United States Department of Justice
Executive Office for Immigration Review
Immigration Court

In the Matter of	:	**Attorney Discipline Proceedings**
Christian DE OLIVAS	:	**Disciplinary Case # D2022-0215**
Respondent	:	

Charges: 8 C.F.R. §§ 1003.102(l), 1003.102(n), 1003.102(o), 1003.102(q)

Proposed Discipline: Suspension from Practice before the Board of Immigration Appeals (BIA), the Immigration Courts, and the Department of Homeland Security (DHS) for a Period of Two Years

Appearances: Respondent, appearing *pro se*

Paul Rodrigues and Diane Kier, Disciplinary Counsels, on behalf of the Executive Office for Immigration Review (EOIR)

Toinette M. Mitchell, Disciplinary Counsel, on behalf of the Department of Homeland Security (DHS)

Decision and Order of the Adjudicating Official

On October 26, 2023, Disciplinary Counsels of the Office of the General Counsel for the Executive Office for Immigration Review (EOIR) and the U.S. Citizenship and Immigration Service (USCIS) with the Department of Homeland Security (DHS) filed with the Board of Immigration Appeals (BIA) a Joint Notice of Intent to Discipline (NID) attorney Christian De Olivas (Mr. De Olivas or Respondent). Ex. 1. The NID contains 53 factual allegations and asserts, in charges contained in paragraphs 54 and 55, that Mr. De Olivas engaged in professional misconduct in violation of 8 C.F.R. § 1003.102(l) (repeatedly failing to appear for scheduled hearings in a timely manner without good cause), 8 C.F.R. § 1003.102(n) (conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process), 8 C.F.R. § 1003.102(o) (failing to provide competent representation), and 8 C.F.R. § 1003.102(q) (failing to act with reasonable diligence and promptness).

On November 22, 2023, Mr. De Olivas filed a motion to extend the 30-day deadline to respond to the NID. Ex. 3. The BIA granted the motion and extended the deadline to December 18, 2023. On December 18, 2023, Mr. De Olivas filed a Response. Ex. 4. In his brief response, Mr. De Olivas stated he was summarily denying all factual allegations. *Id.* He also noted that the United States Postal Service (USPS) failed to deliver court correspondence to his correct address, that he was fired from some of the cases, that he had been ill from late "last year (2012) until October this year (2013)," and that he had been concerned about losing his father. *Id.*

On January 17, 2024, the BIA referred the matter to the Office of the Chief Immigration Judge (OCIJ) for the appointment of an adjudicating official (AO). OCIJ appointed Immigration Judge (IJ) Elizabeth A. Kessler to serve as the AO in this matter.

The parties engaged in some discussion of the matter, and status conferences were held on March 15, 2024, and on April 26, 2024. The parties reported that they could not agree on a proposed resolution. The parties concurred that no testimony would be needed and that the AO should adjudicate this matter based on the documentary evidence and written arguments presented.[1] The AO then set deadlines for the parties to submit additional evidence, statements, and briefs.

On June 17, 2024, Disciplinary Counsels submitted additional evidence. *See* Ex. 5. Per the AO's deadline, on June 25, 2024, Mr. De Olivas submitted a Response to Disciplinary Counsels' charges of misconduct along with supporting evidence. Ex. 6. On August 6, 2024, Disciplinary Counsels filed a brief in support of the disciplinary charges and proposed sanctions against Mr. De Olivas. Ex. 7. On August 28, 2024, Mr. De Olivas submitted a reply to Disciplinary Counsels' brief. Ex. 8. All filings have been reviewed and considered.

Record of Disciplinary Proceedings

The following documentary evidence was admitted into the record and considered in these disciplinary proceedings[2]: Exhibit 1, the Joint Notice of Intent to Discipline (NID); Exhibit 2, Disciplinary Counsels' Initial Evidentiary Exhibits (A-N); Exhibit 3, the Respondent's Motion to Extend 30-Day Deadline; Exhibit 4, the Respondent's Initial Response to Disciplinary Allegations; Exhibit 5, Disciplinary Counsels' Amended Table of Contents and Additional Evidentiary Exhibits (O-S); Exhibit 6, the Respondent's Response to Government's Charges of Misconduct and Supporting Exhibits (A-J); Exhibit 7, Disciplinary Counsels' Brief in Response to Disciplinary Charges and Sanction and Attachments; and Exhibit 8, the Respondent's Reply to the Government's Charges of Misconduct. The AO has also reviewed and considered statements made at the status conferences.

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[1] Mr. De Olivas also waived his opportunity for an evidentiary hearing by not requesting a hearing in his answer to the NID as required under 8 C.F.R. § 1003.105(c)(3). In any event, he indicated that he was not requesting an evidentiary hearing or the opportunity to present testimony.

[2] Neither side objected to the admission and consideration of any of the evidence.

Analysis and Findings

Under the regulations governing professional conduct for practitioners before EOIR, 8 C.F.R. § 1003, subpart G, an adjudicating official or the BIA may impose sanctions against a practitioner where it is "in the public interest to do so." 8 C.F.R. § 1003.101(a); *see also* INA § 240(b)(6). The regulations specify that it will be in the public interest to do so "when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in § 1003.102." 8 C.F.R. § 1003.101(a).

In disciplinary proceedings before an adjudicating official, disciplinary counsel bears the burden of proving alleged disciplinary grounds by clear and convincing evidence. 8 C.F.R § 1003.106(a)(2)(iv). If the adjudicating official finds that a ground for disciplinary sanction has been established, the official must determine the proper sanction. 8 C.F.R § 1003.106(b). An adjudicating official may impose sanctions of disbarment, suspension, public or private censure, or "[s]uch other disciplinary sanctions as the adjudicating official or the [BIA] deems appropriate." 8 C.F.R § 1003.101(a).

Disciplinary Counsels set forth 53 factual allegations across seven cases to support the charges of misconduct, which appear in charging paragraph 54 (relating to conduct in failing to appear for immigration court hearings) and charging paragraph 55 (relating to conduct in failing to respond to four orders to show cause). *See* Ex. 1 at 10-17. In his initial response to the NID, Mr. De Olivas denied all 53 factual allegations, as well as the charges in paragraphs 54 and 55, but provided only a half-page explanation for these denials. Ex. 4 at 2. This blanket and vague first response did not address specifically any of the 53 factual allegations. Mr. De Olivas even denied allegations that he later confirmed by his own statements and evidence, such as the date he was admitted to the bar, Form E-28s filed in the cases at issue, and notices of hearings for the cases at issue. *Compare* Ex. 6, Respondent's Response at 1 n. 1 (stating that he was admitted to the bar on June 5, 2007) *with* Ex. 1 at 10 (stating the same); *see* Ex. 6 1090, 1099, 1103, 1110, 1116, 1399, 1376, 1380, 1385-88, 2070, 2109, 2116, 2795, 2805, 3212, 3647 (notices of hearings). In his more detailed Response, Ex. 6, Mr. De Olivas does not appear to challenge any of the 53 factual allegations but does contest the misconduct charges in paragraphs 54 and 55 and argue he should be subject to minimal, if any, discipline for any misconduct.

