

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Rudrakumaran**In re Visuvanathan Rudrakumaran,**
Attorney.

10-90037-am (2d Cir. Feb. 15, 2013)

- **Decided Feb. 15, 2013**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT.
CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS
PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE
PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A
SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST
CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH
THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER
MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of February, two thousand thirteen.

PRESENT:

José A. Cabranes,
Robert D. Sack,
Richard C. Wesley,
Circuit Judges.

**ORDER OF
GRIEVANCE PANEL**

For Visuvanathan Rudrakumaran: Jonathan R. Nelson, New York, New York.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the findings and recommendations of this Court's Committee on Admissions and Grievances ("the Committee") are adopted, except as discussed below, and Visuvanathan Rudrakumaran is PUBLICLY REPRIMANDED for his misconduct in this Court. ***2 2 I.**
Summary of Proceedings

By order filed in April 2010, this Court referred Rudrakumaran to the Committee for investigation of the matters described in that order and preparation of a report on whether he should be subject to disciplinary or other corrective measures. During the Committee's proceedings, Rudrakumaran had the opportunity to address the matters discussed in the Court's

referral order and to testify under oath at hearings held in November 2010 and March 2011, which were presided over by Committee members Eileen M. Blackwood, Evan A. Davis, Michael D. Patrick, and Gerald Walpin. Thereafter, the Committee filed with the Court the record of the Committee's proceedings and its report and recommendations, and Rudrakumaran responded.

The Committee concluded in its report that there was clear and convincing evidence that Rudrakumaran had engaged in misconduct warranting the imposition of discipline. *See Report at 12-13.* The Committee found that Rudrakumaran had, *inter alia*: (a) defaulted on scheduling orders in twenty-seven cases, resulting in their dismissal, although he succeeded in reinstating eight of them; (2) created an unnecessary and substantial risk of potential injury to those clients who eventually received relief after their defaulted cases were reinstated; (3) caused injury or potential injury, through lack of reasonable diligence, to two clients who were denied reinstatement of their defaulted cases; (4) failed to *3 withdraw seventeen cases despite knowing that the clients did not wish to proceed or that other circumstances rendered further proceedings unnecessary; and (5) on a number of other occasions, violated this Court's rules and orders by untimely filing various documents. *Id.* at 5-10. After considering various aggravating and mitigating factors, *id.* at 12-13, the Committee recommended that Rudrakumaran be publicly reprimanded, and required to complete eight hours of continuing legal education ("CLE") classes, in law office management, and to submit periodic reports concerning his caseload, *id.* at 13.

In his response to the Committee's report, Rudrakumaran, *inter alia*, acknowledged that a reprimand was warranted (noting that he had previously suggested a private reprimand, in contrast to the public reprimand recommended by the Committee), but disputed several of the Committee's findings, which are discussed below.

II. Requests for Clarification

As an initial matter, we acknowledge that Rudrakumaran submitted a total of five character letters, and not just the single letter mentioned in the Committee's report. We also acknowledge Rudrakumaran's clarification of his volunteer work for the Liberation Tigers of Tamil Eelam ("LTTE"): (a) that his international trips relating to that work occurred in 2003 to 2006, and not 2005 to 2006; (b) that he was not an LTTE employee or contractor, or under its direction or control; and (c) that his LTTE work was in compliance with federal law. For purposes of the *4 present decision, we accept Rudrakumaran's assertions about the dates of his LTTE work. Additionally, we do not read the Committee's report as reaching any conclusions about the nature of Rudrakumaran's relationship with the LTTE, nor does this panel reach any such conclusions. Those matters are beyond the scope of these proceedings - due to lack of relevance or lack of evidence upon which to reach any conclusions. Thus, we reject, as unnecessary, Rudrakumaran's request that the Committee's references to his "work for the LTTE" be stricken.

III. Default in *Razan v. Ashcroft*, 04-3259

Rudrakumaran objects to the following Committee findings concerning his conduct in *Razan v. Ashcroft*:

In *Razan v. Ashcroft*, 04-3259, Rudrakumaran testified that he failed to file the relevant brief on time because he had lost contact with the client. After this Court denied a motion to reinstate the petition, Rudrakumaran summarily informed the client five months later that his case had been dismissed without explanation as to why. This was *unfair to the client* because had the client known the reason why the appeal was dismissed, *he could have considered further steps*.

