In re Michelle Gonzalez
Respondent-Appellant

Commission No. 2022PR00018

Synopsis of Review Board Report and Recommendation
(January 2025)

The Administrator brought a two-count disciplinary Complaint against Respondent, Michelle Gonzalez, charging her with failing to provide competent representation in two separate criminal cases, and collecting unreasonable fees in both cases, in violation of Rules 1.1 and 1.5(a) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent failed to provide competent representation to two clients by failing to file a motion to suppress an inculpatory statement in one case, and filing a completely inadequate appellate brief in the other case. The Complaint also alleged that Respondent charged and collected an unreasonable fee in those cases, in light of her failure to competently represent those clients.

The Hearing Board found that Respondent violated Rules 1.1 and 1.5(a), as charged in the Complaint, by failing to provide competent representation, and collecting unreasonable fees. The Hearing Board recommended that Respondent be suspended for four months, and until she pays restitution of $15,750.

Respondent appealed, challenging the Hearing Board's sanction recommendation. Respondent argued that the sanction should be a censure, with restitution to be paid within one year, or a suspension of four months or less, stayed in part by probation, with a condition allowing Respondent to pay the restitution within one year.

The Review Board agreed with the Hearing Board's sanction recommendation and, therefore, recommended that Respondent be suspended for four months, and until she pays restitution of $15,750.

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

In the Matter of:

MICHELLE GONZALEZ,

Respondent-Appellant,

No. 6291582.

Commission No. 2022PR00018

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a two-count disciplinary Complaint against Respondent, Michelle Gonzalez, charging her with failing to provide competent representation in two separate criminal cases, and collecting unreasonable fees in both cases, in violation of Rules 1.1 and 1.5(a) of the Illinois Rules of Professional Conduct (2010). The Complaint alleged that Respondent failed to provide competent representation to two clients by failing to file a motion to suppress an inculpatory statement in one case, and filing a completely inadequate appellate brief in the other case. The Complaint also alleged that Respondent charged and collected an unreasonable fee in those cases, in light of her failure to competently represent those clients.

Following a hearing that was held in August 2023, the Hearing Board found that Respondent violated Rules 1.1 and 1.5(a), as charged in the Complaint, by failing to provide competent representation, and collecting unreasonable fees.1 The Hearing Board recommended that Respondent be suspended for four months, and until she pays restitution of $15,750.

The Administrator presented testimony from three witnesses and called Respondent as an adverse witness. The Administrator also presented fifteen exhibits that were admitted, in part or in

whole. Respondent, who was represented at the hearing, testified on her own behalf, and presented eight exhibits that were admitted. Respondent admitted many of the factual allegations, but denied that she failed to provide competent representation or charged unreasonable fees. (Hearing Bd. Report at 1-2.)

Respondent appealed, challenging the Hearing Board's sanction recommendation. Respondent asks this Board to recommend a censure, with restitution to be paid within one year, or to recommend a suspension of four months or less, stayed in part by probation, with a condition allowing Respondent to pay the restitution within one year. The Administrator argues that the Hearing Board's recommendation is appropriate. Oral argument concerning the appeal was held in August 2024.

For the reasons that follow, we agree with the Hearing Board's sanction recommendation and, therefore, recommend that Respondent be suspended for four months, and until she pays restitution of $15,750.

FACTS

Respondent

Respondent was admitted to practice law in Illinois in 2007. After she graduated from law school, she opened her own law firm in Bolingbrook, Illinois. She was a sole practitioner, focusing primarily on criminal defense work. (Tr. 240-43, 291.)

Respondent worked with attorney John Paul Carroll on the two criminal cases that are the subject of the disciplinary Complaint. Respondent and Carroll were both charged in the Complaint. However, Carroll died prior to the hearing in this matter. He was a sole practitioner, who focused on criminal defense work, and he maintained his own office in Chicago, Illinois. Respondent began working with Carroll in 2007, and they worked together on approximately 90% of their cases.

They did at least ten criminal trials a year together, as well as working on other non-trial criminal matters. (Tr. 23-24, 240-43, 291-92.)

Prior Discipline

In May 2018, Respondent was censured in a prior disciplinary case for failing to provide competent representation to a client in a real estate matter, and charging that client an unreasonable fee. *See In re Gonzalez*, 2015PR00133 (Hearing Bd., July 10, 2017), *recommending censure*, (Review Bd., Feb. 23, 2018), *petition for leave to file exceptions allowed*, M.R. 29325 (May 24, 2018). In that case, Respondent was hired to transfer an interest in a land trust, which she failed to do. Respondent drafted and recorded a bill of sale to make the transfer. The bill of sale, however, was legally ineffective and did not transfer the interest because the property was held in a land trust, and only the trustee could transfer the property. Respondent charged her client $4,000, even though Respondent failed to transfer the interest in the property. Respondent was censured; she was also ordered to pay $4,000 of restitution to her client to repay the attorney's fee she received, and she was ordered to complete the ARDC's Professionalism Seminar.

RESPONDENT'S MISCONDUCT IN THIS CASE

The facts of this case are set out in detail in the Hearing Board's report. (Hearing Bd. Report at 2-12, 17-23.) On appeal, the facts in this matter are not in dispute, and Respondent does not contest the Hearing Board's findings that she engaged in the charged misconduct, which involved failing to provide competent representation to two clients and charging unreasonable fees. The only issue on appeal is the appropriate sanction.

Overview

Respondent and Carroll (collectively "Respondents") represented two defendants, Tomas Hernandez ("Hernandez"), and John Castellanos ("Castellanos"), in separate criminal cases.