The AO has considered the arguments and evidence presented, even if not specifically addressed herein.[3] Based on the detailed and thorough evidence presented by Disciplinary Counsels, Ex. 2, and the lack of any meaningful challenge to the truth of the factual allegations, factual allegations 1-53 are sustained. In short, Disciplinary Counsels have shown, by clear and convincing evidence, that each of the 53 factual allegations is true and correct as stated.

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[3] As noted, Mr. De Olivas's initial response filing, dated December 16, 2023, was quite brief. Ex. 4 (Respondent's two-page Response to Disciplinary Allegations). On June 24, 2024, Mr. De Olivas filed a more detailed Response to Government's Charges of Misconduct, along with over 4,000 pages of supporting exhibits. Ex. 6. The supporting exhibits include copies of his case files in the seven cases at issue here, as well as some other material. Large swaths of that submission appear at best loosely relevant to these disciplinary proceedings. Nonetheless, that lengthy submission has been reviewed and considered by the AO, along with all other evidence and argument presented in the case.

Remaining at issue is (1) whether Mr. De Olivas engaged in professional misconduct in connection with failing to appear for numerous immigration court hearings; (2) whether he engaged in professional misconduct in failing to respond to the orders to show cause; and (3) what sanctions, if any, should be imposed for any professional misconduct he committed.

A. Whether Mr. De Olivas Engaged in Professional Misconduct in Connection with His Failure to Appear for 15 Scheduled Hearings Across Seven Cases (NID Para. 54).

1. 8 C.F.R. § 1003.102(l) – Repeated Failures to Appear

Disciplinary Counsels allege that Mr. De Olivas violated 8 C.F.R. § 1003.102(l) (repeatedly failing to appear for scheduled hearings in a timely manner without good cause) when he failed to appear for 15 scheduled hearings in seven cases without good cause. *See* Ex. 1 at 2. Evidence demonstrates that Mr. De Olivas failed to appear for the below hearings on 15 dates across seven cases under the following circumstances:

1. November 4, 2022 (Ex. 2A at 11-13) (Individual Hearing (IH) at Santa Ana Immigration Court (SNC) in *Matter of* [redacted]) (client appeared and stated that Mr. De Olivas would no longer be representing him; no motion to withdraw had been filed)
2. November 15, 2018 (Ex. 2B at 43-47) (Master Calendar Hearing (MCH) at Los Angeles Immigration Court (LA) in *Matter of* [redacted] (client appeared but Mr. De Olivas did not; client told immigration judge that Mr. De Olivas texted him that he was on the way, yet he never appeared)
3. April 29, 2019 (Ex. 2B at 51-53) (MCH at LA in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared with no explanation given – he later claimed lack of notice)
4. November 25, 2022 (Ex. 2B at 83-84) (MCH at SNC in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared; court staff contacted Mr. De Olivas's office and was told Mr. De Olivas was sick)
5. December 8, 2022 (Ex. 2B at 88) (MCH at SNC in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared with no explanation given – he later claimed lack of notice)
6. June 27, 2017 (Ex. 2C at 100-103) (MCH at Adelanto Immigration Court (ADL) in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared; Mr. De Olivas contacted the immigration court by phone and stated he would not be available)
7. September 21, 2020 (Ex. 2C at 113-115) (IH at LA in *Matter of* [redacted]) (client appeared but Mr. De Olivas did not; Mr. De Olivas called the court and explained he was ill and experiencing chills)
8. September 29, 2022 (Ex. 2C at 117-120) (MCH at SNC in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared with no explanation given – he later claimed lack of notice)

9. November 3, 2022 (Ex. 2C at 122-125) (MCH at SNC in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared with no explanation given – he later claimed lack of notice)
10. February 6, 2023 (Ex. 2D at 146-47) (IH at SNC in *Matter of* [redacted]) (client appeared but Mr. De Olivas did not; client stated that he expected Mr. De Olivas to be present, that he had tried to call him, and that Mr. De Olivas had not answered his phone; after a recess, the immigration judge indicated that Mr. De Olivas's office stated that a call had been made to the clerk's office indicating that Mr. De Olivas hurt his back on the way to court and would not appear for the hearing)
11. April 4, 2023 (Ex. 2E at 174-75, 181-82) (IH at SNC in *Matter of* [redacted]) (clients appeared but Mr. De Olivas did not; client stated she was not aware of the attorney's whereabouts and had expected he would appear; court staff received a call stating that Mr. De Olivas would not be appearing because he had a hearing in state criminal court)
12. February 26, 2020 (Ex. 2F at 216-220) (MCH at LA in *Matter of* [redacted]) (client appeared but Mr. De Olivas did not; Mr. De Olivas called court staff and stated he would not be appearing due to medical issues)
13. May 15, 2023 (Ex. 2F at 229-233) (MCH at SNC in *Matter of* [redacted]) (neither client nor Mr. De Olivas appeared; immigration judge ordered the client removed *in absentia* – Mr. De Olivas later claimed lack of notice)
14. October 27, 2022 (Ex. 2G at 246-49) (MCH at SNC in *Matter of* [redacted] *et al.*) (neither clients nor Mr. De Olivas appeared – he later claimed lack of notice)
15. May 16, 2023 (Ex. 2G at 259-63) (MCH at SNC in *Matter of* [redacted] *et al.*) (clients appeared but Mr. De Olivas did not; Mr. De Olivas contacted court staff and stated he would not be appearing because his father was in the hospital)

At issue with respect to this proposed ground of misconduct is whether Mr. De Olivas had good cause for his failure to appear at any or all of these 15 hearings. In his brief initial response to the NID, Mr. De Olivas provided four vague explanations for his denial of misconduct: he had ongoing issues with USPS not delivering mail to his office; he was fired from some of the cases; he was ill from the end of 2012 to October of 2013; and he was "subjected to the thought of losing [his] father in 2013." Ex. 4.[4] In his subsequent and more detailed Response, filed on June 25, 2024, Mr. De Olivas addressed each absence with the explanations either that he did not receive notice of the hearings or that he notified the respective court that he would not be appearing due to his own illness, family illness, or conflicting trial. *See* Ex. 6, Respondent's Response. In his final reply to Disciplinary Counsels' Brief, Mr. De Olivas again makes a general mention of his ongoing mail issues to explain his claimed lack of notice. Ex. 8 at 6-7.

[4] Even if he meant 2022 instead of 2012 and 2023 instead of 2013, his vague statements in this regard do not account for all the absences or explain why emergency or other motions to continue were not filed.

i. Claimed Lack of Notice.

