

NO. 2011-0120

ORIGINAL

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION, Relator

vs.

VLAD SIGALOV, Respondent

**RESPONDENT'S OBJECTIONS AND BRIEF IN SUPPORT
THEREOF TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATIONS OF THE BOARD OF
COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

Mark A. Vander Laan (0013297)
Mark G. Arnzen, Jr. (0081394)
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
Phone: 513-977-8200
Facsimile: 513-977-8141
E-Mail: mark.vanderlaan@dinslaw.com
E-Mail: mark.arnzen@dinslaw.com

Attorneys for Respondent Vlad Sigalov

John B. Pinney, Esq.
Grayson Head & Ritchey LLP
Fifth Third Center
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202-3157

Jennifer L. Branch, Esq.
Gerhardstein & Branch Co. LPA
432 Walnut Street, Suite # 400
Cincinnati, OH 45202

Attorneys for Relator Cincinnati Bar Association

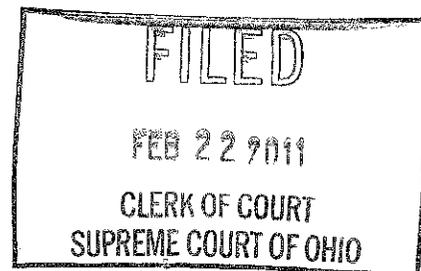


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I. OBJECTIONS

- A. Respondent's Due Process Rights Were Violated When Relator Was Permitted To Reopen Its Case-In-Chief And Charge Respondent With Additional Misconduct Related To The Beriashvili Grievance.
- B. Respondent's Due Process Rights Were Violated When Relator Was Permitted To Amend Its Complaint A Third Time After It Had Already Rested And Respondent Had Already Testified.
- C. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Hurst Grievance.
- D. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Dozier Grievance.
- E. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Beriashvili Grievance.
- F. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Boseman/Hatcher Grievance.
- G. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Khankhnelidze Grievance.
- H. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Adams Grievance.
- I. The Recommended Sanction Of Disbarment Is Far Too Severe And Contrary To The Facts And Law.

II. STATEMENT OF FACTS

A. Background

Relator the Cincinnati Bar Association ("Relator") initiated this proceeding against Respondent Vlad Sigalov ("Respondent") on September 24, 2008. Relator's initial Complaint included allegations of misconduct related to the following grievances: (Count I) Jerry Hurst ("Mr. Hurst"); (Count II) Rezeda Mukhamadiyeva Dozier ("Mrs. Dozier"); and (Count III) Badri Beriashvili ("Mr. Beriashvili"). On April 8, 2009, Relator filed its First Amended Complaint, adding two new counts of misconduct concerning the following grievances: (Count IV) Jayne Vance ("Ms.

Vance");¹ and (Count V) a grievance opened *sua sponte* by Relator regarding Respondent's representation of Anita Boseman, Anitra Boseman, Anasia Boseman (collectively, the "Bosemans"), and Jennifer Hatcher ("Ms. Hatcher"). Finally, on October 1, 2009, Relator filed a Second Amended Complaint, which set forth two more counts of misconduct against Respondent with regard to the following grievances: (Count VI) Koba Khankhnelidze ("Mr. Khankhnelidze"); and (Count VII) Terri Adams ("Ms. Adams").

B. The Facts Underlying The Grievances

1. The Hurst Grievance

Respondent was retained by Mr. Hurst after he was injured in an automobile accident in April 2007. (*See* Relator Ex. No. 109 at CBA 10005). After being retained, Respondent obtained information from Mr. Hurst's medical providers for use in settlement negotiations. (*See* Relator Ex. No. 103). Respondent supplied USAA Insurance (the other driver's insurer) with all of Mr. Hurst's medical specials in his possession in order to negotiate the maximum award possible. (*See id.*).

Based on the medical specials he received, Respondent was able to negotiate a settlement with USAA Insurance in the amount of \$8,200.00. (*See* Relator Ex. No. 105). Respondent contacted Mr. Hurst, who agreed to accept \$2,800.00 in settlement proceeds. (*See* Relator Ex. No. 108 at VS 0520). Mr. Hurst provided Respondent with oral authorization to negotiate the settlement check from USAA Insurance on his behalf. (T.p. 74-75: 25-8; Relator Ex. No. 105).

After receiving the settlement check, Respondent disbursed funds to Mr. Hurst in the amount of \$2,884.00, to Northside Chiropractic ("Northside") in the amount of \$2,658.00, and to the law offices of Respondent in the amount of \$2,658.00. (*See* Relator Ex. No. 106). A Schedule of Expenses and Deductions was also completed by Respondent's office on October 24, 2007,

¹ The Board of Commissioners on Grievances and Discipline properly recommended that Count IV of Relator's Second Amended Complaint concerning the Vance Grievance be dismissed. (*See* Appx. at A-19).

illustrating the disbursement amounts to Northside, Respondent's office, and Mr. Hurst. (*See Relator Ex. No. 107*).

2. The Dozier Grievance

Mrs. Dozier failed to appear at a December 7, 2006 hearing before an Immigration Court and, as a result, she was ordered removed *in absentia* from the United States to Russia. (T.p. 151: 1-2; 442: 7-10). Mrs. Dozier believed that she completed a change of address form, but apparently filed it with the wrong immigration office. (T.p. 442: 16-18; 150-51: 21-1). After she was detained in May 2007, Mrs. Dozier's husband, Timothy Dozier ("Mr. Dozier"), contacted Respondent and requested that he secure his wife's release from the Boone County, Kentucky Detention and Removal Center. (T.p. 146: 10-19). As a result of Respondent's efforts, Mrs. Dozier was eventually released from the custody of Immigration and Customs Enforcement ("ICE"). (T.p. 442-43: 23-2; 146-47: 20-1).

On May 9, 2007, Respondent filed a Motion to Reopen, as well as a Notice of Entry of Appearance with the Immigration Court. (*See Relator Ex. Nos. 203, 204*). Mrs. Dozier, having an approved I-130, was married to a United States citizen and the United States government had approved the marriage. (T.p. 154: 13-21). Unfortunately, the Immigration Court rejected Respondent's May 9, 2007 Motion to Reopen. (T.p. 156-57: 25-18; *Relator Ex. No. 205*). Respondent did not know when he received the rejection notice back from the Immigration Court regarding this Motion. (T.p. 161: 3-6).

Mrs. Dozier met with Respondent at some point in August 2007. (T.p. 448: 13-18). According to Mrs. Dozier, Respondent explained to her that the first Motion to Reopen had been filed incorrectly. (T.p. 456: 3-12). On August 20, 2007, Respondent faxed Mrs. Dozier a Motion to Reopen without any file-stamp. (T.p. 457: 1-2; 458: 11-15). At the time Mrs. Dozier received this

fax, she understood that a second Motion to Reopen had already been filed. (T.p. 458: 19-22). However, Mrs. Dozier also testified that she did not have any discussions with Respondent about him having fixed the Motion to Reopen at some date certain in the past. (T.p. 482-83: 19-8).

On or about September 6, 2007, Respondent filed a second Motion to Reopen on behalf of Mrs. Dozier, as well as a second Notice of Entry of Appearance. (*See Relator Ex. Nos. 206, 207*). The certificate of service on the second Motion to Reopen was dated August 31, 2007. (*See Relator Ex. No. 206 at VS 0646*). This too, however, was rejected by the Immigration Court. (*See Relator Ex. No. 208; T.p. 160: 2-5; see also Relator Ex. No. 209*).

Like the first notice, Respondent did not know when he received the September 6, 2007 rejection letter from the Immigration Court. (T.p. 163-64: 23-6). However, by the middle of September, Respondent was aware that the second Motion to Reopen had in fact been rejected by the Immigration Court. (T.p. 164: 20-23). On September 15, 2007, Attorney Gabriela Thibeau ("Ms. Thibeau") sent a letter to Respondent requesting a copy of his immigration file on Mrs. Dozier. (*See Relator Ex. No. 210*). Respondent forwarded a copy of Mrs. Dozier's file to Ms. Thibeau on September 19, 2007. (*See Relator Ex. No. 212*).

On or about September 26, 2007, Respondent filed a third Motion to Reopen, which was apparently accepted for filing. (*See Relator Ex. No. 213; T.p. 171: 4-12*). This Motion to Reopen was ultimately denied by the Immigration Court on October 3, 2007. (*See Relator Ex. No. 213; T.p. 171: 23-25*). On or about October 18, 2007, Respondent filed a Motion Withdrawing Representation with the Immigration Court. (*See Relator Ex. No. 211*).

3. The Beriashvili Grievance

On August 18, 2006, Respondent filed a Notice of Entry of Appearance as attorney for Mr. Beriashvili with the Immigration Court. (*See Relator Ex. No. 219*). Respondent was retained by Mr.

Beriashvili to assist him with immigration matters related to his application for asylum in the United States. To this end, Respondent and Mr. Beriashvili appeared before the Immigration Court on November 17, 2006 and March 27, 2007. (*See Relator Ex. No. 220 at 000001-2; T.p. 187: 21-23; 190: 19-23*).

At the March 27, 2007 hearing, Respondent and Mr. Beriashvili were informed by the Immigration Court that the hearing would have to be rescheduled due to a malfunctioning television monitor. (T.p. 190-91: 19-2). Respondent was notified that the rescheduled hearing date was set for June 26, 2007. (*See Relator Ex. No. 220 at 000003*). In turn, Respondent sent a letter to Mr. Beriashvili advising him of the date and time of this hearing. (*See Relator Ex. No. 221*).

Despite being notified by Respondent, Mr. Beriashvili failed to appear at the June 26th hearing. (*See Relator Ex. No. 222 at 000002; T.p. 191: 13-16*). Respondent did appear at the hearing and he attempted to contact Mr. Beriashvili, but was unable to do so. (T.p. 191: 18-24). While at the hearing, Respondent spoke with Mr. Beriashvili's brother, David, who also tried to locate Mr. Beriashvili. (*See Relator Ex. No. 223; T.p. 191: 18-24*).² Respondent testified that David called him back and told him that he too was unable to locate Mr. Beriashvili. (T.p. 191: 23-24). Because he failed to appear, Mr. Beriashvili was ordered removed *in absentia*. (T.p. 203: 11-14).

On July 22, 2007, Respondent sent a letter to Mr. Beriashvili enclosing the decision of the Immigration Judge ordering him removed *in absentia*. (*See Relator Ex. No. 225; T.p. 207: 20-22*). Likewise, Jeanette Nelson of Respondent's office also provided Mr. Beriashvili with a copy of the Immigration Judge's decision. (*See Relator Ex. No. 226*). Two to three days later, Mr. Beriashvili and Respondent met to discuss the case. (T.p. 536: 1-6; 539: 4-7). At their meeting, Respondent declined to file a Motion to Reopen Mr. Beriashvili's case based on lack of notice of the June 26th hearing because Respondent had provided notice of that hearing to Mr. Beriashvili. (T.p. 211: 4-9;

² David Beriashvili's phone number is 614-638-5577. (T.p. 194: 12).

14-16). Respondent and Mr. Beriashvili also discussed an appeal, but Mr. Beriashvili said he wanted to think about that course of action. (T.p. 211-12: 24-1).

Mr. Beriashvili was subsequently detained by ICE agents in early March 2008. (T.p. 551-52: 9-16). Mr. Beriashvili's brother, David, requested that Respondent appeal the Immigration Court's removal order. (T.p. 213: 19-25). Pursuant to David Beriashvili's request, on March 4, 2008 Respondent filed an "Appeal of Decision by Immigration Judge with the Board of Immigration Appeals[.]" paying the filing fee himself. (See Relator Ex. No. 228; 231; T.p. 213: 25). After being contacted by Attorney Firooz Namei ("Mr. Namei"), who had been retained to represent Mr. Beriashvili, Respondent filed (1) a Motion to Withdraw Appeal with the Board of Immigration Appeals; and (2) a Motion to Withdraw as Counsel for Mr. Beriashvili. (See Relator Ex. No. 233; 234; T.p. 221: 1-10).

4. The Boseman/Hatcher Grievance

This grievance relates to a civil complaint filed against Respondent in the Hamilton County, Ohio Court of Common Pleas by the Bosemans and Ms. Hatcher. (See Relator Ex. No. 111). Respondent was retained after they were involved in an automobile accident that occurred on October 31, 2002. (T.p. 85: 10-17). With regard to Anita Boseman, Scottsdale Insurance Company ("Scottsdale") offered to settle her claim for \$33,000.00 in October 2004. (T.p. 96-97: 16-2). Scottsdale advised Respondent that \$33,000.00 was its absolute top offer to settle the case. (T.p. 97: 1-2). Respondent agreed to convey the \$33,000.00 settlement offer to Anita Boseman, who ultimately rejected it. (T.p. 97: 7-10; 361: 16-18).

Respondent subsequently filed suit in the Hamilton County, Ohio Court of Common Pleas, Case No. A0408680. (T.p. 87: 15-19; Relator Ex. No. 113). The lawsuit was filed on October 27, 2004 and Mr. Cantrely and Towne Taxi were named as defendants. (See *id.*). Respondent later

dismissed the lawsuit without prejudice, advising Anita Boseman that he had done so because she was still treating for the injuries she sustained. (*See* Relator Ex. No. 116; T.p. 102: 12-16).

While Respondent was able to negotiate settlements for Ms. Hatcher's and Anasia Bosemans' claims, he failed to re-file the lawsuit on Anita Boseman's behalf within the applicable time period. (T.p. 360: 20-25; 435-36: 19-1; Respondent Ex. No. 65). At the time Respondent filed the Entry of Dismissal on April 1, 2006, he mistakenly believed that he had one year within which to re-file the lawsuit. (T.p. 93-94: 24-7). When Respondent realized his error, he immediately sent a letter to Anita Boseman advising her what had happened. (*See* Respondent Ex. No. 65). He also provided her with contact information for his malpractice carrier. (*See* Respondent Ex. No. 66).

5. The Khanknelidze Grievance

Respondent was retained by Mr. Khanknelidze to assist him and his family before the United States Immigration Court. (*See* T.p. 226: 2-5; 582-83: 24-8). By the time Respondent was hired, Mr. Khanknelidze had already filed an application for asylum. (T.p. 226: 2-5; 583: 4-5). On December 8, 2006, Respondent appeared before the Immigration Court and requested the following relief on behalf of Mr. Khanknelidze and his family: (1) asylum, pursuant to Section 208(a) of the Immigration and Nationality Act ("INA"), (2) withholding of removal, pursuant to Section 241(b)(3) of the INA; (3) withholding of removal pursuant to the United Nations Convention against Torture; and (4) in the alternative, voluntary departure pursuant to Section 240(b) of the INA. (*See* Respondent Ex. No. 69 at CBA 0434). A hearing was set for September 25, 2007. (*See id.* at CBA 0435).

Prior to the hearing, Respondent discussed the merits of the case with Mr. Khanknelidze. (T.p. 232: 5-7). During those discussions, Mr. Khanknelidze advised Respondent that he had no documentation to submit to the Court in support of his claims. (T.p. 232: 12-17). At the September

25th hearing, Respondent examined Mr. Khanknelidze concerning an incident that occurred on November 8, 2001 in the Republic of Georgia, which was the basis for Mr. Khanknelidze's asylum application. (*See* Respondent Ex. No. 69 at CBA 0445-0448).

At that time, Mr. Khanknelidze was living in Georgia and working for the Georgian parliament. (*See* Respondent Ex. No. 69 at CBA 0445). According to Mr. Khanknelidze's testimony, he foiled a robbery attempt by another government employee and two other individuals. (*See id.* at CBA 0445-0446). Mr. Khanknelidze was advised that if he interfered with the robbery, he would regret the decision for the rest of his life. (*See id.* at CBA 0446). Despite the threat, Mr. Khanknelidze testified that he activated the alarm and detained the government employee involved in the robbery. (*See id.*).

After this incident occurred, Mr. Khanknelidze testified that he was almost run over by a vehicle as he was returning from work. (*See id.* at CBA 0448). Thereafter, on June 15, 2002, Mr. Khanknelidze's son was kidnapped. (*See id.* at CBA 0449). He was eventually found three days later -- he had been badly beaten and apparently had lost the ability to hear. (*See id.* at CBA 0449-0450). Mr. Khanknelidze did not know who kidnapped his son. (*See id.* at CBA 0452).

In September 2002, three months after his son was kidnapped, Mr. Khanknelidze arrived in the United States, without his family. (*See id.* at CBA 0454). Almost three years later, on August 18, 2005, Mr. Khanknelidze first filed for asylum. (Respondent Ex. No. 70 at CBA 0415). Ultimately, the Immigration Court denied all of Mr. Khanknelidze's claims. (*See id.* at CBA 0420).

6. The Adams Grievance

Respondent was retained by Ms. Adams after she was injured in an automobile accident in November 2007. (T.p. 106: 11-17; Relator Ex. No. 141). Approximately one year later, Ms. Adams was experiencing several financial problems and "simply wanted to get money . . ." (T.p. 106: 11-

17; 114: 18-20). On December 23, 2008, Respondent sent a letter to Ms. Adams stating: "We spoke with the claims adjustor this morning and they offered \$5800 to settle your claim. Please call to discuss." (See Relator Ex. No. 134; T.p. 301: 8-12). Ms. Adams discussed this offer with Respondent by telephone. (T.p. 301: 13-15). An entry in Respondent's call log on January 7, 2009 states: "settled for \$5800; per client and she is to get \$4000." (See Relator Ex. No. 141 at VS 1244).

Respondent proceeded with the settlement because he knew Ms. Adams needed money and she had told him that she wanted to retain \$4,000.00 of the settlement proceeds. (T.p. 114: 18-20). Ms. Adams testified that at the time Respondent represented her, she was being evicted, she was not working, she was under pressure, and she wanted to settle her case. (T.p. 300: 12-23). On January 8, 2009, Ms. Adams received \$4,000.00, Western Hills Chiropractic received \$331.00, and Respondent received \$1,469.00. (See Relator Ex. No. 138; T.p. 298-99: 22-3). At the same time, Ms. Adams executed paperwork at Respondent's office and understood that she was accepting the settlement. (T.p. 307-08: 20-2). On January 13, 2009, the insurance company forwarded the \$5,800.00 settlement check to Respondent. (See Relator Ex. No. 139). Pursuant to the Power of Attorney, Respondent executed the Release on behalf of Ms. Adams and deposited the settlement check. (See Relator Ex. No. 140).

