BEFORE THE BOARD OF PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO

In re:

Complaint against

Harlan Daniel Karp
Attorney Reg. No. 0042411

Respondent

Disciplinary Counsel

Relator

Case No. 2017-023

Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct

OVERVIEW

{¶1} This matter was heard on November 30, 2017 before a panel composed of Jeff M. Davis, Hon. Joseph Gibson, and David L. Dingwell, panel chair. None of the panel members is from the appellate judicial district in which the complaint arose and none served on the probable cause panel that certified the matter to the Board. Commissioner Davis was not present at the hearing, but he participated in reviewing the proceedings through his review of the stipulations, exhibits, and hearing transcript.

{¶2} Relator was represented by Karen H. Osmond. Respondent was present at the hearing and represented by Mary L. Cibella.

{¶3} Based on the parties' stipulations, hearing testimony and exhibits, the panel finds that Respondent engaged in professional misconduct as outlined below. Considering the rules violated, aggravating and mitigating factors, and applicable case precedent, the panel recommends that Respondent be suspended for a period of two years, with 18 months stayed on conditions, and be required to complete a two-year period of probation upon reinstatement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} The parties entered into 57 written stipulations of fact. The parties further stipulated to the admission of 39 exhibits into evidence at the hearing, and Respondent entered four additional exhibits into evidence at the hearing. One additional stipulated exhibit was jointly submitted by the parties following the conclusion of the hearing. The parties also entered into stipulations with respect to certain rule violations. The Respondent testified at the hearing as did Sherif Solimon, M.D. Dr. Solimon is a psychiatrist who evaluated Respondent and testified on his behalf. The panel finds the following facts to have been proven by clear and convincing evidence:

{¶5} Respondent was admitted to the practice of law in Ohio on November 6, 1989.

{¶6} Following graduation, and a brief clerkship in the United States District Court for the Northern District of Ohio, Respondent worked until 1999 with two law different law firms. Hearing Tr. 20-21.

{¶7} In late 1999, Respondent and Paul Camino formed the law firm of Karp and Camino until they separated in 2010. Since then, Respondent has practiced as a sole practitioner focusing his practice in the area of immigration law. Hearing Tr. 21.

{¶8} Respondent testified regarding his involvement in numerous professional organizations. Notably, Respondent testified regarding his involvement with the Cleveland Metropolitan Bar Association's Bar Admissions Committee as well as the Ethics and Professionalism Committee. Hearing Tr. 22-23.

{¶9} Respondent testified that he served as the chair of the Bar Association's Ethics and Professionalism Committee in 2012. Hearing Tr. 23.

Count One—Veronika Gadzheva

Stipulated Facts

{¶10} In February 2015, G&G Star Enterprises, doing business as Fred Astaire Dance Studio, in Morristown, New Jersey, filed an I-129 Petition for Non-Immigrant Worker on behalf of Veronika Gadzheva. The petition requested that Gadzheva, a Bulgarian ballroom dancer, be permitted to enter the United States on an O-1B visa. O-1B visas are for individuals who possess extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry. Stipulated Ex. 2.

{¶11} Upon review, the United States Citizen and Immigration Services granted G&G's petition.

{¶12} Gadzheva entered the United States on or about May 11, 2015 on an O-1B visa. The expiration date of Gadzheva's visa was February 27, 2018. Stipulated Ex. 3.

{¶13} Gadzheva immediately began working for G&G as a dance instructor; however, shortly after she began working for G&G, problems developed in the employment relationship. Accordingly, Gadzheva became unhappy with her employment at G&G and wished to change employers.

{¶14} On or about July 2015, Gadzheva obtained an offer of employment from Londance III Studio in Laguna Niguel, California. Londance III is owned by Patricia West.

{¶15} On July 22, 2015, Gadzheva emailed Respondent regarding the transfer of her O-1B visa to a new employer. Gadzheva advised Respondent that she had been referred to him through Dimitar Petrov, a friend of hers. That same day, Respondent replied to Gadzheva and stated that he would "look at it." Stipulated Ex. 4.

