STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Gregory Vigue, Esq.
PRB File No. 2018-034

Decision No. 216

On or about March 28, 2018, Disciplinary Counsel and Respondent, Gregory Vigue, initiated these proceedings by filing a proposed stipulation of facts along with jointly proposed conclusions of law and a recommended sanction. The parties propose that the Hearing Panel determine, on the basis of the stipulated facts, that Respondent violated Rule 1.1 and 1.3 of the Vermont Rules of Professional Conduct and further propose that the Panel impose a public reprimand as a sanction for these violations. Disciplinary Counsel has filed a Memorandum of Law in Support of Recommended Sanction. Respondent has waived his right under Administrative Order 9 to request a hearing on the issues and, in addition, has waived his right to appeal any aspect of the Hearing Panel's determination, except to the extent that any sanction imposed by the Panel "differs from the Parties' Joint Recommendation of a Public Reprimand." Respondent's Waiver and Affirmation, 3/12/18, ¶¶ 2, 4.

Pursuant to A.O. 9, Rule 11(D)(5), the Panel accepts the parties' proposed stipulation of facts and adopts the stipulation as its own findings of fact. Based on the stipulation of facts, the Panel finds and concludes as follows:

STIPULATED FINDINGS OF FACT

Pursuant to A.O. 9, Rule 11(D)(5)(a), the Panel makes the following findings of facts to which the parties have stipulated:

1. Respondent is an attorney licensed to practice law in Vermont. He was admitted in 1994.

2. Respondent represented CK between December 2012 and June of 2017 in an immigration matter before the Executive Office for Immigration Review, Boston Immigration Court.

3. Procedural Rules in immigration courts are governed by the Immigration Court Practice Manual.

4. The Immigration Court Practice Manual is over 200 pages in length and sets forth specific requirements for motions, hearings, and address changes.

5. CK's matter was scheduled for a merits hearing on June 14, 2017 in the Boston Immigration Court.

6. CK, however, had moved to Texas in 2016, so Respondent and CK agreed she should seek to change venue of the immigration proceeding to Texas.

7. In May 2017, Respondent filed a Motion to Change Venue, which the court denied on May 12, 2017 without prejudice.

8. The Court's order denying Respondent's Motion to Change Venue states: "Denied . . . without prejudice. Provide properly completed Alien Change of Address (Form EOIR-33/1c) per Immigration Court Practice Manual 5.10(c)."

9. Immigration Court Practice Manual Chapter 5.10(c) is entitled "Motion to change venue," and sets forth a specific list of everything that must be included in a properly filed Motion to change venue.

10. Importantly, the final sentence of Chapter 5.10(c) states: "The filing of a motion to change venue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled."

11. Respondent then filed form EOIR-33 Alien Change of Address, a proposed Order, and certificate of service, along with a cover letter. This filing was received by the court June 5, 2017.

12. Respondent believed at the time that the June 5, 2017 filing complied with Immigration Court Practice Manual Chapter 5.10(c).

13. The June 5 filing did not fully comply with the requirements in Immigration Court Practice Manual Chapter 5.10(c).

14. Respondent did not receive any further order from the court regarding scheduling or venue of the merits hearing before the hearing date, and it remained scheduled in Boston for June 14, 2017.

15. Although Respondent had still not received anything from the court before the scheduled June 14, 2017 hearing, he took no steps to figure out if there was a problem requiring his attention and did not appear himself on the hearing date to explain the situation to the court, which would have brought the client's situation to light.

16. Respondent told CK she did not need to attend the hearing even though CK stated she was willing to fly in for it if necessary, and even though this advice was directly contrary to Immigration Court Practice Manual Chapter 5.10(c).

17. Causing further problems, Respondent had failed to update his address with the Court Clerk, which led to delays in receiving orders.

18. Respondent did not file the required form to notify the court of an address change.

19. Despite having received several notices and orders in a delayed fashion from the Boston immigration court, causing delays in relaying important information to his client, Respondent did not inquire with the court how to properly update his address.

20. Immigration Court Practice Manual Chapter 2.3(h) sets forth in detail an attorney's affirmative obligation to update his address and exactly how to comply with the obligation.

21. On June 14, 2017, CK was ordered removed from the United States when neither she nor Respondent appeared for the scheduled hearing.

