

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-0120

FILED
JAN 21 2011
CLERK OF COURT
SUPREME COURT OF OHIO

In Re:	:	
Complaint against	:	Case No. 08-079
Vlad Sigalov	:	Findings of Fact,
Attorney Reg. No. 0070625	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Cincinnati Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

This matter was heard on March 23 and March 24, 2010, in Cincinnati, and on April 20, and June 1, 2010, in Columbus, before Panel members Judge John Street of Chillicothe, Alvin R. Bell of Findlay, and Charles E. Coulson of Painesville, Panel Chair. None of the Panel members was a member of the probable cause panel that heard this complaint, or resides in the appellate district from which this matter arose. The hearing was held on the allegations contained in the Second Amended Complaint accepted for filing on October 6, 2009, and the amendments thereto.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Panel finds, by clear and convincing evidence, the following:

BACKGROUND

Respondent was admitted to the practice of law in the State of Ohio in May 1999. Respondent is a sole practitioner and through the use of advertising has established a large-

volume personal injury practice. Respondent takes in approximately 1000 individual claims a year. In 2009 Respondent estimates that his gross settlement revenues were \$2.5 million dollars, and he received fees of approximately \$800,000.

In addition, up to 20% of Respondent's cases deal with immigration matters.

Respondent's first language is Russian which has aided him in obtaining immigration cases.

To manage Respondent's high volume practice, Respondent's office staff consists of a secretary, a paralegal, a book-keeper/assistant, and a medical records assistant. At times in the past, Respondent has had one additional non-lawyer employee. Periodically, Respondent has associated with one "Of Counsel."

The Second Amended Complaint contains seven counts alleging violations of the Rules of Professional Conduct and Code of Professional Responsibility. Four of the counts deal with personal-injury matters and three of the counts deal with immigration cases.

COUNT ONE

Matter of Jerry Hurst

On April 9, 2007, Jerry Hurst was injured in an automobile accident. Mr. Hurst presented himself to Northside Chiropractic for medical treatment on April 12, 2007. The next day, April 13, 2007, while Hurst was receiving treatment at Northside Chiropractic, a non-lawyer associate of Respondent had Hurst sign a written contingency fee retainer agreement for his claims for damages sustained as a result of the automobile accident. The contingency fee agreement was for 24% of the amount recovered. Respondent did not provide Hurst with a copy of the written retainer agreement.

At no time in the course of his representation did Respondent ever personally meet with Hurst.

Respondent requested copies of Hurst's medical bills, and on July 2, 2007, Respondent sent a demand letter to the insurance carrier of the other driver. Respondent did not contact Hurst prior to making the settlement demand of \$21,500. The demand submitted by Respondent included medical expenses of \$3,948.29. These medical expenses included miscellaneous receipts totaling \$84.89, Dayton Optometric Center-\$49, Northside Chiropractic-\$2,900, and Miami Valley Hospital-\$914.40.

As a result of the accident, Hurst was out of work from April 9, 2007, through June 1, 2007. Respondent's settlement demand did not include a claim for lost wages.

Prior to the disciplinary hearing, Hurst died and could not testify as to the circumstances surrounding the settlement of his case. Respondent states that in response to his demand to the insurance company, the insurance company offered a settlement of \$8,200. Respondent testified that Hurst orally advised Respondent that he wished to retain \$2,800 of the settlement proceeds for himself. At a 24% contingency fee, Respondent would be entitled to a fee of \$1,968 based upon a settlement of \$8,200.

The settlement check from the insurance carrier contained a full and final release. Respondent, upon receiving the check, deposited it into his IOLTA account without Hurst's signing it. Respondent states that he was given oral authorization to sign Hurst's name and to deposit the settlement check.

The \$8,200 check received by Respondent from the insurance company was dated October 17, 2007. On October 24, 2007, Respondent wrote three checks out of his trust account. One check was to Hurst for \$2,884. The other two checks split the balance between Respondent and Northside Chiropractic, each receiving checks for \$2,658. The three checks totaled \$8,200.

Respondent did not pay any of Hurst's other medical bills, of which Respondent had knowledge, leaving Hurst liable for those bills.

Respondent paid himself a fee of 32.4%, or \$690 more than his retainer agreement permitted.

Respondent prepared a schedule of expenses and deductions dated October 24, 2007, for the \$8,200 settlement. The only deductions listed on that schedule are Respondent's attorney fees of \$2,658 and Northside Chiropractic in the amount of \$2,658. The schedule shows a net settlement to Hurst of \$2,884.

The client, Jerry Hurst, did not sign the schedule of expenses and deductions, although there appears to be some attempt to make it appear so. A date and some unreadable initials or scribbles are inserted onto the form where Hurst would have dated and signed had the agreement actually been presented to him.

Hurst refused to cash the settlement check he received from Respondent in the amount of \$2,884. Hurst was upset and stated he did not approve the settlement. Hurst filed the grievance and retained new counsel to re-open the matter.

Hurst's newly hired legal counsel was attorney David Salyer. Salyer was able to re-open the settlement and obtain an additional payment of \$3,800 from the insurance carrier. In a February 11, 2009 letter, Salyer notified Respondent that Sigalov's original settlement check for \$2,884 issued to Hurst on October 24, 2007, was stale and needed to be replaced. Salyer's letter also notified Respondent that he had over-charged Hurst by \$690. Salyer asked that the Respondent issue a fresh check in the sum of \$2,884 to Hurst and also refund the over-charge of \$690 in fees. In response to the February 11, 2009 letter of attorney Salyer, Respondent only

refreshed the original settlement check for \$2,884. Respondent did not refund the \$690 in over-charged attorney fees at that time.

