DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
LILY MAZAHERY,	:	
	:	Board Docket No. 10-BD-088
Respondent.	:	Bar Docket Nos. 2009-D217; 2009-D280;
	:	and 2009-D092
A Member of the Bar of the District of	:	
Columbia Court of Appeals	:	
(Bar Registration No. 480044)	:	

REPORT AND RECOMMENDATION OF
THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes to the Board on Professional Responsibility (the "Board") from an Ad Hoc Hearing Committee (the "Committee"), which concluded that Respondent Lily Mazahery ("Respondent") committed multiple violations of the District of Columbia Rules of Professional Conduct (the "Rules"). Respondent's alleged misconduct occurred primarily between January 2008 and December 2008 during her *pro bono* representations of Mahdi Kianoosh Sanjari Baf ("Sanjari") and Ahmad Batebi ("Batebi"), two former Iranian political prisoners, and her involvement in collecting donations to spare the life of Akram Mahdavi ("Mahdavi"), a woman who killed her abusive husband and was condemned to death in Iran. Based on the totality of Respondent's conduct, including but not limited to her multiple acts of dishonesty and criminal conduct, the majority of the Committee recommended that Respondent be disbarred. In a separate dissenting statement, one member of the Committee concluded that Bar Counsel did not prove by clear and convincing evidence four of the violations found by the majority and recommended that Respondent be suspended for a period of three years. All members of the Committee recommended that Respondent be required to pay restitution and demonstrate fitness

as conditions of reinstatement. Both Respondent and Bar Counsel have taken exception to the Committee's Report and Recommendation.

The Board, having reviewed the record and considered the briefs and oral arguments of the parties, concurs with the Committee's findings of fact and with its recommended sanction of disbarment. The Board finds that Bar Counsel proved violations of the following Rules by clear and convincing evidence: 1.1(a), 1.1(b), 1.4(a), 1.4(b), 1.6(a)(1), 1.6(a)(2), 1.6(a)(3), 1.7(b)(4), 8.1(a), 8.4(b), 8.4(c), and 8.4(d). For the following reasons, the Board recommends that Respondent should be disbarred, and that she should be required to pay restitution in the amount of $3,241.92, plus interest at the legal rate.

I. PROCEDURAL HISTORY

Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by examination on December 1, 2002 and assigned Bar Number 480044. Three different complaints were filed against Respondent in 2010, all of which Bar Counsel docketed for investigation. After conducting its investigation, Bar Counsel filed its initial Specification of Charges on September 10, 2010 and later filed amended Specifications of Charges on October 18, 2010, December 6, 2010, and December 23, 2010.[1] Bar Counsel ultimately charged Respondent with one or more violations of the following Rules:

- Rules 1.1(a) and (b) (competence, skill and care) in the *Batebi* and *Sanjari* matters

[1] The Third Amended Specification of Charges, filed on December 23, 2010, added an additional count relating to an affidavit Respondent submitted to United Bank, a financial institution where she maintained personal accounts. It also incorporated by reference the allegations contained in the Second Amended Specification of Charges but did not reproduce them. Accordingly, all of the charges against Respondent are set forth in the Second and Third Amended Specifications of Charges, collectively. The Committee referred to both the Second and Third Amended Specification of Charges in its Report and Recommendation, as applicable, and we do the same here.

- Rule 1.3(b)(1) (intentional failure to pursue the client's lawful objective) in the *Batebi* and *Sanjari* matters
- Rules 1.3(b)(2) and (c) (intentional prejudice to client and failure to act promptly) in the *Sanjari* matter[2]
- Rules 1.4(a) and (b) (keeping client reasonably informed and explaining matters as reasonably necessary) in the *Batebi* and *Sanjari* matters
- Rules 1.6(a)(1), (a)(2), and (a)(3) (client confidences) in the *Batebi* and *Sanjari* matters[3]
- Rule 1.7(b)(4) (conflicts of interest) in the *Sanjari* matter
- Rules 1.15(a) and (b) (misappropriation of client funds) in the *Mahdavi* matter
- Rule 4.2(a) (communication with represented party) in the *Batebi* matter
- Rule 8.1(a) (false statements in a disciplinary matter) in the *Mahdavi* and *Sanjari* matters
- Rule 8.4(b) (criminal conduct) in the *Mahdavi*, *Batebi*, and *United Bank* matters
- Rule 8.4(c) (dishonesty, fraud, deceit or misrepresentation) in the *Mahdavi*, *Batebi*, *Sanjari*, and *United Bank* matters
- Rule 8.4(d) (conduct that seriously interferes with the administration of justice) in the *Mahdavi* and *Sanjari* matters

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[2] Bar Counsel noted in its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction filed with the Committee ("Bar Counsel's HC Brief") at 2, n.4, that it was choosing not to pursue these charges and the Hearing Committee did not address them. Bar Counsel does not have the authority to unilaterally elect not to pursue charges that have been approved by a Contact Member. *See In re Drew*, 693 A.2d 1127, 1132-33 (D.C. 1997) (per curiam) (appended Board Report) (suggesting that the Board should address charges not decided by a hearing committee); *In re Reilly*, Bar Docket No. 102-94 at 4 (BPR July 17, 2003) (concluding that Bar Counsel did not have the authority to dismiss charges approved by a Contact Member). Based on our review of the record, the Board finds that Bar Counsel failed to establish violations of these Rules.

[3] As the Committee observed, Bar Counsel also charged violations of Rules 1.6(b) (defining "confidence" and "secret") and 1.6(g) (providing that the obligation to preserve client confidences and secrets continues after termination of the lawyer's employment) as independent violations. However, in its Proposed Findings of Fact, Conclusions of Law, and Recommendation as to Sanction, Bar Counsel asserted that Rules 1.6(b) and 1.6(g) do not form an independent basis for discipline and instead define and explain the scope of Rule 1.6. ("HC Rpt.") at 2, n.1. The Committee concurred with Bar Counsel's reasoning, as do we.

On October 8, 2010, January 4, 2011, and January 14, 2011, Respondent filed Answers to the three Specifications of Charges with the Board. The Committee heard the matter over eight days between January 4 and 19, 2011. Bar Counsel submitted numerous exhibits and called 16 witnesses, including the complainants, immigration law and torture survivor experts, and others. Respondent, who was represented by counsel, also submitted numerous exhibits that were received into evidence. She testified during the hearing on her own behalf and called no other witnesses.

Upon the conclusion of the violations phase of the hearing, the Committee made a preliminary, nonbinding determination that Respondent had committed one or more of the violations listed in the Second and Third Amended Specification of Charges. *See* Board Rule 11.11. Bar Counsel offered no evidence in aggravation of sanction, and Respondent offered no evidence in mitigation. The Committee issued its 140-page Report and Recommendation on September 15, 2011, with one member dissenting in a separate statement.[4] The Committee unanimously concluded that Bar Counsel proved violations of Rules 1.1(a) and (b); 1.4(a) and (b); 1.6(a)(1), (a)(2) and (a)(3); 1.7(b)(4); 4.2(a); 8.1(a); and 8.4(c) by clear and convincing evidence. Two of the members of the Committee concluded that Bar Counsel also proved violations of Rule 8.4(b) by clear and convincing evidence. The Committee unanimously concluded that Bar Counsel did not prove the charged violations of Rules 1.3(b)(1); 1.15(a) and

[4] The Committee's Findings of Fact will be cited as "FF [¶]." "BX" refers to Bar Counsel's exhibits. "Tr." refers to the transcript of the hearing held on January 4, 5, 6, 7, 12, 14, 18, and 19, 2011. Respondent's and Bar Counsel's Briefs to the Board will be cited as "Resp't Br." and "BC Br.," respectively.

(b); and 8.4(d) by clear and convincing evidence. Both Bar Counsel and Respondent timely filed exceptions to the Committee's Report and Recommendation.[5]

On October 24, 2011, the date by which she was required to submit her brief to the Board, Respondent instead filed a motion to abate the disciplinary proceedings on the ground that she was suffering from a disability that precluded her from assisting her counsel in presenting an adequate defense in her appeal. As a result of her disability claim, on October 26, 2011, Bar Counsel filed an unopposed motion with the Court of Appeals seeking a temporary suspension of Respondent pursuant to D.C. Bar R. XI, § 13(e), which provides for immediate suspension if, in the course of a disciplinary proceeding, the attorney claims to be suffering from a disability that makes it impossible for the attorney to present an adequate defense. Such a suspension remains in place until a determination is made of the attorney's capacity to practice law. On November 16, 2011, the Court issued an order granting Bar Counsel's unopposed motion for a temporary suspension from the practice of law and referring the matter to the Board to proceed in accordance with D.C. Bar R. XI, § 13(c) and Board Rule 15.7.

On February 16, 2012, the Board denied Respondent's motion to abate the proceedings because she failed to support her claim that her alleged disability made it impossible to present an adequate defense. Respondent then moved for reconsideration of the Board's ruling, which the Board denied on May 22, 2012, based primarily on Respondent's failure to provide requested

[5] Bar Counsel did not except to the Hearing Committee's findings that it had failed to establish violations of Rules 1.1(a) and (b) in the *Sanjari* matter; 1.3(b)(1) in the *Sanjari* and *Batebi* matters; 1.15(a) and (b) in the *Mahdavi* matter; 8.1(a) and 8.4(d) in the *Sanjari* matter; and 8.4(b) in the *Batebi* matter based on the alleged violation of 18 U.S.C. § 1001. Since additional findings of misconduct would not affect the Board's recommended sanction, and Bar Counsel has not pursued the charges, the Board will not address them. *See In re Stewart*, 953 A.2d 1034, 1035 (D.C. 2008) (per curiam) (The Board did not reach a charged violation since there were other violations to sustain its recommendation of disbarment.).

medical records and/or releases. The May 22, 2012 order also set a briefing and oral argument schedule and directed Bar Counsel to petition the Court of Appeals to lift its order of temporary suspension. On August 9, 2012, the Court issued an order lifting Respondent's temporary suspension.[6] Oral argument was heard before the Board on November 8, 2012.

II. FINDINGS OF FACT

The charges of rule violations arose from a series of actions and inactions by Respondent in four related matters. The Committee's Report contains comprehensive and detailed findings of fact, which are supported by substantial evidence in the record. *See* D.C. Bar R. XI, § 9(h)(1); Board Rule 13.7. We generally adopt the Committee's findings and present a summary of them here. Where appropriate, we have supplemented the Committee's findings with additional factual findings supported by clear and convincing evidence, citing directly to the transcripts and exhibits. *See* Board Rule 13.7 (authorizing the Board to make additional findings of fact based on clear and convincing evidence).

A. Background

Respondent was born in Tehran, Iran, and later relocated to Virginia with her family. FF 2. In 1999, she obtained her J.D. from American University and then worked as an associate with the law firm of Jones Day until 2002. FF 3. After leaving Jones Day, she became

[6] D.C. Bar R. XI, § 17(b), provides that "[a]ll proceedings involving allegations of disability on the part of an attorney shall be kept confidential unless and until the Court enters an order suspending the attorney under section 13." In reliance on this provision, the Board issued its May 22, 2012 order under seal on the grounds that the November 16, 2011 order of suspension was not a final disciplinary order that would make the proceeding public. Bar Counsel moved the Court to unseal the May 22 order. On August 9, 2012, the Court granted Bar Counsel's motion and unsealed the May 22 order. Order, *In re Mazahery*, No. 11-BG-1356 (D.C. Aug. 9, 2012). That order did not address the other documents filed with the Board in the disability proceedings, and whether they should be confidential. Accordingly, all disability-related documents filed with the Board, other than the May 22 order, have been filed under seal in the record transmitted to the Court.

increasingly involved with various organizations assisting the victims of political, religious, and gender persecution in Iran and other Middle Eastern countries. *Id*. Since 2007, she has focused her practice on immigration and human rights matters. FF 4. She also founded the Legal Rights Institute and serves as the organization's president. *Id*.

Respondent conversed in Farsi (Persian) as a child but primarily spoke English when she settled in the United States. FF 6. She did not utilize or develop her Farsi language skills again until 2007. *Id*. At the time of the events in question, she professed an ability to translate Farsi into English, and she also interpreted at interviews for her clients and others. *Id*. For example, on June 10, 2008, while representing Batebi, Respondent certified under penalty of perjury that she is "proficient in Persian (Farsi) and competent and experienced to translate documents from Farsi to English," and she translated Batebi's Iranian driver's license and Iranian Identification Card. *Id*.

B. The *Sanjari* Matter (Count III)[7]

First Introduction

Sanjari is an Iranian dissident and a former political prisoner from Iran who was subjected to physical and psychological torture during his confinement.[8] FF 14. He escaped from Iran and fled to Iraq in March 2007. *Id*. In September 2007, Respondent introduced herself

[7] For ease of reference, and to maintain a clear chronology, the Committee chose not to address the Counts in the order in which they appear in the Second and Third Amended Specification of Charges. The Board follows that approach here.

[8] Bar Counsel's expert witness on the impact of torture, Dr. Keller, testified during the hearing that torture can "profoundly undermine trust and a sense of safety in other individuals." FF 12. Symptoms cited by Dr. Keller include depression and profound feelings of sadness, hopelessness, and helplessness. FF 13. Dr. Keller further testified that torture can result in post-traumatic stress disorder ("PTSD") and that individuals suffering from PTSD "are particularly vulnerable to being manipulated." *Id*.

to Sanjari via email while he was in Iraq, and Sanjari believed that Respondent was acting as his lawyer by no later than October 2, 2007.[9] FF 15. Respondent agreed to represent Sanjari *pro bono* in seeking asylum and helping him immigrate to the United States. FF 15, 18. At that time, and continuing thereafter, Sanjari trusted Respondent as his attorney and expected her to protect and maintain his confidences. FF 16. During her online communications with Sanjari and his friends, Respondent emphasized her duty as an attorney to maintain the confidentiality of client communications. *Id*. In a March 7, 2008 email, Respondent emphasized to Sanjari the inviolate nature of attorney client confidences:

> When someone tells you "don't tell this to your attorney (it does not matter who your attorney might be)," you must know something is not right. The only person who must and will keep safe all your secrets, ideas, words, etc. is your attorney. Everyone knows this. No matter whom your attorney might be his/her only and only job is the advocacy of you and your interests. That is all.

Id. (quoting BX I1 at 75). In September 2007, the United Nations High Commissioner for Refugees granted Sanjari's request for refugee status, and with the assistance of Amnesty International, made arrangements for him to live in Norway. FF 17. Respondent was aware of these efforts and agreed that it would be prudent for him to leave for Norway in light of dangers he faced in Iraq. *Id*. Respondent later stated to Bar Counsel that she "was not in direct and frequent contact with Mr. Sanjari during that period personally," referring to the time period of September 2007. FF 18. Respondent differentiates this period from later periods by stating: "In October 2007, however, I began to communicate with Mr. Sanjari on a more regular basis." *Id*.

[9] Respondent testified that she did not use engagement letters with *pro bono* clients. FF 4. Rule 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation," and it applies to *pro bono* representations. *See In re Verra*, 932 A.2d 503, 504 n.1 (D.C. 2007).

At the end of October 2007, Sanjari left Iraq and went to Norway. FF 19. While Sanjari was in Norway, Respondent successfully represented Sanjari in obtaining a B-1 business visitor visa so that he could travel to the United States to speak at the April 2008 Iran Freedom Concert, sponsored by Sacred Heart University, and be interviewed by the Abdorrahman Boroumand Foundation, a human rights organization located in Washington, D.C. FF 20.

Personal Relationship

Beginning in January 2008, when Sanjari was still in Norway and Respondent was actively representing him, Respondent engaged in an intimate, personal relationship with Sanjari through emails, text messages, telephone calls, online chat sessions, and via webcam. FF 28-30. Almost daily, and multiple times a day, Respondent and Sanjari expressed their sexual feelings and mutual interest in each other. FF 29. Respondent sent Sanjari numerous photographs of herself, including close-up shots of her lips and breasts. *Id*. She wrote to Sanjari that she loved him, she missed him, and she sent him love poems, lyrics of love songs, and images of hearts. *Id*. In addition to their email communications while Sanjari was in Norway, Sanjari and Respondent engaged in sexual conduct while they were in contact by telephone or through a webcam. FF 31. Despite the documentary evidence supporting this finding, Respondent falsely testified at the hearing that, while Sanjari was in Norway, she did not have video contact with him. FF 32.

During this time period, January and March 2008, Respondent continued to search for additional speaking opportunities that would further support Sanjari's travel to the United States for an extended visit and was communicating with him about those opportunities as well as his visa application. BX H5 at 10, 213, 226-27, 244, 310, 312, 320-21; BX H6 at 32, 98, 99, 148-50, 180-88, 216-19, 288-89; BX I1 at 14-15, 98-109, 114-21. For example, on or about March 24,

2008, Respondent arranged for both her and Sanjari to attend an upcoming human rights conference organized by the World Prout Assembly that was the subject of an email chain that Sanjari had forwarded to her in February.[10] FF 70, BX I1 at 403-04.

Sanjari arrived in the United States on March 20, 2008 and flew into Dulles Airport in Virginia. FF 23. Once Sanjari arrived in the United States, Respondent continued her simultaneous legal representation of and sexual relationship with Sanjari. FF 36. Respondent admitted to "very briefly" having sexual relations with Sanjari after he arrived in the United States.[11] FF 33. On his first night in the United States, Sanjari stayed with Respondent in her parents' home, and they had sexual relations. FF 36. After that night, Sanjari left to stay with an Iranian friend. *Id*. Respondent and Sanjari continued their sexual relationship for approximately one week after he arrived in the United States. FF 31-33, 36-38. On March 28, 2008, Respondent repeatedly called Sanjari "with an emotional tone, depressed, and accompanied with crying" and talked about personal problems she was having with her family, stemming in part from the fact that she had allowed Sanjari to stay with her in her room at their house. FF 38. In addition to phone calls, Respondent also sent Sanjari emails insisting that she needed to be with him that night. *Id*. After Sanjari declined to meet her, Respondent persisted, and approximately two hours later, Respondent again asked to see Sanjari. *Id*.

