In re Michelle Gonzalez
Attorney-Respondent

Commission No. 2022PR00018

Synopsis of Hearing Board Report and Recommendation
(April 2024)

The Administrator charged Respondent in a two-count complaint with failure to provide competent representation, failure to keep a client reasonably informed about the status of a matter, and charging and collecting an unreasonable fee in connection with two separate matters in which she represented defendants in criminal proceedings. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent failed to provide competent representation and charged and collected an unreasonable fee in each matter, in violation of Illinois Rules of Professional Conduct 1.1 and 1.5(a), but did not prove in either matter that Respondent failed to keep a client reasonably informed about the status of a matter. It recommended that Respondent be suspended for four months and until she pays restitution of $15,750 to her clients.

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

In the Matter of:

MICHELLE GONZALEZ,

Attorney-Respondent,

No. 6291582.

Commission No. 2022PR00018

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent in a two-count complaint with failure to provide competent representation, failure to keep a client reasonably informed about the status of a matter, and charging and collecting an unreasonable fee in connection with two separate matters in which she represented defendants in criminal proceedings. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent failed to provide competent representation and charged and collected an unreasonable fee in each matter but did not prove in either matter that Respondent failed to keep a client reasonably informed about the status of a matter. It recommended that Respondent be suspended for four months and until she pays restitution of $15,750 to her clients.

INTRODUCTION

The hearing in this matter was held at the Chicago office of the ARDC on August 28, 2023, before a panel of the Hearing Board consisting of Jose A. Lopez, Jr., Chair, Joseph L. Stone, and Charles A. Hempfling. Richard C. Gleason II and Rory P. Quinn represented the Administrator. Respondent was present and represented by James A. Doppke.

FILED
April 22, 2024
ARDC CLERK

PLEADINGS AND MISCONDUCT ALLEGED

On March 4, 2022, the Administrator filed a two-count complaint against Respondent, charging her in each count with failure to provide competent representation, failure to keep a client reasonably informed about the status of a matter, and charging and collecting an unreasonable fee, in violation of Illinois Rules of Professional Conduct 1.1, 1.4(a), and 1.5(a). In her Answer, Respondent admitted some of the factual allegations and denied others and denied engaging in any misconduct.

EVIDENCE

The Administrator called Respondent as an adverse witness and presented the testimony of three additional witnesses. Administrator's Exhibits 1, 2 (except for pages 3 and 14), 4, 5, 7, 8, 9 (except for pages 1 through 19), 11, 13, 15, 22, 23, 24, 25, and 27 were admitted into evidence. (Tr. 8-11.) Respondent testified on her own behalf. Respondent's Exhibits 1 through 8 were admitted into evidence. (Tr. 12.)[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014) (Hearing Bd. at 3) (citing People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991)). In determining whether the Administrator has met that burden, it is the responsibility of this hearing panel to determine the credibility of witnesses, weigh and resolve conflicting testimony, and make factual findings based upon all of the evidence. Winthrop, 219 Ill. 2d at 542-43.

I. In Count I, the Administrator charged Respondent with failure to provide competent representation, failure to keep a client reasonably informed about the status of a matter, and charging and collecting an unreasonable fee in connection with her representation of Tomas Hernandez.

A. Summary

The Administrator proved that Respondent violated Rule 1.1 by failing to file and litigate a motion to suppress statements made by her client while in police custody before a *Miranda* warning was given, and Rule 1.5(a) by charging and collecting an unreasonable fee from the client. However, the Administrator did not prove that Respondent failed to keep his client reasonably informed about the status of a matter.

B. Admitted Facts and Evidence Considered

Respondent's Background

Respondent was licensed to practice law in Illinois in 2007. (Tr. 240.) She is a sole practitioner and sole owner of a law firm in Bolingbrook, and practices primarily in criminal defense. (Ans. at par. 2; Tr. 290.) She began working with attorney John Paul Carroll at the end of 2007. During the years they worked together, they maintained separate offices but worked together on cases. Respondent has handled about ten criminal cases on her own, and many more with Carroll. She and Carroll together did a minimum of ten criminal trials per year, in addition to other non-trial criminal matters. (Tr. 240-42.)

The Hernandez Matter

On August 15, 2017, Chicago police arrested Tomas Hernandez at his residence in Berwyn after police recovered cocaine and cannabis in the basement. In the presence of police, Hernandez stated that the cocaine and cannabis were his. (Ans. at par. 3.) He was subsequently indicted on three drug-related felony counts. (Ans. at par. 7.)

Hernandez was referred to Respondent and Carroll (collectively, Respondents)[2] when he was in custody at the Cook County jail on the drug charges. Hernandez hired Respondents to represent him through trial with respect to the drug charges. (Tr. 23-24, 243; Ans. at par. 8.)

The court initially set Hernandez's bond at $25,000, but Respondent filed a motion to reduce bond, which was successful and reduced his bond to $10,000. Hernandez's wife's uncle agreed to post the $10,000 bond, and also agreed to a cash bond refund, which meant that, upon the conclusion of the case, the bond refund would be turned over to Respondents to pay their attorney fees. (Tr. 30-31, 245-47.)

Once bond was posted, the Cook County Sheriff released Hernandez from custody, and Hernandez remained on electronic home monitoring during the pendency of the case. (Tr. 249; Ans. at par.6.) Based upon conversations with Hernandez, Respondent was aware only that Hernandez was on electronic home monitoring and assumed it was through the Cook County Sheriff's Office. She was not aware, at that time, that Pretrial Services also provided electronic home monitoring. (Tr. 250-51; Adm. Ex. 2 at 4.) Electronic home monitoring provided by Pretrial Services did not entitle a defendant to day-for-day credit for time served while on electronic home monitoring. Electronic home monitoring provided by the Cook County Sheriff, however, did entitle a defendant to day-for-day credit for time served while on electronic home monitoring. (Ans. at par.5.)

Within the first few months of representing Hernandez, Respondent received discovery materials regarding the Hernandez matter from the State, including police reports indicating that the police conducted a search warrant on the house and found guns and drugs in the house's common basement, to which people other than Hernandez and his family had access. The reports

further indicated that Hernandez told police that the drugs and gun were his, and that he made that inculpatory statement prior to receiving his *Miranda* warnings. (Tr. 26, 28-29.)