Although Respondent and Carroll both engaged in the charged misconduct, the Hearing Board carefully considered Respondent's own actions, as do we.

The Hearing Board found that Respondent failed to provide competent counsel to Hernandez by failing to file and litigate a motion to suppress an inculpatory statement that Hernandez made to the police while he was in custody, before he was given his *Miranda* warnings, as required by *Miranda v. Arizona*, 384 U.S.436 (1966). (Hearing Bd. Report at 12-14.)

The Hearing Board also found that Respondent provided incompetent counsel to Castellanos in connection with his post-conviction proceedings by filing a totally inadequate appellate brief, and failing to attempt to amend the brief or supplement the record, and failing to file a reply brief. (Hearing Bd. Report at 23-25.)

Additionally, the Hearing Board found that the attorney's fees that Respondent charged and collected from Hernandez ($4,500) and Castellanos ($11,250) were unreasonable, in that Respondent was not entitled to collect any fees in light of her incompetent representation. (Hearing Bd. Report at 15-16, 26.) On appeal, Respondent does not dispute those findings of misconduct.

The Hernandez Case (Count I)

In August 2017, Tomas Hernandez was arrested after police officers searched his apartment and the basement of the building, pursuant to a search warrant. The police recovered cocaine and marijuana from the basement. (Respondent's Answer ("Ans.") at par. 3; Tr. 30.)[2] Other people had access to the basement in which the drugs were located. (Tr. 30.) Hernandez was criminally charged with three drug-related felony counts. (Ans. at par. 7.)

Hernandez's Inculpatory Statement: According to the police report, at the time that Hernandez was arrested, he made an inculpatory statement to the police, admitting that the drugs were his; however, he made that statement before he was given his *Miranda* rights. (Tr. 27, 30.)

In September 2017, Respondent and Carroll were hired to represent Hernandez in his criminal case. A trial was scheduled for June 2018. (Ans. at par. 8; Tr. 244-45, 259.) There was essentially no evidence against Hernandez, other than his inculpatory statement. (Tr. 201-206.)

Respondent and Carroll did not file a motion to suppress Hernandez's inculpatory statement, and they did not talk to him about filing a motion to suppress. (Ans. at par. 11; Tr. 26-27.) Instead of filing a motion to suppress, Respondent negotiated a plea agreement for Hernandez. He pled guilty in June 2018, and sentencing was set for August 2018. The plea agreement provided that Respondent would be sentenced to four years in custody, and he would serve 50% of that time, so that he would spend two years in prison. (Ans. at par. 13; Tr. 35-38.)

In June 2018, shortly after Hernandez pled guilty, Carroll withdrew as Hernandez's counsel because of a disciplinary case that resulted in Carroll's being suspended from the practice of law for six months. Respondent continued to represent Hernandez. (Ans. at par. 13; Tr. 62-63; Adm. Ex. 9 at 71.)

In August 2018, Respondent and Hernandez appeared in court for the scheduled sentencing. During the hearing, the court informed Hernandez that he would not receive credit for the time he spent on electronic home monitoring, which was supervised by Pretrial Service. Respondent asked the court to postpone the sentencing so that Hernandez could consider his guilty plea, and the sentencing was postponed. (Ans. at pars. 14-15; Tr. 37-38, 269-70.)[3]

Shortly thereafter, in September 2018, Hernandez hired another attorney, John DeLeon ("DeLeon"), and Respondent withdrew as Hernandez's attorney. DeLeon subsequently filed a motion to vacate Hernandez's guilty plea, and that motion was granted. (Ans. at par 15; Tr. 197-98.)

DeLeon also filed and litigated a motion to suppress Hernandez's inculpatory statement, arguing that Hernandez made that statement while in custody, before he was given his *Miranda* warnings. After an evidentiary hearing, the court granted the motion to suppress. Immediately after Hernandez's statement was suppressed, the State's Attorney dismissed the case against Hernandez. (Ans. at pars. 16-17; Tr. 206-07.)

Hernandez paid attorney's fees of $9,000, of which Respondent received $4,500. As of the date of the disciplinary hearing, she had not repaid any portion of that money. (Hearing Bd. Report at 32-33, n.3; Tr. 310.)

Thomas Brandstrader's Testimony: Thomas Brandstrader, who has been a criminal defense attorney for more than forty years, testified as an expert witness concerning Hernandez's case. (Tr. 101-39, 165-75, 180, 183-87.) The Hearing Board summarized Brandstrader's testimony as follows:

> [Brandstrader] concluded that Respondent's representation of Hernandez 'fell far short of what should be expected as reasonable representation by a defense lawyer.' He also concluded that the fee Respondent charged and collected from Hernandez was unreasonable. (Tr. 110-11.)
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> Regarding Respondent's representation, Brandstrader found it clear from the police reports that Hernandez was in custody at the time he made his inculpatory statement and that the police failed to give him his Miranda warnings prior to his making the inculpatory statement. He testified that the remedy for a defendant whose statement is taken in violation of Miranda is that the statement is suppressed and cannot be introduced into evidence, and that Hernandez's inculpatory statement would have been an appropriate basis for a motion to suppress. (Tr. 119-21, 123.) He testified that, other than Hernandez's inculpatory statement and information from a confidential informant who would not have testified at trial, he saw no other evidence that would have established beyond a reasonable doubt Hernandez's possession of the drugs that were found in the common basement. (Tr. 122-23.)
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> Brandstrader opined that Respondents' failure to file and litigate a motion to suppress Hernandez's inculpatory statement constituted incompetent representation because 'it presented an opportunity to cut the State's case down to zero, and Respondents didn't take it.' He further opined that 'they were going to send Mr. Hernandez off to prison when there was … an objective factor available

