

THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE\*

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



In the Matter of:	:	
	:	
STEVEN KREISS,	:	
	:	
Respondent.	:	Board Docket No. 18-BD-098
	:	Disc. Docket No. 2018-D191
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 58297)	:	

REPORT AND RECOMMENDATION OF  
THE AD HOC HEARING COMMITTEE

Respondent, Steven Kreiss, is charged with violating Rules 1.4(a), 1.8(i), 1.16(d), 8.4(c), and 8.4(d) of the District of Columbia Rules of Professional Conduct (the “Rules”). The charges arise from his representation of a client in an immigration matter and the termination of that representation. Disciplinary Counsel concedes that it did not establish a violation of Rule 1.4(a), but maintains that it proved by clear and convincing evidence that Respondent violated all of the other charges. It recommends that Respondent be suspended for a period of sixty (60) days as a sanction for his misconduct. Respondent contends that he did not violate any rules and that no sanction is warranted.

As set forth below, the Hearing Committee finds that Disciplinary Counsel has proven violations of Rules 1.8(i) and 1.16(d) by clear and convincing evidence.

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\* Consult the ‘Disciplinary Decisions’ tab on the Board on Professional Responsibility’s website ([www.dcattorneydiscipline.org](http://www.dcattorneydiscipline.org)) to view any subsequent decisions in this case.

It agrees that Disciplinary Counsel has not proven Respondent violated Rule 1.4(a). It also finds that Disciplinary Counsel has not proven violations of either Rule 8.4(c) or 8.4(d) by clear and convincing evidence. The Committee believes that Disciplinary Counsel's sanction recommendation is too severe in light of the charges proven. It recommends that Respondent be publicly censured and required to take an ethics CLE course approved by Disciplinary Counsel.

### I. PROCEDURAL HISTORY

On October 24, 2018, Disciplinary Counsel served Respondent with a Specification of Charges ("Specification") alleging that he violated the following rules in connection with the termination of his representation of a client:

- Rule 1.4(a), by failing to keep his client reasonably informed about the status of a matter and promptly complying with reasonable requests for information;
- Rule 1.8(i), by imposing a lien upon his client's entire case file;
- Rule 1.16(d), by failing to take timely steps, to the extent reasonably practicable, to surrender papers and property to which the client is entitled, in connection with the termination of representation;
- Rule 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- Rule 8.4(d), by seriously interfering with the administration of justice.<sup>1</sup>

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<sup>1</sup> Specification ¶ 22a-e.

Respondent filed an Answer on November 13, 2018. On November 20, 2018, he filed a Motion to Dismiss All Charges. Disciplinary Counsel opposed that Motion on December 10, 2018.

A pre-hearing conference was held on December 13, 2018, before Theodore D. Frank, the Chair of this Ad Hoc Hearing Committee (“Committee”). Respondent was advised at the pre-hearing conference that the Committee was not authorized to rule on the Motion in advance of the hearing and that it would address the Motion in its Report and Recommendation. (Pre-hearing Transcript at 12, Dec. 13, 2018.)<sup>2</sup>

The hearing was held on March 25, 2019.<sup>3</sup> Disciplinary Counsel was represented by Assistant Disciplinary Counsel Joseph N. Bowman, Esquire, and Respondent appeared *pro se*.

Prior to the hearing, Disciplinary Counsel submitted ten exhibits, (DX A through D and DX 1 through 6), and Respondent submitted thirty-four exhibits (RX A1 through AE.)<sup>4</sup> All of Disciplinary Counsel’s and Respondent’s exhibits were received into evidence without objection. (Tr. 24-25.) During the hearing,

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<sup>2</sup> Since the Motion rests on essentially the same facts and arguments as Respondent’s defense at the hearing and since we have concluded that Disciplinary Counsel established a violation of several Rules, we recommend the Board deny the Motion.

<sup>3</sup> The hearing was originally scheduled on February 11, 2019. (*See* Hearing Committee Order, Dec. 17, 2018.) On December 26, 2018, Respondent filed a Motion to Continue the hearing date to accommodate Respondent’s conflicting vacation plans. The Chair granted that Motion on January 10, 2019 and rescheduled the hearing.

<sup>4</sup> “DX” refers to Disciplinary Counsel’s exhibits. “RX” refers to Respondent’s exhibits. “Tr.” refers to the transcript of the hearing held on March 25, 2019.

Disciplinary Counsel introduced two additional exhibits, (DX 7 and 8), which were received into evidence without objection. (Tr. 149-50, 249-50.)

Both Disciplinary Counsel and Respondent filed their lists of proposed witnesses prior to the hearing. On March 13, 2019, Disciplinary Counsel filed a Motion in Limine (“Motion”) objecting to the testimony of Respondent’s proposed expert, Shanta Ramson, Esquire, on the grounds it went to the ultimate issue, which was for the Committee to decide.<sup>5</sup> In his Response to the Motion, Respondent argued that Ms. Ramson was an experienced immigration lawyer who would testify as to “the standards of practice” in the immigration arena and not the ultimate legal issue.<sup>6</sup> After consideration of the pleadings and hearing oral argument by both parties at the hearing, the Chair allowed Ms. Ramson to testify as to the practice of immigration lawyers in situations such as those involved here, but not on the ultimate issue. (Tr. 10.)

Upon conclusion of the hearing, the Committee made a preliminary non-binding determination that Disciplinary Counsel had proven at least one of the ethical violations set forth in the specification of charges. (Tr. 247); *see* Board Rule 11.11. In aggravation of sanction, Disciplinary Counsel introduced an informal

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<sup>5</sup> Disciplinary Counsel’s Memorandum in Support of its Motion in Limine to Exclude Respondent’s Proposed Witness, Shanta Ramson, Esquire at 1-2.

<sup>6</sup> Opposition to Disciplinary Counsel’s (a) March 13, 2019, Objection and Motion in Limine to Exclude Respondent’s Proposed Expert Witness, and (b) March 14, 2019 Memorandum in Support of Its Motion in Limine to Exclude Respondent’s Proposed Expert Witness, Shanta Ramson, Esquire at 2-3. Respondent also argued that Disciplinary Counsel’s Memorandum in Support was untimely. *Id.* at 1-2. The Chair denied that objection at the hearing. (Tr. 10.)

admonition issued to Respondent in 2005. (Tr. 247-49.) Respondent gave a brief statement in mitigation of sanction. (Tr. 250-51.)

Disciplinary Counsel submitted its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on April 22, 2019.<sup>7</sup> Respondent filed his Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction on May 6, 2019. Disciplinary Counsel filed its Reply on May 13, 2019.<sup>8</sup>

## II. SUMMARY OF FINDINGS & CONCLUSIONS

The basic facts of this case are not in dispute: Respondent was retained by Ms. Vida Oppong to represent herself and her daughter, who was an adult, in connection with their applications for U.S. citizenship and to extend their green cards. Ms. Oppong was a native of Ghana who was a resident alien. Even though Respondent obtained under difficult facts the results Ms. Oppong sought for both herself and her daughter, Ms. Oppong was apparently dissatisfied with Respondent and contacted L'Antoinella Spiller-Reddick, Esquire, to review her case and ultimately to take over the representation. Ms. Oppong apparently advised Ms. Spiller-Reddick that Respondent was not keeping her sufficiently informed of the status of the case.<sup>9</sup>

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<sup>7</sup> Due to a delay in the preparation of the transcript, the Committee Chair, on April 11, 2019, *sua sponte*, extended the time to file post hearing briefs.