In his more detailed Response, Mr. De Olivas argues that he did not receive notice for the following seven hearings: November 4, 2022; April 29, 2019; June 27, 2017; September 21, 2020; November 3, 2020; May 15, 2023; and October 27, 2022. Ex. 6, Respondent's Response at 2, 4, 6, 7, 13. Mr. De Olivas's own case records contradict this argument for at least three of these dates. *See* Ex. 6 at 1399 (notice of hearing scheduled for June 27, 2017), 1380 (notice of hearing scheduled for September 21, 2020), 1404 (second copy of notice of hearing scheduled for September 21, 2020), 1385 (notice of hearing scheduled for November 3, 2022). As noted above, his claimed lack of notice in some of the cases conflicts with information on the transcripts. The records of proceedings in these cases also confirm that the respective immigration courts mailed the notices of hearings for these dates to the address of record for Mr. De Olivas. *See* Ex. 2C at 99, 116, 121 (hearing notices); Ex. 2C at 97-98, 104-05 (original and updated Form E-28s filed by Mr. De Olivas for the case). Similarly, for the remaining four hearing dates for which Mr. De Olivas alleges a lack of notice, the records of proceedings also demonstrate that the respective immigration courts or immigration judges provided notice of the hearings, either in person or by mail to the address of record for Mr. De Olivas. *See* Ex. 2A at 7, 9 (transcript showing IJ Tadros-Ibarra stating and reiterating that the merits hearing for the case was set for November 4, 2022); Ex. 2B at 31 (original Form E-28 filed by Mr. De Olivas for the relevant case), 50 (notice of hearing scheduled for April 29, 2019, mailed to Mr. De Olivas); Ex. 2F at 227 (transcript showing IJ Rodin Rooyani stating that the case would be reset for May 15, 2023); Ex. 2G at 241-44 (original Form E-28s filed by Mr. De Olivas for the relevant case), 245 (notice of hearing scheduled for October 27, 2022, mailed to Mr. De Olivas).

Insomuch as Mr. De Olivas argues that he had lack of notice because notices of hearings were returned as undeliverable, the record here belies his claimed lack of knowledge in many of the cases and shows a failure to act with professional diligence in updating his address with EOIR. *See* Ex. 6, Respondent's Response at 2, 4. OCIJ records indicate that only one notice of hearing was returned as undeliverable.[5] *See* Ex. 2B at 50, 54 (notice of hearing on April 29, 2019). For these seven cases, the evidence shows that the respective immigration courts followed the proper procedures for serving the notices of hearing on Mr. De Olivas; when service was effectuated by mail, the immigration courts mailed each hearing notice to the address of record in each case as indicated on the Form E-28 Mr. De Olivas submitted for each client. *See* Ex. 2B at 31-32, 50, 76-77, 85; Ex. 2C at 97-99, 104-05, 116, 121; Ex. 3G at 241-245; *see* 8 U.S.C. § 1229(a)(1) (permitting service of notice to the individual or his or her counsel of record in person or by mail), § 1229(c) (stating that service by mail is sufficient where "there is proof of attempted delivery to

[5] Mr. De Olivas stated that court records also indicate that the notice for the November 4, 2022, hearing was returned as undeliverable. Nevertheless, Mr. De Olivas received oral notice of the November 4, 2022, hearing date from Immigration Judge (IJ) Tadros-Ibarra at the prior hearing on August 1, 2022. Ex. 2A at 9; *see also* Ex. 5Q at 417 ¶ 7. Under 8 U.S.C. § 1229(a)(1), notice is considered properly served if provided in person or by mail. Because Mr. De Olivas was provided notice of the November 4, 2022, hearing in person by IJ Tadros-Ibarra on August 1, 2022, service by mail was not required. Additionally, on August 1, 2022, Mr. De Olivas acknowledged that the address of record was incorrect and stated that he would "immediately update it." Ex. 2A at 9-10. The record of proceeding for *Matter of* [redacted] does not demonstrate that Mr. De Olivas submitted a Form E-28 to update his address.

the last address provided by the alien").

With respect to the returned notice of hearing for April 29, 2019, Mr. De Olivas acknowledged on the record at the subsequent hearing on September 9, 2019, that he had not filed a Form E-28 in the case to update his address. Ex. 2B at 70-73. Practitioners have an affirmative duty to update their contact information with the immigration court. *See* Immigration Court Practice Manual, Ch. 2.1 (b)(6) ("All practitioners have an affirmative duty to keep the immigration court apprised of their current contact information, including address, email address, and telephone number. . . . [T]he practitioner [of record] must submit a new Form EOIR-28 for each respondent for which the practitioner's address is being changed."). Given Mr. De Olivas's failure to update his address with the Los Angeles Immigration Court in this case, his lack of notice for this hearing does not constitute good cause for his failure to appear, particularly when viewed in the context of serial failures to appear and his failure to act with diligence in updating his information with the immigration courts.

Beyond his uncorroborated explanation that USPS has mishandled correspondence to his office since 2016,[6] Mr. De Olivas has not provided sufficient evidence or statements to counter the evidence from the records of proceedings in these cases that demonstrates that the respective immigration courts provided Mr. De Olivas with proper notice of all 15 hearings and that he either received the notices or acted with a lack of diligence in ensuring that he would receive such notices.[7] *See* Ex. 2A at 9; 2B at 41, 50, 80, 85; 2C at 99, 111, 116, 121; 2D at 140; 2E at 172; 2F at 214-15, 227; 2G at 245, 257-58. Based on the evidence presented, Disciplinary Counsels have shown by clear and convincing evidence that Mr. De Olivas failed to appear for the seven hearings mentioned above without good cause in violation of 8 C.F.R. § 1003.102(l).

ii. Same-Day Notification of Absence from Hearings.

Turning to the remaining hearings, Mr. De Olivas claims that he has shown good cause for his absences because he notified the respective immigration courts on the same day of the scheduled hearings that he would not be attending the hearings. *See* Ex. 6, Respondent's Response at 4, 7, 8-9, 10, 12, 13. For seven of the hearings, the record shows that Mr. De Olivas—or his office—provided various reasons to the respective immigration courts for his absence: a calendar error and being on pain medication on November 4, 2022 (Ex. 2A at 21-22); illness on November

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[6] Mr. De Olivas did submit mail from immigration courts and USCIS that was marked as forwarded to Mr. De Olivas's firm at two different addresses. *See* Ex. 6J at 4193-4259. OCIJ records of proceedings for these cases, and Mr. De Olivas's own case records, contain no evidence that Mr. De Olivas submitted Form E-28s with either of the addresses on that forwarded mail, as required by the Immigration Court Practice Manual (ICPM) if those were the new addresses for his office. *See* Immigration Court Practice Manual, Ch. 2.1(b)(6). What's more, Mr. De Olivas submitted no evidence of any communications with USPS officials to show that he ever brought any concerns to their attention or that USPS did not handle his mail appropriately.

[7] As mentioned, the notice of hearing for April 29, 2019, was mailed to Mr. De Olivas's address of record and returned as undeliverable. *See* Ex. 2B at 50, 54. On September 9, 2019, Mr. De Olivas admitted that he did not submit a Form EOIR-28 to update his address in this case. *See id.* at 70-73.