> that would have precluded that disposition, … as evidenced by the fact that the next lawyer took that opportunity and the case was dismissed.' (Tr. 125.)
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> Brandstrader testified that knowing that such a motion should be filed would not require a high level of attorney expertise or experience, and that '[t]his is basically Crim-Pro 101.' He also testified that it would not change his opinion if Hernandez had told Respondents that he never made the statement, because it is the State that decides if the statement will be used as evidence, so whether Hernandez said he made the statement or not is irrelevant to the filing of the motion to suppress. (Tr. 126.)
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> Regarding the fee charged and collected by Respondents, Brandstrader testified that, as a general matter, $10,000 is a fair fee for a criminal defense attorney in Cook County to charge when representing a client in a case like Hernandez's. He also acknowledged that Respondent spent some time and performed a modicum of work on Hernandez's behalf. Nonetheless, Brandstrader opined that [the] fee of $10,000 was unreasonable, based upon the end result. He noted that Respondents 'were going to send [Hernandez] away for four years without looking at the police reports which would have told them they could have gotten the case … thrown out.' He thus opined that, based upon his review of Respondent's work and the outcome of her representation, Respondent is not entitled to any portion of the fee she charged and collected from Hernandez. (Tr. 136-38.)

(Hearing Bd. Report at 8-10.)

John DeLeon's Testimony: John DeLeon was the attorney who ultimately filed a motion to suppress on behalf of Hernandez. He has been a criminal defense attorney for forty-three years, and he testified as both a fact witness (Tr. 195-215), and an expert witness concerning Hernandez's case. (Tr. 216-36.) The Hearing Board summarized DeLeon's expert testimony as follows:

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

> Regarding whether Respondent should have known that Hernandez was in custody when he made the statement, DeLeon described it as 'hornbook law … to know that a person who's … the subject of a search pursuant to the search warrant is in custody in his home…. Everybody should know that who practices criminal law.' (Tr. 224.) He stated that a competent attorney would know that a person is in custody when a search warrant is being conducted at his residence. (Tr. 226.) He also testified that it did not matter whether or not Hernandez claimed at any point that he never made the statement, because the police claimed he made it and it was going to be the evidence in the case, which is why it was necessary to file a motion to suppress. (Tr. 225.)
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> With respect to the fee charged and collected by Respondents, DeLeon opined that, while the quote was reasonable, the fee collected was unreasonable based on Respondents' performance and what happened in the case. (Tr. 229.) He acknowledged that Respondent did some work on Hernandez's behalf. However, he still found the fee unreasonable because of the mistakes she made and the eventual plea of guilty to charges Hernandez never should have pled guilty to. He thus opined that Respondent was not entitled to any of the fee she collected. (Tr. 230.)

(Hearing Bd. Report at 11-12.)

The Castellanos Case (Count II)

In 2012, John Castellanos was arrested by police at his home. The police recovered drugs and guns at Castellanos' home, and he provided written statements in which he admitted that he possessed those drugs and guns. He was indicted on drug and weapon charges, and was released on bond. Castellanos fled to Mexico and did not appear for his trial in 2013. He was tried *in absentia*, and was represented by two attorneys during the trial. Castellanos was found guilty on all counts. The court sentenced him, *in absentia*, to 25 years in prison. He was apprehended in 2015, and he was sent to prison to serve his sentence. (Ans. at pars. 22-25.)

In 2016, Respondent and Carroll were hired by Castellanos to file a post-conviction petition on his behalf relating to his trial. In 2017, Respondents filed a post-conviction petition, alleging that Castellanos received ineffective assistance of counsel at the trial. Carroll drafted the petition, and Respondent reviewed it. The court dismissed the petition, and denied a motion to reconsider the ruling. (Ans. at pars. 26-28; Tr. 42-44, 51.)

The Appeal: Respondents filed an appeal for Castellanos, challenging the trial court's dismissal of the post-conviction petition. (Ans. at pars. 29-30; Tr. 51-52; Adm. Ex. 9 at 148.) On appeal, Respondents did not provide transcripts from the trial, the sentencing hearing, or any other court date in the underlying criminal proceeding. (Ans. at par. 30.)

The State filed a response brief arguing that Respondents had violated Illinois Supreme Court Rule 341(h)(7) by failing to provide a complete record on appeal, in that they failed to provide any transcripts from the proceedings in the trial court. The State also argued that Respondents had failed to articulate a specific basis for relief, and had failed to cite to the record. (Tr. 53-56, 95; Adm. Ex. 9 at 174.)

Respondent read the State's response brief. Respondent and Carroll, however, did not attempt to supplement the appellate record, or to file an amended brief, in order to correct the issues identified by the State. They also failed to file a reply brief. (Ans. at 34; Tr. 57-59; 95-96.)

In May 2018, the appellate court issued an order dismissing the appeal. The court stated, "[D]efendant has failed to put forth a sufficient argument supported by relevant authority demonstrating that his petition made a substantial showing of a constitutional violation." (Ans. at par. 35; Adm. Ex. 13 at 1, 2.) The court also stated, "Given the absence of clearly-defined issues supported with cohesive arguments and citation to pertinent authority, we will not consider defendant's appeal." (Adm. Ex. 13 at 3.)