[10] In April 2008, the organizer of the event rescinded the invitation for Respondent to participate after Sanjari declined to attend any further conferences with her. FF 39, 70.

[11] In the complaint that Sanjari submitted to Bar Counsel, he alleged that Respondent expected sex from him in lieu of payment for legal services. FF 34. In her response to Bar Counsel regarding the complaint, Respondent wrote: "Never did I ask him to be paid for my services, never did I ask him for any sort of sexual favors in return, and never did I have or suggest an ***inappropriate*** sexual relationship to him at any time." FF 35 (emphasis added by HC Rpt.).

On the night of March 28, 2008, Sanjari determined that he was not interested in a personal relationship with Respondent, and he did not want to participate in the Iran Freedom Concert or other speaking engagements with Respondent. FF 39. Sanjari did not want to travel to Sacred Heart University with her and stay in the same accommodation as her. FF 40. Respondent informed Jason Guberman ("Guberman"), one of the student organizers of the concert, about Sanjari's refusal to travel with her. FF 40. On April 2, 2008, Guberman contacted Sanjari by email and notified him that he did not have an option to travel apart from Respondent or stay in separate hotels. *Id*. On April 3, 2008, after Sanjari had informed Respondent that he was unwilling to travel with her, Respondent called Sanjari in the middle of the night and told him that if he did not travel with her, she would cause him to be deported from the United States. FF 41.[12] On April 7, 2008, Respondent and Sanjari appeared at the Iran Freedom Concert. FF 43.

Asylum Application

During the escalating conflict in their personal relationship, Respondent continued to represent Sanjari as his attorney. On April 3, 2008, Respondent notified Sanjari via email, written in English, that she had filed his asylum application with the United States Customs and Immigration Services ("USCIS"). FF 44. On or about April 7, 2008, USCIS received Sanjari's application for asylum. FF 45. On the asylum application, Respondent had listed her own home address as Sanjari's address on the first page, even though Sanjari was staying in another location. *Id*. On April 11, 2008, Sanjari, via email, requested that Respondent send him by

[12] Respondent testified that she "absolutely" never threatened Sanjari with deportation. FF 42. Although the Committee credited Sanjari's testimony that Respondent threatened him with deportation, it did not specifically address the credibility of Respondent's testimony or whether it found it to be false. On this record, we are unable to decide if Respondent testified falsely.

email a copy of the asylum application she had filed and the notice of receipt. FF 46. On April 12, 2008, Respondent replied and informed Sanjari that "[w]henever you want, you can come to the office and make a copy of it for yourself." *Id.*

By May 2008, Respondent and Sanjari's personal relationship had become very acrimonious, and Sanjari was reluctant to meet with Respondent because of their prior sexual relationship. FF 47. The friction caused a break-down in their communication during the two weeks prior to Sanjari's asylum interview scheduled for May 12, 2008, which was a critical juncture in the representation. FF 47, 48. For example, on May 2, 2008, Sanjari met with Respondent to discuss his case at a restaurant in Virginia. FF 49. Instead of discussing Sanjari's asylum interview, Respondent discussed their personal relationship, became intoxicated, and later drove her car into a curb. *Id.*

On May 12, 2008, Respondent appeared with Sanjari for his asylum interview at USCIS. FF 53. Respondent did not submit a written memorandum regarding Sanjari's resettlement in Norway at the time of the interview with the Asylum Officer ("AO") assigned to his case. *Id.* At the conclusion of the interview, the AO asked Respondent to brief whether Sanjari had firmly resettled in Norway, which would preclude him from asylum in the United States. FF 54. Following the asylum interview, Respondent advised Sanjari that she had spoken by telephone with the AO regarding the status of his asylum application. FF 55. Sanjari repeatedly asked Respondent to tell him about her conversation with the AO, what issues the AO raised, what requests he made, what information he needed, and whether the AO had an opinion about his case. *Id.* Instead of responding to Sanjari's repeated email requests for information regarding his case, Respondent replied on four separate occasions telling Sanjari alternatively that she

could not translate into Persian what the AO had told her in their conversation or that he needed to obtain new counsel to handle his case. *Id.*

End of Relationship

In a letter dated May 30, 2008, addressed to Sanjari and with the header "NOTICE OF WITHDRAWAL AS COUNSEL" and "TERMINATION OF REPRESENTATION ON ALL MATTERS," Respondent notified Sanjari that she was withdrawing from the representation. FF 64 (citing BX F4 at 91). In her withdrawal letter, Respondent made disparaging comments about Sanjari's character, integrity, veracity, and behavior. *Id.* Respondent concluded the letter with this sentence: "I will forward a copy of this letter to the appropriate agencies to notify them of my decision." *Id.* Respondent sent the AO a copy of her May 30, 2008 withdrawal letter addressed to Sanjari. FF 65. The withdrawal letter became part of Sanjari's "A-file," which contained all of the documents that are submitted while an asylum case is pending. *Id.* On June 4, 2008, Respondent sent the May 30, 2008 withdrawal letter to Sanjari via email.[13] FF 67.

Around this same time, Respondent also disclosed some of her communications with Sanjari to third parties. For example, on June 18, 2008, Respondent forwarded to Guberman, the student organizer at Sacred Heart University, the email chain that Sanjari had sent to her regarding the speaking opportunity at the World Prout Assembly. FF 70. In her email to Guberman forwarding the exchange, Respondent referred to Sanjari's correspondence regarding the speaking invitation and suggested that he was involved with individuals and activities linked to the Mujahadin, a militant group that the U.S. State Department had previously identified as a

[13] On July 17, 2008, USCIS issued a Referral Notice to Sanjari, indicating that his asylum application had been denied and referred to an immigration judge for adjudication in removal proceedings. FF 67. According to Bar Counsel's HC Brief, on January 31, 2011, after the hearing in this disciplinary matter had concluded, the immigration court held a hearing on Sanjari's petition for asylum and granted him asylum in the United States. FF 68.

terrorist organization. *Id*. Two days later, on June 20, 2008, Respondent forwarded the same email chain, including her disparaging comments to Guberman, to Kathryn Lurie ("Lurie"), an employee at the U.S. State Department. *Id*. Sanjari testified that he believes that Respondent's actions in this regard adversely affected his reputation among his Iranian supporters. *Id*.

On February 18, 2009, Sanjari filed a complaint against Respondent with the Office of Bar Counsel. FF 71. Sanjari testified that he filed a complaint to stop Respondent from publishing confidential information about him and ruining his reputation. *Id*. In her March 31, 2009 response to Bar Counsel, Respondent stated that she conducted her work "with utmost professionalism and care." FF 72.

C. The *Batebi* Matter (Count II)

First Introduction

Batebi is a well-known Iranian-born political prisoner, journalist, photojournalist, and human rights activist. FF 73. He was imprisoned for almost ten years in Iran as a result of his activism and was brutally tortured. FF 74. On February 17, 2008, Sanjari recommended via email that Batebi communicate with Respondent. FF 75. In March 2008, when Batebi was temporarily released from prison for medical treatment, he escaped from Iran and went to Iraq. *Id*. Batebi made contact with Respondent and requested that she provide him with legal representation. FF 76; Tr. 981-82. Respondent agreed to represent Batebi *pro bono* in his efforts to leave Iraq and settle in the United States. FF 76. While in Iraq, Batebi authorized Respondent to sign forms necessary to pursue his entry into the United States. *Id*.

On March 23, 2008, Batebi told Respondent in a chat session that he had escaped from Iran, was in Iraq, and his life was in danger. FF 78. Batebi emphasized that no one could know of his location, including Sanjari. *Id*. Respondent specifically asked Batebi if he would permit

her to tell Sanjari about Batebi's location. *Id*. Batebi repeatedly told Respondent that she could not tell anyone—including Sanjari—about his location. *Id*. Contrary to Batebi's instructions, Respondent told Sanjari that Batebi had escaped Iran and was in Iraq. *Id*.

Arrival in the United States

Respondent submitted an application for humanitarian parole on behalf of Batebi, and on or about June 17, 2008, the application was granted. FF 79. Batebi arrived in the United States on June 23, 2008 with little to no English skills. FF 79, 80. When he first arrived, he was invited to stay at the home of Respondent's parents. FF 80. Batebi came to depend on Respondent and her family for his lodging, food, and interpretation needs.[14] FF 80-82. In addition, Respondent controlled Batebi's finances at this time. FF 83. For instance, when Batebi told Respondent that he wanted to open a bank account, she told him that he could not open a bank account without a Social Security number unless he opened a joint account with her. *Id.* On or about July 21, 2008, Respondent added Batebi as a co-signatory on a personal checking account ending in 9443 (the "9443 account") that Respondent had opened at United Bank. FF 8. Respondent had opened this account on May 1, 2008, and she had used it in connection with her effort to raise money for Akram Mahdavi, the Iranian woman who was sentenced to death for killing her husband.[15] FF 178-81; *see* § II.D, *infra*.

[14] About a week after Batebi arrived in the United States, his girlfriend, Tara Niazi ("Niazi"), arrived and joined him at Respondent's family's house. FF 108; Tr. 986. During the summer in which Batebi arrived in the United States, he and Niazi moved out of Respondent's family's house because Batebi did not want to abuse Respondent's family's generosity and also because he and Niazi began having arguments that disturbed the family. Tr. 1005–06. When Batebi and Niazi moved out of Respondent's family's house, Batebi rented a room for Niazi in Virginia and Batebi moved in with friends in Maryland. FF 108.

[15] As discussed below, Respondent deposited donations she received for the benefit of Batebi and Mahdavi into the 9443 account. Mahdavi donations: $1,952.88 (deposited on May 27,

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Donations to Batebi

Respondent told Batebi that he was earning money from the sale of his photographs, speaking engagements, and interviews, which she deposited in a bank account. FF 84. However, Respondent testified that she never received any payments for photographs taken by Batebi or from media outlets for his interviews and other activities. FF 95. There is no evidence that she actually received any such payments, other than Batebi's testimony that Respondent told him that she had received such payments. *Id*. As discussed below, Respondent received at least $27,050 in contributions for Batebi's benefit, but she failed to tell Batebi the amount of money that she had received on his behalf or who sent the funds. FF 84, 96.

After *The New York Times* published an article about Batebi, Muneer Satter ("Satter"), a wealthy individual who worked for Goldman Sachs, contacted Respondent to discuss how he could assist Batebi. FF 88. On July 23, 2008, Satter wired a $24,000 gift for Batebi into the 9443 account for Batebi's benefit. *Id*. Satter had informed Respondent that he did not want Batebi to know about the funds and wished for the funds to be controlled by Respondent. *Id*. Accordingly, Respondent did not tell Batebi that she had received $24,000 from Satter for his benefit.[16] *Id*. On or about August 6, 2008, Respondent transferred $17,320—which included funds that Satter had given Respondent for Batebi's benefit—from the 9443 joint account with

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2008). FF 180. Batebi donations: $24,000 (deposited on July 23, 2008) (FF 88); $3,050 (deposited on or about August 8, 2008). FF 92, 94.

[16] Satter also gave Respondent an additional $24,000 gift to use at her own discretion. FF 195. Respondent opened a second personal checking account ending in 0878 at United Bank on or about July 21, 2008. FF 9. Satter wired the $24,000 to this account and designated it for Respondent's use. FF 195. Respondent had exclusive control over this account, was the sole signatory on the account, and any debit cards issued on this account were issued to Respondent. FF 9.

Batebi to her 0878 individual account. FF 96. Respondent testified that she transferred these funds from the joint 9443 account to her individual 0878 account because Satter did not want Batebi to know of or control the funds he had sent.[17] Tr. 1438-39. After this transfer, the 9443 account was in overdraft status with a negative balance of $142.31. FF 96.

Around that same time, Elise Auerbach ("Auerbach"), the Iran country specialist for Amnesty International, successfully applied for and obtained $3,000 to give to Batebi from an Amnesty fund reserved specifically for former prisoners of conscience. FF 89-90. Auerbach issued a cashier's check made payable to Batebi and sent the check to Respondent, along with a receipt for Batebi to sign and return. FF 90-91. On or about August 8, 2008, Respondent signed Batebi's name on the back of the check and deposited the $3,000 into the 9443 account. FF 92. Respondent did not notify Batebi that she had received $3,000 on his behalf, and Batebi did not authorize Respondent to endorse his name on the check. *Id.*

Likewise, on or about July 24, 2008, Pam Mitchell ("Mitchell") contacted Respondent about making a donation to Batebi to assist him with medical care and his artistic pursuits. FF 94. Respondent replied and instructed Mitchell to send the donation to Respondent. *Id.* On or about August 8, 2008, Mitchell sent Respondent a check made payable to Batebi for $50. *Id.* Respondent did not notify Batebi that she had received the $50 check, and Batebi did not authorize Respondent to endorse his name on the check. *Id.*

Batebi did not have access to the funds in the 9443 account until he received his debit card on or about August 8, 2008. FF 8, 83. By that time, Respondent had transferred $17,320 from the 9443 account to her 0878 account. FF 96. After the Auerbach and Mitchell donations

[17] Before Respondent transferred $17,320 (including money for Batebi's benefit) to her individual 0878 account, the 0878 account held $3,633.72. BX C5 at 5. Respondent was not charged with commingling the donation for Batebi with her own funds.

were credited to the account (on or about August 12, 2008), the account balance was $3,819.05. BX C2 at 16. Batebi was entitled to use all of the funds in the account, and there were no limitations or restrictions on his use of those funds. FF 8.

Internet Purchases

Respondent also made purchases for Batebi and his activist friends in Iran even before Batebi arrived in the United States on June 23, 2008, and thus, before the above-referenced donations from Auerbach, Satter, and Mitchell. FF 97. For example, Respondent purchased anti-filtering services for a group of activists in Iran. FF 99. She testified that an activist with the alias of "BK" directed her to a website, told her what services they needed, and provided her with the necessary log-in and password information. *Id*. Respondent entered the number of her debit card linked to the 9443 account and made the purchase. *Id*. A transaction with IX Webhosting occurred on June 11, 2008, when $180.24 was debited from the 9443 account. *Id*. Thereafter, additional amounts ($179, $108 and $504) were charged to Respondent's card that she did not authorize. FF 100. Once she saw the unauthorized purchases, she brought them to the attention of Batebi (who by this point was in the United States), and Batebi assured her that the funds would be returned to her.[18] *Id*.

Breakdown in Relationship

By the middle of August 2008, the personal and professional relationship between Respondent and Batebi had broken down. FF 107. Batebi informed Respondent that he did not

[18] Respondent was worried that her computer may have been hacked into, and she twice contacted law enforcement authorities. FF 105. In early September 2008, she brought her computer to the police in McLean, Virginia, but did not leave it with them. *Id*. The police informed her that this was a matter that should be brought to the attention of federal authorities. *Id*. Thereafter, she brought her computer to the FBI. *Id*. Respondent had no documentary evidence that shows that she brought the computer to the police, but she did provide a receipt confirming that she had brought it to the FBI. *Id*.

want Respondent involved in his interviews and appointments. *Id*. Batebi also testified that Respondent threatened him with deportation, and other witnesses provided hearsay corroboration. FF 86. Specifically, Respondent told Batebi that the U.S. government had granted him entry based on her reputation and connections, and if he did not listen to her and do as she instructed, she had the authority to have him deported. *Id*. On August 21, 2008, Batebi and Respondent traveled to New York City by train. FF 110. The following day, Batebi left Respondent and stayed with a friend. FF 112.

Between August 19 and 26, 2008, Batebi used his debit card to withdraw funds in the 9443 account out of concern that Respondent might deplete them. FF 113. Based on Respondent's representations, Batebi believed that all of the funds in the account belonged to him. *Id*. On August 25, 2008, while still in New York, Batebi met with Anwen Hughes ("Hughes"), the Senior Counsel and Deputy Director of the Refugee Program at Human Rights First. FF 115; Tr. 931. During this preliminary meeting, they discussed Batebi's current legal status and Respondent's representation. FF 115. Batebi also signed a Notice of Entry of Appearance (G-28 Form), which granted Hughes authority to represent him in his asylum application. *Id*. On August 27, 2008, Batebi met with Hughes again for a full intake interview. FF 116. Before his second meeting with Hughes, Batebi telephoned Respondent and terminated her representation. *Id*. On September 3, 2008, Batebi wrote to Respondent via email and "officially inform[ed]" Respondent that he was terminating the representation. FF 123. In September 2008, Hughes arranged for Eric Husketh, then an Associate at Latham Watkins, to take on Batebi as a *pro bono* client. FF 131; Tr. 1135. Husketh first met with Batebi on September 22, 2008. Tr. 1137.

Communications with Third Parties

On August 27, 2008, Respondent wrote a check in the amount of $327.62 payable to cash from the 9443 account and deposited the check into her 0878 account. FF 117. Respondent's withdrawal of $327.62 from the 9443 account put the account into overdraft status. *Id*. On August 28, 2008, Respondent transferred funds from her 0878 account back into the 9443 account to cover the overdraft. *Id*. Then, on September 2, 2008, Respondent closed the 9443 account by withdrawing the balance and depositing it into her 0878 account. *Id*.

Within a week after Batebi left Respondent in New York, Respondent wrote an email to the Ledeens, a couple who purchased Batebi's plane ticket from Iraq and became friends with Batebi upon his arrival. FF 79, 112, 119. She sent them a copy of a portion of a bank statement from the 9443 account reflecting itemized transactions from the period of August 22 through 27, 2008. FF 119. The subject line of Respondent's email stated: "What [Batebi] has done to my bank account." *Id*. The copied portion of the statement showed a balance of $3,737.04 on August 22, 2008, and a negative balance of $326.25 on August 27, 2008. *Id*. The $3,737.04 in the account on August 22, 2008 consisted of funds deposited for Batebi's sole benefit from Satter, Amnesty, and Mitchell. *Id*. Batebi did not give Respondent permission to disclose his financial records or bank statements to others. *Id*.