25, 2022[8] (Ex. 2B at 83-84); illness on September 21, 2020 (Ex. 2C at 113-15); injury on February 26, 2020 (Ex. 2F at 216); illness on February 6, 2023 (Ex. 2D at 146-47); a conflicting criminal trial on April 4, 2023[9] (Ex. 2E at 174); and his father's hospitalization on May 16, 2023 (Ex. 2G at 259). Regarding the hearing on June 27, 2017, the record shows that Mr. De Olivas notified the Adelanto Immigration Court of his absence but provided no explanation. *See* Ex. 2C at 100-01. Mr. De Olivas claims that he also notified the Santa Ana Immigration Court that he was ill on December 8, 2022, and May 15, 2023, and that he would not appear for those hearings. Ex. 6, Respondent's Response at 4, 12.

The applicable regulations and the Immigration Court Practice Manual set out clear expectations for practitioners of record, including the obligation to appear in court on behalf of their clients for all scheduled hearings. 8 C.F.R. §§ 1003.17(a)(2), (3); *Immigration Court Practice Manual*, Ch. 2.1(b)(2) ("Once a practitioner has made an appearance, that practitioner has an obligation to continue representation until such time as a motion to withdraw or substitute counsel has been granted by the immigration court."); *Immigration Court Practice Manual*, Ch. 5.10(a) ("The filing of a motion to continue does not excuse the appearance of an alien or practitioner of record at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled."). Mr. De Olivas did not file motions to withdraw as counsel or motions to continue (emergency or otherwise) in any of the cases at issue here. No motions to substitute counsel were filed in these cases, nor did any counsel appear on Mr. De Olivas's behalf on an emergency basis. Mr. De Olivas was required to appear for these hearings as the practitioner of record, or to find suitable counsel to appear on his behalf when possible.

Mr. De Olivas argues that the Government has imposed a duty on him, "*sua sponte*," to follow up on his calls to the immigration courts with "written explanations and/or legal briefs" to qualify his reasoning as good cause for his absence. Ex. 8 at 6. Unforeseen circumstances may demonstrate good cause for an emergency motion to continue and even for failing to appear in a given case, depending on how exigent the circumstances. Here, though, Mr. De Olivas's failure to appear for hearings is not limited to a couple, or even a few, instances, but rather spans across myriad hearings over a period of years. Merely contacting an immigration court on the day of a scheduled hearing, particularly without accompanying proof of emergency circumstances filed that day or soon thereafter, does not necessarily establish good cause for the practitioner's absence. Significantly, a close examination of the records here raises questions about the truthfulness of Mr.

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[8] In his Response, Mr. De Olivas states that he was ill for a hearing related to *Matter of* [redacted] on September 9, 2022. Ex. 6, Respondent's Response at 4. As noted by Disciplinary Counsels, there was no hearing for this case on September 9, 2022, so it seems that Mr. De Olivas is referring to the hearing on November 25, 2022. *See* Ex. 7 at 14 n. 10.

[9] In his discussion of *Matter of* [redacted] in his Response, Mr. De Olivas references a criminal jury trial as his reason for not attending the master calendar hearing set for August 4, 2022. *See* Ex. 6, Respondent's Response at 10. Though there was a master calendar hearing in this case on August 4, 2022, for which Mr. De Olivas was present, the hearing at issue is the subsequent individual hearing scheduled for April 4, 2023. Mr. De Olivas's Response does not mention April 4, 2023. As such, it appears that Mr. De Olivas was referring to the individual hearing on April 4, 2023, when it was stated that he would be absent from a hearing for a criminal jury trial. Were he absent because of a criminal jury trial, surely he had notice of the criminal matter before the day of the immigration court hearing and thus could and should have filed a motion to continue.

De Olivas's representations to the immigration courts and whether claimed circumstances in fact arose on the day of the hearings such that an emergency motion to continue could not be filed.

As to the hearing on November 4, 2022, Mr. De Olivas's response claimed that his failure to appear was due to lack of notice. *See* Ex. 6, Respondent's Response at 2. He did not mention any other reason for his absence. Records filed by Disciplinary Counsels indicate three different reasons for Mr. De Olivas's absence: (1) his client stated that Mr. De Olivas would no longer be representing him; (2) Mr. De Olivas made a scheduling error and believed the hearing was at 9:30 am, not 8:30 am; and (3) Mr. De Olivas was on pain medication and could not appear virtually. *See* Ex. 2A at 11, 13, 15 (transcript of hearing); *id.* at 21 (order to show cause). Aside from the obvious inconsistencies here, Mr. De Olivas has not provided additional support for these claims, such as a motion to withdraw as counsel if such was the case or medical records for the pain medication. Given the inconsistent explanations and the lack of evidence to prove any one explanation, Mr. De Olivas has not demonstrated good cause for failing to appear on November 4, 2022.

Regarding the hearing on June 27, 2017, Mr. De Olivas failed to provide any explanation for his absence when he contacted the Adelanto Immigration Court on the day of the scheduled hearing to say that he would not be appearing or in his Response to the Government's Charges filed in these disciplinary proceedings. A practitioner's day-of notification of absence from a scheduled hearing, without explanation or information, does not demonstrate good cause for such absence. Mr. De Olivas has not demonstrated good cause for his failure to appear on June 27, 2017.

Mr. De Olivas reasons that he was absent from the hearing on April 4, 2023, because he was in a criminal jury trial.[10] No evidence indicates that Mr. De Olivas filed a motion with the Santa Ana Immigration Court to continue the case due to a scheduling conflict, despite him having knowledge of the April 4, 2023, hearing date well in advance. *See* Ex. 2E at 167, 172 (transcript showing IJ Iman Ghasri stating on the record that an individual hearing for the case was scheduled for April 4, 2023). Further confounding matters, at the hearing on April 4, 2023, Mr. De Olivas's client informed IJ Iman Ghasri that she expected Mr. De Olivas to be there, since she received a text from Mr. De Olivas's office the night before the hearing confirming that Mr. De Olivas would be present. Mr. De Olivas's Response neglects to mention his obligation to notify the Court of the conflict and seek a continuance in a timely manner, despite having eight months' notice of the hearing on April 4, 2023. *See e.g.*, *Immigration Court Practice Manual*, Ch. 5.10(a) (explicitly discouraging oral motions to continue and stating that a motion for a continuance should supported by evidence); *see also Matter of Daniel Garda*, D2018-0190, D2019-0052, at 5 (A.O. October 26, 2023) (finding a lack of good cause for an attorney's failure to appear due to a scheduling conflict, as the attorney should have timely notified the immigration court of the conflict or found competent counsel to appear on his behalf). In the year and a half since the April 2023 hearing, Mr. De Olivas still has not submitted evidence of the alleged criminal trial that supposedly conflicted with this hearing and caused his failure to appear. Again, surely he would have had notice of a criminal trial sufficiently in advance of the immigration court hearing to file a motion to continue,

[10] As noted in footnote 7, Mr. De Olivas's Response appears to have the incorrect date. The hearing date at issue is April 4, 2023, not August 4, 2022, as Mr. De Olivas has written. Ex. 6, Respondent's Response at 10.

even a late-filed emergency motion to continue. Mr. De Olivas has not provided good cause for his failure to appear for the individual hearing on April 4, 2023.