Motion to Reconsider: After the appeal was dismissed, Respondents filed a motion to reconsider, which was prepared by another attorney, Joshua Sachs. (Ans. at pars. 36-37; Adm. Ex. 13 at 36.) The motion included a paragraph stating, "Appellant [Castellanos] concedes that the argument section of his brief was deficient and failed to comply with Rule 341(h)(7), and apologizes both to this court and to the People." (Adm. Ex. 13 at 41.)

In June 2018, the motion to reconsider was denied. (Ans. at par. 37; Tr. 61, 97.) The notice of denial, which was issued by the Clerk of the Appellate Court, stated that Castellanos had 35 days to file an appeal with the Illinois Supreme Court. (Ans. at par. 38; Tr. 62-63; Adm. Ex. 13 at 68.) The filing deadline was July 18, 2018. A petition for leave to appeal was not filed by that deadline. (Ans. at par. 38; Tr. 90.)

Around the time the motion to reconsider was denied, Carroll withdrew as Castellanos' counsel because Carroll had been suspended from the practice of law. Respondent remained as Castellanos' attorney. (Ans. at par. 38; Tr. 62-63, 289; Adm. Ex. 9 at 71.)

On July 11, 2018, Castellanos' sister sent an email to Respondent asking about the status of the motion to reconsider. Respondent responded by email on the same day, stating that they had not received a decision. (Tr. 88-89; Adm. Ex. 9 at 66.) In fact, the motion had been denied on June 13, 2018, approximately three weeks earlier. (Tr. 88-89; Adm. Ex. 13 at 68.)

On July 17, one day before the filing deadline, Respondent sent an email to Castellanos' sister stating that Respondent had called the appellate court, and the motion to reconsider was denied. (Tr. 89-90; Adm. Ex. 9 at 65-66.) In follow up emails, Castellanos' sister asked what would happen now, and whether Joshua Sachs, who had prepared the motion to reconsider, would appeal the ruling. Respondent replied that Sachs would not file an appeal, and that Castellanos would have to hire another attorney if he wanted to appeal to the Illinois Supreme Court. (Tr. 89-93; Adm. Ex. 9 at 63-64.)

Castellanos paid attorney's fees of $22,500, of which Respondent received $11,250. As of the date of the disciplinary hearing, she had not repaid any portion of that money. (Hearing Bd. Report at 32-33, n.3; Ans. at par. 26; Tr. 43, 90, 310.)

Thomas Brandstrader's Testimony: Thomas Brandstrader testified as an expert witness concerning Castellanos' case. (Tr. 139-65, 175-79, 181-83.) The Hearing Board summarized his testimony as follows:

> Brandstrader testified that '[y]ou couldn't tell from the brief' what arguments they were making, and that the brief contained no analysis of the case law in light of the facts; it just contained general statements about post-conviction protocol. (Tr. 149.) He testified that '[t]here was no organization to the argument. It led nowhere. It was just a bunch of unrelated case cites that had nothing to do with whatever argument [Respondents were] trying to make.' (Tr. 154.) He stated that he has reviewed between 700 and 750 appellate briefs over the course of his 40-year career, and 'if [he] ranked them 1 to 750, this would be 751.' (Tr. 150.)
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> Brandstrader further testified that, if there has been a trial, the appellant must provide a trial record, which should include transcripts of anything substantial that occurred in the courtroom that led to the disposition of the case. In Castellanos' matter, the State pointed out in its response brief that Castellanos' brief did not contain the complete trial record. It also pointed out that the brief failed to comply with Illinois Supreme Court rules because it did not contain any proper cites. (Tr. 151-52.) He testified that Respondents had an opportunity to clear up 'the mess' by attempting to supplement the record or filing a motion for leave to file an amended brief, but they did neither. (Tr. 152-53.) The appellate court thus dismissed the appeal for failure to follow appellate procedure. (Tr. 154.)
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> Brandstrader opined that Respondents failed to provide competent representation to Castellanos because they were retained to do a petition for post-conviction relief and an appeal, and they 'failed miserably on both points.' He noted that it is '[v]ery rare' to get an appeal dismissed. (Tr. 155.)
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> Regarding the fee charged and collected by Respondents, Brandstrader testified that, as a general matter, $22,500 is not an unreasonable fee for a criminal defense attorney representing a client in a post-conviction proceeding and subsequent appeal. He also acknowledged that Respondents spent some time and performed some work on Castellanos' behalf. Nonetheless, Brandstrader opined that the fee of $22,500 was unreasonable and that Respondent is not entitled to retain any fee at all for the Castellanos matter, because he does not believe she did anything to earn a fee, 'and the job was so poor on every level that [he doesn't] think anybody should profit from it.' (Tr. 160-61.)

(Hearing Bd. Report at 22-23.)

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board concluded that Respondent's conduct violated Rules 1.1 and 1.5(a), as charged in the disciplinary Complaint. On appeal, Respondent does not challenge the Hearing Board's findings of misconduct.

Rule 1.1: Rule 1.1 states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The Hearing Board found that Respondent failed to provide competent representation to her clients, Hernandez and Castellanos, in two criminal cases, in violation of Rule 1.1. (Hearing Bd. Report at 12-14; 23-25.)

Rule 1.5 (a): Rule 1.5(a) states, "A lawyer shall not … charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include … the results obtained." The Hearing Board found that Respondent violated Rule 1.5(a) by charging and collecting an unreasonable fee in the two criminal cases involving Hernandez and Castellanos, in that Respondent provided incompetent representation in both cases, and the results were so poor that Respondent was not entitled to collect any fee from those clients. (*Id*. at 15-17; 26.)

