cases." Tr. 129. We credit Respondent's testimony to the extent that, in hindsight, he may have made different statements in the Withdrawal Notice. Relatedly, although Respondent felt "unjust and betrayed" when he received M.T.'s complaint, *see* FF 15, we credit Respondent's testimony that his motive was to be removed from the representation and that he believed he needed to include the statements in the Withdrawal Notice

in order for the withdrawal to be granted. *See* Tr. 92 ("But to get withdrawal from representation, you need to have some reasons. They will not approve for no compelling reasons."); Tr. 114; Tr. 121-22 "([M]y goal was to be removed.").

III. CONCLUSIONS OF LAW

A. Respondent's Motion to Dismiss Should be Denied

In his "Pleading and Reply to Disciplinary Counsel's Pre-hearing Statement," Respondent argued that this matter should be dismissed because the allegations are "baseless and unsupported by the record." Respondent's Pleading and Reply to Disciplinary Counsel's Pre-hearing Statement, ¶ 3 (Feb. 10, 2022). The Committee construes Respondent's request as a motion to dismiss, as Respondent acknowledged at the pre-hearing conference. Pre-hearing Tr. 18-19; *see also* Tr. 25-26.

The Hearing Committee has no authority to dismiss the charge in this matter. Rather, the Hearing Committee is authorized only to make recommendations to the Board about the charged violation and appropriate sanction, if necessary. *See* Board Rule 7.16(a); *In re Ontell*, 593 A.2d 1038, 1040 (D.C. 1991) (hearing committees must "defer rulings on substantive motions and to include recommendations on such motions in their reports to the Board").

Because we find that Disciplinary Counsel has proven a violation of Rule 1.6(a), we disagree with Respondent's argument that the allegations against him were "baseless and unsupported by the record." We recommend that the Board deny Respondent's Motion to Dismiss.

B. Choice of Law

Because Respondent disclosed the information at issue in an effort to withdraw from his representation of M.T. before the USCIS, we must determine what disciplinary rules apply in those proceedings. *See* D.C. Rule 8.5(b) (For conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise); *see also* Rule 1.0(n) (a "'tribunal' denotes a[n] . . . administrative agency, or other body acting in an adjudicative capacity," which occurs when "a neutral official, after the presentation of evidence or legal argument by a party or parties, [renders] a binding legal judgment directly affecting a party's interests in a particular matter."). *See, e.g.*, *In re Koeck*, Board Docket No. 14-BD-061, at 21-22 (BPR Aug. 30, 2017) (applying the disciplinary rules applicable to practitioners appearing in Department of Labor proceedings, to misconduct in a DOL proceeding); *recommendation adopted where no exceptions filed*, 178 A.3d 463 (D.C. 2018) (per curiam).

The USCIS has promulgated rules of professional conduct for practitioners. *See* 8 C.F.R. §§ 292.3, 1003.102. However, those rules do not contain a rule addressing client confidences and secrets, like D.C. Rule 1.6. In *In re Osemene*, the Board applied the D.C. Rules to similar circumstances, relying on a decision of the Board of Immigration Appeals that recognized that the BIA used state disciplinary rules to fill gaps in its own regulatory scheme:

> Regulations do exist for the disciplining of attorneys appearing before Immigration Judges. *See* 8 C.F.R. § 292.3 (1996). But those

> regulations, in their current form, are not intended to be a comprehensive set of rules governing the practice of law in the immigration field and, indeed, are not as broad as the American Bar Association's Model Rules of Professional Conduct (1995), for example. Moreover, there is no expeditious way for this Board to deal with the more routine attorney-related problems that periodically arise. Instead, for attorneys who may practice before us simply by virtue of their admission into a state bar or the bar of another recognized jurisdiction, we rely on the disciplinary process of the relevant jurisdiction's bar as the first, and ordinarily the fastest, means of identifying and correcting possible misconduct.