Report at 12 (emphasis added by Rudrakumaran).

Although Rudrakumaran concedes "that his conduct led to the dismissal of his client's case, [and] that [he] should have informed his client of the dismissal immediately upon its occurrence," he argues that the timing of his communications with his client "was neither unfair nor harmful to the client." Response to Committee Report at 5. Rudrakumaran asserts that (a) *5 5 his client had left the United States while the case was pending, without leaving Rudrakumaran current contact information; (b) between the denial of the reinstatement motion in May 2006 and his July 2006 letter to the client, he had tried repeatedly to contact his client by telephone, and had left voice mail messages; (c) his July 2006 letter informed the client of the dismissal (without explaining the reason) and urged the client to contact Rudrakumaran immediately; (d) the letter came back undelivered, with a notation that the client had moved two years before; and (e) in or about January 2007, the client telephoned him from Sri Lanka, Rudrakumaran informed him of the default dismissal, and the client thereafter took no action. Response at 7-8.

Under the circumstances, Rudrakumaran argues, he treated his client fairly after the default since he sought reinstatement, submitted a proposed brief and appendix, and attempted to contact the client after reinstatement was denied. *Id.* at 9. He also argues that the client received full information concerning the dismissal at the earliest possible date, since Rudrakumaran lacked any means of contacting him prior to the client's January 2007 telephone call, and that his failure to contact the client "earlier" - possibly referring to the date of the dismissal or some other time preceding the denial of reinstatement - caused the client no practical harm because Rudrakumaran lacked "any effective means to re-establish contact with him" at those earlier junctures. *Id.*

*6 6 Rudrakumaran's hearing testimony was consistent with his assertions in his response to the Committee's report, *see* Nov. [2010 Transcript at 131](#)-42, and the Committee made no finding concerning the credibility of that testimony. Thus, we assume that the Committee credited Rudrakumaran's testimony.

Based on the Committee's record, we find that clarification of the Committee's findings concerning *Razan* is necessary-in Rudrakumaran's favor in some respects, but not in others. First, it is clear from Rudrakumaran's hearing testimony that his failure to file his brief in *Razan* was due to his negligence, *see id.* at 133 ("I missed the deadline. It's negligence on my part."), not simply his loss of contact with his client as suggested by the above-quoted findings. Second, Rudrakumaran did not inform the client of the dismissal five months after reinstatement was denied as stated by the Committee; instead, the hearing testimony and *Razan* docket indicate that: (a) Rudrakumaran's July 2006 letter was sent five months after the February 2006 dismissal and two months after the May 2006 denial of reinstatement, (b) Rudrakumaran attempted to contact his client by telephone several times between the denial of reinstatement and the drafting

of his July 2006 letter, and (c) Rudrakumaran's July 2006 letter constituted merely an attempt to notify his client of the dismissal, and not actual notice, since the letter was returned as undeliverable. *See id.* at 132-38; *Razan*, 04-3259, docket entries from 2-13-06 through 5-26-06.

*7 7 As for the unfairness found by the Committee, we agree that Rudrakumaran treated his client unfairly when he failed to comply with this Court's briefing deadline and caused the dismissal of the case, and when he failed to timely attempt to inform his client of an important development in his case, the dismissal. We do not know whether Rudrakumaran could have reached his client had he tried to do so at some point between the February 2006 dismissal and the unspecified date he first attempted to contact the client after the May 2006 denial of reinstatement. We also do not know if such earlier notification would have altered the result. We further find that Rudrakumaran was unfair to his client when he allowed three months to pass after the default dismissal before filing his reinstatement motion, since a swift request for reinstatement may have been more favorably viewed by the Court. While Rudrakumaran may have been "fair" to his client when, viewed in isolation, he made the effort to seek reinstatement and thereafter attempted to notify the client of the result, the primary damage had already been done by that point. Thus, we adopt the Committee's "unfairness" finding to the extent discussed above, and its earlier finding that Rudrakumaran's conduct in *Razan* reflected "a lack of reasonable diligence causing injury or potential injury to the client." Report at 7.