After reviewing the discovery materials from the State, Respondents developed a defense strategy pursuant to which they were going to attack the fact that the police said Hernandez made the inculpatory statement. They did not consider filing a motion to suppress the inculpatory statement because Hernandez initially told them he did not make the statement. Their intent was to take Hernandez's case to trial, and Hernandez understood and did not express disagreement with that strategy. (Tr. 253-55, 257.) Respondent never spoke with Hernandez about filing a motion to suppress the statement, nor did she file a motion to suppress the statement. (Tr. 25, 244; Ans. at par. 11.)

The trial court set Hernandez's matter for jury trial on June 11, 2018. (Ans. at par. 12.) Respondent testified that she engaged in extensive plea negotiations with the State, which included discussions about what credit Hernandez would get for time served, and whether the time period during which he was on electronic home monitoring would count. However, there was no plea offer until they got to court for Hernandez's trial. Before the trial commenced, the state made an offer of four years at 50 percent, which meant that Respondent would be sentenced to four years in the custody of the Illinois Department of Corrections, but would get day-for-day credit for every day he spent in custody, thus making the sentence effectively two years. Respondent had a discussion with the assistant state's attorney about whether electronic home monitoring also was going to count toward the time that could be deducted from Hernandez's sentence. According to Respondent, both she and the assistant state's attorney thought it would count and that Hernandez would get credit for the 12 months he spent on electronic home monitoring. Thus, when the plea agreement was reached, she assured Hernandez that he would receive credit for the time he spent

on electronic home monitoring, which would lower the amount of time Hernandez would have to spend in prison to about one year. (Tr. 34-36, 65, 258-61, 306.)

Respondent acknowledged that neither she nor Carroll discussed the immigration consequences of a guilty plea with Hernandez prior to June 11, but she believes Hernandez asked them about it when he received the plea offer and they told him that he could be deported on a conviction. She testified that she and Carroll did not tell Hernandez that there would be no immigration consequences to pleading guilty, and that they would never say that to a client who asks about immigration because they are required to tell him and also the judge is going to tell him at sentencing. (Tr. 33-34, 261-62.) Respondent testified that, when they told Hernandez that there could be immigration consequences to pleading guilty, he was concerned but eventually decided he should take the offer. She was not surprised by his decision because, if he thought that he was only going to do one year in prison, she could see why he thought he should take the plea instead of risking doing six or more years. (Tr. 262-63.)

After Hernandez accepted the plea offer, he wanted some time to get his affairs in order before going into custody, so Respondents asked the judge for a sentencing date in two months. The judge granted the request. (Tr. 37, 263-64; Ans. at par. 13.) In addition, at the conclusion of the proceedings on June 11, Respondents asked the court to refund the bond posted on Hernandez's behalf to them for attorney fees. The court granted the bond refund, with no objection from Hernandez, and the bond was paid over to Respondents. Carroll then withdrew as Hernandez's counsel. (Tr. 31-32; Ans. at par. 13.)

On August 31, 2018, Hernandez appeared in court with Respondent for sentencing. When the judge raised the issue of credit for time served, Respondent informed the judge that Hernandez was on electronic home monitoring, implying that he would get credit for that time. But when the

judge reviewed the file, it appeared to him that Hernandez was on electronic home monitoring through Pretrial Services and, if so, would not get credit for that time. Given the confusion, the judge passed the case so that the parties could ascertain the type of monitoring Hernandez was on. (Adm. Ex. 5 at 4-5.)

The assistant state's attorney confirmed that Hernandez was on electronic home monitoring through Pretrial Services and therefore would not get credit for that time. Respondent informed Hernandez that he was not getting credit for his time on electronic home monitoring and told him that he needed to decide if he wanted to take the plea offer or reject the offer and go to trial. Hernandez told Respondent he wanted to think about what he wanted to do. Thus, when the case was recalled, Respondent requested additional time for Hernandez to decide if he still wanted to plead guilty. The court granted the request and continued the sentencing hearing to September 21, 2018. (Tr. 36-37, 264-65, 268-69; Adm. Ex. 5 at 5.)

By the time of the September sentencing hearing, Hernandez had hired a new attorney, John DeLeon. DeLeon entered his appearance and Respondent withdrew from representation. DeLeon filed a motion to vacate Hernandez's guilty plea, which the court granted in February 2019. DeLeon later filed a motion to suppress, arguing that Hernandez's inculpatory statements should be suppressed because the statements were obtained before police provided Hernandez with *Miranda* warnings. After an evidentiary hearing and oral arguments, the court granted DeLeon's motion to suppress. Following the court's ruling, the State dismissed the case against Hernandez. (Tr. 37-38, 270; Ans. at pars. 15-17.)

Respondent has not refunded any portion of the fee she collected in Hernandez's matter. (Tr. 37-38, 270, 309.)

Testimony of Tomas Hernandez

Tomas Hernandez testified that he asked Respondents if he would get deported if he pled guilty, and they told him no. (Tr. 190.)

Testimony of Thomas Brandstrader

The Administrator presented attorney Thomas Brandstrader as an expert witness on the subjects of whether Respondent provided competent representation to Hernandez and whether the fee she charged and received in the Hernandez matter was reasonable. (Tr. 100.) Brandstrader has been licensed to practice law in Illinois since 1981. Since becoming a lawyer, he has practiced in the area of criminal defense. (Tr. 101.)

In reaching his opinions, Brandstrader reviewed relevant documents and transcripts from the Hernandez criminal matter as well as from Respondent's disciplinary proceedings. Following his review, he concluded that Respondent's representation of Hernandez "fell far short of what should be expected as reasonable representation by a defense lawyer." He also concluded that the fee Respondent charged and collected from Hernandez was unreasonable. (Tr. 110-11.)

Regarding Respondent's representation, Brandstrader found it clear from the police reports that Hernandez was in custody at the time he made his inculpatory statement and that the police failed to give him his *Miranda* warnings prior to his making the inculpatory statement. He testified that the remedy for a defendant whose statement is taken in violation of *Miranda* is that the statement is suppressed and cannot be introduced into evidence, and that Hernandez's inculpatory statement would have been an appropriate basis for a motion to suppress. (Tr. 119-21, 123.) He testified that, other than Hernandez's inculpatory statement and information from a confidential informant who would not have testified at trial, he saw no other evidence that would have established beyond a reasonable doubt Hernandez's possession of the drugs that were found in the common basement. (Tr. 122-23.)

Brandstrader opined that Respondents' failure to file and litigate a motion to suppress Hernandez's inculpatory statement constituted incompetent representation because "it presented an opportunity to cut the State's case down to zero, and they didn't take it." He further opined that "they were going to send Mr. Hernandez off to prison when there was … an objective factor available that would have precluded that disposition, … as evidenced by the fact that the next lawyer took that opportunity and the case was dismissed." (Tr. 125.)

Brandstrader testified that knowing that such a motion should be filed would not require a high level of attorney expertise or experience, and that "[t]his is basically Crim-Pro 101." He also testified that it would not change his opinion if Hernandez had told Respondents that he never made the statement, because it is the State that decides if the statement will be used as evidence, so whether Hernandez said he made the statement or not is irrelevant to the filing of the motion to suppress. (Tr. 126.)

Brandstrader also testified about electronic home monitoring, explaining that, in Cook County, it is offered by two separate entities – the Cook County Sheriff's Office and the Pretrial Services division of the Circuit Court of Cook County. He explained that the main difference between electronic home monitoring offered by those two entities is what kind of credit a defendant gets for it. A defendant on electronic home monitoring through the Sheriff's Office gets day-for-day credit for the time spent on "on the bracelet," whereas a defendant on electronic home monitoring through Pretrial Services is not entitled to day-for-day credit. (Tr. 128.) Based on his reading of the transcripts in the Hernandez matter, Brandstrader's understanding is that there was confusion on the day of Hernandez's plea as to what credit he would get, and that both the State and the defense were unclear about the credit Hernandez would receive for his time on electronic home monitoring. (Tr. 182-84.)

Regarding the fee charged and collected by Respondents, Brandstrader testified that, as a general matter, $10,000 is a fair fee for a criminal defense attorney in Cook County to charge when representing a client in a case like Hernandez's. He also acknowledged that Respondent spent some time and performed a modicum of work on Hernandez's behalf. Nonetheless, Brandstrader opined that Respondents' fee of $10,000 was unreasonable, based upon the end result. He noted that Respondents "were going to send [Hernandez] away for four years without looking at the police reports which would have told them they could have gotten the case … thrown out." He thus opined that, based upon his review of Respondent's work and the outcome of her representation, Respondent is not entitled to any portion of the fee she charged and collected from Hernandez. (Tr. 136-38.)

Testimony of John DeLeon

The Administrator presented John DeLeon as both a fact and an expert witness. DeLeon has been a criminal defense lawyer in Illinois for 43 years. (Tr. 194.) After Hernandez learned he would not be getting credit for his time on electronic home monitoring and that he would be deported if he pled guilty, Hernandez met with DeLeon and asked DeLeon if he could look at Hernandez's case and see what he could do to help Hernandez. DeLeon agreed to represent Hernandez for a fee of $10,000. DeLeon filed his appearance in the matter and Gonzalez withdrew from representation. (Tr. 195-96.)

DeLeon reviewed the police reports and "could see immediately that a motion to suppress statements should have been filed, but none was filed." He thus filed a motion to vacate the guilty plea based upon incompetence of counsel and failure to inform the client of the immigration consequences of the plea. The court granted the motion and vacated the plea. (Tr. 197.)

DeLeon testified that the police reports did not indicate that the police gave Hernandez his *Miranda* warnings before Hernandez made the inculpatory statement. He testified that the police

were required to give *Miranda* warnings to Hernandez as soon as they placed him into custody, and that the fact that Hernandez was in his house and not handcuffed did not determine whether or not he was in custody. The police officers had a right to detain Hernandez because they went into his house with a search warrant. Therefore, he was not free to leave, and because he was not free to leave, he was in custody. (Tr. 199-200.)

DeLeon testified that, apart from Hernandez's inculpatory statement, there was no evidence that could have been presented at trial that would have established beyond a reasonable doubt that Hernandez possessed the guns and drugs found in the common basement. The inculpatory statement was the whole case against Hernandez. Thus, DeLeon decided to file a motion to suppress the inculpatory statement because, without that statement, the State could not prevail. (Tr. 200, 204-205.) The court granted the motion, after which the State dismissed the case against Hernandez. (Tr. 206-207.)

After being qualified as an expert, DeLeon further testified that it is his opinion that Respondent did not provide competent representation to Hernandez because she failed to recognize that a motion to suppress statements was what the case needed. He stated that "any good criminal defense lawyer reading those police reports would have noted immediately that the [*Miranda* warnings] were not given … until after the [inculpatory] statement, and that just doesn't count." (Tr. 223.) He testified that the *Miranda* issue and the need to file a motion to suppress were evident to him immediately, and opined that any competent lawyer representing Hernandez would not have failed to file a motion to suppress. He further opined that any competent lawyer would have recognized that the inculpatory statement was the whole case against Hernandez, and would not believe that the State could prevail on the charges absent the inculpatory statement. (Tr. 227-29.)

Regarding whether Respondent should have known that Hernandez was in custody when he made the statement, DeLeon described it as "hornbook law … to know that a person who's … the subject of a search pursuant to the search warrant is in custody in his home…. Everybody should know that who practices criminal law." (Tr. 224.) He stated that a competent attorney would know that a person is in custody when a search warrant is being conducted at his residence. (Tr. 226.) He also testified that it did not matter whether or not Hernandez claimed at any point that he never made the statement, because the police claimed he made it and it was going to be the evidence in the case, which is why it was necessary to file a motion to suppress. (Tr. 225.)

With respect to the fee charged and collected by Respondents, DeLeon opined that, while the quote was reasonable, the fee collected was unreasonable based on Respondents' performance and what happened in the case. (Tr. 229.) He acknowledged that Respondent did some work on Hernandez's behalf. However, he still found the fee unreasonable because of the mistakes she made and the eventual plea of guilty to charges Hernandez never should have pled guilty to. He thus opined that Respondent was not entitled to any of the fee she collected. (Tr. 230.)

C. Analysis and Conclusions

Rule 1.1

The Administrator charged Respondent with failing to provide competent representation to Hernandez based on her failure to file and litigate a motion to suppress Hernandez's statements to the police. We find that the Administrator proved this charge.

A lawyer shall provide competent representation to a client. Ill. R. Prof'l Cond. 1.1. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Id. Representation need not be ideal to be competent. In re Chiang, 07 CH 67, M.R. 23022 (May 18, 2009) (Review Bd. at 13-14). In determining whether representation was competent, we look to the attorney's actions as a whole. In re Brown,

04 CH 73, M.R. 22127 (Mar. 17, 2008) (Review Bd. at 11). The fact that an attorney made errors does not necessarily constitute incompetence if the attorney pursued a "logical and reasonable strategy" in representing the client. Id. at 12-13. Incompetence can be found, however, where an attorney failed to undertake basic steps needed to handle the matter, or where the representation was marred by serious deficiencies such that it did not meet basically reasonable standards. In re Moenning, 2015PR00013, M.R. 28655 (May 18, 2017) (Hearing Bd. at 12) (citations omitted). In assessing whether an attorney represented a client competently, we consider the manner in which competent attorneys ordinarily handle similar matters, and can look to expert testimony to guide our analysis. See, e.g., In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 34) (finding incompetence based upon expert testimony that respondent's conduct deviated from customary standard of care that competent attorneys would provide in similar transactions).

Based upon the foregoing guidelines, we find that Respondent failed to provide competent representation to Hernandez. In reaching our finding, we have relied heavily upon the expert testimony of Brandstrader and DeLeon, which we found to be credible, compelling, and unrebutted. Both testified that no competent attorney would have failed to recognize the need to file a motion to suppress Hernandez's inculpatory statement. Their opinions are buttressed by the fact that DeLeon did, in fact, file such a motion, which was successful and resulted in the case against Hernandez being dismissed.

We have considered Respondent's testimony that she and Carroll chose not to file a motion to suppress as part of their defense strategy, but it does not change our finding. Even accepting her testimony, we find, based upon the expert testimony, that there was no reasonable basis upon which Respondents could conclude that this was a valid strategy for them to follow. The unrebutted testimony of DeLeon and Brandstrader established that the decision was so unreasonable and ill-

advised that no competent attorney would have made it, and therefore that it did not meet the basic standards of competency to which Illinois attorneys are held. Cf. In re Gursel, 93 CH 539 (Feb. 7, 1995) (Hearing Bd. at 12) (finding no misconduct and dismissing all charges, including charge of incompetence, where attorney employed a "logical and reasonable strategy" for defending client).

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent failed to provide competent representation to Hernandez, and therefore that she violated Rule 1.1.

Rule 1.4(a)

The Administrator charged Respondent with failing to keep a client reasonably informed about the status of a matter based upon her alleged failure to inform Hernandez that he would not receive day-for-day credit for the time he spent on electronic home monitoring and that he could be deported as a consequence of a criminal conviction. We find that the Administrator failed to prove this charge.

An attorney shall keep a client reasonably informed about the status of a matter. Ill. R. Prof'l Cond. 1.4(a). Rule 1.4(a) imposes an affirmative duty on lawyers to take the necessary steps to keep clients informed about their cases, as well as a duty to promptly respond to client questions and requests for information. In re Smith, 168 111. 2d 269, 282, 659 N.E.2d 896 (1995).

In finding that Respondent did not violate these duties, we accept Hernandez's testimony that Respondent told him that he would not be deported if he pled guilty. We note that his testimony directly contradicts Respondent's testimony that she and Carroll told him that he could be deported upon a guilty plea or conviction. In resolving this dispute, we found Hernandez credible and Respondent not credible. We were able to observe and listen to both witnesses, and, in short, we believed Hernandez. In addition, Hernandez's testimony is corroborated by DeLeon's testimony

that Hernandez sought his help in part because Respondent misinformed Hernandez about the consequences of his guilty plea. Moreover, we find it implausible that Hernandez would agree to plead guilty if he knew he was likely to be deported.

Irrespective of whether we accepted Hernandez's or Respondent's testimony on this issue, however, one fact remains uncontroverted – that Hernandez asked his counsel if he could be deported if he pled guilty and they communicated information to him in response to his question. Of course, if they gave the answer that Hernandez testified to, the information was plainly wrong, as demonstrated by the expert testimony of DeLeon and Brandstrader. But providing mistaken information does not necessarily constitute a violation of Rule 1.4(a).

Similarly, we find that the evidence established that Respondent provided incorrect information to Hernandez about the credit he would receive for his time on electronic home monitoring. When she learned of her misunderstanding, she provided the correct information to him and requested, and was granted, additional time so that he could decide how he wanted to proceed. We decline to find that her misunderstanding about Hernandez's electronic home monitoring, which caused her to provide incorrect information to him, constitutes a Rule 1.4(a) violation.

Accordingly, we find that the Administrator failed to prove by clear and convincing evidence that Respondent violated Rule 1.4(a).

Rule 1.5(a)

The Administrator charged Respondent with charging and collecting an unreasonable fee in the Hernandez matter. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee. Ill. R. Prof'l Cond. 1.5(a). Factors considered in determining the reasonableness of a fee include the time and labor required to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results

obtained, the time limitations imposed by the client or the circumstances, and the experience and ability of the lawyer performing the services. Id. Applying these factors to the Hernandez matter, we find that the Administrator proved that the fee Respondent charged and collected was unreasonable.

In reaching our finding, we have relied upon the credible and persuasive testimony of DeLeon and Brandstrader. While both experts acknowledged that Respondent performed a modicum of work on behalf of Hernandez and that the total $10,000 fee, in and of itself, was not unreasonable, they opined that the fee was clearly unreasonable given the results Respondents obtained for Hernandez.

We agree. It is clear from all of the evidence that Respondent and Carroll followed a strategically unwise and objectively unreasonable course of action that could have landed Hernandez in prison or, perhaps worse, resulted in his deportation. Their representation of Hernandez was utterly ineffectual and could have had dire consequences for him. Moreover, Hernandez was required to spend another $10,000 to hire DeLeon, who was able to get the case against Hernandez dismissed. We therefore are persuaded by the experts' opinions that Respondent was not entitled to collect any fee from Hernandez because she failed to represent him competently, which resulted in him having to hire another attorney to receive competent representation. See In re Jennings, 99 SH 32, M.R. 17394 (May 25, 2001) (Hearing Bd. at 22) (finding attorney was entitled to no fee "because his overall 'legal services' were incompetent and directly caused his client to be deprived of the constitutional right to an appeal").

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent charged and collected an unreasonable fee from Hernandez by retaining her portion

of the fee despite the nearly disastrous results of her incompetent representation. We therefore find that she violated Rule 1.5(a).

II. In Count II, the Administrator charged Respondent with failure to provide competent representation, failure to keep a client reasonably informed about the status of a matter, and charging and collecting an unreasonable fee in connection with her representation of John Castellanos.

A. Summary

The Administrator proved that Respondent violated Rule 1.1 by failing to provide competent representation to her client in his post-conviction proceedings, and Rule 1.5(a) by charging and collecting an unreasonable fee from her client. However, the Administrator did not prove that Respondent failed to keep her client reasonably informed about the status of a matter.

B. Admitted Facts and Evidence Considered

In May 2012, John Castellanos was arrested at his home in DuPage County. Police recovered guns and drugs from the home, and Castellanos made inculpatory written statements in which he admitted possessing the guns and drugs. He was indicted on drug and weapon charges and released on bond. He did not appear for his July 2013 trial but was represented by counsel and tried in *absentia*. He was found guilty on all counts and sentenced in *absentia* to 25 years in prison. In December 2015, he was apprehended and remanded to the custody of the Illinois Department of Corrections to serve his sentence. (Ans. at pars. 22-25.)

Respondent testified that, when Castellanos' family first contacted her and Carroll about representing Castellanos, Castellanos was incarcerated in an Illinois prison far from Chicago. They were paid $2,500 to travel and meet with Castellanos in person and order transcripts from his criminal trial. After the meeting, Respondents agreed to file a post-conviction petition on Castellanos' behalf for an additional fee of $20,000. (Tr. 38, 272-74; Ans. at par. 26.)

In October 2017, Respondents filed the post-conviction petition, alleging that Castellanos received ineffective assistance of trial counsel. The State filed a motion to dismiss the petition, arguing that none of the issues raised in the petition made a substantial showing of a constitutional violation. Respondents filed a response to the motion to dismiss. (Ans. at par. 27; Adm. Ex. 23 at 230-45, 277-80.)

Respondent did not draft any of the post-conviction petition, but she spent about an hour reviewing the petition that Carroll had drafted. Carroll also handled oral argument on the State's motion to dismiss the petition. Respondent's primarily role in the representation of Castellanos was to communicate with his family about the case. (Tr. 42-43, 275, 303-304; Adm. Ex. 23 at 436.)

In May 2017, the trial court granted the State's motion and dismissed Castellanos' post-conviction petition. (Adm. Ex. 23 at 443.) Respondents filed a motion to reconsider the ruling, which the court also denied. (Ans. at par. 28; Adm. Ex. 23 at 445-48.) Respondents filed an appeal on behalf of Castellanos, challenging the trial court's dismissal of the post-conviction petition. (Ans. at par. 30.)

Respondents compiled an appellate record that included transcripts of the post-conviction proceedings and a copy of the common law record, but failed to include transcripts from the jury trial, sentencing hearing, or any other court date in Castellanos' underlying criminal proceeding. The appellate brief filed by Respondents consisted of a four-page recitation of the allegations in their post-conviction petition and five pages of paragraphs-long quotations from various appellate court opinions. (Ans. at par. 31; Adm. Ex. 9 at 147-64.) Following the pages of block quotations from appellate court opinions, the brief stated:

> When considering the allegations listed in John Castellanos' Post-Conviction Petition, as discussed in Paragraphs 1 through 19 above, and in light of the standard

> of "all well-pled allegations are taken as true unless positively rebutted by the record of the proceedings," any number of his allegations, standing alone, cry out for an evidentiary hearing at the third-stage. It is at such a hearing that the trial court can flush out truth from fiction and ensure that John Castellanos has received the full benefits that he is entitled to under the law.

(Adm. Ex. 9 at 163.)

Other than the foregoing paragraph, the appellate brief contained no analysis of how the cited cases applied to the issues on appeal and no argument regarding the errors the trial court made in dismissing the post-conviction petition. (See generally Adm. Ex. 9 at 148-64.) Respondent did not draft the appellate brief; Carroll drafted it. She did not recall if she read or filed the brief. (Tr. 50-51; 280.)

The State filed a response brief in which it argued that Castellanos had violated Illinois Supreme Court Rule 341(h)(7) by providing the appellate court with an incomplete record because he had failed to provide any transcripts from the proceedings in the trial court. (Ans. at par. 32; Adm. Ex. 22 at 39, 43.) The State further argued:

> Defendant's brief does not articulate any specific basis why the Circuit Court was incorrect in granting the People's motion to dismiss. Instead, he put a general outline of the claims he made in his petition, general case law regarding the stages of the post-conviction hearing act, and ends without any analysis why his claims merited third-stage review. In essence, Defendant has asked this Court to become his advocate.

(Tr. 94; Adm. Ex. 22 at 42.) Respondents did not file a reply brief. (Ans. at par. 34; Tr. 56-58.)

Respondent read the State's response brief before she and Carroll decided not to file a reply brief or seek leave to supplement the record. She and Carroll decided that they did not need to file a reply brief because they believed that the appellate court could see what their argument was and that the State was not addressing it. Their argument was that the trial judge had erred procedurally and dismissed their post-conviction prematurely, whereas the State argued that, because they did not supplement the record with trial transcripts, they should not get their appellate arguments

addressed. Respondents believed that the appellate court could see that the State was not responding to them appropriately and just rule. (Tr. 94, 282-83.)

Nor did Respondents file a motion to supplement the record with transcripts from the trial court proceedings. They believed they did not need to supplement the record because they thought the appellate judges could rule based on affidavits attached to their opening brief. (Tr. 56-57.) For the same reason, while they could have sought leave to amend the appeal, they did not think they needed to do so. (Tr. 94-95.)

On May 2, 2018, the appellate court issued a written order in which it held that Castellanos had "failed to put forth a sufficient argument supported by relevant authority demonstrating that his petition made a substantial showing of a constitutional violation." The court further noted that the brief Respondents prepared on behalf of Castellanos

> consists of a general outline of the numerous claims that he has made in his postconviction petition and four pages of block quotations from cases concerning the stages of postconviction proceedings. Defendant concludes with his 'argument' that, taking the allegations of his petition as true, 'any number of his allegations, standing alone, cry out for an evidentiary hearing at the third stage.' However, he does not tell us why [....] Given the absence of clearly-defined issues supported with cohesive arguments and citation to pertinent authority, we will not consider defendant's appeal.

The court thus dismissed the appeal. (Ans. at par. 35; Adm. Ex. 23 at 461-63.)

After the appeal was dismissed, Respondents hired an appellate attorney, Joshua Sachs, to draft and file a motion to reconsider and vacate the order of dismissal and to reinstate the appeal. Respondent did not recall if she was involved in the drafting of the motion or if she reviewed it before it was filed. Sachs used Respondent's attorney number to file the motion. (Ans. at par. 37; Tr. 58-61, 86, 280; Adm. Ex. 13 at 52-67.)

In its response to Respondents' motion to reconsider and vacate the dismissal, the State noted that Respondents could have filed a reply brief and responded to any of the State's arguments

raised in its response brief, but chose not to. (Adm. Ex. 13 at 71-73.) On June 13, 2018, the court denied Respondent's motion to reconsider and vacate the order of dismissal, and sent a letter addressed to Carroll, with a copy to Sachs, notifying them of the denial. The letter was not addressed to Respondent, even though she was an attorney of record in the matter. The letter indicated that Castellanos had 35 days to file a petition for leave to appeal in the Illinois Supreme Court. (Tr. 61, 285; Adm. Ex. 13 at 68.)

On June 20, 2018, Carroll withdrew as Castellanos' counsel because he had been suspended from the practice of law. Respondent remained Castellanos' attorney. (Tr. 61-62.) In his motion to withdraw, Carroll stated that he had tendered his case file to Respondent. (Adm. Ex. 22 at 94.)

On July 11, 2018, Castellanos' sister, Cristina Caballero, sent an email to Respondent and asked about the status of the appeal. Respondent responded by email on the same day, stating, "We still have not received a decision." (Tr. 87-88; Adm. Ex. 9 at 66.) She was not aware that the June 13 letter with the decision had already been sent to Carroll and Sachs. Sometime between July 11 and July 17, Respondent called the appellate court and learned that the motion to reconsider had been denied. She emailed Caballero on July 17 and informed her of the denial. (Tr. 88-89, 288-89; Adm. Ex. 9 at 65-66.) Caballero asked Respondent if Sachs would appeal the ruling. Respondent told her no, and that she would have to hire another attorney to appeal to the Illinois Supreme Court. (Tr. 289; Adm. Ex. 9 at 63.)

The deadline for filing a petition for leave to appeal in the Illinois Supreme Court was July 18. No petition for leave to appeal was filed by that deadline. On July 20, Respondent received a copy of the June 13 letter from the appellate court and forwarded it to Caballero. (Tr. 89-90, 93; Adm. Ex. 9 at 68.)

Respondent has not refunded any portion of the fee she collected in the Castellanos matter. (Tr. 309.)

Testimony of Thomas Brandstrader

The Administrator presented Brandstrader as an expert witness on the subjects of whether Respondent provided competent representation to Castellanos and whether the fee she charged and collected in the Castellanos matter was reasonable. In reaching his opinions, Brandstrader reviewed relevant documents and transcripts from the Castellanos matter as well as from Respondent's disciplinary proceedings. (Tr. 138-39.)

Regarding the appellate brief that Respondents filed following the dismissal of the post-conviction petition, Brandstrader testified that "[y]ou couldn't tell from the brief" what arguments they were making, and that the brief contained no analysis of the case law in light of the facts; it just contained general statements about post-conviction protocol. (Tr. 149.) He testified that "[t]here was no organization to the argument. It led nowhere. It was just a bunch of unrelated case cites that had nothing to do with whatever argument [Respondents were] trying to make." (Tr. 154.) He stated that he has reviewed between 700 and 750 appellate briefs over the course of his 40-year career, and "if [he] ranked them 1 to 750, this would be 751." (Tr. 150.)

Brandstrader further testified that, if there has been a trial, the appellant must provide a trial record, which should include transcripts of anything substantial that occurred in the courtroom that led to the disposition of the case. In Castellanos' matter, the State pointed out in its response brief that Castellanos' brief did not contain the complete trial record. It also pointed out that the brief failed to comply with Illinois Supreme Court rules because it did not contain any proper cites. (Tr. 151-52.) He testified that Respondents had an opportunity to clear up "the mess" by attempting to supplement the record or filing a motion for leave to file an amended brief, but they did neither.

(Tr. 152-53.) The appellate court thus dismissed the appeal for failure to follow appellate procedure. (Tr. 154.)

Brandstrader opined that Respondents failed to provide competent representation to Castellanos because they were retained to do a petition for post-conviction relief and an appeal, and they "failed miserably on both points." He noted that it is "[v]ery rare" to get an appeal dismissed. (Tr. 155.)

Regarding the fee charged and collected by Respondents, Brandstrader testified that, as a general matter, $22,500 is not an unreasonable fee for a criminal defense attorney representing a client in a post-conviction proceeding and subsequent appeal. He also acknowledged that Respondents spent some time and performed some work on Castellanos' behalf. Nonetheless, Brandstrader opined that the fee of $22,500 was unreasonable and that Respondent is not entitled to retain any fee at all for the Castellanos matter, because he does not believe she did anything to earn a fee, "and the job was so poor on every level that [he doesn't] think anybody should profit from it." (Tr. 160-61.)

C. Analysis and Conclusions

Rule 1.1

The Administrator charged Respondent with failing to provide competent representation to Castellanos based upon her and Carroll's failure to compile a complete appellate record, failure to file an appellate brief in accord with Illinois Supreme Court rules, failure to file a motion to supplement the appellate record, failure to file a motion seeking leave to file an amended brief, and failure to file a reply brief. We find that the Administrator proved this charge.

At the outset of our analysis, we note that the evidence established that Respondent was not the lead counsel in the Castellanos matter. We accept her testimony that her role in the representation was primarily to communicate with the family and that she had no role in drafting

the post-conviction petition or the appellate brief, nor did she make any oral arguments in the matter. That testimony is supported by transcripts from the post-conviction proceedings and other documentary evidence. Nonetheless, her limited role does not obviate her responsibility to her client. See, e.g., In re Imming, 131 Ill. 2d 239, 253, 545 N.E.2d 715 (1989) (limited nature of attorney's duties does not lessen attorney's professional responsibility to client); In re Bless, 2010PR00133, M.R. 27134 (March 12, 2015) (Hearing Bd. at 18) (citing Imming, 131 Ill. 2d at 253) (neither attorney's more limited role nor the fact that he was not the only attorney representing the client in a matter diminished his ethical duties to client).

In finding that Respondent failed to provide competent representation to Castellanos, we have relied upon Brandstrader's unrebutted testimony about the egregious and inexcusable flaws in the appellate brief filed by Respondents, which Respondents could have attempted to rectify with a motion to supplement the record or a motion to file an amended brief, but did not. Moreover, the appellate brief filed by Respondents is in evidence. As is apparent from our own review of it, it is devoid of anything that could be construed as analysis of or argument regarding the issues Castellanos was raising on appeal. We thus find that the appellate brief was "inadequate to constitute even basically reasonable advocacy for" Castellanos. Chiang, 07 CH 67 (Review Bd. at 14).

We also find that Respondents' failure to file an appellate brief that complied with Illinois Supreme Court rules constitutes incompetence. See In re Grigsby, 00 SH 58, M.R. 18695 (May 22, 2003) (Hearing Bd. at 20) (where attorney drafted and filed an appellate brief that failed to comply with Illinois Supreme Court rules and was stricken, Hearing Board found that "any competent attorney … would have known, or would have learned through minimal research, that the Brief filed by the Respondent did not comply with the Rules and was defective").

We grant that "not every mistake or oversight by an attorney constitutes an ethical violation." In re Mason, 122 Ill. 2d 163, 169-70, 522 N.E.2d 1233 (1988). However, we agree with the Grigsby hearing panel that "[t]here is a difference between a mistake and a lack of knowledge or preparation," and find that the defects in the appellate brief that Respondents filed on behalf of Castellanos "were not the result of a mistake or oversight, but clearly were the result of [their] lack of knowledge and lack of preparation, such as by failing to read or understand the Rules regarding the requirements of briefs." Grigsby, 00 SH 58 (Hearing Bd. at 22).

We accept that Respondent did not draft the appellate brief. However, she acknowledged reading the State's response brief before she and Carroll decided not to file a reply brief or take any other action to correct the errors that were noted in the State's response brief. We therefore find that, in addition to her overarching responsibility to Castellanos as one of his attorneys, she bears actual culpability for the manner in which she and Carroll represented Castellanos on appeal.

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent failed to provide competent representation to Castellanos, and therefore that she violated Rule 1.1.

Rule 1.4(a)

The Administrator charged Respondent with failing to keep Castellanos reasonably informed about the status of a matter by failing to inform him of the deadline for filing a petition for leave to appeal to the Illinois Supreme Court. We find that the Administrator failed to prove this charge.

We accept as credible Respondent's testimony that she did not receive notice of the appellate court's decision prior to July 11, when Caballero contacted her and asked about the ruling. Respondent called the appellate court and learned that the appellate court had denied the

motion to reconsider. She then communicated that information to Caballero. We further note that Respondent's testimony is corroborated by texts and emails between her and Caballero.

While there was evidence that Carroll gave his case file to Respondent before he withdrew from representation on June 20, we saw no evidence that the file contained the June 13 letter. Also, while Respondent's testimony was initially unclear on whether she called the appellate court on July 11 or July 17, the inference we drew from her testimony is that she contacted Caballero on the day she learned about the appellate court's decision, which, according to documentary evidence, was July 17. We thus saw no evidence that would establish that Respondent delayed notifying Caballero of the appellate court's decision once she learned of it.

Accordingly, we find that the Administrator failed to prove by clear and convincing evidence that Respondent violated Rule 1.4(a).

Rule 1.5(a)

The Administrator charged Respondent with charging and collecting an unreasonable fee from Castellanos. We find that the Administrator proved this charge.

In making our finding, we have considered the factors set out in Rule 1.5(a), focusing particularly on the quality of the work performed and results obtained by Respondents. We are persuaded by Brandstrader's opinion that Respondent was not entitled to collect any fee in the Castellanos matter because "the job was so poor on every level" that nobody should profit from it, and Respondent did not do anything to earn a fee. (Tr. 161.) See Jennings, 99 SH 32 (Hearing Bd. at 22) (attorney was not entitled to a fee based on his incompetent legal services).

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent charged and collected an unreasonable fee from Castellanos by retaining her portion of the fee despite the shoddy work and abysmal results of the representation. We therefore find that she violated Rule 1.5(a).

EVIDENCE IN MITIGATION AND AGGRAVATION

Mitigation

Respondent testified that she provided *pro bono* services to clients who could not afford to pay for their criminal defense, and that doing so was an important part of her practice. She gave an example of a client who had been in custody for eight years without a trial, testifying that, when he contacted her, she thought she should help him. (Tr. 291.)

Aggravation

Brandstrader and DeLeon testified that, because of Respondent's failure to file a motion to suppress, Hernandez could have been sent to prison or deported. (Tr. 125, 224.)

Prior Discipline

In May 2018, Respondent was censured for incompetently representing a client in a real estate matter and charging that client an unreasonable fee. The Court also ordered her to make restitution of $4,000 to her client and to complete the ARDC's Professionalism Seminar within one year of the entry of the Court's order. In re Gonzalez, 2015PR00133, M.R. 29325 (May 24, 2018).

RECOMMENDATION

A. Summary

Based upon the nature of Respondent's misconduct, and taking into account the mitigating and aggravating factors, the Hearing Board recommends that Respondent be suspended for four months and until she pays restitution of $4,500[3] to Hernandez and $11,250 to Castellanos.

B. Analysis and Conclusions

The Administrator requested that Respondent be suspended for six months and until she pays restitution to Hernandez and Castellanos. Respondent presented no argument on sanction, instead arguing only that the complaint against her should be dismissed.

In determining appropriate discipline, we are mindful that the purpose of these proceedings is not to punish the attorney but rather to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. We also consider the deterrent value of attorney discipline and "the need to impress upon … others the significant repercussions of errors such as those committed by" Respondent. In re Discipio, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing In re Imming, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, In re Timpone, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993), while also recognizing that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may mitigate or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, we find that Respondent has fully cooperated in her disciplinary proceeding. We also accept her testimony that she has provided *pro bono* legal services to clients who could not afford to pay, but we do not give this factor significant weight in mitigation, given the lack of detail she provided about the nature and extent of her *pro bono* practice.

In aggravation, we find that Respondent's incompetence presented a risk of harm to Hernandez, in that he could have been imprisoned or deported because of her incompetent representation. However, we decline to make the same finding with respect to Castellanos. The

Administrator argued that Castellanos remains in custody because of Respondent's conduct but presented insufficient evidence to prove that allegation.

In further aggravation, we find that Respondent's clients were vulnerable, in that they were defendants in criminal cases where their liberty was at stake. Moreover, Respondent was an experienced practitioner at the time of her misconduct, and therefore had the knowledge, skill, and experience to represent her clients competently, but nonetheless failed to do so.

Finally, we find it aggravating that Respondent was previously disciplined for similar misconduct. In fact, we note that the current misconduct began while her prior disciplinary proceedings were pending, and continued after she was censured by the Illinois Supreme Court for failing to competently represent a client and charging an unreasonable fee. That prior disciplinary matter should have made Respondent acutely aware of her ethical obligations to her clients; yet, she still engaged in the same type of misconduct that was at the heart of her earlier disciplinary proceeding. See In re Storment, 203 Ill. 2d 378, 401 (2002) (an attorney who has been previously disciplined should have a "heightened awareness of the necessity to conform strictly to all of the requirements of the Rules of Professional Conduct").

The Administrator argued that we should consider it aggravating that Respondent failed to show remorse or recognize the wrongfulness of her actions. We decline to do so, as we do not equate Respondent's vigorous defense of the misconduct charges against her with lack of remorse or a failure to recognize the wrongfulness of her actions. As we have noted before, a respondent has a right to mount a defense that includes arguing that she did nothing wrong, and we will not hold her defense against her. See, e.g., In re Grosky, 96 CH 624, M.R. 15043 (Sept. 28, 1998) (Review Bd. at 10-11) ("[R]espondents should not be penalized for having defended themselves

… . The respondent is entitled to disagree with, and to present evidence, in good faith, to contradict the Administrator's position, without risking a harsher sanction … for having done so").

We also decline to consider in aggravation that Respondent had a selfish motive. Other than broad allegations that she and Carroll did the least amount of work for the most amount of money, the Administrator presented no evidence of selfish motive. Furthermore, we do not consider Respondent's conduct in two separate criminal matters, which were occurring around the same time, to be a pattern of misconduct that occurred over time, especially in light of her limited role in the Castellanos representation.

Based on Respondent's misconduct, and taking into account the mitigating and aggravating factors, we find that the six-month suspension requested by the Administrator would be unduly harsh, given that the Administrator proved some but not all of the charged misconduct and some but not all of the suggested aggravating factors. Rather, we find that a four-month suspension is commensurate with Respondent's misconduct and supported by precedent. Recognizing that each disciplinary case has unique facts and circumstances, we found guidance for our recommendation in the following cases.

In In re Washington, 99 CH 58, M.R. 19844 (March 18, 2005), an attorney incompetently represented two clients in death-penalty hearings and neglected a third client's criminal appeal. In aggravation, the attorney was suspended for three months in a prior disciplinary matter involving similar misconduct. In addition, his misconduct caused harm to all three of his clients; two were sentenced to death, and remained on death row for years, after sentencing hearings in which the attorney failed to competently represent them, and the third had his appeal dismissed for want of prosecution. The Court suspended the attorney for nine months.

In In re Walsh, 06 CH 85, M.R. 22719 (Jan. 20, 2009), an attorney neglected a criminal appeal and failed to return unearned fees. In aggravation, he had been previously disciplined twice before for similar misconduct. The Court suspended him for five months.

In In re Jennings, 99 SH 32, M.R. 17394 (My 25, 2001), an attorney neglected and failed to provide competent representation in a criminal appeal, resulting in his client losing his right to appeal. The Hearing Board found his conduct to be "extremely serious" because he displayed "deliberate indifference to the matter" by failing to respond to a rule to show cause why the appeal should not be dismissed and failing to draft and file the appellate brief until the deadline for filing had passed. The attorney also engaged in dishonest conduct by making false statements to and filing a false affidavit with the appellate court. The Court suspended him for three months.

The foregoing cases are sufficiently analogous to this matter to inform our recommendation. Jennings involved only one client matter, but the attorney also engaged in dishonest conduct, which is not present here. However, unlike Respondent, that attorney had no prior misconduct. Walsh also involved only one client matter, but that attorney had been previously disciplined twice before, whereas Respondent was previously disciplined once before. Washington involved three client matters as opposed to the two client matters at issue here. That attorney's misconduct also resulted in egregious harm to two of his clients, who remained on death row for years because of his incompetence. In addition, his one instance of prior misconduct was more significant, and yielded a more severe sanction, than Respondent's prior misconduct.

On balance, we find this matter most similar to Jennings and Walsh, and therefore find that a suspension within the range of the suspensions imposed in those cases would be appropriate in this matter. We also find that, because Respondent was not entitled to keep any of the fees she

collected from Hernandez and Castellanos, she should be required to refund those fees to them before she is permitted to return to law practice following her suspension.

Accordingly, we recommend that Respondent be suspended for four months and until she makes restitution of $4,500 to Hernandez and $11,250 to Castellanos.

Respectfully submitted,

Jose A. Lopez, Jr.
Joseph L. Stone
Charles A. Hempfling

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 Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on April 22, 2024.

/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] Just prior to the hearing commencing, the Administrator filed a motion *in limine* seeking leave to use portions of a discovery deposition at hearing. (Administrator's Motion *in Limine* dated August 8, 2023.) The hearing panel chair issued a written order taking the motion *in limine* under advisement and stating that the motion would be addressed at hearing. (Order dated August 24, 2023.) At hearing, the parties argued the motion, and the hearing panel chair reserved ruling on it until the Administrator sought to use the discovery deposition that was the subject of the motion. (Tr. 5-6.) Because the Administrator ultimately did not seek to use any portion of the discovery deposition at hearing, the Administrator's motion *in limine* is denied as moot.

[2] The Administrator brought the Complaint against both Carroll and Respondent and charged them with the same misconduct, but Carroll died prior to the hearing in this matter. Thus, his disciplinary proceeding was closed. (Order dated May 3, 2023.) However, to maintain consistency with the Complaint, this Report refers to Respondent and Carroll collectively as Respondents.

[3] At various points during the disciplinary hearing, the Administrator argued that Respondent owed restitution of $5,000 to Hernandez. In closing arguments, however, the Administrator represented that, of the $10,000 bond that was posted, $1,000 "was taken by the Clerk," and "half of the remainder … is $4,500." (Tr. 332.) And in the Administrator's Report Regarding Prior Discipline,

the Administrator asked for total restitution of $15,750, which would be consistent with $4,500 to Hernandez and $11,250 to Castellanos. Based upon the Administrator's representations regarding restitution, we find that the amount owed to Hernandez is $4,500 and the amount owed to Castellanos is $11,250, for a total of $15,750.