In re Barbara Ann Susman
Respondent-Appellant

Commission No. 2018PR00080

Synopsis of Review Board Report and Recommendation
(June 2022)

The Administrator filed a four-count amended complaint against Respondent, charging her with failing to act diligently and failing to properly communicate with her clients in three immigration matters, failing to return an unearned fee in one of the matters, failing to respond to the Administrator's requests for information, and prejudicing the administration of justice, in violation of Rules of Professional Conduct 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.1(b), and 8.4(d). Respondent filed an answer to the amended complaint in which she admitted some of the factual allegations and denied all allegations of misconduct.

The Hearing Board found that Respondent had engaged in the misconduct charged in three of the four counts of the amended complaint. The Hearing Board recommended that Respondent be suspended for five months, with the suspension stayed in its entirety by a one-year period of probation, with conditions focused on office management.

Respondent appealed, challenging the Hearing Board's findings of misconduct, and requesting that this case be dismissed, with no sanction being imposed.

The Review Board affirmed the Hearing Board's findings of fact and misconduct and recommended that Respondent be suspended for five months, with the suspension stayed by a one-year period of probation, with the conditions set forth by the Hearing Board.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

BARBARA ANN SUSMAN,

Respondent-Appellant,

No. 6186506.

Commission No. 2018PR00080

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

In October 2019, the Administrator filed a four-count amended complaint against Respondent, charging her with failing to act diligently and failing to properly communicate with her clients in three immigration matters, failing to return an unearned fee in one of the matters, failing to respond to the Administrator's requests for information, and prejudicing the administration of justice, in violation of Rules of Professional Conduct 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.1(b), and 8.4(d). Respondent filed an answer to the amended complaint in which she admitted some of the factual allegations and denied all allegations of misconduct.

Following four days of hearings, with thirteen witnesses and forty-two exhibits, at which Respondent was represented by counsel, the Hearing Board found in its Report and Recommendation, issued August 19, 2021, that Respondent had engaged in the misconduct charged in three of the four counts of the amended complaint.[1] The Hearing Board recommended that Respondent be suspended for five months, with the suspension stayed in its entirety by a one-year period of probation, with conditions focused on office management.

Respondent appealed, challenging the Hearing Board's findings of misconduct, and requesting that this matter be dismissed. The Administrator argues that the Hearing Board's findings should be affirmed and requests that the Review Board recommend the same sanction.

On February 18, 2022, the Review Board heard oral arguments by video conference. Respondent was represented by counsel.

For the reasons that follow, we affirm all of the Hearing Board's findings of fact and of misconduct. We recommend that Respondent be suspended for five months, with the suspension stayed by a one-year period of probation, with the conditions set forth by the Hearing Board.

BACKGROUND

Respondent

Respondent has been licensed to practice law in Illinois since 1983. She began her own firm in 1986, with a focus on immigration, customs, and international law for both corporate and individual clients. Respondent had one prior disciplinary matter in 2013, in which she was censured for filing a frivolous pleading and engaging in the unauthorized practice of law after her name was removed from the Master Roll for failure to timely register. *In re Susman*, 2009PR00126, *approved and confirmed*, M.R. 26102 (Sept. 25, 2013).

Respondent's Misconduct

Brocksmith Matter (Count I) (Lack of Diligence and Failure to Communicate)

In 2016, Respondent was retained to help Marne Brocksmith obtain a green card. Marne was a South African citizen and had recently married Tim Brocksmith, an American citizen. Marne was still living in South Africa and Tim was in the United States. Respondent was hired by Tim Brocksmith's mother, Carolyn Gallagher, a circuit court judge, after they met at a professional event.

Respondent successfully submitted an application to the U.S. Citizenship and Immigration Services for Marne, which was approved by that agency at the end of February 2017, and Respondent notified the Brocksmiths and Gallagher that the application had been approved. The next step in the process involved submitting an application with additional documentation to the National Visa Center ("NVC") and paying processing fees of $445.

The final step involved consular processing and an interview of Marne at the U.S. Consulate in Johannesburg, South Africa. Respondent told the Brocksmiths that the interview was likely to be scheduled in approximately 60 to 90 days (in May or June 2017) and that it would be helpful for Tim to be present for the interview. Respondent sent a letter to the Brocksmiths stating: "Now we have 60-90 days of waiting for the National Visa Center action, leading to the Final Permanent Visa Consular Processing in Johannesburg, South Africa. It is there at the U.S. Consulate in Johannesburg that the Final Interview will be held with Tim and Marne attending." (Adm. Ex. 3.)

Tim traveled to South Africa in March 2017, after talking to Respondent about timing his travel so that the interview would take place within 90 days of his arrival in South Africa, since he only would have a 90-day visa to stay in South Africa. Respondent denied talking to Tim about his plan to fly to South Africa and testified that she was not aware of his travel plans. The Hearing Board found that Respondent's testimony on that issue was not credible. (Hearing Bd. Report at 13.)

Respondent asked the Brocksmiths to provide certain documents to her. Respondent also asked Gallagher, who was paying for the costs, to send the $445 processing fees to Respondent, which Gallagher did. However, Respondent did not receive Gallagher's check, or

was not able to locate it. According to Gallagher, her bank confirmed that the check was sent to Respondent, but it was not cashed.

Respondent contacted Gallagher in April and May 2017 about the $445 processing fees. In April, Respondent sent an email stating that she had not received the processing fees; Gallagher responded, saying that her bank had sent the check; and Respondent replied and said she would check in her financial mail again and get back to Gallagher. In May, Respondent sent a letter stating that she had not received the check, and asked Gallagher to issue a new check. On May 22, Gallagher responded via email stating that she had stopped payment on the original check, and she asked to speak with Respondent so that Gallagher could provide her debit card information to Respondent in order to pay the $445 fees.