Mr. De Olivas claims that he failed to appear for scheduled hearings due to illness on six dates—November 25, 2022, December 8, 2022, September 21, 2020, February 6, 2023, February 26, 2020, and May 15, 2023. *See* Ex. 6, Respondent's Response at 4, 7, 8-9, 12. The respective records of proceedings show that, on four of these dates, Mr. De Olivas informed the Santa Ana and Los Angeles Immigration Courts that he could not attend because he was ill. *See* Ex. 2B at 88 (claiming illness); Ex. 2C at 113-15 (sick with COVID-19); Ex. 2D at 141-54 (Mr. De Olivas hurt his back on the way to the hearing); Ex. 2F at 216-20 (medical issues). In his Response, Mr. De Olivas provided the same vague explanation when addressing each separate hearing date—that he has "been dealing with medical issues as early as 2020, be it Covid, slip and fall injury, kidney issues resulting in several hospitalizations (and finally surgery)." Ex. 6, Respondent's Response at 4, 7, 9, 12. For the hearings on December 8, 2022, and May 15, 2023, Mr. De Olivas alleges that he informed the Santa Ana Immigration Court that he would not be appearing due to illness. Ex. 6, Respondent's Response at 4, 12. Mr. De Olivas has not submitted medical records or other evidence to corroborate these statements.

The medical records submitted by Mr. De Olivas include documents with diagnoses and treatments for Mr. De Olivas; those documents are dated between October 2020 and November 2023. *See* Ex. 6H at 4036-84. None of the dates on these documents, however, correspond to the six hearing dates at issue to support Mr. De Olivas's claimed explanations for his absences. Again, in rare circumstances, a practitioners may have to be absent from a hearing due to unforeseeable emergencies, including exigent medical issues. Mr. De Olivas did not allege that any of his medical issues were unforeseeable or sudden; instead, the medical records submitted seem to demonstrate at best that his absences may have been caused by known, chronic health issues. Nor did he promptly file evidence in support of his absences in these cases.

In short, Mr. De Olivas has not shown good cause for failing to appear for the scheduled hearings on November 25, 2022, December 8, 2022, February 6, 2023, February 26, 2020, and May 15, 2023.

With respect to the hearing on September 21, 2020, IJ Jaime Lasso stated on the record that Mr. De Olivas called the Los Angeles Immigration Court to advise that he was "ill" and "having chills." Ex. 2C at 114. September 21, 2020, fell during the COVID-19 pandemic, and individuals were then prohibited from entering immigration courts if they tested positive for COVID-19 or felt any of the established symptoms of COVID-19. *See* EOIR Policy Memorandum 20-13, *EOIR Practices Related to the COVID-19 Outbreak* at 3 (June 11, 2020). The AO will give Mr. De Olivas the benefit of any doubt with respect to his failure to appear for this hearing at the Los Angeles Immigration Court and assume that he had good cause for failing to appear at the hearing there on September 21, 2020.

Lastly, Mr. De Olivas argues that he provided good cause for his failure to appear for a hearing on May 16, 2023, when he informed the Santa Ana Immigration Court that his father was hospitalized. *See* Ex. 6, Respondent's Response at 13. He specifically argues that his "father's

worsening medical condition" was good cause for his absence. As discussed above regarding Mr. De Olivas's own medical issues, Mr. De Olivas admits that his father's medical issues were known prior to the date of the scheduled hearing, and the evidence submitted shows records of continued medical care for his father. *See* Ex. 6I at 4085-92. Significantly, though, none of the hospitalization records are dated for May 16, 2023, or even near that date of the hearing. *Id.*[11] Of course, had he been dealing with his father's medical issues around that time, he could have filed a motion to continue, emergency or otherwise. He did not. Mr. De Olivas has failed to show good cause for his failure to appear on May 16, 2023.

Conclusion Concerning Failures to Appear for Scheduled Hearings. Based on the foregoing analysis, Disciplinary Counsels have demonstrated by clear and convincing evidence that Mr. De Olivas failed to appear for the 14 hearings discussed above without good cause in violation of 8 C.F.R. § 1003.102(l). He is subject to discipline for professional misconduct on that basis.

2. *8 C.F.R. § 1003.102(n) – Engaging in Conduct Prejudicial to the Administration of Justice*

Disciplinary Counsels also allege that Mr. De Olivas engaged in conduct prejudicial to the administration of justice in violation of 8 C.F.R. § 1003.102(n) when he failed to appear for the 15 hearings listed in the NID. *See* Ex. 1 at 16. A practitioner may be subject to discipline under 8 C.F.R. § 1003.102(n) if the practitioner "[e]ngages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process." This includes "any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct." 8 C.F.R. § 1003.102(n).

The supplementary information for the proposed rule that became 8 C.F.R. § 1003.102(n) indicates that this ground comes from the widely recognized ABA Model Rule 8.4(d), which prohibits practitioners from "engag[ing] in conduct that is prejudicial to the administration of justice." The supplementary information also cites to *Matter of Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996) as a useful source for "discerning the most appropriate parameters for this ground." *See* 73 Fed. Reg. 44178 (proposed July 30, 2008). To find a practitioner's conduct to be prejudicial to the administration of justice, the Government must prove that the practitioner's conduct: (1) is improper, (2) bears directly on the judicial process with respect to a specific case or tribunal, and (3) taints the judicial process in more than a *de minimus* way, i.e., it impacts the process "to a serious or adverse degree." *Matter of Hopkins*, 677 A.2d at 61.

Mr. De Olivas's assertions that no legal precedent interprets "good cause" and that the precedent cited by Disciplinary Counsels is "irrelevant" to this matter do not persuade. Ex. 8 at 2. Disciplinary Counsels cite appropriately to *Matter of Hopkins*, especially as it was cited in the

[11] To the extent that Mr. De Olivas argues his father was later hospitalized, the records indicate that his father received hospital care from October 31, 2022, through November 7, 2022, then again beginning in January 2024. Ex. 6I at 4085-92. This does not evidence a hospitalization near enough in time to the hearing on May 16, 2023, to support his claim that his absence then was necessitated by a sudden hospitalization on that date.

proposed rule that formed the basis of the regulation at issue. *See* 73 Fed. Reg. 44178 (proposed July 30, 2008). The *Hopkins* criteria provide a useful guide here.

Even considering solely the finding that Mr. De Olivas violated 8 C.F.R. § 1003.102(l), Mr. De Olivas's conduct was improper. *Matter of Hopkins*, 677 A.2d at 61 (finding improper conduct when a practitioner "violates a specific statute, court rule or procedure, or other disciplinary rule"). As to the second and third criteria, Mr. De Olivas's failure to appear for 14 scheduled hearings without good cause had direct bearing and significant, adverse impact on the judicial process for seven separate cases. *See id.*; *see also* 65 Fed. Reg. 39513, 39520 (proposed June 27, 2000) (noting that repeated absences from scheduled hearings "adversely affects claimants, diminishes the ability of the [courts] to operate efficiently and harms other applicants by disrupting schedules and workflow"). The respective immigration courts had to reschedule 10 of the 14 hearings at issue, four of which were individual hearings that likely would have been resolved without additional hearings had they gone forward as scheduled and that had been allotted significant time on the immigration courts' dockets. *See* Ex. 2A at 9, 19; 2B at 47-48, 59, 84; 2C at 111, 115, 119; 2D at 139-40, 148, 156; 2E at 172, 193; 2F at 219; 2G at 248, 262. In failing to appear for these hearings, Mr. De Olivas further delayed a resolution for his clients, who likely already had experienced extensive delays in the process due to an already backlogged system. *See Matter of Jasmin Veronica Miller*, D2014-040, at 3-4 (A.O. Apr. 23, 2015), available at https://www.justice.gov/sites/default/files/pages/attachments/2015/10/13/miller-ao-order-and-bia-redacted.pdf (finding an immigration attorney's failure to appear for 11 hearings to be prejudicial to the administration of justice, as it caused clients to wait even longer for a resolution of their cases and "wasted" a hearing slot for another case).