Findings Regarding Mitigation and Aggravation

In mitigation, the Hearing Board found that Respondent cooperated in the disciplinary proceeding, and that she provided *pro bono* legal services to clients. (*Id*. at 27-28.)

In aggravation, the Hearing Board made the following findings. Respondent's incompetent representation of Hernandez could have resulted in his being imprisoned or deported. Respondent's clients were vulnerable because they were defendants in criminal cases, where their

liberty was at stake. Respondent was an experienced practitioner. Respondent was previously disciplined for similar misconduct, and the current misconduct began while her disciplinary proceedings were pending in the prior case, and continued after she was sanctioned in the prior case. (*Id*. at 27-29.)

The Hearing Board's Recommendation

The Hearing Board recommended that Respondent be suspended for four months and until she makes restitution of $4,500 to Hernandez and $11,250 to Castellanos. (Hearing Bd. Report at 32.)

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. Respondent argues that the appropriate sanction is a censure, or a minimal suspension, stayed in part by probation, with a condition allowing Respondent to pay restitution within one year. The Administrator argues that the Hearing Board's recommendation that is appropriate.

We review the Hearing Board's sanction recommendation based on a *de novo* standard. *See In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *see In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the purpose of discipline is not to punish the attorney but rather to protect the public, maintain the integrity of the legal profession, deter other misconduct, and protect the administration of justice from reproach. *See In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993); *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994). We defer to the Hearing Board's findings concerning witnesses' credibility because the Hearing Board is able to observe

the witnesses, assess their demeanor and credibility, and resolve conflicting testimony. *See In re Timpone*, 157 Ill. 2d at 196.

For the reasons set forth below, we agree with the Hearing Board's recommendation, and we recommend that Respondent be suspended for four months, and until she pays restitution of $4,500 to Hernandez and $11,250 to Castellanos. In particular, we conclude that a four-month suspension, with restitution, is needed to deter Respondent and convince her of the seriousness of her misconduct; and to help preserve public confidence in the legal profession.

Serious Nature of Respondent's Misconduct

Respondent argues that a four-month sanction is unduly harsh, and that the appropriate sanction is a censure, or a short suspension stayed in part by probation, with a condition allowing Respondent to have one year to pay the restitution. We disagree.

Respondent's misconduct was serious and warrants more than a minimal sanction. Respondent failed to satisfy her obligations to Hernandez and Castellanos. They relied on her to represent them fairly and adequately, which she failed to do. Additionally, Respondent failed to refund the fees that Hernandez and Castellanos paid to her.

The Hearing Board found that Respondent's decision not to file a motion to suppress Hernandez's inculpatory statement "was so unreasonable and ill-advised that no competent attorney would have made it, and therefore that it did not meet the basic standards of competency to which Illinois attorneys are held." (Hearing Bd. Report at 13-14.) The Hearing Board also found that there were "egregious and inexcusable flaws in the appellate brief" that was filed on behalf of Castellanos, and that Respondent could have attempted to rectify those problems but she took no steps to do so. (*Id*. at 23-25.) We agree.

Aggravating Factors

There are also aggravating factors in this case, which weigh against imposing a minimal sanction. We have taken those factors into account in recommending a four-month suspension.

Respondent argues that that a minimal sanction is appropriate because (1) the prior disciplinary proceeding should not be given substantial weight; (2) she did not intentionally provide incompetent representation, she simply made mistakes; (3) she had a very limited role in handling the appeal in the *Castellanos* case; and (4) Hernandez and Castellanos did not suffer any concrete harm. In our view, none of those factors support a minimal sanction, and we address each of those issues below.

Prior Discipline: Respondent argues that the prior disciplinary case should not be given substantial weight because she did not intentionally ignore the prior disciplinary case, and the prior case had not been resolved during the relevant time period. That argument fails.

Respondent's misconduct in this case is very similar to her misconduct in the prior disciplinary case. In both cases, Respondent provided incompetent representation, charged an unreasonable fee, and denied engaging in any wrongdoing.

Respondent's misconduct in the present case took place between September 2017 and September 2018, while the prior case was being adjudicated, which included the following:

- The Hearing Board in the prior case issued its Report in July 2017, finding that Respondent provided incompetent representation and charged an unreasonable fee. The Hearing Board's Report was issued shortly before Respondent was retained by Hernandez in September 2017, and shortly before Respondents filed the appeal for Castellanos in October 2017.

- The Review Board in the prior case affirmed the Hearing Board's findings of misconduct in February 2018. The Review Board's Report was issued while Hernandez's case was pending, and shortly before the State filed its response brief in the *Castellanos* case in March 2018, and Respondent made the decision to take no action to address the existing problems.

- The Supreme Court censured Respondent in May 2018. The Court's order was issued shortly before Hernandez pled guilty in June 2018, at a time when Respondent still could have filed a motion to suppress.

Respondent was not deterred by the prior disciplinary proceeding; she did not learn her lesson, despite the findings of misconduct in the prior case; and the prior case was not sufficient to motivate her to provide competent representation to Hernandez and Castellanos. *See In re Kesinger*, 2014PR00083 (Review Bd., June 1, 2016) at 17, *approved and confirmed in part*, M.R. 28530 (March 20, 2017) ("[W]e find particularly aggravating the fact that [Kesinger] committed the current misconduct during the pendency of disciplinary proceedings for other misconduct."); *In re Segovia*, 2008PR00054 (Hearing Bd., Feb. 19, 2009) at 16, *approved and confirmed*, M.R. 23076 (May 18, 2009) ("[T]he misconduct here not only occurred after the prior misconduct, but also during the very time that the prior disciplinary matter was being adjudicated. It is troubling that Respondent would engage in additional misconduct at a time when he should have been acutely aware of his responsibility to adhere to his professional obligations.").

Additionally, in the prior case, the Review Board found that Respondent failed to accept responsibility, show remorse, or acknowledge that she failed provide to competent representation. (*Gonzalez*, Review Bd., 2018, at 12.) The Review Board in the prior case stated, "While a respondent has a right to defend against misconduct charges by making a good-faith argument that she engaged in no misconduct, it seems to us that Respondent has gone beyond raising a good-faith defense and is simply making excuses for charging her client an excessive amount of money for shoddy legal work." (*Id.* at 13.) In our view, that is also true in the present matter, where Respondent has repeatedly asserted that she did nothing wrong, and that she made no mistakes, despite the substantial evidence to the contrary. (*See e.g.*, Ans. at pars. 20, 42; Tr. 39, 63.)

We recognize that the Hearing Board found that Respondent's failure to accept responsibility or express remorse was not an aggravating factor. (Hearing Bd. Report at 29-30.)

Although we disagree on that point, we still agree with the Hearing Board's conclusion that a four-month suspension is the appropriate sanction, given the mitigating evidence in this case.

Mistakes: Respondent next argues that she did not intentionally provide incompetent representation, she just made mistakes. That argument misses the mark. Respondent did not simply make inadvertent, careless, or accidental mistakes. She provided incompetent representation, which was based on intentional decisions. She made the intentional decision not to file a motion to suppress Hernandez's statement; and she made intentional decisions concerning the appeal in the *Castellanos* case.

Respondent's Involvement: Respondent also argues that her involvement in the *Castellanos* case was very limited. That argument does not excuse or change the fact that she provided incompetent representation to Castellanos, who was relying on her. She was ethically obligated to ensure that Castellanos was competently represented on appeal, and she failed to meet that obligation. The Hearing Board stated, "[Respondent] acknowledged reading the State's response brief before she and Carroll decided not to file a reply brief or take any other action to correct the errors that were noted in the State's response brief. We therefore find that, in addition to her overarching responsibility to Castellanos as one of his attorneys, she bears actual culpability for the manner in which she and Carroll represented Castellanos on appeal." (Hearing Bd. Report at 25.) We agree.

Harm: Finally, Respondent argues that Hernandez and Castellanos did not experience any harm because of her representation. That argument has no merit. Hernandez and Castellanos were both deprived of appropriate judicial review, and they were both harmed financially.

Hernandez was deprived of prompt judicial review concerning his inculpatory statement, because Respondents failed to file a motion to suppress. As a result, Hernandez was very nearly

sent to prison, and he spent a year with an indictment pending against him, facing the threat of incarceration. Additionally, Hernandez's movements were restricted for a year, while he was on bond and on home monitoring.

Castellanos was deprived of a full judicial review based on the merits of the matter. The appellate court dismissed the appeal because Respondent and Carroll failed to follow proper appellate procedure. Although we do not know what the outcome of a competent appeal might have been, Castellanos was denied the opportunity to have the court review the substantive issues in his case.

Additionally, Hernandez paid $9,000 in attorney's fees, and Castellanos paid $22,500. Respondent received half of those fees. As of the date of the disciplinary hearing, Respondent had failed to refund any of that money to Hernandez or Castellanos.

We also note that in both cases, Respondent caused the court and the State to unnecessarily expend precious time and resources as a result of her failure to provide competent representation. In our view, Respondent's misconduct reflects badly on attorneys and may diminish the public's confidence in the legal profession.[4]

Mitigating Factors

We believe that a four-month suspension, with restitution, properly balances the serious nature of Respondent's misconduct with the mitigating evidence in this case. In our view, the mitigating evidence here weighs strongly against a suspension of more than four months.

We find it particularly significant that Respondent's misconduct ended in September 2018, six years ago, and Respondent has practiced law since then without any disciplinary problems. During that six-year period of time, Respondent has demonstrated that she has the ability to practice law ethically, and that she has the necessary skills to competently represent her clients.

The fact that Respondent practiced law for six years without incident is a strong indicator that she will not repeat her misconduct, or harm her clients in the future. We give substantial weight to this mitigating factor. *See In re Belconis*, 2019PR00058 (Review Bd., May 2, 2023) at 13, *petition for leave to file exceptions denied*, M.R. 031823 (Sept. 21, 2023) ("Respondent practiced law for more than ten years without incident after the misconduct ended, thereby demonstrating his ability to fulfill his professional obligations and to act in accordance with ethical standards. Respondent had the unique opportunity to prove himself over a lengthy period of time, after his misconduct ended, and he did so successfully. We give that substantial weight.")

In further mitigation, Respondent testified that she and Carroll provided *pro bono* legal services to clients as part of their practice, including some instances, where the defendants did not have funds to hire an attorney, and they asked Respondent and Carroll to represent them. She gave an example of one case in which the defendant was charged with a serious crime, and she represented the defendant at trial on a *pro bono* basis. She also testified that she planned to continue providing *pro bono* services in the future. (Tr. 292-93.) Respondent also cooperated with the disciplinary proceedings.