Respondent did not answer Gallagher's May 22 email or contact Gallagher. Gallagher assumed that Respondent had taken care of the filing fees, since there was no response to the May 22 email. On May 30, Gallagher sent another email, with tax returns attached, and asked whether Respondent needed anything else from Gallagher. Respondent did not reply to that email. Between the end of May and the end of September, Respondent did not mention the processing fees again or explain that she had not filed the application.

In the meantime, after Tim travelled to South Africa in March 2017, the Brocksmiths could not reach Respondent by phone or email for a month. Thereafter, the Brocksmiths and Gallagher repeatedly contacted Respondent asking when the interview would take place, and Respondent either failed to respond or gave vague answers, saying, for example, that they just had to wait, or that she would review the file and get back to them. On June 16, 2017, Respondent sent an email stating that she would know the date of the interview very soon, possibly within a matter of days, and she did not think that the remaining time period would be too long.

The matter also became more pressing in June, because Tim's visitor's visa was about to expire. As a result, the Brocksmiths and Gallagher made numerous attempts to get information from Respondent. While she had some communications with them, she failed to respond to many of their emails, phone calls, and text messages, and they were unable to get any substantive information from her about Marne's visa application. Tim ultimately got an extension to stay in South Africa and rebooked his return plane ticket.

At one point in June, Respondent said that she would ask her associate, Alberto Gonzalez, to check on the matter, and she sent an email to Gonzalez asking about the timing of the interview and the status of the application. In July, Gonzalez responded, stating that he was out of the country and that he had told Respondent months ago to hire someone else to take his place. During July, August, and early September, the Brocksmiths and Gallagher continued trying to get substantive information from Respondent about the application, without success.

On September 25, 2017, Respondent sent an email to them with a letter attached, which stated that the $445 processing fees had not been paid and Respondent had not received most of the documents she had requested. Although the letter was dated August 14, Respondent did not send it until September 25. Tim responded that he had sent all of the documents to her via email in May. Respondent asserted that she did not receive that email.

At that point, Gallagher checked the State Department's website, and discovered that the fees had not been paid and the application was inactive. She paid the processing fees directly to NVC and completed the steps that needed to be taken. Gallagher fired Respondent in October 2017. Gallagher and the Brocksmiths successfully handled the application themselves, and Marne subsequently got her green card. The interview took place in April 2018, approximately one year after Respondent said the interview would be conducted.

Sanchez Matter (Count IV) (Lack of Diligence and Failure to Communicate)

In November 2018, Amanda Sanchez Chavez ("Sanchez") hired Respondent to file an application to renew Sanchez's status under the Deferred Action for Childhood Arrivals ("DACA") program. Respondent had helped Sanchez file two prior DACA applications. The matter was time sensitive because Sanchez's DACA status was going to expire on February 16, 2019, and Sanchez did not want to get deported. Respondent initially said that the application would be ready in January 2019, but it was not ready when Sanchez met with Respondent in January. Respondent subsequently agreed to meet Sanchez at Respondent's office in late January, but Respondent was not there when Sanchez arrived.

Respondent then advised Sanchez the application would be ready in early February, but it was not ready when Sanchez met with Respondent on February 2, 2019. Respondent told Sanchez they could meet the following week, on February 9, but Respondent did not respond to Sanchez's calls and texts, so they did not meet. Sanchez agreed to meet on February 10, but Respondent did not call or text Sanchez back to confirm the meeting, so they did not meet. On February 12, they agreed to talk in the evening, and Sanchez said she would wait for Respondent's call, but Respondent did not call, and did not respond to Sanchez's text messages, even though Sanchez's DACA status was going to expire on February 16.

Respondent testified that she had finalized the application several days before it was due date but had trouble getting Sanchez to come in to sign the application. (Hearing Bd. Report at 21-22.) The Hearing Board found that Respondent's testimony on that issue was not credible in light of Sanchez's repeated efforts to complete the application, and the emails and text messages between Respondent and Sanchez. (*Id.* at 23.)

On February 13, Sanchez retained another attorney to prepare and file the DACA application. Sanchez fired Respondent two days later. The new attorney subsequently filed the

application for Sanchez, and her application was granted. But the filing was delayed by a month because Respondent refused to turn over Sanchez's file, and Sanchez had to contact family members to get information needed for the application.

Failure to Respond and Prejudicial Conduct (Count III)

On March 7, March 9, April 2, and April 26, 2018, the Administrator sent Respondent letters seeking information about the Brocksmith matter and another immigration matter. Respondent admitted that she received the letters and did not respond to them. In May, a paralegal with the Attorney Registration and Disciplinary Commission ("Commission") called Respondent and discussed the letters that were sent by the Administrator, but their phone call was cut short by a fire drill. According to Respondent, she did not respond to the letters because her father was ill, and she did not re-contact the paralegal because she thought the paralegal would get back to her. During that time, Respondent continued to represent clients and run her law practice while her father was ill.

Because there was no response to the letters, a Commission investigator attempted to serve a subpoena on Respondent. He went to Respondent's office building six times, and to her home once, and he left messages on Respondent's office phone. On June 26, 2018, Respondent left a voicemail for the investigator stating that her father was ill.

The investigator mailed a Commission subpoena to Respondent at the end of June, which directed her to appear on July 26 to provide a sworn statement and to produce documents. She admitted receiving the subpoena. Respondent's father died on June 30 and was buried on July 14. Respondent did not appear on July 26 or respond in any fashion, nor did she request an extension of time or provide the requested documents.

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board found that the Administrator proved all of the charges now on appeal by clear and convincing evidence, namely, the charges regarding the Brocksmith matter, the Sanchez matter, and Respondent's failure to respond to the Commission in a timely manner. (Hearing Bd. Report at 10-14; 17-19; 22-24.)