The immigration courts involved were prevented from operating efficiently, as rescheduling not only delays the courts' ability to resolve these specific cases expediently, but also eliminates that time for scheduling other cases, which in turn prolongs all other cases. *See Matter of Jasmin Veronica Miller*, D2014-040 at 4. The record also indicates that the immigration courts at issue wasted other resources with Mr. De Olivas's absences, including the cost of interpreters who were not utilized (*see* Ex. 5O at 419; Ex. 5S at 431), time spent issuing orders to show cause and locating alternate addresses for Mr. De Olivas (Ex. 2A at 21-22, 24-25, 28; Ex. 2B at 87-89, 95; Ex. 2C at 126-29; Ex. 2D at 155-57, 159-62; Ex. 5O at 418; Ex. 5P at 421; Ex. 5Q at 424), and time and resources spent adjudicating a motion to reopen after one of Mr. De Olivas's clients was ordered removed *in absentia* after failing to appear (*see* Ex. 7, Attachment 2). Mr. De Olivas's conduct of failing to appear for 14 hearings without good cause had a direct bearing on seven cases in a significant, adverse way and impeded the judicial process in far more than a *de minimus* way. His conduct meets the *Hopkins* criteria for conduct prejudicial to the administration of justice and constitutes a violation of 8 C.F.R. § 1003.102(n). Disciplinary Counsels have shown by clear and convincing evidence that the Respondent has engaged in professional misconduct under that subsection.

3. 8 C.F.R. §§ 1003.102(o) and (q) – Competency and Diligence

Mr. De Olivas is also charged with misconduct in violation of 8 C.F.R. §§ 1003.102(o) and

(q) for failing to appear for 15 hearings. *See* Ex. 1 at 16. A practitioner is subject to discipline under 8 C.F.R. § 1003.102(o) if he or she "[f]ails to provide competent representation to a client."[12] 8 C.F.R. § 1003.102(q) provides a ground for disciplining a practitioner who "[f]ails to act with reasonable diligence and promptness in representing a client."[13]

A basic obligation of attorneys of record is to appear for scheduled hearings. *See Matter of Jasmin Veronica Miller*, D2014-040 at 3 (A.O. Apr. 23, 2015) ("It is axiomatic that an attorney must actually appear at a client's hearings to represent him or her diligently and competently."). As the practitioner of record in these seven cases, Mr. De Olivas was under an obligation to appear for all scheduled hearings and employ methods that lead to a resolution for his clients. 8 C.F.R. §§ 1003.102(o) (defining "competent handling of a particular matter" to include the "use of methods and procedures meeting the standards of competent practitioners"), 102(q) (stating that acting diligently requires a practitioner to manage his or her workload such that "each matter can be handled competently"). Reasonable diligence also requires that practitioners maintain a current—and reliable—mailing address with the immigration court and in each case in which they are the practitioner of record, and that they file timely motions to continue when they have foreseeable conflicts. 8 C.F.R. § 1003.102(q)(2); *see also Immigration Court Practice Manual*, Ch. 2.1(b)(6) ("Address Obligations of Practitioners") ("All practitioners have an affirmative duty to keep the immigration court apprised of their current contact information, including address[.]"); *id.* at Ch. 3.1(b). Mr. De Olivas was even warned by IJ Villegas that his failure to maintain a current address could have harmful effects on his clients, such as being ordered removed *in absentia* for failure to appear, which eventually happened in two of the cases. *See* Ex. 2B at 71, 91-93; Ex. 2F at 234-35; Ex. 7, Attachment 2 (motion to reopen filed by new counsel for Mr. De Olivas's former client, claiming that the client was absent from the hearing and ordered removed *in absentia* because Mr. De Olivas failed to inform him of the hearing date despite his efforts to contact Mr. De Olivas).

Mr. De Olivas's failure to appear for 14 scheduled hearings without good cause evinces an unwillingness and inability to provide competent and diligent representation to his clients. *See Matter of Gluck*, 114 F.Supp. 3d 57, 59 (E.D.N.Y. 2015) (finding that attorney demonstrated a lack of competence and diligence and disrespect for the court and judicial process when he repeatedly disregarded court orders and deadlines and failed to appear at pretrial conferences). Disciplinary Counsels have shown, by clear and convincing evidence, that Mr. De Olivas's conduct in failing to appear for the 14 scheduled hearings discussed herein and without good cause violated 8 C.F.R.

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[12] "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." 8 C.F.R. § 1003.102(o).

[13] "A practitioner's workload must be controlled and managed so that each matter can be handled competently." 8 C.F.R. § 1003.102(q)(1). "A practitioner has the duty to act with reasonable promptness. This duty includes, but shall not be limited to, complying with all time and filing limitations." 8 C.F.R. § 1003.102(q)(2). "A practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations." 8 C.F.R. § 1003.102(q)(3).

§§ 1003.102(o) and (q).

B. Whether Mr. De Olivas Engaged in Professional Misconduct in Connection with His Failure to Respond to Four Orders to Show Cause (NID Para. 55).

In four of the seven cases in which Mr. De Olivas failed to appear for scheduled hearings, he also failed to respond to the orders to show cause issued by the respective Immigration Judges. *See* Ex. 2A at 21-22 (*Matter of* [redacted]; Ex. 2B at 87-89 (*Matter of* [redacted]); Ex. 2C at 126-28 (*Matter of* [redacted]; Ex. 2D at 155-57 (*Matter of* [redacted]). Mr. De Olivas first argues that he did not respond to the orders to show cause because he did not have notice of them. *See* Ex. 6, Respondent's Response at 3, 5, 7, 9. The record indicates that all four orders to show cause were mailed to the address of record for Mr. De Olivas, although three were returned to the Santa Ana Immigration Court as undeliverable. *See* Ex. 2A at 21-22; Ex. 2B at 76, 93-94; Ex. 2C at 104; Ex. 2D at 134, 158. For two of the undeliverable orders, IJ Tadros-Ibarra located an alternate address for Mr. De Olivas and sent amended orders to show cause to the alternate address; neither of the amended orders were returned to the Santa Ana Immigration Court as undeliverable. Ex. 2A at 24; Ex. 2D at 159. As previously explained, practitioners of record have an obligation to update their mailing address with the immigration courts for every case. *Immigration Court Practice Manual*, Ch. 2.1(b)(6) ("Address Obligations of Practitioners"); 8 U.S.C. § 1229(c) ("Service by mail . . . [is] sufficient if there is proof of attempted delivery to the last address provided[.]"). Mr. De Olivas had a duty to update his address with the appropriate immigration courts, and his failure to do so does not constitute good cause for failing to respond to the orders to show cause.

In his subsequent response to Disciplinary Counsels' Brief, Mr. De Olivas also argues that he has not engaged in misconduct with respect to his failure to respond to the orders to show cause because (1) practitioners do not have an affirmative duty to respond to orders to show cause; (2) his conduct did not affect anyone but himself; and (3) failing to respond to the orders to show cause should not be sanctioned because failure to respond may result in referral to the Office of General Counsel, which is punishment itself. Ex. 8 at 3-4.

A close examination of the orders to show cause reveals that in each case, the only consequence specified for a failure timely to reply or to provide an adequate explanation was potential referral to EOIR bar counsel. *See* Ex. 2A at 22 (*Matter of* [redacted]) ("Failure to file a written response, including an explanation the Court deems satisfactory, shall result in the Court referring the matter to the EOIR General Counsel for possible disciplinary action."); Ex. 2B at 89 (*Matter of* [redacted]) ("Failure to timely file the written explanation or provide an explanation the Court deems satisfactory will result in the Court referring the matter to the EOIR General Counsel for possible discipline."); Ex. 2C at 127 (*Matter of* [redacted]) (ordering Mr. De Olivas "to file a written explanation for his failure to appear . . . and to show cause why the Court should not refer this matter to the General Counsel of the Executive Office for Immigration Review (EOIR) for further examination and assessment"); Ex. 2D at 157 (*Matter of* [redacted]) ("Failure to file a written response, including an explanation the Court deems satisfactory, shall result in the Court referring the matter to the EOIR General Counsel for possible disciplinary action.").

Each order to show cause provided Mr. De Olivas with the opportunity to explain his failures to appear and potentially avoid a referral of the matter to EOIR Bar Counsel. While the directives do suggest that in each case he was ordered to file a response, the only consequence specified for failure to do so was referral to disciplinary counsel. Mr. De Olivas may well have decided to accept referral to bar counsel and see whether any consequences flowed from that. He certainly had a duty to his clients to show up to hearings on their behalf, but nothing suggests that he had a duty to his clients to respond to these orders to show cause, which concerned solely his own conduct. He correctly asserts that his failures to respond to the orders to show cause did not affect his clients and their cases but could affect only himself and his professional standing. He also correctly observes that the consequence of failing to respond to the orders to show cause was referral of himself to disciplinary counsel.

A practitioner is subject to discipline under 8 C.F.R. § 1003.102(o) if he or she "[f]ails to provide competent representation to a client." Likewise, 8 C.F.R. § 1003.102(q) provides a ground for disciplining a practitioner who "[f]ails to act with reasonable diligence and promptness in representing a client." As Mr. De Olivas's failure to respond to the orders to show cause, which concerned only his own conduct, did not relate directly to his representation of any client, these proposed grounds of discipline cannot be sustained based on his failures to reply to the orders to show cause.[14]

A practitioner may be subject to discipline under 8 C.F.R. § 1003.102(n) if the practitioner "[e]ngages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process." This includes "any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct." 8 C.F.R. § 1003.102(n). Mr. De Olivas's failure to reply to the orders to show cause unquestionably signals a lack of respect for the immigration judges and their time, as well as that of court staff who had to process the orders and monitor any replies. Whether or not he replied to the orders to show cause did not impact the process of adjudicating the cases in which he represented the respective clients, though. For that reason, his conduct in failing to respond to these orders to show cause did not prejudice the administration of justice in his client's cases, undermine the integrity of the adjudicative process in those cases, or interfere with the process of adjudicating those cases. As such, it has not been demonstrated by clear and convincing evidence that the Respondent is subject to discipline for failing to respond to the orders to show cause.

Charges of misconduct in paragraph 55 concerning the orders to show cause are not sustained. The Respondent is not subject to professional discipline based on his failure to reply to the orders to show cause.

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[14] In contrast, appearing for a hearing is required in the course of representing a client. *See Immigration Court Practice Manual*, Ch. 2.1(b)(2). A failure to do so without good cause can reflect failures to provide competent representation and act with reasonable diligence and promptness in representing a client.

C. Appropriate Sanctions for Misconduct Charged in Paragraph 54 of the NID.

The regulations vest the AO with broad discretion in fashioning appropriate sanctions. An adjudicating official may impose sanctions of disbarment, suspension, public or private censure, or "[s]uch other disciplinary sanctions as the adjudicating official or the Board deems appropriate." 8 C.F.R § 1003.101(a).

Disciplinary Counsels cite to the ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (ABA Standards) as an appropriate guide for evaluating sanctions. *See* Ex. 8 at 30. The ABA Standards note, "After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." ABA Standards, Std. 9.1. While the ABA Standards are not binding, they do provide helpful guidance. *See Matter of Gupta*, 28 I&N Dec. 653, 657 (BIA 2022) ("While we are not bound by the ABA Standards, we find them persuasive on this issue."). The ABA Standards state that suspension may be warranted in different circumstances, including when a practitioner knowingly fails to perform services for a client, *see* ABA Standards, Std. 4.42; knowingly violates a court order or rule, *id.*, Std. 6.22; and has been reprimanded for similar misconduct and continues to engage in such misconduct, *id.*, Std. 8.2. Under Standard 2.3, where suspension is imposed, suspension should generally be "for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years." *Id.*, Std. 2.3.

Aggravating Factors. The ABA Standards list numerous, non-exclusive factors that may justify an increase in the degree of discipline to be imposed. *See* ABA Standards at 9.22 ("Aggravating factors include: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution; (k) illegal conduct, including that involving the use of controlled substances."). Considering the evidence, multiple aggravating factors listed in the ABA Standards apply to Mr. De Olivas's case, including (a) prior disciplinary offenses; (c) a pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; and (i) substantial experience in the practice of law.

Mr. De Olivas has a significant disciplinary history: (1) a one-year suspension from practice before the U.S. District Court for the Southern District of California on September 24, 2008; (2) a non-identical reciprocal two-year suspension from practice before the Immigration Courts, the Board, and DHS based on his one-year suspension in California and violation of 8 C.F.R. § 1003.102(f) on August 14, 2009; (3) a one-year suspension from practice in California on March 1, 2011; (4) a warning letter issued by Disciplinary Counsels on December 5, 2017; (5) a warning letter from Disciplinary Counsels on March 25, 2020; and (6) an informal admonition issued by Disciplinary Counsels on May 27, 2022. Ex. 2I at 276-83, 292-93; Ex. 2J at 297-300; Ex. 2K at 310-23; Ex. 2L at 379-81; Ex. 2N at 407-15; 2M at 388-90.

