UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

In the Matter of:	
John W. Gehart,	**DISCIPLINARY CASE # D 2019-0242**
Respondent.	

ON BEHALF OF RESPONDENT:
John W. Gehart, Esquire
Vellanoweth & Gehart, LLP
1625 Olympic Blvd., Suite 702
Los Angeles, CA 90015

ON BEHALF OF THE GOVERNMENT:
Paul A. Rodrigues, Disciplinary Counsel
Alexander Spindler, Associate General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

Catherine M. O'Connell, Disciplinary Counsel
U.S. Department of Homeland Security
111 Massachusetts Avenue, NW, Room 3100,
Mail Stop 2121
Appellate and Protection Law Division
Washington, DC 20529

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that:

[ ] 1. The ground(s) _____ set forth in the Notice of Intent to Discipline have not been established by clear and convincing evidence and are, hereby, dismissed.

[x] 2. The ground, 8 C.F.R. § 1003.102(g), set forth in the Notice of Intent to Discipline has been established by clear and convincing evidence.

The following disciplinary sanction shall be imposed:

[ ] Practitioner shall be permanently expelled from practice before:
- [ ] The Board of Immigration Appeals
- [ ] The Immigration Courts
- [ ] The Department of Homeland Security
- [ ] All

[x] Practitioner shall be suspended from practice before:
- [x] The Board of Immigration Appeals
- [x] The Immigration Courts
- [x] The Department of Homeland Security
- [x] All

For 60 days from the date of the issuance of this decision.

[ ] Practitioner shall be publically/privately censured

[x] Other appropriate disciplinary sanction

Respondent shall complete 10 hours of anger management counseling with a licensed counselor prior to reinstatement.

Date: 4-13-22

Brett M Blanchard

Adjudicating Official - Immigration Judge

APPEAL: RESERVED
APPEAL DUE BY: 30 days from service of Order
EOIR 45

Order of the Court
File No. D2019-0242

CERTIFICATE OF SERVICE

THIS DOCUMENT SERVED BY:
MAIL (M) PERSONAL SERVICE (P) **ELECTRONIC MAIL (E)**
TO: (x) RESPONDENT ( ) RESPONDENT'S ATTORNEY (x) DHS (x) EOIR OGC
DATE: _____4/13/2022 _ BY COURT STAFF: ___CRB_____

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

In the Matter of:	
John Wolfgang Gehart,	**DISCIPLINARY CASE # D2019-0242**
Respondent	

CHARGE: 8 C.F.R. §§ 1003.102(g)

PROSOSED DISCIPLINE: Suspension from practice before the Board of Immigration Appeals and Immigration Courts, and the Department of Homeland Security for a period of 90 days

ON BEHALF OF RESPONDENT:
John W. Gehart, Esquire
Vellanoweth & Gehart, LLP
1625 Olympic Blvd., Suite 702
Los Angeles, California 90015

ON BEHALF OF THE GOVERNMENT:
Paul A. Rodrigues, Disciplinary Counsel
Alexander Spindler, Associate General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

—

Catherine M. O'Connell, Disciplinary Counsel
USCIS/Department of Homeland Security
U.S. Immigration and Customs Enforcement
11411 East Jefferson Ave.
Detroit, Michigan 48214

MEMORANDUM OF DECISION AND ORDER

I. PROCEDURAL HISTORY

On November 19, 2020, the Disciplinary Counsel of the Office of the General Counsel for the Executive Office for Immigration Review (Disciplinary Counsel), together with the Disciplinary Counsel for U.S. Citizenship and Immigration Services,[1] filed a Notice of Intent to Discipline (NID) attorney John W. Gehart (Respondent) with the Board of Immigration Appeals (Board) pursuant to 8 C.F.R. § 1003.102(e)(1). Exh. 1. The NID alleges that Respondent violated

[1] The Disciplinary Counsel for the Executive Office for Immigration Review is lead counsel in these proceedings.

8 C.F.R. § 1003.102(g), which states that attorneys are subject to discipline if they "[e]ngaged in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she act[ed] in a representative capacity, which would constitute contempt of court in a judicial proceeding." *See* Exh. 1; 8 C.F.R. § 1003.102(g).

On December 17, 2020, Respondent filed an answer to the NID, in which he contested that he was subject to discipline under 8 C.F.R. § 1003.102(g). Exh. 3. On March 9, 2022, the Court held a final hearing in this matter, during which time Respondent, as well as two colleagues from his firm, testified. Taking the hearings and all other evidence[2] into account, the following decision will address the charges against Respondent and the discipline to be imposed on Respondent.

II. ALLEGATIONS AND CONCESSIONS OF MISCONDUCT

The filing of the present NID is based upon Respondent's written comments in a brief Respondent submitted to the Board on October 22, 2018. *See* Exh. 1 at 1–2; Exh. 2, Tab 1. This brief was filed in support of the appeal in *Matter of R[redacted] A[redacted] D[redacted] R[redacted]*, A[redacted] 949 over which Immigration Judge (IJ) Zsa Zsa DePaolo of the San Diego Immigration Court presided. Respondent concedes he wrote the following in his brief:

> The IJ acted unconscionably when she found that the beatings inflicted upon Mr. D[redacted] did not constitute torture. One can only hope that Karma causes the IJ herself suffer a similarly terrible fate so that she never again acts with casual disdain when a torture victim testifies how he clung to life through two beatings then decided to provide the requested information to his torturers only so that his family would know his fate, because he already believed he would not survive a third such beating.