Additionally, we have taken into consideration the Administrator's position that a four-month suspension, with restitution, is the appropriate sanction. The Administrator has not argued on appeal that a longer suspension is warranted. We agree.

Restitution: The Hearing Board recommended that, as part of the sanction, Respondent be ordered to pay restitution of $4,500 to Henandez and $11,250 to Castellanos before she is permitted to practice law again. Respondent does not challenge the requirement that she repay $15,750 to her clients. She argues, however, that she should not be required to pay the restitution while she is suspended, and before she is allowed to practice law again. She asserts that she should be given

one year to pay the restitution. Respondent argues that suspending her until she can make full restitution converts the sanction into an indefinite suspension, which is punitive. We disagree.

Respondent has already had a significant amount of time to repay or save the $15,750 that she owes to her clients, and she will have additional time to save money before any sanction is imposed. The Hearing Board issued its Report in April 2024 (six months ago) which put Respondent on notice that she may be required to pay restitution, and gave her time to start making arrangements to repay her clients. The fact that Respondent does not contest that she owes $15,570 to her clients makes her argument even less convincing. Respondent can decide what steps she needs to take to make restitution, so she has control over the issue.

Additionally, Respondent has not presented evidence concerning her financial situation, or demonstrated that she cannot pay the restitution during a suspension. We also note the sanction is not so large that payment is unrealistic, or that it creates an insurmountable burden.

Requiring payment of restitution during a suspension is also consistent with sanctions imposed in other case. *See In re Stolfo*, 2016PR00133 (Review Bd., Dec. 20, 2018), *petition for leave to filed exceptions denied*, M.R. 029728 (April 9, 2019) (the attorney was suspended for six months, and until he paid $205,224 of court ordered sanctions); *In re Martin*, 2011PR00048 (Review Bd., Dec. 31, 2013), *approved and confirmed*, M.R. 26610 (June 6, 2014) (the attorney was suspended for six months, and until he paid outstanding monetary sanctions and fines, totaling approximately $25,000).

Relevant Legal Authority

We have considered the cases cited by the Hearing Board and both parties, and we conclude that a four-month suspension is consistent with discipline that has been imposed for comparable misconduct.

Cases cited by Respondent: In support of her argument that a minimal sanction and delayed restitution payments are appropriate, Respondent cites *In re Naughton*, and *In re Mason*, in which the attorneys were censured for mishandling cases; Respondent also cites *In re Smith*, in which the attorney was conditionally reinstated, and was allowed to delay paying restitution. We do not find those cases to be persuasive. *See In re Naughton*, 2006PR00011, *petition to impose discipline on consent allowed*, M.R. 21230 (Nov. 17, 2006) (the attorney was censured for mishandling two separate estate matters; significantly, his misconduct occurred shortly after the death of his daughter, at a time when he was emotionally distraught; in aggravation, he had been reprimanded fourteen years earlier; in mitigation, he had repaid his clients, he had performed substantial *pro bono* work, he admitted his misconduct, he expressed remorse, and, as noted above, his daughter had recently died); *In re Mason*, 1998PR00013, *petition to impose discipline on consent allowed*, M.R. 15162 (Sept. 28, 1998) (the attorney was censured for neglecting a case and failing to tell his client that the case was dismissed; he also settled the matter with the client, without ensuring that she understood her rights; in aggravation, he had previously been censured for similar misconduct ten years earlier; in mitigation, he accepted responsibility and expressed remorse, he agreed to proceed by consent, he cooperated, and he made restitution); *In re Smith*, 2017PR00105 (Review Bd., May 11, 2020), *petition for reinstatement allowed,* M.R. 028983 (Sept. 21, 2020) (the attorney was conditionally reinstated, after being disbarred based on a conviction for making a false statement on a mortgage loan application; although he had made partial restitution, he had depleted all of his assets, including forfeiting his home, and he still owed $100,000 to a bank; he agreed to enter into a payment plan with the victim bank, and was reinstated subject to his making restitution).

We find that *Naughton*, *Mason*, and *Smith* are distinguishable from this case. The mitigation in *Naughton* and *Mason* far exceeded the mitigation here, including that Naughton's misconduct occurred shortly after the death of his daughter; and Mason paid restitution to his client, accepted responsibility, and agreed to proceed by consent. In *Smith*, the attorney demonstrated that he lacked the financial ability to pay $100,000 while suspended, whereas in this case, Respondent has not demonstrated that she is unable to pay $15,750 while suspended.

In support of his argument for probation, Respondent cites a case, *In re Chiang*, in which the attorney provided incompetent representation, and the Court imposed a four-month suspension, with probation. Although we find that probation is not appropriate in this case, we believe that *Chiang* provides guidance here in terms of the appropriate length of the suspension. *See In re Chiang*, 2007PR00067 (Review Bd., Jan. 30, 2009), *petition for leave to file exceptions denied*, M.R. 23022 (June 8, 2009).

In *Chiang*, the attorney engaged in various types of misconduct in immigration cases, including providing incompetent representation to clients in several appeals. The Review Board concluded the misconduct was serious, but that Chiang had good intentions, and that he was trying to handle matters that were outside his experience. The Review Board concluded that Chiang would benefit from probation that included education and mentoring, which would give Chiang an opportunity to correct the problems in his practice. Chiang was suspended for five months, until further order of the Court, with the suspension stayed after four months, by two-years of probation, with conditions. In other words, he was suspended for four months, followed by probation.

The Administrator argues that probation is not warranted in the instant case, and we agree. Respondent seeks probation, but solely for the purpose of giving her a year to pay the restitution, with no other conditions. In our view, Respondent should pay the restitution before any suspension

ends, and she has provided no sufficient reason to delay that payment. We believe that imposing probation for the sole purpose of delaying payment is not necessary or appropriate, and would not serve the goals of attorney discipline.

Cases Cited by the Hearing Board

In making its recommendation, the Hearing Board cited *In re Walsh* and *In re Jennings*, discussed below, in which the attorneys mishandled cases. (Hearing Bd. Report at 31.) We agree that those cases provide guidance here. Additionally, we find that two other cases, *In re Ring* and *In re Hall*, discussed below, are also instructive here.

In *In re Walsh*, 2006PR00085 (Hearing Bd., July 8, 2008), *approved and confirmed*, M.R. 22719 (Feb. 10, 2009), the attorney was suspended for five months, and until he paid restitution of $1,738 to his former client. Walsh neglected a criminal appeal and failed to return unearned fees. In aggravation, Walsh failed to show remorse; failed to pay restitution; and he had two prior disciplinary cases involving similar misconduct. No mitigating evidence was offered.

In *In re Jennings*, 1999PR00032 (Review Bd., Dec. 27, 2000), *petition for leave to file exceptions denied*, M.R. 17394 (May 25, 2001), the attorney was suspended for three months for failing to provide competent representation in a criminal appeal, and for making false statements to the appellate court in a motion and an affidavit. Additionally, the Review Board found that Respondent should have refunded his fee, in light of the incompetent representation that he provided. In mitigation, Jennings had practiced law for over 35 years without any prior discipline; he accepted responsibility; he was active in the community, church activities, and bar associations; and he eventually refunded the client's money.

In *In re Ring*, 141 Ill. 2d 128, 565 N.E.2d 983 (1990), the attorney was suspended for six months for failing to file an appellate brief in a criminal case, and for engaging in dishonest conduct

by failing to inform the client that Ring was not going to file an appellate brief, and that the appeal was dismissed. In mitigation, Ring was active in the community and in his church; he was a member of several bar associations; he provided *pro bono* legal services to low-income individuals; and five character witnesses testified to his excellent reputation.

In *In re Hall* (1983), 95 Ill. 2d 371, 447 N.E.2d 805 (1983), the attorney was suspended for three months for failing to file an appellate brief in a criminal case and failing to inform the client that the appeal had been dismissed. He also made false statements to the Commission. The Court gave weight to the fact that the Administrator had recommended a suspension of not more than three months. In mitigation, Hall returned the full amount of his retainer fee to the client.

Walsh, *Jennings*, *Ring*, and *Hall* resulted in suspensions ranging from three months to six months for mishandling appeals in criminal cases. The four-month suspension recommended here falls squarely within the range of sanctions imposed in those cases.

In sum, we conclude that a four-month suspension is commensurate with Respondent's misconduct; it falls within the range of discipline imposed in similar cases; and it is sufficient to serve the goals of attorney discipline, including protecting the public, preserving public confidence in the legal profession, and deterring Respondent and other attorneys from committing similar misconduct.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended for four months, and until she pays restitution of $4,500 to Hernandez and $11,250 to Castellanos.

Respectfully submitted,

Leslie D. Davis[5]
David W. Neal
Scott J. Szala

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on January 3, 2025.

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

4907-0449-7420, v. 1

[1] The disciplinary Complaint also charged Respondent with failing to keep the clients in those two cases reasonably informed, in violation of Rule 1.4(a), but the Hearing Board found that the Administrator did not prove that violation concerning either client. The Administrator has not challenged that finding, and it is not an issue on appeal.

[2] Respondent's Answer to the disciplinary Complaint can be reviewed in the Common Law Record at 41-55, paragraphs ("pars.") 1-42.

[3] Respondent failed to explain to Hernandez that he would not receive any credit for the time he spent on electronic home monitoring, and, according to Hernandez, she also failed to explain that Hernandez could be deported after being convicted, based on his immigration status. The Hearing Board found that Respondent's mistakenly providing incorrect information did not rise to the level of failing to keep a client reasonably informed, as charged in the disciplinary Complaint. (Hearing Bd. Report at 14-15.) The Administrator has not challenged that finding, so it is not an issue on appeal.

[4] We also question Respondent's actions concerning notifying Castellanos' sister about the deadline to file an appeal. On July 17, 2018, one day before the deadline to file an appeal, Respondent notified Castellanos' sister (by email) that the motion to reconsider had been denied, and any appeal had to be filed by the next day, July 18, 2018. Respondent said that Castellanos would have to find another attorney to file the appeal. Respondent offered no assistance in terms of filing an appeal, explaining the steps to do so, or finding another attorney. Additionally, when Castellanos' sister sent an email to Respondent on July 11, 2018, asking about the status of the motion, Respondent responded by email on the same day, stating, "We still have not received a decision." (Tr. 88-89; Adm. Ex. 9 at 66.) Respondent provided incorrect information to the sister, since the motion had been denied on June 13, 2018.

[5] Leslie D. Davis is a member of the Review Board Panel who is serving an extended term on the Review Board Panel pursuant to the Illinois Supreme Court order dated December 10, 2021.

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

In the Matter of: **MICHELLE GONZALEZ,** Respondent-Appellant, No. 6291582.	Commission No. 2022PR00018

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

I, Michelle M. Thome, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail service on January 3, 2025, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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

Michelle M. Thome,
Clerk

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

FILED

January 03, 2025

ARDC CLERK