{¶16} Sometime on or after July 22, 2015, but before July 27, 2015, Respondent advised Gadzheva or Petrov that Gadzheva would need to provide him with documentation concerning her existing O-1B visa.

{¶17} Shortly thereafter, Gadzheva attempted to email Respondent information regarding her O-1B visa; however, Respondent did not receive the information. Nevertheless, on or about July 27, 2015, Respondent agreed to represent Gadzheva and to file a concurrent I-129 petition on her behalf. Stipulated Ex. 5.

{¶18} On July 27, 2015, Respondent advised Gadzheva that his attorney fee was $750, plus she would have to pay a $325 filing fee.[1] He had previously advised Petrov of these amounts. He further advised Gadzheva that the documentation she had previously provided "did not come through," and he requested that she resend documentation regarding her O1-B visa. He stated that once he received the documentation, he would "look at things right away." Id.

{¶19} On or about July 27, 2015, Gadzheva emailed Respondent approximately 500 pages of documents concerning her O1-B visa. Respondent initially had some difficulty opening the documents; however, he was successfully able to open the documents approximately 10 days later. After opening the documents, Respondent had to organize the documents because he had not received them in any particular order. Stipulated Ex. 5-7.

{¶20} On or after July 27, 2015, Gadzheva advised Respondent of her unhappiness with G&G and her desire to go to another employer. The parties stipulated that Gadzheva clearly expressed her unhappiness with G&G to Respondent, as well as her desire to leave G&G as quickly as possible. Respondent, however, did not perceive Gadzheva's situation to be dire. Stipulated Ex. 6.

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[1] Respondent's July 27, 2015 email to Gadzheva actually states that the filing fee is $320; however, it was a typographical error. In other correspondence, Respondent advises Gadzheva that the filing fee is $325.

{¶21} On July 28, 2015, Gadzheva emailed Respondent and inquired how she should pay for his services. Respondent advised Gadzheva that she must pay the $325 filing fee up front. He further advised her that he preferred for his legal fee to be paid up front; however, she could pay it in two installments – "half down, half upon approval." Stipulated Ex. 8.

{¶22} On July 30, 2015, Gadzheva emailed Respondent and inquired whether she could move to California upon being approved for a new visa or whether she had to wait for another month. She further stated that she was "not getting on very well" with her current employer and did not want to stay with them another month. On the same day, Respondent replied and stated that she could move as soon as the new I-129 had been filed and that it "may take a week" because the petition has to be filed by her new employer and he had to have her new employer sign some forms. Stipulated Ex. 9.

{¶23} On July 31, 2015, Gadzheva wired $325 to Respondent's IOLTA representing payment of the filing fee. Stipulated Ex. 10 and 34, p. 24.

{¶24} Between August 3, 2015 and September 10, 2015, Respondent and Gadzheva exchanged several emails and phone calls regarding the I-129 petition. During this period of time, Gadzheva inquired several times how long the process would take. On August 3, 2015, Gadzheva advised Respondent that her employment situation with G&G was "not getting really well," and on August 13, 2015, she advised him that she was "not in a good position" with G&G. Stipulated Ex. 11.

{¶25} On August 17, 2015, Respondent emailed Patricia West and requested that she provide information regarding Londance III and the anticipated employment relationship with Gadzheva; *i.e.* proposed job title, compensation, number of employees, and tax ID number. In

this email, Respondent specifically stated that he would email West the completed I-129 for her signature. Stipulated Ex. 12.

{¶26} On August 24, 2015, West provided the requested information to Respondent. Stipulated Ex. 13.

{¶27} On September 8, 2015, Gadzheva emailed Respondent and inquired whether he had received the requested information from West. On the same day, Respondent replied and confirmed that he had received the information from West. Stipulated Ex. 14.

{¶28} On September 10, 2015, Gadzheva emailed Respondent and inquired whether he had filed the I-129 yet. Stipulated Ex. 15.

{¶29} On September 11, 2015, respondent replied to Gadzheva's email and falsely stated, "Yes. Sent." *Id.*

{¶30} Respondent did not file the I-129 until April 15, 2016.

{¶31} On October 2, 2015, Gadzheva wired $750 to Respondent representing payment in full for his legal fees. Stipulated Ex. 16 and 34, p. 94.