Osemene, 18-BD-105 (BPR May 31, 2022), appended HC Rpt. at 34 (Jan 28, 2022) (quoting *Matter of Rivera-Claros*, 21 I&N Dec. 599, 604 (BIA 1996)), *recommendation adopted where no exceptions filed*, 277 A.3d 1271 (D.C. 2022) (per curiam). The D.C. Rules of Professional Conduct applied in *Osemene* because the respondent practiced before the Immigration Court by virtue of his membership to the D.C. Bar. *Id.* at 36. Though we recognize *Osemene* addressed a matter before the immigration court, we do not see why its analysis should not apply in an immigration B-2 Visa proceeding before the USCIS. Indeed, the Board in *Osemene* analyzed the very same regulations applicable here (8 C.F.R. § 292.3; *see also* 8 C.F.R. § 1003.102). The BIA's broad language quoted by *Osemene*, moreover, suggests that this analysis applies generally to immigration practitioners. *See Rivera-Claros*, 21 I&N Dec. 599 at 604 ("But those regulations . . . are not intended to be a comprehensive set of rules governing *the practice of law in the immigration field*." (emphasis added)).

All parties agree, and the evidence demonstrates, that Respondent is a member of the D.C. Bar (by examination (FF 1)). We do not have evidence that Respondent

is a member of any other jurisdiction. We therefore conclude that the D.C. Rules apply.[9]

C. Respondent Disclosed Client Secrets in Violation of D.C. Rule 1.6(a)(1)

Disciplinary Counsel alleges that, because the following information constituted client confidences or secrets under Rule 1.6(b), Respondent violated Rule 1.6(a) when he disclosed the following to USCIS as part of the June 27, 2017 Withdrawal Notice: (1) M.T. "is harassing my office (sending unfounded Complaint-allegations to the District of Columbia State Bar Disciplinary Office);" (2) M.T. has come to his "home residence at 7 am and without appointment demanding actions on her Appeal;" (3) "she is diagnosed with [specified medical condition] (see her I-539 and I-290B files) and maybe she is out of medication when acting inappropriately and unacceptably;" and (4) "I am looking forward to file a civil action against [M.T.] or any other legal actions to protect my integrity and [quiet] enjoyment of my private residence." DCX 9 at 66. Respondent argues that, aside from the statement of the specified medical condition, the statements were not client confidences. He further argues that none of the statements were secrets within the meaning of Rule 1.6(b). In the alternative, he asserts that he did not "knowingly reveal" any confidences or secrets, and therefore his disclosure of that information

[9] Although neither party analyzed the choice of law question, both applied the D.C. Rules in their legal analysis.

in the June 27, 2017 Withdrawal Notice did not violate Rule 1.6(a). *See* Resp. Br. at 15-29.

We start with the Rule. D.C. Rule 1.6(a) provides:

> Except when permitted under paragraph (c), (d), or (e), a lawyer shall not knowingly:
>
> (1) reveal a confidence or secret of the lawyer's client;
>
> (2) use a confidence or secret of the lawyer's client to the disadvantage of the client;
>
> (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person.

Rule 1.6(b) defines a "confidence" as "information protected by the attorney-client privilege under applicable law." Disciplinary Counsel does not allege that the disclosures at issue here were protected by attorney-client privilege at the time they were disclosed in Respondent's June 27, 2017 Withdrawal Notice, and there is insufficient evidence in the record for the Committee to conclude that the information was protected by attorney-client privilege when it was disclosed as part of the Withdrawal Notice. For that reason, the Committee cannot conclude that the information disclosed to USCIS as part of the June 27, 2017 Withdrawal Notice were "confidences" as defined by Rule 1.6(b).