Exh. 1 at 1–2. In light of this comment, Disciplinary Counsel charges Respondent with having violated 8 C.F.R § 1003.102(g) for engaging in contumelious or otherwise obnoxious conduct that would constitute contempt of court in a judicial proceeding. *See id.*

Respondent has not contested any of the factual allegations in the NID. Exh. 3 (Respondent's Written Answer to the NID); Exh. 8. Accordingly, Disciplinary Counsel's allegations are deemed admitted and may be considered by the Court. *See* 8 C.F.R. §

[2] 8 C.F.R. § 1003.106(a)(iv) states that in rendering a decision, the adjudicating official shall consider the complaint, the preliminary inquiry report; the NID, the answer, any supporting documents, and any other evidence, including pleadings, briefs, and other materials. It has been brought to the Court's attention that there is apparently a brief, privileged, extemporaneous conversation that was unintentionally recorded between the Court and a judicial law clerk about their initial, passing thoughts at the conclusion of the proceedings. The Court stresses that this written decision is based upon a thorough and considered review of the entirety of the record.

1003.105(c)(2). Respondent also concedes that his conduct in his brief to the Board was contumelious or otherwise obnoxious conduct. *See* Exh. 3, at 8. However, Respondent argues that he is not subject to discipline because his conduct "would not constitute contempt in a judicial proceeding." 8 C.F.R. § 1003.102(g).

III. LAW AND ANALYSIS

It is Disciplinary Counsel's burden to prove the grounds for disciplinary sanctions by clear and convincing evidence. 8 C.F.R. § 1003.106(a)(2)(iv). The Court will only impose disciplinary sanctions against a practitioner if it finds it to be in the public interest to do so. 8 C.F.R. § 1003.101(a). Disciplinary sanctions are "deemed to be in the public interest" if Disciplinary Counsel establishes that the practitioner falls within any of the enumerated categories in the regulations. 8 C.F.R § 1003.102. If the Court determines that Disciplinary Counsel has met its burden, it must sustain the charge and decide on a form of punishment, which can be expulsion, suspension, public or private censure, or other sanctions deemed appropriate. *Id.* §§ 1003.101(a)(1)–(4). Any grounds for discipline set forth in the NID that have not been established by clear and convincing evidence shall be dismissed. *Id.* § 1003.106(b). In the present case, Disciplinary Counsel advances that Respondent violated 8 C.F.R. § 1003.102(g). The Court proceeds to discuss this charge.

a. 8 C.F.R. § 1003.102(g) – Contumelious or Obnoxious conduct

Disciplinary Counsel charges Respondent as violating 8 C.F.R. § 1003.102(g). *See* Exh. 1. Pursuant to this provision, a practitioner is subject to disciplinary sanctions if he or she:

> Engages in contumelious or otherwise obnoxious conduct, with regard to a case in which he or she acts in a representative capacity, which would constitute contempt of court in a judicial proceeding.

8 C.F.R. § 1003.102; BLACK'S LAW DICTIONARY, *Contumelious* (11th ed. 2019) (defining contumelious as "Insolent, abusive, spiteful, or humiliating").

In determining whether conduct would constitute contempt of court in a judicial proceeding, the Board has looked to federal and state law. *See Matter of De Anda*, 17 I&N Dec. 54, at 54–57, 60–61 (BIA 1979).[3] In the State of California, where the respondent is licensed and where the conduct that gave rise to this complaint occurred, "it is settled law . . . that an attorney commits direct contempt[4] when he impugns the integrity of the court by statements made in open

[3] *De Anda* concerned a disciplinary charge under the precursor regulation to 8 C.F.R. § 1003.102(g). *See De Anda*, 17 I&N Dec. at 58. The Court holds its reasoning applies equally to 8 C.F.R. § 1003.102(g).

[4] "Direct contempt" in California law refers to contempt committed in the immediate view of the Court. *See In re Buckley*, 514 P.2d at 1207. Unlike other forms of contempt, direct contempt in California may be treated summarily

court either orally or in writing." *See In re Buckley*, 514 P.2d 1201, 1207 (Cal. 1973); *see also United States v. Lumumba*, 794 F.2d 806, 809 (2d Cir. 1986) (noting that "disrespectful remarks to the court, opposing counsel, or other parties" is a category of attorney misconduct that may be punished as contempt). Further, "the fact that the alleged contemptuous statements were contained in pleadings or other papers filed in court does not furnish any excuse or defense against the charge of contempt" as it is "well settled that a contempt may be committed by incorporating impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court in pleadings, motions" and other filings. *See Hume v. Superior Court in and for Los Angeles County*, 17 Cal. 2d 506, 513–514 (Cal. 1941).

The contempt power in federal and state courts is not without limits. The Supreme Court of the United States has recognized, for example, that oral accusations of bias directed at a court by a pro se petitioner did not constitute criminal contempt, whereas they were not "uttered in a boisterous or in any wise actually disrupt[ive] [of] the court proceedings." *See In re Little*, 404 U.S. 553, 554 (1972). In reaching this result, the Supreme Court cautioned that the law of contempt "is not made for the protection of judges" and that judges must be careful not to confuse "offenses to their sensibilities with obstruction to the administration of justice." *See id.* at 555. While offensive remarks or insults should be discouraged, courts have recognized the difficulty of drawing a line between a comment that is merely disrespectful and one that ought to be punished as contemptuous for obstructing and imminently threatening the administration of justice. *See Lumumba*, 794 F.2d at 810–11. However, when "aggressive advocacy gives way to insolence and disrespect towards the court and . . . degenerates into 'impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court'" a trial judge is duty bound to employ the contempt power to protect the integrity of his or her court. *See In re Buckley*, 514 P.2d at 1209.