IV. Refund of Client Fee

Rudrakumaran concurs with the Committee's finding that, in light of his mismanagement of *Razan*'s case, he should have refunded *8 8 *Razan*'s fee in full. He further states that, if he remains unable to contact *Razan*, he is willing to donate the fee to the New York State Lawyers' Fund for Client Protection, providing he is directed to do so by the Court.

New York Rule of Professional Conduct 1.15(f), entitled "Missing Clients," provides as follows:

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

We direct Rudrakumaran to do the following: (a) within one week of this order, attempt to contact *Razan* for purposes of refunding his fee, and make such further attempts as seem reasonable under the circumstances; (b) if unable to contact *Razan* within thirty days of this order, promptly apply to the New York Supreme Court in the appropriate county for an order consistent with Rule 1.15(f); and (c) every sixty days, beginning with the date of this order, and until further notice, submit a status report on the refund issue to counsel to this panel. The status report must be in the form of a detailed declaration made under penalty of perjury. *9 9 **V.**

Default in *Lathpandurage v Gonzales* , 05-3327

In *Lathpandurage v. Gonzales*, Rudrakumaran received two extensions of time to file his brief, but nonetheless failed to do so, causing the case to be dismissed based on his default. *See Lathpandurage*, 05-3327 ([2d Cir. Apr. 24](#), 2006) (dismissal order). The Committee found that Rudrakumaran had acted recklessly when he "continued to push his luck at the risk of his client," after this Court had stated in the first order granting him an extension that "any further extension request ... will not be granted absent extraordinary circumstances." *Id.* ([2d Cir. Feb. 13](#), 2006) (order granting extension of time).

Rudrakumaran concedes that he was negligent in causing the default dismissal in *Lathpandurage*, but challenges the Committee's statement that his conduct was reckless. *See Response to Committee Report* at 10-17. Specifically, he argues that his conduct did not meet the definition of recklessness under New York law, which, he asserts, "requires evidence that "the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow" and has done so with conscious indifference to the outcome." *Id.* at 16 (quoting *Saarinen v. Kerr*, [84 N.Y.2d 494](#), 501 (1994) (quoting Prosser and Keeton, *Torts* § 34, at 213 (5th ed. 1984))). He states that, while "it is perhaps debatable whether [he] should have been aware ... of risk so great that it was *10 10 'highly probable that harm would follow,'" he insists that he "was never 'consciously indifferent to the outcome' of his actions or inactions." *Id.* at 17.

The definitions of "reckless" and "recklessness" vary depending on the forum and type of proceeding. *See, e.g.* , *Farmer v. Brennan*, [511 U.S. 825](#), 836-37 (1994) ("The civil law generally calls a person reckless who acts or (if the person has a duty to act) fails to act in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known. The criminal law, however, generally permits a finding of recklessness only when a person disregards a risk of harm of which he is aware.") (citations omitted). ¹

*11 11 The Committee did not find that Rudrakumaran was "consciously indifferent to the outcome" when he failed to file his brief pursuant to the Court's scheduling orders, and the record does not contain clear and convincing evidence of such conscious indifference. However, the record does support a finding that Rudrakumaran acted recklessly because he knew the relevant facts and unreasonably failed to appreciate the high degree of risk involved. We therefore adopt the Committee's finding of recklessness as so clarified.

VI. Disposition

We conclude, consistent with our prior disciplinary decisions, that Rudrakumaran's misconduct was sufficiently egregious to warrant a public reprimand. *See In re Payne*, ____ F.3d ____, [2013 WL 297728](#) ([2d Cir. 2013](#)) (citing prior disciplinary decisions).

Upon due consideration of the Committee's report, the underlying record, Rudrakumaran's submissions, and the matters discussed above, it is hereby ORDERED that Rudrakumaran is PUBLICLY REPRIMANDED for his misconduct in this Court. It is further ORDERED that Rudrakumaran:

(a) complete, within one year of the date of this decision, at least eight hours of live in-class CLE *12 12 instruction in law office/practice management. The required CLE classes must be taken in addition to the regular CLE requirements applicable to all members of the New York bar, and taught by CLE providers accredited by that bar. Rudrakumaran must submit information about proposed CLE classes directly to the Committee's secretary, who will inform him whether the Committee agrees that the proposed classes satisfy his obligation.