During cross examination on the opening day of the hearing, March 23, 2010, Respondent acknowledged that he had over-charged Hurst. Respondent testified that he had sent Salyer two checks in response to Salyer's February 11, 2009 letter. Respondent was specifically asked by Relator the following question: "So your testimony is that you had given Mr. Salyer either two checks, one for \$2,884 and another one for the 600 and-sum-odd-dollar difference between the -- or between what you charged and the 24 percent?" Respondent answered: "That is correct." (3/23/10 Tr., 82-83) The clear import of this testimony is that Respondent immediately corrected the "mistake" after he became aware of it from Salyer's February 11, 2009 letter.

Salyer testified that he never received a payment for the over-charged attorney fees in the amount of \$690. Thirteen months later, Respondent did refund the \$690. This refund was sent just two days prior to the opening day of the hearing in this matter in March 2010.

Hurst died without receiving any benefits of any settlement and before the matter could be rectified.

The Panel finds that Respondent violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.2(a) [Scope of Representation and Allocation of Authority Between Client and Lawyer], a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued;

- 2) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; and
- 3) Prof. Cond. R. 1.5(c)(2) [Fees and Expenses], failing to prepare and have a client sign a closing statement prior to the attorney's receipt of compensation in a contingent fee case.

The Panel does not find by clear and convincing evidence that Relator established a violation of Prof. Cond. R. 5.4 [Professional Independence], by engaging in fee sharing with a non-lawyer, to wit, Northside Chiropractic, and recommends its dismissal. No evidence was presented to the Panel that Respondent engaged in fee sharing with Northside Chiropractic other than the fact that Respondent split the balance of the settlement proceeds with it and he made sure its bill was paid to the exclusion of all the other medical bills.

The Panel notes that it would have also found a violation of Prof. Cond. R. 1.5(a) [fees and expenses], because Respondent did collect a clearly excessive fee in this matter. However, as Respondent was not provided notice in the complaint of a charge of an alleged violation of this rule, these facts may only be considered in connection with mitigation and/or aggravation.

COUNT TWO

Matter of Rezeda Mukhamadiyeva, nka Rezeda Dozier

Ms. Dozier, a citizen of Russia, was in the process of obtaining legal status to stay in the United States. During this process, Dozier married an American citizen and gave the Department of Homeland Security her new address. Unfortunately, the change of address was not received by the proper Immigration Office, and Dozier missed a mandatory hearing set for

December 7, 2006. In May 2007, Dozier was arrested and detained. An immigration order of removal from the United States was issued against her for failure to appear at the status hearing.

On May 7, 2007, Dozier's husband hired Respondent to obtain her release from arrest and to file the necessary "Motion to Reopen." Dozier paid Respondent a \$500 retainer. Legally, the only mechanism by which to obtain Dozier's release from detention, keep her free from further detention, and prevent her from being not immediately deported was to file a "Motion to Reopen."

Respondent made phone calls to immigration officials and secured Dozier's release from detention by advising the authorities that he would immediately file a Motion to Reopen. On May 9, 2007, Respondent mailed a pleading titled Motion to Reopen to the Immigration Court. (Rel. Ex. 203)

Respondent's Motion to Reopen contained just three sentences. To call Respondent's Motion to Reopen "bare bones" is to give it too much credit. The motion contained no meaningful statement of the facts, background, or procedural history. The motion contained no legal analysis or legal research. It did not discuss the necessary legal issues in order to obtain the reopening of the case. Further, the Motion to Reopen did not contain any of the necessary affidavits or exhibits to support it. Finally, Respondent's motion was procedurally defective for several reasons including no proof of service on the adverse party.

Respondent testified that at the time he filed the above Motion to Reopen, he knew that to support such a motion he would have to explain why Dozier failed to appear at her December 7, 2006 hearing; that he knew the Immigration Court required he include the underlying legal grounds; and that immigration regulations required evidence or an affidavit be attached to the motion. (3/23/10 Tr. , 150-152; 155-56) Based on this testimony, the Panel can only come to

one of two conclusions. Either Respondent, despite his testimony, did not know of the above requirements and that's why he filed a three-sentence Motion to Reopen, or Respondent intentionally chose to ignore the necessary requirements for such motion.¹

On May 9, 2007, immediately upon its receipt, the Immigration Court refused to file Respondent's Motion to Reopen for his failure to follow the local rules. The court sent the motion back explaining why the motion was not filed. The court enclosed a copy of the local rules. Among the reasons for the rejection of the motion was Respondent's failure to serve a copy of the motion on opposing counsel, the Department of Homeland Security. Respondent's proof of service certified that he caused the United States Immigration Court itself to be served with his Motion to Reopen. Other problems with the motion included the wrong number of copies of the proposed order and the document was not two-hole punched.

The Immigration Court returned Respondent's Motion to Reopen by mail on May 9, 2007. Respondent received it shortly thereafter. Respondent did not fix any of the deficiencies in his Motion to Reopen, nor did Respondent inform Mrs. Dozier that the filing of his Motion to Reopen had been rejected by the court.

The deportation order against Ms. Dozier was still in effect. A pending Motion to Reopen acts as an automatic stay of the deportation order. Without a pending Motion to Reopen on file with the Immigration Court, Ms. Dozier was subject to immediate arrest and deportation.

¹ At the hearing of this matter, Relator called Douglas S. Weigle, an attorney at law whose practice for the last 33 years has been primarily in the area of immigration law. Mr. Weigle was established as an expert in immigration law with no objection from Respondent. Weigle explained the necessary requirements that legal counsel would need to undertake to competently handle Dozier's case. Weigle was asked, "In your opinion, did Mr. Sigalov possess the legal knowledge, skills, thoroughness, and ability to reasonably represent Mrs. Dozier?" Weigle responded "There is nothing here [the record] to indicate that he did." When Weigle was asked "Did Mr. Sigalov apply the requisite knowledge, skills, thoroughness, and preparation reasonably necessary to represent Mrs. Dozier?" Weigle replied, "No." (3/24/10 Tr., 639)

On several occasions between May 2007 and August 2007, Dozier questioned Respondent about the status of the Motion to Reopen. The Respondent falsely told Dozier that the Motion had been filed, that it was pending and that he was waiting for the court's decision. The Respondent did not tell his client that the court refused to file the motion in May 2007.