The Court finds Respondent's conduct would constitute contempt had it occurred in a judicial proceeding. As an initial matter, the Court finds Respondent's conduct can constitute contempt, even though it occurred in a written filing that was submitted remotely, rather than in the Court's presence. Federal and California law both recognize that an attorney's conduct as expressed through written filings can constitute contempt. *See Hume*, 17 Cal. 2d at 513–514; *United States v. Lee*, 720 F.2d 1049, 1051–54 (9th Cir. 1983); *Cooke v. United States*, 267 U.S. 517, 533 (1925). It is true that such statements are not treated as "direct contempt" that can be punishable summarily. *See Lee*, 720 F.2d 1049 at 1051–54. However, the Court has already determined that the direct contempt distinction is irrelevant to the instant disciplinary inquiry. *See supra* note 4.

by the presiding judge, without the necessity for a contempt hearing. *See id.* This distinction is not legally relevant to the disciplinary inquiry at issue in Respondent's case, as 8 C.F.R. § 1003.102(g) does not specify that the conduct must constitute any particular class of contempt.

As to the nature of Respondent's written comments, the Court finds they would provide the basis for a finding of contempt in judicial proceedings. Respondent "hope[d]" that "Karma" would cause IJ DePaolo to be beaten and "suffer a similarly terrible fate" to his client. Exh. 2, Tab 1, at 15. An expressed desire for an immigration judge to suffer harm, even when invoking pseudo-religious dogma to create distance with the desired result, goes far beyond zealous representation of one's client and "degenerates into 'impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court'" *See In re Buckley*, 514 P.2d at 1209. Respondent's insulting language served no purpose in advancing the interests of his client. His statement further was not just disrespectful to IJ DePaolo and the immigration court she represented, but was so extreme as to impugn her integrity and that of the immigration court as an institution. *See Lumumba*, 794 F.2d at 810–11. Such conduct can appropriately lead to a finding of contempt. *See In re Buckley*, 514 P.2d at 1209; *Lumumba*, 794 F.2d at 810–11. The Court further notes that in other cases, similarly egregious and disrespectful comments have been found to constitute contempt of court. *See United States v. Marshall*, 371 F.3d 42, 48 (2d Cir. 2004) (finding a defendant's statement "So all I can say is kiss my ass and your wife can suck my dick" directed at the judge was a "verbal attack . . . so unnecessary and so insulting to judicial authority as to constitute, without prior warning, contempt."); *In re Mahoney*, 280 Cal. Rptr. 3d 2, 3 (Cal. Ct. App. 2021) (finding an attorney's written statements in a brief constituted contempt wherein the attorney "indulged in an unprofessional rant that impugned the integrity of the court" during which he accused the court of not following the law and "indiscriminately screw[ing]" his client).[5]

The Court also finds that Respondent's comments were imminently obstructive to the fair administration of justice. *See Lumumba*, 794 F.2d at 810–11 (stating that comments become punishable contempt when they "obstruct[] and imminently threaten[] the administration of justice"); *In re Little*, 404 U.S. at 555. Respondent's written desire that IJ DePaolo suffer torture presented a grave insult to IJ DePaolo and her court. Indeed, the Court notes that this insult was so grave that the Board felt compelled to expend time and administrative resources in its appellate opinion both to denounce Respondent's statement, and to suggest that disciplinary consequences may be appropriate. Exh. 2, Tab 2, at 20–21.

In addition, the Court finds as a general matter that a comment of this nature inherently tends to prejudice the fair administration of justice, insofar as it unfairly and unnecessarily attacks the integrity of courts. Respondent incorrectly implies that obstruction in this context means the literal halting or delay of judicial proceedings, or an effort to sabotage the adjudicative

[5] Respondent has attempted to distinguish all of the cases cited to by Disciplinary Counsel, including *Marshall* and *Mahoney* which the Court cites above. *See* Exh. 8, at 8–14. The Court is unconvinced by the Respondent's arguments that *Marshall* and *Mahoney* are distinguishable. While these cases are not identical to Respondent's comments, the Court finds the comments therein to be comparable to Respondent's both in their outrageousness and in the damaging effect they have to the integrity of courts and administration of justice.

function through disobedience or false statements. It is clear under the case law, however, that offensive language is considered to be obstructive when it undermines the integrity and authority of courts. *See Hume*, 17 Cal. 2d at 513–514; *Lumumba*, 794 F.2d at 809 (noting that "disrespectful remarks to the court, opposing counsel, or other parties" is a category of attorney misconduct that may be punished as contempt); *In re Buckley*, 514 P.2d at 1207. Respondent's expressed desire to see IJ DePaolo be tortured was obstructive to the administration of justice because it was such a grave insult that, if left unpunished, it would have undermined the integrity and authority of the court. *See In re Buckley*, 514 P.2d at 1208 ("The judge of a court is well within his rights in protecting his own reputation from groundless attacks upon his judicial integrity, and it is his bounden duty to protect the integrity of his court.").

The Court is mindful that contempt is not to be found lightly. Courts have warned against the reflexive resort by judges to the contempt power. *Seale*, 461 F.2d at 369–70 (warning against "slid[ing] [too] easily" from the conclusion that a remark was disrespectful to the conclusion it "reflected on the integrity of the Court and tended to subvert and prevent justice." (citation omitted)); *In re Buckley*, 514 P.2d at 1201 ("[W]e have warned that the judge's ultimate weapon of the summary contempt power 'must be exercised with great caution, lest it stifle the freedom of thought and speech so necessary to a fair trial under our adversary system."). However, while the Court does not conclude that Respondent's conduct would be contempt lightly, it is clear that Respondent's comments and the corrosive effect they had on the administration of justice would justify a finding of contempt.

Although Respondent concedes his conduct was contumelious or obnoxious, he argues that it would not constitute contempt in a judicial proceeding. The respondent's first argument is that his conduct could not be punished as contempt because federal law prohibits criminal contempt proceedings under 18 U.S.C. § 402 if they were not instituted within a year of the conduct at issue. *See* Respondent's Answer Brief, at 2. Second, Respondent argues that his conduct would not satisfy the four elements that are required for a contempt conviction under 18 U.S.C. § 401(1). *See id.* Both arguments are without merit.

These arguments stem from a faulty premise. Respondent's arguments erroneously assume that 8 C.F.R. § 1003.102(g), by referencing contempt, incorporates all the same requirements needed to obtain a conviction for criminal contempt under federal contempt statutes. The plain text of 8 C.F.R. § 1003.102(g) does not state conduct must be punishable contempt in federal proceedings. Nor does it specify that the conduct must be contempt under any particular contempt statute or court rule. Rather, the regulation merely states that the contumelious or obnoxious conduct "would constitute contempt of court in a judicial proceeding." 8 C.F.R. § 1003.102(g). The Court finds the clear intent of this language is to ensure that an attorney's conduct is, by its nature, the kind of conduct that would constitute contempt in a judicial proceeding. By adding this requirement, the regulation aims to capture

only especially grave forms of contumelious or obnoxious conduct as per se justifying discipline. This interpretation is supported by the purposes disciplinary proceedings serve. Unlike criminal contempt proceedings, the purpose of disciplinary proceedings is not to punish attorneys, but to determine if their conduct warrants disciplinary action in the public interest. *See* 8 C.F.R. § 1003.101 ("An adjudicating official . . . may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so"); *Matter of Jeffrey Sondel*, D2007-276, at 10 (A.O. Sept. 29, 2010) (observing that the purpose of disciplinary proceedings is to determine whether an attorney's "conduct implicates [their] fitness to function as an officer of the court and whether it is in the public interest for him to continue to practice a profession imbued with the public trust"). Respondent's arguments thus fail because Disciplinary Counsel is only required to show his conduct was, by its nature, the kind of conduct that would be punishable as contempt in judicial proceedings.

Citing to various sources, Respondent also argues contempt requires an intent to obstruct the administration of justice. *See* Respondent's Answer Brief, at 2–7; Exh. 3, at 8. Respondent has stated in his filings and testimony that he did not intend or calculate to obstruct justice but that he reacted emotionally and out of distress from IJ DePaolo's decision. However, Respondent has not contested that he himself wrote the portion of his brief that gave rise to these proceedings. While he has conveyed that he regrets what he did, his statements do not convince the Court that he lacked an intention to offend IJ DePaolo and to impugn her reputation and that of her court.

The Court notes that even in his filings in these disciplinary proceedings, Respondent has at times made it clear he actually meant what he wrote. *See, e.g.*, Exh. 8, at 3 (characterizing what he wrote about IJ DePaolo as "hoping that people have their comeuppance under the Golden Rule."); *id.* at 8 (stating his comment "espous[ed] his moral beliefs and reflect[ed] [his] belief in the Golden Rule."). Respondent's comments were clearly written with the intent to insult and impugn IJ DePaolo and the integrity and authority of her immigration court. *See* Exh. 3, at 9 (noting Respondent has stated he "knew that [he] had written a scornful comment").[6] This kind of intent is all that is required for misconduct to constitute contempt. *See Lumumba*, 794 F.2d at 811 (noting that disrespectful remarks can be so severe that they should be "punished as contemptuous for obstructing and imminently threatening the administration of justice.").

The Court recognizes that Respondent in these proceedings has expressed regret for what he wrote in his brief to the Board. *See, e.g.*, Exh. 3, at 5; Exh. 2, Tab 4, at 20. At least in instances of direct contempt, the Supreme Court of California has held that "an apology to the

[6] The Court recognizes Respondent has occasionally denied that he had even an intent to embarrass or insult IJ DePaolo. *See, e.g.*, Exh. 8, at 10, 11. These denials simply are not credible. Rather, in light of what Respondent wrote in his brief to the Board and his concession that his statement was "scornful," the Court finds he possessed such an intent. *See id.* at 8.

judge should be given serious consideration." *In re Buckley*, 514 P.2d at 1214. Assuming the same applies to contempt committed outside the presence of courts, the Court finds that Respondent's current expressions of regret do not materially mitigate his contemptuous conduct. The Court first notes that Respondent's apologies come both after he committed his insulting words to writing and made them a part of the record in his client's case by filing them with the Board. Expressions of regret in a separate proceeding do little to repair the damage and insult Respondent provoked in his brief to the Board. Further, while Respondent has expressed regret for writing what he did, the Court cannot find that he apologized to IJ DePaolo for saying such hurtful things. Indeed, in these disciplinary proceedings Respondent has continued to hurl accusations towards IJ DePaolo of bias, disregard for the law, and lack of empathy. *See* Exh. 3, at 3, 5.[7] And as noted above, Respondent has occasionally implied that he in fact meant what he wrote, for example stating that he only meant she should have her "comeuppance." *See* Exh. 8, at 3, 8. Given these considerations, Respondent's expressions of regret do not prevent his conduct from constituting contempt.

The Court finally finds that imposing discipline for Respondent's misconduct is in the public interest. *See* 8 C.F.R. § 1003.101 ("An adjudicating official . . . may impose disciplinary sanctions against any practitioner if [he or she] finds it is in the public interest to do so."). First, because Respondent has violated 8 C.F.R. § 1003.102(g) the regulations deem it to be in the public interest to impose disciplinary sanctions. Second, the Court independently finds that it is in the public interest to impose disciplinary sanctions in this case. The comments Respondent included in his brief to the Board go far beyond the kinds of statements an attorney can reasonably be permitted to make before a court or adjudicative body. Imposing discipline in light of these comments makes clear that they are unacceptable and will have a deterrent effect on Respondent and other attorneys. The Court also finds discipline is appropriate as a measure to force Respondent to come to terms with his conduct. The Court agrees with Disciplinary Counsel that the Respondent in his filings has demonstrated a "fundamental lack of understanding" regarding the nature of an immigration judge's role in immigration court and the difficult decisions an immigration judge must make in adjudicating applications for relief. *See* Exh. 7, at 14–15. Ultimately, the Court finds this attitude or lack of understanding to be detrimental to the immigration court system, and almost certainly to Respondent's own clients as well. Discipline

[7] Given the extreme and unacceptable nature of Respondent's misconduct, the Court finds it is irrelevant whether IJ DePaolo was, in fact, biased in the immigration case that gave rise to these proceedings. Gratuitous comments suggesting that a judge should be tortured are inappropriate and unwelcome regardless of the context in which they arise; even if the judge was biased, the Court would find such comments constitute contempt. However, while it is not necessary to comment on this issue, the Court notes it has reviewed IJ DePaolo's written decision and the arguments in Respondent's appellate brief. There are no signs that Respondent's accusation are substantiated. IJ DePaolo's decision to deny relief appears to have been the result of a thoughtful consideration of the facts and law. Notably, not only did the Board dismiss his appeal from Judge DePaolo's decision, but the Ninth Circuit did as well, as Respondent acknowledged during his testimony. While IJ DePaolo did not decide the case as Respondent wished, the Court does not find Respondent's accusations of bias are justified by the record.

is in the public interest as a means to prevent Respondent from making similar harmful statements and to force Respondent to come to terms with his misconduct.

IV. DISCIPLINARY SANCTIONS

If the Court finds that one or more of the grounds for disciplinary action enumerated in the NID have been established by clear and convincing evidence, it shall rule that the disciplinary sanctions set forth in the NID be adopted, modified, or otherwise amended. *See* 8 C.F.R. § 1003.106(b). The Court may impose the following penalties: (i) permanent expulsion; (ii) suspension, including immediate suspension; (iii) public or private censure; or (iv) such other disciplinary sanctions as the Court deems appropriate. *See* 8 C.F.R. §§ 1003.101(a)(1)-(4). According to the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards), "[a]fter misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." ABA Standards at 9.0.[8] Though such standards are not binding, the Court finds them generally instructive. A discussion of these factors and the appropriate sanctions appears below.

a. Aggravating Factors

The ABA Standards state that "aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed." ABA Standards at 9.21. The ABA Standards set forth a list of aggravating factors, and the following factors are a portion of that list most applicable to the case as hand: (1) a pattern of misconduct; (2) multiple offenses; (3) refusal to acknowledge wrongful nature of conduct; and (4) substantial experience in the practice of the law. ABA Standards at 9.22.

Most critically, the comment that gave rise to these proceedings is not an isolated instance of contumelious or obnoxious statements written by Respondent. Disciplinary Counsel has submitted evidence that on October 10, 2019 Respondent was privately warned by United States Citizenship and Immigration Services (USCIS) for having made similar comments. *See* Exh. 2, Tab 5; Exh. 6, Tab 9. This private warning arose from an e-mail that Respondent sent on August 26, 2019 to USCIS District Director Donna P. Campagnolo, following a USCIS decision to discontinue a preferred entry policy that gave attorneys expedited entry privileges into the federal building where the Los Angeles USCIS field office was located. The Court excerpts relevant portions of this letter below:

---

[8] The ABA Standards are more formally cited as Joint Committee on Professional Sanctions, Standards for Imposing Lawyer Sanctions, available at: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/corrected_standards_sanctions_may2012_wfootnotes.authcheckdam.pdf.

Director Campagnolo,

Your decision to discontinue preferred Attorney entry at 300 N. Los Angeles Street constitutes a mistake.

Your reasoning that "We are the only USCIS location that has had this practice in place, and it is time for us to discontinue" contains a leap in logic.

There exists a very logical reason why your building constitutes the only building that has this practice: *No other government building has two heavily-visited USCIS Field Offices, a heavily-visited IRS office, a heavily-visited EOIR courthouse, as well as several moderately and lightly visited government offices, e.g. U.S. Attorney's Office.*

. . .

Finally, I want to share three stories that I have collected in recent years. While I lack a belief in divine intervention, in general, those who contribute to the suffering of others tend to suffer themselves. One of my grandfathers not only stood by but verbally supported Nazi policies that demonized and stripped legal protections from "non-aryans." Despite a healthy constitution, several years after WWII ended, he mysteriously developed a cancer so painful that he ended his own life with a morphine overdose. I have also witnessed an immigration judge—who felt fond of concocting intellectually dishonest reasons to deny cases—end his service when he literally came down with wrath-of-God-like boils that rivaled the afflictions written in the Book of Job. After he connected his illness with his dishonesty, the judge started granting every case before him to make up for the suffering he inflicted on countless thousands. A colleague witnessed another immigration judge—who enjoyed tormenting attorneys and their clients alike—callously order a blind man removed when the man could not find the courtroom at 8:00a.m. sharp due to the Courthouse lacking ADA-compliant signage. No [sic] long after, that judge suffered the loss of both his spouse and daughter a mere week apart in separate fatal automobile accidents.

From stories like the above, we should seek to avert the suffering of others for fear of suffering later ourselves: We should open doors for one another rather than

block progress, honestly execute our duties in a manner most helpful to others, and remain mindful that what comes around tends to go around.

So, please reconsider your decision to end the attorney preference line. There exist objective reasons for the attorney line (such as the uniquely large size of and multitude of various law enforcement and legal agencies in the building) as well as subjective altruistic reasons for the attorney line that your predecessors have wisely recognized.

Respectfully submitted,

John W. Gehart, Attorney

Exh. 6, Tab 9 (emphasis in original).

In light of the above, Respondent's suggestion that IJ DePaolo be tortured cannot be dismissed as an isolated instance of poor judgment and inappropriate statements. Rather, the e-mail excerpted above—written in response to a policy that would have caused only minor inconvenience—shows that Respondent has since expressed similar sentiments on at least one other occasion. Of note, two of the three "stories" Respondent shared with Director Campagnolo involve immigration judges who suffered terrible misfortunes.[9] Respondent, in recounting these stories, manifests a disturbing degree of enthusiasm at the thought of immigration judges suffering harms. It is also apparent that he tends to attribute the worst motives to immigration judges and other government employees who disagree with him without basis. Comments of this nature are entirely and obviously inappropriate. It is deeply concerning that Respondent has made such comments in writing on at least two separate occasions. Further, the e-mail excerpted above was written two months after the Board stated in its appellate decision that Respondent's comments were "unacceptable," that they "ha[d] no place in pleadings filed with the Board or any judicial body," and appeared to violate the Executive Office for Immigration Review's ethical regulations and possibly California's professional conduct rules as well. *See* Exh. 2, Tab 2, at 20–21. Respondent was thus on notice that these types of comments were not only inappropriate, but could lead to disciplinary action. *See id.*

It is also noteworthy that Respondent's brief to the Board was replete with other statements that exceeded the bounds of zealous advocacy. Exh. 2, Tab 1. Respondent, for example, wrote that IJ DePaolo "appeared hell-bent" on denying his client's application for protection under the Convention Against Torture. *See id.* at 10. He insinuated that IJ DePaolo deliberately dragged her feet on issuing a written decision because she knew could not deny the

[9] It is unclear whether the "stories" shared by Respondent in his e-mail are accurate descriptions of incidents that have occurred to real people, or whether they were invented in whole or in part by Respondent.

application on discretion. *See id.* He stated that IJ DePaolo's credibility findings were "intellectually dishonest," and he stated that IJ DePaolo "dishonestly applied the REAL ID Act to deny [his client's] claim, because she did not like him but could not deny his claim as a matter of discretion." *See id.* As to IJ DePaolo's finding that his client's past harm was not torture, Respondent stated this was "callous[] and offensive[]" and characterized her finding as being a "flippant dismissal" of his client's harm. *See id.* at 11.

All of the comments referred to above go beyond appropriate zealous advocacy. While an attorney may argue issues of adjudicator bias in an appeal, it must be done so responsibly and appropriately. Respondent's insults towards IJ DePaolo were gratuitous, offensively phrased, and unsupported by the record. Respondent could have solely advanced arguments based on the facts in the record of proceeding or based upon case law, as to why IJ DePaolo's decision should be reversed. Instead, Respondent repeatedly chose to impugn the reputation of IJ Depaolo, without stating facts sufficient to support his allegations of bias. *See* Exh. 2. He refers to IJ DePaolo's decision as supporting his conclusion that she was biased, but the Court has reviewed IJ DePaolo's decision and finds that IJ DePaolo thoughtfully considered the factual and legal issues in the case. Exh. 6, Tab 8. Nor does the Court find it unusual that IJ DePaolo required corroborating evidence, especially since she identified several specific credibility issues. *See id.* at 12–15. In sum, many other portions of Respondent's brief went beyond what is necessary and appropriate zealous advocacy. While these comments are not as grave as the comment that lead to these disciplinary proceedings, they demonstrate a larger pattern of disrespectful and inappropriate advocacy.

The Court also finds that Respondent's failure to acknowledge the wrongful nature of his conduct constitutes an aggravating factor. The Court accepts that Respondent now regrets having made the comments in his brief to the Board and in the e-mail he wrote to USCIS. However, the Court does not find Respondent has recognized that the *contents* of what he stated are wrong. Respondent should have recognized that not only was it inappropriate to file a brief expressing that IJ DePaolo be tortured, but that the very desire and thought was inappropriate and offensive. He should have realized that IJs make difficult decisions on complex issues of fact and law, and that when a case is not decided in the way he wishes, that alone is not evidence of bias. Instead, Respondent throughout these proceedings has complained about the unjustness of IJ DePaolo's decision and emphasized why (in his mind) it justly provoked his extreme response. *See* Exh. 3, at 3 (stating he felt "moral outrage" at IJ DePaolo's decision and that IJ DePaolo "violated the foundational moral principal of 'do on to others as you would have done to you.'"); *see* also Exh. 8, at 3 (characterizing his desire that IJ DePaolo be tortured, as expressing a belief that people should have their "comeuppance under the Golden Rule."). Thus, although the Court finds Respondent has come to regret his actions, he has not fully acknowledged the wrongful nature of his conduct.

Finally, Respondent's lengthy experience as a lawyer constitutes an aggravating factor in his case. Respondent testified that he has been a licensed attorney since February of 1994, and has been with his current firm since 2000. In light of Respondent's extensive legal experience, he should have known his comments were inappropriate and did not belong in a brief submitted to the Board. Respondent is also clearly an intelligent person capable of appreciating the nature of his comments and how they might be received. His decision to write what he did in his brief and to then submit that brief to the Board, despite being an intelligent attorney with extensive experience practicing law, is an aggravating factor.

B. Mitigating Factors

Mitigating circumstances "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." ABA Standards at 9.31. Factors that apply in the present proceedings, which may be considered in mitigation include:

(1) Absence of a prior disciplinary record

Aside from being warned by USCIS on October 10, 2019 for the e-mail he wrote, Respondent otherwise has no disciplinary history. Significantly, Respondent has been a licensed attorney since February of 1994. This lengthy period of time without discipline is a mitigating factor.

(2) Absence of a dishonest or selfish motive

The Court acknowledges Respondent did not have a dishonest or selfish motive when he made contumelious or obnoxious comments in his brief to the Board.

(3) Personal or emotional problems

Respondent testified to two personal or emotional problems that he believed mitigated his misconduct. First, he testified regarding his own psychological condition as a self-identified "empath." Second, he testified regarding his mother's serious health problems during the time he wrote his brief to the Board. The Court addresses these below.

Respondent identifies himself as having "inherited extreme empathy," and has described himself as an "empath." Respondent testified this is not a formal diagnosis, but is his manner of describing himself.[10] In one filing, Respondent wrote that his "entire existence consists of intensive and bitting [sic] emotions." Exh. 3, at 6. Respondent attributes his reaction to IJ DePaolo's no torture finding in his brief as being a result of the extreme empathy he felt for his

[10] Respondent testified that he has been formally diagnosed in the past with Major Depressive Disorder and Anxiety. However, he has not argued that these diagnoses contributed to or mitigate his misconduct.

client. He also testified that hearing his client's description of being harmed caused him to think about his own experience as a child being bullied. Respondent testified that, in retrospect, he believes he had a post-traumatic stress disorder response following the hearing where his client testified about his past harm.

The Court finds these emotional problems do not materially mitigate Respondent's misconduct. The Court does not find Respondent to be unique in his tendency to empathize or feel emotions stemming from representation of clients. Most attorneys, even those in fields such as immigration, remain objective despite experiencing empathy and emotion for their clients. This dual capacity to simultaneously empathize with clients and remain objective is a necessary skill for lawyers, and is critical for delivering competent representation. While Respondent claims that his problem is an excess of empathy, it appears more likely to the Court that he simply struggles with emotional control and struggles to remain objective. Empathy would have lead Respondent to consider how his desire that IJ DePaolo should be tortured was extremely offensive and hurtful to IJ DePaolo. Instead, an excess of emotion and an inability to remain objective, caused him to wish her harm. Empathy might have caused Respondent to consider how being an immigration judge requires making difficult decisions about whether a noncitizen has demonstrated eligibility for relief under the law, despite the immigration judge's personal feelings. Instead, emotion and a difficulty remaining objective caused Respondent to lash out in his brief with unsupported accusations that IJ DePaolo was biased. Finally, empathy would have lead Respondent to consider how his inclusion of three "stories" of individuals suffering terrible harms would have been received by Director Campagnolo as horrifying and worrisome. Yet again, emotion and a difficulty remaining objective caused Respondent to include these warnings in an e-mail he wrote about a minor change in administrative policy. While Respondent's general emotional issues may be difficult for him to control, the Court does not find they materially mitigate Respondent's misconduct.

The Court does, however, find the serious health problems of Respondent's mother at the time he wrote his brief to the Board are a mitigating factor. According to Respondent, his mother would frequently experience pancreatitis that would cause her to visit the hospital. A history chart that was prepared and submitted by Respondent indicates his mother was hospitalized with pancreatitis in June 2016, September 2016, June 2017, and then twice in March 2018. *See* Exh. 10, Tab 1. She was not hospitalized again until May of 2019, after Respondent submitted his brief to the Board. *See id.* However, Respondent testified that the period in 2018 and 2019 was the most difficult and stressful period of time of his mother's illness. During this time when his mother's health was relatively stable, Respondent had to work with his family and his mother's health care providers to decide on a medical course of action. Respondent testified that his family members were often in bitter disagreement on the proper course to follow, and that he had to work with them and his mother's doctors to decide upon a proper course of treatment. Respondent testified that he strongly disagreed with a surgeon's recommendation to perform a

Whipple surgery on his mother. He further stated the burden of being his mother's health care advocate fell largely on him, rather than other family members. He spent a lot of time educating himself on the medical issues involved, and he did not reduce the number of hours he worked at his firm during this time.

It was clear from Respondent's testimony that his mother's health issues caused Respondent a great deal of personal distress during the period of time when he wrote his brief to the Board and the e-mail to Director Campagnolo. The Court finds that the circumstances relating to his mother's health likely did contribute to Respondent's psychological state. The Court thus considers Respondent's mother's health issues to be a mitigating factor.