<sup>8</sup> Disciplinary Counsel's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction. will be cited as D.C. Brief at ---. Respondent's Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction will be cited as Resp. Brief at ---. Disciplinary Counsel's Reply will be cited as Reply at ---.

<sup>9</sup> Neither Disciplinary Counsel nor Respondent called Ms. Oppong to testify. Ms. Spiller-Reddick testified as to Ms. Oppong's reasons for seeking new counsel. (Tr. 77-78.) Respondent disputes Ms. Oppong's claim that he did not keep her informed. (Tr. 237-38.)

Respondent had difficulty in accepting that Ms. Oppong wanted to replace him given the positive results he had obtained and delayed producing the files for a period of six months. Among his reasons for the delay was that he found the initial requests to produce the files ambiguous because they did not say he was terminated. He testified that he thought she might have wanted him to remain on the case as co-counsel to Ms. Spiller-Reddick. He also questioned whether Ms. Spiller-Reddick was representing Ms. Oppong alone or her daughter too. He also requested that Ms. Oppong pay his outstanding fees and the costs of duplicating and mailing the file to Ms. Spiller-Reddick.

Ms. Oppong did not suffer any harm to her immigration case as a result of Respondent's delay. Her request and that of her daughter to become U.S. citizens were granted in the Spring of 2018, not long after Ms. Spiller-Reddick requested the file. Respondent's defense to the charges turns largely on that fact, that he believed, from informal discussions with immigration officials at the time when Ms. Spiller-Reddick initially requested the files, that Ms. Oppong's and her daughter's citizenship applications would be granted, and that the initial requests for the files were ambiguous.

As explained below, the Committee concludes that Respondent violated Rule 1.16(d) and 1.8(i) in not producing the files in response to Ms. Spiller-Reddick's request in a timely manner. Even if Respondent found her requests were somewhat ambiguous, Respondent's failure to seek clarification of Ms. Oppong's request with Ms. Spiller-Reddick and Ms. Oppong was inconsistent with the clear commands of

those rules. The Committee recommends that Respondent be publicly censured and be required to take an approved legal ethics CLE.

### III. FINDINGS OF FACT<sup>10</sup>

#### Background

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by examination on April 24, 1970, and assigned Bar number 58297. (DX A.)

2. Respondent was initially retained by Ms. Oppong and by Ms. Stephanie Asante, her adult daughter, to assist with their applications for U.S. citizenship and to extend their green cards. (Tr. 20-23; 25-26.) Respondent had represented Ms. Oppong when she applied for and acquired her green card. (Tr. 20.) Ms. Oppong was a native of Ghana at the time. (*See* RX A at 15.)

3. Ms. Oppong and Respondent entered into retainer agreements on October 14, 2013, and November 15, 2017. (RX A1 at 1-3; 10-12.) Ms. Asante and Respondent entered into retainer agreements on November 6, 2015, and January 10, 2017. (RX A1 at 4-9.) Ms. Asante's application was dependent on Ms. Oppong's. (Tr. 21-22.)<sup>11</sup> The November 15th agreement with Ms. Oppong expanded

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<sup>10</sup> These findings of fact are based on the testimony and documentary evidence admitted at the hearing. Except where noted, they were 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 facts sought to be established").

<sup>11</sup> The Specification of Charges does not include any charge based on Respondent's representation of Ms. Asante.

Respondent's retention to include relief from deportation proceedings. (RX A1 at 10-11.)

4. All of those agreements provided:

Either party may terminate this Agreement by notifying the other in writing of the reasons therefor, subject to the following provisions:

Client Termination -- In the event that Client terminates this Agreement, Client agrees to reimburse Attorney before such termination shall become effective for all out of pocket costs advanced by Attorney for Client and to pay Attorney a fee equal to the Attorney's standard hourly rate . . . multiplied by the number of hours Attorney has worked on the Client's matter.

(RX A1 at 2, 5, 8, & 11.)

5. Ms. Oppong's citizenship application was not routine. Among other issues, Ms. Oppong was accused by the Department of Homeland Security ("DHS") of marriage fraud by failing to disclose her prior marriage to Fred Asante and her divorce from him. (Tr. 20; *see* RX B at 46-50.)

6. Because of these lapses, her application was set for a removal hearing in January 2017 (*see* RX P at 197), on the grounds, *inter alia*, that she had gained her admission to the United States on the basis of fraud or willful misrepresentation of fact. (RX M, N.) Respondent viewed the designation order as effectively charging her with perjury. (Tr. 44-45; Resp. Brief at 3.)

7. At the time Respondent was retained, Ms. Asante's citizenship application, which was dependent on Ms. Oppong's, had been denied at the initial



level of review because of allegations that her mother had engaged in marriage fraud. (Tr. 21.)<sup>12</sup>

8. Respondent's efforts on behalf of Ms. Oppong and Ms. Asante were extensive, involving lengthy letters to United States Customs and Immigration Service ("USCIS")<sup>13</sup> explaining that all the information concerning Ms. Oppong's previous marriages and divorces were already in USCIS's files relating to her initial application for a green card, and arguing that her failure to list them in her applications was an oversight. (RX B, I-K; Resp. Brief at 6-10.)

9. Respondent was also successful in getting USCIS to dismiss the removal proceedings instituted against Ms. Oppong. (RX L-P1.)

10. DHS was slow in adjudicating Ms. Oppong's and Ms. Asante's applications, notwithstanding Respondent's multiple requests that it act. (RX C-E; Resp. Brief at 4-5.)

11. At about the time Ms. Oppong contacted Ms. Spiller-Reddick, Respondent believed that his efforts were successful. In November or December 2017, he had been advised by a USCIS staff member that he would recommend that Ms. Oppong's application be granted. (Tr. 45-46, 218-19.) USCIS had also requested that the Immigration Court terminate the removal proceedings at that point. (Tr. 46; RX P1.)

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<sup>12</sup> Respondent represented Ms. Asante in her appeal of that initial determination. (Resp. Brief at 6.)

<sup>13</sup> The Committee will refer to USCIS and DHS interchangeably.

12. Respondent testified that he told Ms. Oppong of that development and advised her that it was not final. (Tr. 58.) Ms. Spiller-Reddick testified that Ms. Oppong was not aware that the USCIS staff was recommending grant of her application at the time she contacted Ms. Spiller-Reddick. (Tr. 91-92.)