Sometime in August 2007, Dozier, concerned about the status of her case and not feeling that Respondent was being forthright with her, contacted another immigration attorney, Gabriela Thibeau. Ms. Thibeau checked with the Immigration Court and informed Dozier that the Cleveland Immigration Court had no Motion to Reopen filed on her behalf. That same day, in mid-August 2007, Dozier contacted Respondent, who then acknowledged that initially the Motion to Reopen had been rejected on procedural grounds, but claimed that he had since re-filed the motion. (Rel. Ex. 205) This was another false statement by Respondent. Respondent went on to say that he was going to the Immigration Court in Cleveland the next day, would check on the status of the motion and call Dozier. The next day the Respondent represented to Dozier that he had spoken with the court and confirmed that the revised Motion to Reopen was on file. (3/24/10 Tr., 458-460) This was another false statement.

At this point, Dozier told Respondent that she was going to look for another attorney. Despite this knowledge, in early September Respondent attempted to file a second Motion to Reopen in the Immigration Court. This motion was essentially identical to the first such motion. The second Motion to Reopen received by the court on September 6, 2007, was just as defective as the first motion including a defective proof of service on opposing counsel. The second Motion to Reopen was again returned to Respondent without filing for failure to comply with the requirements of the rules of procedure for proceedings before immigration judges. That same

day, notice of the refusal of the court to file the second Motion to Reopen was sent to Respondent.

Dozier then hired the new immigration lawyer, Gabriela Thibeau. On September 15, 2007, Thibeau sent Respondent a letter informing him that she had been retained in the matter and requested a copy of Respondent's complete file. Respondent sent the file to attorney Thibeau on September 19, 2007.

Inexplicably, on September 26, 2007, after Respondent had received notice that he had been replaced by another lawyer, and before Thibeau could prepare a proper Motion to Reopen containing the necessary requirements, Respondent filed a third defective Motion to Reopen. Unfortunately for Dozier, the Immigration Court accepted this third Motion to Reopen for filing. Under the Code of Federal Regulations a party may file only one Motion to Reopen the proceedings.

Respondent's third Motion to Reopen was just as defective as his first two, but unfortunately, and at great harm to Dozier, the court accepted it for filing. The Immigration Judge, the Honorable D. William Evans, Jr., in his Memorandum and Order, dated October 2, 2007, stated:

...On September 26, 2007, ...[Ms. Dozier], through her attorney [Respondent Sigalov] filed a Motion to Reopen. "A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material," 8C.R.R. §1003.2(c)(1). Since respondent's motion to reopen contains no evidentiary support beyond her attorney's assertions, the Court is precluded from addressing its merits.

Accordingly, it is hereby ordered that the [Ms. Dozier]'s Motion to Reopen is Denied.

Neither Dozier nor her new attorney, Ms. Thibeau, was aware that Respondent had filed the defective third Motion to Reopen.

On October 11, 2007, Thibeau attempted to file a Motion to Reopen on Dozier's behalf. Because the court had accepted and dismissed Respondent's September 26, 2007 third Motion to Reopen, the court was required to dismiss the Motion to Reopen filed by Thibeau.

As a result of Respondent's actions, Dozier was detained by immigration officials and came within hours of being deported from the United States, despite having valid grounds to remain because she had married an American citizen.

Through extraordinary efforts, Thibeau was able to finally get a new Motion to Reopen filed, set for hearing, and she secured the release of Dozier.

The Panel finds that Respondent's conduct as alleged in Count Two violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation to a client;
- 2) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness in representing a client;
- 3) Prof. Cond. R. 1.16(a)(3) [Declining or Terminating Representation], a lawyer shall not represent a client when the lawyer is discharged; and
- 4) Prof. Cond. R. 8.4(c) [Honesty], conduct involving dishonesty, fraud, deceit or misrepresentation.

COUNT THREE

Matter of Badri Beriashvili

At all times relevant to this matter, Mr. Beriashvili lived at the same address in Columbus, Ohio. Beriashvili speaks very little English and his communication with Respondent was in Russian. In August 2006, Beriashvili paid Respondent a retainer to represent him in an asylum and removal immigration case in the Arlington, Virginia Immigration Court.

On August 18, 2006, Respondent filed a notice of appearance notifying the Immigration Court in Virginia that he was representing Beriashvili. From the time of the filing of this notice of appearance, the Court sent all notices of hearings to Respondent only.

On November 17, 2006, Beriashvili and the Respondent attended the first master hearing in Beriashvili's case. On March 27, 2007, Beriashvili and Respondent attended a second master hearing. For this master hearing, the Respondent and Beriashvili appeared at the Cleveland Immigration Court, which had video conferencing with the Immigration Court in Arlington, Virginia. Beriashvili and Respondent learned that the hearing could not go forward as the video equipment was not operating. No master hearing took place on that date as a result.

Respondent claims that while at the Cleveland Immigration Court with Beriashvili, a new master hearing date was set for June 26, 2007. Beriashvili disagrees and states that no new hearing date was set at that time. The immigration expert witness, Douglas Weigle, testified it would have been impossible on March 27, 2007 to set the new master hearing date, as Respondent claims, due to the fact that the video equipment was inoperable. The master hearing date would have to have been set by the Immigration Court in Arlington, Virginia. The immigration expert witness substantiates Beriashvili's version of events.

The notice of the new hearing was prepared on March 27, 2007, and sent to Respondent by the Immigration Court in Arlington, Virginia. Respondent received the notice setting the date

of June 26, 2007, for the master hearing. The court only notified Respondent of the new hearing date and time.