C. The Disciplinary Proceedings

Hearings in this matter were held before a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the "Board") on March 23-24, 2010, April 20, 2010, and June 1, 2010. On March 24th, Relator rested its case.³ Nevertheless, on April 2, 2010, counsel for Respondent received by email Relator's Motion to Recall Respondent in Relator's Case-in-Chief and Add Exhibits ("Motion to Recall"). According to Relator, it needed to recall

³ (T.p. 689: 5-11) (Question: "I assume from what you have told me, subject to your admission of evidence, you are ready to rest." Answer: "We are. And we wish to, obviously, move receipt of exhibits. And we may have some disagreement with regard to a few of them.").

Respondent to inquire about "discrepancies" concerning certain letters Respondent had mailed to Mr. Beriashvili, which Relator claimed (for the first time) were "fabricated." (*See* Motion to Recall at 2). Additionally, Relator filed a Motion to Amend Count V of the Second Amended Complaint to include disciplinary rule violations that were never charged. Before Respondent was given an opportunity to respond, the Panel granted the Motion to Recall on April 7, 2010. (*See* Appx. at A-33 - A-34).

Thereafter, Respondent filed a Motion to Reconsider the Panel's April 7, 2010 Order and Motion to Strike and/or Dismiss Relator's Amendment to the Second Amended Complaint ("Motion to Reconsider") based on the United States Supreme Court's decision in *In re Ruffalo* (1968), 390 U.S. 544. Due to Relator's representation that it was merely seeking to "impeach" Respondent's prior testimony, however, the Panel Chair denied Respondent's Motion to Reconsider. Discovery was then conducted with regard to Relator's new allegation that Respondent had "fabricated" evidence. Additional exhibits and witnesses, both live and by deposition, were presented to the Panel on June 1, 2010. And Respondent was cross-examined again by Relator at that time. The parties then submitted Closing Argument Briefs.

On January 21, 2011, the Board certified its Findings of Fact, Conclusions of Law, and Recommendation ("Findings") to this Court. The Board recommended that Respondent be permanently disbarred from the practice of law in the State of Ohio. (*See* Appx. at A-31). For the reasons set forth below, Respondent respectfully disagrees with the Findings and the Board's analysis.

III. ARGUMENT

- A. **Respondent's Due Process Rights Were Violated When Relator Was Permitted To Reopen Its Case-In-Chief And Charge Respondent With Additional Misconduct Related To The Beriashvili Grievance.**

1. Relator Misled The Panel As To Its Intent In Reopening Its Case-In-Chief To Question Respondent Regarding His June 12, 2007 Letter To Mr. Beriashvili.

In its Motion to Recall, Relator claimed that a June 12, 2007 letter (Relator Ex. No. 221) and a July 22, 2007 letter (Relator Ex. No. 225) that Respondent sent to Mr. Beriashvili were "fabricated." (*See* Motion to Recall at 2). The June 12th letter advised Mr. Beriashvili of his upcoming Immigration Court hearing. (*See* Relator Ex. No. 221).

After the Panel granted Relator's Motion without giving Respondent the opportunity to respond, Respondent filed his Motion for Reconsideration. There, Respondent noted that since 2008, when the initial Complaint was filed, Relator never once claimed that the June 12th and July 22nd letters that Respondent wrote to Mr. Beriashvili were "fabricated." But after Respondent had already testified on March 23, 2010, and after Relator had rested its case, Relator claimed that he had committed this new allegation of misconduct.⁴ Such an attempt to amend a complaint in a disciplinary proceeding after an accused attorney has testified does not comport with due process, as set forth in *In re Ruffalo*.

In its Opposition to Respondent's Motion to Reconsider, Relator claimed that Respondent "mischaracterize[d] the grounds upon which Relator brought its motion to recall [him] as a witness and to amend its complaint." (*See* Relator Opposition to Motion to Reconsider at 1). According to Relator, it was "not adding or attempting to add any new charge of misconduct." (*See id.*). Instead, Relator represented to the Panel that "the entire purpose for recalling Respondent [was] to attack the credibility of his contention that he did in fact give Grievant Beriashvili notice on June 12, 2007 of the Master Hearing . . ." (*See id.*). Relator was "not claiming such falsehood as an additional ground for the imposition of discipline but instead [was] seeking to show it to impeach Respondent's credibility . . ." (*See id.* at 7). Based on Relator's representation that it was merely seeking to

⁴ Relator did in fact rest its case. (*See* T.p. 689: 5-11).

“impeach” Respondent's prior testimony, the Panel Chair denied Respondent's Motion to Reconsider. (T.p. 15-16: 23-5 (April 20, 2010)).

Not surprisingly, Relator then back-tracked on its “impeachment” theory. Through Relator's Post-Hearing Brief, it became apparent that the purpose of the Motion to Recall was precisely what Respondent suspected -- an after-the-fact attempt to charge him with additional counts of misconduct. For example, Relator's Post-Hearing Brief provides:

[Respondent] was dishonest to this tribunal when he fabricated the June 12, 2007 letter to Beriashvili, which was printed on letterhead that did not even exist on June 12, 2007. [Respondent] was dishonest when he fabricated the two versions of the insurance letter to Carol Rogers. [Respondent] was dishonest when he fabricated three additional client letters printed on letterhead that did not exist in June 2007. [Respondent] was dishonest when he testified that all this evidence was true and accurate.

For these reasons there is clear and convincing evidence that [Respondent] has been dishonest and deceitful in violation of Rule 8.4.

(See Relator Post-Hearing Brief at 34) (emphasis added). Relator even argued that "the incredible evidence of fabrication of evidence . . . calls for an even more severe sanction than an indefinite suspension." (See *id.* at 42).

Amazingly, in its Reply to Respondent's Closing Argument Brief, Relator changed its theory again. There, Relator stated:

Respondent is correct when he argues that Relator cannot use the evidence of dishonesty and fabrication of evidence at the hearing to prove a violation of misconduct under Rule 8.4 . . . This evidence should be used to show lack of credibility and aggravating circumstances in support of an increased sanction. Relator withdraws its argument that this evidence supports a finding of misconduct on p. 34 of its Post-hearing brief.

(See Relator Reply to Respondent's Closing Argument Brief at 9). In light of these clear misrepresentations, it is not surprising that the Panel and Board found Respondent guilty of misconduct that was never charged in Relator's Second Amended Complaint.

2. **Respondent Was Charged With Additional Misconduct After He Had Already Testified And Relator Had Already Rested.**

The facts of *In re Ruffalo* are as follows. The Ohio Board of Commissioners on Grievances and Discipline charged an attorney with twelve counts of misconduct. After the accused attorney and one of his witnesses had testified, the Board added a 13th charge of misconduct. Similar to the present case, counsel for the accused attorney stated: "When does the end of these amendments come? I mean the last minute you are here, [counsel for the county Bar Association] may bring in another amendment. I think this gentlemen [petitioner] has a right to know beforehand what the charges are against him and be heard on those charges." *See In re Ruffalo*, 390 U.S. at 546. A motion to strike the 13th charge was denied, but the accused attorney was granted a continuance to respond to the new charge.

The Board found the accused attorney guilty of seven counts of misconduct, one of which was the 13th charge. *See id.* at 547. On review, this Court "found the evidence sufficient to sustain only two charges, one of them being No. 13, but concluded that the two violations required disbarment." *See id.* After the accused attorney had been disbarred from practicing in the Sixth Circuit Court of Appeals based on Ohio's disbarment order, the Supreme Court held that the attorney's due process rights had been violated.

In so holding, the *Ruffalo* court stated that an attorney accused of misconduct is "entitled to procedural due process, which includes fair notice of the charge." *Id.* at 550. According to the Court:

These are adversarial proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.

Id. at 551 (emphasis added) (internal citations omitted).

As set forth above, Relator claimed, after Respondent had already testified, that he committed additional misconduct that was never charged in the Second Amended Complaint. Nevertheless, the Board purported to accept Relator's final version that the "fraudulent letter" was only being used to determine "the credibility of Respondent's testimony as compared to the credibility of Beriashvili's testimony." (*See Appx. at A-18*).

In reality, the record is clear that the Board considered "the testimony on the fraudulent letter" for much more than credibility purposes. There is simply no other explanation when the Board found Respondent guilty of misconduct that was never even alleged by Relator. For example, the Board determined that Respondent violated Prof. Cond. R. 8.4(c) [Honesty] with respect to the Beriashvili Grievance based on the following:

- (1) *his statements to the Bar Association and the Panel that he had provided notice of the new master hearing to Beriashvili when he did not;*
- (2) his not telling Beriashvili, between April and June 2007, that the hearing date had been rescheduled and saying he had not received notice of the hearing date when, in fact, he had received such notice.

(*See Appx. at A-18*) (emphasis added).

But Relator never alleged in its Second Amended Complaint that Respondent violated Prof. Cond. R. 8.4(c) as a result of this conduct. In fact, the only allegation in the Second Amended Complaint that Respondent violated Prof. Cond. R. 8.4(c) was that he lied "to Mr. Beriashvili continually between July 2007 and February 2008 regarding having filed an appeal, and by lying to Mr. Beriashvili when he returned the appeal filing fee regarding the judge being unable to do anything with the appeal." (*See Relator's Second Amended Complaint at ¶ 43(e)*).

The Board's finding in this regard is particularly disturbing in light of the fact that Respondent, in his Closing Argument Brief, referred the Panel to this Court's decision in *Columbus Bar Ass'n v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-5342, 855 N.E.2d 462. In *Farmer*, the Court

dismissed the panel and board's finding that a lawyer misled Disciplinary Counsel when that allegation was not pled in the complaint. *See id.* at ¶ 25.

Nonetheless, the Board somehow found that Respondent deceived the Bar Association, even though such an allegation was never made by Relator in any version of its Complaint. While *Farmer* makes clear that the Board's finding in this case cannot stand, it also solidifies the fact that these Disciplinary Proceedings were tainted by Relator's eleventh-hour allegation that Respondent "fabricated" evidence. Relator's tactics, and the Board's approval of them, violated Respondent's right to notice of the charges which he was called upon to defend.

In addition to charging Respondent with additional misconduct related to the June 12, 2007 letter, Relator also attempted to use this new allegation, which was first raised at the conclusion of the second day of hearings, to seek Respondent's disbarment. And the Board's Findings illustrate that the issue strongly influenced the ultimate recommendation that Respondent be disbarred.⁵ As the Supreme Court stated in *In re Ruffalo*, however, the "absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive[s] [an accused attorney] of procedural due process." *See In re Ruffalo*, 390 U.S. at 552; *see also Cuyahoga County Bar Ass'n v. Judge*, 96 Ohio St. 3d 467, 2002-Ohio-4741 at ¶ 4, 776 N.E.2d 21; *Farmer*, 2006-Ohio-5342 at ¶ 25; *Disciplinary Counsel v. Simecek* (1998), 83 Ohio St.3d 320, 322, 1998-Ohio-92, 699 N.E.2d 933.

But Respondent was never provided with such "fair notice" that the alleged "fabrication" of the June 12, 2007 letter would be litigated and could possibly result in his disbarment. In fact, Relator actually admitted in its Second Amended Complaint that "Respondent did not mail a copy of the notice to Mr. Beriashvili, *but did send him a letter notifying him of the hearing date two weeks*

⁵ (*See Appx.* at A-31) ("The repeated submission of false evidence, the preparation of false documents, and false statements by Respondent greatly exacerbate Respondent's conduct."); (*see id.*) ("The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends, based on his remarkable record of fraud and deceit, that Respondent . . . be permanently disbarred from the practice of law in the State of Ohio.")

before the hearing. Mr. Beriashvili did not receive the letter." (See Second Amended Complaint at ¶ 34) (emphasis added). Obviously, a party's written representations, such as those by Relator that Respondent sent Mr. Beriashvili "a letter notifying him of the hearing date," are binding judicial admissions. See *Faieta v. World Harvest Church* (Dec. 31, 2008), Franklin App. No. 08AP-527, 2008-Ohio-6959 at ¶ 47. And a party "cannot repudiate [its] written admissions at [its] pleasure." *See id.*

After admitting that Respondent did in fact send the June 12th letter, Relator should not have been permitted to claim the opposite was true, especially after it had rested its case and Respondent had already testified. In light of these facts, it is clear that Respondent never contemplated being required to defend against an allegation that he fabricated the June 2007 letters to Mr. Beriashvili.⁶ Simply put, Respondent had no notice that an un-pled, secondary allegation, which was never raised by Relator until after he had already testified, could lead to his disbarment. Moreover, the allegation that Respondent fabricated evidence so permeated the entire Disciplinary Proceedings that it cannot be separated from the Board's consideration of the other charged violations. For these reasons, Respondent's due process rights were violated.⁷

3. Notwithstanding The Violation of Respondent's Due Process Rights, Relator Failed To Prove By Clear And Convincing Evidence That Respondent Fabricated Anything.⁸

⁶ That Respondent was subsequently given additional time by the Panel to respond the "fabrication" allegation has no impact on the due process analysis because Respondent "may well have been lulled 'into a false sense of security . . .'" *See In re Ruffalo*, 390 U.S. at 551, n. 4.

⁷ Relator admittedly did not investigate its new-founded allegation that Respondent fabricated the letters until March 24, 2010, despite the fact that Respondent's entire file (including the letters) was produced years ago. Clearly, "[a] party upon whom the affirmative of an issue rests is bound to give all his evidence in support of the issue in the first instance . . ." *Moore v. Retter* (Ohio App. 10 Dist. 1991), 72 Ohio App. 3d 167, 174, 594 N.E.2d 122.

⁸ Of course, "[i]n disciplinary proceedings, the relator bears the burden of proving the facts necessary to establish a violation." *Ohio State Bar Ass'n v. Reid* (1999), 85 Ohio St. 3d 327, 331, 1999-Ohio-374, 708 N.E.2d 193. Moreover, a disciplinary complaint "must allege the specific misconduct that violates the Disciplinary Rules and relator must prove such misconduct by clear and convincing evidence." *Id.*

According to the Board, the "June 12, 2007 letter submitted by Respondent appears to be a fabrication." (*See Appx. at A-13*). In reaching this conclusion, the Findings state that "[t]he letterhead on this June 12, 2007 letter shows Respondent's law offices to be located at 5055 N. Main Street, Suite 120, Dayton, Ohio." (*See id.*). But according to the Board, "[o]n June 12, 2007, Respondent's office was located at 1927 N. Main Street, Suite 3, Dayton, Ohio." (*See id.*).

Noticeably absent from the Board's faulty analysis, however, is the fact that in March or April 2007, Respondent began looking for a new office address in Dayton. (T.p. 22-23: 24-1 (June 1, 2010)). Likewise, the Board did not discuss the Application for Office Space ("Application") for the 5055 N. Main Street, Dayton, Ohio property that Respondent completed on June 3, 2007. (*See Relator Ex. No. 250*). Also on June 3, 2007, Respondent signed a check in the amount of \$390.00 made payable to Don Wright Realty. (*See Relator Ex. No. 256*). Don Wright Realty served as the leasing agent for the 5055 N. Main Street property. (*See Relator Ex. No. 258 at 7: 18-21*).

The Board also ignored the statements and testimony of Scott Wright ("Mr. Wright"), the property manager for Don Wright Realty. (*See Relator Ex. No. 258 at 7: 2-3*). According to Mr. Wright, "when [Respondent] gave Don Wright Realty [his] application and check in 2007, [he] had [Don Wright Realty's] permission to access the suite to set up [his] new address, install a phone line, etc. prior to the lease being finalized and started." (*See Respondent Ex. No. 94*).

Similarly, Mr. Wright testified that once a tenant provided Don Wright Realty with the Application and check, it would have been standard practice to permit the tenant to access the property to start setting up the new address or phone lines. (*See Relator Ex. No. 258 at 20: 12-20*). Mr. Wright agreed that there was nothing in his file to indicate that his company's standard practice was not followed with regard to Respondent. (*See Relator Ex. No. 258 at 21-22: 23-1*). And, as previously established, the Application and check from Respondent's office to Don Wright Realty

were both dated June 3, 2007. Rather than address this important testimony, the Board simply held that "Respondent did not move to the 5055 N. Main address until the end of June 2007." (*See Appx. at A-13*).

The Board's conclusion that Respondent "did not receive new letterhead from his printer with the 5055 N. Main Street address until August 2007" is also not supported by clear and convincing evidence. (*See Appx. at A-13*). Respondent obtained letterhead from Millennium Printing ("Millennium"), which Richard Vollet ("Mr. Vollet") has owned since April 3, 2007. (*See Relator Ex. No. 259 at 5: 6-14*). When Mr. Vollet was asked whether or not Millennium had printed any letterhead for Respondent between April 3, 2007 and August 13, 2007, he responded: "I would -- give me one minute, please. No. I have no way of knowing if we printed any between those dates." (*See Relator Ex. No. 259 at 17: 7-12*). Later, Mr. Vollet testified that he did not believe Millennium had printed any 24-pound linen bond letterhead for Respondent between April 3, 2007 and August 13, 2007. (*See Relator Ex. No. 259 at 20: 18-24*). The Board failed to address (or even discuss) the inconsistencies in Mr. Vollet's testimony.

The Board also concluded that Millennium delivered invoices with the job. (*See Appx. at A-13, n. 2*). But Mr. Vollet acknowledged that he did not specifically recall any of the invoices contained in Respondent Ex. No. 95, which ranged from May 14, 2007 to December 13, 2007. (*See Relator Ex. No. 259 at 22: 11-14; Respondent Ex. No. 95*). Nor did Mr. Vollet have any specific recollection of when these orders were made by Respondent or delivered by Millennium. (*See Relator Ex. No. 259 at 22: 15-22*).

Mr. Vollet also testified that he did not know the first date that the 5055 N. Main Street, Dayton, Ohio address was printed on Respondent's letterhead. (*See Relator Ex. No. 259 at 27: 4-7*). According to Mr. Vollet, "any number of changes could have occurred between [January 2, 2007 and

September 29, 2009]. [Millennium] do[es] not retain previous sample artwork or press plates once a change has been made to avoid producing the wrong version." (See Respondent Ex. No. 96). Had the Board considered this evidence, it certainly would have reached the conclusion that Relator failed to establish by clear and convincing evidence that the June 12, 2007 letter was fabricated.

In its Findings, the Board also addressed the affidavit of Ms. Carol Rogers ("Ms. Rogers"). According to the Findings, "Respondent produced an affidavit from Carol Rogers proclaiming that she had received a letter from Respondent on June 27, 2007, purportedly on the 5055 N. Main Street letterhead." (See Appx. at A-14). However, the Board found that "[a] problem with the authenticity of the letter attached to Ms. Rogers' affidavit, Rel. Ex. 100, is that there is no fax header." (See *id.* at A-14). But the letter attached to Ms. Rogers' affidavit was faxed to Respondent, who then faxed it to his counsel. (See T.p. 119-20: 19-13 (June 1, 2010)). As the letter included Respondent's fax header to his attorneys, it was redacted by his counsel.⁹ The redacted version was then attached to Ms. Rogers' Affidavit and presented to her for signature.

Regardless, Respondent also produced a second version of the letter attached to Ms. Rogers' affidavit that did include the fax-stamp. Yet, the Board somehow found that "[t]he authenticity of the second version of the letter with the fax header [was] suspect." (See Appx. at A-14). Relying on the testimony of Alexander Rogers, who conceded that he was not sure about "times and dates" in this case, the Findings state:

For some unexplained reason, Respondent brought the second version to Rogers' office in person and gave it to Rogers' son, Alexander Rogers. Respondent asked Alexander Rogers to email this second version which *Respondent had just given him*, back to Respondent. Alexander Rogers emailed the letter to Respondent on the morning of April 20, 2010. Respondent then printed out the email attachment and submitted it to the Panel.

⁹ The unredacted version of the letter showing Respondent's fax stamp to his counsel was also admitted at the hearing. (See Respondent Ex. No. S-103; T.p. 99: 5-17 (June 1, 2010)). Respondent Ex. No. S-103 included a second fax stamp from Alexander Rogers' office. (See Respondent Ex. Nos. S-103, S-104; T.p. 99-100: 5-2) (June 1, 2010)).

(See Appx. at A-14-15; T.p. 97: 23-25 (June 1, 2020)) (emphasis added).

However, the Board's sequence of events is simply not possible. Respondent Ex. No. S-102 clearly shows that Alexander Rogers emailed Respondent the June 27, 2007 letter (with the fax stamp) on the morning of April 20, 2010. (See Respondent Ex. No. S-102). The Board provided no explanation as to how Respondent could have provided that document to Alexander Rogers with instructions to email it to him when Respondent was actually before the Panel in Columbus, Ohio on April 20th.

Respondent also produced Ex. Nos. 97-99, which represent the testimony of three different clients, all of whom stated that they received correspondence from Respondent in June 2007 bearing the 5055 N. Main Street address on the letterhead. (See Respondent Ex. Nos. 97, 98, 99). The Panel believed that these too were not authentic, based solely on the following analysis: "when a straight line is applied to these exhibits, the letterheads appear misaligned with the text of the letter and the copies are not first generation copies." (See Appx. at A-15). Notably, the Board provided no explanation for disregarding the actual affidavit testimony of Respondent's three clients. Moreover, applying a "straight line" across the exhibits is certainly not clear and convincing evidence of anything.

Finally, Relator's version of events concerning when Respondent ordered letterhead (which apparently was adopted by the Board) is simply not logical. Under that theory, Respondent's office did not order any letterhead for its Cincinnati or Dayton offices for four months (April 2007 through July 2007). But the invoices contained in Respondent Ex. No. 95 evidence that Respondent ordered letterhead approximately every two months. (See Respondent Ex. No. 95 at Invoice No. 8526 (August 13, 2007); *see id.* at Invoice No. 8906 (October 25, 2007); *see id.* at Invoice No. 9161

(December 13, 2007)). It is not realistic to believe that Respondent's two busiest offices (Cincinnati and Dayton) could have operated for over four months without ordering any letterhead.

Equally unrealistic is the notion that Respondent would have ordered a stamp and advertising letters for his Dayton office without also ordering letterhead. But, that is precisely what Relator claimed he did. The May 14, 2007 Millennium invoice indicates that a rubber stamp for the Dayton office was purchased by Respondent's office. (*See* Respondent Ex. No. 95 at Invoice No. 8184). Likewise, a May 22, 2007 Millennium invoice indicates that advertising letters were purchased by Respondent for his Dayton address. (*See* Respondent Ex. No. 95 at Invoice No. 8223). While Respondent would not have ordered these materials without also ordering letterhead, he certainly would not have ordered a stamp and advertising letters with his old Dayton address (1927 N. Main Street) when he began looking to move out of that office in March or April 2007. (*See* T.p. 22-23: 24-1 (June 1, 2010)). Simply put, the evidence presented at the hearing does not support the Board's conclusion that Respondent fabricated anything.

B. Respondent's Due Process Rights Were Violated When Relator Was Permitted To Amend Its Complaint A Third Time After It Had Already Rested And Respondent Had Already Testified.

Respondent's due process rights were also violated when the Panel permitted Relator to amend Count V of its Second Amendment Complaint a third time after Relator had rested and Respondent had already been cross-examined. The Panel permitted Relator to amend Count V because "no new factual allegations of misconduct [were] being made against Respondent, but merely specifically stating the rules violated . . ." (*See* Appx. at A-34).

But Relator's Amendment did much more than simply state the applicable disciplinary rules. Indeed, the Amendment actually inserted new allegations of misconduct. For example, Paragraph 55(A) of Relator's Amendment alleged, in part:

DR 1-102(A)(4) [Misconduct] by . . . concealing from Scottsdale Insurance Co. that Anita Boseman had refused to agree to the \$33,000 settlement he had agreed to and that he had filed a lawsuit against the insurance company's insured's on October 27, 2004 . . .

DR 7-101(A)(3) [Representing a Client Zealously], by intentionally prejudicing or damaging the interests of Anita Boseman by dismissing her lawsuit on April 1, 2005, in order to conceal from the insurance company her rejection of the settlement he had previously agreed to with Scottsdale Insurance Co., . . .

These allegations (and others) in Relator's Amendment are nowhere to be found in Count V of the original Second Amended Complaint -- the version Respondent used to prepare his defense.

Ultimately, the Board recommended dismissal of the alleged violations of DR 1-102(A)(5), DR 1-102(A)(6), DR 7-102(A)(1), and DR 7-102(A)(2) because they did not "match any of the Rules of Professional Conduct originally contained in paragraph 55 of Count Five of the Second Amended Complaint."¹⁰ (See Appx. at A-22). Amazingly, however, the Board concluded that Respondent violated DR 6-102(A)(3), 7-101(A)(2), and 7-101(A)(3). (See *id.* at A-21). But these too do not correspond to the Rules of Professional Conduct Relator initially set forth in Count V. And, as previously discussed, due process precluded the Panel and Board from finding violations of disciplinary rules that were never charged in the Second Amended Complaint.

Even more concerning is the Panel's reasoning for allowing Relator to amend Count V of its Second Amended Complaint. The Panel's April 7, 2010 Order, relying on Section 1(A) of the Rules and Regulations, stated that "[t]he Panel and Board shall not be limited to the citation of the disciplinary rule(s) in finding violations based on all the evidence." (See Appx. at A-33). Significantly, however, in *Judge, 2002-Ohio-4741* at ¶ 4, this Court stated:

Presumably, the board found the DR 1-102(A)(4) and (5) violations because evidence showed that respondent had lied to his client and because **Section 1(A) of the Rules and Regulations** Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline purports to allow

¹⁰ That Relator would even attempt to proceed on such allegations illustrates the lengths to which it would go to improperly seek Respondent's disbarment.

the board, with sufficient evidence, to find violations of Disciplinary Rules not cited in the complaint. **We specifically denounced this practice as a violation of due process in *Simecek***

. . . In that case, the board found that Simecek had violated Disciplinary Rules that had not been cited in the complaint. **We held that imposing punishment for an uncharged violation is untenable because the absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprives [an attorney] of procedural due process.**

(emphasis added) (internal citations omitted). Thus, when certain disciplinary rules are not charged in the complaint against the accused attorney, "due process prevents [the Court] from . . . finding these violations." *See id.* at ¶ 1. But that is precisely what the Panel did here.

Moreover, in granting Relator's Motion to Amend, the Panel completely ignored Section 9(D) of the Rules and Regulations. Section 9(D) explicitly states that "[t]he relator may not amend the complaint within thirty days of the scheduled hearing without a showing of good cause to the satisfaction of the panel chair." (emphasis added). Relator made no attempt to show "good cause." Nor could it. The Boseman/Hatcher Grievance, opened *sue sponte* by Relator, was included as Count V of Relator's First Amended Complaint, filed on April 8, 2009. Most (if not all) of the allegations in Count V were simply copied verbatim from the complaint in the Boseman/Hatcher civil litigation. Despite the fact that it had almost one year from the date of filing of the Amended Complaint to the date of the March 23rd hearing in this case, Relator never sought permission from the Panel to include the applicable disciplinary rules in Count V. There was simply no "good cause" to permit Relator to file a third Amended Complaint.

C. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Hurst Grievance.

1. Prof. Cond. R. 1.2(a) [Scope of Representation And Allocation Of Authority Between Client and Lawyer]

According to the Board's Findings, Respondent violated Prof. Cond. R. 1.2(a). (*See Appx. at A-5*). The Board stated that Mr. Hurst "refused to cash the settlement check he received from

Respondent in the amount of \$2,884" and "was upset and stated he did not approve the settlement."
(*See id.* at A-4).

The Board's conclusion that Respondent settled Mr. Hurst's claims without his consent is supported nowhere in the record -- Mr. Hurst never even testified at the hearing. And the fact that Mr. Hurst did not cash the settlement check is hardly evidence of anything. Certainly, it is not clear and convincing evidence that Respondent failed to abide by Mr. Hurst's directive in settling the case.

Instead, the only evidence on this issue came from Respondent, who testified that he signed the settlement check from USAA Insurance "as per authorization from [Mr.] Hurst." (T.p. 74-75: 14-8; Relator Ex. No. 105). Moreover, Respondent's own call log includes an entry on October 16, 2007 which states, in part: "also called client and he is to get \$2800 and is ok . . ." (Relator Ex. No. 108 at VS 0520). This evidence was un rebutted.

Attorney David Salyer ("Attorney Salyer"), who subsequently represented Mr. Hurst, was the only other witness to testify concerning this grievance. He conceded that he had no personal knowledge regarding the discussions Respondent and Mr. Hurst may have had regarding the case. (T.p. 277: 12-16). Nor did Attorney Salyer have any knowledge as to the discussions Mr. Hurst and Respondent may have had about settling Mr. Hurst's claims. (T.p. 277: 20-24). Thus, the Board's conclusion that Respondent failed to abide by Mr. Hurst's purported decision not to settle the matter should be rejected by this Court.

2. Prof. Cond. R. 1.4(a) [Communication]

The Board also found that Respondent violated Prof. Cond. R. 1.4(a). (*See Appx.* at A-6). Relator previously alleged that Respondent "failed to reasonably consult with Mr. Hurst regarding additional medical costs and lost wages incurred, information necessary to accomplish Mr. Hurst's objectives." (*See Second Amended Complaint* at ¶ 13(b)). And the Board found that "Respondent's

settlement demand did not include a claim for lost wages" even though Mr. Hurst "was out of work from April 9, 2007, through June 1, 2007." (*See Appx. at A-3*).

Again, however, there is simply no evidence properly in the record to support such a finding. In fact, there is not even any evidence demonstrating where Mr. Hurst was employed on the date of the accident (if anywhere). Further, Respondent's counsel served a subpoena *duces tecum* on Northside, requesting any and all records regarding Mr. Hurst. (*See Respondent Ex. No. 6 at VS 0426*). The documents produced by Northside provide absolutely no indication that Mr. Hurst missed any work as a result of the injuries he sustained in the automobile accident. (*See Respondent Ex. No. 6*). The Board erred in overlooking this conclusive evidence.

3. Prof. Cond. R. 1.5(c)(2) [Fees and Expenses]

The Board also concluded that Respondent violated Prof. Cond. R. 1.5(c)(2) by failing to prepare and have a client sign a closing statement. (*See Appx. at A-6*). According to the Board, Mr. Hurst "did not sign the schedule of expenses and deductions, although there appears to be some attempt to make it appear so." (*See id. at A-4*). In reality, there is absolutely nothing in the record to support the Board's determination that someone "attempt[ed] to make it appear" as if Mr. Hurst signed the Schedule of Expenses and Deductions. Respondent specifically testified at the hearing that the Schedule of Expenses and Deductions "did not bear Mr. Hurst's signature." (T.p. 76: 22-24).

Respondent also testified, however, that the Schedule of Expenses and Deductions should have been sent to Mr. Hurst, along with a copy of the settlement check. (T.p. 76-77: 8-3). The Board's attempt to imply misconduct on Respondent's part is inappropriate and not supported by the record.

The Board also addressed Relator's claim in its Post-Hearing Brief that Respondent "charged a fee to Hurst that was almost 9% above the agreed 24% amount in the fee agreement." (*See Relator*

Post-Hearing Brief at 8; Appx. at A-6). Like many of its other claims, this too was never alleged by Relator in its Second Amended Complaint. In any event, the record is clear that Respondent forwarded a check in the amount of \$690.00 to Attorney Salyer on March 19, 2010, representing the difference between the 33% percent charged and the 24% set forth in the contingent fee agreement. (See Relator Ex. No. 170 at p. 2; T.p. 14-15: 19-5 (June 1, 2010)). At Attorney Salyer's request, Respondent issued a second check made payable to the Estate of Jerry Hurst (also in the amount of \$690.00) on March 29, 2010. (See Relator Ex. No. 171; T.p. 18-19: 19-4 (June 1, 2010)). Thus, contrary to the Board's finding, Respondent did not charge a "clearly excessive fee."¹¹

D. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Dozier Grievance.

1. Prof. Cond. R. 1.1 [Competence] And Prof. Cond. R. 1.3 [Diligence]

Ultimately, the Board concluded that Respondent violated Prof. Cond. R. 1.1, as well as Prof. Cond. R. 1.3. (See Appx. at A-11). According to the Board, Respondent's Motion to Reopen "contained no meaningful statement of the facts, background, or procedural history[,] . . . contained no legal analysis or legal research[,] . . . did not discuss the necessary legal issues in order to obtain reopening of the case[,] . . . [and] did not contain any of the necessary affidavits or exhibits to support it." (See *id.* at A-7).

However, the evidence admitted at the hearing demonstrates that Respondent did accurately state in the Motion to Reopen that "respondent indicated to counsel that she had sent in a change of address form to the immigration court but never received notice of a December 7, 2006 master hearing." (See T.p. 414: 8-13). Similarly, Mr. Dozier testified that the Motion to Reopen correctly stated that Mrs. Dozier "currently has an approved I-130." (T.p. 414: 18-23). And while no affidavit

¹¹ Furthermore, it is unclear how Respondent's error, which he subsequently corrected, could be considered by the Board for purposes of "mitigation and/or aggravation." (See Appx. at A-6). This issue simply should not have been considered by the Panel, either as an additional charge, as Relator sought, or with regard to "mitigation and/or aggravation."

was attached to the Motion to Reopen, Respondent testified that he has had motions granted in the past without any affidavit. (T.p. 151: 19-25).

Finally, Relator's own expert witness on immigration law, Douglas Weigle ("Mr. Weigle"), testified that even he has received rejection notices from the Immigration Court for errors his office has made in certain filings. (T.p. 621: 10-16). The evidence demonstrates that when Respondent was made aware that his filings had been rejected, he acted diligently in attempting to get a new motion on file on as soon as possible.

2. Prof. Cond. R. 1.16(a)(3) [Declining Or Terminating Representation]

The Board also determined that Respondent violated Prof. Cond. R. 1.16(a)(3). (*See* Appx. at A-11). According to the Board, in mid-August 2007, Mrs. Dozier "told Respondent that she was going to look for another attorney[.]" but Respondent nevertheless "attempted to file a second Motion to Reopen in the Immigration Court." (*See* Appx. at A-9). Then, after Respondent received Ms. Thibeau's request for a copy of Mrs. Dozier's file, "Respondent filed a third defective Motion to Reopen." (*See id.* at A-10). Not surprisingly, the Board, like Relator, cited to no evidence that Mrs. Dozier ever fired Respondent.

Respondent testified that he met with Mrs. Dozier sometime in August 2007 regarding the status of the Motion to Reopen. (T.p. 162-63: 9-2). According to Respondent, Mrs. Dozier did not terminate him as her attorney at that time, nor did Mrs. Dozier ever tell Respondent that she did not want him to represent her in the immigration proceedings. (T.p. 163: 3-10). With regard to Ms. Thibeau's September 15, 2007 letter to Respondent, Respondent testified that when he received the letter, he did not believe that Mrs. Dozier was terminating the attorney-client relationship. (T.p. 167-68: 22-1). In line with Respondent's understanding, neither Ms. Thibeau's letter nor Mrs. Dozier's

executed release provide any mention whatsoever that Respondent was being fired. (*See Relator Ex. No. 210*).

Even more critical was the Board's failure to discuss, evaluate, or address the testimony of the grievant herself, Mrs. Dozier. Mrs. Dozier testified that she never advised Respondent, orally or in writing, "[y]ou are fired." (T.p. 483: 16-18; 483-84: 23-1). In fact, Mrs. Dozier wanted Respondent to remain involved in the case to clarify the situation with the Motion to Reopen. (T.p. 483: 19-22; 487: 7-9). Similarly, Ms. Thibeau also never told Respondent that he was fired -- she never even spoke to Respondent by phone or in person. (T.p. 512: 12-20).

The Board's assumption that Respondent was terminated merely because Mrs. Dozier retained a second attorney is contrary to the facts and law. *See Thayer v. Fuller & Henry, Ltd.*, 503 F. Supp. 2d 887, 893 (S.D. Ohio 2007) (A "client's consultation with another attorney . . . does not necessarily terminate the client's relationship with the original attorney.").¹² In the end, the testimony reveals that Mrs. Dozier actually wanted Respondent to remain in the case to clarify certain issues. (T.p. 483: 19-22). Accordingly, this Court should reject the Board's finding that Respondent violated Prof. Cond. R. 1.16(a)(3).

3. Prof. Cond. R. 8.4(c) [Honesty]

Finally, the Board determined that Respondent violated Prof. Cond. R. 8.4(c). (*See Appx. at A-11*). According to the Board, between May 2007 and August 2007, "Respondent falsely told Dozier that the Motion had been filed, that it was pending and that he was waiting for the court's decision." (*See id.* at A-9). In reality, when Respondent and Mrs. Dozier met in August 2007, Respondent advised her that he had filed the Motion to Reopen, but that it had been rejected by the Immigration Court. (T.p. 455: 10-14). According to Mrs. Dozier, Respondent provided her with a

¹² *See also Mobberly v. Hendricks* (Ohio App. 9 Dist. 1994), 98 Ohio App. 3d 839, 843, 649 N.E.2d 1247 ("In determining when the attorney-client relationship is terminated, the court must point to an affirmative act by either the attorney or the client that signals the end of the relationship.").

copy of the first Motion to Reopen with the "X" through the file-stamp. (T.p. 456: 3-12). Mrs. Dozier's testimony, which the Board apparently ignored, illustrates that Respondent was upfront (and not dishonest) about the first Motion to Reopen being rejected.

Underlying the Board's conclusion that Respondent was dishonest is its finding that "[t]he Immigration Court returned Respondent's Motion to Reopen by mail on May 9, 2007" and "Respondent received it shortly thereafter." (See Appx. at A-8). Contrary to the Board's understanding of the facts, Respondent testified that he did not know when he received the rejection notice back from the Immigration Court. (T.p. 161: 7-14). Respondent stated: "I have no idea when I received it. When I received it, it was filed. And then I called and found out it was rejected and *I immediately went and filed another motion.*" (T.p. 161: 16-19) (emphasis added). Respondent was also unsure when he received notice from the Immigration Court that the second Motion to Reopen had been rejected. (T.p. 164: 3-6).

As the Board stated, "[w]ithout a pending Motion to Reopen on file with the Immigration Court, Ms. Dozier was subject to immediate arrest and deportation." (See Appx. at A-8). While true, Mrs. Dozier testified that ICE agents did not inform her that there was a problem with her case until October 2007. (T.p. 479: 18-20). In fact, at no time during her meetings with the ICE agents in June, July, or August 2007 was Mrs. Dozier ever told that there was an issue with any Motion to Reopen. (T.p. 479: 3-17). That the ICE agents were not aware of any problem with Mrs. Dozier's case (because they did not arrest her) provides further support for Respondent's testimony he did not receive the rejection notice shortly after May 9, 2007, as the Board found. (See T.p. 161: 1-6; 164: 3-6). Thus, the Board's finding that Respondent violated Prof. Cond. R. 8.4(c) is not supported by the evidence.

E. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Beriashvili Grievance.

1. Prof. Cond. R. 1.1 [Competence]; Prof. Cond. R. 1.3 [Diligence]; Prof. Cond. R. 1.4(a) [Communication]; And Prof. Cond. R. 1.2 (a) [Scope Of Representation]

a. Respondent's Alleged Failure To Notify Mr. Beriashvili Of The June 26, 2007 Hearing

The Board concluded that Respondent violated Prof. Cond. R. 1.1, Prof. Cond. R. 1.2(a) and Prof. Cond. R. 1.4(a). (*See Appx. at A-17-18*). These findings apparently arise out of Relator's contention that Respondent was incompetent because he "did not notify [Mr. Beriashvili] of the June 2007 hearing date." (*See Relator Post-Hearing Brief at 32*). Similarly, Relator previously argued that Respondent violated Prof. Cond. R. 1.2(a) and Prof. Cond. R. 1.4(a) because he never actually provided Mr. Beriashvili with notice of the June 26, 2007 hearing. (*See id. at 33-34*).

Despite the Board's finding that Respondent never notified Mr. Beriashvili of the June 26, 2007 hearing, Relator's Second Amended Complaint actually alleged that Respondent "did send [Mr. Beriashvili] a letter notifying him of the hearing date two weeks before the hearing[.]" but "Mr. Beriashvili did not receive the letter." (*See Second Amended Complaint at ¶ 34*). Similarly, Respondent testified that he did send a letter to Mr. Beriashvili informing him of the date and time of the Master Hearing. (T.p. 209-10; 22-18; Relator Ex. No. 221). And Relator's immigration expert, Mr. Weigle, testified that Respondent's letter to Mr. Beriashvili protected the client's interest in knowing that he was required to appear at the Master Hearing. (T.p. 649: 5-10).

The Board also suggests that had Mr. Beriashvili actually been notified of the hearing he surely would have appeared. According to the Findings, Mr. Beriashvili "was keenly aware of how important these hearings were to his case." (*See Appx. at A-13*). Yet, the Board completely ignored Mr. Beriashvili's own testimony that his brother David called him on the evening of June 26th (the date of the hearing) and asked him what had happened at court. (T.p. 574: 3-7; 577: 2-9). Instead of

contacting Respondent immediately after this conversation, Mr. Beriashvili waited until he received a July 22, 2007 letter from Respondent's office enclosing the Immigration Court's removal order. (T.p. 538: 23-25). In other words, Mr. Beriashvili waited almost four weeks from when he allegedly first discovered that he had missed the Master Hearing to contact Respondent.

In order to get his immigration case reopened, Respondent subsequently retained Mr. Namei and Vanessa Teodoro ("Ms. Teodoro") and, under their direction, made an ineffective assistance of counsel claim against Respondent, pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). (T.p. 667: 8-22; 221: 1-7). One of the requirements of making such a claim is that a grievance must be filed against the former attorney -- in this case, Respondent. *See Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); (T.p. 668: 2-4).

Amazingly, this claim was made in such haste that Mr. Beriashvili never even saw the grievance before it was completed on June 28, 2008. (T.p. 558-59: 25-6). In fact, the first time Mr. Beriashvili actually reviewed the grievance was after August 5, 2008. (T.p. 559: 7-9). While Mr. Beriashvili testified that the grievance was "written by [his] brother," he did not even know who completed the actual form. (T.p. 559-60: 21-4). On this point, Mr. Weigle testified that he would never recommend that a client file a grievance before actually reviewing it. (T.p. 673: 8-13). And when filing a *Lozada* motion was necessary, Mr. Weigle "would always have the client sign." (T.p. 672: 18-22).

In light of these facts, it is not surprising that the Beriashvili Grievance included false information. For example, the grievance alleged that Respondent was paid a \$1,000.00 retainer and a total of \$1,700.00. (*See Relator Ex. No. 218 at VS 0027*; T.p. 562-63: 5-1). But at the hearing before the Panel, Mr. Beriashvili admitted that he only paid Respondent \$500.00. (T.p. 562: 12-14). Mr. Beriashvili further conceded that he signed an affidavit presented by Ms. Teodoro while he was

in jail, despite the fact that no translator was present and Ms. Teodoro did not speak Russian. (T.p. 563: 17-23).

Ultimately, the evidence is clear that the only way to get Mr. Beriashvili's case reopened was by filing a grievance against Respondent and asserting an ineffective assistance of counsel claim. This practice of filing meritless grievances against a former attorney merely to provide an applicant with a second chance of succeeding has been abused, as Mr. Weigle admitted at the hearing. (T.p. 668-69: 25-2) ("Question: "And abuses do occur in this area of the law, don't they?" Answer: "I am sure they do.""). Mr. Weigle himself has been subjected to this abuse. (T.p. 669: 3-8).

As a practical matter, if Respondent had in fact failed to give Mr. Beriashvili notice of the hearing, he could have simply filed a Motion to Reopen with the Immigration Court. Respondent testified that Mr. Beriashvili's failure to receive notice of the hearing would have been grounds for a Motion to Reopen. (T.p. 208-09: 24-1). Certainly, filing a Motion to Reopen based on the fact that he (Respondent) had not provided notice of the hearing to Mr. Beriashvili would have been much simpler than fabricating evidence, as the Board found. Neither the record nor common sense provides any support for Board's findings that Respondent failed to give Mr. Beriashvili notice of the June 26, 2007 Master Hearing.¹³

b. Respondent's Filing Of An Appeal And Not A Motion To Reopen

In its Post-Hearing Brief, Relator argued that Respondent violated Prof. Cond. R. 1.1, Prof. Cond. R. 1.2(a) and Prof. Cond. R. 1.3 because he did not file a Motion to Reopen. (*See* Relator Post-Hearing Brief at 32-33). At the same time, Relator claimed that Respondent violated Prof.

¹³ In its Findings, the Board also implied that Respondent should have requested a continuance of the Immigration Court hearing when Respondent did not appear. (*See* Appx. at A-15). But Respondent testified that he was not aware of any "exceptional circumstances" to explain Mr. Beriashvili's failure to appear, nor did he have any "grounds to tell the judge why [Mr. Beriashvili] wasn't there." (T.p. 207: 11-15; 203: 15-18). As a result, Respondent could not even have explained to the Immigration Court what the basis was for requesting a continuance, much less a reason for the Immigration Judge to actually grant the motion.

Cond. R. 1.1 and Prof. Cond. R. 1.3 by filing an appeal of Mr. Beriashvili's removal order. (*See id.*). Parroting these arguments, the Board found that it was "inexplicable how Respondent determined that an appeal was the best course of action." (*See Appx. at A-16*). Similarly, the Board determined that "Respondent took no timely action" to file a Motion to Reopen in this case. (*See id.*).

Absent from the Board's analysis, however, is any discussion of Respondent's testimony that he explained to Mr. Beriashvili that filing a Motion to Reopen based on lack of notice would constitute a misrepresentation to the tribunal. (T.p. 211: 4-9; 209: 9-25). Respondent knew that he had provided notice of the hearing to Mr. Beriashvili through his June 12, 2007 letter. (T.p. 211: 4-9). The June 12th letter was sent to Mr. Beriashvili's address at 1913 Slaton Court, Columbus, Ohio 45235, where Mr. Beriashvili had received correspondence from Respondent's office before. (T.p. 561: 2-11; Relator Ex. No. 221). Based on these facts, Respondent advised Mr. Beriashvili that if he wanted to file a Motion to Reopen, he needed to seek new counsel to do so. (T.p. 215: 19-24).

Mr. Weigle, Relator's own immigration law expert, testified that a lawyer may refuse to offer evidence that he reasonably believes is false. (T.p. 667: 4-7). Not surprisingly, the Rules of Professional Conduct also make clear that an attorney can refuse to submit false evidence to a tribunal, "regardless of the client's wishes." *See Prof. Cond. R. 3.3(a)(3), Comment 5*. Here, Respondent acted in good faith by refusing to file a Motion to Reopen because he reasonably believed that Mr. Beriashvili had notice of the Master Hearing.

The Board also concluded that Mr. Beriashvili "needlessly spent . . . nine months in jail" after he "presented himself to the ICE office and was immediately arrested" on March 3, 2008. (*See Appx. at A-17*). But no action was taken on the case because of Mr. Beriashvili's conduct. Indeed, Respondent and Mr. Beriashvili discussed filing an appeal, but Mr. Beriashvili ultimately decided not to proceed. (T.p. 211-12: 24-1). Respondent testified that Mr. Beriashvili "said he was going to

think about [filing an appeal] and opted against it." (T.p. 211-12; 25-1). According to Respondent, "[t]he reason why I didn't file the appeal . . . is because [Mr. Beriashvili] told me to hold off. So I held off." (T.p. 213: 4-7).

In March 2008, however, David Beriashvili pleaded with Respondent to do something after his brother was detained by ICE (though no fault of Respondent). (T.p. 213: 19-25). Respondent knew the Beriashvili family well and was "grasping at straws," but filed the appeal anyway. (T.p. 213: 19-25). While the basis of the appeal was that Mr. Beriashvili had not received notice of the June 26th hearing, Respondent explained to this Panel that Mr. Beriashvili's family was hysterical and requested that Respondent try something. (T.p. 215: 1-6). For these reasons, the Board erred in finding that Respondent committed misconduct by filing an appeal instead of a motion to reopen.

2. Prof. Cond. R. 8.4(c) [Honesty]

Finally, the Board found that Respondent violated Prof. Cond. R. 8.4(c) based on the following: "(1) his statements to the Bar Association and the Panel that he had provided notice of the new master hearing to Beriashvili when he did not; (2) his not telling Beriashvili, between April and June 2007, that the hearing date had been rescheduled and saying he had not received notice of the hearing date when, in fact, he had received such notice." (*See Appx. at A-18*). As set forth above (pp. 14-15), however, no such misconduct was ever alleged in the Second Amended Complaint. Thus, these allegations cannot form the basis for the Board's conclusion that Respondent violated Prof. Cond. R. 8.4(c). *See In re Ruffalo; Farmer*, 2006-Ohio-5342 at ¶ 25.

F. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Boseman/Hatcher Grievance.

1. DR 1-202(A)(4) [Conduct Involving Dishonesty, Fraud, Deceit, Or Misrepresentation]; DR 7-101(A)(2) [Intentionally Failing To Carry Out A Contract Of Employment Entered Into With A Client For Professional

Services]; And DR 7-101(A)(3) [Intentionally Prejudicing Or Damaging His Client During The Course Of The Professional Relationship]¹⁴

The Board concluded that Respondent violated DR 1-202(A)(4), DR 7-101(A)(2), and DR 7-101(A)(3). (See Appx. at A-21). According to the Board, Respondent agreed to settle Ms. Boseman's and Ms. Hatcher's claims "without consulting or obtaining approval from either Boseman or Hatcher." (See *id.* at A-20). As an initial matter, Ms. Hatcher testified that she was offered \$10,000.00 to settle her case, she considered that offer, and she ultimately agreed to the settlement. (T.p. 435-36: 19-6).

With regard to Anita Boseman's case, it was never settled -- the \$33,000.00 check from Scottsdale was never negotiated and Anita Boseman never signed a release. (T.p. 96: 24-25; *see also* T.p. 97: 9-10). Nor is there any evidence of record that Scottsdale moved to enforce this purported settlement, as it surely would have done had any agreement actually existed. To the contrary, Scottsdale specifically denied that it "entered into a contract with [Anita Boseman] for settlement of her claim for personal injury." (See Exhibit C to Respondent's Motion to Reopen the Record Concerning Count V of the Second Amended Complaint).¹⁵ The Board provided no reasoning whatsoever for disregarding this evidence.

Consistent with the insurance company's position, Respondent testified that Scottsdale advised him that \$33,000.00 was the final offer it was willing to make to settle Anita Boseman's claims. (T.p. 96-97: 16-2). Respondent agreed to convey that settlement offer to Anita Boseman and Scottsdale sent him the settlement check and release. (T.p. 97: 7-9). Respondent informed Anita Boseman of the \$33,000.00 offer on October 7, 2004, the same date that ultimately appeared

¹⁴ With respect to the Board's finding of violations of DR 7-101(A)(2) and 7-101(A)(3), these Disciplinary Rules do not correspond to the Rules of Professional Conduct set forth in Count V of Relator's Second Amended Complaint. And even if they did, the Panel and Board were precluded from finding violations of disciplinary rules that were never charged in the Second Amended Complaint. *See In re Ruffalo*.

¹⁵ On September 10, 2010, the Panel granted Respondent's Motion to the extent that Exhibits A, B, and C "shall be admitted into evidence and become part of the record to be considered by the Panel." (See September 10, 2010 Order).

on the Scottsdale check Respondent received. (T.p. 331: 20-23; Relator Ex. No. 118; 119). However, Anita Boseman rejected the settlement offer in a letter faxed to Respondent on October 8, 2010. (*See* Relator Ex. No. 118 at VS 1525).

According to the Board, however, "Respondent retained the settlement checks and did not want the lawsuit served as it would disturb the 'settlement' that he had agreed to with the insurance company." (*See* Appx. at A-20). The Board also found that "[t]he Court was pressuring Respondent for a settlement entry." (*See id.*). These findings bear a striking resemblance to the speculation advanced by Relator in its Post-Hearing Brief. And like Relator, the Board cited absolutely no evidence in the record to support these conclusions.

The Board also found that "Respondent never informed Boseman that he had dismissed the lawsuit and had extinguished her legal rights to pursue her claims." (*See* Appx. at A-21). However, Respondent testified that he personally informed Anita Boseman that he had dismissed the lawsuit because she was still treating at that time. (T.p. 102: 12-16). When asked whether Anita Boseman gave him express permission to file the Entry of Dismissal, Respondent stated: "She must have if I did it." (T.p. 103: 6-9).

While the Board (like Relator) relied almost exclusively on the testimony of Anita Boseman to support its findings, it is clear that her credibility is sorely lacking. For example, when asked whether she was aware that a lawsuit had ever been filed, Anita Boseman answered: "No." (T.p. 372-73: 22-1). Yet her own daughter, Ms. Hatcher, testified that she learned of the lawsuit Respondent had filed through Anita Boseman. (T.p. 432-33: 23-3).

Even more amazing, on July 16, 2010, Anita Boseman executed an affidavit, which was filed with the Hamilton County, Ohio Court of Common Pleas. (*See* Affidavit of Anita Boseman ("Boseman Affidavit"), attached as Exhibit B to Respondent's Motion to Reopen the Record in this

case). There, Anita Boseman testified: "I did authorize Vlad Sigalov as my agent and attorney to file my personal injury claim in case number A040860 in Hamilton County Common Pleas." (*See id.* at ¶ 1). In the end, even if the Board did not believe Respondent was credible, it was still required to rely on other clear and convincing evidence to support its findings. Anita Boseman's testimony comes nowhere close to meeting this standard.

2. DR 6-102(A)(3) [Neglect Of An Entrusted Legal Matter] And DR 7-101(A)(1) [Intentionally Failing To Seek The Lawful Objectives Of His Client]

The Board also determined that Respondent violated DR 6-102(A)(3) and DR 7-101(A)(1). (*See Appx.* at A-21).¹⁶ In its Amendment to the Second Amended Complaint, Relator charged that Respondent failed to "diligently prosecute the claims of Anita Boseman and Jennifer Hatcher" and allowed Anita Boseman's claim "to be lost by not serving and/or refileing her lawsuit in a timely manner." (*See Relator Amendment to Second Amended Complaint* at ¶ 55(A)(e),(g)).

As previously discussed, Ms. Hatcher was offered \$10,000.00 to settle her case, she considered that offer, and she ultimately agreed to the settlement. (T.p. 435-36: 19-6). Ms. Hatcher executed a release and agreed to honor all outstanding medical expenses. (T.p. 436: 5-9; Relator Ex. No. 122). Relator offered no evidence from which the Board could conclude that Respondent failed to competently prosecute Ms. Hatcher's claims.

With regard to his failure to re-file the lawsuit on behalf of Anita Boseman, Respondent sent a letter to her on June 26, 2008 advising that he had inadvertently allowed the statute of limitations to expire on her claim. (*See Relator Ex. No. 125*). Respondent stated:

I carry ample malpractice coverage and will make a claim with my carrier tomorrow so that you can be compensated for your loss. Rest assured that you will not be prejudiced by my negligence. I will forward a copy of your file to the claims

¹⁶ Even if due process permitted Relator to Amend Count V of its Second Amended Complaint after Respondent had already testified (and it does not), DR 6-102(A)(3) does not even correspond to the Rules of Professional Conduct set forth in Count V of Relator's Second Amended Complaint.

representative from my insurance company who will be in touch with you to reach an amicable resolution.

(*See id.*). Anita Boseman acknowledged that she received this letter. (T.p. 358: 8-10).

Not only did Respondent notify Anita Boseman of his failure to re-file the lawsuit in writing, he also contacted her by phone to advise her of his error. (T.p. 358: 15-17; 359: 8-12). The evidence clearly shows that upon realizing his mistake, Respondent immediately notified both Anita Boseman and his malpractice carrier. For these reasons, the Board erred in finding that Relator had proven misconduct concerning the Boseman/Hatcher Grievance by clear and convincing evidence.

3. Prof. Cond. R. 1.3 [Diligence]; Prof. Cond. R. 1.4(a) [Communication]; Prof. Cond. R. 1.15(d) [Notice]; And Prof. Cond. R. 8.4(c) [Honesty]

Finally, the Board concluded, based on the conduct set forth in its Findings, that Respondent violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a), Prof. Cond. R. 1.15(d), and Prof. Cond. R. 8.4(c). (*See Appx. at A-22*). While the above-mentioned analysis demonstrates that Relator failed to prove any misconduct by clear and convincing evidence (under any authority), the Board's finding that Respondent violated these Rules must be rejected by this Court for a more fundamental reason.

Relator failed to satisfy its burden of proving that Respondent committed any misconduct with regard to the Boseman/Hatcher Grievance after February 1, 2007, the date the Rules of Professional Conduct became effective. Indeed, almost all of the relevant dates cited by the Board in its Findings were long before February 2007. For example, the automobile accident that initiated Respondent's representation of Anita Boseman and Ms. Hatcher occurred in October 2002. (*See Appx. at A-19*). Similarly, Respondent's alleged settlement of Anita Boseman's and Ms. Hatcher's claims with Scottsdale took place in October 2004. (*See id. at A-20*). And the Board itself found that Respondent "dismissed the lawsuit" on April 1, 2005. (*See id.*). Simply put, all of Respondent's alleged misconduct took place prior to the enactment of the Rules of Professional Conduct. On this

basis alone, this Court should reject the Board's findings that Respondent violated any Rule of Professional Conduct.

G. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Khankhnelidze Grievance.

1. Prof. Cond. R. 1.1 [Competence] And Prof. Cond. R. 1.3 [Diligence]

a. Mr. Khankhnelidze's Immigration Court Hearing

The Board found that Respondent violated Prof. Cond. R. 1.1 and Prof. Cond. R. 1.3. (*See* Appx. at A-26). Despite having "ten months to prepare his client, obtain the necessary evidence, and research the law concerning the different legal theories being pursued[,]" the Board concluded that "Respondent undertook no effective action to prepare himself to represent Khankhnelidze at the upcoming hearing." (*See id.* at A-23). Similarly, the Board stated that Respondent did not "prepare Khankhnelidze or his family for testimony before the court." (*See id.* at A-24).

Apparently, the Board ignored the testimony of Respondent that he met with Mr. Khankhnelidze's family on at least two different occasions prior to the hearing. (T.p. 232: 5-7). According to Respondent, "[w]e tried to come up with a game plan as to how we could establish -- because Koba, who was the lead respondent in the case, he didn't have any evidence to produce. So [we] tried to do the best [we] could with what [we] had. And it was just -- it was his testimony." (T.p. 232: 12-17). If Relator didn't believe that Respondent actually met with Mr. Khankhnelidze's family prior to the hearing (as it argued and as the Board found), Relator certainly could have called those individuals as witnesses. But it chose not to do so.

The Board also stated in its Findings that "Khankhnelidze was the only witness called by Respondent to testify [at the hearing] and no corroborating evidence was offered." (*See* Appx. at A-24). Again, however, the Board overlooked the fact that the Immigration Court, at Respondent's

request, accepted that Mr. Khankhnelidze's wife would have corroborated that her son was physically abused by someone. (*See* Respondent Ex. No. 69 at CBA 0457-0458).

Furthermore, the Immigration Court hearing transcript makes clear that Respondent did request corroborating documentation from Mr. Khankhnelidze in advance of the hearing. Mr. Khankhnelidze was questioned on cross-examination whether he had obtained any records of his son's stay in the hospital or the treatment he received. Mr. Khankhnelidze responded:

Well, I do not have in English. I have in Georgian the excerpt from the history, the patient history, and it's a, it's a, it takes a lot of money and it's a bureaucracy over there to get any documents. *I could not quite collect all the documents that I need because of the bureaucracy and all the expenses that is required to have the documents. And also, I don't want to require the documents and to alert anybody that I'm searching for any kind of a document so they might trace back to my location to where I am, and we're terrified, we're afraid to do any of that.* While I'm here, my parents died, my wife's in-laws, my in-laws died also. Only one in-law is left and she is a, that person is handicap and she can't even leave the house.

(*See* Respondent Ex. No. 69 at CBA 0453-0454) (emphasis added). When pressed by the Assistant Chief Counsel for the Department of Homeland Security on whether he actually possessed any documents, Mr. Khankhnelidze responded: "No I don't have." (*See id.* at CBA 0454).

On this point, Relator's own immigration law expert testified that corroborating evidence is usually difficult to obtain and sometimes clients simply do not provide the documentation that the attorney needs to support their applications. (T.p. 676: 16-18; 677: 14-16). According to Mr. Weigle, the reasons Mr. Khankhnelidze provided to the Immigration Court for being unable to obtain supporting documentation, i.e. bureaucracy and expense, are not unusual. (T.p. 677-78: 21-2). In fact, Mr. Weigle testified that it is common for applicants to avoid obtaining documentation from their home countries so as to not alert anyone of their location, as Mr. Khankhnelidze did in this case. (*See* T.p. 678: 3-9). Moreover, Mr. Weigle testified that he places the burden of obtaining corroborating evidence from a client's home country on the client himself. (T.p. 676: 12-15; 8-11).

It is obvious that Mr. Khanknelidze contemplated obtaining whatever supporting documentation he believed existed in Georgia, at Respondent's request, but simply chose not to do so for any number of reasons. Despite the Board's finding that Mr. Khanknelidze "had documents with him that would help support his claim," Mr. Weigle, like Respondent, has never seen any corroborating evidence to date. (T.p. 675-76: 20-1).¹⁷ For these reasons, the Board erred in concluding that Respondent Prof. Cond. R. 1.1 and Prof. Cond. R. 1.3.

b. Mr. Khanknelidze's Appeal

Relying on the testimony of Mr. Weigle, the Board also found that the appeal Respondent filed on behalf of Mr. Khanknelidze was inadequate. (See Appx. at A-24-25). The Board cited Mr. Weigle's testimony that Respondent's brief should have contained "a statement of the issues, which basically in that case were the one-year filing deadline and then the qualification for relief . . ." (See *id.* at A-25 citing Mr. Weigle's testimony).

Conveniently absent from the Board's analysis, however, was Mr. Weigle's testimony that "on the one-year exception I think [Mr. Khanknelidze] had [a] very hard road to deal with on that." (See T.p. 660: 14-16). Mr. Khanknelidze testified that he did not apply for asylum within one year of his entry into the United States because at first he could not bring his family with him and he did not want to leave them alone in Georgia to be terrorized. (See Respondent Ex. No. 69 at CBA 0451). Additionally, Mr. Khanknelidze explained to the Immigration Court that he did not speak English well and was unsure what steps to take to obtain asylum. (See *id.*).

In its opinion, the Immigration Court stated: "Although the Court is certainly understanding and sympathetic of and to these reasons, they do not constitute changed or extraordinary

¹⁷ Like Mr. Beriashvili, Mr. Khanknelidze filed a motion to reopen based on Respondent's alleged ineffective assistance of counsel. The motion to reopen was filed pursuant to *Matter of Compean*, 24 I. & N. Dec. 710 (B.I.A., Jan. 7, 2009). (T.p. 670-71: 20-1). *Matter of Compean* provides that "if the alien's claim is that his former lawyer failed to submit something to the immigration judge or to the Board, *he must attach the allegedly omitted item to his motion.*" *Id.* at 738 (emphasis added). Nevertheless, no corroborating evidence was ever presented to the Panel.

circumstances under the law. They do not justify his late filing." (See Respondent Ex. No. 70 at CBA 0416). Clearly, the Immigration Court considered (and rejected) Mr. Khankhnelidze's justifications for not filing his application within the one year time period. Neither Mr. Weigle, Relator, nor the Board have ever articulated any basis for arguing on appeal that Mr. Khankhnelidze was justified in failing to timely file his asylum application.¹⁸

It is noteworthy that Mr. Khankhnelidze, like Mr. Beriashvili, subsequently retained Ms. Teodoro and Mr. Namei. (T.p. 594: 11-13). Not surprisingly, they advised Mr. Khankhnelidze to file a grievance against Respondent in order to get his case reopened. (T.p. 594: 19-22). Relator's immigration law expert agreed with *Matter of Compean* that "[b]y making the actual filing of a bar complaint a prerequisite for obtaining (or even seeking) relief, it appears that *Lozada* may inadvertently have contributed to the filing of many unfounded or even frivolous complaints." (T.p. 671: 2-8; *Matter of Compean*, 24 I. & N. Dec. at 737).¹⁹ That the grievance in this matter is likewise "unfounded" is evidenced by the admittedly false statements made by Mr. Khankhnelidze.

At his Immigration Court hearing, Mr. Khankhnelidze testified that *two of the three people involved in the robbery were let go*. (T.p. 598: 6-9). But after retaining Ms. Teodoro and Mr. Namei, that story changed. Mr. Khankhnelidze's testimony later was that "[a]fter the three men were convicted and sentenced to several years in prison, my family began to receive terrorizing death threats." (T.p. 597: 21-25) (emphasis added). Further, the Board found, based on the testimony of Mr. Khankhnelidze, that "one or more" of the individuals who attempted to rob the safe where he worked in the Republic of Georgia were members of the KGB. (See Appx. at A-23). Yet, Mr. Khankhnelidze never mentioned any KGB involvement when he testified at the September 25,

¹⁸ Prof. Cond. R. 3.1 prohibits a lawyer from asserting a claim "unless there is a basis in law and fact for doing so that is not frivolous . . ." See Prof. Cond. R. 3.1.

¹⁹ Approximately five months later, *Matter of Compean* was vacated in its entirety. See *Matter of Compean*, 25 I. & N. Dec. 1 (B.I.A., June 3, 2009).

2007 Immigration Court hearing. Without question, Mr. Khankhnelidze's version of events changed dramatically after he retained Mr. Namei and Ms. Teodoro because that was the only way to get his immigration case re-opened.

Ultimately, the record demonstrates that Respondent did the best he could with the information he was provided by his client. As Mr. Weigle conceded, claims for asylum, withholding of removal, and withholding pursuant to the United Nations Convention Against Torture are all difficult to prove. (T.p. 675: 9-15). For these reasons, the Board's finding that Respondent violated the Rules of Professional Conduct should be rejected by the Court.

2. Prof. Cond. R. 1.5(a) [Fees And Expenses]

Finally, the Board found that Respondent charged an excessive fee, in violation of Prof. Cond. R. 1.5(a). (*See* Appx. at A-26). In reaching this conclusion, the Board stated that "[t]he exact amount paid to Respondent as a retainer is in dispute." (*See id.* at A-23). But the only "dispute" was with regard to Mr. Khankhnelidze's own testimony. In his grievance, Mr. Khankhnelidze claimed that he paid Respondent over \$2,000.00. (T.p. 596: 20-24). At the hearing before the Panel, however, Mr. Khankhnelidze admitted that representation was false. (T.p. 596: 20-24; 585: 17-23).

Regardless, the Board's finding "that Respondent did little besides collecting a retainer, showing up for the hearing, and winging it" is not supported by the record. (*See* Appx. at A-24). Respondent met with Mr. Khankhnelidze and his family prior to the hearing, requested documentation to support the claims, and tried the matter to the Immigration Court. That Mr. Khankhnelidze claims were ultimately unsuccessful does not somehow equate to the Board's conclusion that Respondent violated Prof. Cond. R. 1.5(a).

Similarly, the Board failed to set forth any analysis as to how "a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee [charged by Respondent] [was] in

excess of a reasonable fee." *See* Prof. Cond. R. 1.5(a). Nor did the Board ever make any determination as to what a reasonable fee would have been. And although it is not an "absolute requirement" when a layman can understand the issues, "expert testimony is ordinarily required to challenge [the] reasonableness of attorney fees . . ." *Monastra v. D'Amore* (Ohio App. 8 Dist. 1996), 111 Ohio App. 3d 296, 308, 676 N.E.2d 132 (*citing Ramage v. Cent. Ohio Em. Serv.* (1992), 64 Ohio St. 3d 97, 103, 592 N.E.2d 828).²⁰

Here, Relator elicited no testimony, expert or otherwise, to illustrate how the fee charged by Respondent was excessive. That Relator obtained an expert witness on immigration law to testify in this case illustrates that a layman could not understand the complexity of such proceedings. Given the lack of clear and convincing evidence submitted by Relator on this issue, the Board's finding that Respondent charged an excessive fee must be rejected by this Court.

H. There Is No Clear And Convincing Evidence To Support The Board's Findings Of Misconduct With Regard To The Adams Grievance.

1. Prof. Cond. R. 1.15(b)

According to the Board, Respondent violated Prof. Cond. R. 1.15(b), a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose. (*See* Appx. at A-29). Contrary to the Board's understanding of the facts, however, Respondent committed no such misconduct.

Indeed, the funds that were disbursed to Ms. Adams were fees previously earned by Respondent, but not yet withdrawn from his IOLTA account. When asked: "And you maintain a

²⁰ *See also Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194 at ¶ 70, 891 N.E.2d 324 (where this Court found an "unjustified and excessive fee" based in part on expert testimony); *Disciplinary Counsel v. Johnson*, 113 Ohio St.3d 344, 2007-Ohio-2074 at ¶ 36, 865 N.E.2d 873 ("We find, primarily on the strength of relator's expert testimony, that respondent charged and collected clearly excessive fees . . ."); *Cleveland Bar Ass'n Mishler*, 118 Ohio St.3d 109, 2008-Ohio-1810 at ¶ 23, 886 N.E.2d 818 (where "[a] longtime practitioner in employment law provided expert testimony" in a disciplinary case).

minimum of \$20,000 in your IOLTA account of your own funds correct?" Respondent answered: "I try to, yes, I did before." (T.p. 65: 22-24). In this case, Respondent was simply trying to provide the best service he could to a client who desperately needed money. Accordingly, the Court should reject the Board's finding that Respondent violated Prof. Cond. R. 1.15(b).

2. Ms. Adams' Testimony Is Not Credible.

Without Relator ever even making such an allegation, the Board nevertheless held that it "would have found a violation of Prof. Cond. R. 8.4(c) . . . for forging or obtaining forged signatures on those documents purportedly signed by Adams but that were not signed by her." (*See Appx. at A-29*).²¹ Ms. Adams denied that she actually signed the Schedule of Expenses and Deductions, the statement regarding outstanding medical bills, or the Power of Attorney. (*See id. at A-28*). Amazingly, however, the Board failed to even acknowledge Ms. Adams' testimony that she signed some documents at Respondent's office, but claimed not to know what those documents were because they were "covered up." (T.p. 307: 1-9; 338: 20-23).²²

Panel Member Street asked Ms. Adams: "And you didn't ask him what those were?" (T.p. 307: 10-11). Ms. Adams responded: "Yes, I did. He did not respond what those were. None of that." (T.p. 307: 12-14). Even more incredible, when asked whether she removed whatever was covering up the papers, Ms. Adams answered: "No, because he didn't allow me to do that." (T.p. 307: 15-19).

More significant, however, is the Board's failure to acknowledge that one of the documents allegedly forged by Respondent, the Power of Attorney, was actually notarized. (*See Respondent Ex. No. 82*). The Power of Attorney stated, in part: "Terri Adams personally appeared before me

²¹ The Board stated, however, that it was only considering these facts "in connection with mitigation and/or aggravation." (*See Appx. at A-29*).

²² Ms. Adams' testimony demonstrates that Respondent provided her with blank copies of the Schedule of Expenses and Deductions, Power of Attorney, and the form concerning her responsibility for outstanding medical bills, all of which she executed at Respondent's office. (*See T.p. 334-339: 7-9; Relator Ex. No. 169*).

and acknowledged the execution of this power of attorney for the purposes set forth herein." (*See id.*). And Ms. Adams testified that Respondent and a secretary met with her at Respondent's office. (*See T.p. 309: 7-8*).

As this Court has stated, "[a] jurat is not part of an affidavit, but is simply a certificate of the notary public administering the oath, which is *prima facie* evidence of the fact that the affidavit was properly made before such notary." *Stern v. Board of Elections* (1968), 14 Ohio St. 2d 175, 181, 237 N.E.2d 313 (emphasis added). Relator provided nothing to rebut this *prima facie* evidence, which established that Ms. Adams did indeed execute the Power of Attorney. Given these facts, the Board could not have concluded by clear and convincing evidence that Respondent forged Ms. Adams' signature on any document.

The Board also criticized Respondent for settling Ms. Adams' claims even though "she did not agree with the settlement offer . . . [.]" despite the fact that no such charge was made by Relator. (*See Appx. at A-27*). Inexplicably, however, the Board also found that Ms. Adams advised Respondent "that she needed at least \$4,000" and she "returned to Respondent's office to pick up a check . . . in the amount of \$4,000." (*See id.*). Putting aside these glaring inconsistencies, Ms. Adams' testimony is clear that she understood she was accepting the settlement when she received the proceeds and executed the paperwork at Respondent office. (*T.p. 307-08: 20-2*). The Board's attempt to imply misconduct on the part of Respondent for settling Ms. Adams' claim without her knowledge is not supported by the testimony of the grievant herself.

I. The Recommended Sanction Of Disbarment Is Far Too Severe And Contrary To The Facts And Law.

It is well-settled that the "primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Cincinnati Bar Ass'n v. Schwieterman*, 115 Ohio St. 3d 1,

2007-Ohio-4266 at ¶ 34, 873 N.E.2d 810. In determining the proper sanction for an attorney's misconduct, this Court weighs "evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc. Reg.')." *Disciplinary Counsel v. Broeren*, 115 Ohio St. 3d 473, 2007-Ohio-5251 at ¶ 21, 875 N.E.2d 935. The Court also considers "the duties violated, the actual or potential injury caused, the attorney's mental state, and sanctions imposed in similar cases." *See id.*

1. Mitigating And Aggravating Factors

In this case, the Board found that the absence of a prior disciplinary record was the only mitigating factor weighing in favor of Respondent. (*See Appx. at A-29*). With regard to the aggravating factors, the Board found (1) a dishonest or selfish motive; (2) a pattern of misconduct; (3) multiple offenses; (4) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (5) refusal to acknowledge wrongful nature of conduct; and (6) vulnerability of and resulting harm to victims of the misconduct. (*See id. at A-30*).

According to the Board, "[t]he repeated submission of false evidence, the preparation of false documents, and false statements by Respondent greatly exacerbate Respondent's conduct." (*See id. at A-31*). As explained above, however, Relator failed to prove by clear and convincing evidence that Respondent fabricated anything. In reaching its conclusion that Respondent fabricated the letter to Mr. Beriashvili and forged Ms. Adams' signature, the Board ignored critical evidence proving otherwise, including Relator's own admission that Respondent did in fact send the June 12, 2007 to Mr. Beriashvili.

The Board also stated: "[w]hile Respondent did appear to be cooperative and respectful during the proceedings, . . . preparing false evidence and giving false testimony is not providing 'full

and free disclosure' to the Disciplinary Board." (See Appx. at A-29). However, the record reveals that Respondent did, in fact, fully cooperate in the Disciplinary Proceedings. He responded to every request for information submitted by Relator, appeared for deposition, answered every version of Relator's complaint, and appeared at every hearing before the Panel.²³

The Board also found that "Respondent suggesting that the complaint be dismissed with prejudice, and his refusal to acknowledge the wrongful nature of his conduct are further troubling." (See Appx. at A-31). Apparently, the Board believes that Respondent must admit to serious charges when no such misconduct exists. This Court has held, however, that an attorney accused of misconduct is "entitled to zealously defend [himself] . . ." in disciplinary proceedings. See *Cuyahoga County Bar Ass'n v. Wise*, 108 Ohio St. 3d 164, 2006-Ohio-550 at ¶ 30, 842 N.E.2d 35.

Moreover, Respondent did, in fact, acknowledge certain mistakes, contrary to the Board's finding. For example, in the Boseman/Hatcher Grievance, Respondent sent a letter to Anita Boseman advising her that he had inadvertently allowed the statute of limitations to expire on her claim. (See Relator Ex. No. 125). And at the hearing before the Panel, Respondent testified that he "informed [Anita Boseman] of [his] negligence." (T.p. 102: 3). This testimony is completely inconsistent with the Board's finding that Respondent "refus[ed] to acknowledge the wrongful nature of his conduct . . ." (See Appx. at A-30).

2. Sanctions Imposed In Similar Cases

Ultimately, the Board recommended, "based on his remarkable record of fraud and deceit, that Respondent . . . be permanently disbarred from the practice of law in the State of Ohio." (See *id.* at A-31). The Board considered this Court's decisions in *Disciplinary Counsel v. Schiller*, 123 Ohio St.3d 200, 2009-Ohio-4909, 915 N.E.2d 324 and *Toledo Bar Assn. v. Baker*, 122 Ohio St.3d 45,

²³ See *Cleveland Bar Asso. v. Raines* (1988), 37 Ohio St.3d 165, 524 N.E.2d 512 (relying on Board's finding that a failure to answer complaint or appear for evidentiary hearing demonstrated Respondent's "indifference toward the instant proceedings" in recommending that attorney be permanently disbarred).

2009-Ohio-2371, 907 N.E.2d 1172, "where the Supreme Court imposed indefinite suspensions for patterns of misconduct similar to Respondent." (*See id.* at A-30). In recommending that Respondent be disbarred, however, the Board apparently adopted Relator's position that "Respondent's misconduct of fabricating evidence and his lack of truthfulness on the witness stand demand that the sanction go further and be a permanent disbarment." (*See id.* at A-30-31).

But even if Relator had proven by clear and convincing evidence that Respondent was dishonest by fabricating evidence (and it did not), the Board's recommendation that he be permanently disbarred is not warranted. In *Broeren*, this Court found that the attorney failed to conscientiously represent his client, failed to cooperate in the disciplinary proceedings, and failed to exhibit the highest standards of honesty and integrity. *Broeren*, 2007-Ohio-5251 at ¶ 22. Additionally, the Court determined that the attorney did not draft certain letters "at the times he ha[d] asserted." *See id.* at ¶ 17. Nevertheless, the Court only imposed a six month suspension. *See id.* at ¶ 28. The Court stated: "[W]e generally impose a six-month license suspension when a lawyer engages in this type of neglect and dishonesty." *See id.* at ¶ 22

Similarly, in *Cincinnati Bar Ass'n. v. Florez*, 98 Ohio St.3d 448, 2003-Ohio-1730, 786 N.E.2d 875, an attorney neglected his client's case and was dishonest with an investigator. The attorney violated DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation, DR 7-101(A)(2), failing to carry out a contract for professional services, and 6-101(A)(3), neglecting an entrusted legal matter. *See id.* at ¶¶ 5, 8. This Court specifically found that the attorney "fabricated documents and concealed his conduct during an ethical investigation." *See id.* at ¶ 9. Nonetheless, only a six-month suspension was imposed.²⁴

²⁴ This Court has reach similar results in other disciplinary cases. *See Disciplinary Counsel v. Stollings*, 111 Ohio St.3d 155, 2006-Ohio-5345, 855 N.E.2d 479 (six-month suspension imposed on an attorney for misleading a client about the dismissal of the client's case); *Disciplinary Counsel v. Wallace* (2000), 89 Ohio St.3d 113, 2000-Ohio-120, 729 N.E.2d 343 (six-month suspension imposed for an attorney's neglect of a client's case and his attempts to mislead the client about

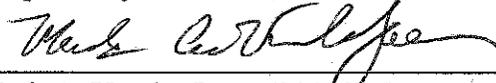
Here, Respondent has no prior discipline and he did in fact fully cooperate in the Disciplinary Proceedings, which spanned a period of several years. With regard to his immigration law practice, Respondent testified that he did not intend to take on any new immigration cases in future and he has not accepted a new immigration for several months. (T.p. 135: 7-12); *see also Disciplinary Counsel v. Harp* (2001), 91 Ohio St.3d 385, 386, 2001-Ohio-48, 745 N.E.2d 1032 (taking steps to reduce caseload can be a mitigating factor). As the purpose of attorney sanctions is to protect the public, Respondent's willingness to reject future immigration cases demonstrates that something less severe than permanent disbarment is appropriate.

IV. CONCLUSION

For any and all of the foregoing reasons, Respondent respectfully requests that this Court reject the Board's Findings and dismiss Relator's Second Amended Complaint in its entirety, with prejudice. In the alternative, Respondent requests that the Court order a new hearing on all charges contained in the Second Amended Complaint due to the repeated violations of Respondent's due process rights. In the event this Court determines that some kind of sanction is warranted, Respondent submits that the penalty recommended by the Board is excessive based on the facts and applicable law.

the dismissal of the case); *Columbus Bar Ass'n. v. Bowen* (1999), 87 Ohio St.3d 126, 1999-Ohio-300, 717 N.E.2d 708 (six-month suspension imposed on an attorney who failed to tell his client that her personal-injury lawsuit had been dismissed until two years after-the-fact).

Respectfully submitted,



Mark A. Vander Laan (0018297)

Mark G. Arnzen, Jr. (0081394)

DINSMORE & SHOHL LLP

1900 Chemed Center

255 East Fifth Street

Cincinnati, Ohio 45202

Phone: 513-977-8200

Facsimile: 513-977-8141

E-Mail: mark.vanderlaan@dinslaw.com

E-Mail: mark.arnzen@dinslaw.com

Attorneys for Respondent Vlad Sigalov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the following by regular U.S. Mail this 22 day of February, 2011:

John B. Pinney, Esq.
Grayson Head & Ritchey LLP
Fifth Third Center
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202-3157

Jennifer L. Branch, Esq.
Gerhardstein & Branch Co. LPA
432 Walnut Street, Suite # 400
Cincinnati, OH 45202

Jonathan W. Marshall, Esq.
Secretary, Board of Commissioners on
Grievances
and Discipline of The Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, OH 43215-3431



APPENDIX

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	
Complaint against	:	Case No. 08-079
Vlad Sigalov	:	Findings of Fact,
Attorney Reg. No. 0070625	:	Conclusions of Law and
Respondent	:	Recommendation of the
Cincinnati Bar Association	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	

This matter was heard on March 23 and March 24, 2010, in Cincinnati, and on April 20, and June 1, 2010, in Columbus, before Panel members Judge John Street of Chillicothe, Alvin R. Bell of Findlay, and Charles E. Coulson of Painesville, Panel Chair. None of the Panel members was a member of the probable cause panel that heard this complaint, or resides in the appellate district from which this matter arose. The hearing was held on the allegations contained in the Second Amended Complaint accepted for filing on October 6, 2009, and the amendments thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Panel finds, by clear and convincing evidence, the following:

BACKGROUND

Respondent was admitted to the practice of law in the State of Ohio in May 1999. Respondent is a sole practitioner and through the use of advertising has established a large-

volume personal injury practice. Respondent takes in approximately 1000 individual claims a year. In 2009 Respondent estimates that his gross settlement revenues were \$2.5 million dollars, and he received fees of approximately \$800,000.

In addition, up to 20% of Respondent's cases deal with immigration matters. Respondent's first language is Russian which has aided him in obtaining immigration cases.

To manage Respondent's high volume practice, Respondent's office staff consists of a secretary, a paralegal, a book-keeper/assistant, and a medical records assistant. At times in the past, Respondent has had one additional non-lawyer employee. Periodically, Respondent has associated with one "Of Counsel."

The Second Amended Complaint contains seven counts alleging violations of the Rules of Professional Conduct and Code of Professional Responsibility. Four of the counts deal with personal-injury matters and three of the counts deal with immigration cases.

COUNT ONE

Matter of Jerry Hurst

On April 9, 2007, Jerry Hurst was injured in an automobile accident. Mr. Hurst presented himself to Northside Chiropractic for medical treatment on April 12, 2007. The next day, April 13, 2007, while Hurst was receiving treatment at Northside Chiropractic, a non-lawyer associate of Respondent had Hurst sign a written contingency fee retainer agreement for his claims for damages sustained as a result of the automobile accident. The contingency fee agreement was for 24% of the amount recovered. Respondent did not provide Hurst with a copy of the written retainer agreement.

At no time in the course of his representation did Respondent ever personally meet with Hurst.

Respondent requested copies of Hurst's medical bills, and on July 2, 2007, Respondent sent a demand letter to the insurance carrier of the other driver. Respondent did not contact Hurst prior to making the settlement demand of \$21,500. The demand submitted by Respondent included medical expenses of \$3,948.29. These medical expenses included miscellaneous receipts totaling \$84.89, Dayton Optometric Center-\$49, Northside Chiropractic-\$2,900, and Miami Valley Hospital-\$914.40.

As a result of the accident, Hurst was out of work from April 9, 2007, through June 1, 2007. Respondent's settlement demand did not include a claim for lost wages.

Prior to the disciplinary hearing, Hurst died and could not testify as to the circumstances surrounding the settlement of his case. Respondent states that in response to his demand to the insurance company, the insurance company offered a settlement of \$8,200. Respondent testified that Hurst orally advised Respondent that he wished to retain \$2,800 of the settlement proceeds for himself. At a 24% contingency fee, Respondent would be entitled to a fee of \$1,968 based upon a settlement of \$8,200.

The settlement check from the insurance carrier contained a full and final release. Respondent, upon receiving the check, deposited it into his IOLTA account without Hurst's signing it. Respondent states that he was given oral authorization to sign Hurst's name and to deposit the settlement check.

The \$8,200 check received by Respondent from the insurance company was dated October 17, 2007. On October 24, 2007, Respondent wrote three checks out of his trust account. One check was to Hurst for \$2,884. The other two checks split the balance between Respondent and Northside Chiropractic, each receiving checks for \$2,658. The three checks totaled \$8,200.

Respondent did not pay any of Hurst's other medical bills, of which Respondent had knowledge, leaving Hurst liable for those bills.

Respondent paid himself a fee of 32.4%, or \$690 more than his retainer agreement permitted.

Respondent prepared a schedule of expenses and deductions dated October 24, 2007, for the \$8,200 settlement. The only deductions listed on that schedule are Respondent's attorney fees of \$2,658 and Northside Chiropractic in the amount of \$2,658. The schedule shows a net settlement to Hurst of \$2,884.

The client, Jerry Hurst, did not sign the schedule of expenses and deductions, although there appears to be some attempt to make it appear so. A date and some unreadable initials or scribbles are inserted onto the form where Hurst would have dated and signed had the agreement actually been presented to him.

Hurst refused to cash the settlement check he received from Respondent in the amount of \$2,884. Hurst was upset and stated he did not approve the settlement. Hurst filed the grievance and retained new counsel to re-open the matter.

Hurst's newly hired legal counsel was attorney David Salyer. Salyer was able to re-open the settlement and obtain an additional payment of \$3,800 from the insurance carrier. In a February 11, 2009 letter, Salyer notified Respondent that Sigalov's original settlement check for \$2,884 issued to Hurst on October 24, 2007, was stale and needed to be replaced. Salyer's letter also notified Respondent that he had over-charged Hurst by \$690. Salyer asked that the Respondent issue a fresh check in the sum of \$2,884 to Hurst and also refund the over-charge of \$690 in fees. In response to the February 11, 2009 letter of attorney Salyer, Respondent only

refreshed the original settlement check for \$2,884. Respondent did not refund the \$690 in over-charged attorney fees at that time.

During cross examination on the opening day of the hearing, March 23, 2010, Respondent acknowledged that he had over-charged Hurst. Respondent testified that he had sent Salyer two checks in response to Salyer's February 11, 2009 letter. Respondent was specifically asked by Relator the following question: "So your testimony is that you had given Mr. Salyer either two checks, one for \$2,884 and another one for the 600 and-sum-odd-dollar difference between the -- or between what you charged and the 24 percent?" Respondent answered: "That is correct." (3/23/10 Tr., 82-83) The clear import of this testimony is that Respondent immediately corrected the "mistake" after he became aware of it from Salyer's February 11, 2009 letter.

Salyer testified that he never received a payment for the over-charged attorney fees in the amount of \$690. Thirteen months later, Respondent did refund the \$690. This refund was sent just two days prior to the opening day of the hearing in this matter in March 2010.

Hurst died without receiving any benefits of any settlement and before the matter could be rectified.

The Panel finds that Respondent violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.2(a) [Scope of Representation and Allocation of Authority Between Client and Lawyer], a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued;

- 2) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; and
- 3) Prof. Cond. R. 1.5(c)(2) [Fees and Expenses], failing to prepare and have a client sign a closing statement prior to the attorney's receipt of compensation in a contingent fee case.

The Panel does not find by clear and convincing evidence that Relator established a violation of Prof. Cond. R. 5.4 [Professional Independence], by engaging in fee sharing with a non-lawyer, to wit, Northside Chiropractic, and recommends its dismissal. No evidence was presented to the Panel that Respondent engaged in fee sharing with Northside Chiropractic other than the fact that Respondent split the balance of the settlement proceeds with it and he made sure its bill was paid to the exclusion of all the other medical bills.

The Panel notes that it would have also found a violation of Prof. Cond. R. 1.5(a) [fees and expenses], because Respondent did collect a clearly excessive fee in this matter. However, as Respondent was not provided notice in the complaint of a charge of an alleged violation of this rule, these facts may only be considered in connection with mitigation and/or aggravation.

COUNT TWO

Matter of Rezeda Mukhamadiyeva, nka Rezeda Dozier

Ms. Dozier, a citizen of Russia, was in the process of obtaining legal status to stay in the United States. During this process, Dozier married an American citizen and gave the Department of Homeland Security her new address. Unfortunately, the change of address was not received by the proper Immigration Office, and Dozier missed a mandatory hearing set for

December 7, 2006. In May 2007, Dozier was arrested and detained. An immigration order of removal from the United States was issued against her for failure to appear at the status hearing.

On May 7, 2007, Dozier's husband hired Respondent to obtain her release from arrest and to file the necessary "Motion to Reopen." Dozier paid Respondent a \$500 retainer. Legally, the only mechanism by which to obtain Dozier's release from detention, keep her free from further detention, and prevent her from being not immediately deported was to file a "Motion to Reopen."

Respondent made phone calls to immigration officials and secured Dozier's release from detention by advising the authorities that he would immediately file a Motion to Reopen. On May 9, 2007, Respondent mailed a pleading titled Motion to Reopen to the Immigration Court. (Rel. Ex. 203)

Respondent's Motion to Reopen contained just three sentences. To call Respondent's Motion to Reopen "bare bones" is to give it too much credit. The motion contained no meaningful statement of the facts, background, or procedural history. The motion contained no legal analysis or legal research. It did not discuss the necessary legal issues in order to obtain the reopening of the case. Further, the Motion to Reopen did not contain any of the necessary affidavits or exhibits to support it. Finally, Respondent's motion was procedurally defective for several reasons including no proof of service on the adverse party.

Respondent testified that at the time he filed the above Motion to Reopen, he knew that to support such a motion he would have to explain why Dozier failed to appear at her December 7, 2006 hearing; that he knew the Immigration Court required he include the underlying legal grounds; and that immigration regulations required evidence or an affidavit be attached to the motion. (3/23/10 Tr. , 150-152; 155-56) Based on this testimony, the Panel can only come to

one of two conclusions. Either Respondent, despite his testimony, did not know of the above requirements and that's why he filed a three-sentence Motion to Reopen, or Respondent intentionally chose to ignore the necessary requirements for such motion.¹

On May 9, 2007, immediately upon its receipt, the Immigration Court refused to file Respondent's Motion to Reopen for his failure to follow the local rules. The court sent the motion back explaining why the motion was not filed. The court enclosed a copy of the local rules. Among the reasons for the rejection of the motion was Respondent's failure to serve a copy of the motion on opposing counsel, the Department of Homeland Security. Respondent's proof of service certified that he caused the United States Immigration Court itself to be served with his Motion to Reopen. Other problems with the motion included the wrong number of copies of the proposed order and the document was not two-hole punched.

The Immigration Court returned Respondent's Motion to Reopen by mail on May 9, 2007. Respondent received it shortly thereafter. Respondent did not fix any of the deficiencies in his Motion to Reopen, nor did Respondent inform Mrs. Dozier that the filing of his Motion to Reopen had been rejected by the court.

The deportation order against Ms. Dozier was still in effect. A pending Motion to Reopen acts as an automatic stay of the deportation order. Without a pending Motion to Reopen on file with the Immigration Court, Ms. Dozier was subject to immediate arrest and deportation.

¹ At the hearing of this matter, Relator called Douglas S. Weigle, an attorney at law whose practice for the last 33 years has been primarily in the area of immigration law. Mr. Weigle was established as an expert in immigration law with no objection from Respondent. Weigle explained the necessary requirements that legal counsel would need to undertake to competently handle Dozier's case. Weigle was asked, "In your opinion, did Mr. Sigalov possess the legal knowledge, skills, thoroughness, and ability to reasonably represent Mrs. Dozier?" Weigle responded "There is nothing here [the record] to indicate that he did." When Weigle was asked "Did Mr. Sigalov apply the requisite knowledge, skills, thoroughness, and preparation reasonably necessary to represent Mrs. Dozier?" Weigle replied, "No." (3/24/10 Tr., 639)

On several occasions between May 2007 and August 2007, Dozier questioned Respondent about the status of the Motion to Reopen. The Respondent falsely told Dozier that the Motion had been filed, that it was pending and that he was waiting for the court's decision. The Respondent did not tell his client that the court refused to file the motion in May 2007.

Sometime in August 2007, Dozier, concerned about the status of her case and not feeling that Respondent was being forthright with her, contacted another immigration attorney, Gabriela Thibeau. Ms. Thibeau checked with the Immigration Court and informed Dozier that the Cleveland Immigration Court had no Motion to Reopen filed on her behalf. That same day, in mid-August 2007, Dozier contacted Respondent, who then acknowledged that initially the Motion to Reopen had been rejected on procedural grounds, but claimed that he had since re-filed the motion. (Rel. Ex. 205) This was another false statement by Respondent. Respondent went on to say that he was going to the Immigration Court in Cleveland the next day, would check on the status of the motion and call Dozier. The next day the Respondent represented to Dozier that he had spoken with the court and confirmed that the revised Motion to Reopen was on file. (3/24/10 Tr., 458-460) This was another false statement.

At this point, Dozier told Respondent that she was going to look for another attorney. Despite this knowledge, in early September Respondent attempted to file a second Motion to Reopen in the Immigration Court. This motion was essentially identical to the first such motion. The second Motion to Reopen received by the court on September 6, 2007, was just as defective as the first motion including a defective proof of service on opposing counsel. The second Motion to Reopen was again returned to Respondent without filing for failure to comply with the requirements of the rules of procedure for proceedings before immigration judges. That same

day, notice of the refusal of the court to file the second Motion to Reopen was sent to Respondent.

Dozier then hired the new immigration lawyer, Gabriela Thibeau. On September 15, 2007, Thibeau sent Respondent a letter informing him that she had been retained in the matter and requested a copy of Respondent's complete file. Respondent sent the file to attorney Thibeau on September 19, 2007.

Inexplicably, on September 26, 2007, after Respondent had received notice that he had been replaced by another lawyer, and before Thibeau could prepare a proper Motion to Reopen containing the necessary requirements, Respondent filed a third defective Motion to Reopen. Unfortunately for Dozier, the Immigration Court accepted this third Motion to Reopen for filing. Under the Code of Federal Regulations a party may file only one Motion to Reopen the proceedings.

Respondent's third Motion to Reopen was just as defective as his first two, but unfortunately, and at great harm to Dozier, the court accepted it for filing. The Immigration Judge, the Honorable D. William Evans, Jr., in his Memorandum and Order, dated October 2, 2007, stated:

...On September 26, 2007, ...[Ms. Dozier], through her attorney [Respondent Sigalov] filed a Motion to Reopen. "A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material," 8C.R.R. §1003.2(c)(1). Since respondent's motion to reopen contains no evidentiary support beyond her attorney's assertions, the Court is precluded from addressing its merits.

Accordingly, it is hereby ordered that the [Ms. Dozier]'s Motion to Reopen is Denied.

Neither Dozier nor her new attorney, Ms. Thibeu, was aware that Respondent had filed the defective third Motion to Reopen.

On October 11, 2007, Thibeu attempted to file a Motion to Reopen on Dozier's behalf. Because the court had accepted and dismissed Respondent's September 26, 2007 third Motion to Reopen, the court was required to dismiss the Motion to Reopen filed by Thibeu.

As a result of Respondent's actions, Dozier was detained by immigration officials and came within hours of being deported from the United States, despite having valid grounds to remain because she had married an American citizen.

Through extraordinary efforts, Thibeu was able to finally get a new Motion to Reopen filed, set for hearing, and she secured the release of Dozier.

The Panel finds that Respondent's conduct as alleged in Count Two violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation to a client;
- 2) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness in representing a client;
- 3) Prof. Cond. R. 1.16(a)(3) [Declining or Terminating Representation], a lawyer shall not represent a client when the lawyer is discharged; and
- 4) Prof. Cond. R. 8.4(c) [Honesty], conduct involving dishonesty, fraud, deceit or misrepresentation.

COUNT THREE

Matter of Badri Beriashvili

At all times relevant to this matter, Mr. Beriashvili lived at the same address in Columbus, Ohio. Beriashvili speaks very little English and his communication with Respondent was in Russian. In August 2006, Beriashvili paid Respondent a retainer to represent him in an asylum and removal immigration case in the Arlington, Virginia Immigration Court.

On August 18, 2006, Respondent filed a notice of appearance notifying the Immigration Court in Virginia that he was representing Beriashvili. From the time of the filing of this notice of appearance, the Court sent all notices of hearings to Respondent only.

On November 17, 2006, Beriashvili and the Respondent attended the first master hearing in Beriashvili's case. On March 27, 2007, Beriashvili and Respondent attended a second master hearing. For this master hearing, the Respondent and Beriashvili appeared at the Cleveland Immigration Court, which had video conferencing with the Immigration Court in Arlington, Virginia. Beriashvili and Respondent learned that the hearing could not go forward as the video equipment was not operating. No master hearing took place on that date as a result.

Respondent claims that while at the Cleveland Immigration Court with Beriashvili, a new master hearing date was set for June 26, 2007. Beriashvili disagrees and states that no new hearing date was set at that time. The immigration expert witness, Douglas Weigle, testified it would have been impossible on March 27, 2007 to set the new master hearing date, as Respondent claims, due to the fact that the video equipment was inoperable. The master hearing date would have to have been set by the Immigration Court in Arlington, Virginia. The immigration expert witness substantiates Beriashvili's version of events.

The notice of the new hearing was prepared on March 27, 2007, and sent to Respondent by the Immigration Court in Arlington, Virginia. Respondent received the notice setting the date

of June 26, 2007, for the master hearing. The court only notified Respondent of the new hearing date and time.

Beriashvili was keenly aware of how important these hearings were to his case. Between April and June 2007 Beriashvili called Respondent on several occasions seeking information on the rescheduled hearing date. Beriashvili testified that with every conversation with Respondent, he was informed that Respondent had not heard anything from the court.

Respondent did not mail a copy of the court's hearing notice to Beriashvili. Respondent testified that it was his practice to notify clients by letter of all court dates. Beriashvili never received a letter from the Respondent informing him of the rescheduled June 26, 2007 hearing.

In an attempt to show Relator and the Panel that Respondent had notified Beriashvili of the June 26 hearing, Respondent produced a copy of a letter written on his letterhead and dated June 12, 2007. This letter purports to advise Beriashvili of the June 26 hearing date and time. (Rel. Ex. 221) The copy of this June 12, 2007 letter submitted by Respondent appears to be a fabrication.

The letterhead on this June 12, 2007 letter shows Respondent's law offices to be located at 5055 N. Main Street, Suite 120, Dayton, Ohio. On June 12, 2007, Respondent's office was located at 1927 N. Main Street, Suite 3, Dayton, Ohio. Respondent did not move to the 5055 N. Main address until the end of June 2007 and did not receive new letterhead from his printer with the 5055 N. Main Street address until August 2007. The copy of this June 12, 2007, letter was apparently prepared at a later time to try to cover up Respondent's failure to notify Beriashvili of this very important hearing date.²

²Respondent's printer produced all invoices for printing Respondent's letterhead from April 2007 thru December 2007. Respondent produced no invoices. The first invoice for the new letterhead containing the 5055 N. Main Street address is dated August 13, 2007. Respondent's printer stated that invoices are delivered with the job.

In fact, a letter is found in Respondent's files in which an employee of Respondent, Jeanette Nelson, writes to Beriashvili on July 22, 2007, over one month later, enclosing a copy of the Immigration Judge's decision. This July 22, 2007 letter to Beriashvili contains the 1927 N. Main Street letterhead address. (Rel. Ex. 226).³

When the discrepancy of the June 12, 2007 letter was revealed at the hearing, Respondent undertook efforts to try to establish the validity of the letter being written in June 2007 using the 5055 N. Main Street letterhead. To do this, Respondent produced an affidavit from Carol Rogers proclaiming that she had received a letter from Respondent on June 27, 2007, purportedly on the 5055 N. Main Street letterhead. Ms. Rogers's affidavit stated the letter was received from Respondent by fax. Respondent testified that the letter attached to the affidavit was provided by Ms. Rogers.

A problem with the authenticity of the letter attached to Ms. Rogers's affidavit, Rel. Ex. 100, is that there is no fax header. Respondent next submitted a second version of the same June 27, 2007 letter, this one showing the fax header at the top. This version was submitted to prove that Ms. Rogers received the fax on "06/27/2007" as printed on the fax header (Rel. Ex. 101). Contrary to Rogers's affidavit, the first version of June 27, 2007 letter did not come from her own files.⁴ Instead, it came from Respondent. The authenticity of the second version of the letter with the fax header is suspect. For some unexplained reason, Respondent brought the

³The letter to Mr. Beriashvili (Rel. Ex. 226) with the 1927 N. Main Street address states "Enclosed please find a copy of the decision of Immigration Judge Thomas Snow. Please call our office to discuss. Thank you for your anticipated cooperation." Suspiciously, Respondent produced to the Bar Association a letter (Rel. Ex. 225) with Respondent's Bates stamp number purporting to be dated July 22, 2007 but with the 5055 N. Main Street address on its letterhead and signed by Respondent. This letter also reads "Enclosed, please find a copy of the decision of Immigration Judge Thomas Snow. Please call our office to discuss."

⁴Respondent's counsel drafted the affidavit. Respondent drove to Rogers' home the evening of April 19, 2010, and notarized the affidavit in her driveway.

second version to Rogers's office in person and gave it to Rogers' son, Alexander Rogers. Respondent asked Alexander Rogers to email this second version which Respondent had just given him, back to Respondent. Alexander Rogers emailed the letter to Respondent on the morning of April 20, 2010. Respondent then printed out the email attachment and submitted it to the Panel.

It appears that the first version of the letter (without the fax header) did not come from Rogers' files, she did not look for it, and she could not say whether it was indeed faxed to her back in June 2007. Nor could it have come from her files since it was faxed to her but contained no fax header. Respondent eventually conceded he gave the letter to Ms. Rogers. It also appears that the second version of the letter (with the fax header) came from Respondent and not from Rogers's office files.

Respondent produced additional letters from June 2007 purporting to show that he was using the 5055 N. Main Street letterhead before he moved in or had the stationary printed. However, when a straight line is applied to these exhibits, the letterheads appear misaligned with the text of the letter and the copies are not first generation copies.

On June 26, 2007, Respondent, by himself, attended the rescheduled master hearing. Approximately fifteen minutes before the hearing was scheduled to begin, Respondent testified that he placed one telephone call to Beriashvili, and four telephone calls to Beriashvili's brother, but was unable to make contact. When the court called the hearing, Respondent appeared, but did not ask the court for a continuance. Respondent told the court that he attempted to call Beriashvili at home in Columbus and, "he's apparently still there and I don't think he is coming....I have no excuse for him." (Rel. Ex. 222, p. 3)

Due to Beriashvili's failure to personally show on June 26, 2007, the Immigration Court ordered Beriashvili to be detained and removed from the United States. Notice of the July 2, 2007 court order was mailed to Respondent along with a cover letter stating that the decision of the Immigration Judge was final unless a "Motion to Reopen" was filed in accordance with law.

On July 22, 2007, Respondent's office mailed to Beriashvili a copy of the removal order and asked Beriashvili to call the office. This letter bore the 1927 N. Main St. address as discussed above and in Footnote 3.

Beriashvili telephoned Respondent and was informed by Respondent that he had been ordered deported. Respondent said he would file an appeal. It is inexplicable how Respondent determined that an appeal was the best course of action. The Immigration Court's July 2, 2007 cover letter specifically stated that the removal order was final unless a "Motion to Reopen" was timely filed. An appeal was totally ineffective in stopping deportation.

Sometime in July 2007, when Beriashvili met with Respondent in his office to discuss the appeal, Respondent told Beriashvili to go to the post office and get a \$110 money order to cover the filing cost of the appeal. Beriashvili gave a \$110 money order to Respondent.

A Motion to Reopen must be filed within six months. Respondent took no timely action in this case. Respondent never filed a Motion to Reopen, but eight months later did file what purports to be an appeal. On March 3, 2008, Respondent appealed the July 2007 order.

Once again, to call the appeal that Respondent filed "bare bones" is to give it much more credit than is due. Respondent was required to state in detail the reasons for the appeal and to further follow the instructions provided. Respondent's appeal consisted of two sentences merely stating "Respondent indicates he did not receive notice of the master hearing. He did appear at

all other scheduled hearings.” No law or other factual information was included with or attached to the appeal.

At the end of January 2008, agents from Immigration, Customs and Enforcement (ICE) went to Beriashvili’s residence to arrest him, as no Motion to Reopen had been filed since the July 3, 2007 order of removal. Beriashvili told the agents that an appeal had been filed. The agents checked with the court, and informed Beriashvili that no Motion to Reopen had been filed since the July 3, 2007 order of removal. The ICE agents granted Mr. Beriashvili an additional thirty days to file a Motion to Reopen, and instructed him to return to the ICE office.

Beriashvili immediately contacted Respondent. Respondent assured Beriashvili that the appeal was sufficient. On March 3, 2008, Beriashvili presented himself to the ICE office and was immediately arrested. Respondent had not filed a Motion to Reopen and the appeal had no legal efficacy. Beriashvili needlessly spent the next nine months in jail.

Because Respondent filed an appeal in the case, Beriashvili’s problems were exacerbated. The effect of the appeal was to remove jurisdiction from the Immigration Court. This meant that a Motion to Reopen could not be filed in that court. Beriashvili contacted new legal counsel, who had to secure from the Respondent a dismissal of the appeal before a Motion to Reopen could be filed by Beriashvili’s new legal counsel.

The Panel finds that Respondent in Count Three violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation;

- 2) Prof. Cond. R. 1.2(a) [Scope of Representation], a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are pursued;
- 3) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness;
- 4) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required; and
- 5) Prof. Cond. R. 8.4(c) [Honesty], conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Panel notes that in finding a violation of Prof. Cond. R. 8.4(c), conduct involving dishonesty, fraud, deceit, or misrepresentation, the panel is finding that Respondent's dishonesty, fraud, deceit, or misrepresentation stems from the following:

- (1) his statements to the Bar Association and the Panel that he had provided notice of the new master hearing to Beriashvili when he did not;
- (2) his not telling Beriashvili, between April and June 2007, that the hearing date had been rescheduled and saying he had not received notice of the hearing date when, in fact, he had received such notice.

The Panel is not finding a violation of Prof. Cond. R. 8.4(c) for the preparation of the fabricated June 12, 2007 letter, for the reason that Relator did not provide notice of an allegation of this rule violation to Respondent in the complaint. The testimony on the fraudulent letter was received by the Panel only for the purpose of aiding the Panel in determining the credibility of Respondent's testimony as compared to the credibility of Beriashvili's testimony. The facts of

the fabricated letter will only be additionally considered by the Panel in connection with mitigating and aggravating factors.

COUNT FOUR

Matter of Jayne Vance

Count Four alleges that Jayne Vance retained Respondent to represent her on a contingency fee basis for injuries sustained in an automobile accident on February 21, 2007. Ms. Vance did not testify. Relator alleges that Respondent did not enter into a written fee agreement with Vance. Respondent states that the parties did enter into a written agreement, however, he is unable to find such agreement.

Relator further alleges that Respondent failed to truthfully update Vance about the status of her case, neglected her case for a year, and made a settlement demand without obtaining Vance's consent.

Relator provided insufficient evidence to prove by a clear and convincing standard that Respondent engaged in misconduct as alleged in Count Four. The Panel recommends the dismissal of Count Four of the Second Amended Complaint.

COUNT FIVE

Matters of Anita Boseman and Jennifer Hatcher

On October 31, 2002, Ms. Anita Boseman and her daughter, Ms. Jennifer Hatcher, were injured in an automobile accident when their car was struck by a taxi cab. Also in the car at the time of the accident were Anitra Boseman and Anasia Boseman, Anita Boseman's other daughter and grandchild. Boseman and Hatcher retained Respondent on a contingency basis to recover damages for injuries they sustained as a result of the automobile accident. Boseman and

Hatcher did not have a copy of the contingency fee agreement and Respondent could not produce a copy of the contingency fee agreement.

Respondent's computer logs do not show a great deal of activity taking place on the case over the ensuing two years. Respondent did send a demand letter to the insurance company on September 27, 2004, about a month before the statute of limitations was to run.

On October 7, 2004, the insurance carrier first offered \$20,300 to settle the Boseman case and \$7,000 to settle the Hatcher case. Respondent countered, and the insurance company agreed to settle the Boseman case for \$33,000 and the Hatcher case for \$10,000. The proposed settlement agreements were done without consulting or obtaining approval from either Boseman or Hatcher. After agreeing to the settlement, Respondent telephoned Boseman and told her that the insurance company had agreed to settle for \$33,000. Boseman rejected the offered amount as totally unacceptable. Nonetheless, Respondent received two checks dated October 7, 2004, from the insurance carrier in the amounts of \$33,000 and \$10,000. Both checks were accompanied by release forms. (Rel. Ex. 119-122)

Having been informed by Boseman that the \$33,000 was not acceptable, Respondent filed a lawsuit on behalf Boseman on October 27, 2004, days before the statute of limitations was to run. However, Respondent instructed the Clerk of Courts to not serve the complaint on the defendant. Respondent retained the settlement checks and did not want the lawsuit served as it would disturb the "settlement" that he had agreed to with the insurance company.

Respondent informed the Common Pleas Court that the lawsuit filed on Anita Boseman's behalf was settled. The Court was pressuring Respondent for a settlement entry. As Boseman refused to settle for the \$33,000, Respondent had no alternative, so on April 1, 2005, he dismissed the lawsuit. (Rel. Ex. 116) From the time of the filing of the complaint to the

dismissal of the lawsuit, Respondent stopped any attempt to serve the defendant with the complaint and summons.

Respondent never informed Boseman that he dismissed the lawsuit and had extinguished her legal rights to pursue her claims. Boseman remained in continuing contact with Respondent about her claims over the next two-plus years. At no time did Respondent tell Boseman that her right to sue had been extinguished. Respondent was still hoping to put into effect the \$33,000 settlement that had been rejected in October 2004.

On June 16, 2008, Respondent finally wrote a letter to Boseman informing her that he had missed the statute of limitations and that she should make a claim with his malpractice carrier. (Rel. Ex. 125)

In paragraph 55 of the second amended complaint, Relator alleged violations of the Rules of Professional Conduct. Respondent's second amended complaint was further amended to insert an additional paragraph 55A alleging violations of the Code of Professional Responsibility for violations occurring prior to February 7, 2007. The Panel finds that the above acts of Respondent violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation;
- 2) DR 6-102(A)(3), neglect of an entrusted legal matter;
- 3) DR 7-101(A)(1), intentionally failing to seek the lawful objectives of his client;
- 4) DR 7-101(A)(2), intentionally failing to carry out a contract of employment entered into with a client for professional services; and
- 5) DR 7-101(A)(3), intentionally prejudicing or damaging his client during the course of the professional relationship.

The Panel also finds that the above acts of the Respondent violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness when representing a client;
- 2) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required;
- 3) Prof. Cond. R. 1.15(d) [Notice], upon receiving funds for a client, a lawyer shall promptly notify the client; and
- 4) Prof. Cond. R. 8.4(c)[Honesty], conduct involving dishonesty, fraud, deceit, or misrepresentation.

The panel does not find violations of:

- 1) DR 2-106(A), a lawyer should not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
- 2) Prof. Cond. R. 1.5(c)(1), failure to put a contingency fee agreement in writing; and
- 3) Prof. Cond. R. 1.5(c)(2), failure to provide a closing statement.

Allegations of violations of DR 1-102(A)(5), DR 1-102(A)(6), DR 7-102(A)(1) and DR 7-102(A)(2) are dismissed by the panel. These Disciplinary Rule charges do not match any of the Rules of Professional Conduct originally contained in paragraph 55 of Count Five of the Second Amended Complaint. Respondent therefore did not receive adequate notice of these charges against which he had to defend.

COUNT SIX

Matter of Koba Khakhnelidze

Prior to 2002, Mr. Khakhnelidze and his family were citizens of and living in the country of Georgia. Khakhnelidze was employed as a guard in Georgia. While performing his duties he stopped a robbery in progress. One or more of the robbers were former KBG agents. Khakhnelidze was threatened that if he called the police and testified against the robbers, he and his family would suffer retaliation. After Khakhnelidze testified, his son was kidnaped. His son was beaten and tortured for three days and released. Khakhnelidze and his family were terrified to remain in Georgia and came to the United States in 2002. Khakhnelidze filed an asylum case for himself which was not going well. He and his family were ordered removed from the United States.

In November 2006, Khakhnelidze retained Respondent to represent him. The exact amount paid to Respondent as a retainer is in dispute. Respondent agrees that he was paid at least \$1,100.00. Khakhnelidze testified that he paid \$1,400.00. Respondent did not give or keep receipts for the amounts paid to him. Respondent's only record of the payments were notes jotted down on a file folder.

In December 2006 the Immigration Court set the evidentiary hearing on Khakhnelidze's case for September 25, 2007. Respondent had ten months to prepare his client, obtain the necessary evidence, and research the law concerning the different legal theories being pursued. Respondent undertook no effective action to prepare himself to represent Khakhnelidze at the upcoming hearing.

Respondent raised three defenses or requests for relief in response to the Order of Removal, to-wit: asylum, withholding from removal, and Conventions Against Torture. Respondent did not explain to Khakhnelidze the different types of legal relief available to him,

nor did he inform him of the evidence needed to establish any one of the three legal positions being advanced.

Respondent performed no legal research in preparation for the hearing and did not understand what evidence was required to prove any one of the three legal claims being advanced. Respondent also failed to prepare Khakhnelidze or his family for testimony before the court. Respondent met with Khakhnelidze once before the hearing and met with him the morning of the hearing. The morning of the hearing, Khakhnelidze told Respondent that he had documents with him that would help support his claim, but they were all written in Georgian. It was too late to have them translated and submitted as evidence. At the hearing Khakhnelidze was the only witness called by Respondent to testify and no corroborating evidence was offered.

As would be expected with such representation, the Immigration Judge denied Respondent's application for asylum and withholding of removal and protection under the United Nations Convention Against Torture. The Panel finds that Respondent did little besides collecting a retainer, showing up for the hearing, and winging it. Respondent did appeal the September 25, 2007 decision of the Immigration Judge, but as the Court of Appeals itself stated "we note that the Respondent has done little on appeal to challenge the Immigration Judge's decision." The reason for this comment is that the brief filed by Respondent only contained three short paragraphs with no factual or legal import. When the expert witness on immigration, Mr. Weigle, was asked if he had an opinion as to whether or not Respondent's appeal brief was appropriate, he testified as follows:

I'm not sure I would dignify calling that a brief. It cites no law. It doesn't go into a discussion of the facts. It doesn't try to link a nexus between one of the enumerated grounds. I'm not sure, looking at it again, I don't think it even has

any discussion as to the one-year requirement. And certainly it doesn't differentiate between the various forms of relief of asylum, withholding, or Convention Against Torture. (3/24/10 Tr., 664)

Weigle went on to testify that:

A brief on an asylum case like that [Mr. Khakhnelidze's] would have, of course, just the summary of the procedural posture, how it got there; a statement of the issues, which basically in that case were the one-year filing deadline and then the qualification of the relief; legal argument as to why, in fact, the immigration judge erred in not giving enough weight to the credible testimony and holding that person had a well-founded fear of persecution and that is why citing *Cardoza-Fonseca* and the ten percent rule would be hammered inasmuch as possible.⁵

Then, of course, you know, at the conclusion trying to convince the board – or certainly the staff attorneys who read it first at the board that you have got something there worthy to look at. (3/2/10 Tr., 665-666)

Weigle was also asked if he had an opinion as to whether or not Respondent's representation of Khakhnelidze was diligent. Weigle testified:

"It is not diligent for the same reasons I have said. Certainly, the submission of exhibits and documents for the case were sparse and then the appeal brief was perfunctory almost to the point of insult." (3/24/10 Tr., 666)

⁵The United States Supreme Court in *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S. Ct. 1207 (1987), held that Congress did not intend to restrict eligibility for asylum to those who could prove that it is more likely than not that they will be persecuted if deported. Respondent in his deposition erroneously thought his burden to sustain such a claim would be at least 51%. Weigle further stated that although *Cardoza-Fonseca* is the law of the land, he doesn't always find immigration judges who will use the 10% formula. However Weigle says that just about every time he makes an asylum closing argument he will quote *Cardoza-Fonseca* just to remind the Court of the 10% rule established by the Supreme Court.

The Panel finds that Respondent in Count Six violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation to a client;
- 2) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness in representing a client; and
- 3) Prof. Cond. R. 1.5(a) [Fees and Expenses], a lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee.

COUNT SEVEN

Matter of Terri Adams

On November 30, 2007, Ms. Adams was injured in an automobile accident. On December 3, 2007, Adams retained the Respondent and signed a contingency fee agreement.⁶ On November 30, 2007, Respondent wrote to the insurance carrier of the other driver stating that the liability in the case was clear and should not be disputed and included the following medical bills on behalf of Adams: Jewish Hospital \$3,106.55; Oxford Pt \$1,840; Freiberg Orthopedic \$573.20; Western Hills Chiropractic \$331; and Alliance Primary Care \$285. The medical bills totaled \$6,135.75. Adams testified that she also had lost wages, however, no loss of wage claim was submitted.

⁶The exhibit numbers for the document relative to this Count will be listed to make it easier to compare the signatures on the different documents. The testimony of Ms. Adams and the appearance of the signatures on the relevant documents show the following: Rel. Ex. 131, (contingency fee agreement), and Rel. Ex. 129 (Adams Complainant Cincinnati Bar Association) containing the signature of Adams. Rel. Ex. 135, (Schedule of Expenses and Deductions), 136 (Responsibility of Outstanding Medical Bills) and 137 (Power of Attorney) by testimony of Adams and by appearance contain forgeries of Adams's signature.

Respondent had no discussions with Adams as to settlement amount prior to Respondent entering into discussion with the insurance company. On December 23, 2008, Respondent sent Adams a letter stating that the insurance carrier had offered \$5,800 to settle the claim. Adams received the letter on December 24, 2008, and contacted Respondent. Adams said that she did not agree with the settlement offer and Respondent told her that basically that was all that the insurance company was offering:

Adams was under great financial pressure and was in the process of losing her townhouse. At one point Respondent wrote a letter to Adams's landlord, as she was behind in rent. Respondent stated in that letter that the landlord would be paid at the time of Adams's settlement.

On January 7, 2009, Adams came to Respondent's office to discuss the settlement offer. Adams stated that she needed at least \$4,000. The next day, on January 8, Adams returned to Respondent's office to pick up a check dated January 8, 2009, in the amount of \$4,000. At this point in time, Respondent had not received any settlement proceeds from the insurance carrier. The settlement proceeds of \$5,800 were not received by Respondent until after January 13, 2009. Respondent wrote two other checks on January 8, 2009. One check was to himself for \$1,469 and one was to Western Hills Chiropractic for \$331. The three checks total \$5,800. The three checks were written on Respondent's IOLTA account. Respondent testified that he keeps \$20,000 of his own money in his IOLTA account. This amount is to cover checks that he writes before he actually receives the clients' funds.

Adams states that when she received the \$4,000 check, she also received a number of other papers stapled together that she didn't pay any attention to until much later in the proceedings. Among those stapled papers may or may not have been Rel. Ex. 135, Schedule of

Expenses and Deductions. The Schedule of Expenses and Deductions show a gross settlement of \$5,800 and the three payments of \$1,469 to Respondent, \$331 to Western Falls Chiropractic, and \$4,000 to the client. Adams testified that the signature on that form is a forgery and it is noted that it does not look like her signature. Respondent was aware of the \$6,135.35 in medical bills owed and only paid the chiropractor the sum of \$331. Rel. Ex. 136, is a statement that reads, "I, Terri Adams, will be responsible for the outstanding medical bills," and is purportedly signed by Terri Adams. Adams testified and it appears that this signature is also a forgery. Also, Respondent prepared a power of attorney, Rel. Ex. 137, purporting to give Respondent the authority to act in Ms. Adams place to sign the release and draft for the \$5,800 settlement. Adams testified that her signature on this power of attorney is a forgery. Subsequently, Adams engaged another attorney to act on her behalf in making a claim against Mr. Sigalov for his handling of the above accident case.

Relator alleges that during Respondent's representation of Adams, Respondent lied to her about the reason for the cancellation of a scheduled mediation. Relator states that Respondent falsely advised Adams that the mediation was cancelled because there was a death in the mediator's family. It seems apparent that no death occurred in mediator's family. However, Respondent testified that there was a death in the insurance adjustor's family. The Panel does not find by clear and convincing evidence that any misrepresentation was made by Respondent concerning the reason for the cancellation of the mediation.

The Panel finds that Respondent's conduct as alleged in Count Seven violated the Ohio Rules of Professional Conduct, specifically:

- 1). Prof. Cond. R. 1.15(b), a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.

The Panel does not find by clear and convincing evidence that Relator established a violation of Prof. Cond. R. 1.15(a) that Respondent disbursed funds of another client out his IOLTA account when he paid Ms. Adams, nor does the panel find violation of Prof. Cond. R. 8.4(c) that Respondent deceived the client as to the reason for the cancellation of the scheduled mediation.

The Panel notes that it would have found a violation of Prof. Cond. R. 8.4(c), conduct involving dishonesty, fraud, deceit or misrepresentation, for forging or obtaining forged signatures on those documents purportedly signed by Adams but that were not signed by her. However, as the complaint does not provide Respondent with notice of these actions and charged rule violations, these facts may only be considered in connection with mitigation and/or aggravation.

MITIGATION

The Panel finds that pursuant to BCGD Proc. Reg. 10(B)(2) the following factor in mitigation is present: (a) absence of a prior disciplinary record.

Respondent argues in mitigation that he made full and free disclosure to the Disciplinary Board and had a cooperative attitude toward the proceedings. While Respondent did appear to be cooperative and respectful during the proceedings, the Panel finds that preparing false evidence and giving false testimony is not providing "full and free disclosure" to the Disciplinary Board.

Respondent also argues that he has received the imposition of other penalties or sanctions outside the disciplinary process because he was sued for malpractice by Boseman. The cases cited by Respondent, *Disciplinary Counsel v. Gittinger*, 125 Ohio St.3d 467, 2010-Ohio-1830 and *Cleveland Metro. Bar Assn. v. Nance*, 124 Ohio St.3d 57, 2009-Ohio-5957, to support this contention are not on point. The Panel finds that being sued for malpractice is not a penalty or sanction to be considered. It merely makes the client whole by paying the client for the damages that were caused to the client.

Respondent states he intends not to take any future immigration cases.

AGGRAVATION

The Panel finds pursuant to BCGD Proc. Reg. 10(B)(1) the following factors in aggravation are present:

- (b) Dishonest or selfish motive;
- (c) A pattern of misconduct;
- (d) Multiple offenses;
- (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) Refusal to acknowledge wrongful nature of conduct; and
- (h) Vulnerability of and resulting harm to victims of the misconduct.

SANCTION

Relator recommends that Respondent be disbarred from the practice of law. Relator cites *Disciplinary Counsel v. Schiller*, 123 Ohio St.3d 200, 2009-Ohio-4909, and *Toledo Bar Assn. v. Baker*, 122 Ohio St.3d 45, 2009-Ohio-2371, where the Supreme Court imposed indefinite suspensions for patterns of misconduct similar to Respondent. However, Relator states that

unlike the above cited cases, this Respondent's misconduct of fabricating evidence and his lack of truthfulness on the witness stand demand that the sanction go further and be a permanent disbarment.

The Respondent's position is that he committed no misconduct and the complaint should be dismissed with prejudice.

The Panel is troubled by some of the significant aggravating factors. Respondent's lack of candor with his clients, with the Bar Association, and on the witness stand is troubling. The repeated submission of false evidence, the preparation of false documents, and false statements by Respondent greatly exacerbate Respondent's conduct. In the eyes of the Panel, Respondent suggesting that the complaint against him be dismissed with prejudice, and his refusal to acknowledge the wrongful nature of his conduct are further troubling. Respondent's clients were certainly vulnerable and harmed by Respondent's misconduct. Some of his clients were arrested when they should not have been, with one unnecessarily spending nine months in jail.

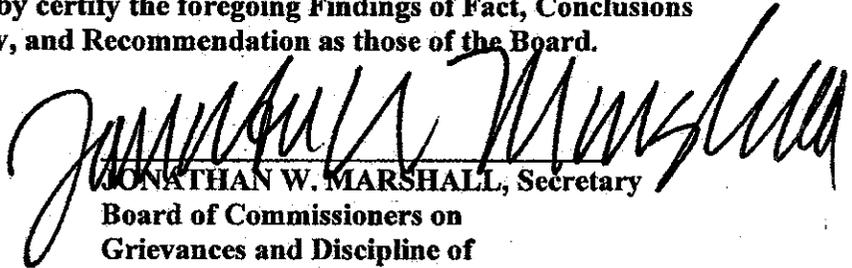
The Panel recommends that the Respondent be disbarred from the practice of law in the State of Ohio.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 2, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends, based on his remarkable record of fraud and deceit, that Respondent, Vlad Sigalov, be permanently disbarred from the practice of law in the State of Ohio. The Board further

recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.


JONATHAN W. MARSHALL, Secretary
Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

IN RE: COMPLAINT AGAINST)	Case No. 08-079
)	
VLAD SIGALOV,)	
Respondent)	ORDER
vs.)	
)	
CINCINNATI BAR ASSOCIATION,)	
Relator)	

On April 2, 2010, Respondent filed two motions as follows:

Relator’s Motion to Recall Respondent in Relator’s Case in Chief and Add Exhibits

Relator’s Motion to Recall Respondent in Relator’s Case in Chief and Add Exhibits is well taken and granted. Relator will be allowed to recall Respondent when the hearing on this matter resumes on April 20, 2010. Relator will be allowed to offer additional exhibits 170, 171 and 248. The final ruling on the admission of these exhibits will be determined after Relator rests its case. If Respondent is required to undertake additional discovery due to the additional exhibits, the Respondent shall complete such discovery prior to the April 20, 2010.

Respondent’s Motion to Amend Count Five of Second Amended Complaint

Relator’s Motion to Amend Count Five of the Second Amended Complaint is well taken and granted. Relator’s amendment is limited to paragraph 55 of the second amended complaint. Such amendment does not allege new matters but adds the Disciplinary Rules from the Code of Professional Responsibility alleged to be violated by Respondent prior to February 7, 2007.

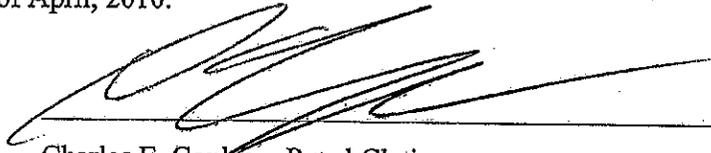
Section 1 “Complaint Requirements” of the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court states “The Panel and Board shall not be limited to the citation of the disciplinary rule(s) in finding violations based on all the evidence.”

Further, Section 11(D) of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio states, “The process and procedure under this rule and regulations approved by the Supreme Court shall be as summary as reasonably may be. Amendments to any complaint... may be made at any time prior to the final order of the Supreme Court. The party affected by an

amendment shall be given reasonable opportunity to meet any new matter presented. ... This rule and regulations relating to investigation and proceedings involving complaints of misconduct... shall be construed liberally for the protection of the public, the courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable..."

As no new factual allegations of misconduct are being made against Respondent, but merely specifically stating the rules violated, the Respondent has received notice of Relator's amendment to the second amended complaint in sufficient time to give Respondent a reasonable opportunity to respond to the amendment to the complaint.

Entered this 7th day of April, 2010.



Charles E. Coulson, Panel Chair

Copies of this order shall be served on Counsel for the Parties:

**Cincinnati Bar Association,
Relator**

John B. Pinney, Esq.
Graydon, Head, and Ritchey, LLP
511 Walnut St., Suite 1900
Cincinnati, OH 45202-3157

Jennifer L. Branch, Esq.
Gerhardstein and Branch Co., LPA
432 Walnut St., Suite 400
Cincinnati, OH 45202

**Vlad Sigalov,
Respondent**

Mark Vander Laan
Dinsmore and Shohl, LLP
1900 Chemed Center
255 East Fifth St.
Cincinnati, OH 45202

Mark Arnzen
Dinsmore and Shohl, LLP
1900 Chemed Center
255 East Fifth St
Cincinnati, OH 45202

Panel Members:

Honorable John B. Street
Chillicothe Municipal Court
26 South Paint Street
Chillicothe, OH 45601

Mr. Alvin R. Bell
618 West Lake Court
Findlay, OH 45840

CEC/ggm