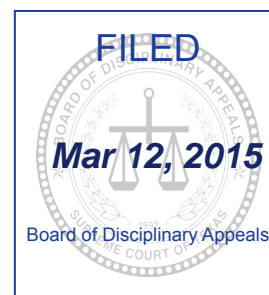


**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**



IN THE MATTER OF §
MICHELLE RENE'E MLADEK, § **CAUSE NO. 55906**
STATE BAR CARD NO. 24046455 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Michelle Rene'e Mladek, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

2. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 206 Porr Drive, Ruidoso, New Mexico 88345.

4. On or about November 26, 2013, a document entitled Specifications of Charges (Exhibit 1) was filed Before the Disciplinary Board of the Supreme Court of New Mexico in a

matter styled, *In the Matter of Michelle Mladek, Esq., An Attorney Licensed to Practice Law Before the Courts of New Mexico*, Disciplinary No. 11-2013-680.

5. On or about July 7, 2014, a Hearing Committee's Findings of Fact and Conclusions of Law (Exhibit 2) was filed Before the Disciplinary Board of the Supreme Court of New Mexico in a matter styled, *In the Matter of Michelle Mladek, Esq., An Attorney Licensed to Practice Law Before the Courts of New Mexico*, Disciplinary No. 11-2013-680.

6. On or about September 25, 2014, an Order of Board Panel (Exhibit 3) was filed in the Before the Disciplinary Board of the Supreme Court of New Mexico in a matter styled, *In the Matter of Michelle Mladek, Esq., An Attorney Licensed to Practice Law Before the Courts of New Mexico*, Disciplinary No. 11-2013-680.

7. On or about February 18, 2015, an Order (Exhibit 4) was filed in the Supreme Court of the State of New Mexico in a matter styled, No. 32,554, *In the Matter of Michelle Renee Mladek, Esquire, An Attorney Licensed to Practice Law Before the Courts of New Mexico*, that states in pertinent part as follows:

...IT IS FURTHER ORDERED that respondent is INDEFINITELY SUSPENDED from the practice of law for no less than two (2) years pursuant to Rule 17-206(A)(3) NMRA, which shall be DEFERRED upon certain terms and conditions;

IT IS FURTHER ORDERED that respondent shall serve the period of deferred suspension on supervised probation in accordance with Rule 17-206(B)(1) under the following terms and conditions...

IT IS FURTHER ORDERED that respondent shall receive a public censure by this Court under Rule 17-206(A)(4), which shall be published in the *Bar Bulletin* and *New Mexico Appellate Reports*.

8. The Hearing Committee's Findings of Fact and Conclusions of Law states that Respondent violated: Rule 16-101 by failing to provide competent representation to a client; Rule 16-103 by failing to act with reasonable diligence and promptness in representing a

client; Rule 16-104(B) by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and Rule 16-105(A) by charging an unreasonable fee.

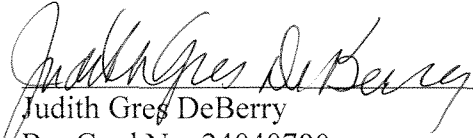
Copies of the Specification of Charges, Hearing Committee's Findings of Fact and Conclusions of Law, Order of Board Panel and Order, are attached hereto as Petitioner's Exhibits 1 through 4, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of hearing of this cause.

9. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of New Mexico and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

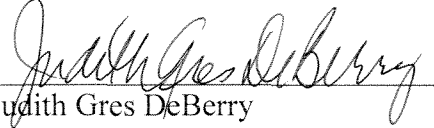
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Judith Gres DeBerry
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Michelle Rene'e Mladek by personal service.

Michelle Rene'e Mladek
206 Porr Drive
Ruidoso, New Mexico 88345


Judith Gres DeBerry

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015

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SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals

from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.
- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.
 - (1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.
 - (2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.
 - (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.
- (ii) The following documents must not be filed electronically:
 - a) documents that are filed under seal or subject to a pending motion to seal; and
 - b) documents to which access is otherwise restricted by court order.
- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
 - (ii) be directly converted to PDF rather than scanned, if possible; and
 - (iii) not be locked.
- (b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).
- (c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:
- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (2) an electronic image or scanned image of the signature.
- (d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.
- (e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter

must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

Rule 1.07 Hearing Setting and Notice

- (a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.
- (b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.
- (c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.
- (d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the

hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

- (a) Motions.
 - (1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.
 - (2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:
 - (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
 - (ii) if an appeal has been perfected, the date when the appeal was perfected;
 - (iii) the original deadline for filing the item in question;
 - (iv) the length of time requested for the extension;
 - (v) the number of extensions of time that have been granted previously regarding the item in question; and
 - (vi) the facts relied on to reasonably explain the need for an extension.
- (b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference,

or BODA on its own motion may require a pretrial scheduling conference.

- (c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.
- (d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:
 - (1) marked;
 - (2) indexed with the title or description of the item offered as an exhibit; and
 - (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

- (a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.
- (b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:
 - (1) as required by the TRDP; and
 - (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.
- (c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

- (a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be

written. The names of the participating members must be noted on all written opinions of BODA.

- (b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.
- (c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

- (a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.
- (b) A current BODA member must not serve as an expert witness on the TDRPC.
- (c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

- (a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.
- (b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.
- (c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

- (a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.
- (b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.
- (c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of

a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

- (a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.
- (b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

- (a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.
- (b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.
 - (1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must

contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

- (2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.
- (c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.
- (d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.
- (e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

- (a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.
- (b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record

on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

- (i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.
- (ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.
- (iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
 - a) a notice of appeal has been filed;
 - b) a party has requested that all or part of the reporter's record be prepared; and
 - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he

or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
- (ii) start each document on a new page;
- (iii) include the date of filing on each document;
- (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
- (v) number the pages of the clerk's record in the manner required by (d)(2);
- (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
- (vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;
- (ii) be double-spaced;

- (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
 - (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
 - (v) if the record consists of multiple volumes, indicate the page on which each volume begins.
- (e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:
- (1) file each computer file in text-searchable Portable Document Format (PDF);
 - (2) create electronic bookmarks to mark the first page of each document in the clerk's record;
 - (3) limit the size of each computer file to 100 MB or less, if possible; and
 - (4) directly convert, rather than scan, the record to PDF, if possible.
- (f) **Preparation of the Reporter's Record.**
- (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.
 - (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.
 - (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
 - (4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise
- (6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.
- (g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.
- (h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.
- (i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

- (a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from,

disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

- (i) the appellant failed to request a reporter's record; or
- (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction,

signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

- (e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.
- (f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:
 - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
 - (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
 - (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

- (a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.
- (b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:
 - (1) the appeal is frivolous;

- (2) the dispositive issue or issues have been authoritatively decided;
- (3) the facts and legal arguments are adequately presented in the briefs and record; or
- (4) the decisional process would not be significantly aided by oral argument.

- (c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

- (a) **Decision.** BODA may do any of the following:
 - (1) affirm in whole or in part the decision of the evidentiary panel;
 - (2) modify the panel's findings and affirm the findings as modified;
 - (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
 - (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
 - (i) the panel that entered the findings; or
 - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.
- (b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair

who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmation may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

- (a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.
- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the

Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

- (a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.
- (b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.
 - (1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.
 - (2) If the criminal sentence is not fully probated:
 - (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
 - (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.
- (c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten

days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

- (a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.
- (b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee

members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

- (c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.
- (d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.
- (e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

Rule 8.02 Petition and Answer

- (a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.
- (b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.
- (c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

- (a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The

party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

- (b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

- (c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

- (a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for

reasonable expenses directly related to representation of the Respondent.

- (b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

- (b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has

a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

- (c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

- (a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.
- (b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.
- (d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.
- (e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the

petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

- (a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.
- (b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.
- (c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of

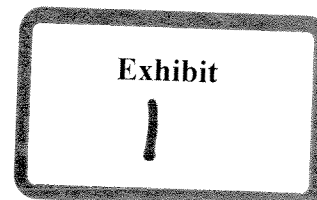
Michelle Mladek, Esq.

Disciplinary No. 11-2013-680

An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico

SPECIFICATION OF CHARGES

1. Rule 17-105(B)(3)(d) NMRA 2013 of the Rules Governing Discipline empowers counsel for the Disciplinary Board to file a Specification of Charges against an attorney with the Disciplinary Board.
2. Michelle Mladek, Esq., hereinafter "Respondent" is an attorney currently licensed to practice law before the courts of the State of New Mexico.
3. The factual allegations set forth in the Specification of Charges state acts of professional misconduct in violation of Rules 16-101, 16-103, 16-104(B), 16-105(A) and/or 16-804(D) NMRA of the Rules of Professional Conduct.
4. Pursuant to Rule 17-309(A) NMRA 2013 of the Rules Governing Discipline, cause exists to conduct a hearing on the following charges so



that the Disciplinary Board and the Supreme Court can determine whether further action is appropriate.

5. On or about June 6, 2012, the Office of Disciplinary Counsel received a complaint from Kelly Brown *nee*. Hurst (hereinafter “Ms. Brown”) against Respondent alleging inadequate representation in her divorce and immigration matters, resulting in her not being granted permanent residence and having to return to the United Kingdom.
6. After investigation, the Office of Disciplinary Counsel determined that there was insufficient evidence to support the allegations that Respondent’s representation in Brown-Hurst v. Hurst, D-1226-DM-201100033, warranted disciplinary action and Ms. Brown and Respondent were notified of the partial dismissal on or about September 23, 2013. The file remained open on other issues.

COUNT I

(I-360)

7. On or about September 10, 2010, Ms. Brown retained Respondent to assist her in obtaining legal permanent residence status.
8. Ms. Brown and her then husband, Donald Hurst, had approached Respondent approximately one year previously about obtaining a green card (I-551) but Respondent informed them “... at that time because she

entered under the visa waiver program (green I94 instead of white I94), she could not adjust to legal permanent residence simply because she married a United States citizen.” Ms. Brown and Mr. Hurst retained other counsel.

9. Contrary to Respondent’s assertion, 8 CFR §245.1(b)(7) states that any individual is ineligible to adjust status if they entered under the visa waiver provisions “other than an immediate relative.” An “immediate relative” is defined, in part, as a spouse.
10. Ms. Brown’s previous counsel had obtained an Employment Authorization Card under I-765 Application for Employment Authorization (hereinafter “I-765”) on or about September 29, 2010, which was valid until September 28, 2011.
11. Respondent filed an I-360 Petition for Amerasian Widow(er) or Special Immigrant (hereinafter “I-360”) on or about November 13, 2010, with the Vermont Service Center, which was marked and received on November 24, 2010.
12. Respondent inaccurately stated on the I-360 that Ms. Brown was in deportation or removal proceedings.

13. Respondent inaccurately stated that Ms. Brown was married to Maurillo Martinez, a Mexican national with no relationship to Ms. Brown whatsoever.
14. Respondent filed the I-360 under the category, "Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident."
15. While Ms. Brown asserts that Respondent told her that the abandonment of her husband was sufficient grounds for "extreme cruelty" and "abuse" Respondent asserts she did not assert abandonment alone would be sufficient.
16. When submitting the I-360, however, Respondent only provided by way of supporting documentation; copies of the Certificates of Marriage and Birth and receipt notice for the July 14, 2010, I-485 Application to Register Permanent Residence or to Adjust Status (hereinafter "First I-485") filed by Ms. Brown's previous counsel.
17. It was not until receipt of a December 3, 2010, Notice of Action from United State Citizenship and Immigration Services (hereinafter "USCIS") that the I-360 filing was deficient because "no evidence was found in your submission to support one or more elements that need to be established" that Respondent submitted supplemental evidence to support the filing.

18. On or about December 29, 2010, Respondent submitted evidence of the marriage such as a psychological evaluation, pictures, letters, e-mails, Facebook postings and bank account information. None of the information provided demonstrated any evidence of abuse of Ms. Brown by Mr. Hurst.
19. In a letter dated February 11, 2011, Respondent asked Ms. Brown to provide "Documents that your husband *abandoned you*, his daughter, work, parents, other family members and if at all possible something that shows you and the family are searching for him." (emphasis added)
20. An Establishment of Prima Facie Case for the I-360 was issued on January 12, 2011, to expire on July 11, 2011.
21. On or about June 15, 2011, Respondent requested an extension to the I-360 Establishment of Prima Facie Case.
22. An Extension of Prima Facie Case was issued on June 30, 2011, to expire on December 27, 2011.
23. On or about July 7, 2011, Respondent supplemented the I-360 filing with a psychological evaluation, a letter from a friend of Ms. Brown, Summer Brooks, and a Ruidoso Police Department incident report dated June 28, 2011, recounting an incident occurring on June 20, 2011.

24. On or about August 1, 2011, USCIS sent Respondent a Notice of Action stating that the I-360 filing was insufficient and additional evidence would need to be provided (1) to address the marriage to Maurillo Martinez, (2) to demonstrate that Ms. Brown shared a residence with Mr. Hurst, (3) to demonstrate battery and/or extreme cruelty because the only evidence submitted was a psychological report which did “not contain any details or specific incidences of battery and/or extreme cruelty” and generic affidavits which did not “provide specific details of events that would show whether they actually witnessed the incidents or whether they heard of them ...” and (4) further evidence of a good faith marriage.
25. It was not until the August 1, 2011, USCIS Notice of Action, nine (9) months after the initial filing, that Respondent first wrote to her client on August 4, 2011, and asked for information regarding battery or cruelty.
26. Respondent responded on or about September 26, 2011, to the Notice of Action by filing a corrected I-360 and providing supporting documentation.
27. On or about June 29, 2012, Respondent informed the Office of Disciplinary Counsel that, “The documents my office provided to USCIS VAWA Unit satisfied everything else, INCLUDING BATTERY OR EXTREME CRUELTY.” (emphasis in original)

28. The "Check List for Establishing Prima Facie Case" filled out by USCIS shows that the three categories not satisfactorily addressed by Respondent's submissions were: "Battery or extreme cruelty; Good moral character and Good faith marriage."

29. The I-360 was denied on or about December 27, 2011, because Respondent, as counsel for Ms. Brown, did not establish the eligibility requirements listed as:

- (4) has resided with the citizen or lawful permanent resident;
- (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the qualifying relationship; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the qualifying relationship;
- (7) entered into the qualifying relationship in good faith.

30. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. 16-101, by failing to provide competent representation to a client;
- b. 16-103, by failing to act with reasonable diligence and promptness in representing a client;

- c. 16-104(B), by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and/or
- d. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

COUNT II

(I-485)

- 31. Ms. Brown's previous counsel had sought an I-485 Application to Register Permanent Residence or to Adjust Status on or about July 14, 2010 (hereinafter "First I-485").
- 32. The First I-485 was denied on or about February 23, 2011, because Ms. Brown's visa petition had been denied due to the Petitioner, Ms. Brown's United States citizen spouse, not attending the adjustment interview.
- 33. Respondent filed a subsequent I-485 (hereinafter "Second I-485") on or about May 13, 2011, by filing at the Chicago Lockbox.
- 34. A Notice of Action was filed on June 13, 2011, rejecting the Second I-485 because Respondent failed to state the basis of eligibility or application type.

35. On or about June 16, 2011, Respondent responded to the June 13, 2011 Notice of Action and submitted a completed I-485 form; a G-28 and Choice of Agent; copies of Ms. Brown's passport photos, Certificate of Marriage, Certificate of Birth; A G-325A, Biographic Information; I-795 receipt notice and I-360 Establishment of Prima Facie Case.

36. USCIS filed a Request for Initial Evidence on or about July 21, 2011, stating that the application would not be able to be processed without the following:

- a. Form I-864W Intending Immigrant's Affidavit of Support Exemption;
- b. Form I-693, Report of Medical Examination and Vaccination Record for the applicant on Form I-485; and
- c. Evidence of lawful admission or parole into the United States.

None of which were submitted with the Second I-485 despite being required under 8 CFR §245.15 and in the form instructions.

37. Respondent submitted the requested documents for the Second I-485 on or about August 31, 2011.

38. Respondent was replaced as counsel of record on or about November 9, 2011. Respondent wrote to Ms. Brown's new counsel on November 16,

2011, stating that she would only provide a copy of the file for \$1.00 per page, and mistakenly referred to Ms. Brown as “Mrs. Rico.”

39. Ms. Brown’s subsequent counsel informed the Office of Disciplinary Counsel that any representation of Ms. Brown had been “rendered substantially and unnecessarily more difficult by the substandard representation of Attorney Mladek.”
40. Ms. Brown had insufficient funds to continue with the immigration process and returned to the United Kingdom on or about December 13, 2012.
41. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:
 - a. 16-101, by failing to provide competent representation to a client;
 - b. 16-103, by failing to act with reasonable diligence and promptness in representing a client;
 - c. 16-104(B), by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and/or
 - d. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

COUNT III

(I-765)

42. Ms. Brown had an Employment Authorization Card under I-765 Application for Employment Authorization (hereinafter "I-765") which was valid until September 28, 2011. The Employment Authorization Card had been obtained by Ms. Brown's previous counsel.
43. Respondent filed a subsequent I-765 application which was received by USCIS on or about March 22, 2011.
44. Respondent filed the I-765 application (March 2011) prior to filing the I-485 application (May 2011) necessitating payment of a filing fee that would not have been required had the I-485 been filed first.
45. The filing fee for the I-485 filing was \$1,070.00 and the filing fee for the I-765 filing was an unnecessary additional \$380.00.
46. Respondent utilized the eligibility category, Title 8, Code of Federal Regulations, Section 27 4a.12(C)(14) which is reserved for individuals who have been granted deferred action.
47. On or about September 27, 2011, USCIS denied the subsequent I-765 application stating,
- Deferred action may be granted to an I-360 self-petitioner, and to qualifying derivatives, after approval of the I-360. However, at this time, the I-360 has not been adjudicated. At the time of filing Form I-765, you were

not eligible for deferred action based on the I-360 petition, and you are not currently eligible for deferred action. Consequently, you are not currently eligible for employment authorization under Section 17 4a. 12(C)(14). Therefore, your application for employment authorization is denied.

48. Respondent sent Ms. Brown a letter dated September 30, 2011, informing Ms. Brown of the denial, but providing no suggestion for action, failing to inform her of the possibility of appeal (however remote), and providing no explanation as to why she had filed the I-765 prematurely under the incorrect section.
49. Ms. Brown lost filing fees, attorney fees and was left without legal authorization to work for months.
50. On or about December 2, 2011, Ms. Brown's subsequent counsel was able to file a proper I-765 application which was approved on or about January 24, 2012.
51. Respondent misstated in her July 29, 2012, response to the Office of Disciplinary Counsel,

I will direct your attention to the fact that obtaining the Deferred Action Prima Facie Case for an I360 Petition/VAWA, gave Complainant the right to an Employment Authorization Document. The Notice clearly stated that this Extension of Prima Facie Case could be used to assist her in receiving public benefits.

52. "Public benefits" do not include employment authorization. 8 USCA §1611; *See also*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Defense Department Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3008 (Sept. 30, 1996); 63 FR 41658-61 (Aug. 4, 1998).

53. By reason of the aforementioned conduct, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. 16-101, by failing to provide competent representation to a client;
- b. 16-103, by failing to act with reasonable diligence and promptness in representing a client;
- c. 16-104(B), by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- d. 16-105(A), by charging an unreasonable fee;
- e. and/or
- f. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

FACTORS IN AGGRAVATION

54. Respondent displayed a pattern of misconduct. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(c).
55. Respondent has refused to acknowledge the wrongful nature of her conduct. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(g).
56. Ms. Brown was a vulnerable client. *See, ABA Standards for Imposing Lawyer Sanctions*, Standard 9.22(h).
57. The names and addresses of witnesses presently known to disciplinary counsel are:

Kelly Brown
c/o Mary Shanks
3227 Harrison Ave
El Paso, TX 79930

Michelle Mladek, Esq.
206 Porr Drive
Ruidoso, NM 88345

Suzan deSeguin-Hons, Esq.
2635 Seventeenth Street, 2nd Floor
Denver, CO 80211

Michelle Saenz-Rodriguez, Esq.
2720 N. Stemmons Freeway
Suite 1200, South Tower
Dallas, TX 75207-2212

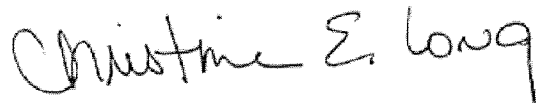
58. It is anticipated that this matter will be prosecuted by Assistant Disciplinary Counsel, Christine E. Long.

Wherefore, by reasons of the foregoing, it is respectfully requested pursuant to Rule 17-309(C) NMRA 2013, that a hearing committee be designated to hear evidence and make findings of fact, conclusions of law,

and recommendations to the Disciplinary Board and, if any of the charges are sustained, be disciplined and assessed the costs of this proceeding.

DATE: November 26, 2013

Respectfully Submitted,

A handwritten signature in black ink that reads "Christine E. Long". The signature is written in a cursive style with a large initial 'C' and a long, sweeping tail on the 'g'.

Christine E. Long
Assistant Disciplinary Counsel

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of

Michelle Mladek, Esq.

Disciplinary No. 11-2013-680

An Attorney Licensed to
Practice Law before the Courts
of the State of New Mexico

HEARING COMMITTEE'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The Hearing Committee hereby enters the following Findings of Fact and
Conclusions of Law:

FINDINGS OF FACT

COUNT I

1. Michelle Mladek, Esq., hereinafter "Respondent", is an attorney currently licensed to practice law before the courts of the State of New Mexico.
2. On or about June 6, 2012, the Office of Disciplinary Counsel received a complaint from Kelly Brown *nee*. Hurst (hereinafter "Ms. Brown") against Respondent alleging inadequate representation in her divorce and immigration matters, resulting in her not being granted permanent residence and having to return to the United Kingdom.
3. After investigation, the Office of Disciplinary Counsel determined that there was insufficient evidence to support the allegations that Respondent's representation in Brown-Hurst v. Hurst, D-1226-DM-201100033, warranted disciplinary action and Ms. Brown and Respondent were notified of the partial dismissal on or about September 23, 2013. The file remained open on other issues.

Exhibit

2

000133

4. Of the expert witnesses testifying in this matter, Suzan deSeguin-Hons has practiced solely in the area of immigration law since 1993, and Michelle Saenz-Rodriguez qualified as an expert in the area of immigration law.

5. On or about September 10, 2010, Ms. Brown retained Respondent to assist her in obtaining legal permanent residence status.

6. Ms. Brown and her then husband, Donald Hurst, had approached Respondent approximately one year previously about obtaining a green card (I-551) but Respondent informed them "... at that time because she entered under the visa waiver program (green I94 instead of white I94), she could not adjust to legal permanent residence simply because she married a United States citizen." Ms. Brown and Mr. Hurst retained other counsel.

7. Contrary to Respondent's assertion, 8 CFR §245.1(b)(7) states that any individual is ineligible to adjust status if they entered under the visa waiver provisions "other than an immediate relative." An "immediate relative" is defined, in part, as a spouse.

8. Ms. Brown's previous counsel had obtained an Employment Authorization Card under I-765 Application for Employment Authorization (hereinafter "I-765") on or about September 29, 2010, which was valid until September 28, 2011.