Beriashvili was keenly aware of how important these hearings were to his case. Between April and June 2007 Beriashvili called Respondent on several occasions seeking information on the rescheduled hearing date. Beriashvili testified that with every conversation with Respondent, he was informed that Respondent had not heard anything from the court.

Respondent did not mail a copy of the court's hearing notice to Beriashvili. Respondent testified that it was his practice to notify clients by letter of all court dates. Beriashvili never received a letter from the Respondent informing him of the rescheduled June 26, 2007 hearing.

In an attempt to show Relator and the Panel that Respondent had notified Beriashvili of the June 26 hearing, Respondent produced a copy of a letter written on his letterhead and dated June 12, 2007. This letter purports to advise Beriashvili of the June 26 hearing date and time. (Rel. Ex. 221) The copy of this June 12, 2007 letter submitted by Respondent appears to be a fabrication.

The letterhead on this June 12, 2007 letter shows Respondent's law offices to be located at 5055 N. Main Street, Suite 120, Dayton, Ohio. On June 12, 2007, Respondent's office was located at 1927 N. Main Street, Suite 3, Dayton, Ohio. Respondent did not move to the 5055 N. Main address until the end of June 2007 and did not receive new letterhead from his printer with the 5055 N. Main Street address until August 2007. The copy of this June 12, 2007, letter was apparently prepared at a later time to try to cover up Respondent's failure to notify Beriashvili of this very important hearing date.²

²Respondent's printer produced all invoices for printing Respondent's letterhead from April 2007 thru December 2007. Respondent produced no invoices. The first invoice for the new letterhead containing the 5055 N. Main Street address is dated August 13, 2007. Respondent's printer stated that invoices are delivered with the job.

In fact, a letter is found in Respondent's files in which an employee of Respondent, Jeanette Nelson, writes to Beriashvili on July 22, 2007, over one month later, enclosing a copy of the Immigration Judge's decision. This July 22, 2007 letter to Beriashvili contains the 1927 N. Main Street letterhead address. (Rel. Ex. 226).³

When the discrepancy of the June 12, 2007 letter was revealed at the hearing, Respondent undertook efforts to try to establish the validity of the letter being written in June 2007 using the 5055 N. Main Street letterhead. To do this, Respondent produced an affidavit from Carol Rogers proclaiming that she had received a letter from Respondent on June 27, 2007, purportedly on the 5055 N. Main Street letterhead. Ms. Rogers's affidavit stated the letter was received from Respondent by fax. Respondent testified that the letter attached to the affidavit was provided by Ms. Rogers.

A problem with the authenticity of the letter attached to Ms. Rogers's affidavit, Rel. Ex. 100, is that there is no fax header. Respondent next submitted a second version of the same June 27, 2007 letter, this one showing the fax header at the top. This version was submitted to prove that Ms. Rogers received the fax on "06/27/2007" as printed on the fax header (Rel. Ex. 101). Contrary to Rogers's affidavit, the first version of June 27, 2007 letter did not come from her own files.⁴ Instead, it came from Respondent. The authenticity of the second version of the letter with the fax header is suspect. For some unexplained reason, Respondent brought the

³The letter to Mr. Beriashvili (Rel. Ex. 226) with the 1927 N. Main Street address states "Enclosed please find a copy of the decision of Immigration Judge Thomas Snow. Please call our office to discuss. Thank you for your anticipated cooperation." Suspiciously, Respondent produced to the Bar Association a letter (Rel. Ex. 225) with Respondent's Bates stamp number purporting to be dated July 22, 2007 but with the 5055 N. Main Street address on its letterhead and signed by Respondent. This letter also reads "Enclosed, please find a copy of the decision of Immigration Judge Thomas Snow. Please call our office to discuss."

⁴Respondent's counsel drafted the affidavit. Respondent drove to Rogers' home the evening of April 19, 2010, and notarized the affidavit in her driveway.

second version to Rogers's office in person and gave it to Rogers' son, Alexander Rogers. Respondent asked Alexander Rogers to email this second version which Respondent had just given him, back to Respondent. Alexander Rogers emailed the letter to Respondent on the morning of April 20, 2010. Respondent then printed out the email attachment and submitted it to the Panel.

It appears that the first version of the letter (without the fax header) did not come from Rogers' files, she did not look for it, and she could not say whether it was indeed faxed to her back in June 2007. Nor could it have come from her files since it was faxed to her but contained no fax header. Respondent eventually conceded he gave the letter to Ms. Rogers. It also appears that the second version of the letter (with the fax header) came from Respondent and not from Rogers's office files.

Respondent produced additional letters from June 2007 purporting to show that he was using the 5055 N. Main Street letterhead before he moved in or had the stationary printed. However, when a straight line is applied to these exhibits, the letterheads appear misaligned with the text of the letter and the copies are not first generation copies.

On June 26, 2007, Respondent, by himself, attended the rescheduled master hearing. Approximately fifteen minutes before the hearing was scheduled to begin, Respondent testified that he placed one telephone call to Beriashvili, and four telephone calls to Beriashvili's brother, but was unable to make contact. When the court called the hearing, Respondent appeared, but did not ask the court for a continuance. Respondent told the court that he attempted to call Beriashvili at home in Columbus and, "he's apparently still there and I don't think he is coming....I have no excuse for him." (Rel. Ex. 222, p. 3)

Due to Beriashvili's failure to personally show on June 26, 2007, the Immigration Court ordered Beriashvili to be detained and removed from the United States. Notice of the July 2, 2007 court order was mailed to Respondent along with a cover letter stating that the decision of the Immigration Judge was final unless a "Motion to Reopen" was filed in accordance with law.

On July 22, 2007, Respondent's office mailed to Beriashvili a copy of the removal order and asked Beriashvili to call the office. This letter bore the 1927 N. Main St. address as discussed above and in Footnote 3.

Beriashvili telephoned Respondent and was informed by Respondent that he had been ordered deported. Respondent said he would file an appeal. It is inexplicable how Respondent determined that an appeal was the best course of action. The Immigration Court's July 2, 2007 cover letter specifically stated that the removal order was final unless a "Motion to Reopen" was timely filed. An appeal was totally ineffective in stopping deportation.

Sometime in July 2007, when Beriashvili met with Respondent in his office to discuss the appeal, Respondent told Beriashvili to go to the post office and get a \$110 money order to cover the filing cost of the appeal. Beriashvili gave a \$110 money order to Respondent.

A Motion to Reopen must be filed within six months. Respondent took no timely action in this case. Respondent never filed a Motion to Reopen, but eight months later did file what purports to be an appeal. On March 3, 2008, Respondent appealed the July 2007 order.

Once again, to call the appeal that Respondent filed "bare bones" is to give it much more credit than is due. Respondent was required to state in detail the reasons for the appeal and to further follow the instructions provided. Respondent's appeal consisted of two sentences merely stating "Respondent indicates he did not receive notice of the master hearing. He did appear at

all other scheduled hearings.” No law or other factual information was included with or attached to the appeal.

At the end of January 2008, agents from Immigration, Customs and Enforcement (ICE) went to Beriashvili’s residence to arrest him, as no Motion to Reopen had been filed since the July 3, 2007 order of removal. Beriashvili told the agents that an appeal had been filed. The agents checked with the court, and informed Beriashvili that no Motion to Reopen had been filed since the July 3, 2007 order of removal. The ICE agents granted Mr. Beriashvili an additional thirty days to file a Motion to Reopen, and instructed him to return to the ICE office.

Beriashvili immediately contacted Respondent. Respondent assured Beriashvili that the appeal was sufficient. On March 3, 2008, Beriashvili presented himself to the ICE office and was immediately arrested. Respondent had not filed a Motion to Reopen and the appeal had no legal efficacy. Beriashvili needlessly spent the next nine months in jail.

Because Respondent filed an appeal in the case, Beriashvili’s problems were exacerbated. The effect of the appeal was to remove jurisdiction from the Immigration Court. This meant that a Motion to Reopen could not be filed in that court. Beriashvili contacted new legal counsel, who had to secure from the Respondent a dismissal of the appeal before a Motion to Reopen could be filed by Beriashvili’s new legal counsel.

The Panel finds that Respondent in Count Three violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation;

- 2) Prof. Cond. R. 1.2(a) [Scope of Representation], a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are pursued;
- 3) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness;
- 4) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required; and
- 5) Prof. Cond. R. 8.4(c) [Honesty], conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Panel notes that in finding a violation of Prof. Cond. R. 8.4(c), conduct involving dishonesty, fraud, deceit, or misrepresentation, the panel is finding that Respondent's dishonesty, fraud, deceit, or misrepresentation stems from the following:

- (1) his statements to the Bar Association and the Panel that he had provided notice of the new master hearing to Beriashvili when he did not;
- (2) his not telling Beriashvili, between April and June 2007, that the hearing date had been rescheduled and saying he had not received notice of the hearing date when, in fact, he had received such notice.

The Panel is not finding a violation of Prof. Cond. R. 8.4(c) for the preparation of the fabricated June 12, 2007 letter, for the reason that Relator did not provide notice of an allegation of this rule violation to Respondent in the complaint. The testimony on the fraudulent letter was received by the Panel only for the purpose of aiding the Panel in determining the credibility of Respondent's testimony as compared to the credibility of Beriashvili's testimony. The facts of

the fabricated letter will only be additionally considered by the Panel in connection with mitigating and aggravating factors.

COUNT FOUR

Matter of Jayne Vance

Count Four alleges that Jayne Vance retained Respondent to represent her on a contingency fee basis for injuries sustained in an automobile accident on February 21, 2007. Ms. Vance did not testify. Relator alleges that Respondent did not enter into a written fee agreement with Vance. Respondent states that the parties did enter into a written agreement, however, he is unable to find such agreement.

Relator further alleges that Respondent failed to truthfully update Vance about the status of her case, neglected her case for a year, and made a settlement demand without obtaining Vance's consent.

Relator provided insufficient evidence to prove by a clear and convincing standard that Respondent engaged in misconduct as alleged in Count Four. The Panel recommends the dismissal of Count Four of the Second Amended Complaint.

COUNT FIVE

Matters of Anita Boseman and Jennifer Hatcher

On October 31, 2002, Ms. Anita Boseman and her daughter, Ms. Jennifer Hatcher, were injured in an automobile accident when their car was struck by a taxi cab. Also in the car at the time of the accident were Anitra Boseman and Anasia Boseman, Anita Boseman's other daughter and grandchild. Boseman and Hatcher retained Respondent on a contingency basis to recover damages for injuries they sustained as a result of the automobile accident. Boseman and

Hatcher did not have a copy of the contingency fee agreement and Respondent could not produce a copy of the contingency fee agreement.

Respondent's computer logs do not show a great deal of activity taking place on the case over the ensuing two years. Respondent did send a demand letter to the insurance company on September 27, 2004, about a month before the statute of limitations was to run.

On October 7, 2004, the insurance carrier first offered \$20,300 to settle the Boseman case and \$7,000 to settle the Hatcher case. Respondent countered, and the insurance company agreed to settle the Boseman case for \$33,000 and the Hatcher case for \$10,000. The proposed settlement agreements were done without consulting or obtaining approval from either Boseman or Hatcher. After agreeing to the settlement, Respondent telephoned Boseman and told her that the insurance company had agreed to settle for \$33,000. Boseman rejected the offered amount as totally unacceptable. Nonetheless, Respondent received two checks dated October 7, 2004, from the insurance carrier in the amounts of \$33,000 and \$10,000. Both checks were accompanied by release forms. (Rel. Ex. 119-122)

Having been informed by Boseman that the \$33,000 was not acceptable, Respondent filed a lawsuit on behalf Boseman on October 27, 2004, days before the statute of limitations was to run. However, Respondent instructed the Clerk of Courts to not serve the complaint on the defendant. Respondent retained the settlement checks and did not want the lawsuit served as it would disturb the "settlement" that he had agreed to with the insurance company.

Respondent informed the Common Pleas Court that the lawsuit filed on Anita Boseman's behalf was settled. The Court was pressuring Respondent for a settlement entry. As Boseman refused to settle for the \$33,000, Respondent had no alternative, so on April 1, 2005, he dismissed the lawsuit. (Rel. Ex. 116) From the time of the filing of the complaint to the

dismissal of the lawsuit, Respondent stopped any attempt to serve the defendant with the complaint and summons.

Respondent never informed Boseman that he dismissed the lawsuit and had extinguished her legal rights to pursue her claims. Boseman remained in continuing contact with Respondent about her claims over the next two-plus years. At no time did Respondent tell Boseman that her right to sue had been extinguished. Respondent was still hoping to put into effect the \$33,000 settlement that had been rejected in October 2004.

On June 16, 2008, Respondent finally wrote a letter to Boseman informing her that he had missed the statute of limitations and that she should make a claim with his malpractice carrier. (Rel. Ex. 125)

In paragraph 55 of the second amended complaint, Relator alleged violations of the Rules of Professional Conduct. Respondent's second amended complaint was further amended to insert an additional paragraph 55A alleging violations of the Code of Professional Responsibility for violations occurring prior to February 7, 2007. The Panel finds that the above acts of Respondent violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation;
- 2) DR 6-102(A)(3), neglect of an entrusted legal matter;
- 3) DR 7-101(A)(1), intentionally failing to seek the lawful objectives of his client;
- 4) DR 7-101(A)(2), intentionally failing to carry out a contract of employment entered into with a client for professional services; and
- 5) DR 7-101(A)(3), intentionally prejudicing or damaging his client during the course of the professional relationship.

The Panel also finds that the above acts of the Respondent violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness when representing a client;
- 2) Prof. Cond. R. 1.4(a) [Communication], a lawyer shall promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required;
- 3) Prof. Cond. R. 1.15(d) [Notice], upon receiving funds for a client, a lawyer shall promptly notify the client; and
- 4) Prof. Cond. R. 8.4(c)[Honesty], conduct involving dishonesty, fraud, deceit, or misrepresentation.

The panel does not find violations of:

- 1) DR 2-106(A), a lawyer should not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
- 2) Prof. Cond. R. 1.5(c)(1), failure to put a contingency fee agreement in writing; and
- 3) Prof. Cond. R. 1.5(c)(2), failure to provide a closing statement.

Allegations of violations of DR 1-102(A)(5), DR 1-102(A)(6), DR 7-102(A)(1) and DR 7-102(A)(2) are dismissed by the panel. These Disciplinary Rule charges do not match any of the Rules of Professional Conduct originally contained in paragraph 55 of Count Five of the Second Amended Complaint. Respondent therefore did not receive adequate notice of these charges against which he had to defend.

COUNT SIX

Matter of Koba Khakhnelidze

Prior to 2002, Mr. Khakhnelidze and his family were citizens of and living in the country of Georgia. Khakhnelidze was employed as a guard in Georgia. While performing his duties he stopped a robbery in progress. One or more of the robbers were former KBG agents. Khakhnelidze was threatened that if he called the police and testified against the robbers, he and his family would suffer retaliation. After Khakhnelidze testified, his son was kidnaped. His son was beaten and tortured for three days and released. Khakhnelidze and his family were terrified to remain in Georgia and came to the United States in 2002. Khakhnelidze filed an asylum case for himself which was not going well. He and his family were ordered removed from the United States.

In November 2006, Khakhnelidze retained Respondent to represent him. The exact amount paid to Respondent as a retainer is in dispute. Respondent agrees that he was paid at least \$1,100.00. Khakhnelidze testified that he paid \$1,400.00. Respondent did not give or keep receipts for the amounts paid to him. Respondent's only record of the payments were notes jotted down on a file folder.

In December 2006 the Immigration Court set the evidentiary hearing on Khakhnelidze's case for September 25, 2007. Respondent had ten months to prepare his client, obtain the necessary evidence, and research the law concerning the different legal theories being pursued. Respondent undertook no effective action to prepare himself to represent Khakhnelidze at the upcoming hearing.

Respondent raised three defenses or requests for relief in response to the Order of Removal, to-wit: asylum, withholding from removal, and Conventions Against Torture. Respondent did not explain to Khakhnelidze the different types of legal relief available to him,

nor did he inform him of the evidence needed to establish any one of the three legal positions being advanced.

Respondent performed no legal research in preparation for the hearing and did not understand what evidence was required to prove any one of the three legal claims being advanced. Respondent also failed to prepare Khakhnelidze or his family for testimony before the court. Respondent met with Khakhnelidze once before the hearing and met with him the morning of the hearing. The morning of the hearing, Khakhnelidze told Respondent that he had documents with him that would help support his claim, but they were all written in Georgian. It was too late to have them translated and submitted as evidence. At the hearing Khakhnelidze was the only witness called by Respondent to testify and no corroborating evidence was offered.