22. Respondent did not inform CK about the order until June 26 and did not send her a copy of it until June 28.

23. CK then retained new counsel in Texas and was able to reopen the matter and change venue to Texas.

24. The November 3, 2017 Order granting CK's Motion to reopen filed by her Texas [attorney] states: "Granted. Possible ineffective assistance of counsel/sua sponte."

25. If called to testify, a practitioner in the field of immigration practice would testify that Respondent's conduct does not meet the standards for competence and diligence in the area of immigration practice.

a. The Immigration Court Practice Manual sets forth the procedural rules for practice in immigration court.

b. In immigration court, just like any other court, if a hearing has not been noticed as cancelled or rescheduled, the hearing is still scheduled for the date noticed.

c. It is not the accepted standard for immigration practice to counsel a client not to appear at a scheduled hearing.

d. It is not the accepted standard for immigration practice for an attorney of record to fail to appear at a scheduled hearing on behalf of a client.

e. It is consistent with ordinary immigration court practice and procedures that failure to appear at a scheduled hearing with no inquiry or explanation by the attorney could result in a deportation order issuing.

26. On December 12, 2017 the probable cause hearing panel returned a finding of probable cause that Respondent violated Rule 1.1 and Rule 1.3.

27. Respondent's acts and omissions were not intentional.

28. Respondent has been entirely cooperative throughout the disciplinary process.

29. Respondent has no prior disciplinary history.

CONCLUSIONS OF LAW

Rule 1.1

Rule 1.1 states: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The comments to Rule 1.1 observe that "[c]ompetent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners [and] includes adequate preparation." V.R.Pr.C. 1.1, Comment 5.

A lawyer's duty to provide competent representation extends to the advice given to clients relating to procedural requirements and the lawyer's compliance with such requirements. *See, e.g., People v. Miller*, 35 P.3d 689, 691 (Colo. O.P.D.J. 2001) (finding violation of Rule 1.1 where respondent advised clients that the court would grant a continuance if they failed to appear for trial despite the fact that one client had been subpoenaed for trial and where respondent failed to advise clients of "the possible consequences which could arise from such conduct"); *In re Moore*, 494 S.E.2d 804, 807 (S.C. 1997) (respondent's failure to appear at scheduled court hearing violated Rule 1.1); *Kentucky Bar Ass'n v. Trumbo*, 17 S.W.3d 856, 856 (Ky. 2000)

(respondent violated Rule 1.1 by failing to comply with scheduling orders, resulting in dismissal of client's case).

Respondent failed to provide competent representation to his client, CK, in connection with her immigration case. Respondent's written submissions to the court on behalf of CK failed to comply with the pertinent procedural requirements. Respondent initially failed to file the necessary documents in support of his original motion to change venue, as specified in the Immigration Court Practice Manual Chapter 5.10(c), resulting in denial of the motion without prejudice. The amended motion to change venue he subsequently filed on June 5, 2017 also did not comply with the requirements of the Practice Manual. *See* Finding of Fact ¶ 13. The procedural requirements for filing a motion to change venue were expressly set forth in the Practice Manual and readily ascertainable.

In addition, Respondent erroneously advised his client that she did not need to appear at the scheduled merits hearing and he failed to attend the hearing as counsel of record, resulting in the court's issuance of a deportation order against his client. At the time of the scheduled merits hearing, a ruling had not yet been issued on the motion to change venue. Respondent's failure to attend the merits hearing and his advice to his client that she need not appear was contrary to the express requirement set forth in Chapter 5.10(c) that "until the motion [for change of venue] is granted, parties must appear at all hearings as originally scheduled." Finding of Fact ¶ 10. This requirement was expressly set forth and readily ascertainable and, based on that provision, the potential adverse consequence of failing to attend the hearing was apparent. Knowledge of and compliance with these procedural requirements was reasonably necessary for Respondent to provide competent representation to his client. Respondent's conduct amounted to incompetent representation.