The Committee notes that Respondent states in his post-hearing brief that the specified medical condition was a confidence, but he did not *reveal* that confidence "because USCIS was already aware of this information." Resp. Br. at 16 (citing RX 5-RX 20). It appears to the Committee, however, that to the extent that M.T.'s specified medical diagnosis may have been protected by attorney-client privilege

(and therefore was a confidence under Rule 1.6(b)) when she first disclosed them to Respondent, any such privilege probably was waived with respect to USCIS by M.T.'s consensual disclosures of her medical diagnosis and treatment to USCIS as part of her applications for B-2 visa extensions beginning as early as 2011. *See, e.g.*, FF 6-8, 12-13; *see also Adams v. Franklin*, 924 A.2d 993, 999 (D.C. 2007) ("When a party authorizes disclosure of otherwise privileged materials, the privilege must be treated as waived."). Because there is reason to doubt that M.T.'s medical diagnosis information was protected by attorney-client privilege at the time Respondent disclosed the specified medical condition to USCIS in the June 27, 2017 Withdrawal Notice, the evidence is insufficient to establish that the specified medical condition was a confidence within the meaning of Rule 1.6(b) at that time.

Instead, this matter concerns "secrets." Rule 1.6(b) defines a "secret" as "other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client."

In *In re Gonzalez*, a disciplinary case involving the alleged disclosure of client secrets in a withdrawal motion, the D.C. Court of Appeals explained that the lawyer's duty to maintain the confidentiality of client secrets "exists without regard to the nature or source of the information or the fact that others share the knowledge." *In re Gonzalez*, 773 A.2d 1026, 1031 (D.C. 2001) (quoting *Perillo v. Johnson*, 205 F.3d 775, 800 n.9 (5th Cir. 2000); ABA Model Code of Prof'l Responsibility Canon 4, DR 4-101 and EC 4-4) (internal quotation marks and

alterations omitted). "The confidentiality rule applies not merely to matters communicated in confidence by the client, but also to *all information relating to the representation, whatever its source*." *Id.* The Court also wrote approvingly of the standard articulated by the hearing committee in the *Gonzalez* matter: "Information falls within the ambit of the prohibition against revealing a client's secrets when that information has been 'gained in the professional relationship, is contained in the client files, and its disclosure might be embarrassing or likely to be detrimental to the client.'" *Id.* (quoting HC Rpt.).

At issue in the *Gonzalez* case was the lawyer's explanation of the need to withdraw, in which he stated, among other things, that the client had missed appointments, failed to timely provide information necessary to the case, and made misrepresentations to her lawyers. *Id.* at 1027. According to the Court, those disclosures fell "well within" the prohibition against revealing client secrets, and therefore violated Rule 1.6(a). *Id.* at 1031. The Court reasoned that it would be "contrary to the fundamental principle that the attorney owes a fiduciary duty to his client and must serve the client's interests with the utmost loyalty and devotion" if the Court were to interpret the duty of confidentiality to "countenance some disclosures by an attorney tending to demean or belittle his client." *Id.*

Similarly, in a more recent disciplinary case, *In re Osemene*, the Board concluded that "a lawyer's public assertions that his client was rude, belligerent and absolutely uncooperative and unruly, among other derogatory characterizations, would likely be embarrassing or detrimental to a client." Board Docket No. 18-BD-

105, at 7. That case involved a lawyer's motion to withdraw filed with the Immigration Court. The lawyer's explanation of the grounds for withdrawal included characterizations of the client's behavior as rude, abusive, and disruptive to the lawyer's office. *Id.* at 43 (appended HC Rpt.). The hearing committee concluded that "[w]hen Respondent moved to withdraw from the case and included detailed, derogatory information about the client, the attorney was disclosing 'secrets' of the client in violation of Rule 1.6(a)." *Id.* (citing *Gonzalez*, 773 A.2d at 1030). The Board agreed. Board Docket No. 18-BD-105, at 7-9. The Court agreed with the Board, as neither party filed exceptions to the Board report. 277 A.3d 1271 (D.C. 2022) (per curiam).