As would be expected with such representation, the Immigration Judge denied Respondent's application for asylum and withholding of removal and protection under the United Nations Convention Against Torture. The Panel finds that Respondent did little besides collecting a retainer, showing up for the hearing, and winging it. Respondent did appeal the September 25, 2007 decision of the Immigration Judge, but as the Court of Appeals itself stated "we note that the Respondent has done little on appeal to challenge the Immigration Judge's decision." The reason for this comment is that the brief filed by Respondent only contained three short paragraphs with no factual or legal import. When the expert witness on immigration, Mr. Weigle, was asked if he had an opinion as to whether or not Respondent's appeal brief was appropriate, he testified as follows:

I'm not sure I would dignify calling that a brief. It cites no law. It doesn't go into a discussion of the facts. It doesn't try to link a nexus between one of the enumerated grounds. I'm not sure, looking at it again, I don't think it even has

any discussion as to the one-year requirement. And certainly it doesn't differentiate between the various forms of relief of asylum, withholding, or Convention Against Torture. (3/24/10 Tr., 664)

Weigle went on to testify that:

A brief on an asylum case like that [Mr. Khakhnelidze's] would have, of course, just the summary of the procedural posture, how it got there; a statement of the issues, which basically in that case were the one-year filing deadline and then the qualification of the relief; legal argument as to why, in fact, the immigration judge erred in not giving enough weight to the credible testimony and holding that person had a well-founded fear of persecution and that is why citing *Cardoza-Fonseca* and the ten percent rule would be hammered inasmuch as possible.⁵ Then, of course, you know, at the conclusion trying to convince the board – or certainly the staff attorneys who read it first at the board that you have got something there worthy to look at. (3/2/10 Tr., 665-666)

Weigle was also asked if he had an opinion as to whether or not Respondent's representation of Khakhnelidze was diligent. Weigle testified:

"It is not diligent for the same reasons I have said. Certainly, the submission of exhibits and documents for the case were sparse and then the appeal brief was perfunctory almost to the point of insult." (3/24/10 Tr., 666)

⁵The United States Supreme Court in *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S. Ct. 1207 (1987), held that Congress did not intend to restrict eligibility for asylum to those who could prove that it is more likely than not that they will be persecuted if deported. Respondent in his deposition erroneously thought his burden to sustain such a claim would be at least 51%. Weigle further stated that although *Cardoza-Fonseca* is the law of the land, he doesn't always find immigration judges who will use the 10% formula. However Weigle says that just about every time he makes an asylum closing argument he will quote *Cardoza-Fonseca* just to remind the Court of the 10% rule established by the Supreme Court.

The Panel finds that Respondent in Count Six violated the Ohio Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 1.1 [Competence], a lawyer shall provide competent representation to a client;
- 2) Prof. Cond. R. 1.3 [Diligence], a lawyer shall act with reasonable diligence and promptness in representing a client; and
- 3) Prof. Cond. R. 1.5(a) [Fees and Expenses], a lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee.

COUNT SEVEN

Matter of Terri Adams

On November 30, 2007, Ms. Adams was injured in an automobile accident. On December 3, 2007, Adams retained the Respondent and signed a contingency fee agreement.⁶ On November 30, 2007, Respondent wrote to the insurance carrier of the other driver stating that the liability in the case was clear and should not be disputed and included the following medical bills on behalf of Adams: Jewish Hospital \$3,106.55; Oxford Pt \$1,840; Freiberg Orthopedic \$573.20; Western Hills Chiropractic \$331; and Alliance Primary Care \$285. The medical bills totaled \$6,135.75. Adams testified that she also had lost wages, however, no loss of wage claim was submitted.

⁶The exhibit numbers for the document relative to this Count will be listed to make it easier to compare the signatures on the different documents. The testimony of Ms. Adams and the appearance of the signatures on the relevant documents show the following: Rel. Ex. 131, (contingency fee agreement), and Rel. Ex. 129 (Adams Complainant Cincinnati Bar Association) containing the signature of Adams. Rel. Ex. 135, (Schedule of Expenses and Deductions), 136 (Responsibility of Outstanding Medical Bills) and 137 (Power of Attorney) by testimony of Adams and by appearance contain forgeries of Adams's signature.

Respondent had no discussions with Adams as to settlement amount prior to Respondent entering into discussion with the insurance company. On December 23, 2008, Respondent sent Adams a letter stating that the insurance carrier had offered \$5,800 to settle the claim. Adams received the letter on December 24, 2008, and contacted Respondent. Adams said that she did not agree with the settlement offer and Respondent told her that basically that was all that the insurance company was offering.

Adams was under great financial pressure and was in the process of losing her townhouse. At one point Respondent wrote a letter to Adams's landlord, as she was behind in rent. Respondent stated in that letter that the landlord would be paid at the time of Adams's settlement.

On January 7, 2009, Adams came to Respondent's office to discuss the settlement offer. Adams stated that she needed at least \$4,000. The next day, on January 8, Adams returned to Respondent's office to pick up a check dated January 8, 2009, in the amount of \$4,000. At this point in time, Respondent had not received any settlement proceeds from the insurance carrier. The settlement proceeds of \$5,800 were not received by Respondent until after January 13, 2009. Respondent wrote two other checks on January 8, 2009. One check was to himself for \$1,469 and one was to Western Hills Chiropractic for \$331. The three checks total \$5,800. The three checks were written on Respondent's IOLTA account. Respondent testified that he keeps \$20,000 of his own money in his IOLTA account. This amount is to cover checks that he writes before he actually receives the clients' funds.

Adams states that when she received the \$4,000 check, she also received a number of other papers stapled together that she didn't pay any attention to until much later in the proceedings. Among those stapled papers may or may not have been Rel. Ex. 135, Schedule of

Expenses and Deductions. The Schedule of Expenses and Deductions show a gross settlement of \$5,800 and the three payments of \$1,469 to Respondent, \$331 to Western Falls Chiropractic, and \$4,000 to the client. Adams testified that the signature on that form is a forgery and it is noted that it does not look like her signature. Respondent was aware of the \$6,135.35 in medical bills owed and only paid the chiropractor the sum of \$331. Rel. Ex. 136, is a statement that reads, "I, Terri Adams, will be responsible for the outstanding medical bills," and is purportedly signed by Terri Adams. Adams testified and it appears that this signature is also a forgery. Also, Respondent prepared a power of attorney, Rel. Ex. 137, purporting to give Respondent the authority to act in Ms. Adams place to sign the release and draft for the \$5,800 settlement. Adams testified that her signature on this power of attorney is a forgery. Subsequently, Adams engaged another attorney to act on her behalf in making a claim against Mr. Sigalov for his handling of the above accident case.

Relator alleges that during Respondent's representation of Adams, Respondent lied to her about the reason for the cancellation of a scheduled mediation. Relator states that Respondent falsely advised Adams that the mediation was cancelled because there was a death in the mediator's family. It seems apparent that no death occurred in mediator's family. However, Respondent testified that there was a death in the insurance adjustor's family. The Panel does not find by clear and convincing evidence that any misrepresentation was made by Respondent concerning the reason for the cancellation of the mediation.

The Panel finds that Respondent's conduct as alleged in Count Seven violated the Ohio Rules of Professional Conduct, specifically:

- 1). Prof. Cond. R. 1.15(b), a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.

The Panel does not find by clear and convincing evidence that Relator established a violation of Prof. Cond. R. 1.15(a) that Respondent disbursed funds of another client out his IOLTA account when he paid Ms. Adams, nor does the panel find violation of Prof. Cond. R. 8.4(c) that Respondent deceived the client as to the reason for the cancellation of the scheduled mediation.

The Panel notes that it would have found a violation of Prof. Cond. R. 8.4(c), conduct involving dishonesty, fraud, deceit or misrepresentation, for forging or obtaining forged signatures on those documents purportedly signed by Adams but that were not signed by her. However, as the complaint does not provide Respondent with notice of these actions and charged rule violations, these facts may only be considered in connection with mitigation and/or aggravation.

MITIGATION

The Panel finds that pursuant to BCGD Proc. Reg. 10(B)(2) the following factor in mitigation is present: (a) absence of a prior disciplinary record.

Respondent argues in mitigation that he made full and free disclosure to the Disciplinary Board and had a cooperative attitude toward the proceedings. While Respondent did appear to be cooperative and respectful during the proceedings, the Panel finds that preparing false evidence and giving false testimony is not providing "full and free disclosure" to the Disciplinary Board.

Respondent also argues that he has received the imposition of other penalties or sanctions outside the disciplinary process because he was sued for malpractice by Boseman. The cases cited by Respondent, *Disciplinary Counsel v. Gittinger*, 125 Ohio St.3d 467, 2010-Ohio-1830 and *Cleveland Metro. Bar Assn. v. Nance*, 124 Ohio St.3d 57, 2009-Ohio-5957, to support this contention are not on point. The Panel finds that being sued for malpractice is not a penalty or sanction to be considered. It merely makes the client whole by paying the client for the damages that were caused to the client.

Respondent states he intends not to take any future immigration cases.

AGGRAVATION

The Panel finds pursuant to BCGD Proc. Reg. 10(B)(1) the following factors in aggravation are present:

- (b) Dishonest or selfish motive;
- (c) A pattern of misconduct;
- (d) Multiple offenses;
- (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) Refusal to acknowledge wrongful nature of conduct; and
- (h) Vulnerability of and resulting harm to victims of the misconduct.

SANCTION

Relator recommends that Respondent be disbarred from the practice of law. Relator cites *Disciplinary Counsel v. Schiller*, 123 Ohio St.3d 200, 2009-Ohio-4909, and *Toledo Bar Assn. v. Baker*, 122 Ohio St.3d 45, 2009-Ohio-2371, where the Supreme Court imposed indefinite suspensions for patterns of misconduct similar to Respondent. However, Relator states that

unlike the above cited cases, this Respondent's misconduct of fabricating evidence and his lack of truthfulness on the witness stand demand that the sanction go further and be a permanent disbarment.

The Respondent's position is that he committed no misconduct and the complaint should be dismissed with prejudice.

The Panel is troubled by some of the significant aggravating factors. Respondent's lack of candor with his clients, with the Bar Association, and on the witness stand is troubling. The repeated submission of false evidence, the preparation of false documents, and false statements by Respondent greatly exacerbate Respondent's conduct. In the eyes of the Panel, Respondent suggesting that the complaint against him be dismissed with prejudice, and his refusal to acknowledge the wrongful nature of his conduct are further troubling. Respondent's clients were certainly vulnerable and harmed by Respondent's misconduct. Some of his clients were arrested when they should not have been, with one unnecessarily spending nine months in jail.

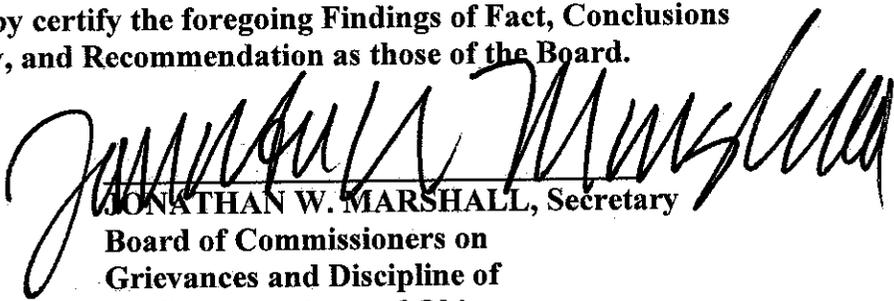
The Panel recommends that the Respondent be disbarred from the practice of law in the State of Ohio.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 2, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends, based on his remarkable record of fraud and deceit, that Respondent, Vlad Sigalov, be permanently disbarred from the practice of law in the State of Ohio. The Board further

recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.


JONATHAN W. MARSHALL, Secretary
Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio