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

In the Matter of:	:	
	:	
FREDERIC W. SCHWARTZ, JR.,	:	
	:	
Respondent.	:	Board Docket No. 13-BD-052
	:	Bar Docket No. 2009-D148
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 197137)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

I. INTRODUCTION

On June 5, 2013, Disciplinary Counsel[1] filed a Specification of Charges against Respondent, Frederic W. Schwartz, Jr., Esquire. Respondent is charged with violating Rule 1.4(a) of the District of Columbia Rules of Professional Conduct in his representation of Dr. Jun Chen, a Chinese national, who sought employment-based permanent residency status in the United States. The Ad Hoc Hearing Committee finds clear and convincing evidence that Respondent violated Rule 1.4(a) and recommends that Respondent receive an informal admonition.

[1] The Petition Instituting Formal Disciplinary Proceedings and the Specification of Charges were filed by the Office of Bar Counsel. The District of Columbia Court of Appeals changed the title of Bar Counsel to Disciplinary Counsel, effective December 19, 2015. We use the current title herein, except we do not modify the title of Disciplinary Counsel's filed documents.

II. PROCEDURAL HISTORY

On June 7, 2013, Disciplinary Counsel served the Specification of Charges and Petition Instituting Formal Disciplinary Proceedings on Respondent by personal service. BX D.[2] The Specification alleged a single violation of Rule 1.4(a) (failure to communicate). BX B. Respondent filed an Answer on July 30, 2013. BX C.

On September 5, 2013, a telephonic pre-hearing conference was held before the Chair of the Ad Hoc Hearing Committee, Erik T. Koons, Esquire, Respondent (appearing *pro se*), and Assistant Disciplinary Counsel Traci M. Tait, Esquire. On September 27, 2013, a second telephonic pre-hearing conference was held. The parties filed stipulations as a joint exhibit on October 8, 2013. On October 22, 2013, the Chair granted Disciplinary Counsel's unopposed motion to present Dr. Chen's testimony by video transmission.[3]

[2] "BX" refers to Disciplinary Counsel's exhibits which were filed as "Bar Counsel's Exhibits." (BX A-D and 1-5 were filed on October 16, 2013; BX 6 was filed on January 15, 2014.) "RX" refers to Respondent exhibits. (RX 1-4 were filed on October 22, 2013; RX 5-6 were filed on January 15, 2014.) "Stip." refers to the Stipulations Between Disciplinary Counsel and Respondent, dated October 8, 2013. "Tr." refers to the transcript of the hearing on January 15 and February 11, 2014. "Preh. Tr." refers to the transcript of the telephonic prehearing conference on January 13, 2014.

[3] On October 23, 2013, Disciplinary Counsel filed a motion to dismiss the Specification of Charges and Petition based on the unavailability of Disciplinary Counsel's sole witness. On October 31, 2013, the Hearing Committee referred Disciplinary Counsel's motion to dismiss to the Executive Attorney for review by a Contact Member, pursuant to Board Rule 7.16(b), and cancelled the previously scheduled November 5 disciplinary hearing on November 4, 2013. On November 18, 2013, a Contact Member denied the motion to dismiss on the basis that Disciplinary Counsel's witness had become available through video testimony.

On November 21, 2013, the Chair was joined by Committee members Jean S. Kapp, public member, and Rudolph F. Pierce, Esquire, attorney member, for a telephonic prehearing conference for scheduling purposes with Respondent and Assistant Disciplinary Counsel Tait. On January 13, 2014, the Chair held another telephonic prehearing conference with Assistant Disciplinary Counsel and Respondent, and the Chair denied Respondent's request for production of unpublished disciplinary decisions involving a violation of a single Rule 1.4(a) charge (*i.e.,* not joined with another separate Rule violation). *See* Preh. Tr. 115-17. In an order issued that same day, the Chair formally denied Respondent's request, but at the same time ordered Disciplinary Counsel to produce to Respondent and the Hearing Committee any unpublished authority, including adverse authority, upon which it would rely in its sanction recommendation.