The case now before the Committee is like *Gonzalez* and *Osemene*. As in those cases, Respondent here sought to explain his need to withdraw by including in the submission to USCIS his detailed, derogatory characterizations about his client. He described her as "harassing," coming to his home and office without appointments, and submitting "unfounded [c]omplaint allegations" to disciplinary authorities. FF 16. He then referred to a specified medical condition, speculated that she had run out of medication, characterized her as "acting inappropriately and unacceptably," and represented that he was "looking forward" to filing legal actions against her. *Id.*

Considered individually, each of these statements about Respondent's client were detailed and derogatory, and an objectively reasonable person would believe the statements to be embarrassing. Further, the cumulative effect of the statements

clearly cast Respondent's client in a negative light before the tribunal considering her then-pending B-2 visa extension application, and for that reason, the statements were likely to be detrimental to his client. Accordingly, the Committee finds that Respondent's statements were embarrassing or likely to be detrimental to his client, that none of the exceptions set forth in Rule 1.6(e) apply, and, therefore, that including them in the June 27, 2017 Withdrawal Notice was a disclosure of client secrets in violation of Rule 1.6(a).

Respondent argues that none of his disclosures were secrets within the meaning of Rule 1.6(b). After careful consideration, however, the Committee concludes that those arguments are unavailing for the reasons that follow. First, Respondent argues that some of the disclosures were "opinions and therefore do not qualify as secrets." Resp. Br. at 22. Based on our review of Rule 1.6 and the accompanying comments, as well as *Gonzalez* and *Osemene*, we do not find an exception authorizing the disclosure of a lawyer's derogatory or detrimental opinions or speculation about their own client. Permitting such an exception would be contrary to the "fundamental principle that the attorney owes a fiduciary duty to his client and must serve the client's interests with the utmost loyalty and devotion." *Gonzalez*, 773 A.2d at 1031.

Second, Respondent argues that the statements about his client allegedly harassing him, coming to his home, and visiting his office without an appointment were not based on information gained during the professional relationship, and therefore were not secrets of the client. He argues that some attorney-client

relationships last for years, and it is "unrealistic" and "not a practical interpretation" to construe all of the information an attorney learns about his client while the attorney-client relationship is ongoing to be secrets. Resp. Br. at 23-25. These arguments are unpersuasive.

For one thing, there is no evidence in the record that the length of the representation caused the disclosure. Nor were the statements at issue *de minimis*, idle slips-of-the-tongue within the context of a lengthy, years long representation. To the contrary, the disclosures were specific, detailed, and negative characterizations of his client specifically included in a pleading for the purpose of obtaining Respondent's desired legal result. Moreover, as in *Gonzalez* and *Osemene*, but for the professional relationship between Respondent and his client, Respondent would not have known the information he disclosed in the Withdrawal Notice. Thus, the disclosed information was gained during Respondent's professional relationship with his client, and Rule 1.6 applies to it.

Third, Respondent argues that the statements regarding his client's submission of a complaint to disciplinary authorities and identifying a specified medical condition were not secrets under Rule 1.6, because they were not embarrassing or likely to be detrimental to the client. Resp. Br. at 25-27. This argument glosses over what Respondent actually disclosed.

Far from neutrally stating certain facts, or attempting to reveal "only the minimum information necessary under the circumstances and to take steps to minimize any harm" to his client's interests, as contemplated in *Gonzalez*, 773 A.2d

at 1028, Respondent included derogatory characterizations of his client's disciplinary complaint and her behavior. With respect to the disciplinary complaint, he did this by describing it as "unfounded [c]omplaint allegations." With respect to the specified medical condition, he went on to suggest that she may not have been taking her medication when she was "acting inappropriately and unacceptably." FF 16. Further, Respondent's argument that disclosing the specified medical condition in the Withdrawal Notice was permissible based on informed consent under Rule 1.6(e)(1) or implied authorization under Rule 1.6(e)(4) is refuted by his testimony that he did not discuss the Withdrawal Notice with his client before submitting it to USCIS. Tr. 44-45, 68, 93-95. And as to Respondent's implied authorization argument, the record does not demonstrate that the disclosures in his Withdrawal Notice were needed to "carry out the representation," as Rule 1.6(e)(4) requires.

Finally, Respondent contends that he did not act knowingly because he "did not believe these were confidences but reasons that he was required to provide to show good cause for withdrawal from the case." Resp. Br. at 21 (citing Tr. 114); *see also* Resp. Br. at 28-29. This argument misconstrues the D.C. Rules' knowledge requirement. It does not require, as Respondent claims, a showing that the "Respondent knew each of these statements were secrets and he intentionally revealed them." Resp. Br. at 28; *see also* Resp. Br. at 20-21. Instead, D.C. Rule 1.0(f) states that the term "'knowingly,' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances."

Here, it strains credulity to argue that Respondent did not know that he was disclosing client secrets. As a D.C. attorney, Respondent is charged with knowledge of the Rules. *See In re Devaney*, 870 A.2d 53, 57 (D.C. 2005) (per curiam) ("[A]n attorney is presumed to know the ethical rules governing his behavior, and ignorance neither excuses nor mitigates a violation."); *see also In re Chapman*, 284 A.3d 395, 402 (D.C. 2022) ("every lawyer—regardless of his or her employment, area of practice or level of seniority—should read, become familiar with, understand, and adhere to the Rules of Professional Conduct and the Court's decisions applying those Rules" (quoting *In re Haar*, 270 A.3d 286, 299 (D.C. 2022))). Respondent felt "betrayed" by his client's submission of a disciplinary complaint. Shortly thereafter, Respondent submitted a Withdrawal Notice to USCIS containing the statements in order to secure his withdrawal from the representation. It is reasonable to infer from these circumstances that Respondent knew that he was disclosing specific, detailed, derogatory information about his client.

We therefore conclude that Disciplinary Counsel has proven by clear and convincing evidence that Respondent violated D.C. Rule 1.6(a)(1).

IV. RECOMMENDED SANCTION

Disciplinary Counsel argues that Respondent should be publicly censured as a result of his misconduct.[10] Respondent argues that if a sanction must be imposed,

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[10] In its Brief on Sanction, Disciplinary Counsel concluded by arguing for "nothing less than public censure." ODC Sanction Br. at 2. In its Reply Brief on sanction, however, Disciplinary Counsel concluded by stating that a "public censure is the appropriate sanction to impose." ODC Sanction Reply Br. at 2.

he should receive an informal admonition. We agree with Respondent and recommend that Disciplinary Counsel should issue an informal admonition.

A. Standard of Review

The sanction imposed in an attorney disciplinary matter is one that is necessary to protect the public and the courts, maintain the integrity of the legal profession, and deter the respondent and other attorneys from engaging in similar misconduct. *See, e.g.*, *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *Cater*, 887 A.2d at 17. "In all cases, [the] purpose in imposing discipline is to serve the public and professional interests . . . rather than to visit punishment upon an attorney." *In re Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc) (citations omitted); *see also In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam).

The sanction also must not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted." D.C. Bar R. XI, § 9(h)(1); *see, e.g.*, *Hutchinson*, 534 A.2d at 923-24; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000). In determining the appropriate sanction, the Court of Appeals considers a number of factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged his wrongful conduct; and (7) circumstances in mitigation or aggravation. *See, e.g.*, *Martin*, 67

A. 3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)). The Court also considers "'the moral fitness of the attorney' and 'the need to protect the public, the courts, and the legal profession . . . .'" *In re Rodriguez-Quesada*, 122 A.3d 913, 921 (D.C. 2015) (per curiam) (quoting *In re Howes*, 52 A.3d 1, 15 (D.C. 2012)).

B. Application of the Sanction Factors

1. *The Seriousness of the Misconduct*

Respondent's misconduct was serious: he knowingly revealed client secrets in violation of Rule 1.6(a)(1). However, we also found that Respondent's motivation was to obtain his withdrawal from the representation, which is a circumstance less serious than a case in which a lawyer reveals client confidences based on a punitive or retaliatory motive.