(b) certify his completion of the above-described CLE classes by sworn statement filed with both this panel and the Committee's secretary within seven days after the end of the one-year period. The Committee may modify the CLE requirements and deadlines, either on motion or *sua sponte*

(c) submit, for the next two years beginning with the date of this decision, biannual status reports to the Committee's secretary, providing an explanation for any "late briefs or motions, or any non-excused non-compliance with a scheduling order of any sort before any Court." Report at 13. The first status report must cover the period beginning with the date of the Committee's report and ending six months from the date of this decision.

(d) comply with the refund procedures outlined in section IV of this decision.

(e) disclose this decision, and its appendices, to all courts and bars of which he is currently a member, and as required by any bar or court rule or order.

Finally, the Clerk of Court is directed to release this order to the public by posting it on this Court's web site and providing copies to the public in the same manner as all other unpublished decisions of this Court, and to serve a copy on Rudrakumaran, this Court's Committee on Admissions and Grievances, the attorney disciplinary committee for the New York State Appellate Division, First Department, and all other courts and jurisdictions to which *13 13 this Court distributes disciplinary decisions in the ordinary course. ²

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: Michael Zachary
Counsel to the Grievance Panel

*14 14

APPENDIX 1

Text of April 2010 Order

For the reasons that follow, Visuvanathan Rudrakumaran is referred to this Court's Committee on Admissions and Grievances for investigation of the matters described below and preparation of a report on whether he should be subject to disciplinary or other corrective measures. *See* Second Circuit Local Rule 46.2. We express no opinion here as to an appropriate disposition. The Committee may, of course, in the first instance, determine the appropriate scope of its investigation.

A review of the 96 cases in which Rudrakumaran is listed as an attorney of record reveals that his defaults on this Court's scheduling orders caused the dismissal of at least 27 cases. *See* cases

docketed under 02-4066-ag (reinstated), 02-4363-ag (reinstated), 02-4545-ag, 03-4038-ag, 03-4083-ag (case deemed withdrawn with prejudice where counsel's motion to hold appeal in abeyance was filed two weeks after the terms of stipulated withdrawal had expired), 03-4546-ag, 03-4547-ag, 03-4741-ag (reinstated), 03-40258-ag, 03-40566-ag, 04-0309-ag (reinstated), 04-2836-ag (reinstated), 04-3259-ag, 04-4136-ag, 04-5186-ag, 04-6272-ag, 05-0117-ag, 05-0915-ag (reinstated), 05-1171-ag, 05-1530-ag (reinstated), 05-2723-ag (reinstated), 05-3327-ag, 05-4193-ag, 05-4452-ag, 06-2161-ag, 06-3366-ag, and 06-3997-ag. Although Rudrakumaran requested and was granted extensions of time in many of these cases, the final briefing deadlines in each passed without Rudrakumaran requesting an extension of time (or an additional extension of time), a stay of proceedings, or leave to voluntarily dismiss the petitions for review. Ultimately, eight of these 27 cases were reinstated following motions filed by Rudrakumaran, in which he usually attributed his failure to file the briefs to various competing "professional and personal commitments." *See, e.g.*, Dkt Nos. 04-0309-ag at 11/30/2006 Entry, 05-0915-ag at 2/22/2006 Entry, 05-2723-ag at 5/31/2006 Entry.

Of the other 19 defaulted cases, Rudrakumaran filed unsuccessful motions to reinstate in two of them, again premised on competing "professional and personal commitments." *See* Dkt Nos. 04-3259-ag at 5/15/2006 Entry & 05-3327-ag at 5/23/2006 Entry. He did not seek to reinstate any of the remaining 17 cases. Notably, in one such dismissed case, *Kamal v. Gonzales*, Rudrakumaran sought two extensions of time, only to then file a motion to withdraw his client's case. *See* Dkt. No. 05-1171-ag at 11/14/2006 Entry. After this Court denied that motion on the basis that Rudrakumaran had to submit a statement showing the client was, in fact, requesting withdrawal, *id.* at 11/22/2006, *15 15 the case was dismissed for failure to file a brief, *id.* at 1/9/2007. In a similar case, *Lakshman-Seneviratne v. Ashcroft*, the petitioner sought reinstatement on the grounds that Rudrakumaran had provided ineffective assistance of counsel. *See* Dkt. No. 04-4136-ag at 7/17/2008 Entry. Appearing *pro se*, the petitioner stated that he had "honestly believed" a brief had been filed on his behalf, until Rudrakumaran informed him several months later that the case had been dismissed, without explaining why. *Id.* at ¶¶ 3-4. Lakshman-Seneviratne averred that he had only discovered a brief had never been filed when he checked the court record. *Id.* at ¶ 5. This Court denied petitioner's reinstatement motion in November 2008. *Id.* at 11/19/2008 Entry.

In addition to the above-noted default dismissals, Rudrakumaran has repeatedly disregarded this Court's scheduling orders in a number of other cases. A review of these cases indicates that Rudrakumaran has filed late briefs at least nine times. *See* cases docketed under 03-4365-ag (brief received 6 days late), 03-41075-ag (motion to file brief one month past deadline), 04-4287-ag (motion to file brief two weeks past deadline), 05-1072-ag (motion to file brief one month past deadline), 08-3028-ag (brief filed 12 days past deadline), 08-3687-ag (ordered to show cause why case should not be dismissed due to default; response filed one day late and brief filed 39 days late), 08-3975-ag (ordered to show cause why case should not be dismissed due to default; motion for extension granted), 08-5616-ag (motion to file brief nine days past deadline), and 08-5770-ag (brief filed 9 days past deadline). Moreover, on at least three other occasions, Rudrakumaran filed untimely motions for extensions of time. *See* 05-5354-ag (two extension motions filed after due dates for brief), 05-6580-ag (one motion filed after due date), and 08-2396-ag (same; and motion filed after Court stated that no further extensions would be granted). Furthermore, in *Zain v. Holder*, the Government moved to dismiss the petition for lack of

jurisdiction, whereupon Rudrakumaran sought and was granted two extensions of time to file opposition papers, only to then file them one week late. *See* Dkt. No. 09-0660-ag at 7/10/2009 & 8/5/2009 Entries (extension orders) and 8/26/2009 Entry (order granting leave to file out of time). This Court permitted the late filing, but granted the Government's motion to dismiss. *Id.* at 10/26/2009 Entry. Most recently, in *Salazar de Rivera v. Holder*, Rudrakumaran not only failed to file his brief by the due date but, in later moving to file out of time, he failed to provide a motion information statement, supporting papers, proof of service, or the proper number of copies. *See* Dkt. No. 09-4272-ag at 2/23/2010 Entry. After the defective motion was corrected, Rudrakumaran was given until March 30, 2010 to file his brief. *Id.* at 3/4/2010 Entry. As of April 5, 2010, the brief has not been filed.

*16 16 Additionally, in eight cases, Rudrakumaran filed stipulations to withdraw the cases with prejudice only after his briefing deadlines had passed. *See* cases docketed under 02-4054-ag (withdrawn two weeks late), 02-4369-ag (withdrawn three months late), 03-4556-ag (withdrawn three days late), 03-4685-ag (withdrawn ten months late), 03-40090-ag (withdrawn three weeks late), 03-41169-ag (withdrawn three months late), 07-2354-ag (withdrawn two weeks late, after three extensions granted), and 08-5064-ag (withdrawn two weeks late). On at least six occasions, Rudrakumaran has also filed untimely C/A Forms. *See* cases docketed under 04-4287-ag, 05-2594-ag, 08-2396-ag, 08-3687-ag, 09-0660-ag (order to show cause why the case should not be dismissed, due to non-filed forms issued 3/20/2009), and 09-3425-ag. In the last-mentioned case, *Oudit v. Holder*, Rudrakumaran's failure to file the C/A Forms ultimately resulted in the case's dismissal, although it has since been reinstated. *See* Dkt. No. 09-3425-ag at 1/6/2010 (dismissal order) & 3/16/2010 (order granting reinstatement) Entries.