The hearing was held before the three members of the Ad Hoc Hearing Committee on January 15 and February 11, 2014.[4] Disciplinary Counsel called Dr. Chen as the only witness in its case-in-chief. Dr. Chen chose to testify in Mandarin with the assistance of a sworn interpreter. Tr. 8. Disciplinary Counsel offered Bar Counsel Exhibits BX A-D and 1 through 6, all of which were admitted without objection. Tr. 55. Respondent testified on his own behalf and called no other

[4] A telephonic prehearing conference took place on January 17, 2014 for the purpose of scheduling the second day of hearing testimony.

witnesses. Tr. 57. Respondent submitted six exhibits, RX 1-6, all of which were admitted without objection. Tr. 80-81. At the conclusion of witness testimony, the Hearing Committee made a preliminary non-binding determination that Respondent had committed a Rule violation. Tr. 176.

By order on February 21, 2014, the Hearing Committee left the record open for evidence on sanction and directed Respondent to submit documentary mitigation evidence by February 27, 2014. In a March 20, 2014 motion, Respondent requested permission to present his arguments in mitigation of sanction in his brief, relying on evidence already submitted. The Hearing Committee granted Respondent's motion on March 27, 2014.

Disciplinary Counsel filed its Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction ("PFF") on March 12, 2014. Respondent filed both his Proposed Findings of Fact, Conclusions of Law, and Recommended Sanction and a Response to Bar Counsel's PFF on April 24, 2014. Disciplinary Counsel filed a Reply Brief on May 5 and a Corrected Reply Brief on May 6, 2014. On May 15, 2014, Respondent filed a motion to strike Disciplinary Counsel's Reply Brief or, in the alternative, to permit Respondent an opportunity to reply.[5] After determining

[5] Respondent argued that Disciplinary Counsel accused Respondent of dishonesty for the first time in its Reply Brief and incorrectly suggested that Respondent altered an exhibit. *See* Corrected Reply of Bar Counsel's to Respondent's Post-hearing Submissions at 8 n.5; Respondent's Non-Consent Motion to Strike or Permit Reply at 4.

that no cause existed to strike Disciplinary Counsel's brief and that no further submissions were warranted, the Chair denied Respondent's motion on June 20, 2014.

III. FINDINGS OF FACT

1. Frederick W. Schwartz, Jr., is a member of the District of Columbia Bar, having been admitted on April 1, 1972, and assigned Bar number 197137. BX A (Registration Statement).

2. In 2005, Dr. Jun Chen was a post-doctoral student with a Ph.D. in medicinal chemistry and was working in the chemistry laboratories of the University of Pittsburgh. Tr. 15-16.

3. Dr. Chen speaks English but communicates most comfortably in Mandarin. Tr. 28. Respondent does not speak Mandarin. Tr. 64, 133; *see* Tr. 28.

4. A friend of Dr. Chen's referred him to Respondent for help in changing his U.S. immigration status to "lawful permanent resident" (to obtain a green card) and to draft the cover letter and recommendation letter that was necessary for a successful national interest waiver application.[6] Tr. 16-17. Dr. Chen chose

[6]A national interest waiver is an option for those seeking employment-based immigration in the EB-2 category. Employment-based petitions pursuant to 8 U.S.C. § 1153(b)(2) (known as EB-2) are available for aliens of exceptional ability who are members of professions with advanced degrees, but the petitions must include a permanent job offer and certification from the Department of Labor. 8 C.F.R. § 204.5(k). Pursuant to 8 U.S.C. § 1153(b)(2)(B)(i), however, the INS can waive the job offer and labor certification requirements if such a waiver is found to be in the "national interest." *Liu v. INS, et al.*, 274 F.3d 533, 534 (D.C. Cir. 2001).

Respondent even though Respondent's office is located in the District of Columbia, and, at the time, Dr. Chen lived in Pittsburgh, Pennsylvania. Tr. 17; Stip. ¶ 2.

5. Respondent testified that two categories of green card authority exist; one is based on marriage to a U.S. citizen or legal permanent resident and the other is employment-based. Tr. 57-58. In Respondent's legal practice, 90-95 percent of the Chinese clients are seeking a "national interest waiver." Tr. 60. Respondent explained that an applicant does not need to be employed to apply for a "national interest waiver." Tr. 61.

6. Respondent explained that in 1998, the former Immigration and Naturalization Service (INS) issued a decision that it was no longer a matter of working for the national interest, but an applicant needed to demonstrate that the national interest would be harmed if he or she did not receive a green card. Tr. 61-62. This change made it more difficult to obtain a national interest waiver. Tr. 62.

7. In August 2005, Dr. Chen contacted Respondent about representing him to adjust his immigration status. BX 1A at 7; Tr. 33-34. From about August 21, 2005 through October 4, 2005 (before Dr. Chen formally retained Respondent), Dr. Chen and Respondent's Mandarin-speaking office assistant, June Miyata, exchanged at least two e-mail messages and spoke on the telephone. Tr. 33-36, 157. The purpose of the communication was to address important information about Dr. Chen's curriculum vitae and publications. *Id*. Respondent did not speak with Dr.

Chen between the sending and the signing of the retainer. Dr. Chen only spoke with Ms. Miyata. Tr. 18.

8. Once Respondent decided to take Dr. Chen's case, Ms. Miyata e-mailed a retainer agreement for Dr. Chen's signature on or about October 4, 2005. Tr. 36. Dr. Chen signed the retainer agreement in October 2005, and Respondent agreed to pursue an employment-based adjustment of status through a national interest waiver. Stip. ¶ 2.

9. The retainer agreement provided for a total fee of $4,000 for all services to adjust Dr. Chen's status. BX 1 at 5; Tr. 17, 65; Stip. ¶ 3. The retainer agreement described a $2,000 "non-refundable" upfront fee, additional amounts of $1,000 to be due when the I-140 was approved, and that $1,000 would be due prior to the filing of the adjustment status or I-485. Stip. ¶ 3.[7]

10. The retainer agreement also included a provision that if Dr. Chen "unilaterally terminate[d] this agreement with no good reason," Respondent could charge the full fee if the I-140 had been submitted or, if not yet submitted, he could charge an hourly rate specified in the retainer agreement for services actually performed. Stip. ¶ 3.

[7]A Form I-140 Immigration Petition for Alien Worker is to be submitted to the United States Citizenship and Immigration Service (USCIS) in conjunction with the national interest waiver petition. *See* 8 C.F.R. § 204.5(a). The Form I-485 Application to Adjust Status is the subsequent form used to get a green card (permanent resident status). *See* 8 U.S.C. § 1255.

11. Dr. Chen testified that the way he understood it, for $2,000, Respondent would draft the letters necessary for a successful national interest waiver application. Tr. 25 ("he should be working on preparing the cover letter and recommendation letters").

12. Respondent admitted that he never spoke with Dr. Chen or emailed him prior to the signing of the retainer agreement. He, instead, assumed that Dr. Chen understood the terms in the retainer, because it was Ms. Miyata's "job to answer" a client's questions. Tr. 120-22. Respondent testified that Ms. Miyata was "fully capable of explaining everything that needed to be explained about the retainer" and he delegated the tasks to her, which "freed [him] up to do the letters." Tr. 70-71. When confronted with the absence of any record or documentation of the communications between Ms. Miyata and Dr. Chen, Respondent stated that "her job wasn't to document everything," and his office did not document conversations or keep records of hours, "because we did not charge by the hour." Tr. 158-59.

13. Before Dr. Chen signed the retainer agreement, Respondent failed to explain to Dr. Chen that he would not be able to start work on his case for some time. In fact, his office had a "queue." According to Respondent, his immigration clients had to wait until those already "in the line" had gotten his attention. Tr. 92. Dr.

Chen was not initially told that his case would be placed in that queue. *See* Tr. 26-27.[8]

14. Dr. Chen made his initial $2,000 payment in October 2005. Stip. ¶ 4. After Respondent received payment, Respondent provided him with a "check list of items Respondent would need to proceed." *Id*.

15. At the end of October, Dr. Chen and Respondent's assistant, Ms. Miyata, had a telephone conversation, to discuss the e-mail she had sent which listed the items needed. Tr. 38-39. Dr. Chen began compiling the documents. Tr. 21. In the next six months, Dr. Chen turned over to Respondent most of the materials needed to proceed. Stip. ¶ 4.