{¶32} On October 5, 2015, Gadzheva notified Respondent that she was leaving for California that same day. Gadzheva thanked Respondent for his services and stated that she hoped she received approval of the I-129 petition soon.

{¶33} Even though Respondent had not yet filed the I-129, Respondent made a blatant misrepresentation to his client by falsely stating, "It should arrive this week. I will email it to you." Stipulated Ex. 17.

{¶34} On October 14, 2015, Gadzheva emailed Respondent and inquired into whether he had received approval of the I-129 yet. Even though he had not yet filed the I-129,

Respondent replied the same day and again falsely stated "Not yet – but I should in a few days." Stipulated Ex. 18.

{¶35} On October 20, 2015, G&G Enterprises requested revocation of the I-129 petition that it had filed on Gadzheva's behalf. It was in fact subsequently revoked. Respondent was unaware that G&G Enterprises had requested revocation of its I-129 petition until several months later.

{¶36} Because Respondent had not yet filed a new I-129 petition on behalf of Gadzheva, Gadzheva may have begun accruing days of "unlawful presence" after revocation of G&G's petition.

{¶37} The parties stipulated that Becki Young, Gadzheva's current counsel, would testify that after extensive research and consultation with numerous immigration colleagues, she has not been able to identify any clear authority regarding whether G&G's revocation might have triggered a formal finding of status violation by USCIS (which would have also started the unlawful presence clock) because Gadzheva was in possession of a visa that was valid until February 27, 2018. At 180 days of continuous unlawful presence, Gadzheva potentially faces a three-year ban from the United States and at 360 days of unlawful presence, Gadzheva potentially faces a ten-year ban from the United States.

{¶38} What is clear is that Respondent's neglect and ongoing misrepresentations to his client regarding the fact that he had filed a new I-129 petition, and that its approval was imminent could have had extremely serious consequences to Gadzheva up to and including a lengthy ban from the United States.

{¶39} On November 5, 2015, Gadzheva emailed respondent and inquired into whether he had received approval of the I-129 yet. Despite the potentially serious repercussions to his

client, and even though he had not yet filed the I-129, Respondent replied the same day and continued his pattern of blatant misrepresentations to his client by stating, "Still pending. Give it another week or two." Stipulated Ex. 18.

{¶40} During November and December 2015, Gadzheva emailed or spoke to Respondent several times. In these communications, Gadzheva inquired into what she could and could not do while waiting for approval of the I-129 petition that she believed, based on Respondent's multiple misrepresentations, that Respondent had filed on her behalf.

{¶41} Even though Respondent had not yet filed the I-129, he continued to lead Gadzheva into believing that he had by advising her as to what she could and could not do while waiting for approval. Stipulated Ex. 20-21.

{¶42} On December 3, 2015, Gadzheva emailed Respondent and asked whether she could take a trip back to Europe "when the papers still aren't ready is this gonna be a problem for my status." Respondent replied, "No. Your visa (on your passport) is still good." Stipulated Ex. 21.

{¶43} In a subsequent telephone conversation, Respondent advised Gadzheva that she could return to Europe and was under the impression that she had returned to Europe for the Christmas holidays.

{¶44} Between December 3, 2015 and April 15, 2016, Gadzheva and her employer, Patricia West, had numerous conversations with Respondent about the status of the I-129 petition. Even though he had not yet filed the petition, Respondent continued his pattern of misrepresentations by consistently telling both Gadzheva and West that the petition had been filed and that it should be approved shortly.

{¶45} Respondent further told both Gadzheva and West that the immigration process moved slowly especially around the Christmas season. He falsely led them to believe that he had other clients who were waiting for approvals as well. One time, he even advised West not to contact USCIS directly as it would delay things even further.

{¶46} When Gadzheva inquired with Respondent about starting the process over by filing a new I-129, Respondent told her to just be patient.

{¶47} Starting on December 3, 2015 and through April 15, 2016, Gadzheva and West made numerous requests to Respondent for some type of proof that Respondent had in fact filed an I-129 on behalf of Gadzheva. Gadzheva and West requested that Respondent provide them with the receipt number for the petition.