At some point between September 3 and 30, 2008, and after Batebi learned that Respondent was telling third parties that he owed her money, Batebi met with Respondent to determine what debt Respondent believed Batebi owed. FF 145. Batebi asked Respondent to identify the items and the amounts owed, and Batebi wrote down by hand what Respondent told him. *Id*. The total claimed to be owed by Batebi was $6,800. *Id.* On September 30, 2008, Respondent sent Batebi's hand-written note to Auerbach and Ms. Ledeen, via email, with the

subject line, "Hand-written note of [Batebi's] Debt," and attached a scanned copy of Batebi's note. FF 146. In the body of Respondent's September 30, 2008 email to Ms. Ledeen and Auerbach, Respondent presented her own English translation of Batebi's note. *Id*. In November 2008, Batebi's successor counsel, Eric Husketh, twice contacted Respondent requesting an accounting of Batebi's alleged debt. FF 151, 154-155. Respondent never provided such an accounting. FF 156-157.

In addition to disclosing confidential financial information to the Ledeens, Respondent also continued to advertise on her website that she represented Batebi, even though Batebi had never consented to being listed. FF 160-161; BX D5 at 40-41.

Work Authorization Application

As part of the representation, Respondent had pursued an Employment Authorization Document ("EAD") on Batebi's behalf, which is a work authorization card issued by the USCIS that enables an immigrant to obtain a Social Security number. FF 127-128. The EAD request is filed on an I-765 Form and is a relatively simple task. FF 127. Bar Counsel's expert testified that many applicants complete the work authorization application themselves by following the instructions on the Form I-765. Tr. 708-09. Although Batebi arrived in the United States on June 23, 2008, Respondent did not file an I-765 Form for Batebi until July 18, 2008, and the form that she filed was incomplete and/or contained inaccurate information. FF 128. Respondent failed to complete item number 12, which requested Batebi's "date of last entry into the U.S. (Month/Day/Year)." *Id*. Also, Respondent incorrectly entered Batebi's eligibility code in response to item 16, listing Batebi as eligible as a refuge under "(A)(04)," instead of the correct response of "(c)(11)" which identifies Batebi as entering the United States under humanitarian parole. *Id*. The submission of an incomplete I-765 Form caused delay and, thus,

harm to Batebi. FF 130 (citing Tr. 1137 (Husketh testified that Batebi needed to obtain work authorization as quickly as possible because he was "in dire financial straits")).

In a letter dated September 16, 2008, USCIS issued a "Request for Evidence" ("RFE") based on Respondent's failure to (1) file a photocopy of Form I-94, Nonimmigrant Arrival/Departure Record, which was issued when Batebi arrived in the United States, and (2) Batebi's failure to appear for his biometrics appointment. FF 131. On or shortly before September 30, 2008, Respondent forwarded the RFE with Batebi's client file to his successor counsel, Eric Husketh. *Id.* Approximately two weeks later, on or about October 14, 2008, Husketh submitted the required documentation, and on November 17, 2008, USCIS approved Batebi's work authorization. *Id*.

Asylum Application

On August, 25, 2008, the same day that Batebi first met with Hughes and signed a G-28 Form authorizing Hughes to represent him, Respondent returned to Washington, D.C. without Batebi. FF 132. The next day, August 26, 2008, Respondent filed an asylum application on behalf of Batebi. *Id.* On August 8, 2008, Batebi had signed the signature page of an asylum application; however, Batebi did not understand or know what he was signing. *Id.* Respondent failed to complete "Part A.III. Questions" on page 4 of the application, which asked for information about the current location of Batebi's relatives. FF 133. USCIS does not accept an asylum application for processing if the application is incomplete and, instead, the entire application is returned to sender. *Id*. Furthermore, the asylum application that Respondent submitted did not discuss or substantiate the persecution Batebi had suffered, and the "Personal Statement of Ahmad Batebi" in support of the application was not signed by Batebi. *Id*. Respondent also did not provide corroborating objective evidence of persecution, including

articles or other documentation. *Id*. Respondent did not notify Batebi that she had filed this asylum application on his behalf, and she did not provide him with a copy. FF 135.

Along with the asylum application, Respondent filed a Notice of Entry of Appearance as Attorney or Representative (G-28 Form), which was dated March 17, 2008. FF 135. The G-28 Form submitted with Batebi's asylum application was the same G-28 Form that had been submitted in connection with the successful application for humanitarian parole. *Id*. According to Bar Counsel's expert, the standard of care in immigration law cases requires an attorney to file a G-28 Form with each "case" he or she undertakes on behalf of the client, meaning that an attorney should file a new G-28 Form with a new application. FF 136.

On or about August 27, 2008, USCIS received Batebi's asylum application. FF 137. On September 3, 2008, USCIS issued a notice to Respondent returning the first asylum application Respondent had filed on Batebi's behalf because it was incomplete. *Id.* On or about September 8, 2008, Respondent sent a second asylum application to USCIS, without Batebi's knowledge or permission, and after he had formally terminated her as his counsel on September 3, 2008.[19] FF 123, 138. She also resubmitted the G-28 Form she signed on Batebi's behalf on March 17, 2008 that accompanied the humanitarian parole petition. FF 138. Respondent submitted the same application that she had first submitted on August 26, 2008, with

[19] Respondent and Batebi disagree as to whether Batebi had terminated Respondent's representation at this point. Batebi testified that he terminated Respondent by telephone on or before August 27, 2008 (FF 116) and that he "officially" terminated her via email on September 3, 2008. FF 123; Tr. 1039. Respondent testified that Batebi did not terminate her over the phone (FF 116) and that she did not recall receiving the September 3, 2008 email terminating her. FF 123; Tr. 1467. The Hearing Committee did not explicitly reject Respondent's explanation, but credited Batebi's testimony that he had terminated Respondent first by phone (between August 25 and 27, 2008) and then by email (on September 3, 2008). HC Rpt. at 102 (citing FF 116, 123). We do not find clear and convincing evidence to support a finding that Respondent's testimony that Batebi did not terminate her over the phone, or that she did not recall receiving the email termination notice, was false.

insufficient corroborating documentation and Batebi's unsigned personal statement. *Id*. In Batebi's second asylum application, Respondent indicated that Batebi still resided at her home "from 6/2008 to Present," when she knew that Batebi had moved out of her residence by the middle of August. *Id*. Respondent did not send Batebi a copy of the asylum application that she filed. *Id*.

As noted above, in mid-September 2008, Husketh agreed to represent Batebi *pro bono* in his asylum application. FF 140. Husketh also agreed to represent Batebi in resolving his financial dispute with Respondent and specifically instructed Respondent to cease contacting Batebi. FF 149. Hughes remained involved in the representation, answered questions and reviewed written submissions before they were filed. FF 140. In a September 30, 2008 email to Respondent, Husketh wrote: "Batebi has also asked me to request that you refrain from contacting him directly in any format, directing any correspondence to us instead." FF 149. Nevertheless, Respondent continued to contact him through telephone calls, chat sessions, and email correspondence. FF 149, 152, 153, 155. On or about October 2, 2008, Husketh, via email, asked Respondent to provide an accounting of expenditures that she had made on Batebi's behalf, including credit card statements, and a billing history from the domain or hosting service, or at least an estimate of expenditures, including the approximate date and recipient. FF 150. He repeated his request twice, in November and December 2008. FF 151, 155. Respondent did not provide an accounting to Husketh. *Id*. She never provided an accounting of the funds she received for Batebi, or spent on him. FF 157.

On July 7, 2009, Batebi filed a disciplinary complaint against Respondent, in which he states that Respondent's misconduct caused him "much emotional and financial damage." FF

163. In her August 7, 2009 response to Bar Counsel, Respondent stated her "absolute denial of any and all allegations of wrongdoing made" by Batebi.[20] FF 164.

D. The *Mahdavi* Matter (Count I)

First Communications with the Mahdavi Group

Mahdavi is an imprisoned Iranian woman who was sentenced to death for the murder of her husband. FF 165. In Iran, a defendant who has been convicted of murder may have a death sentence reversed with the consent of the victim's family, which can be bought with *diyeh,* or blood money. *Id.* In Mahdavi's case, the family of Mahdavi's murdered husband agreed to rescind her death sentence for a payment of $60,000. *Id.* Mina Jafari ("Jafari"), an attorney located in Iran, represented Mahdavi in her criminal case. *Id*. Jafari and a group of individuals (the "Mahdavi Group") began a campaign to raise awareness of Mahdavi's situation and to collect donations for the blood money. FF 166. By at least February 2008, Respondent became involved in the Mahdavi Group's effort to save Mahdavi's life. *Id.* Respondent did not enter into an attorney-client relationship with Mahdavi or Jafari, and she did not hold herself out as representing either of them. *Id*. However, Respondent publicly identified herself as an attorney when soliciting donations. FF 166-67; BX A6 at 8-11, 13-16.

PayPal

In early 2008, Respondent was aware that economic sanctions prohibited her from directly transferring funds to a bank in Iran. FF 168, 214. Knowing that she could not legally transfer funds to Iran, Respondent informed Jafari that she would deliver donations to Iran through her family members who could deposit the money into an account that Jafari had set up

[20] On November 19, 2008, Batebi attended his asylum interview with his successor counsel. FF 159; Tr. 1188-89. In a letter dated December 15, 2008, USCIS notified Batebi that his application for asylum was approved. *Id*.

in Iran. FF 169-70. On March 18, 2008, Respondent suggested that she could set up a PayPal account and link the account to a website that had been created for the purpose of publicizing Mahdavi's plight. FF 169. On April 7, 2008, Jafari and another member of the Mahdavi Group both contacted Respondent by email to ask Respondent to set up a PayPal account. *Id*. Respondent replied that she would direct her assistant to set it up and provide the information to Jafari.[21] *Id*.

After establishing the PayPal account in early April 2008, Respondent created a donation button on her website next to an article about Mahdavi that linked directly to the PayPal account. FF 167, 172. Individuals from around the world contributed donations into the PayPal account to benefit Mahdavi. FF 172. In addition to collecting donations through PayPal, Respondent solicited support for Mahdavi's cause from friends and acquaintances. FF 173-175. In April 2008, Respondent discussed Mahdavi's death sentence and the collection of blood money with Nazanin Boniadi ("Boniadi"), an Iranian-American actress and social acquaintance of Respondent. FF 173. Boniadi agreed to donate the proceeds from the sale of the dress that she had worn to the 2007 Emmy Awards to benefit Mahdavi. FF 174. On May 20, 2008, Boniadi's donation of $520 from the sale of her dress was deposited into the PayPal account. *Id.* Respondent also told Jennifer Hosny, an office assistant in Respondent's shared office suite, about

[21] During the investigation of this matter, Respondent told Bar Counsel that an activist "asked me to open an account that could be used to collect donations from supporters around the world and then given to [Mahdavi's] in-laws." FF 170. At the hearing, she testified that "they asked me to open up a PayPal account because of the fact that there were individuals outside of Iran who wanted to donate money to save this woman's life. However, they could not open a PayPal, or because of the financial restrictions, they couldn't accept, you know, obviously, payments through credit cards or donations of such." FF 170. Later, when asked if she offered to set up a PayPal account, Respondent replied: "No. This is, again, in response to their inquiry about PayPal." *Id*. In short, subsequent to her initial suggestion that a PayPal account *could* be set up, an activist asked Respondent to actually set up the PayPal account. FF 169.

Mahdavi and the campaign to collect donations to save her life. FF 175. On May 23, 2008, Hosny wrote a check for $300 made payable to the Respondent to contribute towards the cause. *Id.*

First Transfer Attempt

Respondent received a total of $2,385.05 (gross) in donations to benefit Mahdavi. FF 176. When funds were received into the PayPal account, Respondent was charged a fee, which was deducted from the donations. *Id.* Because PayPal assessed fees against the collected donations, Respondent received $2,232.23 (net) in donations. *Id.* In mid-May 2008, she made her first effort to send the donated funds to Iran. FF 177. As of May 20, 2008, there was a balance of $1,702.58 in the PayPal account. *Id.* On May 22, 2008, Respondent transferred $1,700 of that amount from the PayPal account opened at her direction to the PayPal account of Kamal Abdi ("Abdi"), an individual who agreed to take the donations to Iran. *Id.* Abdi learned that he could withdraw only $500 a month from his PayPal account, which would not allow him to deliver all of the donations to Jafari in Iran. *Id.* On the same day, May 22, 2008, Abdi transferred the $1,700 back into Respondent's PayPal account. *Id.* Paypal imposed a fee of $49.60 for the transfer. *Id.*

After her first unsuccessful attempt to send donated funds to Iran through Abdi, on or about May 23, 2008, Respondent either submitted or caused to be submitted a request to PayPal to transfer the donations from the PayPal account into Respondent's 9443 account, which Respondent had opened on May 1, 2008 and linked to the PayPal account. FF 8, 178, 179. On or about May 27, 2008, per Respondent's May 23, 2008 request, PayPal transferred $1,652.88 of Mahdavi's donations into Respondent's 9443 account. FF 180. That same day, Respondent also deposited the $300 check from Hosny for a total deposit of $1,952.88 of donations into

Respondent's personal 9443 account. *Id*. Respondent knew that these funds were not for her personal use. *Id.* No further deposits were made into the 9443 account until July 14, 2008. FF 181. Thereafter, between May 27 and June 13, 2008, all of the funds in Respondent's 9443 account were depleted, and the account fell to a negative balance of $130.42.[22] *Id*.

Inquiries from the Mahdavi Group

By May 2008, the Mahdavi Group had begun to ask for an update regarding the funds collected on Mahdavi's behalf through the PayPal account. FF 182-83. On May 20, 2008, Respondent sent Jafari and other Mahdavi Group members an email stating that "there would be $2,000 available and [we] need to find someone to take [the donations] to Iran." FF 183 (quoting BX A13 at 177). At the end of June 2008, when Jafari had not received the donations from Respondent, Jafari and other Mahdavi Group members, including Boniadi, asked Respondent for an accounting of the funds and for an explanation of why the donations had not been sent. FF 185. In spite of repeated requests from the Mahdavi Group for an accounting of the donations, Respondent never provided an accounting. FF 185. On June 30, 2008, Jafari sent another email to Respondent and other members of the Mahdavi Group stating that Respondent had not delivered the donations, asking Respondent to send the $2,000 in donations, and expressing her frustration with the situation. FF 186. By the date of Jafari's email, all of the donations that Respondent had transferred from the PayPal account into her personal 9443 account plus the $300 donation from Hosny (totaling $1,952.88) had been spent. *Id.*

After receiving Jafari's June 30 email, Boniadi sent Respondent a separate email asking why Respondent had not delivered the $2,000 in donations to Jafari in Iran. FF 187. By email,

[22] During this time period, Respondent had exclusive control over the account. Batebi did not gain access to the 9443 checking account until August 8, 2008. FF 8.

Respondent told Boniadi that Batebi would help explain what happened to the donations and that her check card was charged more than it should have been when she purchased web hosting plans for them, resulting in "approximately 10 bounced checks, which caused substantial fees." *Id*. (quoting BX A10 at 62). In fact, Respondent's purchase (or authorization of the purchase) of webhosting plans did not cause "approximately 10 bounced checks, which caused substantial fees." FF 188. The purchases that ultimately caused Respondent's account to go into overdraft status occurred on June 13, 2008, and resulted in a total of $66.00 in overdraft fees. *Id*. On June 17, 2008, Respondent incurred an additional $33.00 overdraft fee when she charged an additional $90.00 for services provided at Nails by Thuc. *Id*.

Later in July 2008, in response to further emails from Jafari and others in the Mahdavi Group, Respondent falsely claimed that she had transferred the donations into "an account which I use for this sort of thing, but that account got block/freeze [*sic*]." FF 193. Contrary to Respondent's suggestion that the funds had been deposited into a trust account or other special purpose account, Respondent had deposited the funds into her personal checking account. *Id*. Further, United Bank did not take any action to "block" Respondent's account. In a July 25, 2008 email, after Respondent had received the gift of $24,000 from Satter to support her human rights work, which she deposited into her 0878 account, Respondent wrote to Jafari and several other individuals that the issue with her bank account had been resolved, and that she could now transfer the money donated to benefit Mahdavi to the bank account that the Mahdavi Group had set up for Mahdavi in Europe. FF 195.

On or about August 6, 2008, Respondent withdrew $2,000 in cash from the 9443 account, and put the cash in a bank envelope in a cigar box in a locked safe in her parents' home "in an attempt to safeguard the funds for the Mahdavi matter." FF 196. Respondent testified that on

August 8, 2008, she attempted to transfer the donated funds to a bank account in Sweden. FF 197. The bank transfer request, however, was for only $1,600, not the full amount of donations that had been collected. *Id*. Respondent had no idea why the transfer request was for less than the full amount of the donations. *Id*. The attempted transfer was unsuccessful because Respondent did not have the name and address of the bank in Sweden. *Id*. Respondent made some efforts to obtain the missing information, such as requesting it from a member of the Mahdavi Group during a chat session. *Id*.

Also in August 2008, again in response to requests from the Mahdavi Group for an explanation regarding the funds, Respondent stated that "the money which we have collected for Mahdavi, as it has always been, is ready to be transferred." FF 199 (quoting BX A13 at 254). Contrary to Respondent's statement, from the date that Respondent transferred the PayPal donations into her 9443 account on May 27, 2008, until July 23, 2008 when she received $24,000 from Satter for Batebi, Respondent did not have the full $1,952.88 of donations available to transfer. *Id*.; *see also* FF 88. We concur with the Hearing Committee that Respondent lied to members of the Mahdavi Group in asserting that the money had always been immediately available for transfer. *See* HC Rpt. at 112; FF 199-202.