9. Respondent filed an I-360 Petition for Amerasian Widow(er) or Special Immigrant (hereinafter "I-360") on or about November 13, 2010, with the Vermont Service Center, which was marked and received on November 24, 2010.

10. Respondent inaccurately stated on the I-360 that Ms. Brown was in deportation or removal proceedings.

11. Respondent inaccurately stated that Ms. Brown was married to Maurillo Martinez, a Mexican national with no relationship to Ms. Brown whatsoever.

12. The "Notice of Action for the I-360 and the checklist for establishing prima facie case from USCIS in the packet dated December 3, 2010" specifically states: Through this notification, you are invited to address the items notated below and to return this notice and any supporting evidence you wish to the Vermont Service Center. [X] that you married the alleged abuser in good faith." The checklist only identifies #7: "In the case of a self-petitioning spouse, good faith marriage." The other items were not check marked, indicating USCIS was satisfied with what had already been submitted.

13. Respondent made several other errors when submitting the I-360 petition including failure to fill out the attorney box, failure to state her attorney state license number, and using an inaccurate nonimmigrant status. Respondent did not correct the mistakes made until she was alerted to the mistakes by USCIS more than ten (10) months later.

14. Respondent filed the I-360 under the category, "Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident."

15. When submitting the I-360, however, Respondent only provided by way of supporting documentation: copies of the Certificates of Marriage and Birth and receipt notice for the July 14, 2010, I-485 Application to Register Permanent Residence or to Adjust Status (hereinafter "First I-485") filed by Ms. Brown's previous counsel.

16. In responding to the specification of charges asserted against her, the Respondent stated, "The only documents required at the time of filing were those required to prove a legal and valid marriage between Ms. Brown and Mr. Hurst, and

proof of U.S. citizenship for Mr. Hurst.” This is the position Respondent maintained through the hearing.

17. On December 3, 2010, USCIS corresponded with Respondent and advised Ms. Brown’s file was currently at the Vermont Service Center and was still pending consideration; however, “due to recent changes in processing, a decision on Ms. Brown’s petition had been delayed”. Files from another office were required to complete the adjudication of her case. USCIS stated they could not give a definite time frame for when her petition would be adjudicated but once the necessary files were received, her case would be handled in an expeditious manner. USCIS apologized for the delay.

18. It was not until receipt of a December 3, 2010, Notice of Action from United State Citizenship and Immigration Services (“USCIS”) when Respondent was notified that the I-360 filing was incomplete because “no evidence was found in your submission to support one or more elements that need to be established”, that Respondent submitted supplemental evidence to support the filing.

19. On the same date, December 3, 2010, Respondent received a Notice of Action advising Ms. Brown needed to produce additional supporting evidence that she married Mr. Hurst in good faith. The Notice of Action clearly indicated there was no question that Ms. Brown had already satisfied the requirements (i) that she and Mr. Hurst were married; (ii) that Mr. Hurst was a U.S. Citizen; (iii) that she and Mr. Hurst resided together; that she suffered extreme cruelty perpetrated by Mr. Hurst; and (iv) that she was a person of good moral character.

20. Additional evidence that Ms. Brown had suffered extreme cruelty at the hands of Mr. Hurst was not requested in the December 3, 2010 letter from USCIS.

Rather, the additional evidence was submitted to support Ms. Brown's position as a self-petitioner on the Form I-360. Upon review of the documents, letters and psychological assessment, it is evident that the information provided did in fact demonstrate additional evidence of abuse by Mr. Hurst upon Ms. Brown. Respondent supplemented with additional supporting documents as they became available. USCIS has full discretion to request additional evidence; which they did. Additionally, USCIS requested, as is their right, additional evidence to support Ms. Brown's claim that she was subjected to extreme cruelty.

21. On or about December 29, 2010, Respondent submitted evidence of the marriage to include a psychological evaluation, pictures, letters, e-mails, Facebook postings and bank account information. None of the information provided demonstrated any evidence of abuse of Ms. Brown by Mr. Hurst.

22. An I-360 application has a high burden of proof and should never be sent without sufficient supporting documentation. Piecemeal submission of documentation likely raises concerns by USCIS regarding the filing.

23. In a letter dated February 11, 2011, Respondent asked Ms. Brown to provide "Documents that your husband *abandoned you*, his daughter, work, parents, other family members and if at all possible something that shows you and the family are searching for him."

24. An Establishment of Prima Facie Case for the I-360 was issued on January 12, 2011, to expire on July 11, 2011. On or about June 15, 2011, Respondent requested an extension of the I-360 Establishment of Prima Facie Case.

25. An Extension of Prima Facie Case was issued on June 30, 2011, to expire on December 27, 2011.

26. On or about July 7, 2011, Respondent supplemented the I-360 filing with a psychological evaluation, a letter from Summer Brooks, a friend of Ms. Brown, and a Ruidoso Police Department incident report dated June 28, 2011, recounting an incident occurring on June 20, 2011.

27. On or about August 1, 2011, USCIS sent Respondent a Notice of Action stating that the I-360 filing was insufficient and additional evidence would need to be provided (1) to address the marriage to Maurillo Martinez, (2) to demonstrate that Ms. Brown shared a residence with Mr. Hurst, (3) to demonstrate battery and/or extreme cruelty because the only evidence submitted was a psychological report which did "not contain any details or specific incidences of battery and/or extreme cruelty" and generic affidavits which did not "provide specific details of events that would show whether they actually witnessed the incidents or whether they heard of them ...", and (4) further evidence of a good faith marriage.

28. It was not until the August 1, 2011, USCIS Notice of Action, nine (9) months after the initial filing, that Respondent first wrote to her client on August 4, 2011, and asked for information regarding battery or cruelty.

29. Respondent responded on or about September 26, 2011, to the Notice of Action by filing a corrected I-360 and providing supporting documentation.