16. On or about March 28, 2006, Dr. Chen e-mailed Respondent's office with concerns about a former professor who refused to provide a letter of support for his immigration application; Ms. Miyata contacted Dr. Chen to address the problem. Tr. 39-41. Dr. Chen acknowledged that he and Ms. Miyata spoke by telephone after he sent his e-mail request for advice. Tr. 41-42 ("I believe she did contact me").[9]

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[8] In his briefing, Respondent acknowledges that "Dr. Chen's reference and cover letters remained in the queue at least until late March 2007." Respondent's Response to Bar Counsel's PFF at 12.

[9] In its Reply Brief, Disciplinary Counsel suggests that RX 6 (e-mail dated March 28, 2006) improperly includes a handwritten notation "answered by phone 3/28/2006" when the copy of the e-mail sent earlier to Disciplinary Counsel (BX 1A at 11) did not include this notation. The Committee notes that Dr. Chen himself believed he spoke to Ms. Miyata after he sent the March 28, 2006 e-mail. *See* FF 17. If Disciplinary Counsel is asserting dishonesty on the part of

17. Because Dr. Chen had a professional conference in the District of Columbia in early April 2006, he made an appointment to meet with Respondent at his office in order to give him certain documents for his immigration application. Tr. 22.

18. On April 6, 2006, Dr. Chen met with Respondent and turned over the materials he had compiled. Tr. 21-22. The meeting lasted between 20 and 30 minutes. Tr. 23, 88. Respondent admitted that this was the only meeting he had with Dr. Chen during the entire period of representation. Tr. 116.

19. Dr. Chen believed he had submitted all the necessary materials, and that Respondent would "work on the cover letter and the recommendation letter" which were necessary to submit the application. Tr. 23-24.

20. Over the ensuing year, however, Respondent did not write Dr. Chen about the status of his case, did not telephone Dr. Chen with updates, or e-mail him regarding what, if any, progress Respondent was making to advance Dr. Chen's interests. Tr. 23-24.

21. In January 2007, Ms. Miyata received a notification from United States Citizenship and Immigration Services stating that her work permit had been denied

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Respondent in his production of documents or is challenging the weight to be given to RX 6, the Committee does not have evidence to support a finding of dishonesty and finds that RX 6 is consistent with Dr. Chen's own testimony. Moreover, because Dr. Chen met with Respondent the following week, the exact timing of the response from Ms. Miyata is less relevant. *See* FF 17.

and that she was required to leave the country within 30 days. Tr. 66.

22. Respondent testified he had a series of legal assistants before Ms. Miyata. They handled the bulk of the work for the immigration matters, which made up about 50 percent of his practice, in a "very cost effective" manner. Tr. 63-64. For "national interest waiver" cases like Dr. Chen's, the assistant was "in charge of getting the material together" and communicating with the client, while Respondent prepared the drafts of letters for the applications of the clients next up in the "queue." Tr. 64-65, 163.

23. After Ms. Miyata left, Respondent did not hire a replacement because he "could not find somebody else . . . who charged a reasonable fee." Tr. 67-68. As a result, Respondent "reached the determination that [he] would take no new clients, starting maybe a month after she left, and that [he] would just deal with the clients that [he] had." Tr. 68.

24. Respondent also admitted that "there came a time when the system essentially crumbled." Tr. 164. Respondent admitted: "For a three-month period, four-month period, in fact I did not communicate with [Dr. Chen] as a I should have . . . because I could not find the file . . . ." Tr. 70.

25. Respondent claimed that the lack of progress in Dr. Chen's application was due to deficiencies in the references or reference letters provided by Dr. Chen. Tr. 83, 95-96. Respondent testified that he never telephoned Dr. Chen to inform him

about these concerns because he did not speak Chinese. Tr. 97 (Dr. Chen's "best language was Chinese and so . . . . they would not be successful communications, unless somebody spoke Chinese to make those calls.").

26. Respondent had no recollection of ever sending a letter to Dr. Chen. Tr. 86. Respondent stipulated that he and his office "only occasionally communicated with Dr. Chen regarding the progress of his case, and then only to indicate that initial work had been performed but that different references from the ones Dr. Chen had already provided were necessary to complete the process." Stip. ¶ 9.

27. Respondent acknowledged that from reviewing an initial e-mail sent by Dr. Chen to his office, he knew that the timing was important to Dr. Chen: "he said that [time] was a concern before he signed the retainer." Tr. 88. Respondent testified that he "specifically advised" Dr. Chen about the queue when they met in April 2006, six months after the retainer had been signed. Tr. 163.

28. Between April 2006 and February 2007, Dr. Chen inquired twice by e-mail about what was happening in his case. Tr. 24-26. He wanted to know exactly where his application was and why he had not seen it yet. Tr. 92. A total of six contacts occurred from November 2005 to February 2007 between Dr. Chen and either Ms. Miyata or Respondent. *See* BX 1A at 11 (Dr. Chen's March 28, 2006 e-mail seeking help); Tr. 39-42 (Miyata's telephone call in response shortly

thereafter); Tr. 42 (Respondent's in-person meeting with Dr. Chen in early April 2006); Tr. 44-45 (a telephone conversation in which Ms. Miyata informed Dr. Chen she was leaving Respondent's office); and Tr. 24-25 (two e-mails in February 2007).

29. Dr. Chen sent a second e-mail request for a status report on February 20, 2007. *See* Tr. 25-26; BX 6A at 5-6. He wrote:

> Dear Mr. Schwartz, One week has passed again. Could you drop me some lines and let us know the status of our case in your hand? We[10] have been waiting for it for almost one year. If it was not an emergency one year ago, we think it is urgent enough now.
>
> Thanks! Jun

BX 6A at 5-6. Respondent replied with a brief e-mail, only saying: "I am working on an emergency deportation case and will reply in several days." BX 6A at 6.[11]

30. When he still did not hear back from Respondent, Dr. Chen followed up with the following e-mail message of March 1, 2007:

> Time flied quickly as we are waiting for your information about our application. It is already March - we have provided you all necessary materials for 11 months without receiving any responses about the progress! You can imagine how disappointed and anxious we are. You should let us know that you could not handle our case in an effiecient [sic] way when we signed the contract. If you are still not working on our case now, we may have to find a solution - we are at the edge of patience. Hope this email can call your attention.

[10] Dr. Chen was married and living with his wife Liying Ren, and the "we" refers to him and his wife. Tr. 16.

[11] Respondent believes that this was his first e-mail to Dr. Chen was in February 2007. *See* Respondent's Response to Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommended Sanctions at 13.

BX 6A at 4. Respondent again did not reply.

31. In the five weeks after February 20, 2007, Dr. Chen sent Respondent a total of seven e-mails without ever receiving an answer. BX 6A at 2-5. Dr. Chen expressed his confusion and consternation with the lack of any response from Respondent or his office. *Id.*

32. Respondent claimed that sometime in March 2007, he relayed a message to Dr. Chen through an associate of Dr. Chen's (Yajuan) who had also retained Respondent and visited Respondent's office. According to Respondent, his message to Yajuan informed Dr. Chen that "a cover letter and reference letters have to be done." Tr. 52, 86-87. However, Dr. Chen specifically wrote to Respondent on March 20, 2007, to ask if Yajuan was correct when she told Dr. Chen that his case was "almost done except the cover letter. Is this true?" BX 6A at 2. Respondent did not call or e-mail a reply to Dr. Chen to clarify or confirm. *See id.* (March 27, 2007 e-mail message from Dr. Chen: "We have to say that we are now very angry about your attitude and behavior. You ignore our requests and did not answer our emails.").

33. Dr. Chen terminated Respondent's representation by e-mail on June 4, 2007, followed by at least one telephone call to Respondent's office to confirm that he did not intend to continue with Respondent's services. Stip. ¶ 6. Upon being fired, Respondent did not offer to provide his file or any work product, documents,

or any information at all to his former client's successor representatives. Tr. 30-33. Respondent acknowledged during the hearing that when Dr. Chen terminated the representation, Respondent had not made "significant" progress on drafting those letters. Tr. 149, 165.

34. Respondent testified that after Ms. Miyata left the office in early 2007, for a three to four-month period, he "did not communicate with [Dr. Chen] as I should have" because the relevant portion of Dr. Chen's file had been misplaced. BX 6B; Tr. 69-70. However, it was not until around February 2008 that Respondent telephoned Dr. Chen to tell him that his file "had been 'misplaced' following the departure of his legal assistant." Stip. ¶ 7. Approximately one or two weeks later in 2008 (at this point, several months after having been fired by Dr. Chen), Respondent located Dr. Chen's file and notified Dr. Chen. *Id*.

35. Dr. Chen testified that, in February 2008, he did not need the cover letter and reference letters from Respondent because a different application had already been sent by university staff by that time.[12] Tr. 52.

36. In October 2008, Dr. Chen obtained a change of status with the University of Pittsburgh's sponsorship in a different green card category. Stip. ¶ 9. The university's immigration specialists, who were not lawyers, used the EB-1B

[12] After Dr. Chen fired Respondent on June 4, 2007, the University of Pittsburgh Division of Student Affairs Office of International Services submitted an EB-1 application on Dr. Chen's behalf in late July 2007. Tr. 30-31; BX 2 at 1.

category to assist Dr. Chen. Tr. 32-33, 48. Dr. Chen testified that the EB-1B category required sponsorship with the university. *Id*. He paid $1,000 to the University of Pittsburgh for the assistance. *Id*. at 33, 49.

37. Dr. Chen testified that he filed the complaint with the Office of Disciplinary Counsel because he believed Respondent did not do his work: "I already paid the $2,000, but he didn't do anything." Tr. 53. Respondent, however, claimed he had "earned that $2,000" by reviewing materials and preparing the file, and talked about what he had planned to do for Dr. Chen. Tr. 82-83, 139-41.

38. Respondent stipulated that he "never presented Dr. Chen with either an immigration petition for his review and signature, or other evidence that he had performed work on Dr. Chen's immigration petition justifying the $2,000 paid." Stip. ¶ 8; *see also* Tr. 86-87, 116-18. Respondent testified that he refused to show draft letters to Dr. Chen because Dr. Chen was not entitled to see them. Tr. 30-31, 155. He was not entitled because "he had not paid for it." Tr. 170.

39. At the time of the hearing, Respondent had not refunded the $2,000 he was paid in response to Dr. Chen's demand for restitution. Tr. 53; BX 1 at 4.

40. Respondent contends that Dr. Chen had only asked about the "progress" but not the "status" of his case, and that "Dr. Chen was not interested in the status of the case." Tr. 148, 151. In Respondent's view, "progress" referred to the client's position in his "queue," *i.e*., the amount of time the client still must wait to get his

attention, and Respondent was not obliged to tell his clients about their "progress." Tr. 149-51. Respondent testified that the "status" of Dr. Chen's case did not change between his office visit in April, 2006 and when Dr. Chen wrote in February, 2007 so he had no obligation to communicate with Dr. Chen. Tr. 149 (Respondent) ("The status of the case had not changed. . . . I had not completed the application and the cover letter and the referee letters and sent it in. That is the status.")

IV. LEGAL CONCLUSIONS

Rule 1.4(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." As Comment [1] to Rule 1.4 explains, a lawyer must provide the client with "sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." Rule 1.4, cmt [1]. Comment [2] adds that "[t]he lawyer must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations," and that the lawyer must "initiate and maintain the consultative and decision-making process" even in the absence of requests for information from a client. Rule 1.4, cmt [2]. Finally, "[a] lawyer may not withhold information to serve the lawyer's own interests or convenience." Rule 1.4, cmt [5].

At the inception of the case, including the signing of the retainer, Respondent did not take basic measures to ensure that Dr. Chen understood the meaning of the retainer or what to expect from the representation. FF 9-13. From their only meeting on April 6, 2006 until June 4, 2007 (when Dr. Chen fired Respondent), Dr. Chen was unable to obtain any substantive information about what Respondent was doing to advance his immigration application despite his repeated requests for information (in English and by e-mail). FF 27-31. According to Respondent, "providing 'complicated and nuanced information' and responding to questions about that information, required the highest degree of communications skills including, on occasion, the need to provide an explanation in [Mandarin,] Dr. Chen's native language." Respondent's Response to Bar Counsel's PFF at 6. In Respondent's view, this posed a problem because he did not speak Mandarin.

The Committee finds that Respondent did not keep Dr. Chen "reasonably informed about the status" of his case. *See* Rule 1.4(a). After Dr. Chen signed and e-mailed Respondent's retainer agreement in October 2005, Respondent met with Dr. Chen only one time. FF 17-18. On this single occasion, on April 6, 2006, Respondent met with Dr. Chen for about 20-30 minutes. FF 18. Respondent's first e-mail to Dr. Chen was sent in February 2007 after Dr. Chen complained about not knowing the status of his case, and, in it, Respondent only stated that he was busy working on an "emergency deportation case" but would reply in several days – which

he did not do. FF 29. Respondent did not recall ever sending Dr. Chen a letter, even after receiving the signed retainer agreement. FF 26.

The evidence is incontrovertible that Respondent did not "promptly comply with reasonable requests for information." *See* Rule 1.4(a); *see also In re Edwards*, 990 A.2d 501, 523 (D.C. 2010) (client is "entitled to whatever information [he] wishes about all aspects of the subject matter of the representation"). Despite Dr. Chen's repeated and urgent e-mails asking for information about his immigration matter, Respondent did not e-mail, telephone, or write a letter in response. FF 26, 28-31. Respondent acknowledged that he knew that the timing was important to Dr. Chen even before he received the signed retainer agreement from Dr. Chen in October 2005. FF 27. Despite this expressed concern by his client, Respondent did not ever respond to Dr. Chen's February 20, 2007 request for a status update or provide any information on what was causing the delay. FF 29-31. After Dr. Chen asked (in a March 20, 2007 email to Respondent) whether it was true that his application was "almost done except the cover letter" as his associate Yajuan had relayed, Respondent again did not write or call Dr. Chen to confirm or clarify (even though Respondent claimed at the time of the hearing that he could not complete the work because he needed additional reference letters). *See* FF 32.

"[A] lawyer not only must respond to client inquiries but also must initiate communications to provide information when needed." *In re Hallmark*, 831 A.2d

366, 374 (D.C. 2003) (citing Rule 1.4(a), cmt [1]). Here, the record shows that the attorney-client communications were initiated by Dr. Chen, even when Ms. Miyata was still working for Respondent. Nor did Respondent's obligations to Dr. Chen cease following the departure of his assistant. Respondent never initiated contact when he should have notified Dr. Chen that he was not going to hire a replacement for Ms. Miyata and how that would cause additional delays (as his system had "essentially crumbled"); and he should have informed Dr. Chen that the file was missing well before February 18, 2008, as he noticed it missing in early 2007. *See* FF 22-24, 34.

Accordingly, the Hearing Committee finds by clear and convincing evidence that Respondent violated Rule 1.4(a).

V. RECOMMENDED SANCTION

The discipline imposed in a matter should serve to maintain the integrity of the legal profession, protect the public and the courts, and deter similar misconduct by the respondent-lawyer and other lawyers. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). A disciplinary sanction should be comparable to those imposed in similar cases. D.C. Bar Rule XI, § 9(h)(1) (Court seeks to avoid "inconsistent dispositions for comparable conduct").

A Hearing Committee should take into consideration the following factors when determining an appropriate sanction: (1) seriousness of the misconduct; (2)

prejudice, if any, to the client; (3) whether the conduct involves dishonesty and/or misrepresentation; (4) violations of any other disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether the attorney acknowledges the wrongful conduct; and (7) circumstances in mitigation and aggravation. *In re Martin*, 67 A.3d 1032, 1053 (D.C. 2013); *In re Vohra*, 68 A.3d 766, 771 (D.C. 2013)

Respondent argues that, if the evidence supports a finding of a rule violation, the appropriate sanction is an informal admonition given his lack of any prior discipline in more than 40 years of being a member of the D.C. Bar, the absence of severe prejudice to the client, and the finding of a single rule violation. Disciplinary Counsel, however, recommends that Respondent be sanctioned with public censure for his violation of Rule 1.4(a). In making its recommendation, Disciplinary Counsel relies chiefly on the public censure that was ordered in *In re Geno*, 997 A.2d 692 (D.C. 2010). *See* Bar Counsel's PFF at 20-22.

In *Geno*, however, Respondent was found to have violated Rule 1.3(c) (failure to act with reasonable promptness) in addition to Rule 1.4(a). In *Geno*, the prejudice to the client was also much more severe than the circumstances here. The client in *Geno* had been seeking political asylum and because respondent never notified his client of an important immigration court hearing (and because respondent went to the wrong immigration court that day), a deportation order issued *in absentia*. 997 A.2d at 692-93. The respondent in *Geno* then demanded additional money from the

client and when the client refused to make additional payments, the respondent continued to refuse to move to vacate the order so that the deportation order was still in effect at the time of the disciplinary proceedings. *Id*. at 693.

Disciplinary Counsel's reliance on *Geno* is misplaced because, here, Respondent's misconduct was less serious (did not involve a failure to give notice or failure to appear in court on behalf of his client), involved a single rule violation, and his client suffered less prejudice than the order of deportation in *Geno*.

The Ad Hoc Hearing Committee, instead, finds that the facts and circumstances described in the informal admonition letters cited by Respondent are more analogous. *See e.g.*, *In re Dix*, Bar Docket No. 133-00 at 2 (Letter of Informal Admonition, Sept. 7, 2004) (Office of Disciplinary Counsel admonishing that after taking of the client's retainer fee, attorney "had an affirmative obligation to initiate contact with her… [and] failed to communicate with [the client] notwithstanding her repeated attempts to contact [the attorney] concerning the status of her case"); and *In re Steinberg*, Bar Docket No. 203-98 (Letter of Information Admonition, Mar. 26, 2001) (Rule 1.4(a) violation for failing to send important court documents despite client's numerous requests).

At the same time, the Hearing Committee notes that the prejudice suffered by Dr. Chen was not *de minimis*, because (1) he had to pay an additional $1,000 to the University of Pittsburgh for their assistance in filing the appropriate paperwork for

a green card (FF 37); (2) Respondent did not return the $2,000 retainer fee (FF 40); and (3) Respondent knew that time was of the essence for Dr. Chen (FF 28). We, accordingly, do not agree with Respondent's position on that point. *Compare* Respondent's Response to Bar Counsel's PFF at 29 (arguing lack of prejudice) *with In re Quinn*, Bar Docket No. 209-02 (Letter of Informal Admonition, Aug. 1, 2002) (after misplacement of client's file, Rule 1.4(a) violation for failing to communicate with client in connection with application for citizenship before the INS, even though attorney admitted failure to file the application and returned client's file, retainer fee, and citizen application fee).

Aside from the misconduct itself, Disciplinary Counsel offered no evidence in aggravation of the sanction. There is no evidence of dishonesty or misrepresentation in this case and the parties do not dispute that Respondent has no prior disciplinary history. Finally, Respondent acknowledges his misconduct. *See* Respondent's PFF at 34. Because the facts and circumstances in the instant case are comparable to those imposed in similar cases where Disciplinary Counsel has issued Informal Admonition letters, we recommend the same sanction for Respondent's misconduct. *In re Winstead*, 69 A.3d 390, 399 (D.C. 2013) (Board and Court of Appeals may rely on Informal Admonition letters issued by the Office of Disciplinary Counsel when considering the appropriate range of sanctions) (citing *In re Schlemmer*, 840 A.2d 657, 662 (D.C. 2004)).

VI. CONCLUSION

Based on the foregoing clear and convincing evidence and conclusions of law, the Ad Hoc Hearing Committee finds that Respondent violated of Rule 1.4(a) in his representation of Dr. Jun Chen, and recommends that he be sanctioned with the imposition of an informal admonition.

AD HOC HEARING COMMITTEE

/ETK/
Erik T. Koons, Esq., Chair

/JSK/
Jean S. Kapp, Public Member

/RFP/
Rudolph F. Pierce, Esq., Attorney Member

Dated: April 24, 2017