End of Efforts

By December 2008 or January 2009, Respondent had given up hope that she would be able to transfer the funds to Iran. FF 205. However, Respondent did not immediately notify the donors that she was unable to transfer the funds or return their donations. Tr. 1684-85. Even though she worked in the same office suite as Hosny, she never informed Hosny that she could not transfer or deliver the donations to Mahdavi, nor did she return Hosny's $300 donation. FF 216. Boniadi also contacted Respondent in January 2009 and asked her about the status of

Mahdavi's case and the donations Respondent had received. FF 205. Respondent answered that the donations were "sitting there in a separate account I set up for Mahdavi, I will send that to you." *Id*. At this time, according to Respondent's testimony at the hearing, cash in the approximate amount of the donations was in a cigar box in a safe in her parents' home. *Id*. In an earlier email, Boniadi had asked Respondent to return the $520 donation from the sale of her red carpet dress, and Respondent did not return the donation until over a year later. FF 206. In addition, in August 2009, on several different dates, Respondent used donations from the PayPal account to purchase $116.53 worth of jewelry on eBay for her own use in separate transactions from multiple sellers. FF 211. Respondent testified that she did not understand that she had been using donations from the PayPal account to purchase items on eBay, and explained that she had earlier used one of her debit cards linked to the PayPal account to pay for eBay items. FF 212. However, Respondent acknowledged that once she "discovered" that some of the items had been purchased with PayPal donations, she did not return funds to the PayPal account. FF 213. The Hearing Committee did not address whether Respondent was mistaken or if she testified falsely in asserting that her misuse of the funds in the PayPal account was inadvertent. On this record, we are unable to decide the question.

On May 18, 2009, Bar Counsel sent Respondent a copy of the ethical complaint lodged against her and asked her to respond in writing to the allegations. FF 214. On June 17, 2009, Respondent submitted her response, in which she falsely stated: "When I attempted to transfer the restored funds from Paypal to Jafari, I learned that economic sanctions barred direct transfers of funds from a financial account in this country to the account of an Iranian citizen in Iran." *Id*. However, Respondent knew by at least March 2008, when she first became involved in the matter, that it would be difficult for her to transfer funds directly into an Iranian bank account,

and she thus suggested that she could have her family in Tehran deposit funds into the account. *Id*. Respondent also stated that she found Jafari's insistence that Respondent transfer exactly $2,000 to be "puzzling," because, according to Respondent, she had sent Jafari "daily (sometimes hourly) updates of the PayPal transfers and transactions." FF 221. Respondent also accepted no responsibility for any wrong-doing in this matter and instead reiterated her "complete and unequivocal denial of any and all allegations of wrongdoing."[23] FF 222 (quoting BX A13 at 254).

On January 20, 2010, Respondent opened a checking account at United Bank ("2981 account") with a cash deposit of $2,020.00, which Respondent testified were Mahdavi's donations that she had kept in a cigar box. FF 218. At the hearing, Respondent testified that in January 2010 she attempted to return all of the donations by sending letters with refund checks written on her 2981 account, and she presented numerous unsigned letters dated January 29, 2010, which were addressed to individual donors, to support her testimony. FF 219. Most of the checks Respondent claimed that she sent were not presented for payment; however, ten checks dated January 27, 2010, made payable to individual donors, were presented for payment. *Id*. Respondent did not keep an accounting or record of how many checks were presented for payment and did not know how much of the donations she returned to donors. *Id*. On multiple occasions between February 2010 and August 2010, the balance in Respondent's 2981 account fell below the amount of donated funds that had not yet been reimbursed to the donors. FF 220.

[23] Although Respondent was within her rights to deny the charges, her lack of remorse is a factor to be considered in assessing the disciplinary sanction to be imposed in this matter. This factor is discussed in the Sanction section below.

E. The *United Bank* Matter (Count IV)

Purchase of Ticket

At some point, either while still living in the Mazahery household or after Batebi and Niazi had moved out, Niazi told Batebi that she did not like the United States and wanted to return to Iran. FF 224. Batebi then told Respondent that Niazi wanted to return to Iran. *Id*. Respondent testified that while she and Batebi were in a car together driving to the White House, Batebi received "another hysterical call from Ms. Niazi, making various demands." FF 225. Respondent testified that Batebi then said to Niazi, "okay, you want to go to Iran? Fine, go back." *Id*. Respondent testified that she then called her colleague, Jason Tankel,[24] who purchased a plane ticket for Niazi with credit card information using a check card which Respondent took from her wallet and handed to Batebi. *Id*.

Emails from Travelocity

Within a 24-hour period, Respondent received three emails from Travelocity about the ticket purchase for Niazi. FF 226. First, on July 28, 2008 at 3:03 p.m.,[25] Travelocity sent Respondent an email advising her that an airplane ticket had been purchased for Niazi to fly from Washington Dulles to London Heathrow on July 28, 2008, from London Heathrow to Dubai on July 29, 2008, and finally from Dubai to Tehran on July 30, 2008. FF 226. The email identified the originating flight from Washington Dulles as Continental Airlines Flight 8242 operated by Virgin Atlantic. *Id*. Respondent received a second email from Travelocity on July 28, 2008 at 3:07 p.m., confirming travel booked with Travelocity.com. FF 227. The email lists the

[24] Mr. Tankel did not testify at the hearing. FF 225.

[25] The Committee identified the time of this email as 3:30 p.m. FF 227. However, BX K1 at 2 lists the time stamp as 3:03 p.m.

originating flight as "CO 8242 28 JUL DEPARTS WASHINGTON DULLES AT 640P ARRIVES LONDON HEATHROW AT 705A OPERATED BY VIRGIN ATLANTIC," and also includes the flights from London to Dubai and Dubai to Tehran. *Id*. The email also states that the "total fare for this reservation is: 1946.80." *Id*. On July 29, 2008 at 11:21 a.m., Respondent received a third email from Travelocity informing her that a change had been made to the flight times and/or flight numbers for the recently booked travel on Travelocity for "Tahereh," and assigning a different travel ID number. FF 228. Also on July 29, and apparently in response to the emails she had received from Travelocity, Respondent communicated twice with Batebi about the ticket, asking him whether he had changed Niazi's ticket and then stating that someone may have bought a new ticket using her credit card. FF 229.

Cancellation

That same day, Respondent sent Travelocity an email stating that she had "been trying to cancel" Niazi's plane ticket for two days. FF 230. Travelocity confirmed receipt of this email. *Id*. Respondent's bank statement for the period July 21, 2008 through August 18, 2008, reflected, among other charges, an $11 Travelocity charge and a $1,946.80 charge labeled "Continenta Continent [sic] San Antonio Texas." FF 231 (quoting BX C5 at 5). These purchases were made using Respondent's 0878 account, over which she had exclusive control. *Id*. Respondent testified that she understood the $11 Travelocity charge to be the cost of cancelling Niazi's plane ticket, which she understood Travelocity had done when Respondent called Travelocity and told them to cancel the ticket because its purchase had not been authorized. FF 237. Respondent testified that she did not identify the $1,946.80 charge as the cost of Niazi's plane ticket as Respondent had no idea what it cost to fly to Iran from the United States. FF 238-39. Respondent also testified that she did not associate the $1,946.80 charge

with Niazi's plane ticket because she knew the ticket was purchased through Travelocity and she did not see Travelocity's name associated with that charge, and that she assumed "Continenta" referred to the Continental Hotel in San Antonio. FF 238. Respondent testified incorrectly that none of the Travelocity emails had indicated the cost of the ticket or identified the airline on which Niazi was to fly. FF 239. The Hearing Committee found that in an effort to cover up her misconduct, Respondent falsely testified that she did not associate the charge with the ticket purchase and that she assumed "Continenta" referred to a hotel. HC Rpt. at 129-30. We concur.

On September 6, 2008, Respondent signed and returned to United Bank a Dispute Interview Form asserting that she did not recognize the transaction at issue. FF 233. On October 6, 2008, Respondent signed a United Bank ATM/Check Card Disputed Transaction Form, on which she checked a box indicating that she "did not authorize or participate in" the transaction that resulted in the $1,946.80 charge. FF 234. United Bank refunded $1,946.80 to Respondent on October 8, 2008. FF 236. On October 9, 2008, Respondent filed an ATM/Check Card Fraud Affidavit with United Bank under the penalties of perjury claiming that she knew nothing of the $1,946.80 charge on her bank statement and that she had not authorized the charge.[26] FF 235; Tr. 199-201. United Bank attempted to investigate the legitimacy of Respondent's fraud claim but, being unable to obtain any cooperation from Continental Airlines, closed its file. FF 236.

[26] It is not clear in the record why the affidavit is dated the day after she received the credit.

III. ANALYSIS

All members of the Committee found that Respondent violated Rules 1.1(a) and (b); 1.4(a) and (b); 1.6(a)(1), (a)(2) and (a)(3); 1.7(b)(4); 4.2(a); 8.1(a); and 8.4(c). Two of the members of the Committee concluded that Bar Counsel also proved violations of Rule 8.4(b) by clear and convincing evidence. The Committee unanimously concluded that Bar Counsel did not prove the charged violations of Rules 1.3(b)(1), 1.15(a) and (b), and 8.4(d) by clear and convincing evidence.

As is fully set forth below, the Board finds that Bar Counsel proved violations of the following Rules by clear and convincing evidence:

- Rules 1.1(a) and 1.1(b) in the *Batebi* matter
- Rules 1.4(a) and 1.4(b) in the *Batebi* matter
- Rules 1.4(a) and 1.4(b) in the *Sanjari* matter
- Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Batebi* matter
- Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Sanjari* matter
- Rule 1.7(b)(4) in the *Sanjari* matter
- Rule 8.1(a) and 8.4(d) in the *Mahdavi* matter
- Rule 8.4(b) in the *United Bank* matter
- Rule 8.4(c) in the *Batebi* matter
- Rule 8.4(c) in the *Sanjari* matter
- Rule 8.4(c) in the *Mahdavi* matter
- Rule 8.4(c) in the *United Bank* matter

Unlike the Committee, we do not find that Respondent violated Rules 4.2(a) or 8.4(b) in the *Batebi* or *Mahdavi* matters.

A. Respondent Violated Rules 1.1(a) and 1.1(b) in the *Batebi* Matter.

The Hearing Committee found that Respondent violated Rules 1.1(a) and 1.1(b) in the *Batebi* matter. These Rules address the competence, skill and care that lawyers must exercise in providing legal services to their clients. Subsection (a) provides that the lawyer must "provide competent representation to a client," which is defined as "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Subsection (b) provides that a lawyer must represent a client with the "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." The competent representation standards embodied in Rules 1.1(a) and 1.1(b) "are not mere aspirations. They set standards that the legal profession is obliged to meet because lawyers often are entrusted with responsibility for some of the most important matters in their clients' lives." *In re Ukwu*, 926 A.2d 1106, 1135 (D.C. 2007).

The Board concurs with the Committee that Respondent violated Rules 1.1(a) and 1.1(b) during her representation of Batebi. HC Rpt. at 91-92. As detailed by the Committee, the work authorization request (Form I-765) that Respondent submitted to USCIS on Batebi's behalf was incomplete, contained inaccurate information, and did not include required documentation. FF 128, 131. Likewise, the asylum applications that Respondent submitted on August 26, 2008 and September 8, 2008 lacked sufficient objective corroborating documentation and did not include a signed and notarized personal statement from Batebi. FF 133, 138; Tr. 731-33. Notably, Respondent failed to cure the omissions in the original application when she sent the second asylum application to USCIS (without Batebi's knowledge or permission, and after her termination), escalating the errors into serious deficiencies in the representation. FF 138; *see In re Evans*, 902 A.2d 56, 69-70 (D.C. 2006) (per curiam) (appended Board report) (an error caused

by a lack of competence is a "serious deficiency in the representation" that violates Rule 1.1(a) when the error could have prejudiced the client). Batebi ultimately had to engage other counsel to successfully complete his applications to USCIS. FF 131, 159.

In addition, Bar Counsel's expert testified that Respondent did not meet the standard of care required for competently completing Batebi's asylum application or his work authorization application. FF 129, 134. Bar Counsel's expert also testified that many applicants complete the work authorization application themselves by following the instructions on the Form I-765, instructions with which Respondent, as counsel, should have been able to follow. Tr. 708-09. The Hearing Committee accepted this expert testimony, and so do we.

Respondent contends that she provided competent, skillful, and careful representation to Batebi, arguing that she assisted in laying the groundwork for his entry into the United States under humanitarian parole and in arranging for certain medical care on Batebi's behalf. Resp't Br. at 32-33. In essence, she argues that she did not violate Rule 1.1(a) because some of her representation was competent. However, Bar Counsel is not required to prove that Respondent's representation was *entirely* incompetent, but rather, that her lack of competence constituted a serious deficiency in the representation. As discussed above, Bar Counsel satisfied that burden here. In addition, a violation of Rule 1.1(a) need not be based on a showing of intentional misconduct, and "taking on a representation with the best of intentions is not a defense." *In re Shorter*, Bar Docket No. 194-96 at 6 (BPR Oct. 31, 1997), *recommendation adopted*, 707 A.2d 1305 (D.C. 1998) (per curiam); *see In re Nwadike*, Bar Docket No. 371-00, at 22-24 (BPR July 30, 2004), *recommendation adopted*, 905 A.2d 221, 222 (D.C. 2006). Respondent also violated the obligation under Rule 1.1(b) to represent her client with skill and care. Moreover, skill and care in a representation "requires adequate and thorough preparation, *as well as*

continuing attention to the client's needs." *In re Lyles*, 680 A.2d 408, 416 (D.C. 1996) (per curiam) (emphasis added) (appended Board Report) ("Counsel's 'dropping the ball' caused by a lack of competence violates Rule 1.1(b)."). As discussed above, Bar Counsel's expert established that Respondent did not represent her client with skill and care.

Accordingly, Respondent had a continuing duty to provide competent representation to Batebi, and Bar Counsel proved by clear and convincing evidence that she failed to meet that obligation as well as the obligation to represent Batebi with skill and care, when she filed work authorization and asylum applications that contained numerous errors and omissions.

B. Rules 1.4(a) and 1.4(b)

Rule 1.4(a) requires an attorney to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4(b) provides that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." "The guiding principle for evaluating conduct under [Rule 1.4(a)] is whether the lawyer fulfilled the client's 'reasonable . . . expectations for information.'" *In re Schoeneman*, 777 A.2d 259, 264 (D.C. 2001) (citations omitted). "To meet that expectation, a lawyer not only must respond to client inquiries but also must initiate communications to provide information when needed." *In re Hallmark*, 831 A.2d 366, 374 (D.C. 2003).

With respect to Rule 1.4(b), Comment [2] explains that Rule 1.4 imposes an affirmative duty to "initiate and maintain the consultative and decision-making process" even in the absence of requests for information from a client, and states that a lawyer "must be particularly careful to ensure that decisions of the client are made only after the client has been informed of all relevant considerations." Comment [1] explains that Rule 1.4 requires that the client be provided with

"sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ."

1. Respondent Violated Rules 1.4(a) and 1.4(b) in the *Batebi* Matter.

There is clear and convincing evidence in the record that Respondent failed to keep Batebi reasonably informed about the status of the legal matters in which Respondent represented him, and failed to explain ongoing events so that he could make informed decisions about them. Specifically, Respondent failed to notify Batebi that she filed two asylum applications on his behalf, and she did not provide Batebi with a copy of either application that she filed. FF 132, 135, 138. Batebi also testified that Respondent did not explain matters to him and, instead, would just ask him to sign documents. FF 132. Given his limited English language skills and his lack of familiarity with American laws and regulations, FF 80, Respondent's obligation to explain the content and significance of those documents to him was enhanced. As the Court noted in another case involving immigration matters:

> Explaining legal matters to their clients is an essential part of the work of lawyers. Especially in an immigration law practice like Respondent's, with its complex set of rules and procedures and clients who often do not have great experience with the legal culture of the United States and are not proficient in speaking and reading the English language, the lawyer's assistance is vital to his clients' ability to understand fully the options available to them and the consequences of each option. The obligation, imposed by Rule 1.4(b), that the lawyer "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation" has special importance in immigration law cases.

In re Ukwu, 926 A.2d at 1139-40.

Respondent argues that "there is nothing in the record that even remotely suggests a finding that Mr. Batebi would have pursued any other course of action or was otherwise prejudiced by his allegedly unsatisfactory communications with [Respondent]." Resp't Br. at 34. That argument misses the point. Whether Batebi would have selected a different course of action

is irrelevant to Respondent's obligations under Rules 1.4(a) and 1.4(b). They required her to involve Batebi in the decision-making process and to inform him of the relevant considerations before she filed the two asylum applications on his behalf. She was not free to file without first alerting him to her actions. Moreover, had Respondent communicated with Batebi about these applications, he likely would have requested that she refrain from filing them given that he was already seeking out successor counsel at the time she submitted the first application and had terminated her representation at the time she submitted the second application. FF 115-16, 123. In short, the Board agrees with the Committee that Respondent's failure to notify Batebi about critical matters that would affect his long-term residence and legal status in the United States constitutes a violation of Rules 1.4(a) and 1.4(b).[27]

2. Respondent Violated Rules 1.4(a) and 1.4(b) in the *Sanjari* Matter.

The Board agrees with the Committee that Respondent violated Rules 1.4(a) and 1.4(b) during her representation of Sanjari. Bar Counsel proved by clear and convincing evidence that as their personal relationship deteriorated, Respondent failed to adequately and professionally communicate with Sanjari about his immigration case. In particular, she wrote to Sanjari in

[27] The Committee concluded that Respondent further violated Rules 1.4(a) and 1.4(b) by virtue of her failures to inform Batebi about his financial matters and to provide an accounting. HC Rpt. at 93–94. In reaching that conclusion, the Committee analyzed whether Respondent's handling of Batebi's finances could be considered a "matter" in which she represented him within the meaning of Rules 1.4(a) and 1.4(b). *Id.* As the Committee noted, Rule 1.0(h) defines a "matter" as "any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, except as expressly limited in a particular rule." *Id.* at 93. Viewing the scope of the representation from Batebi's perspective, the Committee determined that Respondent was acting in her capacity as Batebi's attorney with respect to his finances. *Id.* at 94. That conclusion may well be reasonable, given that Batebi entrusted Respondent with handling a wide range of matters for him in addition to his immigration applications. FF 76, 79, 82, 85. However, the Board need not reach that issue, given the clear violations of Rules 1.4(a) and 1.4(b) stemming from her submission of the asylum applications.

English about important matters even though she knew he did not understand the language. FF 44, 55, 61; BX G4 at 220. Bar Counsel's expert testified that if a language barrier exists between an immigration attorney and his or her client, the attorney should use a translator to communicate with the client or, at a minimum, put the communications in writing so that the client can have them translated. FF 61. Respondent did not advise Sanjari that he should have her English-language communications translated from English into Persian, and she responded to Sanjari's inquiries about the status of his application following his asylum interview by alternatively telling him that she could not explain legal matters in Persian or that he needed to obtain new counsel to handle his case. FF 55. Prior to the asylum interview, which was a critical juncture in the application process, Sanjari requested copies of the documents she had filed on his behalf, and Respondent failed to provide them forthwith. FF 46, 51. In addition, on at least one occasion when Sanjari met with Respondent to prepare for the interview, Respondent discussed their personal relationship instead. FF 49. On another occasion, Respondent purposefully evaded contact with Sanjari when he wanted to obtain his client file. FF 51. Finally, Respondent falsely advised Sanjari during a contentious email exchange that she had already submitted the memorandum to the AO regarding the resettlement issue when in fact she did not do so until two days later. FF 63.

Respondent argues that although her "limited Farsi skills" caused her to transmit some of her communications to Sanjari in English, "it was clear that Mr. Sanjari could readily obtain assistance in translating those communications from individuals such as Roya Boroumand and,

in fact, had done so on multiple occasions."[28] Resp't Br. at 42. However, as Bar Counsel's expert testified, Respondent had a responsibility in her capacity as Batebi's attorney to ensure that she communicated effectively. FF 61. And, while she might have been able to discharge that obligation by communicating in English, she was obligated to assure that he could or would obtain translations from other sources, especially where Sanjari told Respondent on more than one occasion that he did not understand her communications to him and asked that she explain them in Persian. FF 55; BX J1 111-14. She could not discharge her obligations under Rules 1.4(a) and (b) by assuming that he could obtain the necessary translation services.

C. Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3)

Pursuant to Rule 1.6(a), "a lawyer shall not knowingly: (1) reveal a confidence or secret of the lawyer's client; (2) use a confidence or secret of the lawyer's client to the disadvantage of the client; [or] (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person." Rule 1.6(b) defines "confidence" as "information protected by the attorney-client privilege." The term "secret" under Rule 1.6(b) is broader, including "other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client." As provided by Rule 1.6(g), "[t]he lawyer's obligation to preserve the client's confidences and secrets continues after termination of the lawyer's employment." Comment [4] to Rule 1.6 explains that in order to encourage a client to communicate fully and frankly with the lawyer, "[a] fundamental principle in the client-lawyer relationship is that the lawyer holds

[28] Ms. Boroumand was the organizer of a foundation with which Sanjari worked upon his arrival to the United States. Tr. 355–56. She was copied on some of the email exchanges between Sanjari and Respondent because Sanjari looked to her as an intermediary. FF 52.

inviolate the client's secrets and confidences." Comment [5] further notes that "[p]roper concern for professional duty should cause a lawyer to shun indiscreet conversations concerning clients."

1. Respondent Violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Batebi* Matter.

The Committee correctly concluded that Respondent violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Batebi* matter by virtue of three purposeful unauthorized disclosures she made during the course of the representation. As the Committee found, Respondent told Sanjari that Batebi had escaped to Iraq after Batebi had specifically and unequivocally instructed Respondent in March 2008 not to disclose that information to anyone, including Sanjari. FF 78. Respondent's disclosure of such sensitive information at a time when Batebi represented to her that his life was in danger reflects a clear violation of her ethical duties under Rule 1.6.

Following the termination of the representation, Respondent also disclosed Batebi's financial situation to the Ledeens (Batebi's friends who had purchased his plane ticket from Iraq) and Auerbach (Respondent's contact at Amnesty International), without his permission or knowledge. Her actions included sending them copies of bank statements from the 9443 account, falsely claiming that Batebi had withdrawn funds from Respondent's account without permission (when in actuality all of the funds in the account belonged to Batebi at the time he withdrew them and he had been given joint access to the account), and falsely claiming that he owed Respondent money (even though she had not kept an accounting of the funds she had received or spent on Batebi's behalf). FF 118-22, 124, 126, 146. These unauthorized disclosures of information gained during the course of the professional relationship between Respondent and Batebi caused Batebi embarrassment and distress and caused strife in his relationship with the Ledeens. FF 126.

Lastly, Respondent violated Batebi's confidentiality when she identified him as a client on her website for her own benefit even though Batebi had not authorized her to do so. FF 160-62. As the Committee noted, "[d]isclosure of a client's identity falls within the scope of Rule 1.6(a)(1)." HC Rpt. at 97 (quoting *In re Hager*, 812 A.2d 904, 920 (D.C. 2002) ("Rule 1.6(a) applies whenever a client requests nondisclosure of the fact of representation, or circumstances suggest that such disclosure would embarrass or detrimentally affect any client.")). Although her representation of Batebi may have been publicly known, a client may request that his or her lawyer limit the disclosure of already public information. *In re Gonzales*, 773 A.2d 1026, 1031 (D.C. 2001) (holding that an attorney's duty of confidentiality "exists without regard to the nature or source of the information or the fact that others share the knowledge") (internal quotation marks and citations omitted). Respondent's use of Batebi's name on her website strikes the Board as especially opportunistic given that she had maligned him in her communications with third parties.

In defense of her actions, Respondent first argues that a finding of misconduct based on her communications with Batebi and any third parties would constitute an improper restriction upon her freedom of speech in violation of the First and Fifth Amendments to the U.S. Constitution. Resp't Br. at 34-35, 47-48. Respondent asserts that she had "a constitutionally-protected right" to respond to the criticism lodged against her by her clients and others and that she "cannot be punished . . . for any alleged false [or] prohibited statements contained in her out-of-court communications." *Id.* at 48. The Committee found her argument unavailing, as does the Board. As officers of the court, lawyers voluntarily accept a "fiduciary responsibility" to the justice system and have "a duty to protect its integrity." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1074, 1076 (1991). "Membership in the bar is a privilege burdened with conditions." *Id.*

at 1066 (quoting *In re Rouss*, 116 N.E. 782, 783 (N.Y. 1917)). The prohibition on divulging client confidences and secrets is a narrowly tailored, content-neutral regulation designed to achieve a substantial state interest, namely the fostering of candid communications between attorneys and their clients that improve the quality of legal advice clients receive, and therefore does not violate the First Amendment. In addition, the prohibition is not absolute, as Rule 1.6(e)(3) permits the disclosure of client confidences in certain delineated circumstances, including to the extent reasonably necessary to respond to specific allegations by the client concerning the quality of the lawyer's representation. For the reasons stated below, Respondent has not demonstrated that her knowing and unauthorized disclosures fall within this exception.[29]

Respondent suggests that "since the communications in question were in response to specific allegations of misconduct from Mr. Batebi," her disclosures were authorized by

[29] The two out-of-state cases cited by Respondent do not lend any support to her argument. *Carrigan v. Commission on Ethics*, 236 P.3d 616 (Nev. 2010), was a decision by the Supreme Court of Nevada in which it held that a section of the state's Ethics in Government Law requiring legislators to recuse themselves from voting on projects in which they had a disqualifying conflict of interest was unconstitutionally overbroad. This decision was overturned by the U.S. Supreme Court, as Respondent notes in her brief. Resp't Br. at 48. The Supreme Court determined that the recusal provision of the Ethics in Government Law was not unconstitutionally overbroad because legislators lack a personal First Amendment right to vote on any given matter. *Nev. Comm'n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2347 (2011). Here, Respondent's case involves an attorney discipline matter, and restrictive rules are permissible for the reasons stated above. The other case cited by Respondent is equally inapposite. In *In re Williams*, 414 N.W.2d 394 (Minn. 1987) (per curiam), the Supreme Court of Minnesota affirmed a recommendation that an attorney be publicly reprimanded and suspended for six months due to his disruptive misconduct at various pretrial and trial proceedings. In response to the attorney's argument that an imposition of discipline would chill his effective representation of clients, the court commented that the regulation of an attorney's in-court conduct does not offend the First Amendment. *Id.* at 397. In stating that a lawyer outside the courtroom may "freely engage in the marketplace of ideas and say all sorts of things," *id.*, the court was simply distinguishing statements made inside and outside of the attorney's professional capacity. The court was not suggesting, as Respondent implies, that any statements an attorney makes outside of the physical courtroom cannot be regulated by rules of professional conduct.

Comment [25] to Rule 1.6. Resp't Br. at 35. That argument is entirely without merit. Comment [25] provides:

> If a lawyer's client, or former client, has made *specific* allegations against the lawyer, the lawyer may disclose that client's confidences and secrets in establishing a defense, without waiting for formal proceedings to be commenced. *The requirement of subparagraph (e)(3) that there be "specific" charges of misconduct by the client precludes the lawyer from disclosing confidences or secrets in response to general criticism by a client*; an example of such a general criticism would be an assertion by the client that the lawyer "did a poor job" of representing the client. But in this situation, as well as in the defense of formally instituted third-party proceedings, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, *the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it*, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

R. 1.6 cmt. [25] (emphasis added). First, nothing in the record supports Respondent's assertion that her disclosures were made in response to specific allegations of misconduct by Batebi within the meaning of Comment [25] and Rule 1.6(e)(3). The disclosures regarding Batebi's financial information began on August 28, 2008 and continued until at least September 5, 2008. FF 118, 126. Batebi did not file a complaint against Respondent until July 7, 2009, almost a year later. Moreover, even if Batebi had made specific allegations against Respondent at the time of her disclosures, Comment [25] expressly explains that disclosure "should be no greater than the lawyer reasonably believes is necessary to vindicate innocence" and that it "should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it." Here, Respondent made her disclosures to third parties, not a tribunal, and she has advanced no argument that any of these individuals had a need to know the personal and confidential information she shared with them. Even assuming that she could make such an argument, she took no steps to limit or protect the information she disclosed to them.

Respondent acted knowingly and could not have been under any illusions as to the information that Batebi regarded as "confidences" or "secrets." According to her own admissions, she had a responsibility to protect the confidentiality of information derived from the attorney-client relationship. FF 77, 78. These disclosures are particularly troubling given that Respondent had encouraged Batebi to confide in her, swore to keep his secrets, and told him that she could not act as his attorney if she did not uphold that obligation. FF 77, 78. For the foregoing reasons, the Board concludes that Respondent violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Batebi* matter.

2. Respondent Violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in the *Sanjari* Matter.

The Committee determined that following Sanjari's termination of her representation, Respondent maliciously and intentionally attempted to damage his reputation when she sent correspondence between herself and Sanjari to three parties. HC Rpt. at 97-98. The Committee ruled that only one of those communications violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) because the other two did not contain information that Respondent received in the course of her professional relationship with Sanjari. *Id*. at 98-99. Bar Counsel has taken exception to the Committee's conclusion that only one of the three communications violated Rule 1.6.

First, we affirm the Committee's finding that Respondent purposefully sent the AO considering Sanjari's asylum application a copy of the termination letter she sent to Sanjari. In the termination letter, Respondent made disparaging comments about Sanjari's character, integrity, veracity, and behavior. FF 64. Respondent was not required to file a written notice of withdrawal with the AO, and her statements could have seriously prejudiced his case. FF 64. Although the AO testified that his receipt of the letter did not affect his decision regarding Sanjari's application, it caused Sanjari great distress. FF 65, 68. The Committee rejected as

false Respondent's testimony that she sent the termination letter to the AO accidentally, FF 66, taking into consideration the statement in the letter that she would be forwarding it to "appropriate agencies."[30] FF 64; *see* HC Rpt. at 139. The Hearing Committee found that Respondent intended to cover up misconduct. *See* HC Rpt. at 130. We accept that determination as supported by substantial evidence in the record. FF 64-65; *see* HC Rpt. at 129-30. Given that the letter addresses information obtained during the course of her representation of Sanjari (i.e., his supposed conduct as a client), Respondent violated Rules 1.6(a)(1), 1.6(a)(2), and 1.6(a)(3) in sending the letter to the AO.

Second, unlike the Committee, we find that Respondent further violated Rules 1.6(a)(1) and 1.6(a)(2) by forwarding an email exchange to Guberman and Lurie. The underlying communications that Respondent forwarded were among Sanjari and other parties and concerned a potential speaking engagement for Sanjari with the World Prout Assembly. FF 70. In her email forwarding the exchange, Respondent implied that Sanjari was involved with an organization that had ties to terrorism. FF 70. This accusation caused Sanjari embarrassment and could have damaged his reputation among human rights activists and supporters. FF 70. The Committee acknowledged that Respondent made these disclosures "maliciously and intentionally" but did not explain how or why it reached the conclusion that she did not receive the underlying information from Sanjari in the course of their professional relationship. HC Rpt. at 97-99.

[30] Respondent argues that this disclosure was "truly inadvertent." Resp't Br. at 43. The Board is required to defer to the Hearing Committee finding to the contrary, that her testimony that the transmittal was "accidental" was false, because it is based on an assessment of her credibility and by the termination letter itself. *See In re Elgin*, 918 A.2d 362, 373 (D.C. 2007). Moreover, "the credibility of the witnesses and the weight, value and effect of the evidence" are "factual determinations which fall primarily within the sphere customarily left to the factfinder [i.e., the Committee]." *In re Temple*, 629 A.2d 1203, 1208-09 (D.C. 1993).

The Board finds that the Committee overlooked relevant evidence that her disparaging remarks were made during the course of her representation of Sanjari and that she violated Rules 1.6(a)(1) and 1.6(a)(2) in sending the email exchange to third parties for no reason other than to damage Sanjari's reputation. Respondent received the underlying email exchange from Sanjari in February 2008, while her representation of him was ongoing and she was working to file an application for a non-immigrant visa on his behalf. FF 20, 21, 70. Between January and March 2008, Respondent was searching for additional speaking opportunities for Sanjari in the United States and was communicating with him about those opportunities as well as his visa application. BX H5 at 10, 213, 226-27, 244, 310, 312, 320-21; BX H6 at 32, 98, 99, 148-50, 180-88, 216-19, 288-89; BX I1 at 14-15, 98-109, 114-21. On or about March 24, 2008, Respondent had arranged for her and Sanjari to attend the human rights conference organized by the World Prout Assembly that was the subject of the underlying email that Sanjari had forwarded to her the previous month. FF 70, BX I1 at 403-04. Based on these facts, the Board concludes that there is substantial evidence in the record that Respondent obtained the underlying email chain during the course of her efforts to secure speaking engagements for Sanjari, which was a central aspect of their professional relationship. She therefore violated Rules 1.6(a)(1) and 1.6(a)(2) by disclosing that communication to others for no reason other than to damage his character.

D. Respondent Violated Rule 1.7(b)(4) in the *Sanjari* Matter.

Rule 1.7(b)(4) prohibits a lawyer from representing a client with respect to a matter if "the lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by . . . the lawyer's own financial, business, property, or personal interests." Comment [37] to Rule 1.7 advises:

> The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. Because of this fiduciary

> duty to clients, combining a professional relationship with any intimate personal relationship may raise concerns about conflict of interest, impairment of the judgment of both lawyer and client, and preservation of attorney-client privilege. These concerns may be particularly acute when a lawyer has a sexual relationship with a client.

For these reasons, Comment [37] further acknowledges that a sexual relationship with a client "generally is imprudent even in the absence of an actual violation of these Rules." Comment [38] likewise cautions:

> Especially when the client is an individual, the client's dependence on the lawyer's knowledge of the law is likely to make the relationship between lawyer and client unequal. A sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role and thereby violate the lawyer's basic obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant risk that the lawyer's emotional involvement will impair the lawyer's independent professional judgment.

Bar Counsel proved by clear and convincing evidence that Respondent violated Rule 1.7(b)(4) when she began a personal and sexual relationship after the onset of the representation. While Sanjari was in Norway, they expressed their romantic feelings and sexual interest in one another through emails, text messages, telephone calls, and online chat and video sessions. FF 29-32. Respondent also engaged in sexual relations with Sanjari immediately upon his arrival in the United States. FF 33, 36, 38. Furthermore, as the Comments to Rule 1.7(b)(4) anticipate, their personal relationship impaired Respondent's ability to act in Sanjari's best interest and to exercise independent professional judgment. The disintegration of their personal relationship by May 2008 caused serious tension and discord that prevented them from communicating effectively and made Sanjari reluctant to meet with Respondent. FF 47, 49-52. As discussed above, the conflict in their personal relationship created such animosity between them that Respondent refused to reasonably communicate with Sanjari about the status of his asylum

application and divulged his confidences and secrets. FF 55, 65, 70. Based on this conduct, we agree that Respondent violated Rule 1.7(b)(4).[31]

E. Respondent Did Not Violate Rule 4.2(a) in the *Batebi* Matter.

Rule 4.(2) provides that "[d]uring the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter." As Respondent observes, (Resp't Br. at 36), Comment [5] to Rule 4.2 explains that it "is primarily focused on protecting represented persons unschooled in the law from direct communications from counsel for an adverse person." The Committee determined that Respondent violated Rule 4.2(a) when she continued communicating directly with Batebi after his successor counsel directed her to refrain from doing so. HC Rpt. at 102-03. The record supports the Committee's finding that Respondent was aware that Batebi was represented by new counsel with respect to his immigration matters by at least September 26, 2008. FF 144.

However, the Committee's conclusion that she violated Rule 4.2(a) by thereafter contacting Batebi ignores the express language of the Rule, which states that it applies only when

[31] With respect to the time period while Sanjari remained in Norway, Respondent submits that "two individuals situated in different hemispheres cannot be found to engage in sexual relations." Resp't Br. at 43-44. Respondent raised a similar objection at the hearing, which the Committee characterized as "evasive[]." FF 32. The distinction Respondent attempts to draw does not overcome the fact that she engaged in sexual behavior. Regardless of whether they actually performed sexual acts or only exchanged sexually explicit and suggestive messages and photographs, the Committee's finding that Respondent engaged in a personal and intimate relationship with Sanjari that affected her professional judgment is supported by substantial evidence in the record. With respect to the sexual relations she shared with Sanjari after his arrival in the United States, Respondent baldly asserts that "those relations had no adverse effect upon her representation of Mr. Sanjari." Resp't Br. at 44. Other than this bare statement, she makes no attempt to refute the findings of the Committee that her personal, intimate relationship with Sanjari impaired her professional judgment and adversely affected Sanjari's interests, and she has failed to raise any factual dispute on this issue.

a lawyer (1) is acting "during the course of representing a client," and (2) attempts to communicate with a person known to be represented "in the matter." In this case, when Respondent communicated with Batebi following the end of their attorney-client relationship, she was not acting "during the course of representing a client," nor was she acting with respect to a "matter" in which she represented anyone at the time. In addition, she was not acting as "counsel for an adverse person" within the meaning of Comment [5]. In short, the Board does not find support for the Committee's conclusion in the language of Rule 4.2(a). Accordingly, the Board finds that Respondent did not violate Rule 4.2(a).[32]

F. Rules 8.1(a) and 8.4(d)

Rule 8.1(a) prohibits an attorney from "knowingly" making "a false statement of fact" in connection with a disciplinary matter. Comment [1] to Rule 8.1(a) states that "it is a separate professional offense for a lawyer knowingly to make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct." Rule 1.0(f)'s definition of "knowingly" requires "actual knowledge of the fact in question," but "knowledge may be inferred from the circumstances."

Rule 8.4(d) provides that it is "professional misconduct for a lawyer to . . . engage in conduct that seriously interferes with the administration of justice." To find a violation of Rule 8.4(d), there must be clear and convincing evidence that (1) Respondent's conduct was improper, *i.e.*, that Respondent either acted or failed to act when she should have; (2) Respondent's conduct bore directly upon the judicial process with respect to an identifiable case or tribunal; and (3)

[32] Respondent argues that a finding of misconduct based on Respondent's post-representation communications with Batebi would constitute an improper restriction upon her freedom of speech in violation of the First and Fifth Amendments. Resp't Br. at 35-36. Given our conclusion that Respondent did not violate Rule 4.2(a), we do not need to reach this issue.

Respondent's conduct tainted the judicial process in more than a *de minimis* way, *i.e.*, it must have potentially had an impact upon the process to a serious and adverse degree. *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). The prohibition of Rule 8.4(d) applies not only to "activities which may cause a tribunal to reach an incorrect decision, but also to conduct which taints the decision making process." *In re Keiler*, 380 A.2d 119, 125 (D.C. 1977) (per curiam) (analyzing DR 1-102(A)(5), the precursor to Rule 8.4(d)); *see also Reback*, 487 A.2d at 238-239 (attorneys violated DR 1-102(A)(5) by forging the client's signature on the complaint, even though the facts and arguments in the forged version were identical to those in the previous version validly signed by the client). Misrepresentations to Bar Counsel made during a disciplinary investigation also constitute a violation of Rule 8.4(d). *In re Boykins*, 999 A.2d 166, 172 (D.C. 2010).

1. Respondent Violated Rule 8.1(a) in the *Mahdavi* Matter.

The Committee correctly determined that Respondent made two of the four misrepresentations alleged by Bar Counsel in her June 17, 2009 response to Bar Counsel. First, Respondent falsely stated in her response that she learned she could not transfer funds to Iran because of economic sanctions when she first attempted to transfer some of the donations. Contrary to Respondent's statement, Respondent knew by at least March 2008, when she first became involved in the matter, that it would be difficult for her to transfer funds directly into an Iranian bank account. FF 168. Accordingly, that is why Respondent suggested, prior to collecting any donations, that she would arrange for a family member in Tehran to deposit the anticipated donations into an Iranian account. FF 169. We agree that she violated Rule 8.1(a) when she made this misstatement, which she did not attempt to explain or justify during the hearing. HC Rpt. at 105.

Second, we affirm the Committee's determination that Respondent further violated Rule 8.1(a) when she stated to Bar Counsel that she was puzzled by Jafari's request to receive the $2,000 in donations that Respondent had collected. *Id.* at 106. Respondent had previously informed Jafari that approximately $2,000 would be available for someone to take to Iran. FF 183. Respondent knew that she had advised Jafari and the Mahdavi Group that these funds would be available, and she therefore violated Rule 8.1(a) when she told Bar Counsel that she was puzzled by Jafari's request.[33]

2. Respondent Violated Rule 8.4(d) in the *Mahdavi* Matter.

Calling it a "close question," the Committee decided that Respondent's two violations of Rule 8.1(a) did not violate Rule 8.4(d) because there was no evidence presented at the hearing as to how these misrepresentations tainted Bar Counsel's investigation in more than a *de minimis* way or how these misrepresentations would have affected the investigation. HC Rpt. at 107.[34] Bar Counsel has taken exception to that determination. Bar Counsel argues that Respondent's false representations in the *Mahdavi* matter were self-serving attempts to deflect blame and obfuscate the facts and that they could have "potentially impacted" its investigation because they concerned the amount of the collected donations and her ability to successfully transfer the funds to Iran. BC Br. at 41. The Board agrees with Bar Counsel because "[a]ll that Rule 8.4(d) requires is conduct that taints the process or *potentially* impact[s] upon the process to a serious

[33] The Committee determined that Bar Counsel did not prove the other two alleged misrepresentations by clear and convincing evidence. HC Rpt. 105-07. Bar Counsel has not challenged that conclusion, and for the reasons set forth *supra* at note 6, the Board has not addressed these alleged violations.

[34] As Bar Counsel noted in its Brief to the Board (BC Br. at 40 n.11), the Committee appears to have misstated its conclusion on this charge in the heading for the corresponding section of its Report and Recommendation. The heading states that Respondent violated Rule 8.4(d), while the Committee reached the opposite conclusion in the paragraph that follows. HC Rpt. at 107.

and adverse degree." *In re Martin*, 67 A.3d 1032, 1052 (D.C. 2013) (quoting *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002) (emphasis in original) (internal quotation marks omitted)); *see also Reback*, 487 A.2d at 238-39 (holding that the attorneys' false signature tainted the judicial process even though their dishonesty caused the client little, if any, prejudice). The evidence of record clearly and convincingly establishes that Respondent's two statements to Bar Counsel were false. Her statements certainly had the potential to seriously impact the disciplinary proceedings against her by misleading Bar Counsel as to the amount of funds she collected and her ability at different points in time to transfer those funds to Iran. We therefore find that Respondent's misrepresentations had the potential to materially interfere with Bar Counsel's ability to understand the true facts of this case and violated Rule 8.4(d).

G. Rule 8.4(b)

Pursuant to Rule 8.4(b), "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." An actual criminal conviction based on proof beyond a reasonable doubt is not required to find a Rule violation. *See In re Slattery*, 767 A.2d 203, 207 (D.C. 2001). Rather, for purposes of Rule 8.4(b), Bar Counsel must only prove the criminal act by clear and convincing evidence. *Id*. Here, the Second and Third Amended Specification of Charges alleged that Respondent engaged in five different criminal acts: (1) forgery, when she signed Batebi's name on two checks in the *Batebi* matter; (2) making material false statements to a federal agency in violation of 18 U.S.C. § 1001, when she submitted forms to USCIS in the *Batebi* matter; (3) larceny, when she took funds from a third party in the *Mahdavi* matter;

(4) larceny, when she obtained $1,946.80 from United Bank in the *United Bank* matter; and (5) perjury, when she submitted a false affidavit in the *United Bank* matter.[35]

Bar Counsel's Rule 8.4(b) charge did not specifically allege the applicable criminal statutes. "In construing the phrase 'criminal act' for purposes of Rule 8.4(b), a court 'properly may look to the law of any jurisdiction that could have prosecuted respondent for the misconduct.'" *Slattery*, 767 A.2d at 212 (quoting *In re Gil*, 656 A.2d 303, 305 (D.C. 1995)). As the Committee determined, the vast majority of the events at issue in this case occurred in Virginia. HC Rpt. at 108. Specifically, Respondent lived and worked in Virginia and opened the bank accounts at issue at United Bank in Virginia. *See Slattery*, 767 A.2d at 212 ("The Account was opened and maintained at a bank in Washington, D.C., and we therefore look to District of Columbia law."). Both Bar Counsel and Respondent agreed that Virginia law should apply. *See* BC Post-Hearing Br. at 96-99, 100-02; Resp't Post-Hearing Br. at 21-23, 33, 43-44. Accordingly, the Committee correctly considered the forgery, larceny, and perjury allegations under Virginia law.

1. Bar Counsel Did Not Establish a Violation of Rule 8.4(b) Based on Forgery in the *Batebi* Matter.

Under Section 18.2-172 of the Virginia Code, "[i]f any person forges any writing . . . to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, [that person] shall be guilty of a Class 5 felony." The General

[35] Specifically, the Second and Third Amended Specification of Charges allege that Respondent committed (1) a criminal act of theft in the *Mahdavi* matter; (2) criminal acts of forgery and knowingly making a false representation to the federal government in the *Batebi* matter; and (3) criminal acts of perjury and larceny by false pretense and/or theft in the *United Bank* matter. The Committee concluded that Bar Counsel did not establish that Respondent made false statements to the government in the *Batebi* matter. Bar Counsel has not challenged that conclusion, and for the reasons set forth *supra* at note 5, the Board has not addressed these alleged violations.

Assembly codified the English common law of forgery when it enacted this provision. *See Campbell v. Commonwealth*, 431 S.E.2d 648, 653 (Va. 1993). At common law, the crime of forgery "is defined as 'the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of legal liability.'" *Fitzgerald v. Commonwealth*, 313 S.E.2d 394, 395 (Va. 1984) (quoting *Bullock v. Commonwealth*, 138 S.E.2d 261, 263 (Va. 1964)).[36] To be guilty of forgery, a defendant must act with a specific intent to defraud, which has been defined as acting "with an evil intent, or with the specific intent to deceive or trick." *Campbell v. Commonwealth*, 421 S.E.2d 652, 653 (Va. Ct. App. 1992) (en banc), *aff'd in part*, 431 S.E.2d 648 (Va. 1993). Intent "may, and often must, be inferred from the facts and circumstances in a particular case." *Ridley v. Commonwealth*, 252 S.E.2d 313, 314 (Va. 1979). In making this inference, the court must "'look to the conduct and representation of the defendant.'" *Rader v. Commonwealth*, 423 S.E.2d 207, 210 (Va. Ct. App. 1992) (quoting *Norman v. Commonwealth*, 346 S.E.2d 44, 45 (Va. Ct. App. 1986)).

Bar Counsel alleged, and the Committee determined, that Respondent committed the criminal act of forgery in the *Batebi* matter by forging his signature on two checks (one from Amnesty International for $3,000 and the other from Mitchell for $50) made payable to Batebi without his permission and without notifying him that she received the checks on his behalf. FF

[36] A document or instrument is one of legal efficacy "where *by any possibility* it may operate to the injury of another." *Gordon v. Commonwealth*, 41 S.E. 746, 748 (Va. 1902) (emphasis added). Therefore, to sustain a conviction under the modern forgery statute, the Commonwealth must prove that the forged or altered document operated to the *actual or potential* prejudice of another. *See Muhammad v. Commonwealth*, 409 S.E.2d 818, 821 (Va. Ct. App. 1991) (holding that the "bare possibility" of prejudice is sufficient under Code § 18.2-172). "'The purpose of the statute against forgery is to protect society against the fabrication, falsification and the uttering of instruments which *might* be acted upon as being genuine.'" *Id*. (emphasis in original) (quoting *Mayes v. State*, 571 S.W.2d 420, 427 (Ark. 1978)).

92, 94; HC Rpt. at 109-10. In reaching this conclusion, the Committee relied principally on the "salient fact" that Respondent did not tell Batebi of the checks made out in his name. *Id*. at 110. The dissenting member of the Committee concluded that Bar Counsel failed to prove by clear and convincing evidence that Respondent possessed the requisite intent to defraud when she signed Batebi's name on the two checks. Dissent at 1. According to the dissent, Respondent's failure to tell Batebi about the checks did not equate to an intent to defraud, given that Respondent did not personally benefit from her endorsement of the two checks at issue. *Id*. at 1-2. Respondent has likewise argued that Bar Counsel failed to prove that she possessed the "specific intent *mens rea* to injure Mr. Batebi" in light of the fact that (1) she had been permitted by Batebi to sign his name on other important documents, (2) she deposited the checks into their joint bank account (to which Batebi had unfettered access during the relevant time period), and (3) Batebi spent all of the proceeds from the checks. Resp't Br. at 36-37.

While the Board concludes that Respondent's actions had the potential to prejudice Batebi, we find that there is insufficient evidence in the record to rule that she had an intent to defraud Batebi when she signed the two checks in his name. The evidence in the record supports the possibility that the forged checks may have operated to the prejudice of Batebi's rights, as he was not aware of them and could have easily been deprived of their proceeds given that Respondent also used their joint account during the relevant time period. FF 83, 92, 94. However, under the law of Virginia, Bar Counsel also needed to prove that Respondent had an evil intent or specifically intended to trick or deceive Batebi. *Campbell*, 421 S.E.2d at 653. The majority of the Committee relied on her failure to inform Batebi of the checks, but that fact, by itself, does not prove by clear and convincing evidence that Respondent intended to deceive Batebi. There is no indication that Respondent intended to obtain some benefit or cause some

detriment to Batebi by way of deception.[37] For example, in *In re Asher*, 772 A.2d 1161, 1167 (D.C. 2001), cited by the majority of the Committee, the attorney had forged his clients' names on checks he received from an insurance company in settlement of their personal injury claims and deposited those funds into a checking account that he used for commingled personal and business funds and entrusted funds. The Court found that not only had the attorney forged his clients' names on the checks he received for their benefit and on related release forms, but that he had also misappropriated those funds because he never disbursed all of the money owed to them. *Id*. at 1168-69. There, the attorney deposited the funds into his own account, to which his clients did not have access, and he used the money for his own benefit. *Id.* at 1167. No such circumstances are present in this case. Accordingly, the Board concludes that Bar Counsel failed to prove that Respondent committed forgery and, therefore, failed to prove a violation of Rule 8.4(b) in the *Batebi* matter.[38]

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[37] Bar Counsel suggests that fraudulent intent "is established when there is an endorsement of a check without authority." BC Br. at 17 n.7. The Committee makes a similar statement. HC Rpt. at 109. Both Bar Counsel and the Committee cite to *Muhammad v. Commonwealth*, 409 S.E.2d 818 (Va. Ct. App. 1991), in support of that proposition. However, *Muhammad* was principally concerned with whether the check at issue in that case had "legal efficacy" because no signature of a drawer appeared on it. *Id.* at 819-21. The defendant had endorsed a stolen check and presented it at a grocery store to obtain merchandise and cash. *Id.* at 819. The court concluded that by endorsing the check, regardless of the fact that it lacked a drawer's signature and was therefore irregular on its face, the defendant accorded the instrument legal efficacy because he warranted that he had good title to the instrument and that it had not been materially altered. *Id*. at 821. The court did not examine the issue of intent in any detail and merely stated that there could be "no doubt" that the defendant intended to defraud the grocer, presumably because he presented the instrument to the clerk to obtain merchandise and cash in exchange for the check. *Id*. We do not read *Muhammad* to hold that the mere act of signing a check without authorization establishes forgery as a matter of law. In the present case, the efficacy of the checks is not at issue, and nothing in the record establishes that Respondent presented them to the bank for her own personal benefit.

[38] Had Respondent used the $3,050 for her own benefit, the Board might find differently on this charge. Her use of the funds, coupled with her lack of communication, would establish that she had a fraudulent intent in signing Batebi's name. However, the record demonstrates, and the

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2. Bar Counsel Did Not Establish a Violation of Rule 8.4(b) Based on Larceny in the *Mahdavi* Matter.

The Committee found that Bar Counsel failed to prove the predicate act of larceny in the *Mahdavi* matter. *Id*. at 112. In Virginia, larceny is a common law crime that is defined "as the wrongful or fraudulent taking of another's property without his permission and with the intent to permanently deprive the owner of that property." *Britt v. Commonwealth*, 667 S.E.2d 763, 765 (Va. 2008) (citing *Tarpley v. Commonwealth*, 542 S.E.2d 761, 763 (Va. 2001) (citations omitted)). "Intent is the purpose formed in a person's mind *at the time an act is committed*." *Commonwealth v. Taylor*, 506 S.E.2d 312, 314 (Va. 1998) (emphasis added). As noted above, intent may be inferred from the facts and circumstances, including the conduct of the accused. *Ridley*, 252 S.E.2d at 314. For larceny, one must prove that the original taking was trespassory. *Maye v. Commonwealth*, 189 S.E.2d 350, 351 (Va. 1972) (per curiam). Proof of larceny also requires that there be an asportation, or a movement of the seized goods, however slight, coupled with an intent to permanently deprive the owner of those goods. *See Bryant v. Commonwealth*, 445 S.E.2d 667, 670 (Va. 1994). The defendant's intent to steal must exist at the time the seized goods are moved. *McAlevy v. Commonwealth*, 605 S.E.2d 283, 285 (Va. Ct. App. 2004), *aff'd*, 620 S.E.2d 758, 760 (2005).[39]

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parties do not dispute, that Batebi obtained and used the $3,050. *See* App. E to BC Br. Respondent added Batebi as a co-signatory to the 9443 account and caused United Bank to issue him a debit card. FF 8. In depositing the $3,050 to their joint account, as opposed to the 0878 account, she was aware that Batebi would have access to the funds. In the circumstances, we cannot conclude that Respondent fraudulently endorsed the checks from Amnesty International and Mitchell.

[39] Grand larceny is covered by Section 18.2-95 of the Virginia Code, which provides that "[a]ny person who . . . (ii) commits simple larceny not from the person of another of goods and chattels of value of $200 or more . . . shall be guilty of grand larceny. . . ."

The Committee reasoned that Respondent's established efforts to transfer the donations that she had collected for Mahdavi were inconsistent with an intention to permanently deprive the donors of their funds at the time Respondent obtained the donations. HC Rpt. at 112. Respondent likewise argues that although the balance in the 9443 account sometimes fell below the total amount of donations deposited in that account, that fact does not establish that she committed a trespassory taking or that she had specific intent to permanently deprive Mahdavi or the donors of those donations. Resp't Br. at 29. Respondent further asserts that her attempts to safeguard the donations by storing the cash in her home, to transfer a portion of the donations to the account in Sweden opened for Mahdavi's benefit, and her later attempts in 2010 to mail refund checks to some of the PayPal donors further proves that she lacked the requisite intent to support a finding of larceny. *Id*. The Board accepts Respondent's argument and concurs in the Committee's decision, as the record does not support a finding that Respondent intended to permanently deprive Mahdavi and/or the donors of the collected funds at the time she "moved" them from the donors into the PayPal account or when she "moved" them into her own bank account.

Bar Counsel argues that the Committee erred in its decision because (1) it placed undue emphasis on Respondent's unsuccessful attempts to transfer the donations to Iran, (2) failed to accord appropriate weight to the fact that Respondent continually treated the donations as her own personal property by making purchases with them for her own benefit, and (3) overlooked the fact that she failed to take advantage of opportunities to return the donations after she determined that she was unable to transfer the money to Iran. BC Br. 34-37. As the Committee noted, Respondent lied to donors, an activist, and Mahdavi's attorney about the immediate availability of the funds and "exercised insufficient diligence" in delivering them to Mahdavi and

in later returning them to their original owners. HC Rpt. at 112; *see* FF 199-202. However, the Committee determined that Respondent made genuine efforts to transfer the donations, and we agree that those efforts undermine any conclusion that she intended to permanently deprive others of the donations.

3. Respondent Violated Rule 8.4(b) by Committing Larceny and Perjury in the *United Bank* Matter.

Bar Counsel also alleged that Respondent violated Rule 8.4(b) by committing perjury and larceny in the *United Bank* matter. Bar Counsel's charge is premised on the allegation that Respondent knowingly filed a false fraud claim with United Bank stating that a charge of $1,946.80 appearing on her bank statement was not authorized by her and that she had no knowledge of it, and thereafter accepted reimbursement of the charge. BC Br. at 41-43. Respondent swore to the following statements in signing the affidavit: (1) that she had not "given any other person authorization or permission to use [her] card to make transactions on [her] account;" (2) that she "had not negotiated the disputed transaction(s) nor did [she] authorize anyone to do so;" (3) that "the transaction(s) was/were done without [her] knowledge or consent;" and (4) that all the information given was "true and complete," to the best of her knowledge. FF 234-35 (quoting BX C7 at 13).

Section 18.2-434 of the Virginia Code defines the criminal act of perjury in pertinent part as follows:

> [I]f any person in any written declaration, certificate, verification, or statement under penalty of perjury pursuant to Sec. 8.01-4.3 willfully subscribes as true any material matter which he does not believe is true, he is guilty of perjury, punishable as a Class 5 felony.

Section 8.01-4.3 provides:

> If a matter in any judicial proceeding or administrative hearing is required or permitted to be established by a sworn written declaration, verification,

> certificate, statement, oath, or affidavit, such matter may, with like force and effect, be evidenced by the unsworn written declaration, certificate, verification, or statement, which is subscribed by the maker as true under penalty of perjury, and dated, in substantially the following form: 'I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.'

Based on a variety of evidence, the majority of the Committee determined that Respondent knew these statements to be untrue when she made them and, consequently, violated Section 18.2-434 of the Virginia Code. HC Rpt. at 114-16. The Committee further determined that the same conduct establishes that Respondent committed larceny when she knowingly accepted the $1,946.80 from United Bank with the intent of keeping it. *Id.* at 116. We concur with the Hearing Committee's conclusion.

The record clearly supports the conclusion that Respondent was aware that her check card was used to purchase an airline ticket for Niazi, as she admitted that she heard Batebi provide her card number to Jason Tankel (whom she had phoned) during their car ride and knew that it would be used to purchase a ticket for Niazi. FF 225. The majority found that Respondent committed perjury because it did not accept her testimony that she never associated the $1,946.80 charge she disputed with the ticket purchase she authorized. HC Rpt. at 114. The Committee relied on several facts in support of that conclusion, chief among them that Respondent had received emails from Travelocity identifying the cost of the ticket and replied to one of those emails in order to cancel the ticket. FF 226-28, 230. The Committee also determined that Respondent's credibility on this issue was undermined by her own misstatements, such as her email to Travelocity on the same day that she received the flight information in which she stated that she had not authorized the purchase of the ticket. FF 230. The Committee correctly found that Respondent further undermined her own credibility when she testified that she assumed the reference on her bank statement to "Continenta" [sic] referred

to a "Continental" hotel in San Antonio, an improbable explanation as the Committee suggests. HC Rpt. at 115-16.

The dissenting member of the Committee takes the position that Respondent cannot reasonably be charged with reason to know that the $1,946.80 charge on her bank statement was the cost of Niazi's cancelled airline ticket, given that (1) she thought she had cancelled the charge for the ticket she had authorized, (2) there is no reason to conclude that she had committed the price of that ticket to memory, and (3) Continental Airlines was identified only by the letters "CO" in one of the emails from Travelocity and there is no reason to conclude that Respondent knew that the cost of Niazi's airline ticket would appear on her bank statement as a Continental Airlines charge rather than as a Travelocity charge. Dissent at 7-8. The dissent finds the controlling fact to be that Respondent had every reason to believe that she had cancelled the charge for Niazi's ticket, even though she accomplished the cancellation by lying to Travelocity that the purchase was not authorized. *Id*. at 8.[40] The Board agrees with the majority's determination that substantial evidence in the record demonstrates that Respondent was aware of the cost of the flight. Notably, the first email Respondent received from Travelocity identified the originating flight as being operated by Continental Airlines, and her contemporaneous emails with Batebi establish that she was paying attention to the communications from Travelocity. FF 226, 229. As such, the Board agrees with the Committee

[40] Respondent's arguments in her brief largely mirror the dissent's position. Resp't Br. at 46-47. Respondent makes the additional argument that there is no evidence in the record that Respondent's affidavit was signed "before a person with the legal authority to administer the oath." *Id*. at 45-46 (citing *Mendez v. Commonwealth*, 255 S.E.2d 533 (Va. 1979)). The Committee determined that Respondent's argument on this point lacked merit, as does the Board. *See Waldrop v. Commonwealth*, 478 S.E.2d 723, 729 (Va. Ct. App. 1996) ("Proof that a written oath was signed and acknowledged before a notary public is sufficient to prove that a person swears under penalty of perjury to the truth of his [sworn statement]."), *rev'd on other grounds*, 495 S.E.2d 822, 825 (Va. 1998).

that Respondent violated Rule 8.4(b) in the *United Bank* matter because she committed perjury and larceny.

H. Rule 8.4(c)

Under Rule 8.4(c), a lawyer shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation." The term "dishonesty" includes not only fraudulent, deceitful or misrepresentative conduct, but also "conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990) (per curiam) (citing *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967) (quotation marks omitted)); *see also In re Jones-Terrell*, 712 A.2d 496, 499-500 (D.C. 1998) (violation found despite "lack of evil or corrupt intent"). Rule 8.4(c) does not always require proof that a respondent acted intentionally; it is sufficient if a respondent acts with reckless disregard of the truth. *Ukwu*, 926 A.2d at 1113-14. Furthermore, "dishonesty does not always depend on a finding of intent to defraud or deceive." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003) (citations omitted).

1. The Dishonesty Charges Based on Other Predicate Offenses.

Bar Counsel charged that the same conduct upon which it based its charges under Rules 8.1(a) and 8.4(b) also violates Rule 8.4(c). Of the alleged violations of Rule 8.1(a), for misrepresentations in Respondent's responses to Bar Counsel, the Committee concluded (and the Board also finds) that Bar Counsel established two of them by clear and convincing evidence. Accordingly, we concur in the Committee's determination that the conduct establishing those two violations also establishes two violations of Rule 8.4(c).

With respect to the five alleged violations of Rule 8.4(b) for commission of criminal acts, the Committee concluded that Bar Counsel did not establish that Respondent made false

statements to the government in the *Batebi* matter or that she committed larceny in the *Mahdavi* matter, but that Bar Counsel did establish that Respondent committed forgery in the *Batebi* matter and grand larceny and perjury in the *United Bank* matter. The Board's conclusions are substantially similar except that we do not find that Bar Counsel established that Respondent committed forgery in the *Batebi* matter. Accordingly, we conclude that the conduct establishing the two Rule 8.4(b) violations we have found establishes two violations of Rule 8.4(c) based on dishonesty.

2. Other Alleged Instances of Dishonesty

The Hearing Committee found that Respondent committed the following additional instances of dishonesty in violation of Rule 8.4(c). We address each allegation in turn.

a. Threats to Deport Sanjari (*Sanjari* Matter)

Sanjari testified that Respondent threatened him with deportation if he did not accompany her to Sacred Heart University. FF 41. The Committee determined that Sanjari testified credibly that Respondent's statements amounted to threats, "especially in light of (1) the troubled personal relationship between them (FF 38-39); (2) the timing of the statements, coming just after Sanjari told Respondent that he did not want to travel and share a hotel room with her (FF 40), and (3) the fact that Batebi testified that Respondent made similar threats against him (FF 86)." HC Rpt. at 118-19. The Board concurs in this finding and in the Committee's determination that making threats to a client about his immigration status constitutes dishonest conduct in violation of Rule 8.4(c).

b. Threats To Deport Batebi (*Batebi* Matter)

Batebi testified that Respondent told him the U.S. government had granted him entry based on her reputation and connections, and if he did not listen to her and do as she instructed,

she had the authority to have him deported. FF 86. The Committee found that Batebi testified credibly that Respondent's statements amounted to threats, "especially in light of (a) the troubled personal relationship between them (FF 81, 107-126); (b) the fact that other witnesses provided hearsay corroboration (FF 86); and (c) the fact that Sanjari testified that Respondent made similar threats against him (FF 41)." HC Rpt. at 119. The Board agrees with the Committee's decision that as with the threats to Sanjari, the threats to Batebi violate Rule 8.4(c) for the same reasons.

c. Concealment of Receipt of Funds (*Batebi* Matter)

The majority of the Committee concluded that Respondent was dishonest within the meaning of Rule 8.4(c) when she failed to tell Batebi about the checks from Amnesty International, Mitchell, and Satter. Unlike the crime of forgery (which we conclude Bar Counsel failed to prove by clear and convincing evidence in this case), dishonesty under Rule 8.4(c) does not require intentional conduct. Moreover, dishonesty includes not only affirmative misrepresentations but also the failure to disclose information when there is a duty to do so. "Concealment or suppression of a material fact is as fraudulent as a positive direct misrepresentation." *Reback*, 487 A.2d at 239 (quoting *Andolsun v. Berlitz Schools of Languages of Am.*, 196 A.2d 926, 927 (D.C. 1964)).

We agree with the majority of the Committee that Respondent was dishonest in not revealing her receipt of these funds. Respondent's testimony and the documentary evidence show that Satter did not want Batebi to know about the gift and wanted Respondent to control the use of the funds. FF 88. However, the Committee found credible Batebi's testimony that Respondent told him she was receiving money from the sale of his photographs and his speaking engagements. FF 84. "Respondent testified that she did not actually receive any such money

(FF 95), and she gave no explanation for why she told Batebi that she had received such money." HC Rpt. at 120. The Board again agrees with the majority of the Hearing Committee that her fabrication of the source of the funds was dishonest, and would likewise come to the same conclusion even if she had testified expressly that she did so to comply with Satter's wishes.[41]

d. Requests for Repayment of Funds (*Batebi* Matter)

The Board agrees with the Committee's well-reasoned decision that Respondent acted dishonestly when she sought repayment of a debt that she claimed Batebi owed to her, causing him distress. Respondent did not keep track of any such expenditures that may have been legitimate debts, was unable to do so at the hearing, and did not attempt to do so in her post-hearing briefs. FF 151, 156-57. However, at the same time, Respondent made a demand for a specific amount—$6,800.00—without any documentation or other support to show how she arrived at this amount. FF 145. Based on the evidence presented, she made no effort to further specify the amounts that she claimed that Batebi owed her. She never produced Batebi's hand-written note listing the amounts she had previously claimed he owed, which she had provided to the Ledeens. Indeed, she never provided the requested accounting despite multiple requests from Batebi's successor counsel. FF 151, 154-57. Moreover, at the time that Respondent claimed to be owed $6,800, the 9443 account held $3,840.14 of the $27,050.00 that had been deposited for Batebi's benefit. HC Rpt. at 122. In claiming that Batebi owed her $6,800, Respondent apparently made no effort to credit this $3,840.16 to Batebi, and "there was no explanation for

[41] The dissenting member of the Committee concluded that Respondent did not behave dishonestly in concealing the receipt of funds for Batebi's benefit, principally because she did not benefit from her actions and Satter undeniably asked Respondent not to disclose his $24,000 gift to Batebi. Dissent at 9. However, 8.4(c) does not require that a lawyer benefit from his or her dishonesty in order to find a violation. In addition, for the reasons stated above, we conclude that Respondent violated Rule 8.4(c) in misrepresenting the source of the funds that Satter donated to Batebi.

why she did not do so." Based on these facts, we agree with the Committee that when Respondent demanded that Batebi repay $6,800, she did so with reckless disregard of the amount actually owed and, therefore, violated Rule 8.4(c).

e. Representation Regarding the Status of Respondent's Bank Account (*Mahdavi* Matter)

Respondent told the Mahdavi Group that her bank account had been frozen, (FF 193), when there was no evidence presented at the hearing that it had, in fact, been frozen. *Id.* at 123. The Committee concluded that this misstatement by Respondent was intentional because (1) there was "no evidence in the record on which Respondent could have formed a mistaken, good faith belief," and (2) it is "part of a series of misstatements that Respondent made to conceal the fact that she did not have funds available for transfer to Iran in the amount of the donations received." *Id.* Accordingly, the Committee correctly found that Respondent's conduct violated Rule 8.4(c).

f. Representation Regarding Bounced Checks (*Mahdavi* Matter)

Respondent told Boniadi that the unauthorized use of funds had resulted in ten checks being bounced and substantial bank fees. FF 187. The Committee correctly determined that the evidence presented merely established that her account went into overdraft status on June 13, 2008 and that $99 in fees had been assessed. FF 188. Accordingly, we concur with the Committee's determination that this conduct constitutes dishonesty because it is part of a series of misstatements that Respondent made to conceal the fact that she did not have funds in the amount of the donations available for transfer to Iran.

g. Representation Regarding Batebi's Involvement with the Donations (*Mahdavi* Matter)

Respondent told Boniadi in an email that Batebi knew and would explain what happened to the donations that she had collected for Mahdavi. FF 187. However, as the Committee noted, there is no evidence that Batebi knew anything about the donations or ever discussed the matter with Respondent. HC Rpt. 123. Moreover, Respondent had transferred the donations into the 9443 account and spent them before Batebi became a joint account holder and received a debit card for the 9443 account. *Id.* This representation to Boniadi was made on June 30, 2008, after Respondent spent the donations and before she received the gift from Satter on July 25, 2008. *Id.* at 123-24; *see* FF 181 (between May 27 and June 13, 2008, the funds in the 9443 account were depleted and the account had a negative balance). The Board agrees with the Committee that Respondent made this dishonest misrepresentation to delay having to transfer funds in the amount of the donations to Iran and that it constitutes another violation in contravention of Rule 8.4(c).

h. Representations Regarding Status of the Donations (*Mahdavi* Matter)

Respondent told the Mahdavi Group in an email dated July 21, 2008 that the Mahdavi donations had been transferred into "an account that I use for that sort of thing." FF 193. In fact, the donations had been transferred into a personal checking account and had been spent by that date. *Id*. The Board affirms the Committee's determination that this statement was made with the intent to lull the Mahdavi Group into believing that the donations were safe and available for transfer and, therefore, violated Rule 8.4(c).

Likewise, on August 27, 2008, Respondent told one of the Mahdavi supporters by email that the money for Mahdavi, "as it has always been, is ready to be transferred." FF 199 (quoting

BX A13 at 234). Although the money may have been ready for transfer on that date, it had not always been ready for transfer. This additional misrepresentation also violates Rule 8.4(c).

i. Failure to Inform Hosny (*Mahdavi* Matter)

Respondent deposited the $300 check from Hosny but thereafter never told Hosny that she was unable to transfer the funds to Iran. FF 175. She never made an attempt to return the funds to Hosny, even though they worked in the same building. FF 216. The Committee found, and the Board agrees, that her failure to do so constitutes dishonesty. HC Rpt. at 125.

IV. SANCTION

Respondent submits that all of the allegations in the Second and Third Amended Specification of Charges should be dismissed without any finding of misconduct, or alternatively, that the Board adopt the recommendation of the dissenting member of the Committee that she be (1) suspended from the practice of law for three years, and (2) required to make restitution and demonstrate fitness to practice law as conditions of reinstatement. Resp't Br. at 49. Bar Counsel argues that the Committee properly recommended disbarment as the appropriate sanction based on the totality of Respondent's conduct, which, as Bar Counsel summarizes, includes instances of flagrant dishonesty, unauthorized use of donated funds, perjury, larceny, and knowing and vindictive disclosures of client confidences. BC Br. at 53-54. For the following reasons, the Board accepts the recommendation of the majority of the Committee that Respondent should be disbarred with restitution in the amount of $3,241.92, plus interest at the legal rate.

In making this determination, the Board relies on seven factors, including: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence

or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney has a previous disciplinary history; (6) whether the attorney has acknowledged her wrongful conduct; and (7) circumstances in mitigation or aggravation of the misconduct. *Martin*, 67 A.3d at 1053 (citing *In re Elgin*, 918 A.2d 362, 376 (D.C. 2007)); *In re Thyden*, 877 A.2d 129, 144 (D.C. 2005) (citations omitted). *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc), also notes two additional relevant factors: the need to maintain the integrity of the legal profession and to protect the public and the courts, and the need to deter future or similar misconduct by the respondent-lawyer and other lawyers. Lastly, a disciplinary sanction in any given case must also be consistent with sanctions imposed in comparable cases and not otherwise unwarranted. *See Elgin*, 918 A.2d at 373; *In re Berryman*, 764 A.2d 760, 766 (D.C. 2000); D.C. Bar R. XI, § 9(h)(1). Each of these factors is discussed below.

A. Seriousness of the Misconduct

Respondent has committed numerous serious Rule violations, including larceny and perjury in the *United Bank* matter, several instances of dishonesty across all of the matters at issue, and incompetent representation in the *Batebi* matter. Incompetent representation of a client and misrepresentations are serious violations of the Rules. *See In re Cole*, 967 A.2d 1264, 1267 (D.C. 2009). "The seriousness of the conduct at issue increases with an additional violation of the rule prohibiting dishonest conduct. There is nothing more antithetical to the practice of law than dishonesty . . . ." *In re Daniel*, 11 A.3d 291, 300 (D.C. 2011) (citing *Hutchinson*, 534 A.2d at 924). Respondent was dishonest in matters involving her clients, torture survivors with limited English skills who relied on her guidance and expertise.

Bar Counsel argues that Respondent engaged in "flagrant dishonesty," that is, "a continuing and pervasive indifference to the obligations of honesty in the judicial system . . . ."

In re Pennington, 921 A.2d 135, 141 (D.C. 2007) (quoting *In re Corizzi*, 803 A.2d 438, 443 (D.C. 2002)). In determining whether a respondent's conduct involves "flagrant dishonesty," the Court of Appeals has endorsed a "fact-specific approach [which] requir[es] [consideration of a] [r]espondent's particular misconduct, and not simply the rules that he violated." *In re Guberman*, 978 A.2d 200, 206 n.5 (D.C. 2009) (quoting Board Report). Flagrant dishonesty has been found where the respondent's dishonest conduct involves criminal activity or fraud. *See, e.g.*, *In re Cleaver-Bascombe*, 986 A.2d 1191, 1196-98, 1200 (D.C. 2010) (per curiam) (respondent submitted "patently fraudulent" voucher, lied about it under oath, and testified falsely before the Hearing Committee). The Court has also found flagrant dishonesty where the respondent's dishonest conduct was "morally reprehensible" and/or quasi-criminal in nature, particularly where the dishonesty was intended to cover up prior misconduct. *See, e.g.*, *In re Kanu*, 5 A.3d 1, 3-6, 15 (D.C. 2010) (attorney who had promised to refund money to clients if their visa applications were denied did not tell the clients that their applications had been denied, evaded their inquiries, lied to the clients and Bar Counsel about refunding the clients' money, and encouraged clients to falsify applications).

Here, the Hearing Committee found, and we agree, that Respondent engaged in the following conduct, which constitutes "flagrant dishonesty":

- Falsely stating to Bar Counsel that she learned she could not transfer funds to Iran because of economic sanctions when she first attempted to transfer some of the donations;
- Falsely stating to Bar Counsel that she was puzzled by Jafari's request to receive the $2,000 in donations that Respondent had collected;
- Committing larceny and perjury in the *United Bank* matter by filing a false ATM/Check Card Fraud Affidavit with United Bank, and obtaining a refund of the $1,946.80 airfare charge based on the false affidavit;
- Concealing from Batebi her receipt of donations from Satter, Amnesty (Auerbach) and Mitchell;

- Demanding that Batebi repay a $6,800 debt with reckless disregard for the amount that Batebi actually owed;
- In an attempt to cover up the fact that she did not have the donations available to transfer to Iran:
  - falsely telling the Mahdavi Group that her bank account had been frozen;
  - falsely telling Boniadi that the unauthorized use of funds in Respondent's account had resulted in ten checks being dishonored and substantial fees charged to her account;
  - falsely telling Boniadi that Batebi would explain what happened to the donations collected for Mahdavi, when Batebi knew nothing about this matter;
  - falsely telling the Mahdavi Group that the Mahdavi donations were in an account she used "for that sort of thing," when they were in her personal checking account; and
  - falsely telling one of the Mahdavi supporters that money donated to Mahdavi, "as it has always been, is ready to be transferred."
- Dishonestly failing to return Hosny's $300 contribution for Mahdavi after Respondent concluded that the money could not be transferred to Iran.

In addition to her flagrant dishonesty, as the Committee noted, Respondent also ceased her efforts to transfer the donations in the *Mahdavi* matter to Iran, kept the money until she retained counsel in this disciplinary matter, and then only took partial steps to return it. FF 205, 219; HC Rpt. at 112. Although we have concluded that Respondent did not intend to permanently deprive the donors of their money, her actions nevertheless had that effect and are a basis to impose disbarment.

B. Prejudice to the Clients

The Board recognizes that Respondent's clients did not suffer any ultimate legal injury by reason of her misconduct and incompetence. However, the Court has considered prejudice as an aggravating factor where, as here, a client's rights have been placed in jeopardy and he or she has been caused unnecessary delay and anxiety. *See In re Mance*, 869 A.2d 339, 341 n.6 (D.C. 2005) (per curiam). As the Committee observed, Batebi and Sanjari both testified to the distress

that Respondent's actions caused them. FF 71, 161, 163; HC Rpt. at 131. Moreover, Respondent's actions could have adversely affected Sanjari's asylum application, as the allegations contained in the letter that she forwarded to the AO could have undermined his credibility, a significant factor in asylum proceedings. *Id.* The Committee also observed that the donors in the *Mahdavi* matter were deprived of their money either temporarily or permanently, and United Bank was prejudiced when it credited the disputed funds to Respondent's account based on a false affidavit. *Id.* at 131-32. Because the Mahdavi donors and United Bank were not Respondent's clients, the Board believes that these points are more appropriately considered in the context of the need to protect the public.

C. The Presence of Dishonesty and/or Misrepresentation

As discussed above, the Board has affirmed the Committee's determination that Respondent committed multiple acts of dishonesty, including but not limited to her false testimony regarding her decision to forward her termination letter in the *Sanjari* matter to the AO and her explanation regarding her understanding of the "Continenta" charge on her bank statement in the *United Bank* matter. The Court of Appeals has previously classified the act of testifying falsely under oath as a significant aggravating circumstance. *See Cleaver-Bascombe*, 986 A.2d at 1200.

At the disciplinary hearing, Bar Counsel offered no evidence in aggravation. Tr. 1826. In its brief to the Board, however, Bar Counsel argues that Respondent's false testimony at the hearing should be considered an aggravating factor and that the Committee mistakenly declined to do so. BC Br. at 48-49. It is not entirely clear from the Committee's Report whether it considered Respondent's testimony pertaining to the AO and the "Continenta" charge as aggravating factors or whether it was just reciting these facts as instances of dishonesty. HC Rpt.

at 129-30. Bar Counsel argues that the Committee failed to consider other additional instances of dishonesty as aggravating factors, including her false testimony regarding her video contact with Sanjari while he lived in Norway, her denial of threatening Sanjari and Batebi with deportation, and her statement that she told Batebi that she had received the $3,000 check from Amnesty International. BC Br. at 48-49. The Board agrees with Bar Counsel's submission that these acts of dishonesty, taken together, should be considered a significant aggravating factor in assessing Respondent's disciplinary sanction.

D. The Presence of Multiple Violations of the Rules

Respondent violated several provisions of the Rules and committed a variety of misconduct, including allowing personal relationships to interfere with client representations, disclosure of secrets, failure to adequately communicate with her clients, and incompetence. Multiple violations of the Rules are an aggravating factor warranting a more severe sanction. *See Martin*, 67 A.3d at 1054-55.

E. Respondent's Prior Disciplinary Record

Respondent has incurred no prior discipline. "Just as a prior disciplinary record is a factor which may be considered in aggravation, so may the absence of such a record be considered in mitigation." *Hutchinson*, 534 A.2d at 924 (internal citation omitted) (citing *In re Roundtree*, 467 A.2d 143, 147-48 (D.C. 1983) (per curiam)). We have considered Respondent's lack of a disciplinary history in mitigation.

F. Respondent's Acknowledgement of Wrongful Conduct

An attorney's failure to acknowledge misconduct is a significant factor affecting a sanction recommendation. *Daniel*, 11 A.3d at 300-01. Respondent has not demonstrated any acknowledgement of her wrongful conduct other than to claim that her disclosure of her

termination letter to the AO in the *Sanjari* matter was inadvertent. The Committee observed that Respondent showed a lack of understanding of the level of care and communication required of lawyers, particularly lawyers who represent clients who have recently endured painful physical and psychological trauma and have relocated to a country with which they lack familiarity. HC Rpt. at 130-31.

G. Mitigating Circumstances

Respondent adduced no evidence of mitigating circumstances after the Committee issued its preliminary, non-binding determination that Bar Counsel had proven an ethical violation and has not argued in her brief to the Committee or to the Board that any evidence in the record demonstrates mitigating circumstances. With respect to Respondent's assertions regarding her alleged disability, (Resp't Br. at 25-26), the Board does not find any grounds on which to revisit its earlier decision. Issues relating to Respondent's alleged disability are irrelevant to Respondent's underlying misconduct because Respondent never asserted her alleged disability in mitigation, *see In re Kersey,* 520 A.2d 321 (D.C. 1987), but instead raised it only after the record closed and in the context of asserting that she was unable to defend against the charges. *See* D.C. Bar R. XI, § 13(c).

H. Protecting the Public, Courts, and the Profession

Protecting clients and the overall judicial system from the possibility of future misconduct is a principal function of the disciplinary system. *Matter of Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam). As stated in D.C. Bar R. XI, § 2(a), "[t]he license to practice law in the District of Columbia is a continuing proclamation . . . that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and an officer of the Court." Respondent's dishonesty and incompetence, coupled with her lack

of appreciation for the severity of her misconduct, causes concern that she would be poised to commit similar violations in the future.

I. Deterring Similar Conduct by Respondent and Other Attorneys

Deterring future and similar misconduct is an important purpose of the disciplinary system. *See In re Kennedy*, 542 A.2d 1225, 1231 (D.C. 1988). Respondent needs deterrence. She has engaged in significant dishonest conduct and has not learned from her mistakes. Other members of the Bar need to be placed clearly on notice that such misconduct is incompatible with retaining the privilege of remaining an attorney in the District of Columbia.

J. Comparability of Sanction

The majority of the Committee and Bar Counsel principally rely on two decisions of the Court of Appeals in reaching the conclusion that Respondent should be disbarred. The first decision, *Slattery*, 767 A.2d at 212, involved the president of the local chapter of a fraternal organization. He did not serve as the organization's counsel, but he had signatory authority over the organization's account, withdrew funds from the account for his personal use, and gave false testimony at a deposition about his use of the funds. *Id.* at 206. Once his use of the funds was detected, he reimbursed the organization. *Id.* The Court of Appeals held that disbarment was appropriate even though Slattery had not misappropriated client funds. *Id* at 219. The Court noted the Board's finding that his conduct was dishonest, because taking the funds "reflected a lack of integrity," and he "was deceitful when asked about the condition of the account." *Id.* at 214 (quoting Board Report). The Court further held that although Slattery was not in an attorney-client relationship with the fraternal organization, and therefore did not misappropriate client funds, he was in a position of trust. *Id*. at 216. The majority members of the Committee noted that Slattery (who had been previously disciplined, unlike Respondent) only returned the

funds once his misconduct had been detected, whereas Respondent made efforts to transfer the donations in the *Mahdavi* case to Iran before she spent any of the money. HC Rpt. at 133. At the same time, the majority observed that Respondent's conduct is more extensive, as it spans multiple other issues in the *Sanjari*, *Batebi*, and *United Bank* matters.

In the second decision, *In re Gil*, 656 A.2d 303, 304 (D.C. 1995), the respondent used a false document to withdraw funds from the bank account of a friend who had temporarily left the country, and used the funds to pay personal obligations and purchase an automobile. When his friend returned, he confessed to withdrawing the funds, provided a promissory note for the principal and interest, and repaid the principal. *Id.* The Court of Appeals adopted the Board's recommendation that the respondent be disbarred, quoting the Board's observation that "respondent's betrayal of the trust of [a] friend . . . shows him to be so wanting in his fundamental awareness of right and wrong that his continued membership in the Bar undermines its integrity and poses a threat to future clients." *Id*. at 306 (internal quotation marks and citations omitted). As Bar Counsel argues, unlike the respondent in *Gil*, who confessed and returned the funds, Respondent attempted to conceal her misconduct in the *Mahdavi* matter and lied about the status of the donations and her failure to deliver the funds. BC Br. at 53.

As the Committee observed, a wide range of sanctions has been imposed for acts of dishonesty, depending on the nature of the violation and the circumstances in which it occurred. Single instances of misrepresentation generally result in public censure or a brief suspension. *See, e.g.*, *In re Hawn*, 917 A.2d 693, 693-94 (D.C. 2007) (per curiam) (30-day suspension for falsifying resume and altering law school transcripts in an attempt to obtain legal employment). However, where the dishonesty is combined with other serious rule violations or where the dishonesty is more pervasive, more severe sanctions have been imposed. *See, e.g.*, *Boykins*, 999

A.2d at 167-74 (two-year suspension plus fitness for negligent misappropriation and misleading and inconsistent explanations to Bar Counsel); *Pennington*, 921 A.2d 135 at 136-39, 144-45 (two-year suspension with fitness for missing a statute of limitations, falsifying a settlement with an insurer, intentionally misrepresenting matters in negotiating with third-party health care providers, and providing a false settlement check to the client out of her own funds); *In re Arneja*, 790 A.2d 552, 556-58 (D.C. 2002) (one-year suspension for commingling, failure to turn over a client file, and misrepresentation to Bar Counsel that he had turned over the entire file, where conduct "would be misappropriation 'but for' the operation of an ethical rule" that provided a "'technical' defense" to intentional misappropriation).

In addition, where as here, the dishonesty is of a "flagrant kind," the sanction will be disbarment. *See, e.g., Kanu*, 5 A.3d at 17, n.4; *Cleaver-Bascombe*, 986 A.2d at 1200; *In re Pelkey*, 962 A.2d 268, 280-82 (D.C. 2008) (dishonesty for personal gain); *In re Goffe*, 641 A.2d 458, 465 (D.C. 1994) (per curiam) (dishonesty "was part of a plan to commit fraud intended to benefit himself").

K. Recommendation

The Board concludes that Respondent's pattern of dishonesty in three separate matters, combined with her disclosure of client secrets and other violations, warrants the sanction of disbarment. As the majority members of the Committee determined, her "ethical violations are simply too serious, too numerous, and adversely affected too many people." HC Rpt. at 137. Several of her actions taken together constitute flagrant dishonesty, such as her false statements to Bar Counsel, her false testimony at the hearing, her perjury and larceny in the *United Bank* matter, her evasion of Sanjari and Batebi when they requested information about their asylum applications, and her deceit regarding the status of the donations in the *Mahdavi* matter. Coupled

with her lack of remorse, these facts demonstrate that Respondent cannot be entrusted with professional matters, particularly those that involve vulnerable clients facing life-altering immigration issues.

The Board also affirms the Committee's decision that Respondent should be required to pay restitution in the sum of $3,241.92 plus interest at the legal rate of 6%, which accounts for the unearned reimbursement from United Bank and the Mahdavi donations she still retains in her possession. HC Rpt. at 139. To the extent Respondent is unable to identify the individual donors in the *Mahdavi* matter, and to return their donations, she should disgorge those funds to the D.C. Bar Clients' Security Fund.[42]

[42] We decline to follow the Hearing Committee's recommendation that any funds that cannot be returned to the donors be donated to a recognized human rights organization that focuses on Iran and/or women's issues. The Board does not recommend that disgorgement be made to any particular charity or non-profit organization because the selection of such an organization to receive Respondent's disgorgment could "be looked upon as indirectly putting the Court's stamp of approval on such organization." *In re Hager*, Bar Docket No. 138-04, at 29 (HC Aug. 4, 2004), *recommendation approved in relevant part*, (BPR Mar. 18, 2005), *recommendation approved*, 878 A.2d 1246 (D.C. 2005) (per curiam).

V. CONCLUSION

Having found that Bar Counsel has proven by clear and convincing evidence that Respondent committed several violations of the Rules of Professional Conduct, the Board recommends that the Court find the foregoing violations and disbar Respondent, and that as a condition of reinstatement, Respondent be required to pay the sum of $3,241.92 in restitution, plus interest at the legal rate of 6%, to United Bank and the Mahdavi donors. For reinstatement purposes, the disbarment should be deemed to run from the date Respondent files an affidavit in compliance with D.C. Bar R. XI, § 14(g). *See In re Slosberg*, 650 A.2d 1329, 1331 (D.C. 1994).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /ELF/
Eric L. Yaffe
Vice Chair

Dated: October 4, 2013

This matter was decided during the 2012-13 term of the Board. All members of the Board concur in this Report and Recommendation except for Ms. Fletcher, Ms. Butler, and Ms. Soller, who did not participate.