{¶48} While Respondent promised on multiple occasions to provide the receipt number, he did not do so until April 25, 2016, after he had actually filed the petition.

{¶49} On April 14, 2016, West had a heated conversation with Respondent. She told him that this had been going on too long, and she demanded that he provide the receipt number for the petition that he had allegedly filed on behalf of Gadzheva. In this call, West also told Respondent that she had hired several dancers from outside the country and that it generally did not take this long for an I-129 to be approved.

{¶50} On the following day, Gadzheva contacted Hammond Young Immigration Law, LLC in Silver Spring, Maryland regarding the situation with Respondent. Gadzheva requested assistance from Hammond Young with an O-1 visa petition to be sponsored by Londance III.

{¶51} On April 15, 2016, and over seven months after he first misrepresented to Gadzheva that he had filed an I-129 petition on her behalf, Respondent filed an I-129 petition with USCIS. Stipulated Ex. 22.

{¶52} Prior to filing the I-129 petition, Respondent did not provide it to West for her signature or review as he had previously stated he would do. Instead, Respondent signed West's name on two different places on the petition.

{¶53} The parties stipulated that West never gave Respondent authority to sign her name on the I-129 petition or implied that he had her authority to do so.

{¶54} Respondent claims that he believed that he had authority to sign West's name because Gadzheva and West had consistently requested proof of a *filed* I-129, which cannot be filed without a signature.

{¶55} One part of the I-129 petition form that Respondent signed West's "signature" includes the following disclaimer and warning:

> I certify, under penalty of perjury, that I have reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true and correct.
>
> Stipulated Ex. 22.

{¶56} On April 15, 2016, Respondent also filed a Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative). Respondent also signed West's name on this document even though West never gave Respondent authority to sign her name on the G-28 or implied that he had her authority to do so. Stipulated Ex. 23.

{¶57} Respondent again claims that he believed that he had authority to sign West's name because Gadzheva and West had consistently requested proof of a *filed* I-129.

{¶58} On April 25, 2016, Respondent emailed West the receipt number for the petition. Stipulated Ex. 24.

{¶59} On or about April 26, 2016, Respondent received an I-797E form (Notice of Action) from USCIS. This form is commonly referred to as a Request for Evidence or RFE.

The RFE requested that respondent provide additional evidence regarding the type of status he was requesting on behalf of Gadzheva, i.e. an O-1A visa for extraordinary ability in athletics or an O-1B visa for extraordinary ability in the arts. The RFE also indicated that on October 20, 2015, G&G had submitted written notice requesting withdrawal of its previously filed petition and that the petition had been subsequently revoked. The RFE indicated that "if the beneficiary [Gadzheva] was not in a valid nonimmigrant status at the time present petition was filed, the request for extension of stay may not be approved and the petition (if approved) will be forwarded abroad." Stipulated Ex. 19.

{¶60} The RFE was also sent to West.

{¶61} The first time that Respondent learned that G&G Enterprises, Gadzheva's prior employer, had submitted a withdrawal of its previously filed petition was when Respondent received the April 26, 2016 RFE.

{¶62} On the same day, Respondent replied to the RFE and advised USCIS that the petition was seeking an O-1B classification, but that he had no objection to an O-1A classification if USCIS believed that to be more appropriate. Stipulated Ex. 25.

{¶63} Respondent did not consult with West or Gadzheva regarding the RFE or even advise them that he had received it.

{¶64} On or about April 29, 2016, West emailed Respondent and requested a complete copy of Respondent's file regarding Gadzheva. Stipulated Ex. 26.

{¶65} On May 2, 2016, Respondent provided his complete file to West over the course of four emails. After providing the file to West, Respondent claims that he believed that his services to Gadzheva and West had ended. However, there is no evidence that either Gadzheva

or West communicated to Respondent that his services were being terminated. Respondent never advised USCIS that his representation of Gadzheva had ended.

{¶66} On May 9, 2016, a second RFE was issued requesting additional evidence regarding Gadzheva's qualifications. Stipulated Ex. 27.

{¶67} Respondent did not reply to this second RFE claiming that his services to Gadzheva and West had ended. Respondent failed to advise West or Gadzheva that he had received the second RFE. The RFE was also sent to West. Id.

{¶68} On July 11, 2016, HYIL filed a new petition on behalf of Gadzheva resulting in Gadzheva being granted a new O-1B status; however, because Gadzheva was not in a valid immigration status at the time the petition was filed, Gadzheva must leave the United States in order to activate her new O-1B status. Stipulated Ex. 38.

{¶69} The parties stipulated that Gadzheva would testify that she is afraid to leave the country in order to activate her O-1B status due to uncertainty as to whether she accrued any days of unlawful presence, and if so, how many days.

{¶70} Also due to this uncertainty, Hammond Young is currently exploring other options that may be available to Gadzheva to prevent further hardship to her.

{¶71} On August 27, 2016, USCIS denied the I-129 petition that Respondent had filed on behalf of Gadzheva due to "abandonment" because no response was submitted to the second RFE.

{¶72} Respondent did not notify Gadzheva or West of the denial. West was also sent the Notice of Abandonment, so she was aware of it. However, by that time, the I-129 that Hammond Young had filed through Londance III was already approved. Stipulated Ex. 22 and 38.

{¶73} On or about January 5, 2017 and at the request of Relator, Respondent refunded Gadzheva the $1,075 that she had paid him.

{¶74} Gadzheva paid Hammond Young $7,150 in fees for legal services provided to her. Respondent's malpractice insurance carrier agreed to pay Gadzheva the amount of $7,150 pursuant to a settlement agreement reached between Respondent and Gadzheva. In exchange for the payment of $7,150, Gadzheva released any and all claims against Respondent. See, Exhibit 40.

Relator's Investigation

{¶75} On July 15, 2016, Gadzheva filed a grievance against Respondent. Stipulated Ex. 31.

{¶76} On August 1, 2016, a Letter of Inquiry was sent to Respondent. Stipulated Ex. 32.

{¶77} On August 26, 2016, Respondent replied to Gadzheva's grievance. Enclosed with his response was an unsigned copy of the I-129 petition that he filed on behalf of Gadzheva. In his response, Respondent falsely stated to Relator that Patricia West had given Respondent authority to file the I-129 in April 2016. Stipulated Ex. 6, p. 4.

{¶78} On November 30, 2016, Relator sent Respondent a letter requesting additional information. Question No. 4 of this letter stated:

> It appears that the I-129 that you filed on behalf of Ms. Gadzheva/Londance requires the signature of an Authorized Signatory. Did you sign Ms. West's name on the form? If so, did you indicate that you were signing with authority or did you make it appear as if Ms. West signed the form? Please provide a copy of the filed I-129.
>
> Stipulated Ex. 33.

{¶79} On December 22, 2016, Respondent replied to Relator's November 30, 2016 letter. In his response, Respondent stated "I signed Ms. West's name on the form and noted I had authority. I had received information to fill out the form from her (attached). A copy of the signed version is attached. Exhibit C." Stipulated Ex. 7.

{¶80} Although Respondent claimed that Exhibit C was a copy of the petition that he had filed with USCIS, it was not. Exhibit C indicated that Respondent had signed Patricia West's name "per authority;" however, there was no such indication on the petition that Respondent actually filed with USCIS. Stipulated Ex. 7 and 22.

Count Two—IOLTA

{¶81} Between at least June 1, 2015 and continuing until at least May 31, 2016, respondent used his IOLTA at US Bank (account no. X XXX XXXX 5607) as a personal or business account even though he maintained and used an operating account during the same period of time.

{¶82} Respondent advised relator in a February 21, 2017 letter that he did so "because it is easier to just pay online from one account. I am a solo practitioner and do not have a bookkeeper or office assistant. I had not taken the step of moving money earned from IOLTA into my operating, and then paying expenses through operating, and then another step in turn, paying from my operating into my personal account to pay the minimum fees on a few personal credit cards." Stipulated Ex. 34-35.

{¶83} During this period of time, Respondent deposited earned fees into his IOLTA and allowed earned fees to accumulate in his IOLTA.

{¶84} Although Respondent used some of the earned fees to pay merchant service fees for credit card transactions, the amount of earned fees in his IOLTA was well in excess of what he needed to pay merchant service fees. Id.

{¶85} During this same period of time, Respondent used the excess earned fees in his IOLTA to pay business or personal obligations directly from his IOLTA rather than transferring those earned fees to a personal or business account and paying the obligations from those accounts. He regularly made payments to at least six different credit cards, as well as a line of credit. In addition, he authorized at least one bank to make a regular withdrawal from his IOLTA as payment of a personal or business obligation. Id.

{¶86} Despite Respondent's commingling of client and personal funds, as well as his improper use of his IOLTA, there was no evidence presented by Relator that any client funds were misappropriated.

{¶87} Upon being advised in January 2017 of Relator's investigation of Respondent's IOLTA, Respondent ceased, as of February 1, 2017, paying his personal or business obligations from his IOLTA.

Stipulated Rule Violations

{¶88} The parties stipulated, and the panel concludes by clear and convincing evidence, based upon the stipulations, exhibits and the testimony presented at the hearing, that Respondent's conduct outlined above violated the following Rules of Professional Conduct:

Count One:

- Prof. Cond. R. 1.3 [diligence];
- Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation];

- Prof. Cond. R. 1.4(a)(1) [failure to communicate with a client where informed consent is required];

- Prof. Cond. R. 1.4(a)(2) [failure to reasonably consult with the client about the means by which the client's objectives are to be accomplished];

- Prof. Cond. R. 8.1(a) [in connection with a disciplinary matter, knowingly making a false statement of material fact].

Count Two:

- Prof. Cond. R. 1.15(a) [failure to hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property];

- 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].

Additional Rule Violation

{¶89} Relator agreed in the stipulations that it would dismiss its allegation that Respondent violated Prof. Cond. R 1.4(b) as alleged in Count One. The panel rejects this stipulation because it finds clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 1.4(b).

{¶90} It is abundantly clear that Respondent repeatedly lied to his client, Gadzheva, and her new employer (West) regarding the fact that he had filed the I-129.

{¶91} Rather than explain the truth that he had not filed the I-129, and had in fact lied about the status of the petition, Respondent clearly failed to explain the status of the matter to the extent reasonably necessary to permit Gadzheva to make informed decisions regarding the representation. Therefore, the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.4(b).

Dismissed Rule Violations

{¶92} The parties stipulated that Respondent's conduct as alleged in Count Two constitutes a violation of Prof. Cond. R. 1.15(c). Pursuant to that rule, a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred funds into a client trust account and to withdraw those funds as fees are earned or expenses incurred. No evidence was presented that Respondent withdrew any fees or expenses from the IOLTA prior to the time they had been earned. To the contrary, Relator's Count Two alleges exactly the opposite—that Respondent failed to withdraw earned fees, and was instead using the built-up earned fees in the IOLTA to pay personal obligations.

{¶93} The panel therefore rejects the parties' stipulation of this violation and dismisses the Prof. Cond. R. 1.15(c) violation because it was not supported by clear and convincing evidence.

{¶94} Relator agreed in the stipulations that it would dismiss its allegation that Respondent violated Prof. Cond. R. 1.2(d) as alleged in Count One. The panel agrees that there was no clear and convincing evidence that Respondent counseled his client to engage or assist a client in conduct that the lawyer knows is illegal or fraudulent. The panel therefore dismisses this charged violation.

AGGRAVATION, MITIGATION, AND SANCTION

{¶95} The parties stipulated and the panel finds the following aggravating factors:

- Respondent has committed multiple offenses;
- Respondent caused harm to his client, Veronika Gadzheva, who was extremely vulnerable based upon her immigrant status.

{¶96} In addition to the stipulated aggravating factors, the panel further finds all of the following aggravating factors by clear and convincing evidence:

- Respondent had a dishonest motive demonstrated by his repeated misrepresentations to his client, the United States government, and Relator;
- There was a pattern of misconduct reflected in his repeated misrepresentations;
- Respondent engaged in deceptive practices during the disciplinary process by suggesting that West had given him authority to sign on her behalf, and by providing Relator with a different I-129 petition document than the one actually submitted to the United States government.