Disciplinary Counsel has also asserted that Respondent's failure to update his address with the immigration court, which resulted in delays in his receipt of the court order denying the initial motion to change venue and the later order deporting CK and which delayed his notifications to his client, amounted to incompetent representation in violation of Rule 1.1. When considered together with his deficient filings in CK's case, Respondent's failure to update his address is certainly of concern. It delayed Respondent's notification to his client and impacted his ability to proceed expeditiously in the case. Moreover, one might argue that his failure to update his address despite his awareness that his address on file was not current and had resulted in delayed notifications from the court, *see* Findings of Fact ¶¶ 17-19, justifies finding a violation of Rule 1.1. One could argue that a prudent lawyer who was filing a motion to change venue nine days before a scheduled merits hearing, *see* Findings of Fact ¶¶ 5 & 11, and who was aware that his address on file was not up to date, would take steps to correct the address.

On the other hand, the stipulated facts do not reveal any concrete harm to the client resulting from Respondent's failure to update the address, and the delays in Respondent's notifications to the client were not extensive.[1] Given that the underlying purpose of the Rules of Professional Conduct is to protect the public, one can argue that absent some discrete harm attributable to a failure to update an address on file, there is not a sufficient basis to find a violation. Here, the initial denial of the motion to change venue and the subsequent deportation order resulted from Respondent's other conduct and the stipulated facts do not reveal any

[1] The stipulation indicates that twelve days elapsed between the issuance of the deportation order and Respondent's notification to his client. *See* Finding of Fact ¶ 22. The stipulation does not state when Respondent received the order from the court during that time period. In any event, this is not a case where a communication between a lawyer and client ceased for a prolonged period of time, with adverse consequences resulting.

concrete harm to the client attributable to Respondent's failure to update his address. Under the factual circumstances presented, the Panel concludes that Respondent's failure to update his address on file (and the associated modest delay in notification to Respondent's client) did not by itself rise to the level of a violation of Rule 1.1.[2] In sum, Respondent's deficient submissions to the court, along with the faulty advice he gave his client and his own failure to attend the merits hearing, violated Rule 1.1.

Rule 1.3

Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." V.R.Pr.C. 1.3. The comments to the rule observe that "[a] client's interests often can be adversely affected by the passage of time . . . . Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." *Id.*, Comment 3. As suggested by the comment, actual prejudice to the client is not a required element of a violation under Rule 1.3. *See, e.g.*, *Attorney Grievance Comm'n v. Davis*, 825 A.2d 430, 448 (Md. Ct. App. 2003) ("no harm, no foul" defense not available under Rule 1.3); *In re Seaworth*, 603 N.W.2d 176, 180 (N.D. 1999) (prejudice not required for Rule 1.3 violation).

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[2] In *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 10, 181 Vt. 625, 925 A.2d 1026, a lawyer who had missed a deadline to file an appeal was found not to have violated Rule 1.3 where the right to appeal was subsequently reinstated as a result of a post-conviction relief proceeding brought on behalf of the affected client. In that case, the Court concluded that "absent injury, or other factors, a single mistake does not show a lack of reasonable diligence or promptness," *id.* ¶ 10, reasoning that to conclude otherwise "would result in bringing all instances of an attorney's inadvertence or negligence within the realm of misconduct." *Id.* The Court reached this conclusion notwithstanding the delay that resulted to respondent's client from missing the deadline. Although *PRB Docket No. 2006-167* was decided under Rule 1.3, its reasoning would seem to support a broader principle that some tangible harm or potential harm should be present to find a violation for lack of competency under Rule 1.1. Otherwise, all sorts of isolated and non-consequential oversights on the part of attorneys would require the imposition of discipline, without any corresponding benefit to public protection. In the instant case, there was some delay in client notification, but those delays were modest and did not cause the issuance of the deportation order.

Respondent failed to act diligently and promptly in his representation of his client. His failure to attend the merits hearing violated Rule 1.1. *See, e.g., In re Andres*, 2004 VT 71, ¶ 8, 177 Vt. 511, 857 A.2d 803 (finding violation of Rule 1.3 where respondent failed to attend a scheduled pretrial conference.) Moreover, the fact that the immigration court ultimately vacated the deportation order against CK and ordered the requested change of venue does not relieve Respondent of this violation.

The Panel concludes that *In re PRB Docket No. 2006-167*, 2007 VT 50, 181 Vt. 625, 925 A.2d 1026, is distinguishable. In that case, the Court held that a lawyer who missed an appeal deadline did not violate Rule 1.3 because his client's right to appeal was ultimately reinstated through a post-conviction relief proceeding. The Court enunciated a general principle that "absent injury, or other factors, a single mistake does not show a lack of reasonable diligence or promptness," *id.* ¶ 10, while also cautioning that "[t]his decision should not be read to excuse single negligent acts or omissions by attorneys in all situations." *Id.* In applying this principle, the Court reasoned that "respondent's error was appropriately remedied through the post-conviction relief process and none of the goals of attorney discipline would have been served by imposing discipline here." *Id.* For two reasons, the circumstances presented in the present case are distinguishable.

First, unlike the single-mistake circumstance presented in *Docket No. 2006-167*, this case involves multiple related instances of negligence on the part of Respondent: his failure to follow the requisite procedures in filing both the initial motion to change venue and the subsequent amended motion to change venue; his faulty advice that his client did not have to attend the scheduled merits hearing; his failure to track the status of his motion to change venue before the scheduled hearing; and, in the absence of a favorable ruling on the motion, his failure to attend

the scheduled merits hearing (whether or not his client was in attendance). This case does not involve an isolated instance of negligence, but rather a series of negligent acts and omissions.[3]

In addition, the facts of this case suggest that the harm to Respondent's client was not fully remedied by the later decision vacating the deportation order. Unlike the client in *Docket No. 2006-167*, who received representation from the Prisoners' Rights Division of the Defender General's Office in connection with the subsequently required post-conviction relief proceeding – presumably at no cost to the client – CK was required to retain private counsel to address the deportation order. CK presumably suffered financial harm as a result – not to mention the emotional harm of receiving a deportation order – that was not remedied by the immigration court's eventual decision to rescind the deportation order. Thus, even assuming Respondent's conduct were viewed as a single instance of negligence – and it cannot reasonably be viewed as such – CK's need to hire a private attorney to remedy Respondent's negligence distinguishes this case from *Docket No. 2006-167*.

In sum, Respondent's conduct violated Rule 1.3.

SANCTIONS DETERMINATION

The Vermont Rules of Professional Conduct "are 'intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar.'" *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991)). The purpose of sanctions is not "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by

[3] For the reasons stated previously, the Panel concludes that Respondent's failure to update his address on file with the court, while problematic, did not by itself rise to the level of a violation of Rule 1.3. The violation of Rule 1.3 in this case was due to Respondent's other conduct.

deterring future misconduct." *In re Obregon*, 2016 VT 32, ¶ 19, 201 Vt. 463, 145 A.3d 226 (quoting *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)).

Applicability of the ABA Standards for Imposing Lawyer Sanctions

Hearing panels are guided by the ABA Standards when determining appropriate sanctions for violation of the Vermont Rules of Professional Conduct:

> When sanctioning attorney misconduct, we have adopted the *ABA Standards for Imposing Lawyer Discipline* which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

In re Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803.

"Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction. *** This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461.

The Duty Violated

The ABA Standards recognize a number of duties that are owed by a lawyer to his or her client. *See Standards for Imposing Lawyer Sanctions* (ABA 1986, amended 1992) (*"ABA Standards"*), Theoretical Framework, at 5. Other duties are owed to the general public, the legal system, and the legal profession. *Id.* In this case, Respondent violated duties owed to his client under Rule 1.1. and Rule 1.3 – the duty of competence and the duty of diligence, respectively.

Mental State

"The lawyer's mental state may be one of intent, knowledge, or negligence." *ABA Standards*, § 3.0, Commentary, at 27. For purposes of the sanctions inquiry, "[a lawyer's] mental state is [one] of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result." *Id.*, Theoretical Framework, at 6. The mental state of

"knowledge" is present "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result." *Id.* The mental state of "negligence" is present "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id.*; *see also id.*, at 19 (definitions of "intent," "knowledge," and "negligence").

The Supreme Court has observed that "[t]he line between negligent acts and acts with knowledge can be fine and difficult to discern . . . ." *In re Fink*, 2011 VT 42, ¶ 38. In addition, the Court has concluded that while a lawyer's constructive knowledge, in contrast to a lawyer's subjective belief, may support a determination that an ethics violation has occurred, "[i]n the context of sanctions . . . knowing conduct does not encompass both knew or should have known." *Id.* ¶ 38. In reaching this conclusion, the Court has reasoned that [i]f the definition [of the term "knowledge"] extended to constructive knowledge, then no misconduct would be negligent because rather than failing to heed a substantial risk we would always assume the lawyer should have known the substantial risk." *Id.* ¶ 41. Thus, "while a lawyer's good faith, but unreasonable, belief that his actions are not misconduct is not a defense to a violation, such an error can be a factor in imposing discipline." *Id.*

Here, the Panel concludes that Respondent's state of mind was that of negligence. He was not aware that his motion to change venue was procedurally deficient or that his failure to attend the hearing would result in the issuance of a deportation order against his client. Respondent's conduct did not meet the accepted standard of care that a reasonable lawyer would exercise in that situation. But he believed – albeit erroneously – that his submission of an amended motion to change was sufficient to produce a continuance of the scheduled merits hearing.

Injury and Potential Injury

The ABA Standards consider "the actual or potential injury caused by the lawyer's misconduct." *ABA Standards*, § 3.0(c), at 26. The term "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id.*, Definitions, at 9. The term "potential injury" refers to harm that is "reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id.* Under the ABA Standards, "[t]he extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." *Id.*, at 6.

Respondent's misconduct resulted in injury to Respondent's client. The immigration court issued a deportation order against the client. Although the immigration court subsequently vacated the order and changed venue to Texas, the order placed CK in serious legal jeopardy while it remained pending. The deportation order was issued in June 2017 and was not vacated until November 2017. During that period of time, the client had no guarantee that the order would in fact be rescinded. Respondent's client remained at risk of deportation. Moreover, the issuance of the order must have resulted in stress and anxiety to the client, and it caused substantial delay in the client's immigration proceeding. *See, e.g., In re Scholes*, 2012 VT 56, ¶ 3, 192 Vt. 623, 54 A.3d 520 (finding violation of Rule 1.3 due to delay in the prosecution of bankruptcy proceedings and observing that "there does not appear to be any financial injury, but there is the very real anxiety felt by the clients who wanted to move their bankruptcy petitions to conclusion"). Finally, Respondent's client had to hire a new attorney to undo the harm that Respondent caused through his misconduct, presumably resulting in additional expense to the client. For each of these reasons, the Panel concludes there was substantial injury to the client.

Presumptive Standard under the ABA Standards

With respect to the violation of Rule 1.1, the Panel concludes that Standard 4.53(a) is applicable. It provides that "[r]eprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client." Respondent's understanding was clearly deficient with respect to the procedural requirements for a motion to change venue that were set forth in the immigration court's practice manual. He also failed to understand his obligation to attend a scheduled hearing in order to protect his client's interests absent cancelation of the hearing.

With respect to the violation of Rule 1.3, the Panel concludes that Standard 4.43 provides the most pertinent guidance. It provides for a reprimand to be issued "when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." Respondent's failure to appear at the scheduled immigration merits hearing resulted in the issuance of a deportation order. Respondent failed to act with reasonable diligence and his negligence resulted in injury to his client. Standard 4.43 has been applied as the presumptive standard under similar circumstances. *See, e.g.*, *In re Andres*, 170 Vt. 599, 601, 749 A.2d 618, 620 (2000) (based on respondent's failure to file a timely appeal caused his client to lose her right to appeal from an adverse decision); *In re Blais*, PRB Decision # 194 (File No. 2015-084) (based on respondent's failure to respond to initial discovery requests and a subsequent motion to compel discovery, and failure to comply with the court's discovery orders, resulting in issuance of sanction); *In re Farrar*, PRB Decision No. 82 (PRB File No. 2005-203) (based on respondent's failure to provide advice concerning the client's obligations following an unsuccessful appeal and failure to attend a contempt hearing that resulted in a ruling against his client).

The Panel concludes that the standard providing for a private admonition (Standard 4.44) is too lenient under the facts presented. It applies when a respondent's negligence results in "little or no actual or potential injury." As discussed above, the injury caused in this case was substantial and therefore merits a more serious sanction. Likewise, the Panel concludes that the standard providing for a suspension (Standard 4.42) is too harsh. That standard requires either a mental state of "knowledge" on the part of the lawyer – § 4.42(a) – or a "pattern of misconduct" – § 4.42(b). Neither knowledge nor a pattern of misconduct is present in this case. Respondent's state of mind was that of negligence, not knowledge. And his conduct involved one client and centered on one instance of representation – his handling of the motion to change venue and the related merits hearing that had been scheduled. *Cf. In re Hongisto*, 2010 VT 51, ¶¶ 3 & 15, 188 Vt. 553, 998 A.2d 1065 (applying Standard 4.42(a) where respondent took no action on behalf of client after receiving a retainer and failed to respond to "between forty and fifty phone messages" from client); *In re Blais*, 174 Vt. 628, 631, 817 A.2d 1266, 1270 (2002) (applying the suspension standard in § 4.42 where respondent engaged in "repeated instances of neglect of client matters" in connection with five separate client matters). In sum, the public reprimand standard in § 4.43 is the appropriate presumptive standard.

Aggravating and Mitigating Factors Analysis

Next, the Panel considers any aggravating and mitigating factors and whether they call for increasing or reducing the presumptive standard of a public reprimand. Under the ABA Standards, aggravating standards are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." *ABA Standards*, § 9.21, at 50. Mitigating factors are "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Id.* § 9.31, at 50-51. Following this analysis, the Panel must decide on the ultimate sanction that will be imposed in this proceeding.

(a) Aggravating Factors

Based on the stipulated facts presented, the following aggravating factors under the ABA Standards are present:

§ 9.22(d) (multiple offenses) – Respondent committed multiple violations of the Rules of Professional Conduct. His conduct violated Rule 1.1 and Rule 1.3.

§ 9.22(i) (substantial experience in the practice of law) – At the time of the conduct in question, Respondent had practiced law for approximately twenty-three years.

(b) Mitigating Factors

Based on the stipulated facts presented, the following mitigating factors under the ABA Standards are present:

§ 9.32(a) (absence of a prior disciplinary record) – Respondent has no record of any prior disciplinary action having been taken against him.

§ 9.32(b) (absence of dishonest or selfish motive) – There is no evidence suggesting that Respondent acted on the basis of a dishonest or selfish motive. Rather, it appears that Respondent acted based on a simple failure to understand the procedural requirements that applied under the circumstances.

§ 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings) – The parties have stipulated that Respondent was cooperative during the course of the disciplinary process.

(c) Weighing the Aggravating Mitigating Factors

The mitigating factors slightly outweigh the aggravating factors in number. However, Respondent's cooperation in the disciplinary process is entitled to relatively little weight because Respondent has a duty under V.R.Pr.C. 8.1(b) to cooperate in connection with any disciplinary investigation. *See, e.g., In re Richmond's Case*, 872 A.2d 1023, 1030 (N.H. 2005) ("[W]e do not

ascribe significant weight to this factor because a lawyer has a professional duty to cooperate with the committee's investigation"). Also, the presence of multiple offenses merits considerable weight. The ABA Standards recommend that in cases involving multiple offenses "[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." *ABA Standards*, at 7. And, finally, the Panel notes the serious nature of Respondent's misconduct and the resulting injury to Respondent's client – the issuance of a deportation order that remained pending for several months. In sum, the Panel concludes that the presumptive sanction of public reprimand should neither be increased nor decreased based on the aggravating and mitigating factors presented.

* * *

Having in mind that "[i]n general, meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanction varies so widely between cases," *In re Strouse*, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (Dooley, J., dissenting), the Panel has considered whether past disciplinary determinations are consistent with the issuance of a public reprimand in this case. In *In re Andres*, 170 Vt. 599, 749 A.2d 618 (2000), the Supreme Court approved a public reprimand where, in one case, the respondent had neglected the filing requirements associated with a client's appeal resulting in dismissal of the appeal and, in another case, the respondent's conduct had resulted in delays in a family law proceeding. *Id.* at 601. The Court noted the mitigating factors that the respondent did not have a prior disciplinary record at the time and had not acted based on any selfish or dishonest motive. *Id.* at 603. Respondent in this case is similarly situated. His state of mind at the time of the misconduct was that of negligence

and he lacks any prior record or selfish motive.[4]

In *In re Blais*, PRB Decision # 194 (File No. 2015-084), the hearing panel issued a public reprimand for violations of Rule 1.3 based on respondent's failure to respond to initial discovery requests and a subsequent motion to compel discovery and for sanctions, and his failure to comply with the court's discovery orders, resulting in a discovery sanction being issued against his client. In that case, the trial court had issued a sanction barring respondent's client from presenting expert testimony at trial and, while respondent's subsequent motion to lift the sanction was pending, the parties reached a settlement agreement in the case. The panel concluded that the respondent's mental state was that of negligence and that a public reprimand – as opposed to a private admonition – was appropriate because respondent's conduct had resulted in significant potential injury to the client in the form of the sanction that was issued by the Court, notwithstanding the subsequent settlement by the parties. *Id.* at 11-13. As was the case in *Blais*, Respondent in the instant case negligently failed to follow procedural requirements and there was significant potential injury to Respondent's client from the deportation order.

In *In re Farrar*, PRB Decision No. 82 (PRB File No. 2005-203), the panel found that respondent violated Rule 1.3 by failing to provide his client with advice concerning the client's obligations following an unsuccessful appeal and by failing to attend a subsequent contempt hearing that resulted in a ruling against his client. While noting that the respondent took steps to

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[4] The 2000 *Andres* case is distinguishable from a subsequent disciplinary case involving the same respondent. In *In re Andres*, 2004 VT 71, 177 Vt. 511, 857 A.2d 803, the Court affirmed the imposition of a two-month suspension based on respondent's failure to attend a pre-trial hearing and failure to oppose a motion for summary judgment filed against his client. The facts in that case revealed that respondent had intentionally decided not to take action on behalf of his client. The Court relied on that factual circumstance, as well as the fact that respondent had been disciplined previously on three occasions, two of which involved neglect of a client matter. *See id.* ¶ 15; *see also id.* ¶ 14 ("Suspension is generally appropriate when a lawyer *knowingly* fails to serve a client's interests causing real or potential injury or when a lawyer has been reprimanded previously for the same or similar conduct.") (emphasis added). By contrast, Respondent in the instant case did not act knowingly and has no prior disciplinary record.

remedy the financial injury that resulted to his client from the contempt motion, the panel determined that the respondent had been negligent and that the potential financial injury to the client that had resulted from the contempt finding, along with the client's "anxiety, stress, and frustration" called for a public reprimand. *Id.* at 3. It further concluded that the aggravating and mitigating factors were "not of sufficient weight to cause us to deviate from the recommended sanction under [ABA Standard] 4.43." *Id.* Consistent with the rationale in *Farrar*, Respondent in the instant case failed to attend a hearing on behalf of his client, with an adverse outcome resulting; the injury to Respondent's client in the form of the deportation order was ultimately avoided but constituted serious potential injury until the order was vacated; the deportation order necessarily caused Respondent's client stress and anxiety; Respondent's state of mind was that of negligence; and the panel has concluded that the mitigating factors are not sufficient in number or weight to justify a reduction in the presumptive sanction of a public reprimand.

In sum, the Panel concludes that issuance of a public reprimand in the instant case is consistent with past disciplinary determinations. Respondent will be public reprimanded for his misconduct.

ORDER

Pursuant to A.O. 9, Rule 11(D)(5)(a)(ii), the Panel accepts the parties' proposed stipulation of facts and adopts the stipulation as its own findings of fact. It is further ORDERED, ADJUDGED and DECREED that the Respondent, Gregory Vigue, is publicly reprimanded for his violation of Rules 1.1 and 1.3 of the Vermont Rules of Professional Conduct.[5]

Dated: June 6, 2018.

Hearing Panel No. 10

By: _____
Jonathan M. Cohen, Esq., Chair

By: _____
Mary C. Welford, Esq.

By: _____
Roger Preuss, Public Member

[5] The Panel is aware that a period of probation has been included in some disciplinary proceedings involving a lawyer's neglect of client matters. *See, e.g.*, *In re Blais*, PRB Decision # 194 (File No. 2015-084) at 17 (imposing public reprimand and period of probation; *In re Di Palma*, PRB Decision # 44 (File No. 2002-031). In those cases, the panels determined on the basis of the specific facts presented that some form of monitoring would be prudent going forward to protect the public. Among the facts presented in those cases were that both respondents had a prior record of having neglected one or more client matters and the instances of neglect were extensive. Here, by contrast, Respondent has no prior record. Moreover, the violations committed by Respondent resulted from an isolated instance of Respondent failing to review the provision in the immigration manual pertaining to motions to change venue. There was no evidence presented of any other similar failure on Respondent's part on any other occasion. In addition, Disciplinary Counsel has not requested that a period of probation be imposed or proposed any plan of probation. For all these reasons, the Panel has decided not to place Respondent on probation.