Notably, this pattern of late filing and belated withdrawals has not been limited to Rudrakumaran's practice in this circuit. In October 2007, for example, four judges from the Ninth Circuit rebuked Rudrakumaran for withdrawing his client's petition for review, after the Court had devoted significant time and resources to reconsidering the case *en banc*. *See Suntharalinkam v. Gonzales*, [506 F.3d 822 \(9th Cir. 2007\)](#). The issue there concerned the Ninth Circuit's approach to the immigration judge's credibility findings and, although a majority of judges granted Rudrakumaran's withdrawal motion (on the condition that the panel's previous opinion would be vacated as well), the dissenting panel noted that the petitioner "had absolutely nothing to gain by withdrawing [the] petition for review," and that Rudrakumaran's withdrawal motion was an "obvious effort at subverting the orderly development of the law through artful dismissal of the petition long past the eleventh hour." *Id.* at 822-26, 831. To that end, the dissenting judges argued that the panel should instead "exercise [its] discretion by requiring" Rudrakumaran to provide, as this Court has required, a "declaration from [the] petitioner himself, confirming that he wishes to dismiss his petition." *Id.* at 831. Furthermore, earlier in that litigation, Rudrakumaran was chastised by one of the same dissenting judges for filing an untimely motion for leave to file an oversized supplemental brief. *See Suntharalinkam v. Gonzales*, [488 F.3d 1121-22 \(9th Cir. 2007\)](#). Although the motion was granted, the judge "[found] it vexing" that Rudrakumaran did not file the motion in time; rather, "he sent in a non-conforming brief the day after it was due." *Id.* at 1121. Such filing tactics, the judge noted, not only flout the Court's rules, but "force [it] ... to choose between consenting to *17 17 the filing of a non-conforming brief and disrupting the briefing schedule." *Id.*

Finally, a review of this Court's orders reveals two cases in which Rudrakumaran failed to raise all pertinent issues on appeal or raised claims that he had failed to exhaust at the administrative level. In *Qing Lin v. Gonzales*, this Court denied the petition for review on the basis that the Board of Immigration Appeals had "effectively illustrated" that the immigration judge's determination that relocation was "not a viable alternative" was clearly erroneous. *See* Dkt. No. 06-3433-ag at 8/20/2007 Entry. Although dispositive of the petition, the order noted that the petitioner "ha[d] not challenged this point in her brief" and the claim was therefore deemed waived. *Id.* In a later case, *Siuabalasingam v. Holder*, where Rudrakumaran represented the petitioner both here and before the BIA, he sought CAT relief in the petition for review, but failed to raise that claim on appeal to the BIA. Accordingly, this Court dismissed the request for CAT relief, based on Rudrakumaran's failure to exhaust the claim. *See* Dkt. No. 08-2064-ag at 8/17/2009 Entry.

[text redacted]

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: Michael Zachary
Counsel to the Grievance Panel

Notes:

1. "Reckless" is defined by Black's Law Dictionary as:

Characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk; heedless; rash. Reckless conduct is much more than mere negligence: it is a gross deviation from what a reasonable person would do.

Black's Law Dictionary (9th ed. 2009). "Recklessness" is defined as:

1. Conduct whereby the actor does not desire harmful consequence but nonetheless foresees the possibility and consciously takes the risk. Recklessness involves a greater degree of fault than negligence but a lesser degree of fault than intentional wrongdoing. ... 2. The state of mind in which a person does not care about the consequences of his or her actions.

Id. ; *see also* Restatement (Second) of Torts § 500 cmt. a (1965) ("Recklessness may consist of either of two different types of conduct. In one the actor knows, or has reason to know, ... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk. In the other the actor has such knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable man in his position would do so.").

2. Counsel to this panel is authorized to provide, upon request, documents from the record of this proceeding to other attorney disciplinary authorities. While we request that all such documents remain confidential to the extent circumstances allow, we of course leave to the discretion of those disciplinary authorities the decision of whether specific documents, or portions of documents, should be made available to any person or the public.