Regarding the Brocksmith matter, the Hearing Board found that Respondent failed to provide diligent representation in preparing Marne's visa application, in violation of Rule 1.3. The Hearing Board also found that Respondent failed to communicate with her clients, failed to keep her clients reasonably informed, and failed to promptly comply with her clients' reasonable requests for information, in violation of Rules 1.4(a)(2), 1.4(a)(3), and 1.4(a)(4). (*Id*. at 10-14.)

Regarding the Sanchez matter, the Hearing Board found that Respondent failed to diligently represent Sanchez by failing to complete Sanchez's application in a timely manner, in violation of Rule 1.3. The Hearing Board also found that Respondent failed to keep Sanchez reasonably informed about the status of her application and failed to promptly respond to Sanchez's reasonable requests for information, in violation of Rules 1.4(a)(3) and 1.4(a)(4). (*Id*. at 22-24.)

Regarding Respondent's failure to respond, the Hearing Board found that Respondent failed to comply with the Administrator's requests for information and documents and failed to appear for a sworn statement as directed by the Commission's subpoena, in violation of Rule 8.1(b). The Hearing Board also found that Respondent's failure to respond constituted conduct prejudicial to the administration of justice, in violation of Rule 8.4(d). (*Id*. at 17-19.)

Mitigation and Aggravation Findings

In mitigation, the Hearing Board found that Respondent had been active in several professional organizations, including the American Immigration Lawyers Association, the Chicago Lincoln Inn of Court, the Chicago Bar Association, and the Illinois State Bar Association. Respondent had also provided extensive *pro bono* legal services and given numerous speeches. Respondent's father was hospitalized in March 2018, after being diagnosed with a serious illness several months earlier, and passed away in June 2018, which was extraordinarily difficult for Respondent. She was his health advocate and arranged his funeral. Respondent was also distressed because one of her brothers allegedly took money from their father in June 2018. Four witnesses, including three judges, testified as to Respondent's good character. (Hearing Bd. Report at 24-26; Tr. 50-56, 521-35, 537-49, 550-54.)

In aggravation, the Hearing Board found that Respondent's misconduct caused stress and anxiety to the individuals involved and resulted in financial and emotional harm to them. (Hearing Bd. Report at 26-27.) Tim Brocksmith was shocked at the lack of communication, and he found the uncertainty to be nerve-wracking and stressful. Marne Brocksmith was anxious and had panic attacks. Judge Gallagher was shocked, upset, and horrified. Sanchez felt stressed and she was fearful that she would be deported. The Hearing Board noted that the Brocksmiths incurred additional expenses due to the delay of their matter and Sanchez had to pay additional attorney fees in order to get her DACA renewal application filed. (*Id*. at 27.)

In aggravation, the Hearing Board also found that Respondent attempted to blame her clients, rather than accepting responsibility for her own misconduct. (*Id*.) The Hearing Board further found that Respondent did not testify truthfully when she denied knowing that Tim Brocksmith planned to travel to South Africa so that he could participate in the consulate interview,

and when she testified that she had finalized Sanchez's application several days before it was due but had trouble getting Sanchez to come in to sign the application. (*Id*. at 13, 27.) The Hearing Board also noted that Respondent was censured in 2013 in a prior disciplinary matter. (*Id*. at 26.)

Recommendation

The Hearing Board concluded that the nature of the misconduct and the factors in mitigation and aggravation warranted a five-month suspension, stayed in its entirety by a one-year period of probation subject to conditions focused on office management. (*Id*. at 29.)

ANALYSIS

The Hearing Board's factual findings are entitled to deference and generally are not reversed on review unless they are against the manifest weight of the evidence. *See In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961(2006). The Hearing Board is generally in the best position to observe the witnesses, assess their demeanor and credibility, resolve conflicting testimony, and render other fact-finding judgments. *Winthrop*, 219 Ill. 2d at 543. Respondent must establish that the Hearing Board's findings are against the manifest weight of the evidence. *In re Timpone*, 208 Ill. 2d 371, 380, 804 N.E.2d 560 (2004).

A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *See Leonardi v. Loyola University*, 168 Ill. 2d 83, 106, 658 N.E.2d 450 (1995) (stating "[a] judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary, or not based on evidence."); *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273 (1995) (stating "[a] judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings

appear to be unreasonable, arbitrary, or not based on evidence."). That the opposite conclusion is reasonable is not sufficient. *See Winthrop*, 219 Ill. 2d at 542-43.

The reviewing tribunal is also responsible for correcting errors in the application of the facts to the law and determining whether or not a particular set of facts constitutes the misconduct charged. *See Winthrop*, 219 Ill. 2d at 543; *In re Discipio*, 163 Ill. 2d 515, 527, 645 N.E. 2d 906, 206 Ill. Dec. 654 (1994). Questions of law, such as whether circumstances shown by undisputed facts constitute misconduct and what interpretation is to be given to disciplinary rules, are reviewed under a *de novo* standard. *See In re Thomas*, 2012 IL 113035 ¶ 56; *In re Morelli*, 01 CH 120 (Review Bd., March 2, 2005) at 10, *approved and confirmed*, M.R. 20136 (May 20, 2005).

Respondent argues that the Hearing Board's legal conclusions are incorrect and asserts that the appropriate standard of review in this matter is *de novo.* Respondent argues that she is not challenging the Hearing Board's findings of fact, but rather, she is challenging the Hearing Board's conclusions that the facts establish violations of the Rules of Professional Conduct and, therefore, the standard of review should be *de novo*. Respondent is mistaken.

Clearly, Respondent is challenging the Hearing Board's factual findings, which, as noted above, we will reverse only if they are against the manifest weight of the evidence. Moreover, Respondent appears to ask us to reweigh the evidence and draw different inferences from those drawn by the Hearing Board, which we decline to do. *See In re Gurvey*, 2017PR00092 (Review Bd., Dec. 5, 2019) at 14, *petitions for leave to file exceptions denied*, M.R. 030215 (May 18, 2020) (stating "Respondent is essentially asking us to reweigh the evidence, draw different inferences, and substitute our judgment for that of the Hearing Board majority. That is inconsistent with our role on review, which requires us to defer to the Hearing Board regarding such matters.").

Consequently, after considering Respondent's arguments along with the record in this matter, we find no basis to overturn the Hearing Board's findings of fact, which are supported by the record and, therefore, not against the manifest weight of the evidence. Nor do we find any basis to overturn the Hearing Board's findings of misconduct, which are supported by the Hearing Board's factual findings and consistent with applicable law.

Brocksmith Matter

Lack of Diligence

With regard to the Brocksmith matter, the Hearing Board found that Respondent violated Rule 1.3, which requires a lawyer to "act with reasonable diligence and promptness in representing a client." The Illinois Supreme Court has stated that "it is especially important that attorneys take all reasonable steps to ensure that client matters are handled expeditiously." *In re Smith*, 168 Ill. 2d 269, 283-84, 659 N.E.2d 896 (1995). "Even relatively brief periods of inactivity can constitute professional misconduct, where there is no reasonable justification for the delay." *In re Grief*, 2015PR00059 (Hearing Bd., Jan. 20, 2017) at 13, *approved and confirmed*, M.R. 028641 (May 18, 2017); s*ee also, In re Bertrand*, 07 SH 30 (Hearing Bd., March 18, 2008) at 15, *affirmed*, (Review Bd., Feb. 18, 2009), *recommendation adopted*, M.R. 23087 (Sept. 22, 2009) (attorney failed to act with reasonable diligence in a divorce case by failing to issue and serve a summons during a four-month period).

Respondent first challenges the Hearing Board's findings that she failed to represent her clients diligently. The Hearing Board found that Respondent was not diligent in completing the steps necessary to obtain Marne's green card. The Hearing Board also found that "[a]lthough Respondent filed the I-130 application in a timely manner, she failed to follow through with the next stage of the process. Specifically, Respondent ignored Gallagher's effort to arrange

for payment of the processing fees, which stalled the application." (Hearing Bd. Report at 10-11.) The Hearing Board further found that Respondent's failure to file Marne's application between the end of May and the end of September was an unreasonable delay. (*Id*. at 10-12.)

Respondent blames her clients for her own misconduct. Respondent argues that the delays occurred because Gallagher did not follow up on paying the $445 processing fees and the Brocksmiths did not provide all of the requested documents. The Hearing Board specifically rejected that argument, finding that the "evidence shows the clients responded to Respondent's document requests and made efforts to pay the necessary fees. Respondent was the person with expertise in the immigration process and was being paid to see the application through to completion in an expeditious manner." (*Id.* at 11.)

The other evidence also supports the Hearing Board's findings. For example, Gallagher sent an email on May 22, 2017, asking Respondent to contact her, so that Gallagher could provide her debit card information to pay the $445 processing fees, but Respondent failed to contact Gallagher. At that point, Gallagher assumed that Respondent had taken care of the fees issue. Gallagher heard nothing from Respondent about the fees between May and September, a period of four months. On September 21, Gallagher had a phone conversation with Respondent and asked whether Respondent needed anything else from Gallagher, and Respondent said no. (*Id*. at 9.) Moreover, according to Marne Brocksmith, by the end of May 2017, all of the requested documents had been sent by e-mail and standard mail, and Respondent had sent an email acknowledging that she had received the documents. (Tr. 300.)

The Hearing Board also found that Respondent's testimony was not credible or was unpersuasive on two issues concerning the Brocksmiths. (Hearing Bd. Report at 12-13.) Specifically, Respondent testified that she did not know that Tim Brocksmith planned to travel to

South Africa in order to participate in Marne's interview. (*Id*. at 5.) The Hearing Board found that Respondent's testimony on that issue was not credible, particularly in light of an email written by Respondent, referring to a phone call in which Tim talked about his interest in leaving for South Africa. Respondent also testified that she had contacted Gallagher many times to obtain Gallagher's debit card information. (*Id*. at 10.) The Hearing Board concluded that Respondent's testimony on that issue was unpersuasive and found that there was a four-month gap between the time that Gallagher offered to provide her debit card information and the time that Respondent asked for payment again. (*Id*. at 12.)

Respondent also argues that she did a substantial amount of work during the relevant time period. The Hearing Board rejected that argument and found that Respondent "did very little to advance the process after the initial I-130 application was approved" at the end of February 2017. (*Id*. at 11.) The evidence showed that Respondent did not know the status of the matter in June; she failed to work on the file after she learned that her associate was no longer handling the matter in July; and she sent an email at the end of September saying she had not received the Brocksmiths' documents. In sum, the record supports that Respondent was not diligently attending to this matter, and she did very little to complete and file the application after the end of February 2017.

Failure to Communicate

The Hearing Board also found that Respondent violated Rule 1.4(a), which provides that a "lawyer shall … keep a client reasonably informed about the status of a matter; [and] promptly comply with reasonable requests for information." (Hearing Bd. Report at 10-14.) As the Court explained in *Smith*, this Rule imposes a duty on lawyers to communicate with clients in order to keep them reasonably informed about their cases so the clients can make informed

choices, and to promptly respond to clients' questions and requests for information. *Smith*, 168 Ill. 2d at 282 (attorney violated Rule 1.4(a), where six of his clients made repeated attempts to reach him, and he failed to return the clients' phone calls).

Respondent challenges the Hearing Board's findings that she failed to communicate with her clients, failed to keep the clients reasonably informed, and failed to respond to the clients' reasonable requests for information. Respondent argues that the evidence showed that there was no lack of communication with the clients, and that there were numerous communications with the clients' regarding the need to pay the fees. That argument is not persuasive.

The evidence showed that, over a period of four months, between the end of May and the end of September, Respondent was not responsive to the clients' many attempts to contact her to discuss the status of the application, and that when Respondent did communicate with the clients, Respondent failed to advise them that no progress had been made. (Hearing Bd. Report at 12.) For example, in June, Respondent sent an email stating that she would know the date of Marne's interview very soon, possibly within a matter of days, and she did not think that the remaining time period would be too long. (*Id*. at 6.) That email was misleading because Respondent had not filed the application, the interview was not about to be scheduled, and there was no way to know what the remaining time period was going to be until the application was filed. Respondent failed to disclose that information to the clients. (*Id*. at 12-13.)

The evidence also showed that, although the Brocksmiths and Gallagher were continually and desperately trying to get information about the application, Respondent was not providing that information promptly. The Hearing Board found that the testimony from Gallagher and the Brocksmiths regarding their many unsuccessful attempts to reach Respondent in June and July 2017 was credible, and that their testimony was corroborated by text messages and emails.

(*Id*. at 12.) Moreover, the Hearing Board found that, between the end of May and the end of September, Respondent failed to communicate with Gallagher or the Brocksmiths about the $445 fees and failed to advise them that the application had not been filed, even though they repeatedly asked for information about the application. (*Id*.)

Respondent blames the communication issues on the clients' failure to pay the $445 processing fees. The Hearing Board rejected that argument, pointing out that the clients were begging for information for the entire summer. The Hearing Board found that it was "the failure to respond to Gallagher's request to arrange for payment coupled with the four-month gap in communication about the fees that constitutes misconduct, particularly given Respondent's knowledge that the NVC application could not proceed until the fees were paid." (*Id*. at 12.) Respondent's arguments do not provide a basis for disturbing the Hearing Board's findings, which are reasonable and well-supported by the evidence.

Sanchez Matter

With regard to the Sanchez matter, the Hearing Board found that Respondent violated Rule 1.3 (lack of diligence) and Rule 1.4(a) (lack of communication). Respondent argues that she was diligent and communicated properly with her client because she had prepared the application, she met with Sanchez on four or five occasions, and she was in communication with Sanchez. That argument is not persuasive.

Lack of Diligence

There is ample evidence in the record to support the Hearing Board's findings that Respondent failed to provide diligent representation in violation of Rule 1.3. As the Hearing Board noted, Comment 3 to Rule 1.3, which is applicable in this matter, states in part:

> Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected

> by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

(Hearing Bd. Report at 22.) The evidence showed that Respondent failed to have the application ready until the day before Sanchez's DACA status expired; the matter was time sensitive; the application was not lengthy or complicated; Respondent was hired months before the application was due; and Respondent already had the requisite information from earlier applications, so that she could have prepared the application on a timely basis. As the Hearing Board pointed out, "[i]t was Respondent's responsibility to make sure the application was ready in sufficient time to allow for signing and filing before Sanchez's DACA status expired. Respondent failed to do so and provided no valid explanation for that failure." (*Id*. at 23.)

Failure to Communicate

There is also ample evidence to support the Hearing Board's findings that Respondent violated Rule 1.4(a) by failing to keep Sanchez reasonably informed and failing to promptly respond to Sanchez's reasonable requests for information. The evidence showed that, over a period of weeks, Respondent failed to respond promptly to Sanchez's attempts to make contact; Respondent did not follow through on the proposed meeting times; Respondent initially told Sanchez that the application would be ready in January and then said it would be ready in early February, but she failed to prepare the application as promised; and Respondent failed to respond to text messages and phone calls as the due date for the application drew near. (Hearing Bd. Report at 20-21, 24.) Sanchez was so uncertain about the status of her DACA application that she retained another attorney three days before the application deadline in order to ensure that the application was properly filed.

Respondent testified that she had finalized Sanchez's application several days before it was due but had trouble getting Sanchez to come in to sign the application. The Hearing Board found that Respondent's testimony on that issue was not credible. (*Id*. at 23.)

Respondent argues that, although it might have been better if she had prepared the application earlier, providing representation that is less than perfect does not compel a finding of misconduct. In this instance, however, Respondent's conduct was not only less than perfect, but it also violated the rules of professional conduct. Specifically, Respondent failed to prepare the application on a timely basis, even though she had adequate time to prepare the application; she promised to have the application ready at the end of January but failed to do so; she promised to have the application ready at the beginning of February, but failed to do so again; she repeatedly failed to meet with the client; she failed to contact the client as promised; and she failed to provide information to the client concerning the status of the application.

In support of her argument that her less-than-perfect conduct did not warrant discipline, Respondent cites two cases in which the attorneys' conduct did not rise to the level of unethical conduct. *See In re Howard*, 96 CH 531, (Review Bd. June 4, 1998), *approved and confirmed*, M.R. 15103 (September 28, 1998); *In re Mason*, 122 Ill. 2d 163, 170, 522 N.E. 2d 1233 (1988). Those cases, however, are distinguishable from the instant matter.

In *Howard*, the attorney was charged with misconduct that included failing to provide diligent representation. The attorney had filed an adoption petition that did not include the birth father's name and address, but she filed an amended petition as soon as she obtained the father's name and address. The Review Board found that there was no evidence concerning what steps the attorney should have taken to locate the father's information or concerning the time frame for filing that information. The Review Board concluded that, without any evidence of a definitive

standard, they could not find that the attorney had failed to act diligently. In the instant case, it is clear that Respondent failed to take the steps needed to complete and file Sanchez's application, and the time frame was clearly established because Sanchez's DACA status was set to expire in February 2019.

In *Mason*, the attorney failed to timely file a notice of claim with the Chicago Transit Authority ("CTA") because the attorney was not aware of the CTA's specific filing requirements. The Court concluded that the attorney's lack of knowledge about the CTA's specific filing requirements did not constitute negligence or incompetence. In the instant matter, Respondent was an experienced immigration attorney; her failure to prepare Sanchez's application, and her failure to properly communicate with Sanchez had nothing to do with a lack of knowledge. Based on the record, the Hearing Board's findings that Respondent failed to act diligently and failed to properly communicate with Sanchez, (Hearing Bd. Report at 22-24), are not against the manifest weight of the evidence.

Failure to Respond

Finally, the Hearing Board found that Respondent violated Rule 8.1(b), which requires attorneys to comply with the Commission's requests for information, and Rule 8.4(d), which prohibits attorneys from engaging in "conduct that is prejudicial to the administration of justice." Respondent challenges the Hearing Board's findings and argues that the Hearing Board failed to give sufficient weight to Respondent's personal family difficulties, involving her father's illness and death, and ignored the evidence that she informed a Commission investigator and a paralegal about her family circumstances. Respondent contends that her personal difficulties demonstrate a good-faith basis for her failing to respond. Respondent also argues that her conduct did not result in any actual prejudice. Those arguments are not persuasive.

Rule 8.1(b)

Respondent clearly violated Rule 8.1(b) in this case by failing to respond to the Administrator's four letters and by failing to comply with the subpoena requiring her to produce documents and appear for a sworn statement. The evidence showed that between March and May 2018, the Administrator sent Respondent four letters, requesting information about two of Respondent's immigration cases. (Hearing Bd. Report at 17.) Respondent acknowledged that she received those letters but did not produce the requested information. In June, the Administrator issued a subpoena directing Respondent to appear for a sworn statement at the end of July, and to produce certain documents. Respondent acknowledged that she received that subpoena but did not appear for the sworn statement or produce any documents, as directed. (*Id*. at 17-18.)

Clearly, the Hearing Board took into consideration Respondent's personal difficulties but found that those difficulties did not justify her misconduct. Specifically, the Hearing Board stated: "While we sympathize with Respondent's difficult family circumstances and loss of her father, these issues do not excuse her lack of cooperation." (*Id*. at 19) (citing *In re Bruno*, 2014PR00006 (Hearing Bd., May 15, 2015) at 10-11, *approved and confirmed*, M.R. 27476 (Sept. 21, 2015)) (four-month illness of the attorney's father did not excuse her failure to respond to the Commission's requests for one year, where the attorney knew about her obligation to respond because she had previously been disciplined); s*ee also, In re Bertrand*, 07 SH 30 (Hearing Bd., March 18, 2008) at 15, *affirmed*, (Review Bd., Feb. 18, 2009), *recommendation adopted*, M.R. 23087 (Sept. 22, 2009) (rejecting attorney's explanations for failing to act diligently, including having to assist his 86-year old father who had serious heart problems). Although we also sympathize with Respondent, we agree with the Hearing Board's conclusions.

The Hearing Board pointed out that Respondent continued to run her law practice during her father's illness and death and, therefore, she could have responded to the Commission's requests for information, or she could have requested an extension of time. Instead, Respondent essentially ignored the letters and the subpoena. Furthermore, given the difficulties that she was facing at the time, Respondent could have hired additional support staff to help her. The Hearing Board also concluded that because Respondent had previously been disciplined, she should have had a heightened awareness of her obligation to comply with the Commission's requests, citing *In re Storment*, 203 Ill. 2d 378, 401, 786 N.E.2d 963 (2002) ("We would expect that an attorney who has been [previously disciplined] … would have a heightened awareness of the necessity to conform strictly to all of the requirements of the Rules of Professional Conduct."). (Hearing Bd. Report at 27.)

The Hearing Board also noted that while Respondent described her family circumstances to a paralegal in May 2018, and a Commission investigator in June 2018, Respondent did so after approximately two months had elapsed following the first letter and no response date was provided to the Commission. (Hearing Bd. Report at 18; Tr. 696-702.) Moreover, Respondent did not communicate with the Commission attorney who was handling the matter to request an extension of time. Furthermore, Respondent's communications with the paralegal and investigator took place before the Administrator issued the subpoena in late June 2018, and Respondent did not contact anyone at the Commission before the return date of the subpoena. (Hearing Bd. Report at 18-19.) Respondent's family circumstances and her communications with the paralegal and investigator did not justify her failure to respond. *See In re Grief*, 2015PR00059 (Hearing Bd., Jan. 20, 2017) at 20, *approved and confirmed,* M.R. 028641

(May 18, 2017) (attorney's personal problems, and the discussion of those problems with counsel for the Commission, did not excuse compliance).

Conduct Prejudicial to the Administration of Justice

Respondent also challenges the Hearing Board's finding that she engaged in conduct that was prejudicial to the administration of justice, arguing that her conduct did not cause any actual prejudice because she subsequently provided the requested documents at a later date and sat for a deposition. That argument is unpersuasive.

"An attorney's failure to comply with requests for information needlessly delays the disciplinary process and impedes the Administrator's ability to obtain relevant facts about Respondent's conduct. This constitutes actual prejudice to the administration of justice and establishes a violation of Rule 8.4(d)." *In re Cannon*, 2011PR00015 (Hearing Bd., Feb. 24, 2014) at 27, *affirmed*, (Review Bd., Sept. 17, 2014), *approved and confirmed*, M.R. 27055 (Jan. 16., 2015).

The Hearing Board found that Respondent caused actual prejudice to the administration of justice by needlessly delaying the disciplinary process and impeding the Administrator's ability to obtain relevant facts about Respondent's conduct. (Hearing Bd. Report at 19.) Respondent's conduct caused the Commission to undertake additional work trying to gather information, and to expend additional resources, which included sending multiple letters, issuing two subpoenas, and attempting unsuccessfully to contact Respondent. (*Id*. at 18.) *See In re Barringer*, 2016PR00112 (Hearing Bd., Sept. 25, 2017) at 18-19, *affirmed*, (Review Bd., June 21, 2018), *approved and confirmed*, M.R. 029478 (Nov. 15, 2018) (attorney's failure to respond to the Commission's letters and to appear violated Rule 8.4(d) because the disciplinary process was needlessly delayed, Administrator's counsel had to undertake additional work, and the disciplinary

process was disrupted); *In re Carr*, 2017PR00096 (Hearing Bd., Sept. 10, 2018) at 8, *approved and confirmed*, M.R. 029562 (Jan. 29, 2019) (attorney violated Rule 8.4(d) by failing to respond to the Commission's letter and e-mail, and failing to appear).

The Commission asked for the materials in March 2018, and it still had not received them by the end of July, which delayed the disciplinary process. In addition, because Respondent failed to answer the four letters, the Administrator had to issue two subpoenas to Respondent, and the Commission investigator made seven attempts to serve the subpoenas. The Hearing Board's findings that Respondent engaged in misconduct (Hearing Bd. Report at 18-19) are not against the manifest weight of the evidence. While we recognize that Respondent's family circumstances were difficult and constitute a mitigating factor, we believe that the Hearing Board gave appropriate consideration and weight to the evidence, and so we affirm its findings.

Respondent also argues that Rule 8.4(d) does not apply in this matter because the Commission's disciplinary process does not constitute a judicial proceeding. That argument has no merit. The disciplinary process falls within the scope of the administration of justice under Rule 8.4(d). *See e.g., In re Shelton,* 2013PR00039 (Hearing Bd., Feb. 19, 2015) at 31, *affirmed*, (Review Bd., Sept. 14, 2015), *petition for leave to file exceptions denied,* M.R. 27712 (Jan. 21, 2016) (Rule 8.4(d) was violated where the attorney ignored the Commission's attempts to gather information, and the Commission expended additional effort and resources in the investigation); *In re Barringer*, 2016PR00112 (Hearing Bd., Sept. 25, 2017) at 18-19, *affirmed*, (Review Bd., June 21, 2018), *approved and confirmed*, M.R. 029478 (Nov. 15, 2018) (Rule 8.4(d) was violated where the attorney failed to respond to letters from the Commission and to appear as directed); *In re Carr*, 2017PR00096 (Hearing Bd., Sept. 10, 2018) at 8, *approved and confirmed*, M.R. 029562 (Jan. 29,

2019) (Rule 8.4(d) was violated where the attorney failed to respond to the Commission's letter and failed to appear).

In short, the Hearing Board's findings are fully supported by the record. Therefore, we affirm the Hearing Board's findings that Respondent failed to act diligently and to communicate properly with her clients in the Brocksmith and Sanchez matters, and that Respondent failed to respond to the Administrator's requests for information, thereby prejudicing the administration of justice, in connection with the Commission's investigation.

SANCTION RECOMMENDATION

The Hearing Board recommended a five-month suspension, stayed by a one-year period of probation with conditions designed to improve Respondent's office management practices. Respondent argues that no sanction should be imposed, and the case should be dismissed. (Hearing Bd. Report at 29.) The Administrator, in turn, argues that the Hearing Board's recommendation is appropriate and urges us to recommend the same sanction.

The standard of review for the Hearing Board's sanction recommendation is *de novo*, and we have applied that standard in this matter. *See In re Storment*, 2018PR00032 (Review Bd., January 23, 2020) at 15, *petition for leave to file exceptions denied,* M.R. 30336 (May 18, 2020). In making our own sanction recommendation, we consider the nature of the proved misconduct and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill.

2d at 361 (citing *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the case's unique facts. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

We agree with the Hearing Board's recommendation that Respondent be suspended for five months, stayed by a one-year period of probation with the conditions designed to address her office management deficiencies. This case involved numerous acts of misconduct and several aggravating factors exist, but substantial mitigating factors were also presented, and the conditions of probation will help to address Respondent's office management deficiencies, which appear to be instrumental factors in Respondent's misconduct.

In aggravation, we find particularly troubling that Respondent was not candid in her testimony during the disciplinary hearing concerning three issues, namely, Respondent's knowledge of Tim Brocksmith's plan to travel to South Africa, Respondent's contact with Gallagher regarding payment, and the date on which Respondent finalized Sanchez's application. The Hearing Board found that Respondent's testimony on those issues was not credible or was unpersuasive. (Hearing Bd. Report at 12-13, 23.) *See Gorecki*, 208 Ill. 2d at 366 (stating "a lack of candor before the Hearing Board is a factor that may be considered in aggravation."). It appears that Respondent intentionally provided misleading testimony; her statements are contrary to the existing evidence, and her testimony did not result from a lapse of memory, confusion, or a misunderstanding.

Moreover, Respondent has failed to show remorse, accept responsibility, or acknowledge wrongdoing. Instead, Respondent has attempted to shift the blame to her clients. The Hearing Board stated: "Respondent's efforts to blame her clients for the delays in their matters …

leads us to conclude that she does not recognize or accept responsibility for her conduct." (Hearing Bd. Report at 27) (citing *In re Samuels*, 126 Ill. 2d 509, 531, 535 N.E.2d 808 (1989) (stating "Respondent still believes he acted properly … which does not inspire confidence that respondent is ready to recognize his duty as an attorney and to conform his conduct to that required by the profession."). We agree.

Respondent's misconduct also caused emotional distress for the Brocksmiths and Sanchez and required them to expend additional funds. *See In re Banks*, 2011PR00008 (Hearing Bd., Dec. 2, 2011) at 27, *approved and confirmed*, M.R. 25136 (Mar. 19, 2012) (stating "We also take into account in aggravation the harm or risk of harm created by Respondent's actions."). In sum, Respondent engaged in a pattern of misconduct.

As stated, we recognize that significant mitigating factors are present in this matter. Respondent was actively involved in the legal community, which included participating in several professional organizations, and she provided extensive *pro bono* legal services. In addition, Respondent's family circumstances were very difficult for her during a portion of the relevant time period. We also consider the favorable character testimony presented by four individuals, which included testimony that Respondent is a person of good moral character and high integrity, has a good reputation for character and truthfulness, and has been a good advocate for her clients.

We believe that the recommended sanction of five months' suspension, stayed by a one-year period of probation, strikes an appropriate balance, taking into consideration the seriousness of the misconduct, and the mitigating and aggravating factors. In either regard, we agree with the Hearing Board that a period of probation with conditions concerning office management is appropriate, given that "Respondent's misconduct arose from office management

deficiencies that can be addressed and improved with monitoring rather than suspension." (Hearing Bd. Report at 28.)

The record shows that Respondent's misconduct involved serious problems with her office systems, practices, and management, including her failure: to receive and respond to voicemails, emails, text messages, and mail; to keep track of materials; to communicate with clients in a timely manner; to meet deadlines; and to retain proper support staff. We believe that improved office management is particularly important because Respondent handles immigration cases, which involve strict deadlines, substantial paperwork, and potential harm to clients who may face deportation. We believe that probation with conditions focused on office practices, including a law office management program, will help to prevent future misconduct.

Relevant authority also supports the recommended sanction. *See, e.g., In re Brydges*, 2018PR00075, M.R. 30472 (Sept. 21, 2020) (five-month suspension stayed in its entirety by one-year period of probation where attorney neglected two separate foreclosure matters, failed to file documents resulting in harm to his clients, charged excessive fees, and was previously censured, but accepted responsibility and agreed to return fees); *In re Smith*, 168 Ill. 2d 269, 659 N.E.2d 896 (1995) (17-month suspension, stayed after five months by a one-year period of probation, where attorney engaged in a pattern of neglecting client matters and failing to communicate with seven clients, prejudiced the administration of justice, and failed to promptly refund monies); *In re Grief*, 2015PR00059 (Hearing Bd., Jan. 20, 2017), *approved and confirmed*, M.R. 028641 (May 18, 2017) (nine-month suspension where attorney neglected a matter, made false statements to his client, fabricated three letters, and failed to respond during the disciplinary investigation); *In re McCarthy*, 2017PR00051, M.R. 29303 (May 24, 2018) (suspension of one year and until further order, with the suspension stayed in its entirety by a two-year period of

probation, where the attorney failed to timely file briefs, and had been disciplined twice before, but provided substantial *pro bono* services).

Therefore, we recommend that Respondent be suspended for five months, stayed by a one-year period of probation, with the conditions recommended by the Hearing Board. We find this recommended sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession. We sincerely hope that Respondent learns the appropriate professional responsibility lessons from our comments in this opinion.

For the foregoing reasons, we recommend that Respondent be suspended for five months, with the suspension stayed in its entirety by a one-year period of probation, subject to the following conditions set forth by the Hearing Board, which we substantively adopt:

1. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;

2. Respondent shall successfully complete the ARDC Professionalism Seminar within the first six months of probation;

3. During the first thirty (30) days of probation, Respondent shall enroll in a law office management program acceptable to the Administrator and shall, upon enrollment, notify the Administrator in writing of the name of the attorney with whom Respondent is assigned to work. Respondent shall successfully complete the law office management program prior to the end of the probation term;

4. Through Respondent's participation in the law office management program, Respondent shall establish and utilize the following:

    a. A system for maintaining records as required by Supreme Court Rule 769;

b. A diary and docketing system in accordance with the requirements established by the law office management program, including a mechanism by which approaching filing deadlines are noted;

c. A system by which telephone messages are recorded and telephone calls are returned in a timely manner; and

d. A system by which requests by clients for the status of their legal matters are answered, either orally or in writing, in a timely manner;

5. Respondent shall authorize the attorney assigned to work with her in the law office management program to:

a. Disclose to the Administrator on a quarterly basis, by way of signed reports, information pertaining to the nature of Respondent's compliance with the law office management program and the above described conditions;

b. Report promptly to the Administrator Respondent's failure to comply with any part of the above described conditions; and

c. Respond to any inquiries by the Administrator regarding Respondent's compliance with the above described conditions;

6. Respondent shall attend meetings as scheduled by the Commission probation officer. Respondent shall submit quarterly written reports to the Commission probation officer concerning the status of her practice of law and the nature and extent of her compliance with the conditions of probation;

7. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

8. Respondent shall notify the Administrator within seven (7) days of any arrest or charge alleging her violation of any criminal or quasi-criminal statute or ordinance;

9. At least thirty days (30) before to the termination of probation, Respondent shall reimburse the Client Protection Program for any Client Protection payments arising from her conduct;

10. Respondent shall reimburse the Commission for the costs for this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation; and

11. Probation shall be revoked if Respondent is found to have violated any of the terms of her probation. The five-month period of suspension shall

commence from the date of the determination that any term of probation has been violated.

Respectfully submitted,

George E. Marron III
Bradley N. Pollock
Scott J. Szala

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on June 2, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] The disciplinary hearing was held on December 14, 2020, January 15, 2021, February 17, 2021, and March 12, 2021, by video conference. The Hearing Board's conclusion that there was no misconduct concerning the client matter charged in Count II is not at issue on appeal, and, therefore, that matter will not be addressed here. For complete citations, *see* the Hearing Board's Report and Recommendation, incorporated by reference herein.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **BARBARA ANN SUSMAN,** Respondent-Appellant, No. 6186506.	Commission No. 2018PR00080

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by email and by regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on June 2, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Michelle M. Thome
By: Michelle M. Thome
Clerk

FILED

June 02, 2022

ARDC CLERK