{¶97} The parties stipulated and the panel finds the following mitigating factors:

- Respondent has no prior discipline;
- Respondent had made a timely, good faith effort to make restitution and to rectify the consequences of his misconduct;
- Respondent has submitted evidence of good character and reputation aside from the charged misconduct;
- Respondent suffers from a mental health disorder that contributed to his misconduct. Dr. Sherif Solimon testified in detail regarding his conclusion that Respondent suffered from a major depressive disorder, single episode, moderate. Stipulated Ex. 36; Hearing Tr. 62-64.

{¶98} The parties stipulated that they believed an appropriate sanction in this matter is a two-year, fully stayed, suspension on the following conditions:

- Respondent enters into an Ohio Lawyer's Assistance Program contract;
- Respondent complies with all treatment recommendations by OLAP or his treating health care professional;
- During the two-year stayed suspension, Respondent provide Relator with quarterly reports from OLAP and his treating health care professional that he is in compliance with all treatment recommendations.

{¶99} The Supreme Court of Ohio has repeatedly held as follows:

> This court has consistently recognized that "in determining the appropriate length of the suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but

to protect the public." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 53; see, also, *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100, 70 O.O.2d 175, 322 N.E.2d 665.

Disciplinary Counsel v. Agopian, 112 Ohio St.3d 103, 2006-Ohio-6510 at ¶10.

{¶100} The panel agrees with the parties that a two-year suspension, with at least a portion of the suspension stayed on certain conditions, will serve to protect the public.

{¶101} Dr. Solimon testified at the hearing regarding Respondent's physical and mental health disorders. As described by Dr. Solimon, Respondent suffers from hypothyroidism. Hearing Tr. 68-70. This condition is associated with low energy, weight gain, depression, poor memory, and possibly other cognitive dysfunctions. Id.

{¶102} Dr. Solimon further testified that Respondent has followed up with his treating physician to treat both his hypothyroidism as well as his depression. Hearing Tr. 72. Since then, Respondent has been prescribed a regimen of prescription medication to address both conditions. Id.

{¶103} Dr. Solimon's testimony suggests that Respondent's condition appears to be improved including Respondent having more energy, sleeping better, able to concentrate more, and feeling less depressed. Hearing Tr. 72-73.

{¶104} The panel therefore believes Respondent has demonstrated improvement in his conditions, that he is mindful of the need to continue his treatment regimen, and that he is therefore addressing both his physical and mental health disorders properly.

{¶105} Accordingly, the panel recommends that Respondent serve a two-year suspension from the practice of law.

{¶106} However, the panel is troubled with Respondent's pattern in this matter of making multiple misrepresentations to his client, his client's employer, the United States government, and to the Relator.

{¶107} Not only is the panel troubled with the fact that Respondent made multiple misrepresentations, the gravity and potential consequences of these misrepresentations does not appear to be truly appreciated by Respondent.

{¶108} Respondent's testimony certainly reveals his acknowledgement of wrongdoing by saying that he was "just not thinking correctly," and that his response to Relator regarding his authority to sign West's name was "not the right answer." Hearing Tr. 45-46.

{¶109} However, Respondent did not seem to grasp the fact that his client's status as an immigrant in the United States, relying upon properly-processed documents, was incredibly tenuous, and that these misrepresentations have very serious consequences.

{¶110} At present, it is unknown what exactly will happen to Gadzheva because of Respondent's conduct.

{¶111} The Supreme Court has held:

> Although an actual suspension from the practice of law is the general sanction when an attorney engages in dishonest conduct, a lesser sanction may be appropriate when the misconduct is an isolated incident in an attorney's career or when little or no harm resulted from the misconduct.
>
> *Medina Cty. Bar Assn. v. Cameron*, 130 Ohio St.3d 299, 2011-Ohio-5200 at ¶17, citing *Disciplinary Counsel v. Cuckler*, 101 Ohio St.3d 318, 2004-Ohio-784 at ¶10.

{¶112} In cases with a finding of a Prof. Cond. R. 8.4(c) violation, an actual suspension is ordinarily required, unless "sufficient mitigating circumstances are present." *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649 (court found additional mitigating factors not found by the Board).

{¶113} An abundance of mitigating evidence can justify a lesser sanction. *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129 (lesser sanction warranted when lawyer did not lie to a client or court). See generally, *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261.

{¶114} However, the Court has previously determined that an actual suspension is especially appropriate when a lawyer's dishonesty has been directed toward a client. "Dishonesty toward a client, whose interests are the attorney's duty to protect, is reprehensible." *Disciplinary Counsel v. King*, 74 Ohio St.3d 612, 614, 1996-Ohio-238 (six-month suspension was imposed after respondent created a false complaint in order to deceive his client that he was proceeding with a paternity action when he was not).

{¶115} In *Disciplinary Counsel v. Keller*, 110 Ohio St.3d 240, 2006-Ohio-4354, Keller was suspended for two years with 18 months stayed for neglecting a client's personal-injury matter, failing to return her telephone calls, failing to inform the client that he had no malpractice insurance, and falsely telling her that he had filed a lawsuit. When the client attempted to terminate the attorney's services, Keller lied again by claiming that he had received a settlement offer. In mitigation, Keller had no prior discipline and submitted evidence of good character and a chemical dependency. Aggravating factors included harm to a vulnerable client, dishonest or selfish motive, and failure to make restitution.

{¶116} Finally, in *Disciplinary Counsel v. Riek*, 125 Ohio St.3d 46, 2010-Ohio-1556, Riek was suspended for two years with 18 months stayed for giving his client a check for the net proceeds of a settlement deposited in his trust account when it did not have sufficient funds to honor the check because of respondent's withdrawal of money to pay his personal expenses. When confronted by his client, Riek lied about the reason for the dishonored check. While the

client was not harmed, the Board determined that the respondent's deception justified a longer partially stayed suspension. There were no aggravating factors present, but mitigating factors included no prior discipline, full and free disclosure to the Board and cooperative attitude toward the proceedings, and evidence of his good character. The Court adopted the Board's sanction recommendation in that case.

{¶117} The panel cannot in good faith ignore the case precedent of the Supreme Court with regard to a lawyer's dishonest conduct. Respondent repeatedly lied to his client, her employer, the United States government, and to Relator. The panel believes that Respondent should serve an actual suspension of six months with the remainder of the two-year suspension stayed on specified conditions.

{¶118} The panel, having considered the case law, the Rule violations, the aggravating factors, and the mitigating factors and circumstances present here, recommends that Respondent be suspended from the practice of law for a period of two years, with 18 months of the suspension stayed on the following conditions:

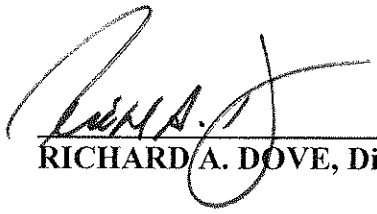
- Respondent enters into an Ohio Lawyer's Assistance Program contract (OLAP);
- Respondent complies with all treatment recommendations by OLAP or his treating health care professional;
- During the two-year stayed suspension, Respondent provide Relator with quarterly reports from OLAP and his treating health care professional that he is in compliance with all treatment recommendations;
- Respondent commit no further misconduct;
- Respondent pay the costs of these proceedings.

{¶119} Upon reinstatement to the practice of law, Respondent shall be required to serve a two-year period of monitored probation pursuant to Gov. Bar R. V, Section 21.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on February 9, 2018. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Harlan Daniel Karp, be suspended from the practice of law in Ohio for a period of two years, with 18 months stayed on the conditions that Respondent: (1) enter into an OLAP contract and comply with all treatment recommendations by OLAP or his treating health care professional; (2) during the suspension period, provide Relator with quarterly reports from OLAP and his treating health care professional that he is in compliance with all treatment recommendations; and (3) refrain from further misconduct. The Board recommends that upon reinstatement to the practice of law, Respondent be required to serve a two-year period of monitored probation pursuant to Gov. Bar R. V, Section 21. The Board further recommends that Respondent be ordered to pay the costs of these proceedings.

Pursuant to the order of the Ohio Board of Professional Conduct, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director