Importantly, prior disciplinary action against Mr. De Olivas was largely based on similar misconduct, revealing a pattern of professional misconduct over the course of Mr. De Olivas's entire legal career, a failure to address serious shortcomings in his performance as an attorney, and a lack of respect for the disciplinary process. His suspension in 2008 was in part due to his failure to appear for scheduled hearings and failure to comply with court orders, and the informal admonition in 2022 found that Mr. De Olivas failed to appear for four scheduled hearings without good cause in violation of 8 C.F.R. §§ 1003.102(l), (o), and (q). *See* Ex. 2I at 276-83; Ex. 2N at 407-415. The informal admonition letter, sent to Mr. De Olivas roughly six months before the first complaint in this disciplinary action, specifically noted that Mr. De Olivas's conduct appeared to be the start of a pattern and his continued failure to appear for hearings or failure to respond to orders to show cause would result in formal disciplinary proceedings. Ex. 2N at 414-415. Ten of the 14 hearings at issue here occurred after the issuance of the informal admonition. Moreover, this conduct occurred more than 10 years after Mr. De Olivas was found to have engaged in the similar misconduct in 2008 that led to his suspension and after he had received two warning letters from Disciplinary Counsels about his failure to act in a competent and diligent manner. *See* Ex. 2L at 379-81; Ex. 2M at 388-90.

This repeated pattern of misconduct by Mr. De Olivas, even after multiple warnings, suggests a concerning disregard for his clients and the immigration courts. Mr. De Olivas is an experienced attorney; he has been licensed to practice law since 2007. That experience, combined with Mr. De Olivas's similar past misconduct and the resulting disciplinary actions, as well as Disciplinary Counsels' efforts to warn Mr. De Olivas of the consequences of his misconduct, should have provided the necessary encouragement to change his behavior. Yet, Mr. De Olivas has instead continued the pattern of misconduct. He has not demonstrated remorse or taken responsibility for how his misconduct has impacted his clients or the legal system. On the contrary, Mr. De Olivas believes that his misconduct "did [not] affect anyone else but [him] alone." Ex. 8 at 4. This disregards the considerable toll that immigration proceedings can have on individuals and families, such as the impact of being ordered removed *in absentia*, like two of his clients. *See* Ex. 2B at 91; Ex. 2F at 234. His general statement that "some of [his] actions, at some point, may have [been] unsuitable, perhaps even inexcusable" does not demonstrate a sincere understanding of his wrongdoings. Ex. 6, Respondent's Response at 14.

Mitigating Factors. The ABA Standards provide mitigating factors that may justify a reduction in the degree of discipline. *See* ABA Standards 9.32 ("Mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; (j) delay in disciplinary proceedings; (k) imposition of other penalties or sanctions; (l) remorse; (m) remoteness of prior offenses.").

The record here suggests that the only mitigating factor may be Mr. De Olivas's health and personal problems, to include caring for his father. Both Mr. De Olivas and his father have encountered some medical issues in recent years. *See* Exs. 6H, 6I. Mr. De Olivas has not provided much detail about the effect and extent of these medical issues. Rather, as noted above, he has merely provided medical records that fail to line up with the dates that he failed to appear for hearings. Mr. De Olivas has given no further explanation as to how any specific medical condition or ailment—whether his own or that of his father—played a role in his conduct. The record suggests that Mr. De Olivas may have missed a hearing due to being on pain medication, but he does not claim any chemical dependency. While his earliest prior misconduct offenses are somewhat remote in time, he continued to engage in professional misconduct over the ensuing years. He has provided little in the way of supporting letters or statements. He has shown no contributions to the community, such as through pro bono service or volunteer or other activity, or other evidence of character or reputation.

Conclusion Regarding Sanctions. Pursuant to the relevant ABA Standards, Disciplinary Counsels proposed a minimum of two years' suspension from practice before the Immigration Courts, the Board, and DHS. Ex. 1 at 18; Ex. 7 at 30. In support of its position, Disciplinary Counsels cite to cases in which practitioners' repeated failure to appear led to or contributed to months-long suspensions. *See Matter of De Anda*, 17 I&N Dec. 54, (A.G. 1979) (practitioner suspended for six months for failure to appear for two consecutive hearings without explanation); *Matter of Daniel Garcia*, D2018-0190, D2019-0052 (A.O. Oct. 26, 2023) (practitioner suspended for two years and four months for extensive misrepresentations and fraud in nineteen custody hearings and failure to appear for four scheduled hearings); *Matter of Jasmin Veronica Miller*, D2014-040 (A.O. Apr. 23, 2015) (practitioner suspended for one year and six months for repeatedly failing to appear for scheduled hearings).

Given significant and numerous aggravating factors, a dearth of mitigating factors, and Mr. De Olivas's evident lack of remorse, suspension is warranted. The conduct here aligns with the relevant ABA Standards stating that suspension may be appropriate when a practitioner knowingly fails to perform services for a client, knowingly violates a court order or rule, and has been reprimanded for similar misconduct and continues to engage in such misconduct. ABA Standards, Std. 4.42, Std. 6.22, Std. 8.2. Mr. De Olivas repeatedly failed to appear for scheduled hearings without good cause, despite past disciplinary sanctions for similar misconduct. This conduct adversely affected not only Mr. De Olivas's vulnerable clients, whose cases were further delayed and some of whom were ordered removed *in absentia*, but also the immigration courts' ability to operate efficiently, as cases did not proceed as expected and time and other resources were wasted. As discussed, this is not the first time that Mr. De Olivas has been involved in disciplinary proceedings. His failure to exhibit growth when given ample opportunities to fix his behavior demonstrates disrespect for the immigration courts and his vulnerable clients.

Based on the aggravating factors described above, with particular emphasis on the past suspensions and warnings for similar misconduct and the lack of concern about the impact of that misconduct, and lack of sufficient mitigating factors, a significant suspension is appropriate. Mr. De Olivas has not demonstrated that he finds his misconduct problematic or in need of change and

has not provided evidence of substantial mitigating factors that warrant consideration.

Upon consideration of the entire record, the AO concludes that Mr. De Olivas should be suspended from the practice of law before the Immigration Courts, the Board, and DHS for a period of 18 months.[15]

Order

Charges based on paragraph 54 of the NID (connected with his failures to appear for the 14 scheduled hearing discussed above) are sustained. As charged in paragraph 54, Mr. De Olivas engaged in professional misconduct under 8 C.F.R. § 1003.102(l), 8 C.F.R. § 1003.102(n), 8 C.F.R. § 1003.102(o), 8 C.F.R. § 1003.102(q). As such, he is subject to discipline under 8 C.F.R. § 1003.101.

Charges based on paragraph 55 of the NID (connected with Mr. De Olivas's failures to respond to the orders to show cause) are not sustained.

As discipline, Mr. De Olivas is suspended from the practice of law before the Immigration Courts, the BIA, and the DHS for a period of 18 months.

ELIZABETH KESSLER

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Elizabeth A. Kessler,
Adjudicating Official / Immigration Judge

[15] Should Mr. De Olivas seek to be reinstated to the practice of law before the Immigration Courts, the BIA, and the DHS in the future, he must follow the procedures for reinstatement set out at 8 C.F.R. § 1003.107 at the appropriate time.