

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2597 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 197 DB 2016
	:	
v.	:	Attorney Registration No. 80082
	:	
DOUGLAS ANDREW GRANNAN,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 9th day of July, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent's Petition for Review and Request for Oral Argument, and the Office of Disciplinary Counsel's response, the petition for review and request for oral argument are denied. See Pa.R.D.E. 208(e)(4) (providing for oral argument in disciplinary matters in limited circumstances). Respondent Douglas Andrew Grannan is suspended from the Bar of this Commonwealth for a period of one year and one day. He shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 07/09/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 197 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 80082
	:	
DOUGLAS ANDREW GRANNAN	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On December 5, 2016, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, Douglas Andrew Grannan, charging him with violating the Rules of Professional Conduct in seven separate client matters. The parties stipulated to a one-time twenty-day extension for Respondent to file an Answer. Respondent filed his Answer to Petition for Discipline on January 25, 2017.

On March 8, 2017, the Board referred the Petition to a District I Hearing Committee ("Committee") comprised of Chair Kevin J. O'Brien, Esquire, and Members Sayde J. Ladov, Esquire, and Andrew J. Soven, Esquire. On March 28, 2017, Chair O'Brien conducted a prehearing conference. The Committee held a disciplinary hearing and Petitioner presented its case-in-chief on May 23, 2017; June 15, 2017; July 18, 2017; November 17, 2017; and January 17, 2018. Respondent testified on February 28, 2018 and was cross-examined on April 24, 2018. He called no witnesses during his case. On June 13, 2018, Petitioner presented a rebuttal witness. The record was closed on June 13, 2018.

On August 1, 2018, Petitioner filed a brief with the Committee and recommended that Respondent be suspended for not less than two years.

On September 7, 2018, Respondent filed a Brief with the Committee and requested that the charges be dismissed; in the alternative, he requested no more than a Public Censure.

On November 19, 2018, the Committee filed a Report concluding that Respondent committed ethical misconduct and recommending that he be suspended for a period of one year and one day.

On December 13, 2018, Respondent filed a Brief on Exceptions and requested oral argument before the Board. Respondent requests that the Board reject the Committee's recommendation and instead recommend to the Court that he be suspended for one year or less.

On December 21, 2018, Petitioner filed a Brief Opposing Respondent's Exceptions and requests that the Board reject Respondent's exceptions, adopt the

Committee's findings and conclusions, and recommend to the Court that Respondent be suspended for no less than one year and one day.

A three-member panel of the Board held oral argument on January 7, 2019.

The Board adjudicated this matter at the meeting on January 10, 2019.

II. FINDINGS OF FACT

The Board makes the following findings:

GENERAL BACKGROUND

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings.

2. Respondent is Douglas Andrew Grannan, born in 1968 and admitted to practice law in the Commonwealth of Pennsylvania in 1997.

3. Respondent maintains an office for the practice of law at 300 Walnut Street, Philadelphia, PA 19106. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has no history of prior discipline.

5. Respondent engaged in professional misconduct in seven separate client matters, as set forth below.

OTTO R. VILLATORO-CHOA MATTER

a. Background

1. On or about July 11, 1999, Otto R. Villatoro-Ochoa (Mr. Villatoro), a native of Guatemala, entered the United States illegally, was arrested by United States Border Patrol Agents, agreed to voluntarily depart the United States, and failed to depart as he had agreed to do. (Stip ##9, 10, 11, 12, and 13).

b. Lack of Competence and Diligence

2. On March 19, 2014, Respondent filed an Application for Stay of Deportation or Removal (ICE Form I-246) (Application for Stay) with the Department of Homeland Security (DHS); on April 4, 2014, Respondent wrote a follow-up letter to DHS (ODC-6), Office of Enforcement and Removal, regarding the Application for Stay.

3. In Respondent's follow-up letter requesting Mr. Villatoro's release under supervision, Respondent:

a. stated that "**Mr. Morocho [sic] is not a danger to public safety, and he is not a flight risk**" (double emphasis in original); and

b. requested that "she [sic] be released under an order of supervision so that she [sic] may join her [sic] family, return to gainful employment, and no longer be a financial burden to society." (p. 2)

4. On April 10, 2014, Respondent filed with the Immigration Court (IC) an Emergency Request to Stay Removal and Motion to Reopen (Emergency Request). (ODC-9)

a. The cover page to Respondent's Emergency Request states "NOT DETAINED" (ODC-9, p. 2), when in fact, Mr. Villatoro had been

detained since his arrest on March 6, 2014. (Stip #19, ODC-21(b))

5. In the Emergency Request (ODC-9, ¶ 16), Respondent alleged that ICE's denial of the administrative stay did not reflect the agency's goals as Mr. Villatoro has: "no criminal history"; "extraordinary family ties"; "two USC (United States citizen) children"; one child who was "diagnosed as autistic"; "a pregnant USC wife who was dependent on his income"; and "a clear path to lawful permanent residence" with an approved I-130.

6. In Exhibit B, Respondent alleges that "Mr. Villatoro is suffering from Epilepsy. . . . It's also called a seizure disorder." (ODC-9)

7. In Respondent's Emergency Request, Respondent failed to:

a. attach documentary support for the allegations that Ms. Villatoro was pregnant, Mr. Villatoro suffers from a seizure disorder, and Mr. Villatoro's son is autistic;

b. allege that Mr. Villatoro does not have a criminal record;

c. attach an affidavit from Mr. Villatoro explaining why he chose to remain in the United States and not voluntarily depart; and

d. allege that Mr. Villatoro has a credible fear of returning to his home country of Guatemala.

8. Mrs. Villatoro provided Respondent:

a. on March 24, 2014, with proof of her pregnancy (ODC-10);

b. on March 20, 2014, with proof that Mr. Villatoro suffers from seizure disorders (ODC-11); and

c. on March 7, 2014, with the psychiatric evaluation of the child.
(ODC-12)

9. On cross-examination, Respondent admitted that he failed to provide any evidence to the Immigration Court (IC). (N.T. 4/24/18, pp. 110-114)

10. By Order dated April 10, 2014, the Honorable Annie S. Garcy, Immigration Judge, granted Mr. Villatoro a stay of removal until further order of the Court.
(ODC-13)

11. On or about April 24, 2014, Mr. Villatoro was released from custody.
(ODC-15)

12. By Decision dated May 7, 2014 (ODC-17), Judge Garcy found that Respondent had failed to establish “*prima facie* eligibility [for Mr. Villatoro] to apply” (p. 1) for a provisional waiver under 8 C.F.R. § 212.7. (**ODC-18**)

13. Judge Garcy wrote that Respondent’s Emergency Request failed to supply “evidence to support the claims made about” Mr. Villatoro’s case (p. 2), including evidence that (ODC-17, p. 1): (1) Mrs. Villatoro was pregnant; (2) Mr. Villatoro suffers from epilepsy; (3) Mr. Villatoro is the father of a US citizen child; and (4) Mr. Villatoro’s child is autistic.

14. Judge Garcy found that Respondent also failed to (ODC-17, p. 2):

a. file an affidavit with the Court explaining why Mr. Villatoro remained in the United States;

b. establish that Mr. Villatoro does not have a criminal record;
and

c. provide evidence of the condition of Mr. Villatoro’s marriage.

15. By Order dated May 7, 2014, Judge Garcy (ODC-17, p. 2) vacated the April 10, 2014 stay, denied the Emergency Request to reopen, and ordered that the removal order that resulted from Mr. Villatoro's failure to voluntarily depart remain in effect.

16. Respondent failed to act with competence and diligence in handling Mr. Villatoro's Application for Stay and Emergency Request in that Respondent:

- a. wrote in his follow-up letter to DHS the incorrect name and sex of Mr. Villatoro;
- b. wrote incorrectly in the Emergency Request to the IC that Mr. Villatoro was not detained;
- c. failed to attach relevant evidence that he had received from Mrs. Villatoro to support the Emergency Request; and
- d. failed to request that Mr. and Mrs. Villatoro provide relevant available information, including: an affidavit explaining the condition of their marriage (N.T. 6/15/17, pp. 109, 175-76); an affidavit from Mr. Villatoro explaining why he failed to depart the USA (*id.* at p. 174); the child's birth certificate (*id.* at p. 144); and medical records of Mr. Villatoro's epilepsy diagnosis. (*Id.*)

17. Respondent's conduct was prejudicial to the administration of justice in that his lack of competence and diligence in filing an unsupported motion unnecessarily expended the IC's limited time and resources.

c. Failure to communicate

18. Respondent failed to provide Mr. or Mrs. Villatoro with a copy of his

written fee agreement. (N.T. 6/15/17, pp. 82, 121-122, 169-170)

- a. Mrs. Villatoro testified that she did not see the fee agreement prior to ODC providing her with a copy. (N.T. 6/15/17, pp. 121-124)

19. Respondent failed to provide Mr. or Mrs. Villatoro with a copy of his correspondence to DHS and pleadings filed with IC. (N.T. 6/15/17, pp. 85, 88, 172-73, 193)

20. Respondent failed to promptly inform Mr. and Mrs. Villatoro that the IC had denied the Emergency Request to reopen. (N.T. 6/15/17, pp. 109-114; ODC-23; *see also* N.T. 4/24/18, pp. 141-142)

21. Respondent failed to promptly provide Mr. and Mrs. Villatoro with a copy of the IC's decision denying the Emergency Request. (ODC-17(a); N.T. 6/15/17, p. 114; N.T. 4/24/18, p. 142)

d. Failure to surrender client file

22. On or about May 30, 2014, Mr. Villatoro terminated Respondent's representation and retained the legal services of Gerardo Mejia, Esquire. (N.T. 6/15/17, p. 179; ODC-17(a), -17(b), -17(c)).

23. From time to time thereafter, Mrs. and Mr. Villatoro, as well as Mr. Mejia requested that Respondent forward a copy of Mr. Villatoro's file to Mr. Mejia. (ODC-19; ODC-20; N.T. 6/15/17, pp. 118-120, 179)

24. Respondent failed to surrender Mr. Villatoro's file upon the termination of the representation. (N.T. 6/15/17, pp. 118-120)

25. As of September 11, 2014, when Mr. and Mrs. Villatoro filed a complaint with ODC, Respondent had failed to provide Mr. Villatoro or Mr. Mejia with a

copy of Mr. Villatoro's client file. (N.T. 6/15/17, pp. 120, 137, 149; ODC-21)

e. Visit to Elizabeth Detention Center

26. Respondent wrote in his DB-7 Answer (ODC-23, p. 3) and PFD Answer ¶ 19 that he visited Mr. Villatoro at the Elizabeth Detention Center on March 8, 2014, at which time Mr. Villatoro executed a fee agreement.

27. Respondent testified on direct and cross examination that he visited Mr. Villatoro a "couple times" while Mr. Villatoro was at the detention center and one of the times was on March 8, 2014. (N.T. 2/28/18, p. 148; 4/24/18, pp. 149, 157)

28. Respondent testified that during March 2014, he visited the Elizabeth Detention Center twelve times, of which two of those visits were with Mr. Villatoro. (N.T. 4/24/18, p. 192)

29. Mr. and Mrs. Villatoro testified that Respondent visited Mr. Villatoro only one time while Mr. Villatoro was at the Elizabeth Detention Center and the one visit was not on March 8, 2014, the date Respondent claims Mr. Villatoro signed the fee agreement. (N.T. 6/15/17, pp. 123-124, 166, 182-184)

30. Mr. James Wise, Deputy Warden of Elizabeth Detention Center, confirmed the testimony of Mr. and Mrs. Villatoro that prison records show that Respondent did not visit the detention center on March 8, 2014. (N.T. 6/13/18, pp. 81, 83)

31. Mr. Wise testified that Respondent made only one visit to the detention center in March 2014, and that one visit was on March 18, 2014 to see Mr. Villatoro. (N.T. 6/13/18, pp. 80-82; ODC-21(b), -21(c)).

32. Mr. Villatoro's, Mrs. Villatoro's, and Mr. Wise's testimony was credible.

CHARGE II: JOAO BATISTA RIBEIRO

a. Background

33. Mr. Joao Batista Ribeiro Viana ("Mr. Ribeiro") is a native of Brazil who was not lawfully in the United States. (Stip ##54-55; ODC-26)

b. Lack of competence, diligence, and communication

34. In or around June or July 2012, Mr. Ribeiro went to Respondent's office with Ivanna, a Portuguese translator (N.T. 5/27/17, pp. 172-175, 207, 236), during which time: Respondent met with Mr. Ribeiro for approximately 10-20 minutes; Respondent did not take any notes during their meeting; Mr. Ribeiro gave Respondent \$700 in cash; and Respondent did not give Mr. Ribeiro a receipt or fee agreement for his payment.

35. On September 1, 2012, Respondent met again with Mr. Ribeiro, during which time Respondent agreed to represent Mr. Ribeiro in his immigration matter for a fee of \$1,500, advised Mr. Batista Ribeiro that he would file an application to stay Mr. Ribeiro's removal, and received \$500 cash from Mr. Ribeiro. (ODC-29)

36. On December 12, 2012, Respondent filed a generic Motion to Withdraw Pleadings alleging that Mr. Ribeiro's arrest was in violation of his Fourth Amendment rights. (ODC-30)

a. Respondent failed to act with competence and request that the pleadings be reopened because they were taken in Spanish, whereas Portuguese is Mr. Ribeiro's native language. (N.T. 4/28/18, p. 44)

b. Respondent failed to act with competence and allege any facts in support of the Motion.

37. On February 4, 2013, DHS filed a motion in opposition noting that Respondent “offered no evidence to support his proffer that the case facts of ***Oliva Ramos*** [concerning improper arrests] are on point——*no declaration even recounting the facts that led to his arrest.*” (emphasis added) (ODC-31; Stip #66)

38. By Decision and Order dated March 12, 2013 (Stip #67; ODC-32), Judge Morley: *sua sponte* vacated Mr. Ribeiro’s May 10, 2012 pleadings because they were taken in Spanish and Mr. Ribeiro’s best language was Portuguese; ordered DHS to file its evidence of removability by March 25, 2013; ordered Respondent to file a Motion to Suppress by April 25, 2013, and added that Respondent’s failure to timely file the motion would be deemed a waiver; and scheduled a pre-trial conference for June 26, 2013.¹

39. Mr. Ribeiro received the March 12, 2013 Decision and Order in the mail, but Mr. Ribeiro did not read English, had no legal background, did not know what a motion to suppress was, and was unable to understand the decision and order. (N.T. 5/27/17, pp. 178-179)

40. Mr. Ribeiro faxed a copy of the Decision and Order to Respondent, called Respondent’s office to ensure that they had received his facsimile, and scheduled an appointment to meet with Respondent. (N.T. 5/23/17, pp. 180-182)

41. Mr. Ribeiro met with Respondent, during which time Respondent failed to:

- a. explain a motion to suppress, the need to draft an affidavit to

¹ On March 25, 2013, DHS filed a motion to reconsider Judge Morley’s decision to vacate Mr. Ribeiro’s pleadings (ODC-33) and evidence of removability, which included a Form I-213 [arrest report] providing DHS’s summary of the circumstances surrounding Mr. Ribeiro’s arrest. (ODC-34)

attach to the motion, and the importance of filing a motion to suppress so as to enable Mr. Ribeiro to make an informed decision about his case (N.T. 5/23/17, pp. 182, 184-185) and

- b. obtain facts regarding Mr. Ribeiro's arrest; and
- c. draft an affidavit for Mr. Ribeiro's signature.

42. Respondent blamed Mr. Ribeiro for failing either to schedule an appointment to prepare the affidavit for the motion (ODC-55, p. 3) or to "show up" for scheduled appointments to prepare the affidavit (N.T. 2/28/18, p. 71).

a. Respondent failed to introduce an office calendar, telephone records, memo to file, letter, email, or testimony of his office staff to corroborate his testimony that Mr. Ribeiro either did not make an appointment or was a "no show" for his appointments. (N.T. 4/24/18, pp. 61-62, 65-66, 94)

43. Mr. Ribeiro credibly testified that he never cancelled any scheduled appointments with Respondent. (N.T. 5/23/17, pp. 183, 234)

44. Respondent failed to keep Mr. Ribeiro informed about the ongoing need for an affidavit to attach to a motion to suppress.

a. The follow-up letter that Respondent sent to Mr. Ribeiro requesting that he make an appointment only made reference to the June 26, 2013 hearing and failed to mention the need for an affidavit for a motion to suppress. (N.T. 2/28/18, p. 53; 4/24/18, 65-66)

45. Respondent agreed that Mr. Ribeiro "never missed a hearing." (*Id.* at p. 68)

46. Respondent failed to act with competence and diligence when he failed to (ODC -39, -40):

- a. prepare an affidavit regarding Mr. Ribeiro's arrest and being targeted because of racial profiling;
- b. prepare a motion to suppress for Mr. Ribeiro's review; and
- c. file a motion to suppress with Judge Morley.

47. To the extent that Respondent was unable to prepare a timely affidavit to attach to a motion to suppress, Respondent failed to act with competence and reasonable diligence to protect and preserve Mr. Ribeiro's rights by requesting an extension of time, requesting to withdraw from the case, or filing a *nunc pro tunc* motion to suppress. (N.T. 4/24/18, p. 67)

48. By Interlocutory Decision and Order dated May 2, 2013 (ODC-37), Judge Morley:

- a. denied DHS's motion to reconsider its order vacating Mr. Ribeiro's *pro se* pleadings;
- b. stated that "the Court cannot simply accept the I-213 as the accurate representation of the events that led to [Mr. Ribeiro's] arrest, devoid of [Mr. Ribeiro's], perhaps different view of what occurred" (*id.* at p. 1); and
- c. found that since Mr. Ribeiro had failed to file a timely Motion to Suppress, Mr. Ribeiro had waived his right to challenge the circumstances surrounding his warrantless arrest. (*Id.* at p. 2)

49. Prior to Respondent's attending the June 26, 2016 pre-trial conference with Mr. Ribeiro, Respondent failed to obtain a copy of the Notice to Appear (NTA) (ODC-38, p. 70) and discuss admitting to its charges with Mr. Ribeiro. (N.T. 5/23/17, p. 189)

50. On June 26, 2013, Respondent and Mr. Ribeiro attended the pre-trial conference before Judge Morley (ODC-38), during which Respondent:

- a. failed to obtain Mr. Ribeiro's consent to concede Mr. Ribeiro's removability (ODC-38, p. 70; N.T. 5/23/17, pp. 189, 192);
- b. admitted Mr. Ribeiro's removability as alleged in the NTA (*id.* at pp. 70-71) without previously having obtained a copy of the NTA and discussing its contents with Mr. Ribeiro (N.T. 5/23/17, p. 189);
- c. designated Brazil as Mr. Ribeiro's country of removal (ODC-38, at p. 71);
- d. requested only that Mr. Ribeiro have a continuance of more than four months so that Mr. Ribeiro could make arrangements to depart the United States (*id.*);
- e. failed to discuss the continuance request with Mr. Ribeiro (N.T. 5/23/17, p. 189); and
- f. failed to offer any reasons in support of his request that Mr. Ribeiro have a continuance greater than four months to depart.

51. Respondent failed to provide competent representation to Mr. Ribeiro at the June 26, 2013 IC proceeding.

52. Shortly after the IC proceeding, Judge Morley issued an Oral Decision (ODC-39) and Order (ODC-40):

a. finding removability based on Respondent's admissions to the allegations in Mr. Ribeiro's NTA and concession of removability (ODC-39, p. 3);

b. denying Respondent's request for a continuance of Mr. Ribeiro's departure because Respondent failed to offer good cause for his client's request, such as Mr. Ribeiro's "own illness, illness of a family member, complex business to shut down, anything that might warrant an additional amount of time...." (*id.* at p. 4); and

c. establishing an appeal deadline of July 26, 2013, for Mr. Ribeiro to seek review before the Board of Immigration Appeals (BIA).

53. On or about June 26, 2013, Respondent and Mr. Ribeiro executed a fee agreement that provided for Respondent's continued representation in Mr. Ribeiro's immigration matter for a fee of \$1,500. Stip #75.

54. On or about July 22, 2013, Respondent filed a Notice of Appeal with BIA form Judge Morley's decision and order. Stip. #76.

55. Respondent failed to file a brief on appeal. (N.T. 4/28/18, pp. 70-71)

56. On November 7, 2013, Respondent filed a Motion for Remand with the BIA raising boiler-plate allegations that Mr. Ribeiro's arrest was in violation of the Fourth Amendment and seeking a remand to the IC to litigate a Motion to Suppress. (ODC-42)

a. Although Respondent admitted he was in contact with Mr. Ribeiro prior to filing the Motion for Remand, Respondent failed to draft an affidavit for Mr. Ribeiro to sign and attach to support the remand motion. (N.T. 4/24/18, pp. 71-74)

57. On December 18, 2013, DHS filed a Response to Mr. Ribeiro's Motion to Remand (ODC-43), noting Respondent's failure to file a brief on appeal and failure to offer any evidence in support of his request for a remand. (*Id.* at pp. 1-2)

58. From time to time after the June 26, 2013 hearing, Mr. Ribeiro would contact Respondent's office regarding the appeal of Judge Morley's decision, during which time Respondent failed to:

a. speak with Mr. Ribeiro (N.T. 4/28/18, pp. 69-71; N.T. 5/23/17, pp. 194-195);

b. explain Mr. Ribeiro's immigration matter to Mr. Ribeiro to the extent necessary to enable Mr. Ribeiro to make informed decisions regarding the representation (N.T. 5/23/17, pp. 194-195); and

c. comply with Mr. Ribeiro's reasonable requests for information regarding his appeal. (*Id.*)

59. By Order and Decision dated February 20, 2015 (ODC-44), the BIA:

a. found that Judge Morley did not err in denying Mr. Ribeiro's motion for continuance because Respondent failed to demonstrate good cause for the continuance;

b. upheld Judge Morley's finding of removability based, in part, on Respondent's concessions of his client's removability at the June 26, 2013 hearing;

c. noted that Respondent failed to file a Motion to Suppress in accordance with Judge Morley's filing schedule or proffer any actual evidence suggesting that Mr. Ribeiro had been subject to egregious misconduct;

d. denied the Motion to Remand, finding that Mr. Ribeiro had failed to establish "prejudice, as necessary to support a remand on due process grounds" (*id.* at p. 2); and

e. dismissed the appeal.

60. Respondent failed to provide competent representation to Mr. Ribeiro before the BIA.

61. After the BIA entered its Decision, Respondent failed to:

a. call Mr. Ribeiro and advise him of the BIA's Decision (N.T. 5/23/17, p. 198); and

b. meet with Mr. Ribeiro and explain the BIA's Decision so that Mr. Ribeiro could make informed decisions regarding his case. (N.T. 5/23/17, p. 197, 199-200)

62. Following Mr. Ribeiro's receipt of the BIA's Decision in the mail, Mr. Ribeiro took the Decision to someone who could read English and translate the Decision for him. (N.T. 5/23/17, p. 198)

63. Thereafter, Mr. Ribeiro decided to retain a new lawyer. (N.T. 5/23/17, p. 200)

64. Mr. Ribeiro met with Katelyn Hufe, Esquire, a former legal associate at the law firm of Hogan & Vandenberg.

a. Ms. Hufe is the American Immigration Lawyers Association's liaison with the Department of Justice's Executive Office of Immigration Review, Philadelphia Ambassador for the American Immigration Counsel, and Philadelphia Bar Association's immigration law liaison to the Young Lawyers Division. (N.T. 5/23/17, pp. 43-44)

65. During Mr. Ribeiro's meeting, Ms. Hufe:

a. read the BIA Decision and discovered that Respondent had waived the filing of a motion to suppress (N.T. 5/23/17, p. 49);

b. read DHS's I-213 and found that Mr. Ribeiro was arrested after the target of the arrest was taken into custody (*id.* at pp. 55-56);

c. interviewed Mr. Ribeiro for approximately one hour and concluded that the I-213 corroborated Mr. Ribeiro's recollection of his arrest (*id.* at pp. 49, 55); and

d. concluded that "at no point" did Mr. Ribeiro understand what was going on with his immigration case. (*Id.* at pp. 63-64, 66)

66. Subsequently, Ms. Hufe met with Mr. Ribeiro and prepared two affidavits, one concerning the facts of his arrest and one concerning Respondent's representation of Mr. Ribeiro. (N.T. 5/23/17, pp. 57-58)

67. Ms. Hufe's supervisor, W. John Vandenberg, Esquire, contacted Respondent to try to determine why the motion to suppress deadline was missed. (N.T. 5/23/17, p. 59)

68. By email to Respondent sent on Monday, April 13, 2015, Mr. Vandenberg (ODC-45, p. 1):

a. informed Respondent that Mr. Ribeiro had retained his law firm to file a Motion to Reopen;

b. noted that it "seems like Joao [Mr. Ribeiro] has a pretty strong suppression case";

c. advised that he was considering filing a motion to reopen pursuant to **Matter of Lozada**, 189 I&N Dec. 637 (BIA 1998), to have Mr. Ribeiro's case reopened based on Respondent's ineffective assistance of counsel;

d. inquired as to whether there was a reason why Respondent had failed to file a motion to suppress;

e. explained that if Respondent had a reason for not filing the motion, then under **Fadiga v. Attorney General**, 488 F.3d 142 (3rd Cir. 2007), Mr. Vandenberg did not have to file a disciplinary complaint; and

f. stated that if Respondent provided a statement regarding his conduct for Mr. Vandenberg to attach to the **Lozada** motion, Mr. Vandenberg would handle the motion so that Respondent would not be affected.

69. Respondent agreed to "look at Joao's file." (*Id.*)

70. By emails sent between Mr. Vandenberg and Respondent on Friday, April 17, 2015:

- a. at 2:36 p.m., Mr. Vandenberg asked Respondent whether he had a chance to look at Mr. Ribeiro's file (*id.* at p. 5);
- b. at 2:49 p.m., Respondent wrote, "No" (*id.*);
- c. at 3:46 p.m., Mr. Vandenberg inquired whether Respondent was going to cooperate or whether Mr. Vandenberg should handle Joao's matter as a standard **Lozada** claim as he had a duty to look out for Joao (*id.* at p. 4); and
- d. at 3:58 p.m., Respondent complained that if Mr. Vandenberg wanted to impose a deadline, he should not have waited "until 3:45 p.m. on a Friday." (*Id.*)

71. By letter to Respondent dated May 15, 2015, sent via email, facsimile transmission, and certified mail, Ms. Hufe reminded Respondent that Mr. Vandenberg had requested that Respondent submit a response to allegations of his ineffective assistance of counsel, requested a complete copy of Mr. Ribeiro's file no later than May 19, 2015 as there was a pending deadline for filing a Motion to Reopen, attached Mr. Ribeiro's affidavit, and explained that she would welcome Respondent's response in this matter. (ODC-46, pp. 1-2)²

72. By email reply at 6:31 p.m. on May 19, 2015, Respondent asked, "Why do I need to contact you to respond?" (*Id.* at p. 8)

² Respondent did not timely provide Ms. Hufe with a copy of Mr. Ribeiro's file. (ODC-48, n. 2; N.T. 5/23/17, pp. 80-81; *see also* N.T. 4/24/18, p. 96)

73. Respondent never provided an explanation to either Mr. Vandenberg or Ms. Hufe as to why he failed to file a motion to suppress. (ODC-48, exh. 8)

74. Respondent testified that he did not submit a response to Mr. Vandenberg or Ms. Hufe because it would have been “cataclysmically prejudicial to [Mr. Ribeiro’s] ability to reopen his case.” (N.T. 4/28/18, p. 85)

75. On May 20, 2015, Ms. Hufe filed a complaint with ODC alleging Respondent’s ineffective assistance of counsel in his handling of Mr. Ribeiro’s matter. (ODC-47; Stip #87)

76. On May 20, 2015, Mr. Ribeiro filed a Motion to Reopen with the BIA challenging the ineffective assistance of Respondent pursuant to ***Matter of Lozada***. (ODC-48; Stip #88)

a. In the Motion to Reopen, Mr. Ribeiro alleged that Respondent provided ineffective assistance by his failure to communicate and failure to file a Motion to Suppress, and that Respondent’s ineffective assistance prejudiced Mr. Ribeiro.

77. By Decision dated August 21, 2015 (ODC-49; Stip #89), the BIA:

a. stated that it “agree[d] that counsel may have been ineffective in not submitting a motion to suppress, as the Immigration Judge afforded him an opportunity to do so” (*id.* at p. 2);

b. noted that since Mr. Ribeiro conceded removability, “the alleged ineffective assistance has not been shown to have potentially affected the outcome of” Mr. Ribeiro’s case (*id.*); and

c. denied the Motion to Reopen.

78. On September 18, 2015, Mr. Ribeiro filed a Motion to Reconsider BIA's denial of the Motion to Reopen arguing that Respondent provided ineffective assistance when he conceded removability on behalf of Mr. Ribeiro without communicating with Mr. Ribeiro about the allegations in the NTA. (ODC-50; Stip #90)

79. DHS did not oppose Mr. Ribeiro's Motion to Reconsider.

80. By Order dated November 18, 2015, BIA granted the Motion to Reconsider, reopened the proceedings, and remanded Mr. Ribeiro's case to the Immigration Judge for a *de novo* hearing. (ODC-51; Stip #92)

81. On remand, Mr. Ribeiro filed an Unopposed Motion to Administratively Close Proceedings as DHS had offered to exercise prosecutorial discretion to administratively close his case. (ODC-52)

82. By Order dated May 17, 2016, Judge Morley found there was good cause and granted the Motion dismissing the removal proceedings against Mr. Ribeiro. (ODC-53; Stip #94)

83. Respondent's conduct in handling Mr. Ribeiro's immigration matter needlessly expended the limited time and resources of the immigration court system.

84. Mr. Ribeiro's and Ms. Hufe's testimony was credible.

CHARGE III: THE DR. JOHN J. DEL GAISO MATTER

a. Background

85. On August 29, 2012, John J. Del Gaiso, DMD, a certified pediatric dentist, performed dental surgery on Jovan, a juvenile (ODC-57); on May 8, 2013, Dr. Del Gaiso saw Jovan for a routine dental check-up. (*Id.*; N.T. 11/17/17, p. 180)

86. Between August 29, 2012 and May 8, 2013, Dr. Del Gaiso had no contact with Jovan or his mother, Marya Magdalena. (N.T. 11/17/17, p. 181)

87. When Dr. Del Gaiso saw Jovan's mother on May 8, 2013, she had no complaints about Jovan's prior treatment. (*Id.*)

88. On October 16, 2013, Respondent's office manager took a statement from Ms. Magdalena. (ODC-64, Exh. A)

89. On October 17, 2013, Respondent and Ms. Magdalena entered into a Contingent Fee Agreement for Respondent's representation of a cause of action arising out of "Jovan's visit to Dr. Del Gaiso's office in July of 2013 [sic]." (ODC-64, Exh. C)

90. By letter dated October 17, 2013, from Respondent to Dr. Del Gaiso (ODC-58; Stip #102), Respondent wrote that:

- a. he represented Jovan and his mother, Marya Magdalena;
- b. Dr. Del Gaiso "failed to properly manage the behavior [sic] Jovan during" his dental surgery;
- c. Dr. Del Gaiso failed to exercise reasonable dental care and provided grossly negligent and reckless dental care;
- d. Dr. Del Gaiso committed dental malpractice, and as a result, Jovan's mouth and face have been irreparably damaged;
- e. Jovan and Ms. Magdalena would settle their claim against

Respondent for \$25,000; and

f. Respondent would revoke his settlement demand and seek damages in excess of \$25,000 should the matter go to trial.

91. After reviewing Jovan's file and discussion with his malpractice carrier, on October 29, 2013, Dr. Del Gaiso called Respondent's office to explain that Respondent's claim was mistaken (N.T. 11/17/17, pp. 183-185), during which time:

a. Respondent asked, why did Dr. Del Gaiso care, "Don't [you] have malpractice insurance?" (ODC-62; N.T. 11/17/17, p. 187)

92. Although Respondent suggested that Ms. Magdalena take Jovan to see Respondent's wife, Dr. Wu, for a Certificate of Merit to support a dental malpractice complaint, Ms. Magdalena failed to appear for scheduled appointments with Dr. Wu. (ODC-64, p. 4)

b. Failure to act with competence and diligence

93. On December 20, 2013, Respondent filed a complaint on behalf of Jovan and Ms. Magdalena against Dr. Del Gaiso and Dentistry for Children (defendants) in the Court of Common Pleas of Philadelphia County. ***Magdalena et al. v. Del Gaiso et al.***, No. 2629, December Term, 2013. (ODC-59; Stip #104)

a. The complaint contained claims of dental malpractice (negligence), breach of contract, and breach of fiduciary duty.

94. At the time Respondent filed the complaint, Respondent:

- a. had a statement from Jovan's mother that he considered inaccurate and dramatic;
- b. knew that Jovan had not been examined by a pediatric dentist;
- c. did not have a Certificate of Merit as required by Pa.R.Civ.P. 1042.3 (ODC-60);
- d. did not have photographs of Jovan's mouth at or near the time of Jovan's purported injury; and
- e. did not conduct any investigation to confirm that Dr. Del Gaiso's office was closed the day after Jovan's dental surgery.

95. Prior to filing the complaint, Respondent failed to act with competence and diligence and undertake an investigation of the factual basis to support the allegations.

96. On March 27, 2014, Respondent attended a Case Management Conference in the **Dr. Del Gaiso** matter; after the conference, Respondent met with Jason Bialker, Esquire, attorney for Dr. Del Gaiso, during which time Respondent:

- a. falsely stated that he had photographs of Jovan's mouth that "show the child during and immediately following the treatment," which are "quite graphic" and "show the child with blood throughout his mouth and face from the laceration" (ODC-62, p. 8; N.T. 11/17/17, p. 170);
- b. stated that he knew he needed to file a Certificate of Merit to pursue his client's malpractice claim (N.T. 11/17/17, p. 168); and
- c. agreed to drop the breach of contract and breach of fiduciary duty claims and file an amended complaint with more specificity. (*Id.* at pp.

168-169; ODC-62, p. 8)

97. Respondent did not dismiss the breach of contract and breach of fiduciary duty claims as he had agreed to do. (*Id.*)

98. Respondent knew he had a duty to file a Certificate of Merit within sixty days of filing the dental malpractice complaint, as required by Pa.R.C.P. 1042.3. (N.T. 4/24/18, p. 32)

99. To the extent that Jovan had a viable malpractice claim, Respondent failed to act with competence and diligence and file a Certificate of Merit. (ODC-59)

100. On April 1, 2014, the defendants filed a Notice of Intention to Enter Judgment of Non Pros on Professional Liability Claim as a result of Respondent's failure to file a Certificate of Merit. (ODC-59; Stip #106)

101. On May 2, 2014, defendants filed a Praecipe for Entry of Judgment of Non Pros; on May 2, 2014, a Judgment of Non Pros was entered in favor of Dr. Del Gaiso and against Ms. Magdalena and Jovan on the dental malpractice claim. (ODC-59; Stip #107)

102. Thereafter, Mr. Bialker made multiple unsuccessful attempts to contact Respondent for discovery and the status of Respondent's agreement to dismiss the remaining charges. (N.T. 11/17/17, pp. 171-172; ODC-62, p. 11)

103. On January 15, 2015, defendants filed a Motion for Judgment on the pleadings (ODC-59); on February 19, 2015, the Honorable Mary D. Colins denied the motion without prejudice. (*Id.*)

104. On March 6, 2015, defendants filed a motion to compel answers and production of documents and requested a discovery hearing on their motion; the Court

scheduled a hearing on the Motion for March 16, 2015. (ODC-59)

a. Respondent received a copy of defendants' discovery request and notice of the scheduled discovery hearing (Stip #111(a)); and

b. Respondent failed to act with competence and diligence to either respond to the Motion to Compel or provide the requested discovery.

(N.T. 11/17/17, pp. 172-173)

105. On March 16, 2015, a hearing was held on defendants' discovery motion (ODC-59; Stip #112), during which:

a. Respondent failed to attend; and

b. the Honorable Mark I. Bernstein ordered that Ms. Magdalena comply with defendants' discovery request within ten days of his Order or risk the entry of sanctions.

106. Although Respondent received notice of Judge Bernstein's Order (Stip #113), Respondent failed to act with competence and diligence and provide the requested discovery. (N.T. 11/17/17, p. 173)

a. Respondent failed to provide Mr. Bialker with copies of the photographs for Jovan's purported injuries as Respondent had agreed to do and in compliance with the Court's discovery orders. (N.T. 11/17/17, p. 170)

107. On March 27, 2015, defendants filed a motion for sanctions as a result of Respondent's failure to comply with the discovery requests (*Id.*; ODC-59); the Court scheduled a hearing on the motion for sanctions for April 6, 2015; and Stip #116.

108. On April 6, 2015, oral argument was held before Judge Bernstein on

defendants' motion for sanctions (ODC-59), at which:

- a. Respondent failed to attend (N.T. 11/17/17, p. 173); and
- b. Judge Bernstein granted the motion and ordered that Jovan and his mother were "precluded from offering into evidence at trial as to those things contained in the request for production or interrogatories."

109. On April 16, 2015, defendants filed a Motion for Summary Judgment (ODC-59); Respondent was served with a copy of the motion. (Stip #19)

- a. Respondent failed to act with competence and diligence and file a response to the Motion for Summary Judgment. (N.T. 11/17/17, p. 173)

110. On September 30, 2015, Judge Colins entered an Order granting defendants' Motion for Summary Judgment and ordering that Jovan and his mother's complaint be stricken and dismissed with prejudice. (N.T. 11/17/17, p. 173; Stip #121)

111. To the extent Jovan may have received improper dental care, Respondent failed to act with competence and diligence to protect Jovan's rights by:

- a. requesting a continuance to enable Jovan to obtain a Certificate of Merit; or
- b. withdrawing the complaint so that either the Minor Tolling Statute (42 Pa.C.S.A. § 5533(b)) or Statute of Repose (40 P.S. § 1303.513) could apply when Jovan was no longer a minor.

112. Respondent's handling of the complaint against the defendants unnecessarily expended the court system's limited time and resources, and was prejudicial to the administration of justice.

113. Dr. Del Gaiso's and Jason Bialker, Esquire's, testimony was credible.

CHARGE IV: JINFEI JIANG MATTER

a. Background

114. Mr. Jinfei Jiang, a native of China, entered the United States without inspection (Stip #129) and lived in New York City. (N.T. 7/18/17, pp. 7-8)

b. Lack of competence and diligence

115. At the outset of the representation, Respondent sought to have Mr. Jiang interviewed by an Asylum Officer. (N.T. 2/28/17, p. 212; ODC-67)

116. Subsequently, Mr. Jiang went with "a Korean" from Respondent's office and Ms. Jessica Huang, Mr. Jiang's future wife, for an asylum interview in Newark, NJ. (*Id.* at pp. 18- 19)

a. Mr. Jiang had not previously met "the Korean" and did not know his name (*id.*);

b. "the Korean" spoke no Chinese (*id.* at pp. 19, 94);

c. Mr. Jiang thought "the Korean" was "a driver" (*id.* at pp. 19-20); and

d. neither Respondent nor "the Korean" informed Mr. Jiang that "the Korean" was an attorney. (*Id.* at p. 20)

117. Prior to the interview, Respondent failed to act with competence and diligence and:

a. comply with the mandates of 8 CFR § 10003.33 and have Mr. Jiang's documents translated from Chinese to English (*id.* at p. 18);

b. prepare Mr. Jiang for the asylum interview (*id.* at pp. 18, 94);

and

c. arrange to have a Chinese translator for Mr. Jiang at the interview. (*Id.* at pp. 20, 95)

118. Mr. Jiang would have paid Respondent to have his documents translated or paid a translator directly if Respondent had requested that Mr. Jiang have his documents translated. (*Id.* at pp. 18-19, 77)

a. Mr. Jiang explained, “I already paid the attorney’s fee. Why would I not pay the translation fee.” (*Id.* at p. 19)

119. At the asylum interview:

a. Ms. Huang, who believed she was attending the interview solely to “accompany” Mr. Jiang, was asked to translate for Mr. Jiang (*id.* at p. 123);

b. Ms. Huang, who had no legal or professional translation experience, attempted to translate for Mr. Jiang (*id.* at p. 95);

c. Ms. Huang “got stuck halfway through” the asylum interview (*id.* at pp. 20-21);

d. the interview was then delayed until the asylum office obtained a telephonic translator (*id.* at p. 21); and

e. Mr. Jiang was told for the first time that he needed to have some of his documents translated. (*Id.* at pp. 21-22)

120. By letter dated February 13, 2014, the Asylum Office advised Mr. Jiang that he had not met his burden of proof and referred Mr. Jiang’s application to an immigration judge for adjudication in removal proceedings. (ODC-68)

121. The IC scheduled Mr. Jiang's Master Hearing for April 30, 2014; prior to the Master Hearing, Respondent filed a Notice of Intent to Offer Evidence with the IC (ODC-70(c)), which:

- a. included Mr. Jiang's untranslated travel documents;
- b. included untranslated letters from Mr. Jiang's family and church friend;
- c. did not include a letter from Mr. Jiang's church in Chengman, China (*id.* at pp. 26-27); and
- d. did not include any documentation regarding Mr. Jiang's current church affiliation and attendance in Philadelphia.

122. On April 30, 2014, Respondent attended a Master Hearing before Immigration Judge Charles Honeyman (ODC-69(a)), during which time:

- a. Judge Honeyman explained that some of the issues in asylum cases are whether "there is some harm, serious harm. . . . And then if not, what the likelihood is" (*id.* at pp. 8-9);
- b. Judge Honeyman advised that "sometimes people will bring in the church affiliation witness, or at least a letter of the witness available [sic]" (*id.* at p. 9);
- c. Judge Honeyman inquired whether Respondent had yet submitted a "church affiliation letter," to which Respondent stated he had not (*id.*);
- d. Pamela Ransome, Esquire, attorney for DHS, requested that the court schedule Mr. Jiang's Individual Hearing for the afternoon of April

13, 2015, the same day as another matter she had scheduled (*id.* at pp. 9-10); and

e. Respondent gave Mr. Jiang's original documents to Ms. Ransome. (*Id.* at p. 23)

123. The IC scheduled Mr. Jiang's Individual Hearing for 1:00 p.m. on April 13, 2015. (ODC-69)

124. Prior to Mr. Jiang's Individual Hearing, Respondent failed to request that Mr. Jiang provide:

a. evidence of Mr. Jiang's church affiliation and attendance in Philadelphia (N.T. 7/18/17, pp. 28, 141);

b. letters of support from members of Mr. Jiang's Christian congregation in Philadelphia (*id.* at pp. 28, 99);

c. a letter from Mr. Jiang's employer (*id.*);

d. updated letters from Mr. Jiang's family and friends in China that the political situation had not changed. (*id.* at pp. 29, 141); and

e. translations of all of Mr. Jiang's documents or funds for Respondent to have Mr. Jiang's documents translated. (*Id.* at pp. 21-22, 35)

125. Respondent failed to act with competence and diligence to provide the foregoing relevant evidence in support Mr. Jiang's asylum application. (*Cf.* N.T. 7/18/17, pp. 140-142)

126. Respondent requested that Ms. Huang translate Mr. Jiang's letters of support from Mr. Jiang's father and church friend from China. (*Id.* at pp. 29, 98, 124)

a. Ms. Huang complied with Respondent's request. (*Id.*)

127. Respondent failed to act with competence and diligence to:

- a. include the letters Ms. Huang translated with the evidence submitted to the IC (*id.* at pp. 98, 113, 142); and
- b. obtain translations of all of Mr. Jiang's documents from Chinese to English as mandated by 8 CFR § 10003.33. (*Id.* at pp. 21-24, 33-35)

128. On April 13, 2015, Mr. Jiang met with Respondent and Sister in a conference room at the courthouse prior to Mr. Jiang's Individual Hearing, during which time:

- a. Respondent told Mr. Jiang that he should not go to court because he would not win (*id.* pp. 31, 100);
- b. Mr. Jiang informed Respondent that he wanted to proceed with his asylum application (*id.* at pp. 33-34, 101); and
- c. Respondent did not advise Mr. Jiang that Respondent had failed to have all of Mr. Jiang's documents translated and served on DHS as mandated by 8 C.F.R. § 1003.33 and as instructed by the Immigration Court Practice Manual (ICPM). (*Id.* at pp. 33, 100)

129. At Mr. Jiang's Individual Hearing (ODC-69(a)):

- a. Judge Honeyman stated that DHS has agreed to defer prosecuting Mr. Jiang's case and close it (*id.* at p. 15);
- b. Judge Honeyman explained that Mr. Jiang could re-calendar his case if he was able to get adequate proof, including certified translations (*id.* at p. 16);

c. Mr. Jiang agreed to the administrative closure of his case (*id.* at p. 18);

d. Ms. Ransome informed Mr. Jiang that she had Mr. Jiang's original documents, but that DHS was "not in a position to have them authenticated" (*id.* at p. 23);

e. Ms. Ransome noted that Mr. Jiang's translation of his documents "might be helped if [Mr. Jiang] had the originals, so the government wants to return them" (*id.*);

f. Judge Honeyman told Mr. Jiang that "the government is returning your original documents to your lawyer" (*id.*); and

g. Judge Honeyman advised Mr. Jiang that DHS would not translate Mr. Jiang's documents and Mr. Jiang needed to translate them himself and submit the translated documents with a certificate that the translation is true and correct. (*Id.* at pp. 23-25)

130. Mr. Jiang and Ms. Huang testified, consistent with the Individual Hearing transcript, that Mr. Jiang's case was closed because Mr. Jiang needed to have his documents translated. (*Id.* at pp. 34, 36, 81-82, 101, 122; ODC-69(a))

131. Respondent's claim that Judge Honeyman and DHS suspected that Mr. Jiang's application was fraudulent, DHS had threatened to send Mr. Jiang's documents for forensic examination if he would not agree to administratively close his case, and DHS was returning documents it suspected were fraudulent (N.T. 2/28/18, 225-226; 4/24/18, pp. 204-205, 226-227; ODC-74, ¶ 22) is without evidentiary support, illogical, and false.

a. At no time before or during the hearing did Respondent, Judge Honeyman, or Ms. Ransome advise Mr. Jiang that DHS suspected that his documents were fraudulent and warn him that his documents would be sent for forensic investigation if he refused to administratively close his case. (ODC-69(a); N.T. 7/18/17, pp. 32, 81-83, 100, 122);

b. Respondent failed to produce Ms. Chen, who he testified would corroborate his testimony that Mr. Jiang and Ms. Huang were advised of Judge Honeyman and DHS's purported suspicions about Mr. Jiang's asylum application and documents (N.T. 4/24/18, p. 228); and

c. Respondent failed to produce any emails, letters, or notes to file corroborating his purported conversations with Judge Honeyman and DHS about the purported suspicions regarding Mr. Jiang's asylum application and documents. (N.T. 4/24/18, pp. 231-232)

c. Failure to return Mr. Jiang's original documents

132. After Mr. Jiang's hearing, Respondent, Sister, Mr. Jiang, and Ms. Huang met on the sidewalk outside the IC (N.T. 7/18/17, pp. 36, 101), during which time:

a. Mr. Jiang and Ms. Huang observed that Respondent had all of Mr. Jiang's original documents (*id.* at pp. 37, 84, 102);

b. Respondent agreed to have all of Mr. Jiang's documents translated for Mr. Jiang by Saturday (*id.* at p. 102); and

c. Mr. Jiang and Ms. Huang saw Respondent leave with Mr. Jiang's original documents. (*id.* at pp. 37, 102)

133. Respondent did not return any of Mr. Jiang's original documents to

Mr. Jiang or Ms. Huang after the April 13, 2015 hearing. (*Id.* at pp. 36-37, 102)

134. Mr. Jiang and Ms. Huang went directly home after meeting with Respondent and Sister on the sidewalk outside of Immigration Court. (*Id.* at pp. 85, 117)

a. Mr. Jiang and Ms. Huang did not go back to Sister's office with Respondent after the hearing. (*Id.* at pp. 85, 117)

135. Mr. Jiang did not knowingly sign ODC-74, Exhibit J, in that:

a. Exhibit J is written in English and does not state it was translated into Chinese;

b. Mr. Jiang cannot read Exhibit J (*id.* at p. 38);

c. Exhibit J was not translated into Chinese for Mr. Jiang (*id.* at pp. 38, 40);

d. Mr. Jiang would sign any document Respondent or Sister told him to sign (*id.* at pp. 38-39, 71);

e. Respondent and Sister would ask Mr. Jiang to sign documents that were not translated into Chinese (*id.* at pp. 38-39, 40);

f. when Mr. Jiang signed Exhibit J, he did not know what he was signing (*id.* at pp. 39, 71);

g. Mr. Jiang did not recall signing any documents after the hearing (*id.* at p. 39);

h. Mr. Jiang did not remember where or when he signed Exhibit J (*id.* at pp. 38, 71, 86);

i. Respondent's signature is not on Exhibit J evidencing that Respondent, in fact, had returned Mr. Jiang's original documents to Mr. Jiang;

j. Mr. Jiang did not recognize either the Chinese name or the signature of the other person on Exhibit J (*id.* at pp. 38, 70);

k. Respondent failed to introduce as a witness the person whose name and signature appears on Exhibit J; and

l. Respondent failed to give Mr. Jiang any of Mr. Jiang's original documents. (*Id.* at pp. 88, 91)

136. Exhibit J is false and has no evidentiary value.

137. In May 2015, Mr. Jiang's family in China was moving and needed Mr. Jiang's original Chinese identification card. (*Id.* at p. 40)

a. Mr. Jiang's original Chinese identification card was with the other documents Mr. Jiang had given to Respondent (*id.* at p. 40); and

b. Respondent had never returned Mr. Jiang's original Chinese identification card. (*Id.*)

138. At 10:28 p.m. on May 21, 2015, Mr. Jiang and Sister exchanged text messages about Mr. Jiang's documents (N.T. 7/18/17, pp. 41-45), during which:

a. Mr. Jiang explained that there was a family emergency;

b. Mr. Jiang requested Sister's help in looking at his materials when she was at work the next morning to see whether his Chinese ID was with the materials;

c. Sister agreed to do so; and

d. Mr. Jiang thanked Sister.

139. Mr. Jiang explained that he contacted Sister to get his identification card because:

the attorney has all of my materials, and whatever I need, I have to go through ah-jie (Sister in Chinese), who would subsequently contact the attorney to request it for me.

(N.T. 7/18/17, p. 46); *see also* p. 49 (“all of my documents were with the attorney”); and p. 104.

140. Mr. Jiang subsequently picked up his Chinese identification card from Sister, which his wife then sent by Federal Express to Mr. Jiang’s family in China. (*Id.* at pp. 45, 108)

141. Mr. Jiang did not get any other of his original documents from Respondent when he received his Chinese identification card from Sister. (N.T. 7/18/17, p. 50)

142. Mr. Jiang subsequently decided to terminate Respondent’s representation and retained Zhen H. Jin, Esquire, to pursue Mr. Jiang’s asylum matter. (*Id.* at p. 50)

a. At the time Mr. Jiang retained Mr. Jin, Mr. Jiang’s case was administratively closed and Mr. Jiang was not in any immediate danger of deportation. (N.T. 7/18/17 at pp. 126-127)

143. Following Mr. Jin’s request to see Mr. Jiang’s documents (*id.* at p. 130), Mr. Jiang went to Respondent’s office to get his client file. (*Id.* at pp. 50-51)

a. Respondent informed Mr. Jiang that he needed Mr. Jin to

request his client file. (*Id.* at p. 51)

144. On October 26, 2015, Mr. Jin called Respondent's office and requested Mr. Jiang's file; thereafter, Respondent's legal assistant called back and advised Mr. Jin to write a letter to Respondent requesting Mr. Jiang's file and include Mr. Jin's entry of appearance. (N.T. 7/18/17, pp. 131-132)

145. Mr. Jin complied with Respondent's assistant's request, and by letter to Respondent dated November 11, 2015, sent via First Class mail and hand-delivered by Mr. Jiang, Mr. Jin requested Mr. Jiang's client file. (*Id.* at pp. 132-133; ODC-72)

a. Mr. Jiang went to Respondent's office with the letter from Mr. Jin, but Respondent refused to give him his documents. (N.T. 7/18/17, p. 51)

b. Respondent's legal assistant also failed to send Mr. Jiang's documents to Mr. Jin as the legal assistant had agreed to do. (*Id.* at p. 134)

146. Thereafter, on February 15, 2016, Mr. Jiang went to Respondent's office with his wife, who understood and spoke English, at which time Respondent stated that Mr. Jiang's documents were at Respondent's storage facility in Fishtown and agreed to mail Mr. Jiang's documents to Mr. Jin. (*Id.* at pp. 108-109; *see also* pp. 51-52)

147. Respondent failed to mail Mr. Jiang's documents to Mr. Jin as he had agreed to do. (*Id.* at p. 109)

148. On February 29, 2016, Mr. Jin called Respondent's office regarding Respondent's failure to forward Mr. Jiang's file, during which time:

a. Mr. Jin spoke to Respondent's legal assistant and advised the assistant that Mr. Jin has not received Mr. Jiang's file (*id.* at p. 135);

b. Respondent's legal assistant told Mr. Jin that Respondent had Mr. Jiang's original file (*id.* at p. 137); and

c. Respondent's legal assistant agreed to send a copy of the file to Mr. Jin. (*Id.* at p. 138)

149. Respondent's legal assistant failed to forward a copy of Mr. Jiang's file to Mr. Jin as the legal assistant agreed to do. (*Id.*)

150. Approximately two weeks after Ms. Huang's visit to Respondent's office with Mr. Jiang, Ms. Jiang returned to Respondent's office, at which time:

a. Ms. Huang met with Respondent and requested the return of her husband's original documents (*id.* at pp. 109-110);

b. Respondent gave Ms. Huang a copy of some of Ms. Huang's documents (*id.* at p. 110);

c. Respondent claimed that Mr. Jin had Mr. Jiang's original documents (*id.* at p. 111);

d. after Ms. Huang explained that Mr. Jin did not have the original documents, Respondent then claimed that Mr. Jiang had his original documents (*id.*); and

e. after Ms. Huang denied that Mr. Jiang had his original documents, Respondent told Ms. Huang that they "were done" and "[y]ou are not allowed to come to this office again," then opened the door for Ms. Huang to leave. (*Id.*)

151. Respondent failed to return Mr. Jiang's original documents to Mr. Jiang or Mr. Jin after the termination of Respondent's representation. (N.T. 7/18/17, pp.

87-88)

152. Mr. Jin repeatedly testified that he had no reason to believe that Mr. Jiang was not being truthful when he told Mr. Jin that he never received his original records from Respondent. (N.T. 7/18/18, pp. 151, 153)

153. The absence of Mr. Jiang's original records will make it "very hard" for Mr. Jiang to meet his burden of proof in his asylum case. (*Id.* at p. 143)

154. Although Respondent gave Ms. Huang a copy of some of Mr. Jiang's documents, Respondent never gave Mr. Jiang or Mr. Jin a complete copy of any of Mr. Jiang's documents. (N.T. 7/18/17, pp. 88, 91-92, 139)

155. Subsequently, Mr. Jiang asked Ms. Huang to do an Internet search for an organization that could help them "find justice," Ms. Huang found ODC, and Mr. Jiang filed a complaint against Respondent with ODC. (*Id.* at p. 114; ODC-70)

156. Mr. Jiang's and Mr. Jin's testimony was credible.

CHARGE V: EUSTAQUIO JUAREZ-APARICIO MATTER

a. Background

157. Eustaquio Juarez-Aparicio and his former wife, Rebecca Lugo Gonzalez, are natives of Mexico and entered the United States without inspection in 2003. (N.T. 2/28/18, pp. 82; Stip #157)

b. Failure to communicate

158. From time to time after Respondent was retained, Mr. Juarez-Aparicio “was always calling and trying to get in touch with” Respondent and “never could.” (N.T. 6/15/17, p. 24; *see also* p. 59)

a. When Mr. Juarez-Aparicio called Maria to get information about his case, Maria would tell Mr. Juarez-Aparicio that Respondent “wasn’t there or he was in court.” (N.T. 6/15/17, p. 24; *see also* p. 59)

159. As a result, Mr. Juarez-Aparicio “felt that [he] couldn’t trust” Respondent and decided to terminate Respondent’s legal services.³ (N.T. 6/15/17, p. 24)

160. On or before June 1, 2015, Mr. Juarez-Aparicio terminated Respondent’s legal representation. (Stip #165)

c. Failure to surrender client documents

161. Mr. Juarez-Aparicio called Maria about obtaining the return of his documents. (N.T. 6/15/17, p. 29)

³ Respondent never received the \$2,000 filing fee from Mr. Juarez-Aparicio and Ms. Gonzalez, and as a result, Respondent never filed Mr. Juarez-Aparicio’s and Ms. Gonzalez’s adjustment of status applications with USCIS. (Stip #164)

162. Maria informed Mr. Juarez-Aparicio that she had spoken to Respondent's secretary, who stated that Mr. Juarez-Aparicio should go to Respondent's office to get his documents. (*Id.*)

163. When Mr. Juarez-Aparicio arrived at Respondent's office, Respondent's secretary advised Mr. Juarez-Aparicio that he would have to wait for Respondent to arrive. (N.T. 6/15/17, p. 30)

a. After Respondent arrived, Respondent refused to give Mr. Juarez-Aparicio any of his documents and Mr. Juarez-Aparicio left "very upset." (*Id.* at pp. 30-31)

164. Thereafter, Mr. Juarez-Aparicio retained Gary T. Jodha, Esquire, to assist him in obtaining his documents from Respondent and to represent Mr. Juarez-Aparicio in his adjustment of status matter. (N.T. 6/16/17, pp. 28, 31)

165. By letter to Respondent dated June 1, 2015, from Gary T. Jodha, Esquire (ODC-75), Mr. Jodha wrote that:

a. Mr. Juarez-Aparicio had retained Mr. Jodha's services to continue processing his immigration case;

b. Respondent should immediately discontinue processing Mr. Juarez-Aparicio's immigration matter;

c. Respondent should "transfer ... his file including but not limited to all original documents" to Mr. Jodha;

d. Mr. Juarez-Aparicio had signed the bottom of the letter authorizing the transfer of his file from Respondent to Mr. Jodha; and

e. he had attached the DHS Form G-28 to his letter showing that Mr. Jodha had entered his appearance as Mr. Juarez-Aparicio's attorney.

166. Although Respondent had received Mr. Jodha's letter (Stip #167) and made copies of Mr. Juarez-Aparicio's documents (N.T. 2/28/18, pp. 95-96, 106; N.T. 4/24/18, pp. 174-175; ODC-82, p. 2), Respondent failed to provide Mr. Jodha with any documents. (N.T. 4/24/18, pp. 179-180; ODC-76)

167. On June 19, 2015, Mr. Jodha sent Respondent a copy of his June 1, 2015 letter with attachment via certified mail and facsimile transmission. (ODC-77)

168. Respondent received Mr. Jodha's certified letter and facsimile transmission (Stip #170), but again Respondent failed to respond to Mr. Jodha's letter and provide the requested documents. (ODC-76)

169. Upon Mr. Juarez-Aparicio's termination of Respondent's representation, Respondent failed to surrender Mr. Juarez-Aparicio's file or copies of any of Mr. Juarez-Aparicio's documents to Mr. Jodha.

170. On August 26, 2015, Mr. Jodha sent Respondent another facsimile-transmitted letter requesting Mr. Juarez-Aparicio's file and documents (ODC-78), and once again, Respondent failed to respond to Mr. Jodha's request. (ODC-76)

171. From time to time thereafter, Mr. Juarez-Aparicio and Mr. Jodha would call Respondent's office and request that Respondent provide Mr. Juarez-Aparicio's documents and file to Mr. Jodha. (ODC-76)

172. Respondent failed to comply with Mr. Juarez-Aparicio's requests. (N.T. 6/15/17, pp. 28, 31-31)

173. By letter dated October 14, 2015, from Mr. Jodha to Respondent (ODC-79), Mr. Jodha:

a. reiterated his request for Mr. Juarez-Aparicio's "file, including but not limited to all original documents"; and

b. listed the 16 dates that he had requested, via First Class mail, facsimile transmission, and telephone call, Mr. Juarez-Aparicio's client file.

174. Respondent received Mr. Jodha's October 14, 2015 letter, which was sent via First Class and certified mail. (Stip #178)

175. Respondent failed to comply with Mr. Jodha's request for Mr. Juarez-Aparicio's file, including "but not limited to all original documents." (ODC-75)

a. Respondent admitted that he made copies of Mr. Juarez-Aparicio's documents and failed to provide any documents to Mr. Jodha, including Respondent's copies of Mr. Juarez-Aparicio's passport, marriage certificate, work authorization receipt, I-140 receipt, and birth documents. (N.T. 4/24/18, pp. 180-181)

176. Respondent's testimony that he called Mr. Jodha "after the first letter" and told him to contact Mr. Juarez-Aparicio's prior lawyer (N.T. 2/28/18, p. 106) is irrelevant, inconsistent with Mr. Juarez-Aparicio's testimony, illogical in context of Mr. Jodha's repeated correspondence, without supporting telephone records requested by ODC (N.T. 4/24/18, p. 182), and not credible.

177. Mr. Juarez-Aparicio's testimony was credible.

VI: ED CARLOS STIPP MATTER

a. Background

178. Ed Carlos Stipp is a native of Brazil, who entered the United States without inspection and unlawfully remained in the United States. (ODC-83, pp. 1-3)

b. Failure to competently and diligently follow IC procedures

179. On November 9, 2011, Respondent filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.⁴ (ODC-86)

180. On November 9, 2011, Respondent attended a Master Hearing in his removal matter before Immigration Judge Phillip T. Williams (ODC-87), during which time:

a. Respondent admitted that he had not discussed the alternative of seeking voluntary departure with Mr. Stipp “yet and I should have” (*id.* at p. 11);

b. Judge Williams reminded Respondent to have Mr. Stipp fingerprinted for his application for cancellation of removal because “[f]ailure to do that will result in the application being deemed abandoned for failure to comply”; and

c. Judge Williams scheduled Mr. Stipp’s Individual Hearing for 8:00 a.m. on September 7, 2012.

181. On September 4, 2012, three days before Mr. Stipp’s scheduled Individual Hearing, Respondent filed a Motion to Continue (ODC-88) for the following reasons:

⁴ An applicant for cancellation of removal must establish: (1) ten-year continuous physical presence in the USA prior to his receipt of a NTA; (2) good moral character; (3) no conviction of a serious crime; and (4) that his removal would result in exceptional and extremely unusual hardship to a qualifying US citizen relative. (N.T. 11/17/17, pp. 12-13; 8 U.S.C. § 1229(b))

a. Mr. Stipp's "matter was mistakenly listed as a Master Calendar Hearing by my office rather than an Individual Hearing" (*id.* ¶ 3);

b. "no statement by Respondent or Respondent's wife has been prepared or submitted" (*id.* at ¶ 4);

c. Mr. Stipp's "application is still incomplete," the distance between Respondent's office and Mr. Stipp's residence is more than two hours, and Mr. Stipp is unable to travel that distance before his Individual Hearing (*id.* at ¶ 7);

d. Respondent's law "office relocated shortly after [Mr. Stipp's] last hearing and this important matter was overlooked" (*id.* at ¶ 8); and

e. Respondent has two other matters scheduled in New York the same day. (*Id.* at ¶ 12)

182. Respondent admitted that his untimely continuance motion was not "in keeping with EOIR Rules." (*Id.* at ¶ 6)

183. The IC continued Mr. Stipp's Individual Hearing to July 30, 2013.
(ODC-89)

a. As a result of Respondent's lack of competence and diligence, Mr. Stipp's immigration matter was delayed over ten months.

184. Respondent's failure to competently and diligently handle Mr. Stipp's removal hearing was prejudicial to the administration of justice.

185. Respondent's disciplinary hearing testimony, that he had not committed neglect, but the foregoing conduct was just a "series of oversights by his office

during a move” (N.T. 4/24/18, p. 320), shows Respondent’s lack of recognition of wrongdoing.

186. At Mr. Stipp’s July 30, 2013 hearing (ODC-89), Judge Williams:

a. informed Respondent that Mr. Stipp’s fingerprints had expired (*id.* at p. 17-18);

b. again reminded Respondent that Mr. Stipp’s prints must stay current or his application would be deemed abandoned (*id.* at p. 18);

c. advised Respondent that he should have included evidence of community service with his Application for Cancellation of Removal (*id.* at p. 20); and

d. granted Respondent’s request for a continuance and continued Mr. Stipp’s Individual Hearing until May 12, 2014. (*Id.* at pp. 9-10)

187. By facsimile transmitted letter dated May 8, 2014, from Respondent to Carla Baker, Trial Counsel, DHS (ODC-90), with an attached Notice of Intent to Offer Evidence for Mr. Stipp’s Individual Hearing, Respondent:

a. explained that Mr. Stipp’s Individual Hearing was scheduled for May 12, 2014 (in four days);

b. stated that his “associate went on vacation abroad and our office overlooked this case before”;

c. attached seven letters, all of which were dated August 19, 2013 (nine months earlier), in support of Mr. Stipp from members of the community; and

d. requested that, “if possible,” DHS include the attached information in Mr. Stipp’s file and review the matter for prosecutorial discretion.

188. At the outset of Mr. Stipp’s May 12, 2014 Individual Hearing (ODC-92):

a. Respondent stated that his failure to timely submit exhibits, “was an oversight of my office’s part” (*id.* at p. 28);

b. Judge Williams agreed with the DHS attorney that Respondent had engaged in a pattern of delays (*id.* at p. 29);

c. the DHS attorney reminded Respondent that the government does not accept service of exhibits by facsimile (*id.* at p. 31); and

d. Judge Williams admonished Respondent for failing to comply with the procedures set forth in the ICPM for timely and properly submitting exhibits. (*Id.* at pp. 28, 30)

189. Respondent’s disciplinary hearing testimony, that “[f]requently, there are out-of-time submissions in all courts and this was one of those times” (N.T. 4/14/18, p. 290), is further illustrative of Respondent’s lack of recognition of wrongdoing and remorse for misconduct.

190. At the conclusion of the May 12, 2014 Individual Hearing, Judge Williams “set the matter over for a decision as soon as possible after the new fiscal year.” (ODC-92, p. 113)

191. On November 19, 2014, Respondent filed a Notice of Intent to Offer Evidence in Mr. Stipp's Cancellation of Removal Matter that stated "Next Hearing: NONE" on the cover page and contained six additional exhibits, including updated tax returns, Mr. Stipp's son's medical and school records, and photographs. (ODC-95)

192. On February 11, 2015, Respondent appeared again before Judge Williams (ODC-96), at which time:

a. Judge Williams again admonished Respondent for failing to update Mr. Stipp's fingerprints, which had expired on October 29, 2014 (*id.* at pp. 116-119);

b. Judge Williams stated that Respondent had submitted Mr. Stipp's November 19, 2014 Notice of Intent to Offer Evidence after the record was closed (*id.* at p. 120);

c. Judge Williams explained that Respondent's submission of additional evidence was "of particular concern to the court because once the record is closed, [the court] can then request a visa number...[the court] did request a visa number in this case, and there is a number available today" (*id.*);⁵

d. Judge Williams advised that the court cannot consider the newly-submitted evidence unless the court reopens the record, which would result in Mr. Stipp losing his visa number (*id.*);

⁵ An immigration court judge cannot request a visa number until the close of an immigration court proceeding.

e. Respondent made a motion to reopen the record and move the belated exhibits into evidence (*id.* at p. 121); and

f. Judge Williams stated that he was “displeased by the way they’ve [the additional exhibits] come into evidence,” but granted the motion out of concern and deference to Mr. Stipp’s child and his family. (*Id.* at p. 123)

193. Respondent’s disciplinary hearing testimony, claiming that the Immigration Judge had “misspoke” when he said the record was closed (N.T. 4/24/18, p. 304), is belied by the fact that: Judge Williams had stated at the conclusion of the May 12, 2014 hearing that Mr. Stipp’s matter would be scheduled for a decision after the beginning of the new fiscal year; Respondent’s November 19, 2014 pleading states there are no scheduled hearings; and Judge Williams himself had requested a visa number for Mr. Stipp.

194. Respondent failed to competently and diligently comply with Immigration Court practices and procedures in handling Mr. Stipp’s cancellation of removal hearing.

195. Respondent’s failure to handle Mr. Stipp’s removal hearing with competence and diligence expended the Immigration Court’s limited resources, unnecessarily delayed Mr. Stipp’s immigration matter, and was prejudicial to the administration of justice.

c. Failure to competently and diligently prepare for and present evidence for Cancellation of Removal Hearing.

196. Prior to filing Mr. Stipp's Application for Cancellation of Removal (ODC-86), Respondent failed to:

- a. translate the questions on the application for Mr. Stipp (N.T. 11/17/17, p. 61);
- b. ask Mr. Stipp for answers to the questions (*id.*); and
- c. provide available answers to all of the questions. (*Id.* at pp. 61-62)

197. After filing the Application, Respondent failed to:

- a. provide Mr. Stipp with a copy of the Application. (*Id.* at 65); and
- b. review the Application with Mr. Stipp prior to his Individual Hearing. (*Id.* at p. 78).

198. From time to time, Respondent failed to amend and update the Application as necessary. (*Id.* at pp. 13-14; and ODC-92, p. 107)

199. Respondent's failure to update and amend the Application prompted the DHS attorney to ask Mr. Stipp why he had failed to amend his Application. (ODC-92, p. 107)

200. Mr. Stipp had friends, co-workers, and employers available to establish the requirement of Mr. Stipp's ten-year physical presence in the USA. (*Id.* at pp. 23, 70, 108, 135)

- a. Mr. Stipp's friends, co-workers, and employers were available to testify as witnesses at Mr. Stipp's Individual Hearing (N.T. 11/17/17, pp. 70, 119, 135);

b. Mrs. Stipp gave Respondent the names and contact information for witnesses to Mr. Stipp's ten-year physical presence (*id.* at pp. 153-154);

c. Respondent failed to request that Mr. Stipp's 10-year physical presence witnesses write letters to submit to the Immigration Court; and

d. Respondent failed to request that Mr. Stipp's ten-year physical presence witnesses testify at Mr. Stipp's Individual Hearing. (*Id.* at pp. 39, 70, 135-136)

201. Mr. Stipp had "people who hired" him, people at "[p]laces he had worked," and people who had written letters of support that were available to testify as to Mr. Stipp's good moral character. (*Id.* at pp. 39, 72-73, 151-152)

a. Mr. Stipp and Mrs. Stipp gave Respondent the names of these witnesses (*id.* at pp. 73, 111-112, 136-137, 151-152); and

b. Respondent failed to ask these witnesses to testify to Mr. Stipp's good moral character at his hearing. (*Id.*)

202. Mr. Stipp had witnesses who could establish that Mr. Stipp's removal would cause extreme and exceptionally unusual hardship to his son. (*Id.* at pp. 73-74, 137)

203. Prior to Mr. Stipp's Individual Hearing, Respondent failed to:

a. explain, to the extent necessary to enable Mr. Stipp to make an informed decision, that Mr. Stipp had the burden of proving that Mr. Stipp's removal would cause extreme and exceptionally unusual hardship to Mr. Stipp's son (*id.* at p. 73);

b. advise Mr. Stipp that he needed witnesses to establish extreme, exceptionally unusual hardship to his son (N.T. 11/17/17, pp. 73, 137); and

c. request that Mr. Stipp provide him with the names and contact information for available witnesses. (*Id.* at p. 137)

204. Prior to Mr. Stipp's Individual Hearing, Respondent failed to explain to Mr. Stipp to the extent necessary to enable him to make an informed decision regarding his removal hearing, that Mr. Stipp needed an expert report on ADHD treatment and the Brazilian educational system to establish extreme and exceptional hardship on his United States citizen son if Mr. Stipp were removed to Brazil. (N.T. 11/17/17, pp. 23-24, 34, 74, 113, 137-138, 162)

205. Respondent acted without competence and diligence in relying solely on the testimony of Mr. Stipp to explain what would happen to Mr. Stipp's son if Mr. Stipp were removed to Brazil as: (1) Mr. Stipp had left Brazil over ten years earlier and had no current knowledge of the educational system (ODC-92, pp. 36, 104); (2) Mr. Stipp had no personal experience with the handling of a child with learning disorders in Brazil (*id.* at pp. 51-52, 54); (3) Mr. Stipp had no personal experience with any persons with learning disabilities in Brazil (*id.* p. 55); and (4) Mr. Stipp had limited knowledge of his own son's medical condition. (*Id.* at pp. 48-49)

206. Prior to Mr. Stipp's Individual Hearing, Respondent failed to explain that the Immigration Judge would need a psycho-social report on the impact of Mr. Stipp's departure on his son. (N.T. 11/17/17, pp. 54, 138)

a. Had Respondent asked for such a report, Mrs. Stipp would

have obtained a doctor to draft a report. (*Id.*)

207. Mrs. Stipp was ready, willing, and available to testify at Mr. Stipp's Individual Hearing to establish Mr. Stipp's ten-year physical presence, her son's health issues, and Mr. Stipp's good moral character. (*Id.* at pp. 22-23, 75, 138-139, 159)

a. Respondent failed to request that Mrs. Stipp testify at Mr. Stipp's Individual Hearing. (N.T. 11/17/17, pp. 75, 106, 139-40);

b. Respondent failed to ask Mrs. Stipp to write a letter of support on behalf of Mr. Stipp (ODC-92, p. 107);

c. Mrs. Stipp testified voluntarily at Respondent's disciplinary hearing (N.T. 11/17/17, p. 140); and

d. Respondent's statement to the IC that Mrs. Stipp was "not willing to testify due to her own status and her fears of being apprehended" (ODC-92, p. 32) was false. (N.T. 11/17/17, pp. 23-24, 44-45)

208. Prior to Mr. Stipp testifying at his Individual Hearing, Respondent failed to:

a. meet with Mr. Stipp to prepare Mr. Stipp's direct and cross-examination testimony (N.T. 11/17/17, pp. 37-38, 77, 79, 103, 134-135);

b. discuss Mr. Stipp's direct and cross-examination testimony on the telephone (*id.* at 77, 79, 103, 134-135);

c. review with Mr. Stipp the documents Respondent had introduced on behalf of Mr. Stipp (*id.* at p. 78; *see, e.g.* ODC-92, p. 67);

d. review with Mr. Stipp the facts of Mr. Stipp's criminal case and tax filings (*id.*);

e. prepare Mr. Stipp for questions regarding his son's medical condition and the impact on his son if Mr. Stipp were deported (*id.*; *see, e.g.*, ODC-92, pp. 48-49); and

f. instruct Mr. Stipp to become familiar with the Brazilian educational system and its handling of children with disabilities. (N.T. 11/17/17, p. 78; *see, e.g.*, ODC-92, pp. 52-55, 104)

209. At the February 11, 2015 listing following Mr. Stipp's Individual Hearing, Judge Williams:

a. detailed the deficiencies in the record and explained the requisite evidence Respondent needed to introduce to sustain Mr. Stipp's burden of proof (ODC-96, pp. 123-126);

b. stated that he was "just shocked by the absence of such a document in this record" to establish that Mr. Stipp's son would experience exceptional, extreme, or unusual hardship if Mr. Stipp were deported (*id.* at p. 125); and

c. continued Mr. Stipp's matter until August 31, 2015, and agreed to keep the record open for Respondent to submit the requisite evidence. (*Id.* at p. 129)

210. Prior to the August 31, 2015 hearing, Respondent failed to introduce additional, available evidence to the IC.

211. At the August 31, 2015 listing (ODC-98), Judge Williams entered an Oral Decision (ODC-83), finding that Respondent failed to:

- a. introduce documentation establishing the date of Mr. Stipp's arrival in the USA and continuous presence in the USA (*id.* at pp. 5-7, 10);
- b. introduce evidence to show the first year Mr. Stipp began paying taxes (*id.* at p. 5);
- c. provide documentation to support the medical condition of Mr. Stipp's son and the necessity of Mr. Stipp to remain in the United States with his son (*id.* at pp. 8-9, 10); and
- d. present a psycho-social evaluation that would demonstrate the exceptional hardship to the family dynamic if Mr. Stipp were deported to Brazil. (*id.* at p. 9)

212. As a result, Judge Williams concluded that Mr. Stipp had failed to meet his burden of proof, denied Mr. Stipp's application for cancellation of removal, and ordered that Mr. Stipp be deported to Brazil. (*id.* at pp. 10-11)

213. On December 31, 2015, Respondent filed an appeal of Judge William's Decision to the BIA (ODC-99); by Decision dated March 30, 2016, the BIA affirmed Judge Williams' Decision and dismissed Mr. Stipp's appeal. (ODC-106)

214. On June 28, 2016, Jay S. Marks, Esquire, Mr. Stipp's new counsel, filed with the BIA a timely Motion to Reopen Mr. Stipp's removal matter based on Respondent's ineffective assistance under ***Matter of Lozada***, and provided new, previously unavailable evidence regarding the health of Mr. Stipp's son (ODC-109); DHS opposed Mr. Stipp's Motion to Reopen.

215. By Decision and Order dated September 8, 2016 (ODC-110), the BIA:

a. found that Mr. Stipp “has substantially complied with the process requisite to asserting an ineffective assistance of counsel claim” and cited ***Matter of Lozada***;

b. held that “[g]iven the affidavits and other evidence presented, and in consideration of [Mr. Stipp’s] application for relief,” the Motion to Reopen “should be granted”;

c. granted the motion to reopen and remanded the record for consideration of evidence Respondent failed to present in support of Mr. Stipp’s “application for cancellation of removal, including issues of continuous physical presence and exceptional and extremely unusual hardship”; and

d. provided Mr. Stipp with “the opportunity to apply for any other relief for which he may be eligible.”

216. Respondent failed to competently and diligently prepare and present evidence for Mr. Stipp’s Application for Cancellation of Removal.

217. Respondent’s failure to handle Mr. Stipp’s removal proceedings with competence and diligence was prejudicial to the administration of justice in that it resulted in additional litigation, including appeals to the BIA and remand back to the Immigration Court.

d. Failure to Communicate

218. Mr. Stipp attended Master Hearings with Respondent on November 9, 2011 (ODC-87) and July 30, 2013 (ODC-89).

a. Prior to each Master Hearing, Respondent failed to explain

what would take place during the hearing (N.T. 11/17/17, p. 69); and

b. After each Master Hearing, Respondent failed to explain to Mr. Stipp what had occurred during the hearing. (*Id.*; ODC-100, p. 2)

219. Mr. Stipp volunteered that “[i]t was very hard to communicate with” Respondent (N.T. 11/17/17, p. 77), and explained:

We would call, but the secretary would never pass the message on to him.... My wife would send e-mail. He didn’t get them either. So to talk to him, we would have to get in the car and drive three hours.

Id., see also N.T. 11/17/17, p. 116.

220. Respondent met with Mr. and Mrs. Stipp no more than five times during the course of his five-year representation of Mr. Stipp (*id.* at pp. 78, 145) and each meeting was no more than twenty minutes (N.T. 11/17/17, pp. 77, 116, 145)

a. Respondent’s testimony that Mr. Stipp would come to his office “once every two or three months” (N.T. 2/28/18, p. 175) is: inconsistent with Respondent’s DB-7 Answer (ODC-113, ¶ 9, “met on at least four occasions” in Respondent’s office during the course of the representation); without any documentary support; and false.

221. Mr. Stipp attended the August 31, 2015 hearing with Mr. Stipp, during which time:

a. Judge Williams announced his decision denying Mr. Stipp’s cancellation of removal (ODC-98);

b. Mr. Stipp thought the judge had given him “30 days to leave” (N.T. 11/17/17, p. 80);

c. Respondent advised Mr. Stipp that “everything was going to be fine” and he would “have to do an appeal,” but Mr. Stipp did not know what an “appeal” was (*id.*); and

d. Respondent told Mrs. Stipp, who was waiting in the courthouse parking lot, that “everything is going to be fine.” (*Id.* at 68; *see also id.* at pp. 143, 161)

222. On December 31, 2015, Respondent filed an appeal of the Immigration Judge’s decision to the BIA. From time to time after Respondent filed the appeal of Judge Williams’ decision, Mr. Stipp and his wife would call Respondent’s office to request information regarding the status of Mr. Stipp’s immigration matters. (Stip #214, 215; ODC-100)

223. Respondent failed to:

a. promptly comply with Mr. and Mrs. Stipp’s requests for information (N.T. 11/17/17, p. 118; ODC-101, ¶¶ 2, 7, 9);

b. keep Mr. Stipp informed about the status of his case (N.T. 11/17/17, p. 81; ODC-101, ¶¶ 2, 7, 9); and

c. explain matters to Mr. Stipp so that he could make informed decisions regarding the representation. (*Id.*)

224. Mrs. Stipp attended all meetings with Respondent and Mr. Stipp, was a party to all telephone conversations between Respondent and Mr. Stipp, and sent email communications to Respondent on behalf of Mr. Stipp. (N.T. 11/17/17, pp. 131-132)

a. Mrs. Stipp explained that the “whole time” that she and her husband were working with Respondent, she was “always trying” to

communicate with Respondent, but Respondent failed to provide requested information and explain matters so Mr. Stipp could make informed decisions regarding his case. (*Id.* at pp. 144-145)

225. In February 2016, Mr. Stipp decided it was “so hard to communicate with Mr. Douglas” and retained Mr. Marks. (*Id.* at p. 81)

226. Mr. Marks testified that Mr. Stipp did not have a clear understanding of his immigration case. (*Id.* at p. 7)

227. Respondent failed to:

a. provide ODC with requested documentary support (N.T. 11/17/17, p. 128 and 4/24/18, pp. 263-264, 276-277, 309-311) corroborating Respondent's purported communications with Mr. and Mrs. Stipp wherein he requested information for Mr. Stipp's cancellation of removal hearing; and

b. offer any witness testimony to support Respondent's purported communications with Mr. and Mrs. Stipp.

228. Respondent's denial that he failed to communicate with Mr. and Mrs. Stipp is not credible.

e. Failure to surrender client file, unearned fee, and photograph

229. On January 8, 2016, Mr. and Mrs. Stipp met with Respondent to prepare for filing an Application for Employment Authorization (ODC-102, ¶ 7), during which time:

a. Mrs. Stipp gave Respondent check number 1099, made payable to Douglas Grannan, in the amount of \$300, for his legal fee (N.T.

11/17/18, pp. 85, 146; ODC-103); and

b. Mrs. Stipp gave Respondent check number 1098, made payable to USCIS, in the amount of \$380, for the Work Authorization filing fee. (*Id.* at pp. 88-89, 95-96, 146)

230. The following day, Mrs. Stipp sent Mr. Stipp's passport-size photograph to Respondent for the Work Authorization. (N.T. 11/17/17, p. 146)

231. On January 11, 2016, Respondent deposited check number 1099 into his law office bank account. (ODC-103; Stip #219)

232. Respondent failed to act with reasonable diligence and file Mr. Stipp's work authorization with USCIS. (N.T. 11/17/17, p. 49; ODC-102)

233. From time to time thereafter, Mrs. Stipp would call Respondent's office and request information regarding the status of Mr. Stipp's work authorization. (N.T. 11/11/17, p. 50; ODC-100)

234. Respondent failed to answer Mrs. Stipp's reasonable requests for information. (ODC-100; ODC-101, ¶ 7, ODC-102,-104)

235. On or before February 4, 2016, Mr. Stipp hired Mr. Marks to handle some of Mr. Stipp's immigration matters because "[i]t was so hard to communicate with Mr. Douglas." (N.T. 11/17/17, p. 81)

236. By letter to Respondent dated February 4, 2016 (ODC-105), sent via facsimile and email, Mr. Marks:

a. advised Respondent that Mr. Stipp had retained him to pursue a request for prosecutorial discretion with DHS and the renewal of Mr. Stipp's work authorization; and

b. requested that Respondent provide Mr. Marks with a copy of Mr. Stipp's file and to return Mr. Stipp's check number 1098 and passport picture that Mr. Stipp had sent to Respondent in January 2016.

237. Respondent received Mr. Marks' letter and:

a. sent a copy of Mr. Stipp's prosecutorial discretion file to Mr. Marks;

b. failed to send Mr. Stipp's passport photo and check number 1098 to Mr. Marks (N.T. 11/17/17, pp. 96-97); and

c. failed to refund his unearned \$300 fee to Mr. Stipp. (*Id.*)

238. On April 18, 2016, Mr. Marks filed Mr. Stipp's I-765 Application for Employment Authorization with USCIS; on August 1, 2016, USCIS approved Mr. Stipp's application. (Stip #225) On May 4, 2016, following the BIA's decision denying Mr. Stipp's appeal, Mr. Marks sent an email to Respondent advising Respondent that he was now representing Mr. Stipp before the BIA in a Motion to Reopen and requesting a complete copy of Mr. Stipp's file, not limited to Mr. Stipp's prosecutorial discretion file. (ODC-108)

239. Despite repeated requests from Mr. Marks, upon the termination of Respondent's representation, Respondent failed to provide any additional documents from Mr. Stipp's file to Mr. Marks. (N.T. 4/24/18, p. 327; *see also* N.T. 11/17/17, pp. 8-9; ODC-101; ODC-102)

240. As a result of Respondent's failure to provide Mr. Stipp's complete file, Mr. Marks obtained from the 4th Circuit Court of Appeals the following documents in Mr. Stipp's immigration matter: Mr. Stipp's Application for Cancellation of Removal; motions Respondent had filed in IC; Respondent's appellate brief to the BIA; work

authorization paperwork; Master and Individual Hearing transcripts; and hearing exhibits that were not included in the requests for prosecutorial discretion. (N.T. 11/11/17, pp. 9-10, 18-19)

241. Mr. Stipp's, Mrs. Stipp's, and Mr. Mark's testimony was credible.

CHARGE VII: ANG PHING AND HERMAN SALIM MATTERS

a. Background

242. Mr. Herman Salim and Ms. Ang Phing, husband and wife, are from Indonesia and are lawful permanent residents of the United States. (N.T. 1/17/18, pp. 40, 96)

243. Ms. Phing and Mr. Salim have limited fluency in reading, writing, speaking, and understanding the English language. (N.T. 1/17/18, p. 96; N.T. 4/24/18, p. 377)⁶

b. Ang Phing and Herman Salim Retain Respondent

244. Prior to November 26, 2014, Ms. Phing and Mr. Salim decided to

⁶ On or about May 15, 2011, Ms. Phing was involved in a slip and fall accident at Ren's Gift Shop, 150 North 10th Street, Philadelphia, PA 19107. (Stip #239) On or before May 9, 2013, Ms. Phing retained Warren I. Siegel, Esquire, of the law firm Bernhardt, Rothermel & Siegel, P.C. (BRS), to represent Ms. Phing in her personal injury matter against, among others, Leo Choi, Ren's Gift Shop, the City of Philadelphia, and the Commonwealth of Pennsylvania. (Stip #240; N.T. 1/17/18, p. 40) On May 9, 2013, Mr. Siegel filed a civil complaint in *Phing et al. v. Choi et al.*, No. 0696, May Term, Court of Common Pleas, Philadelphia County (2013) (*Choi* matter), on behalf of Ms. Phing and Mr. Salim. (ODC-116) By Case Management Order dated August 22, 2013, the Honorable Mark Bernstein ordered that the *Choi* matter be ready for trial on December 1, 2014.

On or about September 15, 2011, Mr. Salim was involved in a personal injury accident. (Stip #242; N.T. 1/17/18, p. 96) On or before June 27, 2013, Mr. Salim retained Mr. Siegel to represent Mr. Salim in his personal injury matter against, among others, Dung Q. Tran, the City of Philadelphia, and the Commonwealth of Pennsylvania (*Tran* matter). (Stip #243) On June 27, 2013, Mr. Siegel filed a civil complaint on behalf of Mr. Salim and Ms. Phing in the Court of Common Pleas of Philadelphia County. *Salim et al. v. Tran et al.*, No. 3653, June Term, Court of Common Pleas, Philadelphia County (2013). (ODC-117) Mr. Salim's matter was scheduled for arbitration on March 17, 2014.

On or about July 17, 2013, Ms. Phing was involved in a personal injury accident at 1514 Mifflin Street, Philadelphia, Pa., and retained Mr. Siegel to also represent her in this personal injury matter. (N.T. 1/17/18, p. 40)

terminate Mr. Sigel's representation and retain a new lawyer to represent them in their personal injury matters. (N.T. 1/17/18, pp. 40-41, 97)

245. Ms. Phing saw Respondent's advertisement in an Indonesian language newspaper, which stated, in pertinent part, that Respondent handled "accident" matters. (N.T. 1/17/18, pp. 42-43; ODC-144, p. 20)

246. Thereafter, on November 26, 2013, Respondent met with Ms. Phing and Mr. Salim about their accident matters, during which time:

a. Respondent's translator, Lilly, was present (N.T. 1/17/18, pp. 40, 44, 97);

b. Ms. Phing and Mr. Salim stated that they wanted to "transfer" their "accident" cases to Respondent (*id.* at pp. 44-45);

c. Respondent asked Ms. Phing questions about her accidents, including where she fell, what caused her to fall, and injuries sustained (*id.* at pp. 45-46);

d. Respondent asked Mr. Salim questions about his accident, including how he slipped and fell, the nature of his injuries, and the condition of the property where he fell (*id.* at pp. 98-98);

e. Respondent agreed to handle Ms. Phing's accident cases (*id.* at pp. 45-46, 48-49);

f. Ms. Phing hired Respondent to handle her accident cases (*id.* at p. 47);

g. Respondent agreed to handle Mr. Salim's accident case (*id.* at pp. 99, 116);

h. Mr. Salim hired Respondent to handle Mr. Salim's accident case (*id.* at pp. 98-99); and

i. although Lilly explained that settlement funds from Ms. Phing and Mr. Salim's accident cases would be divided "40/60" (*id.* at pp. 47, 99), Respondent failed to provide a written fee agreement that set forth the basis and rate of his fee for all three accident matters.

247. At no time during Respondent's meeting with Ms. Phing and Mr. Salim did Respondent state that he wanted to investigate the facts before he decided to take on the representation. (N.T. 1/17/18, p. 117)

248. At no time during Respondent's meeting with Ms. Phing and Mr. Salim did Respondent advise them that he does not handle accident matters.⁷ (N.T. 1/17/18, pp. 46, 98)

a. Respondent asked Ms. Phing and Mr. Salim about their accident cases because "that's what they wanted to talk about, and that's what we talked about." (N.T. 4/24/18, p. 335)

249. At no time during Respondent's meeting with Ms. Phing and Mr. Salim did he ever tell them that he was going to find another lawyer to handle their accident cases. (N.T. 1/17/18, pp. 46, 98)

250. If Respondent had ever advised Ms. Phing that he could not represent her, Ms. Phing explained that she would "go[] to find a new lawyer." (N.T. 1/17/18, p. 48)

⁷ Both Ms. Magdalena in the *Del Gaiso* matter and Ms. Phing contacted Respondent's office after seeing Respondent's advertisement in an Indonesian language newspaper stating that he handles accident cases. (ODC-64; ODC-144, p. 20; *see also* N.T. 4/24/18, pp. 334-335)

251. If Respondent had ever advised Mr. Salim that he could not represent him, Mr. Salim explained that he “would look for another lawyer.” (N.T. 1/17/18, p. 100)

252. On November 26, 2013, Respondent also had Ms. Phing sign correspondence to Mr. Siegel giving him permission to discuss her accident cases and “turn” her “entire file over” to Respondent. (ODC-118)

a. When Ms. Phing signed this correspondence, Ms. Phing reasonably believed that she had retained Respondent to handle her accident cases. (N.T. 1/17/18, p. 52)

253. At no time did Respondent or anyone from Respondent’s office ever tell Ms. Phing that Respondent was not going to represent her in the two accident cases. (N.T. 1/17/18, pp. 52-53)

254. On January 1, 2014, Mr. Salim signed a “Power of Attorney/Fee Agreement”, providing that Mr. Salim “hereby retained LAW OFFICES OF DOUGLAS GRANNAN, P.C. As [sic] my Attorneys to perform all necessary legal and connected services related to . . . Accident 2011.” (ODC-120)

a. Mr. Salim received a copy of ODC-120 from Lilly in Respondent’s law office. (N.T. 1/17/18, p. 115); and

b. When Mr. Salim signed ODC-120, he reasonably believed that he had hired Respondent to represent him in his 2011 accident case. (N.T. 1/17/18, pp. 99-100)

255. At no time did Respondent or anyone from Respondent’s office ever tell Mr. Salim that Respondent was not handling his accident case. (N.T. 1/17/18,

p. 106)

256. On January 16, 2014, Mr. Salim signed releases so that Respondent could obtain copies of his medical records from Methodist Hospital and Paul J. Sedacca, M.D. (ODC-125, -126)

a. It was Mr. Salim's understanding that when Mr. Salim signed the releases for the medical records, that Respondent would be using the medical records for Mr. Salim's 2011 accident case. (N.T. 1/17/18, p. 104)

257. Respondent's direct examination testimony (N.T. 2/28/18, p. 249), that Respondent requested Mr. Salim's medical records for Mr. Salim's United States Citizenship application, is not credible in that Mr. Salim: did not retain Respondent to apply for his American citizenship; did not want American citizenship; and did not believe the medical records were going to be used for a citizenship application. (N.T. 1/17/18, pp. 101-102, 104)⁸

258. By facsimile transmitted letter from Respondent to Paul J. Sedacca, M.D., sent on January 16, 2014 (ODC-125), Respondent:

a. had a fax coversheet that stated, "LETTER OF LEGAL REPRESENTATION";

b. stated that he was "an Attorney representing Herman Salim," Mr. Salim "request me to wrote [sic] a letter for you to copy his Medical records for Accident occurs [sic] in 2011," and explained that he had

⁸ Respondent failed to introduce a fee agreement to support his defense that he was retained to handle Ms. Phing and Mr. Salim's immigration cases.

attached a HIPAA Authorization Form and an “Entry of Attorney Appearance” (ODC-125); and

c. attached Mr. Salim’s HIPAA release.

259. By letter from Respondent to Methodist Hospital, dated January 16, 2014 (ODC-126), Respondent:

a. wrote that “I am an Attorney for client name *HERMAN SALIM* (*dob 05/07/1954*)” and requested Mr. Salim’s medical records for “happened in 2011 at Methodist Hospital for Accident”; and

b. attached Mr. Salim’s HIPAA release.

260. After Mr. Salim retained Respondent to handle his personal injury case, Mr. Salim went with Respondent’s legal assistant, Michael Winata, to a waiting room at 1900 JFK Boulevard to meet with opposing counsel regarding Mr. Salim’s personal injury case. (N.T. 1/17/18, pp. 105-106, 119)

a. Mr. Salim left after Mr. Winata was unable to locate opposing counsel. (*Id.* at p. 106)

261. After Ms. Phing retained Respondent to handle her personal injury cases, Mr. Winata came to her house to take photographs of her injuries and the hole in the sidewalk that caused Ms. Phing to fall. (*Id.* at pp. 63-64)

a. Mr. Winata informed Ms. Phing that he was taking the photographs because Respondent was handling her accident case. (*Id.* at p. 65)

262. Respondent admitted that Ms. “Phing specifically instructed Respondent not to tender any funds to Mr. Siegel’s office.” (PFD Answer at ¶ 197)

263. Respondent entered into an attorney-client relationship with Ms. Phing and Mr. Salim:

- a. Ms. Phing and Mr. Salim sought legal advice from Respondent about their accident cases;
- b. the advice sought was within Respondent's professional capacity;
- c. Respondent expressly or impliedly agreed to render assistance; and
- d. it was reasonable for Ms. Phing and Mr. Salim to believe that Respondent was representing them.

264. Respondent's claim that he was not retained to handle Ms. Phing and Mr. Salim's accident cases (*see, e.g.*, ODC-146, ¶¶ 7, 8, 11, 24(d), and 34, and PFD Answer, ¶¶ 188, 189, and 192) is false.

c. Respondent's Request for and Receipt of Accident Files

265. On November 26, 2013 (ODC-118) and December 6, 2013 (ODC-119), Respondent sent facsimile transmissions to Mr. Siegel requesting Ms. Phing's accident files; on January 9, 2014, Respondent sent a facsimile and email transmission to Francis J. Bernhardt, III, Esquire, the managing partner at BRS, requesting Mr. Salim's file. (ODC-124)

266. Thereafter, Respondent went to BRS and met with Mr. Siegel and Mr. Bernhardt, during which time Respondent⁹:

⁹ At no time during Mr. Bernhardt's meeting with Respondent or in any conversations with Respondent did Respondent ever advise Mr. Bernhardt that Respondent does not handle personal injury cases (N.T. 1/17/18, pp. 16, 34) and Respondent was only retained to handle Ms. Phing and Mr. Salim's immigration cases. (*Id.* at pp. 16-17) Indeed, Mr. Bernhardt believed Respondent when Respondent said he was going

a. was shown three boxes with copies of Phing and Salim's cases (N.T. 1/17/18, p. 13-14);

b. was informed that BRS had received a \$40,000 settlement offer on Phing's May 2011 accident case (*id.* at pp. 14, 30, 35, 38);

c. took two of the three boxes of files (*id.*); and

d. advised that he would take a look at the files and was "sure" that he would enter his appearance. (*Id.* at p. 16)

267. Thereafter, Lilly from Respondent's office came to Mr. Bernhardt's office to pick up the remaining Phing and Salim files, during which time:

a. Lilly was informed that BRS needed Respondent's entry of appearance (N.T. 1/17/18, pp. 17-18);

b. Lilly said that it was already sent to BRS (*id.* at p. 18);

c. Lilly called Respondent and asked that another entry of appearance be sent to BRS (*id.*); and

d. Respondent sent a termination letter to BRS. (*Id.*)

268. By facsimile and email transmitted letter to Respondent dated February 5, 2014 (ODC-129), Mr. Bernhardt wrote that:

a. during Respondent's last meeting with Mr. Bernhardt at his office, Respondent was given both of Ms. Phing's files;

to be entering his appearance and "thought it was a good case." (*Id.* at p. 17)

- b. at the meeting Respondent assured Mr. Bernhardt that he “would review the files and then execute the Entry of Appearance and forward it to Mr. Bernhardt’s office for filing”;
- c. to date, Respondent has not fulfilled his end of the agreement;
- d. Respondent should confirm, in writing, that Respondent will protect Mr. Bernhardt’s office’s costs on the Phing and Salim files, as well as a one-third referral fee, or Mr. Bernhardt will have no alternative but to put a lien on each of the files for *quantum meruit* and costs; and
- e. Respondent should contact him upon Respondent’s receipt of his letter so that “we may resolve the issue of representation on behalf of Ms. Phing and Mr. Salim.”

d. Lack of Diligence and Communication

269. On March 11, 2014, Mr. Siegel filed a Motion to Withdraw Appearance on behalf of Ms. Phing and Mr. Salim in the ***Tran*** and ***Choi*** matters. (ODC-134, -135)

270. After Mr. Siegel withdrew his appearance, Mr. Bernhardt’s law firm had nothing further to do with Ms. Phing and Mr. Salim’s cases. (N.T. 1/17/18, p. 24)

271. After Mr. Siegel withdrew his appearance in the ***Tran*** and ***Choi*** matters, Respondent failed to act with reasonable diligence and enter his appearance on behalf of Ms. Phing and Mr. Salim in their legal matters.

272. To the extent that Respondent did not intend to enter his appearance in the ***Choi*** and ***Tran*** matters, Respondent failed to explain this to Ms. Phing and Mr. Salim to the extent necessary to permit them to make informed decisions regarding the

representation. (N.T. 1/17/18, pp. 52-53, 106; ODC-141)

273. To the extent that Respondent did not intend to enter his appearance in the **Choi** and **Tran** matters, Respondent failed to take steps reasonably practicable to protect Respondent's clients' interests, such as Respondent's giving reasonable notice, allowing time to employ other counsel, and surrendering papers that Respondent's clients were entitled to receive. (ODC-141)

274. To the extent that Respondent had limited the scope of his representation of Ms. Phing and Mr. Tran, he failed to clearly communicate this limitation to Ms. Phing and Mr. Tran and obtain their informed consent. (ODC-141)

275. Respondent failed to advise Ms. Phing and Mr. Salim that the arbitration hearing scheduled for March 17, 2014, in the **Tran** matter had been rescheduled for June 30, 2014. (ODC-141)

276. On June 30, 2014, following Ms. Phing's and Mr. Salim's failures to appear for the scheduled arbitration, the Honorable Idee C. Fox entered a judgment of *non pros* in the **Tran** matter. (ODC-116)

277. Respondent failed to inform Ms. Phing and Mr. Salim that a judgment of *non pros* had been entered in the **Tran** matter. (ODC-141; N.T. 1/17/18, p. 110)

278. On July 7, 2014, a Motion for Judgment *non pros* was filed in the **Choi** matter. (Stip #282). Respondent failed to inform Ms. Phing and Mr. Salim that a motion for *non pros* had been filed. (ODC-141)

a. By Order dated July 30, 2014, Judge Mark Bernstein denied the Motion for Entry of a Judgement of Non Pros and granted Ms. Phing

and Mr. Salim the right to proceed *pro se* in the **Choi** matter should they choose to do so. (Stip #284).

b. Respondent failed to inform Ms. Phing and Mr. Salim that Judge Bernstein entered an order permitting them to proceed *pro se* in the **Choi** matter. (ODC-141)

279. On October 27, 2014, Judge Bernstein dismissed the complaint in **Choi** for failure to comply with his previous orders. (ODC-116)

280. Respondent failed to inform Ms. Phing and Mr. Salim that the Court dismissed their complaint in the **Choi** matter. (N.T. 1/17/18, pp. 69, 71; ODC-141)

281. From time to time after Ms. Phing and Mr. Salim retained Respondent and signed releases so that Respondent could obtain their client files from Mr. Siegel, Ms. Phing would call Respondent's office asking for information about the status of her and her husband's personal injury cases. (N.T. 1/17/18, p. 65; ODC-141)

a. Mr. Winata would repeatedly advise Ms. Phing that "we have to wait for a while." (N.T. 1/17/18, p. 65);

b. At no time was Ms. Phing ever told that Respondent was not representing her in her accident cases. (*Id.* at pp. 65-66); and

c. At no time did Ms. Phing ever receive a letter from Respondent's office stating that he was not representing her. (*Id.* at p. 66; N.T. 4/24/18, p. 382)

282. In July 2016, Ms. Phing and Mr. Salim met with Respondent about their accident cases, at which time Respondent advised them that "the City of Philadelphia has no money." (N.T. 1/17/18, p. 66; ODC-141)

a. Respondent failed to inform Ms. Phing and Mr. Salim that their cases had been dismissed. (*Id.* at pp. 67, 69, 71, 107; ODC-141)

283. On or about August 8, 2016, Ms. Phing and Mr. Salim were in Chinatown and saw a sign for a law office written in Chinese (N.T. 1/17/18, pp. 67, 108), at which time:

a. Ms. Phing and Mr. Salim went into the law office and met with a lawyer and his wife who spoke Chinese (*id.* at pp. 68, 108);

b. the lawyer entered Ms. Phing's and Mr. Salim's names into the computer and found that their cases had been dismissed (*id.* at pp. 68-69, 109);

c. the lawyer gave Ms. Phing a Philadelphia Court Civil Docket Access sheet with the caption of Ms. Phing and Mr. Salim's cases and handwrote the disposition of each case on the docket sheet (*id.* at pp. 70-71; ODC-144, p. 15);

d. Ms. Phing "didn't know before" that her case had been dismissed (N.T. 1/17/18, pp. 69, 71);

e. Mr. Salim did not know previously that his case had been dismissed (*id.* at p. 110);

f. Ms. Phing was "so disappointed" to learn about the dismissal and asked the lawyer, "what should I do? Where should I go?" (*id.*); and

g. the lawyer advised Ms. Phing to contact ODC about Respondent's mishandling of Ms. Phing and Mr. Salim's cases (*id.* at p. 68, 69-70) and gave Ms. Phing a printout with ODC's address and complaint

form instructions. (N.T. 1/17/18, pp. 71-72; ODC-144, pp. 16-17)

284. On August 31, 2016, Ms. Phing filed a complaint against Respondent with ODC. (ODC-144)

285. The first time that Mr. Bernhardt learned that **Tran** and **Choi** had been dismissed was when ODC contacted him about Ms. Phing and Mr. Salim's cases in the fall of 2016. (N.T. 1/17/18, pp. 24-25)

286. Mr. Bernhardt expected that Respondent would enter his appearance in the **Tran** and **Choi** matters. (*Id.*)

e. Request for Client Files

287. Following Ms. Phing and Mr. Salim's discovery of the dismissal of their civil actions, Ms. Phing, Mr. Salim, and their church friend, Mommy, went to Respondent's office to retrieve Ms. Phing and Mr. Salim's accident files. (N.T. 1/17/18, pp. 72-73, 111)

288. Respondent informed Ms. Phing that he "didn't have it (their files)." (*Id.* at pp. 73, 111-112)

289. Respondent has confirmed that he no longer had Ms. Phing and Mr. Salim's accident files. (N.T. 4/24/18, p. 232; ODC-142, -143, -146)

290. Upon the termination of the representation, Respondent failed to surrender papers and property that Ms. Phing and Mr. Salim were entitled to receive. (N.T. 2/28/18, pp. 73, 111-112; ODC-141)

f. Michael H. Gaier, Esquire

291. Ms. Phing does not know and never met an attorney by the name of Michael H. Gaier. (N.T. 1/17/18, p. 78)

292. Mr. Salim does not know and never met an attorney by the name of Michael H. Gaier. (*Id.* at pp. 107, 120)

293. Ms. Phing never gave Respondent permission to refer her accident cases to another lawyer. (*Id.* at p. 74; N.T. 4/24/18, p. 347)

294. Mr. Salim never gave Respondent permission to refer his accident case to another lawyer. (N.T. 1/17/18, p. 107; N.T. 4/24/18, p. 37)

295. Mr. Gaier received a referral of Ms. Phing's July 2013 accident case from Respondent. (*Id.* at p. 129; ODC-148)

a. Ms. Phing's July 2013 accident case is the only case involving Ms. Phing and Mr. Salim that Mr. Gaier received from Respondent. (N.T. 1/17/18, p. 135)

296. After investigation, by letter dated November 25, 2014, Mr. Gaier advised Ms. Phing that he would not be able to represent Ms. Phing in her July 2013 accident case. (ODC-148)

a. Ms. Phing never received Mr. Gaier's letter as she was in Indonesia at the time it was sent. (N.T. 1/17/18, pp. 75, 96, 124; ODC-144(a), (b), (c));

b. Mr. Salim never saw Mr. Gaier's November 25, 2014 letter (N.T. 1/17/18, p. 120);

c. Respondent received a copy of Mr. Gaier's November 25, 2014 letter (N.T. 4/24/18, p. 377);

d. Respondent never asked Mr. Gaier about Ms. Phing's May 2011 accident case or Mr. Salim's September 2011 accident cases after

receiving Mr. Gaier's November 25, 2014 letter concerning Ms. Phing's July 2013 accident (*id.* at p. 378); and

e. Respondent never sent Ms. Phing and Mr. Salim a letter advising them that he was not handling their accident cases and informing them of the statute of limitations applicable to their cases. (N.T. 4/24/18, pp. 382-383)

297. Mr. Gaier never received Ms. Phing's May 2011 accident file from Respondent. (N.T. 1/17/18, pp. 132-133)

298. Mr. Gaier never received Mr. Salim's September 2011 accident file from Respondent. (N.T. 1/17/18, pp. 133-134)

299. Neither Respondent nor anyone in Respondent's office informed Ms. Phing and Mr. Salim that Mr. Gaier was not handling their accident cases. (*Id.* at pp. 74, 107)

g. Direct Solicitation of Potential Clients

300. After Ms. Phing retained Respondent to handle her personal injury matters, there was a serious automobile accident where one Indonesian-speaking person was killed and several Indonesian-speaking persons were seriously injured. (N.T. 1/17/18, pp. 53-55)

a. The seriously-injured persons were in the hospital. (*Id.*)

301. Respondent contacted Ms. Phing to find out "where in the hospital [the injured] were admitted" and "to find out more about these patients." (*Id.* at p. 55)

a. Ms. Phing learned through a friend the hospital and room

number of the patients. (*Id.* at p. 56)

302. Thereafter, Ms. Phing went with Respondent to the hospital to meet the injured Indonesian-speaking patients. (*Id.* at pp. 56-57, 94)

a. Respondent and Ms. Phing did not have an appointment to see the patients. (*Id.*)

303. Ms. Phing explained that the purpose of going to the hospital with Respondent was “to get some more clients from the accident case.” (*Id.* at p. 58)

a. The hospital patients did not retain Respondent because they had already retained another lawyer. (*Id.* at pp. 57, 92)

304. Lilly paid Ms. Phing \$100 for assisting Respondent in the direct solicitation of potential clients. (*Id.* at p. 58)

305. Respondent also gave Ms. Phing, Mr. Salim, and her adopted brother Richard three tee shirts with the name of his firm, “Law Office of Douglas Grannan,” and brochures advertising Respondent’s law firm. (N.T. 1/17/18, pp. 60-61)

a. Ms. Phing understood that Respondent wanted her to wear the tee shirt to promote his business (*id.* at p. 85);

b. Ms. Phing was asked to wear a tee shirt and give Respondent’s law firm brochures to people (*id.* at p. 61);

c. Ms. Phing stated that she was “so scared” handing out the brochures because some people chased her, including security guards and parking lot attendants (*id.* at p. 61); and

d. Ms. Phing ultimately decided that instead of “running away from these people chasing her,” to just put the brochure from Respondent’s

law firm under the windshield wiper of cars. (*Id.*)

306. After Ms. Phing retained Respondent to handle her personal injury matter, Ms. Phing referred at least two personal injury matters to Respondent. (N.T. 4/24/18, pp. 335-336; 1/17/18, pp. 58-60)

307. Respondent subsequently offered to help Ms. Phing become a United States citizen. (*Id.* at p. 62)

a. Ms. Phing was told Respondent would handle her immigration matter for “free” because Ms. Phing and Richard “have done a lot to help” Respondent, including “distribut[ing] the brochures diligently. Big brochures, small brochures.” (*Id.*)

308. Mr. Bernhardt’s, Ms. Phing’s, Mr. Salim’s, and Mr. Gaier’s testimony was credible.

ADDITIONAL FACTS

309. Following his admission to the bar in 1997, Respondent developed an interest in immigration law, and in 2011 began a solo practice concentrating in immigration-related matters. N.T. 2/28/18 at 9-13.

310. Respondent’s firm represents individuals from five continents, predominantly from South America. Respondent employs support staff who speak other languages. N.T. 2/28/18 at 15 -16.

311. Respondent failed to show any recognition of his wrongdoing or remorse for his misconduct.

312. Respondent did not present any mitigating evidence, such as evidence of good character and community service.

313. Respondent's testimony was not credible.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. (Villatoro-Ochoa, Ribeiro, Del Gaiso, Jiang, Juarez/Aparicio, Stipp)

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client. (Villatoro-Ochoa, Ribeiro, Del Gaiso, Jiang, Juarez-Aparicio, Stipp, Phing/Salim)

3. RPC - 1.4(a)(1), (2), (3), and (4) – A lawyer shall promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required; reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter; promptly comply with reasonable requests for information. (Ribeiro, Juarez-Aparicio, Stipp, Phing/Salim)

RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Ribeiro, Juarez-Aparicio, Stipp, Phing/Salim)

4. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing representation. (Phing/Salim)

5. RPC 1.16(d) – Upon termination of representation, a lawyer shall

take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. (Villatoro-Ochoa, Jiang, Juarez-Aparicio, Stipp, Phing/Salim)

6. RPC 7.3(a) – A lawyer shall not solicit in-person or by intermediary professional employment from a person with whom the lawyer has not family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. (Phing/Salim)

7. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. (Villatoro, Ribeiro, Del Gaiso, Jiang, Stipp)

IV. DISCUSSION

This matter is before the Board for consideration of the charges against Respondent alleging multiple violations of the Rules of Professional Conduct in seven separate client matters. Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Upon review of the record, the Board concludes that Petitioner met its burden of proof. The witness testimony, pleadings and documentary evidence demonstrate Respondent's troubling pattern of neglect. For the following reasons, the Board recommends that Respondent be suspended for a period of one year and one day.

Respondent has practiced law since 1997 with no history of discipline. Following his admission to the bar, Respondent developed an interest in immigration law, and since 2011 has practiced as a sole practitioner, concentrating in serving the immigrant community in Philadelphia who require legal assistance in connection with immigration-related matters. As evidenced by the multiple days of disciplinary hearing that required the use of translators, such representations are complicated when the client base speaks a variety of languages and has a limited or non-existent fluency in English. The Committee commended Respondent for undertaking representation of this often underserved community; however, as rightly emphasized by the Committee, no matter the status of each client, Respondent was obligated to represent these individuals in conformity with the Rules of Professional Conduct.

As shown by the evidence presented over eight days of hearing, Respondent consistently failed to represent his clients according to ethical standards of practice.

Otto R. Villatoro-Ochoa is a native of Guatemala. Mr. Villatoro entered the United States illegally, was arrested by United States Border Patrol Agents, agreed to voluntarily depart the United States, and failed to depart. On March 19, 2014, Respondent filed an Application for Stay of Separation or Removal with the DHS, with a follow-up letter on April 4. On April 10, 2014, Respondent filed an Emergency Request to Stay Removal and Motion to Reopen with the Immigration Court.

In the Emergency Request, Respondent opposed the United States' denial of an administrative stay on the grounds that it did not reflect DHS' goals as Mr. Villatoro had no criminal history, was the father of an autistic child, had a pregnant wife dependent

on his income, and Mr. Villatoro suffered from epilepsy. Respondent did not properly provide evidence of these points as required, and even failed to submit an affidavit from Mr. Villatoro regarding his background and reasons why deportation would jeopardize him and his family. By decision dated May 7, 2014, the ALJ found that Respondent had failed to establish *prima facie* eligibility for a provisional waiver due to failure to present evidence.

Furthermore, Respondent failed to communicate with his client by failing to provide him with a copy of the written fee agreement, failing to provide Mr. or Mrs. Villatoro with a copy of his correspondence with DHS, failing to promptly inform his client of the ALJ's adverse decision, and failing to provide the Villatoros with a copy of the Immigration Court's decision denying the Emergency Request.

On or about May 30, 2014, Mr. Villatoro terminated Respondent's representation and retained new counsel. As of September 11, 2014, the date the Villatoros filed a complaint with Petitioner, Respondent had failed to provide Mr. Villatoro or his new counsel with a copy of the file despite being requested to do so.

Joao Batista Ribeiro Viana is a native of Brazil who is not lawfully in the United States. As a result of an arrest, Mr. Ribeiro was subject to removal proceedings. On or about September 1, 2012, Respondent met with Mr. Ribeiro, during which time he agreed to represent Mr. Ribeiro in his immigration matter and advised Mr. Ribeiro that he would file an application to stay Mr. Ribeiro's removal by filing a motion to suppress evidence related to the allegedly unlawful arrest.

In opposition to the motion to suppress filed by Respondent, DHS claimed that Respondent's Motion was unsubstantiated and without properly verified evidence.

By Order dated March 12, 2013, the ALJ *sua sponte* ordered Mr. Ribeiro to file another motion to suppress by April 25, 2013, with a failure to timely file the motion deemed a waiver.

Mr. Ribeiro received the March 12, 2013 Order in the mail, but because he did not read English, he was unable to understand the decision and order. Respondent did not inform his client about the Order. Respondent failed to submit the requisite information that the ALJ noted was required. The ALJ thereafter denied the motion to suppress. Although an appeal was taken to the Bureau of Immigration Appeals, the ALJ's order was affirmed due to failure to proffer evidence. After the Bureau of Immigration Appeals entered its ruling, Respondent failed to communicate the ruling to Mr. Ribeiro, who found out about the judicial decision by receiving a copy in the mail, after which he had it translated by a third party.

Mr. Ribeiro retained new counsel, who received limited, if any cooperation from Respondent with respect to transferring the file or obtaining information regarding why Respondent did not file a motion to suppress. With assistance of new counsel in subsequent proceedings, the ALJ concluded there was good cause for dismissal of the Government's removal proceedings against Mr. Ribeiro.

John J. Del Gaiso, DMD is a certified pediatric dentist, who performed dental surgery on Jovan, a juvenile, on May 8, 2013. Marya Magdalena, Jovan's mother, met with Respondent's office manager on October 16, 2013, and the next day Respondent and Ms. Magdalena entered into a contingent fee agreement for Respondent's representation in a cause of action arising out of Jovan's visit to Dr. Del Gaiso.

By letter dated October 17, 2013, Respondent accused Dr. Del Gaiso of committing dental malpractice and further claimed that Jovan's face was irreparably damaged. After Dr. Del Gaiso denied any wrongdoing, Respondent asked Dr. Del Gaiso whether he had insurance to fund a settlement, thereby suggesting that Dr. Del Gaiso encourage his insurance carrier to settle the matter regardless of its merit. At the same time, there is no evidence that Respondent consulted with an appropriate healthcare professional to review the case, or that he required Jovan to see another pediatric dentist to review the case before filing a complaint.

On December 20, 2013, Respondent filed a Complaint in the Court of Common Pleas of Philadelphia County alleging malpractice, breach of fiduciary duty and breach of contract. At the time, the case had not been evaluated by an appropriate healthcare provider, and Jovan had not been examined by a pediatric dentist; there was also no Certificate of Merit, as required by the Pennsylvania Rules of Civil Procedure.

With no settlement forthcoming, Respondent abandoned the litigation. Dr. Del Gaiso's counsel was required to seek *non pros* dismissal of the dental malpractice claim, move for dismissal of the breach of contract and fiduciary duty claims, and move to compel response to discovery to which Respondent had failed to respond. Respondent failed to attend the discovery hearing and failed to comply with the resulting order to respond to the discovery, thereby requiring Dr. Del Gaiso's counsel to move for sanctions. Respondent failed to attend the hearing on the sanctions motion, resulting in an evidence preclusion order. Dr. Del Gaiso's counsel then filed a motion for summary judgment, to which Respondent also failed to respond. On September 30, 2015, the Court entered an Order granting the motion for summary judgment and Jovan and his mother's complaint

was dismissed with prejudice. Dr. Del Gaiso subsequently filed a disciplinary complaint against Respondent.

Jinfei Jiang is a native of China who entered the United States illegally. Mr. Jiang sought to retain Respondent in connection with an asylum application. According to Mr. Jiang, he met with someone in Respondent's office who spoke no Chinese. Further, Mr. Jiang testified that Respondent failed to properly prepare him for his asylum interview by not translating documents from Chinese to English and sending Mr. Jiang to an interview with a person who was not capable of assisting Mr. Jiang.

By letter dated February 13, 2014, the Asylum Office advised Mr. Jiang that he had not met his burden of proof and referred Mr. Jiang's application to an ALJ for removal proceedings. In preparation for the hearing, it appears that Respondent intended to offer untranslated travel documents as well as untranslated letters from Mr. Jiang's family, friends and church in support of the application. At a hearing on April 30, 2014, the ALJ noted the difficult burden facing Mr. Jiang and further noted that corroborating witness support and documentation demonstrating Mr. Jiang's claim were important to the hearing outcome. Despite this, Respondent did not obtain translation of all support documents. On the day of the April 13, 2015 hearing, the ALJ indicted that DHS had agreed to defer prosecution but that Mr. Jiang's asylum case would be closed due to failure to provide translated copies of all of the documents that Mr. Jiang intended to submit to support his claim.

Although there was competing testimony concerning responsibility for translation of the documents and related costs, there was insufficient evidence that Respondent ever clearly communicated the consequences for failure to do so to Mr.

Jiang. Respondent's claim that the documents were not translated and submitted because doing so may have raised suspicion of fraud was not credible.

Mr. Jiang terminated Respondent's representation and retained new counsel to pursue his asylum matter. An appropriate request for file transfer was made by the new counsel, but Respondent – as he had done repeatedly in the past – failed to mail Mr. Jiang's documents to the new counsel and failed to return all of the original documents given by Mr. Jiang to Respondent, thereby making it more difficult for Mr. Jiang to pursue his asylum case.

Eustaquio Juarez-Aparicio is a native of Mexico and entered the United States illegally in 2003. On or around October 3, 2014, Mr. Juarez-Aparicio retained Respondent in order to seek an adjustment in his immigration status. At all times thereafter, Mr. Juarez-Aparicio had repeated difficulty reaching Respondent to discuss his case. On or around June 1, 2015, Mr. Juarez-Aparicio terminated Respondent's representation.

Thereafter, Mr. Juarez-Aparicio went to Respondent's office but Respondent declined to return Mr. Juarez-Aparicio's documents. Mr. Juarez-Aparicio retained new counsel, Gary Jodha, Esquire, to assist him in obtaining his documents from Respondent and to represent him in further proceedings, but despite many requests by Mr. Jodha, Respondent failed – again – to respond and failed to turn over Mr. Juarez-Aparicio's file materials.

Ed Carlos Stipp is a native of Brazil who entered the United States illegally. On March 31, 2011, DHS charged Mr. Stipp with violating the immigration laws. On July 12, 2011, Mr. Stipp retained Respondent to prepare an application for cancellation of

removal proceedings. Mr. Stipp ultimately agreed to pay Respondent \$8,250 to prepare the application as well as an application for employment authorization.

On November 9, 2011, Respondent filed an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Mr. Stipp's Application was scheduled for a hearing on September 7, 2012. Three days before the hearing, Respondent sought a continuance based on a purported office move and various scheduling conflicts. The hearing was continued until July 30, 2013. At the July 30, 2013 hearing, the ALJ noted that Mr. Stipp's fingerprints has expired, thereby imperiling his Application, noted that certain evidence had not been submitted and granted Respondent's second request for a continuance. The hearing was continued until May 12, 2014.

At the May 12, 2014 hearing, Respondent acknowledged that he had failed to properly submit exhibits offered in support of Mr. Stipp's case and was admonished by the ALJ for the delay in prosecution of the Application. However, the ALJ rescheduled the hearing for February 11, 2015. At the February 11, 2015 hearing, it again became apparent that Respondent had failed to submit evidence timely and according to the applicable rules. The ALJ accepted the evidence in deference to Mr. Stipp and his family, and *sua sponte* took steps to ensure that Mr. Stipp would not lose his visa number, which had been jeopardized by the dilatory manner in which the Application had been litigated.

Following completion of the hearing, the ALJ explained that the record was legally deficient. The ALJ continued the hearing until August 31, 2015, and kept the record open. Respondent failed to submit any additional evidence, and at the August 31, hearing, the ALJ denied the Application due to a failure to introduce documentation

establishing when Mr. Stipp arrived in the United States and his continuous presence, when Mr. Stipp began paying taxes, and evidence to support the medical condition of Mr. Stipp's son.

Mr. Stipp credibly testified at the disciplinary hearing that Respondent failed to keep him apprised of the status of the proceedings, failed to answer all of his questions and did not provide him with a copy of the Application. To support his Application, Mr. Stipp needed to establish presence in the United States for at least ten years. Although Mrs. Stipp as well as Mr. Stipp's co-workers and friends apparently were available to testify on this issue on Mr. Stipp's behalf, Respondent did not ask any of these witnesses to testify. Respondent also failed to explain to Mr. Stipp that Mr. Stipp needed an expert report to explain why his son's medical care related to ADHD would suffer if the family was required to return to Brazil.

After Mr. Stipp's appeal was denied, Mr. Stipp retained new counsel, who filed a motion and was able to reopen the record to give Mr. Stipp the opportunity to submit additional evidence. Despite repeated requests from Mr. Stipp's new counsel, Respondent again failed to provide any additional information from Mr. Stipp's file.

Mr. Stipp provided credible evidence concerning Respondent's failure to communicate with him during the course of the representation. Despite the protracted length of the proceedings involving Mr. Stipp, Respondent did not explain the nature of the Application process and did not meet sufficiently frequently with Mr. Stipp during the engagement. Mr. and Mrs. Stipp described many unreturned telephone calls and they credibly testified that Respondent did not keep them adequately informed concerning the status of the legal proceeding.

Herman Salim and Ang Phing, husband and wife, are from Indonesia. They are lawful permanent residents of the United States and have limited fluency in English. On or around November 26, 2013, Respondent met with Ms. Phing and Mr. Salim about two slip and fall matters pending in the Philadelphia Court of Common Pleas. Ms. Phing had contacted Respondent after she saw his advertisement in an Indonesian-language newspaper, which stated, in part, that Respondent handled “accident” matters. Ms. Phing and Mr. Salim retained Respondent, although he did not disclose to his clients that he might try to find another lawyer to handle or assist with their accident cases. The documentation provided by Respondent and accepted by Mr. Salim indicated that Respondent would be their attorney.

Shortly after agreeing to represent Ms. Phing and Mr. Salim, Respondent, without first discussing the matter with his clients, contacted Michael Gaier, Esquire, to see if he would represent Ms. Phing in a third matter involving an automobile accident. After investigation, Mr. Gaier advised Ms. Phing by letter that he would not be able to represent her. According to Ms. Phing, she never received the letter because she was in Indonesia at the time. Ms. Phing testified that she had no knowledge that Respondent would be speaking to another attorney regarding involvement in the matter, and Respondent never conveyed to Ms. Phing that the matter would not be pursued.

Respondent subsequently met with the prior counsel for Ms. Phing and Mr. Salim and arranged for transfer of the case files for the slip and fall matters, ***Tran*** and ***Choi***. At that time, a settlement had been offered to resolve at least one of the matters. Although the prior counsel withdrew from the matters, Respondent failed to enter his appearance in either matter. Respondent failed to advise his clients that an arbitration in

the **Tran** matter had been scheduled for June 30, 2014. On June 30, 2014, the court entered a judgment of *non pros* in the **Tran** matter due to Ms. Phing's and Mr. Salim's failure to appear. On October 27, 2014, the court dismissed the complaint in **Choi** for failure to comply with prior orders. Respondent failed to inform his clients that the Court dismissed their complaint in **Choi**.

Although the record is not clear as to the timing of several conversations between Ms. Phing and Mr. Salim and Respondent and/or his staff, Ms. Phing credibly testified at the disciplinary hearing that she inquired of Respondent regarding the status of the two cases and Respondent did not disclose the status. In August 2016, nearly two years after the cases were dismissed, Ms. Phing and Mr. Salim met with a lawyer who, when told about the two cases which they believed were pending, reviewed the dockets and told Ms. Phing and Mr. Salim that both cases had been dismissed. Ms. Phing and Mr. Salim went to Respondent's office to retrieve their files, but Respondent informed them he no longer had the files.

After Ms. Phing and Mr. Salim retained Respondent to handle their personal injury matters, there was a serious automobile accident where one Indonesian-speaking person was killed and several Indonesian-speaking persons were seriously injured. Respondent contacted Ms. Phing to find out more about the injured individuals because he suspected she might know them. Ms. Phing went with Respondent to the hospital to meet the injured parties. None retained Respondent. However, Respondent paid Ms. Phing \$100.00 for assisting him and Respondent subsequently offered to help Ms. Phing become a United States citizen without payment of fees because of her assistance.

The Committee, considering these facts, issued a Report and concluded that Respondent violated multiple ethical rules and recommended that he be suspended for one year and one day. In making this recommendation, the Committee considered the number of clients with similar complaints against Respondent; his lack of remorse; failure to present character evidence; and failure to demonstrate remedial measures to prevent the conduct described herein. The Committee balanced these aggravating factors with Respondent's lack of prior discipline and its observation that Respondent undertook legal services for an underserved community. The Committee further noted that it was not persuaded by Respondent's defense that his clients failed to provide him with necessary information or documents. The Committee found the testimony of Respondent's former clients to be "significantly" more credible than that of Respondent. Hearing Committee Report, p. 2.

Respondent filed exceptions to the Committee's Report and objects that his misconduct does not warrant a suspension of one year and one day; he requests that the Board recommend a suspension of one year or less. Petitioner opposes Respondent's exceptions.

It is well-established that the goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). Upon reviewing the totality of the facts and circumstances of this record, and after considering the goals of the disciplinary system and the established precedent, we conclude that Respondent's objection is unfounded, as his misconduct warrants a one year and one day suspension. ***Office of Disciplinary***

Counsel v. Robert Lucarini, 427 A.2d 186, 190 (Pa. 1983); ***Office of Disciplinary Counsel v. Melvin V. Richardson***, No. 35 DB 1988, 8 Pa. C. & C. 4th 344, 355 (1990).

During a span of two and one-half years, Respondent engaged in a course of misconduct in five immigration and two personal injury matters. His misconduct involved lack of competence, lack of diligence, failure to communicate, failure to return client files, and conduct prejudicial to the administration of justice. Respondent's poor communication strikes the Board as particularly troubling, as his clients' limited English placed them in a vulnerable position with regard to their understanding of the legal processes in which they were involved. Respondent's misconduct resulted in adverse consequences to his clients, as their rights were either jeopardized or lost due to Respondent's failure to present evidence or pursue arguments essential to the advancement of their matters. Some clients' files were never returned. Many clients retained new counsel in an attempt to remedy Respondent's wrongdoing. Respondent's conduct burdened the court system, which had to contend with his repeated incompetence

Respondent's attempt to defend himself by claiming that his clients failed to provide him with necessary documents or information is not credible. We accept the Committee's determination that the testimony of Respondent's clients was "significantly" more credible than his own. Respondent did not demonstrate genuine remorse for his misconduct, did not show appreciation for his wrongdoing by demonstrating measures to remediate his practice problems, and did not present any character evidence.

To protect the public, the profession and the courts, attorneys who have engaged in multiple instances of neglect and failure to communicate with their clients

have received suspensions of one year and one day, which required the attorneys to undergo a reinstatement hearing to determine fitness to resume the practice of law. See ***Office of Disciplinary Counsel v. Michael Elias Stosic***, No. 65 DB 2015 (D. Bd. Rpt. 6/23/2016) (S. Ct. Order 9/14/2016) (suspended for one year and one day for neglect of five client matters; held in criminal contempt on three occasions for failing to appear for court dates; no history of discipline); ***Office of Disciplinary Counsel v. Sterling Artist***, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S. Ct. Order 7/18/2007) (suspended for one year and one day for neglecting three client matters; admitted wrongdoing; no record of discipline); ***Office of Disciplinary Counsel v. Howard Goldman***, No. 157 DB 2003 (D. Bd. Rpt. 5/20/2005) (S. Ct. Order 8/30/2005) (suspended for one year and one day for neglecting four client matters; admitted misconduct; no record of discipline). See also, ***Office of Disciplinary Counsel v. Kevin Mark Wray***, No. 19 DB 2017 (S. Ct. Order 7/6/2017) (suspended for one year and one day on consent for neglect, failure to communicate and retention of unearned fees in six matters; criminal contempt in one client matter); ***Office of Disciplinary Counsel v. Ann-Marie MacDonald Pahides***, No. 171 DB 2009 (S. Ct. Order 12/21/2010) (suspended for one year and one day on consent for lack of competence, neglect, lack of communication and failure to return unearned fees and documents in five client matters; prior Informal Admonition).

Upon this record, we conclude that Respondent is not fit to practice law. A one year and one day suspension removes Respondent from practice and thereby protects the public, fulfilling the predominant mission of the disciplinary system. If Respondent desires to practice law in the future, he will be required to prove his fitness by clear and convincing evidence.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Douglas Andrew Grannan, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Dion G. Rassias, Member

Date: 4.3.19