30. Ms. Brown's interview was scheduled for November 22, 2011 in El Paso, Texas. Ms. Brown testified that she chose to not attend that interview. Instead, she chose to hire an attorney in Colorado. On November 16, 2011, Respondent was made aware

that Ms. Brown hired Ms. Suzan deSequin-Hons. Respondent immediately notified USCIS that she was no longer attorney of record and she would not be attending the interview with Ms. Brown. Respondent did not participate in the interview on November 22, 2011. Nor did she receive any more correspondence from USCIS regarding the I-360.

31. Ms. Brown's refusal to attend the scheduled interview with Respondent was her choice.

32. On or about June 29, 2012, Respondent inaccurately informed the Office of Disciplinary Counsel that, "The documents my office provided to USCIS VAWA Unit satisfied everything else, INCLUDING BATTERY OR EXTREME CRUELTY." (emphasis in original).

33. The "Check List for Establishing Prima Facie Case" filled out by USCIS shows that the three categories not satisfactorily addressed by Respondent's submissions were: "Battery or extreme cruelty; Good moral character and Good faith marriage."

34. The I-360 was denied on or about December 27, 2011, because Respondent, as counsel for Ms. Brown, did not establish the eligibility requirements listed as:

- (4) has resided with the citizen or lawful permanent resident;
- (5) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the qualifying relationship; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the qualifying relationship;
- (6) [blank]
- (7) entered into the qualifying relationship in good faith.

35. The I-360 application was substandard in terms of preparation.

FINDINGS OF FACT

COUNT II

36. Ms. Brown's previous counsel had sought an I-485 Application to Register Permanent Residence or to Adjust Status on or about July 14, 2010 (hereinafter "First I-485").

37. The First I-485 was denied on or about February 23, 2011, because Ms. Brown's visa petition had been denied due to the Petitioner, Ms. Brown's United States citizen spouse not attending the adjustment interview.

38. Respondent failed to request that the I-485 be held in abeyance pending a decision on the I-360.

39. Respondent filed a subsequent I-485 (hereinafter "Second I-485") on or about May 13, 2011, by filing at the Chicago Lockbox. Respondent incorrectly filed the I-485 at the Chicago Lockbox as it should have been filed at the Vermont Service Center.

40. A Notice of Action was filed on June 13, 2011, rejecting the Second I-485 because Respondent failed to state the basis of eligibility or application type.

41. On or about June 16, 2011, Respondent responded to the June 13, 2011 Notice of Action and submitted a completed I-485 form; a G-28 and Choice of Agent; copies of Ms. Brown's passport photos, Certificate of Marriage, Certificate of Birth; a G-325A, Biographic Information; I-795 receipt notice and I-360 Establishment of Prima Facie Case.

42. USCIS filed a Request for Initial Evidence on or about July 21, 2011, stating that the application would not be able to be processed without the following:

1. Form I-864W Intending Immigrant's Affidavit of Support Exemption;
2. Form I-693, Report of Medical Examination and Vaccination Record for the applicant on Form I-485; and
3. Evidence of lawful admission or parole into the United States.

None of which were submitted with the Second I-485 despite being required under 8 CFR §245.15 and in the form instructions.

43. Respondent incorrectly asserted that the I-692 medical exam should not be sent until requested because of the length of time it takes USCIS to process application and petitions.

44. Respondent incorrectly stated that, "The form I-864W is provided to USCIS just prior to the interview being scheduled to avoid having to duplicate beneficiary/applicant's efforts to prove he/she can support herself."

45. The burden of filing applications with USCIS and presenting sufficient evidence lies with the immigration attorney.

46. Expert Witness Ms. Michelle Sainz Rodriguez testified Respondent had a "bare bones filing initially" and also admitted that Respondent did in fact follow the written instructions for the I-360; "shall file" vs. "may file".

47. Respondent failed to adequately advise Ms. Brown as to what documentation and evidence was necessary for her filings.

48. Respondent submitted the requested documents for the Second I-485 on or about August 31, 2011.

49. Respondent was replaced as counsel of record on or about November 9, 2011. Respondent wrote to Ms. Brown's new counsel on November 16, 2011, stating that she would only provide a copy of the file for \$1.00 per page, and mistakenly referred to Ms. Brown as "Mrs. Rico."

50. Ms. Brown's subsequent counsel informed the Office of Disciplinary Counsel that any representation of Ms. Brown had been "rendered substantially and unnecessarily more difficult by the substandard representation of Attorney Mladek."

51. Ms. Brown had insufficient funds to continue with the immigration process and returned to the United Kingdom on or about December 13, 2012.

52. Ms. Brown testified she left voluntarily and was never placed into removal proceedings and was not deported.

53. Ms. Brown was forced to expend additional monies to retain new counsel and seek her I-765 work permit and would have had to expend approximately \$7,000.00 to continue her I-360 application.

54. Ms. Brown testified that she didn't have the money or time to travel to El Paso, Texas for the scheduled interview. She did have the money to hire another attorney who failed to file a Motion to Change Venue and the I-485 on her behalf.

FINDINGS OF FACT

COUNT III

55. Ms. Brown had an Employment Authorization Card under I-765 Application for Employment Authorization (hereinafter "I-765") which was valid until September 28, 2011. The Employment Authorization Card had been obtained by Ms. Brown's previous counsel.

56. Respondent filed a subsequent I-765 application which was received by USCIS on or about March 22, 2011.

57. Respondent filed the I-765 application (March 2011) prior to filing the I-485 application (May 2011) necessitating payment of a filing fee that would not have been required had the I-485 been filed first.

58. The filing fee for the I-485 filing was \$1,070.00 and the filing fee for the I-765 filing was an unnecessary additional \$380.00.

59. Respondent utilized the eligibility category, Title 8, Code of Federal Regulations, Section 27 4a.12(C)(14) which is reserved for individuals who have been granted deferred action.

60. On or about September 27, 2011, USCIS denied the subsequent I-765 application stating,

Deferred action may be granted to an I-360 self-petitioner, and to qualifying derivatives, after approval of the I-360. However, at this time, the I-360 has not been adjudicated. At the time of filing Form I-765, you were not eligible for deferred action based on the I-360 petition, and you are not currently eligible for deferred action. Consequently, you are not currently eligible for employment authorization under Section 17 4a. 12(C)(14). Therefore, your application for employment authorization is denied.