Ms. Oppong Discharges Respondent

13. Ms. Oppong contacted Ms. Spiller-Reddick on or about January 25, 2018, to inquire about the status of her and her daughter's immigration matters. Ms. Spiller-Reddick testified that Ms. Oppong "wasn't quite sure what was going on at the time," wanted more information about her case, and "had lost some faith in" Respondent. (Tr. 77-78.)<sup>14</sup>

14. Ms. Oppong was also concerned whether she would be able to return to the United States after she traveled to Ghana for her father's funeral. (Tr. 82.) Because Ms. Oppong's green card remained valid, she should have been permitted to return to the U.S. However, since entry is not guaranteed, Ms. Spiller-Reddick prepared "a travel packet" to assist Ms. Oppong on her return should immigration authorities challenge her right to re-enter the country. (Tr. 82-84.) Upon her return, no questions were raised. (Tr. 83.)

15. On January 25, 2018, Ms. Oppong retained Ms. Spiller-Reddick to represent her and her daughter in their pending immigration matters. (Tr. 80; DX 1 at 6-7.)

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<sup>14</sup> See footnote 9, *supra*.

16. At the time, Ms. Spiller-Reddick did not have Ms. Oppong sign a retainer agreement. She testified that under the Virginia Rules of Professional Conduct a retainer agreement was not required, although she admitted that the better practice is to obtain one. (Tr. 84-86.) Ms. Oppong subsequently signed an “accounting” prepared by Ms. Spiller-Reddick after the initial meeting, which confirmed the work performed by Ms. Spiller-Reddick. (DX 7; Tr. 84.)

17. Ms. Oppong signed a G-28 form -- the DHS form required to represent clients before the agency (Tr. 32) -- and an authorization and release authorizing Respondent to release her files to Ms. Spiller-Reddick. (DX 1 at 6-11.) The authorization and release included a hand-written note requesting Respondent to “release the information for my daughter” as well. (DX 1 at 7.)

18. On the same day, January 25, 2018, Ms. Spiller-Reddick both called and wrote a letter to Respondent informing him that Ms. Oppong had “expressed her desire” to retain Ms. Spiller-Reddick “for the remainder of her process (if any) and that of her daughter, Stephanie Asante.” (DX 1 at 6.)

19. She requested “the complete immigration file of Ms. Oppong and Ms. Asante, . . . copies of all Forms & motions filed, supporting evidence submitted, and communication/correspondence sent to and received from DHS and/or EOIR.” She also requested the return of any unearned fees. *Id.*

20. During Ms. Spiller-Reddick’s telephone call with Respondent, he advised her that the staff of USCIS was going to recommend grant of Ms. Oppong’s citizenship application. (*Id.*; Tr. 77, 91, 229.) In her letter, Ms. Spiller-Reddick

advised Respondent that she had “shared the good news about the recommended USCIS approval with Ms. Oppong . . . .” (DX 1 at 6.)

21. Ms. Spiller-Reddick included with her letter the Authorization/Release signed by Ms. Oppong, which directed Respondent to release to Ms. Spiller-Reddick “my complete case file including any and all documents . . . related to the legal service” for which she had retained Respondent. (DX 1 at 7.) Ms. Spiller-Reddick also enclosed a copy of a G-28 Form signed by Ms. Oppong. (DX 1 at 8-11.) None of these documents specifically stated that Ms. Oppong was terminating Respondent.

22. Ms. Spiller-Reddick never spoke to Ms. Asante (Tr. 111-12) and did not provide Respondent with a copy of a G-28 form signed by Ms. Asante or any other document confirming that Ms. Asante had retained her. (Tr. 118-21.) Ms. Spiller-Reddick assumed that she would represent both Ms. Oppong and her daughter based on Ms. Oppong’s actions. (Tr. 118-21.)

23. Respondent was surprised to learn that Ms. Oppong wanted to terminate the relationship since he had obtained a favorable result in “one of the most difficult cases I’ve had in the 50 years I’ve been practicing.” (Tr. 57.)

24. He testified that, after he spoke to Ms. Spiller-Reddick, he called Ms. Oppong to discuss the status of her case and whether she wanted him to release her file. (Tr. 57-58.) He testified that she told him to keep the file. (Tr. 58.) No documentary evidence was produced concerning that telephone call.

25. Respondent testified that Ms. Oppong was anxious, upset about the delays in the processing of her application and was concerned about her status and that of her children. (Tr. 58, 250.)

26. Because Ms. Spiller-Reddick's letter requested the files for both Ms. Oppong and Ms. Asante but included a Form G-28 for Ms. Oppong alone, Respondent was uncertain as to his status and particularly his obligations to Ms. Asante. (Tr. 59.) However, he did not go back to discuss the matter further with Ms. Spiller-Reddick. (Tr. 60-69.)

27. On February 6, 2018, Ms. Spiller-Reddick sent Respondent a "follow-up" to her January 25th letter advising Respondent that, during the week following the January 25th letter, Ms. Oppong had "expressed her continued desire to retain" Ms. Spiller-Reddick's services and requesting again that he send her the complete immigration file. She again enclosed a copy of the G-28 form and authorization/release signed by Ms. Oppong. (DX 1 at 14.)

28. On February 25, 2018, Ms. Spiller-Reddick notified DHS that Ms. Oppong had changed counsel and requested it to update its files to list Ms. Spiller-Reddick as counsel. (DX 1 at 28.) Being listed as counsel was essential for Ms. Spiller-Reddick to receive notifications of actions by DHS. Until recognized as counsel by DHS, Ms. Spiller-Reddick would not receive notices from the department and was required to review the DHS website to find out the status of Ms. Oppong and Ms. Asante's cases. (Tr. 86.)

29. Because she had not received Ms. Oppong's file from Respondent and in order to obtain a copy of Ms. Oppong's application, she filed a Freedom of Information Act request. (Tr. 86.) She found the copy of the application helpful but was nervous because the application may not have contained all the information that she might need. (Tr. 102.)

30. On March 6, 2018, Ms. Spiller-Reddick's assistant, Ms. Paola Kery, contacted Respondent to ask for Ms. Oppong's file. She testified that Respondent told her that Ms. Oppong did not want the client file released to Ms. Spiller-Reddick. (Tr. 154.) Ms. Kery then called Ms. Oppong who told her: "That that was not true [and] that she will call [Respondent]." (Tr. 155.)

31. At some point between March 9 and March 13, 2018, Ms. Oppong spoke to Respondent and was advised that he would require reimbursement of duplicating costs for her files. (DX 1 at 17; RX S at 206.)

32. In an email to Respondent dated March 13, 2018, Ms. Spiller-Reddick again requested the release of Ms. Oppong's file. She advised that her office had spoken to Ms. Oppong after Ms. Kery's call and that "Ms. Oppong confirmed with us that she does indeed want the file transferred to our office." Ms. Spiller-Reddick also told Respondent that she would be willing to reimburse him for any copying costs. (DX 1 at 17.)

33. Respondent did not provide Ms. Oppong's file to Ms. Spiller-Reddick in response to any of these requests. (Tr. 30-32, 36, 94.) When asked whether he

released the files in response to these requests, he testified “absolutely not.” (Tr. 30-32.)

34. On April 10, 2018, Ms. Spiller-Reddick sent another email requesting release of Ms. Oppong’s file. She attached to the email a notarized authorization and release and copy of Rule 1.16 of the Rules of Professional Conduct and the comments to that rule. (DX 1 at 22-25.) Respondent was out of the country when this request was received. (Tr. 34; RX T.)

35. On June 11, 2018, Ms. Spiller-Reddick filed a complaint with the Office of Disciplinary Counsel concerning Respondent’s failure to provide Ms. Oppong’s file. (DX 1 at 1-2.)

36. On July 5, 2018, Respondent filed an informal response to Ms. Spiller-Reddick’s disciplinary complaint (DX 2 at 1-2), which he supplemented on July 20, 2018 (DX 2 at 7-14). In his July 20th supplement he detailed the successful efforts he undertook for Ms. Oppong and Ms. Asante, which he maintained were essentially final at the time he received Ms. Spiller-Reddick’s initial request for the files. (DX 2 at 12, 14.)

37. He also referred to the provisions of his retainer agreement requiring Ms. Oppong to pay his outstanding fees and other costs (DX 2 at 13-14) and stated that, “I await Spiller-Reddick’s check for \$35.55 in order to mail the requested file, request Spiller-Reddick to obtain and provide me with the outstanding legal fee balance of \$350 owed to me by former client Ms. Vida Oppong, . . . and request

Spiller-Reddick to withdraw its [sic] bar complaint against me, especially since I won very difficult cases for my clients . . . .” (DX 2 at 14.)<sup>15</sup>

38. In that supplemental statement, he stated that “I would . . . have provided my client’s file to her if she had to comply with any legal or other obligation in her and/or her daughter’s cases.” (DX 2 at 13-14.)

39. On July 17 and 18, 2018, Respondent advised Ms. Spiller-Reddick that he would send the files to her and requested a reimbursement of \$35.55 for postage. (DX 3 at 1.) She sent him a check for \$40.00 to cover those costs on the same day. (DX 3 at 3-4.)

40. Respondent mailed Ms. Oppong’s and Ms. Asante’s file to Ms. Spiller-Reddick on July 23, 2018. (RX Z; Tr. 222-23.) She received them on July 31, 2018, and filed a letter with Disciplinary Counsel requesting to withdraw her complaint. (DX 4.) Respondent reimbursed Ms. Spiller-Reddick for the overpayment. (RX AE; Tr. 53.)

41. Both Ms. Oppong’s and Ms. Asante’s applications for citizenship were granted. Ms. Asante’s application was granted in March 2018 (DX 5 at 1) and Ms. Oppong’s in May (DX 5 at 2).

42. At the time Ms. Spiller-Reddick learned that Ms. Oppong’s application had been granted, she still had not received Ms. Oppong’s file. (DX 5 at 2.)

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<sup>15</sup> Respondent apparently dropped his request for an additional \$350 when he forwarded the files. (See DX 3; Tr. 224.)



### Respondent's Explanations for the Delay in Releasing the File

43. Respondent attributes some of the delay in releasing the files to an April 4 to April 24, 2018, trip to Africa and to the necessity to finish a brief in the U.S. Court of Appeals for the Ninth Circuit, which was due on July 6. (Tr. 36, 55.) He claims that he did not receive the April 10th letter until he returned from vacation in early May and did not focus on it until after the Ninth Circuit brief was filed. (Tr. 36, 50-51.)

44. His primary explanation for not releasing the file before then was that none of Ms. Spiller-Reddick's earlier requests specifically stated Ms. Oppong was terminating his services. (Tr. 56-57.)

45. He also relied on the requirement in his retainer agreement that Ms. Oppong consult with him, give him the reasons she was terminating and reimburse his fees and cost. (Tr. 40-41.)<sup>16</sup> He thought that Ms. Oppong may have retained Ms. Spiller-Reddick to serve as co-counsel with him, a situation he stated was not unusual where clients contacted new attorneys in immigration matters. (Tr. 56-57.)

46. He also questioned the *bona fides* of Ms. Spiller-Reddick's initial request because it sought both Ms. Oppong's and Ms. Asante's files, but included a G-28 form for Ms. Oppong only. There was, he thought, an open question as to Ms. Asante's status. (Tr. 30-31, 59-60.)

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<sup>16</sup> When asked during the hearing if this clause was consistent with the Rules, Respondent stated, "It's got nothing to do with the Rules of Professional Conduct. This is a contractual agreement." (Tr. at 41.)

### Respondent's Expert Witness

47. Shanta Ramson, Esquire, Respondent's expert witness, supported Respondent's claims as to the inadequacy of Ms. Spiller-Reddick's initial request as to Ms. Asante. She testified that separate G-28s would be required for Ms. Spiller-Reddick to represent both Ms. Oppong and her daughter and that the G-28 for Ms. Oppong was inadequate for her to represent them both. (Tr. 164-65, 175.)

48. She stated that a G-28 filed by a new attorney did not terminate the representation by the client's existing attorney. (Tr. 198-99.) She agreed with Respondent that, at times, clients retain a second immigration lawyer to work with the first lawyer. (*See* Tr. 56, 199-201.)

49. Based on her review of Ms. Oppong's and Ms. Asante's files for the period of December 2017 to July 2018, Ms. Ramson testified that Ms. Oppong's and Ms. Asante's citizenship applications were winding down and there was little risk to them if Respondent withheld their files. (Tr. 189-191.)

50. In support of Respondent's position that he believed he was not terminated until he received the April 10th letter, she testified that, if a client was not at risk, it was not unusual for it to take 90 to 120 days to effect a transfer of files in an immigration case. (Tr. 190-92.)

51. Ms. Ramson admitted that an experienced immigration attorney, under the facts of this case, would have contacted Ms. Spiller-Reddick to determine whether Ms. Oppong had terminated Respondent. (Tr. 209-10.)

### Evidence in Aggravation and Mitigation

52. At the end of the hearing, Disciplinary Counsel introduced an informal admonition issued against Respondent in 2004. The informal admonition was based on Bar Counsel's (now Disciplinary Counsel) finding that Respondent had violated Rules 1.1, 1.3(a) & (c), and 1.4(a) & (b) in connection with the representation of a client in an immigration proceeding. The complainant in the case alleged and Bar Counsel found that Respondent failed to file a brief in a timely manner in an appeal of an Immigration Court's denial of application for asylum and failed to communicate adequately with his client. *See In re Steven Kreiss*, Bar Docket No. 2004-D204 (ODC Letter of Informal Admonition Jan. 6, 2005).

53. In mitigation, Respondent again stressed the positive results he achieved for Ms. Oppong in an extremely difficult case. She had been charged with perjury and marriage fraud, and, through his efforts, her removal proceeding had been terminated and her citizenship application had been granted. He rehearsed his earlier testimony concerning the prospects that that application would be granted and stated that had there been any risk to Ms. Oppong he would have handed over the files the next day. (Tr. 239.)

54. He claimed that Ms. Oppong was a difficult client who would say anything to get what she wants, flipped-flopped and had a tendency to get hysterical. (Tr. 241-42, 250-51.)

55. He reiterated his position that he was not discharged until he received the April 2018 letter, which specifically used the word, "terminate," and maintained

that he released the files within 90 to 120 days, a period of time he argued satisfied Rule 1.16. (Tr. 235-41.)

#### IV. CONCLUSIONS OF LAW

1. Disciplinary Counsel argues that Respondent's failure to deliver Ms. Oppong's files until July 2018, more than six months after Ms. Spiller-Reddick requested them, violated both Rule 1.8(i) and Rule 1.16(d). It maintains that none of Respondent's explanations for the delay excuse his failure to return the file sooner. Respondent's actions were, Disciplinary Counsel asserts, an unlawful attempt to impose a lien on the files. (D.C. Brief at 10-13.)

2. Disciplinary Counsel argues that Respondent violated Rule 8.4(c) when he advised Ms. Spiller-Reddick's office that Ms. Oppong did not want him to release her files. (D.C. Brief at 13-14.) Finally, Disciplinary Counsel asserts that Respondent's request that Ms. Spiller-Reddick withdraw her complaint seriously interfered in the administration of justice and thus violated Rule 8.4(d). (D.C. Brief at 14-15.) Disciplinary Counsel admits that it has not proven a Rule 1.4(a) violation and has withdrawn the charge. (D.C. Brief. at 15.)

3. Respondent argues that Ms. Oppong did not terminate his representation until April 10, 2018, when Ms. Spiller-Reddick's letter stated, for the first time, that Ms. Oppong was "terminating" his representation. (Resp. Brief at 24.) The earlier requests were, he argues, ambiguous. He maintains that the approximate 90-day delay in releasing the file thereafter was justified by his travel and the need to attend to other client matters. (Tr. 234-36.) During the hearing he

maintained that Ms. Oppong was obligated to pay his outstanding fees and copying and mailing costs before she could terminate the relationship. (*See* DX 2 at 13-14.) He appears to abandon the claim for fees in his Proposed Findings and argues only that his request for his fees was not a condition precedent to his returning the files. (Resp. Brief at 21, 25-26.)

4. Ultimately, his defense is that he produced a positive result in a very difficult case and that there was no harm in not releasing the file because he knew, when Ms. Spiller-Reddick first requested the files in January 2018, that Ms. Oppong's citizenship application would be granted. (Resp. Brief at 30, 35-36.)

5. As explained below, the Committee concludes Disciplinary Counsel has established a violation of Rules 1.8(i) and 1.16(d) by clear and convincing evidence, but has failed to bear that burden with respect to the remaining charges. The Committee concludes that Ms. Oppong discharged Respondent as her attorney on January 25, 2018, when Ms. Spiller-Reddick first spoke to Respondent and sent her first letter to him. (FF 18-21.) Any question that his services had been terminated was resolved by her February 6, 2018, letter. (FF 27-28.)

A. Disciplinary Counsel Failed to Establish a Violation of Rule 1.4(a).

6. While Disciplinary Counsel has admitted that it had not established a Rule 1.4(a) violation, the Committee is nonetheless required to address the charge. *See In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003) (Disciplinary Counsel does not have the authority to dismiss charges approved by a Contact Member).

7. 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.” Under that Rule, “[a] client is entitled to whatever information the client wishes about all aspects of the subject matter of the representation . . . .” Rule 1.4, cmt. [2]. In assessing the adequacy of communication, “[t]he guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with (1) the duty to act in the client’s best interests, and (2) the client’s overall requirements and objectives as to the character of representation.” Rule 1.4, cmt. [3].

8. Because Ms. Oppong did not testify, the only evidence supporting this charge is (a) Ms. Spiller-Reddick’s testimony that Ms. Oppong was dissatisfied with Respondent and did not know the status of her case (FF 13), and (b) that Ms. Oppong sought out assistance from and retained Ms. Spiller-Reddick (FF 15). Respondent, however, testified that he kept Ms. Oppong informed and spoke to her in January 2018 to let her know that he had been advised in the November/December timeframe that the USCIS office reviewing her case was recommending that DHS grant her citizenship application. (FF 11-12.)

9. While the approximate two-month delay in communicating that information leaves something to be desired, Disciplinary Counsel has not established that it was unreasonable, particularly since the information was tentative. Admittedly there is some evidence that Respondent did not “fulfill reasonable client expectations for information” but, in the Committee’s view, the evidence falls short

of establishing a violation by clear and convincing evidence. The Committee therefore finds that Disciplinary Counsel's decision to withdraw this charge is reasonable.

B. Respondent Violated Rules 1.8(i) and 1.16(d) by failing to release Ms. Oppong's File Within a Reasonable Period of Time After Ms. Spiller-Reddick Requested It and by Imposing a Lien upon His Client's Entire Case File.

10. Rule 1.16(d) provides in relevant part:

In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i).

Rule 1.8(i) states, in relevant part:

[A] lawyer shall not impose a lien upon any part of a client's files, except upon the lawyer's own work product, and then only to the extent that the work product has not been paid for. This work product exception shall not apply when the client has become unable to pay, or when withholding the lawyer's work product would present a significant risk to the client of irreparable harm.

These two Rules make it clear that attorneys have an obligation to respect client decisions to change counsel and that their right to retain files is severely limited. *See, e.g., In re Hager*, 812 A.2d 904, 920 (D.C. 2002) ("This rule unambiguously requires an attorney to surrender a client's file upon termination of the representation.") (quoting *In re Bernstein*, 707 A.2d 371, 375 (D.C. 1998)); D.C. Bar Legal Ethics Op. 250 (1994) ("it seems clear to us that retaining liens on client files are now strongly disfavored in the District of Columbia, that the work product exception permitting such liens should be construed narrowly, and that a lawyer

should assert a retaining lien on work product relating to a former client only where the exception is clearly applicable and where the lawyer’s financial interests ‘clearly outweigh the adversely affected interests of his former client.’”) (quoting D.C. Bar Legal Ethics Op. 59 (undated)); D.C. Bar Legal Ethics Op. 250 (noting that the comments to Rule 1.8(i) and its ‘legislative history’ emphasize that surrender of all files to the client at the termination of a representation is the general rule, and that the work product exception should be construed narrowly); D.C. Bar Legal Ethics Op. 230 (1992) (“The Comments to Rule 1.8(i) emphasize that it was intended to create only a ‘narrow exception’ to the general rule stated in Rule 1.16(d) . . .”).

11. The record unequivocally establishes that Respondent did not surrender Ms. Oppong’s file in a timely manner. Ms. Oppong discharged Respondent when Ms. Spiller-Reddick requested the files on January 25, 2018; Respondent did not provide them until July 2018, six months later. (FF 18-21, 40.) Ms. Spiller-Reddick reiterated that request five times. (FF 18, 27, 32, 34.) “[A] client should not have to ask twice’ for [her] file.” *In re Thai*, 987 A.2d 428, 430 (D.C. 2009) (per curiam) (quoting *In re Landesberg*, 518 A.2d 96, 102 (D.C. 1986)).

12. None of Respondent’s explanations excuse his delay. His claim that he thought Ms. Oppong might have wanted him to remain on the case because Ms. Spiller-Reddick’s letter and emails did not state explicitly Ms. Oppong was terminating his representation is specious. The letter and emails were unambiguous in requesting all the files and a return of any unearned fees. (FF 19, 21, 27, 32.) There is no mention or implication of a joint representation. Respondent has not



cited any authority for the proposition that a client must use specific language to discharge her attorney and the Committee has not found any. Indeed, such a requirement would be inconsistent with the language, the purpose of the Rules, and both Court and D.C. Bar Legal Ethics Committee opinions.

13. Admittedly, Respondent's concern whether Ms. Asante had retained Ms. Spiller-Reddick has merit, since the January 25th letter included a G-28 for Ms. Oppong only. (FF 22.) Ms. Spiller-Reddick never provided him any evidence that Ms. Asante had retained her. But that concern does not excuse his failure to contact Ms. Spiller-Reddick or Ms. Oppong or both to ascertain Ms. Oppong's intent and to discuss any concerns he might have had as to Ms. Asante.

14. And, even if, as Respondent contends, he spoke to Ms. Oppong and she told him she wanted him to retain the file (and then later changed her mind),<sup>17</sup> his failure to respond to Ms. Spiller-Reddick's subsequent emails and requests for the files violates Rule 1.16(d). Those emails make it clear that Ms. Oppong wanted Ms. Spiller-Reddick to serve as her lawyer. (*See, e.g.*, FF 18-19, 27.) "A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services." Rule 1.16, cmt. [4]. Respondent cannot bury his head in the sand when there is a question whether a client wishes to end a relationship. Rather, he was obligated to ascertain Ms. Oppong's wishes and, if he thought it necessary, to request that he be told specifically that Ms. Oppong was

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<sup>17</sup> *See* ¶¶ 20-22, *infra*.

discharging him. *See Landesberg*, 518 A.2d at 102 (appended Board Report) (ambiguity does not excuse failure to timely release the file); *see also Thai*, 987 A.2d 428; *In re Arneja*, 790 A.2d 552 (D.C. 2002). Even his own expert witness testified that a lawyer who is uncertain whether she is being replaced or whether the client has retained a second lawyer should discuss the question with the client, the new attorney or both. (FF 51.)

15. Similarly, his claim that Ms. Oppong was required under his retainer agreement to contact him, give him the reasons why she wanted to change counsel, pay his outstanding fees, and reimburse his duplicating and mailing cost before she could terminate the relationship cannot be reconciled with Rule 1.16(d) or 1.8(i). *In re Douglass*, 859 A.2d 1069, 1085-86 (D.C. 2004) (per curiam) (appended Board Report). Respondent has the right to seek his unpaid legal fees from Ms. Oppong, but neither Rule 1.16(d) nor 1.8(i) permitted him to withhold the entire file until his conditions were satisfied. The Rules specifically prohibit a lawyer from “impos[ing] a lien upon any part of a client’s files, except upon the lawyer’s own work product, and then only to the extent that the work product has not been paid for.” *See, e.g., Douglass*, 859 A.2d at 1085 (appended Board Report).

16. Respondent’s refusal to release Ms. Oppong’s file also does not fall within this limited exception for unpaid-for work product. *See, e.g., Bernstein*, 707 A.2d at 376. Assuming that Ms. Oppong owed Respondent some money, Respondent’s action was not limited to an aliquot portion of his work product; he did not produce any of the file until July 2018 -- after Ms. Spiller-Reddick filed her

complaint with Disciplinary Counsel. Moreover, much of the file related to work performed in connection with obtaining Ms. Oppong's green card, work which presumably had been paid for.

17. As the D.C. Bar Legal Ethics Committee noted in Opinion 250:

[R]etaining liens on client files are . . . strongly disfavored in the District of Columbia, . . . the work product exception permitting such liens should be construed narrowly, and . . . a lawyer should assert a retaining lien on work product relating to a former client only where the exception is clearly applicable and where the lawyer's financial interests "clearly outweigh the adversely affected interests of his former client."

(quoting D.C. Bar Legal Ethics Op. 59). The limited amount of money that Ms. Oppong may have owed Respondent clearly did not outweigh the potentially adverse effects to Ms. Oppong of withholding the files.<sup>18</sup>

18. The Committee is aware that Respondent believed that, due to his efforts and as a result of his conversations with the DHS staff, Ms. Oppong's application for citizenship would be granted and thus transferring her files may not have been essential. However, as he admitted, Respondent did not know for certain that the application would be granted, as the staff recommendation was still subject to review. (FF 12.) Ms. Spiller-Reddick could have needed those files if USCIS had requested information in those files that was not in the public record. That he

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<sup>18</sup> Nothing in this Report and Recommendation should be construed to express any opinion on whether Respondent may or may not seek to recover any unpaid fees by an appropriate legal action.

was out of the country while Ms. Oppong's application was pending only aggravates his failure to release the files in a timely manner.

19. For the foregoing reasons, the Committee concludes that Disciplinary Counsel has established by clear and convincing evidence that Respondent violated Rules 1.16(d) and 1.8(i) when he failed to give Ms. Oppong's file to Ms. Spiller-Reddick in a reasonable period of time.

C. Disciplinary Counsel Has Not Established by Clear and Convincing Evidence that Respondent Violated Rule 8.4(c) by Engaging in Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation.

20. Disciplinary Counsel bases its Rule 8.4(c) charge on Ms. Kery's testimony that Respondent told her in a telephone conversation in February 2018 that he had spoken to Ms. Oppong and that Ms. Oppong did not want him to release her file to Ms. Spiller-Reddick. Respondent submits that Ms. Oppong told him to keep the file. He asserts that Ms. Kery's testimony is hearsay and that Disciplinary Counsel's failure to call Ms. Oppong creates a presumption that her testimony would be unfavorable, citing *Alexander v. Blackman*, 26 App. D.C. 541 (D.C. 1906). He also argues that neither Ms. Kery nor Ms. Spiller-Reddick testified that Ms. Oppong did not tell him to retain her file. (Resp. Brief at 33.)

21. Even though hearsay is admissible in disciplinary proceedings, it is entitled only to such weight as the evidence can bear. See *In re Cater*, 887 A.2d 1, 6 (D.C. 2005) (finding uncorroborated hearsay insufficient); *In re Kennedy*, 605 A.2d 600, 603 (D.C. 1992) (per curiam). The Committee does not think the testimony here is sufficient to establish Disciplinary Counsel's case. To establish a

violation of Rule 8.4(c), Disciplinary Counsel is required to demonstrate by clear and convincing evidence that Respondent intentionally misrepresented his conversation with Ms. Oppong. *See In re Romansky*, 825 A.2d 311, 315 (D.C. 2003).

22. The circumstantial evidence that might support Ms. Kery's testimony is insufficient to make that showing clearly and convincingly. Respondent called Ms. Oppong after receiving Ms. Spiller-Reddick's requests and he may have convinced her during that call that he should keep the files, if only to serve as co-counsel in the case. He testified that she was mercurial and had a tendency to flip-flop. (FF 54.) Disciplinary Counsel did not adduce any evidence to contradict that testimony. Although the record establishes that Ms. Oppong ultimately decided to stay with Ms. Spiller-Reddick, there is no basis for the Committee to conclude that she did not agree that Respondent could retain the files, as he contends, and then flip-flop after she spoke to him. Accordingly, the Committee concludes that Disciplinary Counsel has not shown by clear and convincing evidence that Respondent violated Rule 8.4(c).

D. Disciplinary Counsel Has Not Demonstrated by Clear and Convincing Evidence that Respondent Violated Rule 8.4(d) by Seriously Interfering with the Administration of Justice.

23. Rule 8.4(d) provides that it is professional misconduct for a lawyer to “[e]ngage in conduct that seriously interferes with the administration of justice.” To establish a violation of Rule 8.4(d), Disciplinary Counsel must demonstrate that: (i) Respondent's conduct was improper, *i.e.*, Respondent either acted or failed to act

when he should have; (ii) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (iii) Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). Rule 8.4(d) is violated if the attorney's conduct causes the unnecessary expenditure of time and resources in a judicial proceeding. *See In re Cole*, 967 A.2d 1264, 1266 (D.C. 2009).

24. Disciplinary Counsel argues, relying principally on *In re Martin*, 67 A.2d 1032, 1051 (D.C. 2014),<sup>19</sup> that Respondent violated the Rule when he requested, in his response to Ms. Spiller-Reddick's complaint, that she withdraw the complaint. Disciplinary Counsel argues that withdrawal of the complaint was a condition precedent to Respondent's release of the file. (D.C. Brief. 14-15; Reply at 4-5.) Respondent denies that he made the dismissal of the complaint a condition of his release of the file. (Tr. 54-55; Resp. Brief at 34-35.)

25. The Committee recognizes that demanding the dismissal of a complaint as a condition to fulfilling an obligation owed under the Rules violates Rule 8.4(d). However, Disciplinary Counsel's argument has two defects. First, it is not clear Respondent demanded the dismissal of the complaint as a condition of returning the file. Respondent agreed to return the file on July 17, 2018. He requested that she dismiss the complaint on July 20, 2018, in his response to the complaint. (FF 35-

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<sup>19</sup> *See also, e.g., In re Green*, Bar Docket Nos. 2012-D106, *et al.* (BPR Aug. 5, 2015), *aff'd on other grounds*, 136 A.3d 699 (D.C. 2016) (*per curiam*); D.C. Bar Legal Ethics Op. 260 (1995).

36, 39.) He did not demand or insist that she dismiss the file as a condition of his releasing the file.<sup>20</sup> Thus, the request to dismiss the complaint came after he had already agreed to release the file.<sup>21</sup> His request lacks the *imprimatur* of a demand; rather, it is more consistent with a view that, since he complied with Ms. Spiller-Reddick's requests for the files, he should not have to face a disciplinary proceeding over his failure to do so.

26. Moreover, as compared with facts in *In re Martin*, where the demand to withdraw was made to the complainant alone, 67 A.3d at 1038, 1052, the request here was made in a filing with Disciplinary Counsel. It strikes the Committee as passing strange to accuse Respondent of interfering with the administration of justice or attempting to do so by making his request in a filing with Disciplinary Counsel. The request may have been unwise, but the Committee cannot find by clear and convincing evidence that Respondent intended to condition his release of the file on the dismissal of the complaint.

27. Second, and perhaps more importantly, Disciplinary Counsel has not demonstrated that Respondent's request "taint[ed] the judicial process in more than a *de minimis* way, . . . [or] potentially had an impact upon the process to a serious and adverse degree." *Hopkins*, 677 A.2d at 61. The request was made after Ms. Oppong's application for citizenship had been granted and she was awaiting a

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<sup>20</sup> Ms. Spiller-Reddick did not testify that Respondent conditioned release of the file on the dismissal of the complaint.

<sup>21</sup> He returned the file on July 23, 2018; it was received on July 31, 2018. Ms. Spiller-Reddick requested the dismissal of her complaint on that date. (FF 40.)

swearing in date. The request, openly disclosed to Disciplinary Counsel, did not delay or interfere with either the prosecution of Ms. Oppong’s citizenship application or this disciplinary matter. In short, it did not taint a judicial proceeding; there was no interference with the judicial process. Accordingly, the Committee concludes that Disciplinary Counsel has not established any violation of Rule 8.4(d).<sup>22</sup>

## V. RECOMMENDED SANCTION

28. Disciplinary Counsel argues that the appropriate sanction in this proceeding is a sixty-day suspension. (D.C. Brief at 18). Respondent argues that no sanction is warranted but if the Committee disagrees, an informal admonition is the appropriate sanction. (Resp. Brief at 36-37). For the reasons described below, the Committee recommends that Respondent be publicly censured and that he be required to take an ethics CLE approved by Disciplinary Counsel.

### A. Standard of Review

29. 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

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<sup>22</sup> The Committee is aware that D.C. Bar Legal Ethics Op. 260 (1995) opined that merely asking that a complaint be dismissed violates Rule 8.4(d). However, the Court in *Martin* did not go that far. In *Martin*, the respondent demanded that clients dismiss complaints in order for him to agree to a settlement. The four decisions from other jurisdictions cited by the Court all required the dismissal of a bar complaint. The Court held: “[b]ecause the settlement agreement required ESI to withdraw its bar complaint against Martin, we sustain the violation of Rule 8.4(d).” 67 A.3d at 1052 (emphasis added). Further, in rejecting the respondent’s claim that the demand to dismiss the complaint did not have a material adverse impact on any proceeding, the Court stressed the potential impact of his demand. *Id.* Had merely asking that the complaint be dismissed been sufficient to support a Rule 8.4(d) violation, that discussion would have been unnecessary.



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); *Martin*, 67 A.3d at 1053; *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 should also not be inconsistent with sanctions imposed in other comparable cases. 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).

30. 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. Discussion

31. The Committee believes that a sixty-day suspension is not consistent with the sanctions imposed in cases involving misconduct comparable to that found above. Disciplinary Counsel's recommendation is based in part on asserted violations of Rules 8.4(c) and 8.4(d) (D.C. Brief at 16), charges that carry with them implications that go to the honesty and integrity of a respondent and his or her qualifications to practice law. The Committee, however, has found that Disciplinary Counsel did not establish those charges by clear and convincing evidence. The charges that were sustained do not give rise to such inferences, and thus, Disciplinary Counsel's "sanction" cases are inapposite. Without the character issues implicated by violations of Rules 8.4(c) and (d), a sixty-day suspension is, in the Committee's view, inconsistent with precedent.

32. Cases in which a suspension has been imposed typically involved more serious Rule violations in addition to not releasing a client file in a timely manner. *See, e.g. In re Hargrove*, 155 A.3d 375 (D.C. 2017) (per curiam) (sixty-day suspension for delaying release of files for over a year, failure to provide competent representation, and interference with the administration of justice); *In re Fitzgerald*, 109 A.3d 619 (D.C. 2014) (one-year suspension for making a false statement in a disciplinary proceeding, failure to respond to disciplinary counsel's request, failure

to return a client file, fraud, and serious interference with the administration of justice).<sup>23</sup>

33. Most of these cases also included some harm to the client. Here, the harm, if any, to Ms. Oppong was minimal. Her citizenship application was granted in due course, through Respondent's efforts, and did not require Ms. Spiller-Reddick to do much more than monitor the status of the application. (FF 42.)<sup>24</sup> Moreover, Respondent had a reasonable basis to believe that Ms. Oppong's application would be granted and thus the risks to her were limited. (FF 11, 49.)

34. That is not to say that Respondent's conduct is acceptable. As his testimony and demeanor during the hearing showed, he was offended that Ms. Oppong wanted to change counsel after he had apparently succeeded in achieving her objectives against difficult odds. This response, though perhaps understandable, does not excuse his refusal to accede to her wishes and turn over her files promptly

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<sup>23</sup> See also *In re Askew*, 96 A.3d 52 (D.C. 2014) (per curiam) (six-month suspension, with all but sixty days stayed, with conditions, for failure to release CJA-client's file as ordered by court, interference with the administration of justice, and failure to provide competent representation); *In re Kitchings*, 857 A.2d 1059 (D.C. 2004) (per curiam) (eighteen-month suspension for neglect (Rule 1.3(a) & 1.3(c)); failure to communicate (Rule 1.4(a) & 1.4(c)) and violations of Rules 1.15(b) and 1.16(d)); *Douglass*, 859 A.2d 1069 (appended Board Report) (ninety-day suspension where the respondent neglected a client's case and then failed to timely return the client's file until she signed an agreement to incur liability for payment of \$750.00 to the respondent and a release from liability); *Bernstein*, 707 A.2d 371 (thirty-day suspension for filing a lawsuit without the knowledge or consent of the client in a jurisdiction where he was not licensed to practice, neglecting the client's case, and refusing to return the client file until the client signed a release of liability).

<sup>24</sup> In addition to monitoring the case, Ms. Spiller-Reddick prepared a travel packet for Ms. Oppong. While she could have used the file, no harm resulted from Respondent's failure to deliver it. Ms. Oppong was able to re-enter the country without a problem. (FF 14.)

to the attorney of her choice. Further, the positive result he obtained was tentative at the time Ms. Oppong chose to seek different representation, and Ms. Spiller-Reddick potentially could have needed the full file if, for example, USCIS requested more information or if a superior official in DHS rejected the staff member's recommendation. (*See* FF 29.) That Respondent's refusal to provide the file to Ms. Oppong's new attorney did not harm Ms. Oppong should not be allowed to obscure the fact that it could have harmed her, nor does it mitigate the seriousness of his conduct.

35. In addition, Respondent's insistence that Ms. Oppong adhere to his retainer terms before he would release her file and his assertion that the lawfulness of his retainer is a contractual and not an ethical issue (FF 33, 45 n.17) demonstrates a lack of appreciation of his obligations under the Rules of Professional Conduct. Respondent's attitude at the hearing, his continued insistence that he did not violate any Rules -- or at least might have violated them -- aggravates his case. Moreover, this is not Respondent's first disciplinary proceeding. He was informally admonished, albeit fifteen years ago, in another immigration case for, *inter alia*, failing to represent his client adequately.

36. While the Committee finds that a suspension is not warranted, it believes that Respondent's misconduct is serious and warrants a more stringent sanction than the minimum sanction of an informal admonition. The record establishes that Respondent was offended that Ms. Oppong sought new counsel and delayed the release of her file to express his displeasure. In addition, his approach

to Disciplinary Counsel's investigation is reminiscent of his conduct in his prior disciplinary proceeding, where he failed to file a brief in a timely manner, and failed to keep his client adequately informed of the scope of his undertaking and developments in a timely manner. His insistence on Ms. Oppong honoring the terms of his retainer before he would release the file and his lack of any remorse evince a cavalier acceptance of his ethical obligations. *See In re Kreiss*, Bar Docket No. 2004-D204 at 3 (Letter of Informal Admonition Jan. 6, 2005).

37. The Committee has not found any prior decision that involves comparable facts. However, several decisions involving failure to turn over client files have resulted in less severe sanctions than suspensions. *See, e.g., In re Kaufman*, 14 A.3d 1136 (D.C. 2011) (per curiam) (public censure for neglect of a client's case and for failing to turn over a client file following termination of the representation, even after four requests by the client to do so); *In re Shepard*, 870 A.2d 67 (D.C. 2005) (public censure and ethics CLE for failure to release files, failure to prosecute litigation, failure to keep client advised of the status of the litigation, no prior violation); *In re Bland*, 714 A.2d 787 (D.C. 1998) (per curiam) (public censure for neglect, violation of Rule 1.16(d), no material prejudice to the client; no prior discipline).

38. This case differs from these in that Respondent is charged with fewer Rule violations, and there is no neglect or lack of competence. Respondent produced a positive result for Ms. Oppong. However, as distinguished from these cases, Respondent has been disciplined before for not dissimilar misconduct. Still more,

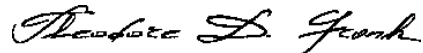
Respondent demonstrated during the hearing a defiant attitude toward the Rules, denying, for example, that the ethical rules were relevant to the provisions in his contractual agreement with clients and testifying with pride that he “absolutely” did not turn over the files when requested. Finally, he demonstrated absolutely no remorse or any concern about the anxiety his refusal to release Ms. Oppong’s file unquestionably created for Ms. Oppong. He maintained throughout the hearing and in his proposed findings that he produced a positive result in what he viewed as a very difficult case, and essentially argued that fact should excuse whatever ethical rules he might have violated.

39. In addition to recommending a public censure, the Committee also believes that Respondent should be required to take an ethics CLE course. It finds that Respondent’s testimony demonstrated an inadequate appreciation of the ethical rules, especially in arguing that his obligation to release Ms. Oppong’s file was a contractual, not an ethical matter. Although he recanted later (Tr. 240-41), his assertion that his contractual rights superseded his ethical obligations is troublesome. The Committee believes a better appreciation of the Rules is required. Accordingly, it recommends that he should be required to take a course in legal ethics.

## VI. CONCLUSION


For the foregoing reasons, the Committee finds that Respondent violated Rules 1.8(i) and 1.16(d) and should receive the sanction of public censure and a requirement to take a legal ethics CLE course approved by Disciplinary Counsel.

### AD HOC HEARING COMMITTEE



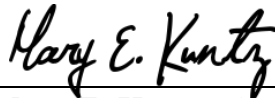
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Theodore D. Frank, Chair



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George Hager, Public Member



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Mary E. Kuntz, Attorney Member