(4) Cooperative attitude toward disciplinary proceedings

Respondent has cooperated throughout these disciplinary proceedings, and assisted the Court by testifying as to his own personal circumstances. Respondent's cooperation with these proceedings is a mitigating factor.

(5) Delay in disciplinary proceedings

The Court recognizes there has been a substantial delay in these proceedings from when Disciplinary Counsel filed the NID in November of 2020. This delay has largely been the product of irregular court operations due to the COVID-19 pandemic. Nonetheless, the Court recognizes that the delay has been a hardship to Respondent. It has also given him time to reflect on his conduct. The amount of time which has passed also makes the damaging effect of Respondent's misconduct more remote.

(6) Remorse

Respondent has testified that he regrets having written about his desire that IJ DePaolo be tortured in a brief submitted to the Board. However, as the Court has expressed above, the Court does not conclude that Respondent is remorseful for the *contents* of what he wrote, but merely for having the poor judgment to include it in a filing with the Board. Thus, the Court does not find that Respondent's show of remorse significantly mitigates his misconduct.

C. Sanctions

In the NID, Disciplinary Counsel proposes that pursuant to 8 C.F.R. § 1003.102, Respondent should be suspended from the practice of law in front of the Board, Immigration Courts, and the Department of Homeland Security (DHS). Exh. 1. Disciplinary Counsel suggests that by applying the appropriate standards and considering the aggravating and mitigation factors, Respondent's suspension should be for a period of 90 days. *See id.*; *see also* Exh. 7, at 9–15. In response, Respondent requests that the Court issue a private admonishment, without any

suspension from practice. Exh. 10, at 11. The Court, having considered both proposals, will adopt neither but will craft an appropriate sanction that takes into consideration the egregiousness of Respondent's misconduct, the need to protect both the public and the integrity of the Immigration Court process, and the aggravating and mitigating factors in his case. *See Matter of Singh*, 26 I&N Dec. 623 (BIA 2015) (affirming a disciplinary sanction, which included prohibitions for entering telephonic appearances and other special requirements as "reasonable and fair").

In making its determination of sanctions, the Court acknowledges that there are sympathetic factors in Respondent's case. He is a partner in his law practice that predominantly deals in immigration law, and it appears that his firm will face difficulties serving its clients if he is suspended. His income, along with that of his wife, helps to provide for his family. Respondent has been active in helping to care for his mother when she was suffering severe health issues. It was clear to the Court that he is respected by his colleagues who testified on his behalf. The Court has described other mitigating factors present in his case above. However, the Court also recognized there are significant aggravating factors.

Though Disciplinary Counsel's request for the imposition of a 90-day suspension is not without merit, and while the Court believes that a suspension is warranted, the Court finds a more appropriate sanction is a 60-day suspension from practicing before the Board, Immigration Courts and DHS combined with a requirement that Respondent complete ten (10) hours of anger management classes.

Respondent clearly struggles with emotional issues and has difficulty remaining objective as an attorney. He testified that he has long struggled with extreme empathy and has learned coping mechanisms. However, it is clear that these coping mechanisms failed Respondent in October 2018 when he wrote his brief to the Board. These coping mechanisms also failed Respondent in August 2019 when he wrote his e-mail to Director Campagnolo. Respondent testified that since August of 2019, he has tried to take his mental health more seriously. He testified he now takes more time off from work, talks with his sister (who is a licensed therapist), and goes to websites that provide free psychological tools. While the Court is encouraged that Respondent is making these informal efforts, the Court finds these informal efforts are insufficient to help him develop necessary coping mechanisms to manage his emotions and remain objective in his work as an attorney. Thus, the Court will order Respondent to complete ten (10) hours of anger management classes with a licensed practitioner as a condition of his reinstatement from suspension. *See* 8 C.F.R. § 1003.102(a) (stating that appropriate sanctions include suspension before the immigration courts, Board, and/or DHS, as well as "other disciplinary sanctions as the adjudicating official or the Board deems appropriate"). The Court believes requiring the respondent to focus for ten hours on improving his coping mechanisms would serve the public interest more than an additional thirty days of suspension.

The sanction described above is necessary to protect the public and the dignity of the Court system. The Court hopes these measures will cause Respondent to fully accept the wrongful nature of his conduct. However, even if he does not, the public interest requires that Respondent at least learn to cope with his emotions and remain an objective and effective attorney. Respondent clearly needs to develop coping mechanisms that will assist him, not only during periods of normal stress, but during periods of high stress, such as when his mother was struggling with health problems. This is also a necessary measure in order to protect immigration courts, the Board, and DHS against future statements or written comments that may insult or harm the integrity of these institutions.

The Court does not enter this order lightly. However, considering the egregiousness of Respondent's misconduct and the aggravating factors discussed above, even while factoring in the mitigating factors, these sanctions are warranted.

Accordingly, the following orders are hereby entered:

IT IS HEREBY ORDERED that the charge under 8 C.F.R. § 1003.102(g) be **SUSTAINED**.

IT IS FURTHER ORDERED that Respondent be suspended from the practice of law before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security for a period of sixty days.

IT IS FINALLY ORDERED that Respondent must complete ten (10) hours of anger management therapy with a licensed practitioner as a condition of his reinstatement before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security.

DATE: 4-13-22

Brett M. Parchert

Brett M. Parchert
Adjudicating Official/Immigration Judge