2. *Prejudice to the Client*

Although Respondent's disclosures were embarrassing or likely to be detrimental to the client, there is not clear and convincing evidence of prejudice to the client.

3. *Dishonesty*

There is no dishonesty charge and thus no dishonesty violation.

4. *Violations of Other Disciplinary Rules*

We have found that Respondent violated Rule 1.6(a)(1).

5. *Previous Disciplinary History*

Respondent has no prior discipline.

6. *Acknowledgement of Wrongful Conduct*

Respondent acknowledged that in hindsight he may have made different statements in the Withdrawal Notice, but that he believed he needed to include the statements in the Withdrawal Notice in order for the withdrawal to be granted.

7. *Other Circumstances in Aggravation and Mitigation*

We do not treat the four-year period between the initial investigation and the filing of the Specification of Charges as a mitigating factor, as Respondent suggests. Nor do we find any lack of remorse as an aggravating factor, as Disciplinary Counsel offers. We discuss the related circumstance of acknowledgement of wrongful conduct in our comparability analysis below, where we also briefly address Respondent's plan to retire in the near future.

C. Sanctions Imposed for Comparable Misconduct

The Court has "imposed public censures or informal admonitions" in cases where attorneys violated Rule 1.6. *In re Paul*, 292 A.3d 779, 788 (D.C. 2022). (We also address cases imposing suspensions below.) Disciplinary Counsel points to *In re Ponds* and *In re Gonzalez* in advancing a sanction of a public censure.[11] Though

[11] Disciplinary Counsel also cites *In re Kennedy*, 542 A.2d 1225, 1230 (D.C. 1988), in asserting that "misconduct committed while acting as a lawyer generally warrants a more severe sanction than misconduct outside the course of legal practice, because such practice-related misconduct presents a heightened risk to the public." ODC Sanction Br. at 2. We find the cases involving Rule 1.6 violations more applicable. Indeed, the respondent in *Gonzalez* received the lowest possible sanction for the very type of misconduct Respondent committed here. And Disciplinary Counsel does not assert that *Gonzalez* involved conduct "outside the course of legal practice."

we recognize that no two cases are exactly alike, we find that these cases and others support a sanction of an informal admonition.

1. *Matters Resulting in Informal Admonitions Involved Similar or More Aggravated Circumstances*

Matters in which respondents received informal admonitions involved similar, and/or more aggravating circumstances than those presented here. For example, the respondent in *In re Daub* disclosed confidences in a letter attached to his motion to withdraw. In considering the "mitigating circumstances," Disciplinary Counsel's Informal Admonition described a key, similar fact that we have here: "some of the statements in [the respondent's] client's letter were previously stated by [the respondent's] client in open court." The Informal Admonition then "considered" the respondent's disciplinary history consisting of a public censure in a reciprocal action. Despite this aggravating circumstance—which is not present here—the respondent received an informal admonition. *In re Daub*, Bar Docket No. 2003-D346 (Letter of Informal Admonition Feb. 24, 2004).

In re Gonzalez also offers helpful guidance. The respondent in that matter received an informal admonition for disclosing secrets of a client. 773 A.2d 1026. *Gonzalez* describes two other important parallels: First, the respondent disclosed numerous secrets in his motion to withdraw (and attachments), just like we have found Disciplinary Counsel to have proven. *Id.* at 1030-32. Second, the respondent "acknowledged his misconduct" in a manner similar to Respondent's acknowledgment during the hearing that in hindsight he may have made different statements in the Withdrawal Notice, but that he believed he needed to include the

statements in the Withdrawal Notice in order for the withdrawal to be granted. Specifically, in *Gonzalez*, the respondent "testified that, with the benefit of hindsight, he might have done things differently, such as requesting that the Virginia Court review the supporting documents *in camera* to minimize any potential harm to his client. He also testified that he did what he thought he had to do, in light of his understanding of the strictness with which the Virginia Court reviewed motions to withdraw." Order, *In re Gonzalez*, Bar Docket No. 382-98, at 7 (BPR July 27, 2000), *recommendation adopted*, 773 A.2d 1026 (D.C. 2001). We find this similarity in circumstances persuasive.

Finally, *In re Fykes* also involves an informal admonition in circumstances that guide our recommendation of that sanction here. For example, as in this case, *Fykes* took "into consideration that [the respondent's] misconduct did not involve dishonesty." Bar Docket No. 2004-D293, at 3 (Letter of Informal Admonition May 7, 2008). Also, although *Fykes* involved eleven separate statements that were made in violation of the Rule, here, Respondent's violation of Rule 1.6(a)(1), albeit serious, involved fewer statements.

2. *Matters Resulting in Public Censures or Suspensions Involve More Aggravated Circumstances*

Cases resulting in public censure—the sanction sought here by Disciplinary Counsel—or a period of suspension contain more aggravated circumstances than those presented here. For example, in *In re Ponds*, the respondent was publicly censured for disclosing confidential information in a motion to withdraw. 876 A.2d 636 (D.C. 2005) (per curiam). As in this case, in *Ponds* there was no suggestion of

dishonesty, nothing gained from the respondent violating the Rule, and no harm to the client. Bar Docket Nos. 008-03 & 149-02, at 20 (BPR April 27, 2005), *recommendation adopted where no exceptions filed*, 876 A.2d 636. However, unlike this case, the Board in *Ponds* explicitly rested its recommendation on the respondent's prior discipline: "In light of [the r]espondent's prior discipline, we recommend that the Court censure [the r]espondent. *Id.* at 21. The respondent's prior discipline consisted of a previous informal admonition and a pending recommendation of a stayed, 60-day suspension. *Id.* at 20. Because this case does not involve any history of prior discipline comparable to that in *Ponds*, a lesser sanction than the public censure imposed in that case would be more appropriate here.

In re Osemene also involved more aggravated conduct that warranted higher sanctions. The respondent in *Osemene* was publicly censured for disclosing client secrets in a motion to withdraw. 277 A.3d 1271. Significantly, however, when the Board explained that sanction through the appended Hearing Committee Report, it clarified, "If this case involved only a single violation of either D.C. Rule 1.6 or Rule 1.5(b), and did not involve false testimony, the Committee would recommend an informal admonition." Board Docket No. 18-BD-105 (BPR May 31, 2022), appended HC Rpt. at 69 (Jan. 28, 2022), *recommendation adopted where no exceptions filed*, 277 A.3d 1271; *see also Osemene*, Board Docket No. 18-BD-105, at 10 ("[B]ut for the false testimony, an Informal Admonition may have been consistent with the sanction imposed in cases involving comparable misconduct.").

Thus, crucial to the Board's sanction determination were the facts that the respondent had violated Rule 1.5(b) and testified dishonestly—the latter being a significant aggravating factor. *Id.* at 6, 10-11; *see also* appended HC Rpt. at 67, 69. Again, because this case does not involve either dishonest testimony or additional Rule violations, a lesser sanction than the public censure imposed in *Osemene* would be more appropriate here.

In re Wemhoff is similar to *Osemene* but involved a 30-day stayed suspension (with probation). 142 A.3d 573 (D.C. 2016) (per curiam). As in *Osemene*, the Board explained its sanction by noting that "if only a Rule 1.6 violation were involved in this proceeding, and in light of the Hearing Committee's conclusion that [the r]espondent will not likely make the disclosure mistake again, an informal admonition would seem indisputably to be in order."[12] Board Docket No. 14-BD-056 (BPR Nov. 20, 2015), appended HC Rpt. at 21-22 (Sept. 15, 2015), *recommendation adopted where no exceptions filed*, 142 A.3d 573 (D.C. 2016) (per curiam). As the Board further explained, however, the respondent also violated

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[12] Unlike in *Wemhoff*, we make no finding as to whether Respondent is likely to repeat the misconduct in the future. We recognize that Respondent has indicated that he is planning to retire from his law practice in or around September 2023. *See* Resp. Doc. Ev. (stating that he "has plans to retire and close his legal practice at the end of September 2023"); Resp. Sanction Br. at 1 (stating, in his Brief filed March 20, 2023, that "Respondent is in the process of closing his practice so that he can retire in six months"); Tr. 74 ("Yes, I am in the stage of closing to retire at 62 next year, but I'm, yes, practicing -- wrapping up."). We do not rely on these representations in recommending informal admonishment as the appropriate sanction for Respondent's violation of Rule 1.6(a)(1).

Rules 3.4(c) and 8.4(d), stemming from his failure to appear at a hearing after being ordered to do so. *Id.* at 20, 22. These additional Rule violations resulted in the sanction of a stayed suspension accompanied by probation. Because the present case does not involve such conduct, a lesser sanction than the stayed suspension imposed in the *Wemhoff* case would be more appropriate here. Neither these violations, nor any others besides Rule 1.6(a)(1), are present here.

In *In re Paul*, the Court determined that the respondent should receive a 30-day suspension for violating Rule 1.6(a). In differentiating *Paul* from other Rule 1.6 cases that imposed lesser sanctions, the Court held that "the retaliatory nature of [the respondent's] complaint is particularly problematic and therefore warrants a suspension of some length." 292 A.3d at 788; *see also id.* ("We . . . consider the complaint to be retaliatory and serious conduct, and conclude that a 30-day suspension is appropriate."). The Court also cited two Maryland cases to note the respondent's prior discipline in Maryland. *Id.* at 788 n.4. Neither of these more serious aggravating circumstances, which warranted the more serious sanction in *Paul*, are present in this case.

Finally, *In re Koeck* also involves more aggravated circumstances, resulting in a 60-day suspension accompanied by a fitness requirement. Specifically, the disclosures in that matter were more extensive and potentially detrimental to the client. Although the respondent's misconduct violated only Rule 1.6(a), the facts involved the respondent's disclosure of client confidences and secrets on four occasions and to different entities: the news media, the United States Attorney's

Office for the Northern District of Illinois, Brazilian authorities, and the SEC. Board Docket No. 14-BD-061, at 4 (BPR Aug. 30, 2017), *recommendation adopted where no exceptions filed*, 178 A.3d 463 (D.C. 2018) (per curiam). The Board determined that the latter three disclosures were additional violations,[13] and that they "significantly increase the seriousness of [respondent's] misconduct, the prejudice to [the client], and the number of rule violations." *Id.* at 36-37. The conduct in *Koeck* that resulted in a 60-day suspension was far more extensive and potentially damaging than the conduct in this matter, and a lesser sanction therefore would be more appropriate here.

In sum, given the facts of this case, the Committee concludes that an informal admonition would serve the public and professional interests, and would not "foster a tendency toward inconsistent dispositions for comparable conduct or . . . otherwise be unwarranted," and we so recommend. D.C. Bar R. XI, § 9(h)(1). The Committee therefore recommends an informal admonition as the appropriate sanction for Respondent's violation of Rule 1.6(a)(1) in this matter.

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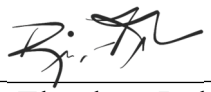
[13] These were "additional" violations found by the Board, because the Committee found a violation only as to the disclosure to the press. Board Docket No. 14-BD-061, at 16, 36-37.

V. CONCLUSION

For the foregoing reasons, the Committee finds by clear and convincing evidence that Respondent violated Rule 1.6(a)(1), and recommends an informal admonition as the appropriate sanction.

AD HOC HEARING COMMITTEE

Leonard O. Evans, Chair



Ria Fletcher, Public Member

Abraham J. Kramer, Attorney Member