61. Respondent sent Ms. Brown a letter dated September 30, 2011, informing Ms. Brown of the denial, but providing no suggestion for action, failing to inform her of the possibility of appeal (however remote), and providing no explanation as to why she had filed the I-765 prematurely under the incorrect section.

62. Respondent was representing Ms. Brown September 10, 2010 to November 16, 2011 at the following locations based upon where the different

applications, petitions, interviews, fingerprint applications, etc were submitted: 12th Judicial District Court; USCIS in Lees Summit, Missouri; USCIS in El Paso, Texas District Office; USCIS in St. Albans, Vermont. Each USCIS office had a portion of Ms. Brown's A-file and demanded attention to the pending applications before that particular office, not sharing information or previously submitted documents with the other offices. Representation was pertinent to the divorce, the original I-130, I-485, I-765, the subsequent forms I-360, I-765, Notices of Prima Facie Determination, and interviews in El Paso.

63. Ms. Brown lost filing fees, attorney fees and was left without legal authorization to work for months.

64. On or about December 2, 2011, Ms. Brown's subsequent counsel was able to file a proper I-765 application which was approved on or about January 24, 2012.

65. Respondent misstated in her July 29, 2012, response to the Office of Disciplinary Counsel,

I will direct your attention to the fact that obtaining the Deferred Action Prima Facie Case for an I360 Petition/VAWA, gave Complainant the right to an Employment Authorization Document. The Notice clearly stated that this Extension of Prima Facie Case could be used to assist her in receiving public benefits.

"Public benefits" do not include employment authorization. 8 USCA §1611.

66. From the foregoing it is apparent Respondent did not apply the most fundamental understanding of immigration law, of the process, and her work was sub-standard.

67. Respondent's letterhead states, "Immigration Assistance Services."

CONCLUSIONS OF LAW

1. The Hearing Committee designated in this matter has the authority to hear and make recommendations of fact and law on matters heard before it.

2. Respondent has violated 16-101, by failing to provide competent representation to a client.

3. Respondent has violated Rule 16-103, by failing to act with reasonable diligence and promptness in representing a client.

4. Respondent has violated Rule 16-104(B), by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. Respondent has violated Rule 16-105(A), by charging an unreasonable fee.

6. "While an isolated instance of a failure to communicate, act diligently, or provide competent representation may not necessarily warrant the filing of formal charges of professional misconduct, a pattern of such behavior that is negligent or unreasonable⁴ will not only constitute misconduct but will also result in the imposition of discipline." *In re Reif*, 1996-NMSC-026, 121 N.M. 758, 762, 918 P.2d 344, 348.⁷ *In re Romero*, 2001-NMSC-008.

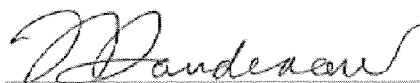
RECOMMENDED DISCIPLINE

That respondent be reprimanded by public censure, placed on probation for the period of 1 (one) year during which time she shall comply with the following requirements: within thirty days of imposition of sanction by the Supreme Court of the State of New Mexico, she shall make restitution to Kelly Brown in the amount of

\$380.00; in addition: she shall be assessed and pay the cost of this action pursuant to Rule 17-106(B) NMRA 2014; attend at her own expense the University of Texas at Austin continuing legal education course, *38th Annual Immigration and Nationality All Conference* (both fundamentals session and conference); and comply with all continuing legal education requirements required for membership in the New Mexico State Bar.

Respectfully submitted,

SANDENAW LAW FIRM, P.C.



Thomas A. Sandenaw, Jr.
Hearing Committee Chair
2951 Roadrunner Parkway
Las Cruces, NM 88011
(575) 522-7500
tas@sandenawlawfirm.com

I certify that on July 7th, 2014, this document was e-mailed to the following:

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Michelle Mladek, Esq.
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immlawhelp@yahoo.com


T.A. SANDENAW

**BEFORE THE DISCIPLINARY BOARD OF THE SUPREME
COURT OF THE STATE OF NEW MEXICO**

In the Matter of
MICHELLE MLADEK, ESQ.

Disciplinary No. 11-2013-680

An Attorney Licensed to
Practice Before the Courts
of the State of New Mexico

ORDER OF BOARD PANEL

This matter came before the Board Panel on the request of Petitioner seeking reconsideration of the sanctions recommended by the hearing committee, and other matters.

On September 25, 2014, the Board Panel comprised of Thomas L. Popejoy, Chair, and Doug Perrin and Thomas P. Alesi, Panel Members, heard oral argument presented by Christine E. Long, Assistant Disciplinary Counsel, appearing for Petitioner and Michelle Mladek, Respondent, appearing personally. The panel has reviewed and considered the Briefs presented by the parties and the oral arguments presented at the hearing before the Board.

The Board Panel has significant concerns about Respondent Mladek's competence to practice law. Her representation of Kelly Brown was substandard, and as found by the hearing committee in this matter, demonstrated that Respondent Mladek "did not apply the most fundamental understanding of immigration law, of the process, and her work was substandard."

The Board Panel's concerns regarding Ms. Mladek's competence are heightened by her continued refusal to recognize her own misconduct and the errors and omissions committed by her repeatedly in her representation of Ms. Brown, or to even acknowledge the findings of the hearing committee of her incompetence. Further, before this Board, Ms. Mladek has misstated the facts in her briefing and argument to the point of misrepresentation and continued in her presentation before the Board to attempt to mislead the Board regarding the facts in the record.

It appears to this panel that Ms. Mladek does not understand nor appreciate her misconduct nor the seriousness of this proceeding. The panel does not believe, however, that Ms. Mladek's professional misconduct based upon the representation of this one client warrants suspension. If Ms. Mladek does not change her practice to pay closer attention to the forms which are filed, obtain information from her client, keep her client informed and use due care in the representation of each client, she is likely to be before this board again and any justification for lenience will be lost at that juncture.

The Board Panel therefore Orders as follows:

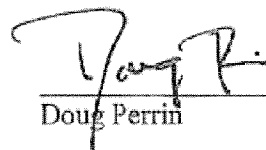
1. Respondent Michelle Mladek shall be reprimanded by public censure;
2. Further, she should be placed on probation for the period of two years, during which time she shall comply with the following requirements:

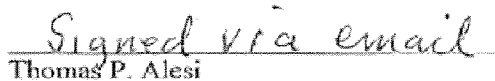
- a. Within 30 days of imposition of the sanction by the Supreme Court of New Mexico, she shall make restitution to Kelly Brown in the amount of \$380.00;
- b. She shall be assessed and pay the cost of this action, together with interest, pursuant to Rule 17-106(B) NMRA (2014), within 30 days of the imposition of sanctions by the Supreme Court of New Mexico, and any costs not paid in a timely matter shall accrue interest at the rate of 8.75% per annum;
- c. Respondent shall attend at her own expense the University of Texas at Austin continuing legal education Course 39th and 40th Annual Immigration and Nationality Law Conference (both fundamental sessions and conference);

- d. Respondent shall meet and cooperate fully with a supervising attorney, approved by the office of disciplinary counsel, at least 1 time per week during her probationary period to periodically review the status of all her pending and new cases for the first year and then as often as the supervising attorney deems necessary, but no less than 1 time per month for the next year;
- e. The supervising attorney shall file a monthly report to the office of disciplinary counsel regarding Respondent's level of cooperation, case management and competence in representing her clients, and shall point out any errors of Ms. Mladek which may rise to the level of professional misconduct; and
- f. Respondent shall be responsible for paying the fees and costs of the supervising attorney and shall pay his/her monthly invoices within 15 days of her receipt thereof.

3. Upon the completion of her two-year period of probation, Respondent shall be reinstated to non-probationary status only upon demonstrating that all of the terms and conditions of her probation have been satisfied.


Thomas L. Popejoy, Chair


Doug Perrin


Thomas P. Alesi

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

February 18, 2015

NO. 32,554

**IN THE MATTER OF
MICHELLE RENEE MLADEK, ESQUIRE**

**An Attorney Licensed to
Practice Before the Courts
of the State of New Mexico**

ORDER

WHEREAS, this matter came on for consideration by the Court upon the recommendation of the disciplinary board, petitioner's request for hearing, respondent's response, and oral argument by the parties on February 18, 2015, and the Court having considered the foregoing and being sufficiently advised, Chief Justice Barbara J. Vigil, Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, and Justice Charles W. Daniels concurring;

NOW, THEREFORE, IT IS ORDERED that the recommendation of the disciplinary board is ADOPTED AS MODIFIED HEREIN;

IT IS FURTHER ORDERED that respondent is INDEFINTIELY SUSPENDED from the practice of law for no less than two (2) years pursuant to Rule 17-206(A)(3) NMRA, which shall be DEFERRED upon certain terms and conditions;



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IT IS FURTHER ORDERED that respondent shall serve the period of deferred suspension on supervised probation in accordance with Rule 17-206(B)(1) under the following terms and conditions:

1. Respondent shall submit the names of at least two (2) licensed New Mexico attorneys to disciplinary counsel who are willing to serve as respondent's supervising attorney during the period of her supervised probation, and disciplinary counsel shall either approve one of those attorneys to serve as respondent's supervising attorney or require respondent to submit additional names for disciplinary counsel's consideration;
2. Upon disciplinary counsel's approval of respondent's supervising attorney, respondent shall begin meeting and fully cooperating with the supervising attorney at least once each week for the first year of probation to review respondent's caseload and then shall continue to meet for the remainder of the probationary period as often as the supervising attorney deems necessary but no less than once per month;
3. The supervising attorney shall submit monthly written reports to disciplinary counsel concerning the status of respondent's practice and shall certify that respondent is not taking on any new clients that she cannot competently represent, and disciplinary counsel shall file a copy of those reports with this Court;
4. Respondent shall be responsible for all costs and fees associated with the supervised probation;
5. Respondent shall pay restitution to Kelly Brown in the amount of three hundred eighty dollars (\$380.00);
6. Respondent shall reimburse the Client Protection Fund for any amounts paid on any claims that have been or may be filed by any of respondent's former or current clients; and

Amy Mayer
Clerk of the Supreme Court
of the State of New Mexico

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7. Respondent shall attend intense and concentrated continuing legal education in the area of immigration law for a minimum of twenty (20) hours per year;

IT IS FURTHER ORDERED that any request for reinstatement to non-probationary status shall proceed in accordance with Rule 17-214(H) NMRA;

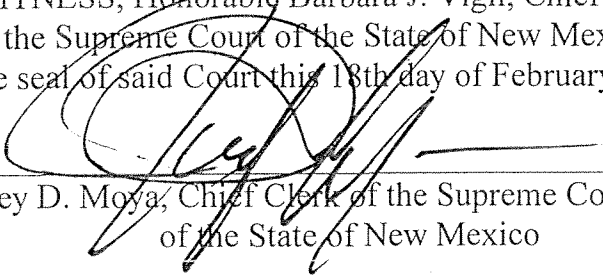
IT IS FURTHER ORDERED that respondent shall pay the costs of this proceeding to the disciplinary board in the amount of seven thousand eighty-six dollars and eighty-two cents (\$7,086.82) on or before **March 23, 2015**. Any balance remaining thereafter shall accrue interest at the rate of eight and three-fourths percent (8¾%) per annum until paid in full and shall be reduced to a transcript of judgment; and

IT IS FURTHER ORDERED that respondent shall receive a public censure by this Court under Rule 17-206(A)(4), which shall be published in the *Bar Bulletin* and *New Mexico Appellate Reports*.

IT IS SO ORDERED.

WITNESS, Honorable Barbara J. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 18th day of February, 2015.

(SEAL)



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico