

ORIGINAL

No. 2011-0120

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,  
Relator,

vs.

VLAD SIGALOV,  
Respondent.

RELATOR'S RESPONSIVE BRIEF IN SUPPORT OF RECOMMENDATIONS  
OF BOARD OF COMMISSIONERS ON GREIVANCES AND DISCIPLINE

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## COUNTER-STATEMENT OF FACTS

Respondent Vlad Sigalov was charged with violating his duties as an attorney in connection with seven different grievances. The Board of Commissioners on Grievances and Discipline (“Board”) found Relator had proved violations on six of the seven – three involving Respondent’s handling of personal injury cases and another three involving his handling of immigration cases. The Board found that with respect to one personal injury grievance – Vance – that Relator had failed to establish a violation by clear and convincing evidence.

### **A. Personal Injury Cases – Hurst, Boseman/Hatcher and Adams.**

All of the personal injury matters have a common thread – Respondent, while representing a claimant seeking to recover for injuries incurred from auto accidents, uniformly negotiated settlements with the other drivers’ insurance company without first having obtained specific client direction or authority to do so and then as a matter of his standard operating procedure sought to persuade the client to accept the negotiated settlement. This was largely the result of Respondent’s practice of seeking auto accident personal injury clients through mass mailings and using non-professional employees to meet with and sign-up clients all over the state of Ohio. While this created an avalanche of business, Respondent, a sole practitioner, was unable to give each client the attention his or her case deserved and consequently failed to meet the requirements of the Rules of Professional Conduct; specifically Prof. Cond. R. 1.2 (Scope of Representation and Allocation of Authority), and Prof. Cond. R. 1.4 (Communication). As a result, Respondent did his clients, the bar and the public great disservice.

As shown by the evidence submitted to the Hearing Panel, Respondent typically would have no face to face meetings with clients after they had been signed-up by a legal

assistant and would only occasionally speak with them by phone. Most importantly, Respondent's regular practice was to marshal the client's medical bills and any known lost wages and use those to present a demand to the other driver's insurer. Again without actually discussing the client's objectives and desires with the client, Respondent would then negotiate (and frequently agree upon) a "settlement" with the insurer's adjuster and present it to the client as virtually a done deal. Finally, to facilitate completion of the settlement, Respondent would ordinarily then meet with the client and on the spot write out a check to the client in his own hand drawing it on his IOLTA account for the net settlement proceeds to the client. This was done before the insurance company's settlement check was deposited into the IOLTA account which meant that he needed to have his own funds in the account to cover the checks. Respondent, as in the Hurst case, occasionally would also simply send the settlement check to the client, and he himself would sign/endorse the settlement documents and check "as per authorization," without first receiving any writing or power of attorney from the client specifically authorizing him to do so.

It is Relator's contention that Respondent conducts his practice in the foregoing manner for two main reasons: first, it is highly efficient and avoids his having to have the client return to his office to receive the Respondent's check for the net settlement proceeds after the insurance company's check has cleared and the funds have been received by Respondent; and, second, the practice of offering clients his disbursement check immediately serves to entice the client, who typically is in desperate need of the settlement funds, into accepting the settlement and conclude the matter even if it is objectively inadequate. For Respondent's practice, efficiency is of paramount

importance because he admittedly takes in claims for almost 1,000 clients each year and generates gross settlement revenues of about \$2.5 million and fees of \$800,000 a year.

TR 51.

**B. Immigration Cases – Dozier (Mukhamadiyeva), Beriashvili and Khankhnelidze.**

Respondent's immigration practice is the subject of the remaining three counts in the Relator's Second Amended Complaint. The common thread for each of these grievances is simply Respondent's gross incompetence. While Respondent's Ukrainian and Russian speaking background enabled him to obtain Eastern European clients needing immigration help, he completely lacked the knowledge, skills and basic competence to serve the needs of the clients having immigration problems who entrusted their futures to him. This is shown not only by the consequences of his mishandling of Dozier,<sup>1</sup> Beriashvili and Khakhnelidze cases (including two of the grievants having spent substantial time in jail as a result of Respondent's misconduct), but also by the expert testimony of Attorney Douglas Weigle, a leading immigration practitioner both in Ohio and nationally. While Respondent testified at the hearing that he was no longer taking immigration cases, this expediant purported limitation of Respondent's practice cannot mitigate the substantial harm done to all three immigration grievants by Respondent's incompetence and misconduct.

Finally, during the merits hearing before the Hearing Panel, evidence emerged that Respondent had actually fabricated a key item of evidence (his June 12, 2007 letter to grievant Beriashvili – Rel. Exhibit 221) which he had offered to prove that he had

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<sup>1</sup> Mrs. Mukhamadiyeva's married name is Dozier. Throughout the hearing, she was most frequently referred to as Mr. Dozier, although in Relator's complaint (Count Two) she was referred to as Rezeda Mukhamadiyeva.

actually provided notice to his client of a rescheduled June 26, 2007 Immigration Court hearing date. This was a critical point respecting the Beriashvili grievance because the grievant had testified that he had received no such notice from Respondent and because the grievant's failure to appear at this hearing resulted in his being jailed for nine months. During the one month recess between the second and third hearing days before Hearing Panel, Relator investigated whether the purported notice letter was a fabrication because the address on the letterhead had an address for Respondent's Dayton office that first appeared on Respondent's other letters only months later than June 12, 2007.

As found by the Board, the evidence developed during this recess demonstrated that Respondent's letterhead used with respect to the purported June 12, 2007 letter to grievant Beriashvili listed Respondent's office address as 5055 N. Main Street, Suite 120, Dayton, Ohio, did not exist on June 12, 2007. Deposition testimony from both Respondent's Dayton landlord and letterhead printer taken during the recess period established that Respondent did not have a letterhead with that address printed on it until August 2007. Wright Depo. – Rel. Exhibit 254; Vollet Depo. At 6-8, Rel. Exhibit 248, 259. Thus, this evidence established not only that Respondent had submitted false evidence at the merits hearing in the form of the purported June 12, 2007 letter but that he had also given false testimony to the Hearing Panel about sending the letter. It was this misconduct at the hearing itself that led the Board to recommend the ultimate disciplinary penalty – disbarment.

## ARGUMENT

### **A. There Was No Violation of Respondent's Right to Due Process.**

#### **1. Relator's Complaint Was Not Amended To Allege New Misconduct During the Hearing; Relator Reopened to Show Respondent's Submission of False and Fabricated Evidence During the Hearing Itself.**

Respondent claims he was denied due process because he was not given fair notice of additional charges of misconduct related to the fabrication of evidence related to the Beriashvili grievance. Objections at 10-21. Respondent is wrong to argue he was charged with additional misconduct. Relator did not move to amend the complaint after learning of the fabrication of evidence. See Relator Motion to Recall and Relator Opposition to Motion to Reconsider. Relator did not argue that the evidence should be used as proof of misconduct. See Relator's Post-Hearing Reply Brief at 9. Instead, Relator moved to recall Respondent and submit evidence of the fabrication as evidence that Relator's testimony was not credible. Relator plead:

Importantly, Relator is not claiming such falsehood as an additional ground for the imposition of discipline but instead is seeking to show it to impeach Respondent's credibility regarding his defense that he had in fact notified Mr. Beriashvili of the master hearing as a matter of fact and more generally that little, if any, of Respondent's testimony is worthy of any credit by the Panel.

Relator Opposition to Motion to Reconsider at 7. The Board properly found that the fabricated evidence Respondent submitted to the Panel during the hearing was not evidence of misconduct in violation of Prof. Cond. R. 8.4(c) [Honesty] because Relator did not provide notice of an allegation of this rule violation to Respondent in the complaint. Board Decision at 18. The Board stated it received the evidence "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.” *Id.* at 18-19, 30.

Respondent’s main argument is that he was not on notice that the veracity of his June 12, 2007 letter was at issue. However this issue has always been one of the key aspects of the allegations of Count Three of the Second Amended Complaint (as well as in Relator's original Complaint and its Amended Complaint, which included verbatim the same allegations). At ¶34 in all of its complaints, original, amended and second amended, Relator alleged:

34. On March 27, 2007, the Court mailed notice that the Master Hearing was scheduled for June 26th. As before, the Court only mailed notice to the Respondent. Respondent did not mail a copy of the notice to Mr. Beriashvili, *but did send him a letter notifying him of the hearing date two weeks before the hearing.* Mr. Beriashvili did not receive the letter.

Emphasis added. The italicized phrase in Relator's complaint reflected Respondent's contention that he had sent a letter to Grievant Beriashvili on June 12, 2007 advising him of the June 26 Master Hearing.<sup>2</sup> As noted in the last sentence, Grievant Beriashvili denies having received that letter.

More importantly, Respondent is specifically charged in each iteration of the formal complaint with violating Rule 1.4 of the Ohio Rules of Professional Conduct "by failing to inform Mr. Beriashvili of his June hearing date." ¶43.d. Accordingly, there is no question that Respondent was on notice that his sending of his June 12 letter was a key

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<sup>2</sup> In his written response to the grievance (Relator's Exhibit 237) dated August 14, 2008, Respondent's counsel stated:

At the center of Mr. Beriashvili's grievance is his allegation that Mr. Sigalov failed to inform him of the June 26 hearing date. . . . Moreover, on June 12, 2007, Mr. Sigalov sent Mr. Beriashvili a letter reminding him that the hearing had been rescheduled for June 26, 2007. (*See* June 12, 2007 letter from Mr. Sigalov to Mr. Beriashvili.) Clearly, Mr. Beriashvili's claim that he was not notified of the June 26, 2007 hearing is without merit.

Clearly, Respondent's June 12, 2007 letter was at the center of his defense to the grievance filed against him. See Relator's Exhibit No. 218.

event relating to this charge brought against him. Accordingly, the *In re Ruffalo* (1968), 390 U.S. 544, case has no relevance to the correctness of the Panels' decision to consider the fabrication evidence. The holding in *Ruffalo* was that a respondent in a disciplinary case is "entitled to procedural due process, which includes fair notice of the charge" in advance of the hearing. *Id.* at 550-51. As shown by the foregoing, Respondent was here afforded appropriate notice of the misconduct charged. Thus, the Panel did not err in allowing the evidence.

Furthermore, the Board did not error in considering the evidence as it related to Respondent's credibility. While Respondent objects to the Board's use of the evidence to determine Respondent's credibility, there is no due process requirement that a Respondent be given notice, prior to his presenting false evidence, that if he does, additional evidence will be submitted to impeach him. Nor does Respondent make such an argument. It should be noted that Respondent does not object to the Board's use of the fabricated evidence as an aggravating factor.

During the recess after the first two days of the hearing, Relator noticed differences in the various letterheads used by Respondent during 2007 suggesting that the letterhead used in Respondent's June 12, 2007 letter to grievant Beriashvili might have been fabricated. This led to Relator taking depositions of Respondent's landlord and printer which demonstrated that Respondent had not moved into his Dayton office at 5055 N. Main Street until late June 2007 and that he had not received letterheads with this new address on it until August 2007. This evidence, coupled with the apparent misalignment of the type on Relator's Exhibit 221, demonstrated that this exhibit could

not have been sent on June 12, 2007 and that it necessarily was a fabrication submitted by Respondent as false evidence at the hearing.

Therefore, Respondent was not denied due process when, after he submitted false evidence during the hearing, Relator was allowed to rebut his evidence by recalling him as a witness and calling Ms. Rogers and her son in rebuttal to Respondent's exhibits submitted on April 20, 2010. Nor was Respondent denied due process when the fabricated evidence was used to impeach his credibility and as an aggravating factor in determining the proper sanction.

**2. Respondent Had Fair Notice of Relator's Allegations of Misconduct; The Amendment Allowing Allegation of Violations of the Disciplinary Rules under the Code of Professional Conduct in Addition to the Ohio Rules of Professional Conduct Did Not Change the Factual Basis for the Misconduct Charged.**

The Hearing Panel noted during the course of the first two days of the Merits Hearing that, because the facts giving rise to the Boseman/Hatcher grievance first arose largely in 2002, the rules applicable to most of Respondent's alleged misconduct would need to be determined under the prior Disciplinary Rules of the Code of Professional Conduct that were in effect prior to February 1, 2007. As a result, Relator moved under Civil Rule 15(B) to amend its complaint to add a new paragraph 55A in order to allege violation of the former Disciplinary Rules explicitly. The panel thereafter granted Relator's motion and Relator filed its amendment accordingly.

The gist of Respondent's due process objection respecting this amendment is that Respondent claims he was not given fair notice of the conduct that Relator claims warranted discipline. However, the factual allegations giving rise to conduct that the Board found to have constituted disciplinary violations are set forth in Relator's Second

Amended Complaint and it is those allegations of misconduct that the Board ultimately found to have been proven and to warrant the imposition of discipline.

Specifically, Relator had alleged in its Second Amended Complaint that Respondent had engaged in misconduct by: (a) causing the dismissal of the plaintiffs' suit without their knowledge or consent, and negotiating and settling Anita Boseman's claim without her knowledge or consent; (b) failing to re-file the plaintiffs' case within the one-year grace period and neglecting the lawsuit to the plaintiffs' prejudice; (c) failing to keep the plaintiffs informed of the status of their case; (d) by failing to promptly deliver settlement funds to the plaintiffs; and (e) by misrepresenting facts of the case to the plaintiffs. The fact that Relator had erred by referring in its complaint to the post-February 2007 Professional Conduct Rules instead of the old Disciplinary Rules are not substantively significant, especially since the same acts or omissions would constitute misconduct and a violation of both rules.

To illustrate, the conduct alleged above is proscribed by the old Disciplinary Rules, viz, DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 6-102(A)(3) (neglect of an entrusted legal matter), DR 7-102(A)(1) (intentionally failing to seek the lawful objectives of his client), DR 7-102(A)(2) (intentionally failing to carry out a contract of employment entered into with a client for professional services) and DR 7-101(A)(3) (intentionally prejudicing or damaging his client during the course of the professional relationship), and is also generally proscribed by the new Ohio Rules of Professional Conduct, viz. Prof. Cond. R. 1.3 [Diligence] (a lawyer shall act with reasonable diligence and promptness when representing clients), 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), Prof. Cond. R. 1.15(d) [Notice] (upon receiving funds for a client, a lawyer shall promptly notify the client), and Prof. Cond. R. 8.4(c) [Honesty] (conduct involving dishonesty, fraud, deceit, or misrepresentation). Having fair notice of the facts constituting violations of the applicable disciplinary rules, Respondent cannot show any prejudice in his ability to defend against the Boseman/Hatcher grievance nor that the findings against him failed to afford due process.

Moreover, Respondent at the hearing made no objection during the presentation of Relator's evidence of the substantive violations that he had inadequate notice of the alleged misconduct. Thus, Respondent impliedly consented to the trial of this matter as if the Rules of Professional Conduct applied with respect to the misconduct alleged in Count Five to have occurred on and after February 1, 2007, and the Code and Disciplinary Rules applied with respect to the his misconduct alleged in Count Five to have occurred prior to February 1, 2007, provided, of course, that the conduct alleged did indeed constitute a cognizable disciplinary violation. For the foregoing reasons, the Hearing Panel's allowance of such amendment did not, as a matter of fact, prejudice in any manner Respondent or his ability to defend against the misconduct charged in said count.

**B. The Clear And Convincing Standard Was Satisfied With Respect To Each Violation Found By The Board.**

**1. The Personal Injury Case Grievances –  
Hurst, Boseman/Hatcher & Adams**

The only issue before this Court on Respondent's specific objections to the Board's recommendations is whether there is sufficient evidence to support the Board's

finding that Respondent committed violations by clear and convincing evidence. The evidence submitted by Relator at the hearing with respect to each finding in the three personal injury cases will be discussed in detail below.

**a. Hurst Grievance - Count One.**

The Hurst grievance was typical of Respondent's general practice methods and procedures and demonstrates his systematic misconduct in virtually all aspects of his vast personal injury law practice. With respect to this grievance - Count One, Relator presented clear and convincing evidence that Respondent violated the Ohio Rules of Professional Conduct Rule 1.2 (scope of representation and allocation of authority, Rule 1.4 (Communication), and Rule 1.5(c)(2) (Fees and Expenses). Notwithstanding Hurst's untimely death in February 2009, the evidence from both Respondent and from Attorney David Saylers, the attorney Hurst hired after he discharged Respondent, demonstrated Respondent's violations to the clear and convincing standard.

Jerry Hurst was injured in an automobile accident on April 9, 2007 and retained Respondent on April 13, 2007 to represent him in making a personal injury claim against the other driver. Under a "Retainer Agreement" (Ex. 109/CBA 10126) Respondent's contingency fee was specified as 24%. TR 81-82.

Significantly, Respondent never met with Hurst either at the time he was hired or at any time thereafter. TR 66:9-13. Instead, Hurst initially met with Tom Proctor, one of Respondent's employees who was authorized to meet clients for the first time. TR 57-58. Interestingly, Proctor recorded entries on Respondent's case log (Ex. 108) as "Missy". TR 80-81.

On July 2, 2007, Respondent sent a demand letter, with no lost wage claim, to the other driver's insurer, USAA, demanding \$21,500. (Rel. Ex. 103). Thereafter, Respondent engaged the adjuster for the other driver's insurer in settlement discussions and agreed, on or about October 17, 2007, to settle the claim for \$8,200 on Hurst's behalf, as shown by USAA's settlement draft of that date (Rel. Ex. 105).<sup>3</sup>

By October 24, 2007, Respondent had received the \$8,200 settlement draft, which was jointly payable to him and Hurst. (Ex. 105; Ex. 108/VS0521) He proceeded to endorse on it both his name and that of "Jerry Hurst, as per authorization". (Rel. Ex. 105) TR 74-75. Respondent then, on October 24, 2007, drafted checks drawn on his IOLTA account to himself for \$2,658, to Northside Chiropractic \$2,658 and to Hurst for \$2,884 (Rel. Ex. 106) and prepared a Schedule of Expenses and Deductions showing the gross settlement of \$8,200, a fee of \$2,6258 and a payment to Northside Chiropractic for \$2,658. (Rel. Ex. 107). Significantly, the fee charged (actually deducted from the settlement proceeds) was not 24%, as per Respondent's fee agreement, but was actually 32.4% of the \$8,200 settlement, or an overcharge of \$690. Moreover, Hurst never signed and returned to Respondent the Schedule as is required by Rule 1.5(c)(2), TR 76:24, nor was there even a place on the form for Respondent's signature as is also required by the Rule.

When Hurst received the "settlement check" check from Respondent for \$2,884, he did not cash it, and thereafter filed his grievance against Respondent. He later retained Attorney Salyer to take over his case. Fortunately, Salyer was able to reopen the settlement and obtain an additional payment of \$3,800 from USAA. TR 268.

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<sup>3</sup> There is an entry in Respondent's case log dated October 16, 2007 (Rel. Ex. 108:VS0520) that reads: "called adjuster and she said she will call right back; also called client and he is to get \$2800 and is ok; s" (apparently balance of note was not recorded).

After renegotiating the settlement with USAA Insurance and receiving more money for Hurst, Salyer advised Respondent in a letter dated February 22, 2009 that Hurst's original "settlement" check for \$2,884 issued to Hurst on October 24, 2007 was stale and needed to be replaced and also that he had overcharged Hurst by \$690. TR 81:25 (Rel. Ex. 109/CBA 10111-2). In his original examination on the opening day of the hearing, March 23, Respondent acknowledged that he had overcharged Hurst and that he had sent Salyer two checks in response to Salyer's February 11, 2009 letter. TR 82-83. The clear import of this testimony is that Respondent immediately corrected the "mistake" after he became aware of it as a result of Salyer's February 2009 letter. However, Salyer testified later on March 23, that he had never received a payment of the overcharged amount of \$690. TR 271:22. Asked again about the overcharge when he was recalled on June 1, Respondent admitted that he had not sent the fee refund to Salyer in February 2009, but actually had done so just two days prior to the opening day of the hearing in March 2010. TR 14 (Vol. IV)<sup>4</sup> This misleading testimony of Respondent was cited and relied upon in the Board Decision at 5.

**Violations Found By Board – Prof. Cond. R. 1.2(a), 1.4(a) and 1.5(c)(2)**

The Board found that Respondent violated Prof. Cond. R. 1.2(a), which, in pertinent part, provides, "[A] lawyer shall abide by a client's decisions 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... A lawyer shall abide by a client's decision whether to settle a matter..."

The Board further found that Respondent violated Prof. Cond. R. 1.4(a), which provides:

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<sup>4</sup> References to the transcript pages for the June 1, 2010 hearing will note that they are in "Vol. IV".

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

(2) *reasonably* consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client *reasonably* informed about the status of the matter;

(4) comply as soon as practicable with *reasonable* requests for information from the client;

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer *knows* that the client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law.

These two rules go hand in glove. While Hurst's death prevented him from offering his own testimony, his actions, the documentary evidence and the subsequent supplemental settlement with USAA Insurance all show that Respondent had agreed upon a settlement of Hurst's claim without fully explaining the consequences to the client and proceeded to consummate the settlement by endorsing Hurst's name to the settlement check without having any further discussion with him or securing any written or other formal authorization (other than Respondent's say-so). The fact that Hurst never cashed the settlement check which stated on its face "full and final settlement" shows that Hurst did not as a matter of fact authorize the settlement.

In addition, the Board found that Respondent violated Prof. Cond. R. 1.5(c)(2) by failing to prepare and have his client sign a closing statement prior to Respondent's receipt of compensation in a contingent fee case. In addition to charging and collecting a fee that was almost 9% above the agreed 24% amount in the fee agreement, the evidence from the hearing is clear that Respondent consummated the "settlement" without ever

having met with Hurst or even having him sign the insurance company's draft and the required attorney/client closing statement. This evidence was not substantially disputed at the hearing. Moreover, by cutting corners, Respondent did a disservice to Hurst who ended up never receiving the benefits of any settlement as a result of his death before the situation could be rectified.

The evidence adduced at the hearing unquestionably satisfied the clear and convincing evidence standard. The Board's findings and conclusions regarding the violations in the Hurst case should therefore be confirmed.

**b. Boseman/Hatcher Grievance – Count Five.**

This grievance was brought *sua sponte* by Relator as a result of a lawsuit filed by Anita Boseman and Jennifer Hatcher against Respondent. Because the conduct engaged in by Respondent, as alleged in the lawsuit, was similar to his actions in other personal injury cases, this count was added to Relator's complaint.

Boseman and her daughter Hatcher were injured in a serious auto accident on October 31, 2002, when their car was struck by a taxicab operated by Town Taxi. TR. 320. There is no dispute that Boseman had actually hired Respondent to represent her and her daughter and granddaughter on a contingent fee basis, but Respondent could not produce a copy of the actual contingent fee agreement. TR 86. Respondent's computer case log showed that Respondent did very little over the two years immediately after the accident to resolve Boseman's and Hatcher's claims. (Rel. Ex. 128/VSO537-9). Respondent's log relates that he did not even send a demand to the taxi company's insurer until September 27, 2004 – just over one month before the limitations period expired. There is then an entry in Respondent's log on October 7, 2004 stating, "offered

\$20,300, settled for \$33,000” (Rel. Ex. 128/VSO540). There also is a similar entry on the same date in the single page log for Hatcher’s claim, stating: \$7,000 settled for \$10,000. (Rel. Ex. 128/VSO565).

Later that day (October 7, 2004), Boseman, after being telephonically informed by Respondent that he had arranged for a settlement, wrote Respondent a letter (Rel. Ex. 118) regarding the “Proposed Settlement of \$33,000.00” stating that the amount offered was “totally unacceptable.” Notwithstanding Respondent’s not having had authority from Boseman or Hatcher to settle the case, Scottsdale Insurance Co. sent two checks, dated October 7, 2004, to Respondent showing that Respondent had “agreed” on settlements with the adjustor; one for \$33,000 payable to Boseman (Rel. Ex. 119) and the other for \$10,000 payable to Hatcher (Rel. Ex. 121). Both checks were accompanied by filled-in release forms (Ex. 120 and 122). However, Respondent never informed Boseman that he had received the \$33,000 settlement check and only informed Hatcher much later after having persuaded her to take the \$10,000 settlement in March 2005.<sup>5</sup>

Having failed to persuade Boseman to take the \$33,000 settlement, Respondent faced a dilemma of what to do because he already had “agreed” upon the settlement with the Scottsdale adjuster and knew there would be no more settlement money available. Respondent elected to file a lawsuit on behalf of Boseman and Hatcher on October 27, 2004 in order to preserve the claims’ viability, but, instead of proceeding with the actions, he specifically instructed the Clerk not to serve the complaint on the defendants. (Rel. Ex. 113). Respondent’s motive in not serving the suit was obviously intended to not disturb the settlement that he had agreed upon with the insurance company. TR. 101.

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<sup>5</sup> According to Hatcher’s testimony, she had no knowledge of the “settlement” of her case until Respondent called her to his office on March 4, 2005 even though the settlement check was dated October 7, 2004. TR. 430-32.

After Respondent advised the judge assigned to the case that it had been “settled,” Respondent was required to dismiss Boseman’s case without prejudice on April 1, 2005. However, Respondent was at the time not aware that, by not having served the defendants named in the lawsuit, the action was never “commenced,” meaning that the one year savings statute had not been triggered, and, upon dismissal, Boseman’s claim became barred by the two year statute of limitations.<sup>6</sup> According to Boseman, she never authorized Respondent to dismiss the lawsuit and was never informed that the lawsuit had been dismissed until more than three years later when she received Respondent’s June 16, 2008 letter advising that he had missed her statute of limitations. (Rel. Ex. 125).

As is shown by Respondent’s computer log (Rel. Ex. 128) and Boseman’s correspondence with him dated May 16, 2005, June 13, 2005, November 17, 2005, November 18, 2005, and June 14, 2006 (Rel. Ex. 123), Boseman not only was not told her claims had been completely extinguished by Respondent’s dismissal of the lawsuit without service but he was still hoping to put into effect the \$33,000 settlement that had been rejected in October 2004. In fact, Respondent even arranged for the insurance company to replace the original \$33,000 check with another that was issued on August 14, 2007 (Ex. 124) when Respondent was still hoping to resurrect the old settlement. (Rel. Ex. 124).

Finally, on June 16, 2008 after Boseman still was unwilling to settle her claim for \$33,000, Respondent wrote Boseman to tell her that he had missed a statute of limitations on her claim suggesting she contact his malpractice insurance carrier for relief. (Rel. Ex. 125). What Respondent did not say, however, is that he at that time knew he had not

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<sup>6</sup> The lawsuit was dismissed with Respondent’s consent on April 1, 2005 by the Hamilton County Common Pleas Court. (Rel. Ex. 116).

merely missed the statute of limitations but that he blew the limitations period when he dismissed her suit in 2004, over four years earlier and had continually misled her about the status of her claim for almost four years.

**Violations Found by Board – DR 1-102(A)(4), 6-102(A)(3), 7-101(A)(1), 7-101(A)(2) & 7-101(A)(3); and Prof. Cond. R. 1.3, 1.4(a), R. 1.15(d) & 8.4(c).**

Whether applying the former Disciplinary Rules or the new Rules of Professional Conduct, Respondent violated his professional duties to clients Boseman and Hatcher. He was hired to prosecute injury claims in 2002 but did very little for almost two years. Then, on the eve of the running of the two year statute of limitations, he “negotiated” two “settlements” with the Scottsdale Insurance Company but did so without first getting authority or instructions from the clients -- \$33,000 for Boseman and \$10,000 for Hatcher. When later informed by Boseman that the “settlement” of her claim for \$33,000 was unacceptable, Respondent filed suit but chose to instruct the clerk not to serve it in order to avoid upsetting the “settlements” to which he had agreed. As is shown by the case schedule (Rel. Ex. 114), Respondent continued to represent to the Court that the case would be dismissed by “settlement entry,” which ultimately resulted in the dismissal on April 1, 2005. Significantly, Respondent did not communicate any of this to Boseman and was clearly not authorized by Boseman to dismiss the case. TR. 353:22. He then strung Boseman along until the summer of 2008 when he concluded that there was no way he could “consummate” the 2004 settlement and had no choice other than to “confess” that he had blown the statute of limitations.

The Board found violations of DR 1-102(A)(4) (dishonesty, fraud, deceit or misrepresentation); DR 6-102(A)(3) (neglect); DR 7-101(A)(1) (intentionally failing to seek the lawful objectives of his client); DR 7-101(A)(2) (intentionally failing to carry

out a contract of employment); and DR 7-101(A)(3) (intentionally prejudicing or damaging his client); Prof. Cond. R. 1.3 [Diligence]; Prof. Cond. R. 1.4(a) [Communication]; Prof. Cond. R. 1.15(d) [Notice] (re receiving client funds); and Prof. Cond. R. 8.4 [Honesty] (dishonesty, fraud, deceit or misrepresentation) (Board Report at 19-22). All are supported by substantial evidence sufficient to meet the applicable clear and convincing standard.

**c. Adams Grievance – Count Seven.**

The Adams grievance, like the Hurst, and Boseman/Hatcher cases, arise from Respondent's personal injury practice. Importantly, it too is symptomatic of Respondent's continuing inability to manage his immense practice and deal with clients individually first to learn their objectives and then to prosecute their case in accordance with their specific desires and instructions. As was found by the Board, Respondent agreed to "settle" Adam's injury claim with the insurance adjuster without first having discussed Adams' settlement objectives with her and then presented the "settlement" to Adams as a done deal.

Although the foregoing scenario was Respondent's standard procedure, the Adams case has one additional important element, which is that Respondent actually disbursed "settlement" funds from his IOLTA account to Adams and to himself for his fee *before* the "settlement" was completed and *before* he had even received in hand the insurance company's settlement check. In other words, Respondent actually paid settlement proceeds from others' money that was on deposit in his IOLTA account to

both Adams and himself.<sup>7</sup> This constitutes a clear violation of his obligation under Prof. Cond. R. 1.15 regarding safekeeping of funds.

Adams was injured in an auto accident on November 30, 2007 and signed a contingent fee agreement with Respondent on December 3, 2007. (Rel. Ex. 131). A year later on November 26, 2008, Respondent sent a letter to Grange Insurance listing about \$6,000 in medicals but made no demand. (Rel. Ex. 133). However, Respondent had no communications with Respondent about the amount of her claim prior to this letter being sent. TR. 285-6. Moreover, no wage claim was included in this letter, although Adams testified she had significant lost wages and had so informed Respondent about that claim prior to November 2008. TR. 285.

Respondent also agreed to participate in a mediation conference before Attorney James Scherer on December 4, 2008. Respondent admitted that he had not paid the \$300 fee which was required before the mediation could proceed. (Rel. Ex. 132). In fact, the mediation was cancelled, and Respondent falsely advised Adams that it had been cancelled because “there was a death in the mediator’s family.” TR. 286:8-20.

According to Respondent’s log, he later called the insurance adjuster on December 23, 2008 during which call “she offered \$4,816.” The entry continues: “[I] counter; top is \$5,800.” According to Adams, Respondent had no discussions about the amount of any settlement with her prior to this discussion with the adjuster. TR. 287, 300-01. On December 24, 2008, Adams received Respondent’s letter informing her of the \$5,800 offer. (Rel. Ex. 134). TR. 287: 24.

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<sup>7</sup> Although funds are fungible, and included those belonging to other clients, Respondent kept a large amount of his own funds on deposit so that he could cover checks for paying settlement proceeds to clients from his IOLTA account before depositing insurance company settlement checks respecting the particular case.

Then on January 7, 2009, Adams met with Respondent at his office. TR. 290. At the time, Adams was in desperate need of the money and accepted the \$4,000 check from Respondent.<sup>8</sup> (Rel. Ex. 138). However, Adams denied that she actually signed either the Schedule of Expenses and Deductions dated January 7, 2009 (Rel. Ex. 135), the statement regarding outstanding medical bills (Rel. Ex. 135), and the Power of Attorney (Rel. Ex. 137).

The evidence then shows that Respondent later received a Grange Insurance check payable jointly to Adams and Respondent for \$5,800 and a release form nine days later on or about January 16, 2009 (Rel. Ex. 139 and 140) which respectively were endorsed and signed by Respondent evidently per Adams Power of Attorney. Respondent admits that he “disbursed monies from [his] IOLTA account to the client before [he] had even consummated the settlement in terms of getting the settlement documentation and check.” TR. 112-13.

**Violation Found by Board: Prof. Cond. R. 1.15(b).**

In the complaint, Relator charged Respondent with a violation of Prof. Cond. R. 1.15 (a) if he was disbursing the money of other clients and a violation of Rule 1.15 (b) if he was commingling and disbursing his own money to clients. At from the evidence at the hearing, the Board found that Relator only established that Respondent has violated Rule 1.15 (b) for leaving an excess amount of his own funds in his trust account.

As noted above, the Board found that Respondent disbursed to Adams her net settlement proceeds he had received the insurance company’s settlement check, let alone before he had deposited the funds into his IOLTA account. At the hearing. Respondent

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<sup>8</sup> Respondent’s log for January 6, 2008, says “she is being evicted.” (Rel. Ex. 141:VS1242). See also TR. 106:17.

was asked, "You had not received, at that point in time [when disbursing \$4,000 to Ms. Adams], any settlement check, settlement release, or other confirmation of the settlement with the insurance company, correct?" Respondent answered, "Just the oral agreement that the claims adjuster and I had." TR. 122:19-24. Relator then asked, "So you disbursed monies from your IOLTA account to the client before you had even consummated the settlement in terms of getting the settlement documentation is check, correct?" Respondent answered, "Correct." TR. 112:25- 113:4; *See also*, Rel. Ex.138 and 139.

These quotations from the hearing transcript prove that Respondent disbursed Adams' net settlement proceeds from his IOLTA account before any documentation regarding the settlement had been received and obviously before the check had been received. It was also apparent from the following quotation that funds used to cover the Adams check was Respondent's own personal funds that he had left in his IOLTA account: "[a]nd it is your practice to leave money that is due to you from prior settlements in your IOLTA account so that there are sufficient funds to cover the checks to which you disbursing funds to clients, right?" Respondent answered, "Yes." TR. 65:16-21. Relator then asked, "And you maintain a minimum of \$20,000 in your IOLTA account of your funds, correct?" Respondent answered, "I try to, yes. I did before." TR. 65:22-24.

Relator also demonstrated that this violation was not an isolated incident, but a common practice of the Respondent. Relator asked, "So it is correct, sir, that according to your ordinary practice that continues to this day, is that the client comes in, the client signs the settlement draft to endorse the check, signs the release, signs a distribution sheet

showing all the distributions of the settlement, and you immediately write them a check on your IOLTA account for the net amount due the client?" Respondent answered, "Correct." TR. 65:5-13. Respondent was then asked, "And at that point in time, when you deliver the check drawn on your IOLTA account, you have not yet deposited the settlement draft, correct?" Respondent replied, "Correct." TR. 65; 18-22.

The hearing also demonstrated a larger problem with Respondent's trust account and the amount of money moving through it on a monthly basis. Respondent stated, "I would not think it [the amount of trust account deposits] would be \$3 million annually. It would be a bit less than that. Maybe around 2 would be more accurate." TR. 49:1-3. Later, Respondent states that he received about two and a half million dollars in gross settlements in 2009, and brought in about \$800,000 in gross fees in 2009. TR. 51:4-13.

As is indicated by the record, Respondent has violated Rule 1.15 (b) by commingling his own money with the money he held in trust. The Adams incident, in which he disbursed funds before he had received, much less deposited, the settlement check, is proven by the record. Moreover, the record demonstrates that Respondent has a history of this practice and other issues with his trust account.

**2. The Immigration Grievances –  
Dozier, Beriashvili & Khankhnelidze**

**a. Dozier (Mukhamadiyeva) Grievance – Count Two**

Respondent argues that the evidence supporting this grievance does not meet the clear and convincing standard to support the Board’s findings of misconduct with regard to violating the competence, diligence, representation, and honesty rules. This contention must be rejected in that the testimony of both the grievant and her husband, along with the testimony from expert immigration lawyer Douglas Weigle, demonstrate both Respondent’s utter incompetence and deceitful conduct in his representation of Dozier.

The Board found that Mr. Dozier hired Respondent to get his wife released from immigration detention. The proper pleading to accomplish this was entitled “Motion to Reopen.” Respondent mailed a Motion to Reopen (Rel. Ex. 203) to the immigration court. The Board found “[t]o call Respondent’s Motion to Reopen ‘bare bones’ is to give it too much credit.” Board Decision at 7. The Board found that the motion was only three sentences long and contained no meaningful statement of the facts, background, procedural history, legal analysis or legal research. It did not discuss the necessary legal issues or contain any evidence to support it. Additionally, the motion was procedurally defective for many reasons. Board Decision at 7. Immigration expert witness Weigle testified what is reasonably required to be attached as evidence to a motion to reopen in a case such as this is an affidavit from the client as to why she did not appear and an approved I-130 form approving the marriage. Weigle TR. 619-620, 624, 628-630. In addition, law and argument are reasonably required. Weigle TR. 631. Weigle testified that the motion was perfunctory and not reasonably appropriate to protect his client’s interest. *Id.* 636-637.

The Board also found that Respondent testified he knew what was required in a Motion to Reopen. The Board concluded that Respondent either did not know the requirements of such a motion, despite his testimony, or he ignored the requirements. Board Decision at 7 - 8. These findings are supported by the testimony at the hearing. Immigration expert witness Weigle testified that in his opinion there was no evidence that Respondent possessed the legal knowledge, skills, thoroughness, and ability to reasonably represent grievant. Weigle TR. 639. Nor did Respondent apply the necessary knowledge, skills, thoroughness, and preparation reasonably necessary to represent the grievant. Weigle TR. 639.

The Board further found that the immigration court rejected Respondent's motion for the failure to follow several local rules, including his failure to serve the Department of Homeland Security. The court returned the motion to Respondent with a copy of the local rules. Respondent received the returned motion shortly thereafter and did not fix the deficiencies nor inform his client the motion had been rejected. Without a Motion to Reopen on file Mrs. Dozier was subject to immediate arrest and deportation. Weigle testified that if the court rejects a motion the errors should be corrected and re-filed immediately. *Id.* 634-635, 639-640. The Board found that Respondent made multiple false statements to Mrs. Dozier misleading her to believe the motion was pending and she was thus protected from arrest and deportation. Board Decision at 8-9.

After Mrs. Dozier hired new counsel and the new counsel informed Respondent that she was hired, Respondent "inexplicably" filed a third Motion to Reopen which was accepted by the immigration court. The third motion was as defective as the first motion. Respondent's motion was denied because it did not contain any evidence. Respondent

filed the third motion without the knowledge of Mrs. Dozier or her new counsel. The new counsel attempted to file a motion but it was rejected since a party may file only one motion. As a result, Mrs. Dozier was arrested and scheduled for deportation. The Board found that as a result of Respondent's actions, Mrs. 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 was legitimately married to an American citizen. Board Decision at 11.

**Violations Found by Board: Prof. Cond. R. 1.1 [Competence], 1.3 [Diligence], 1.16(a)(3) [Declining or Terminating Representation], and 8.4 [Honesty]. *Id.***

Respondent objects to these findings as not being supported by clear and convincing evidence. As Relator explained in its Post-Hearing Brief at 18-23, there is substantial evidence to support each finding to the clear and convincing standard. Respondent argues with regard to the evidence of lack of competence that two of the three sentences contained in his Motion to Reopen are true. This argument does not refute Weigle's evidence that the motion was insufficient on many grounds. Nor does it refute the Immigration Court's decision that the motion contained no evidence or exhibits. Rel. Ex. 213. While it is true Respondent testified he had motions to reopen granted without any affidavits, he did not produce those documents nor explain if they raised the same issues as the Dozier motion. Respondent also argues that he "acted diligently in attempting to get a new motion on file on [sic] as soon as possible." Respondent does not cite to the record for this, nor can he. The evidence was clear that Respondent learned of the rejection of the first motion soon after it was sent to him in early May and he did not file a motion that was acceptable until late September. Rel. Ex. 205; Sigalov Tr. 157: 1-18; 157: 19-22; 158:17-21; Rel. Ex. 213.

With regard to the finding that Respondent continued (incompetently) to represent Mrs. Dozier after she terminated him in violation of Prof. Cond. R. 1.16 (a)(3), Respondent claims there is no evidence he was ever fired. Objections at 27. On the contrary, the evidence was clear that when Respondent received attorney Gabriela Thibeau's letter (Rel. Ex. 210) that Mrs. Dozier had retained her as her new counsel. The letters stated in part, "my office has been retained by [Mrs. Dozier]." Rel. Ex. 210. Respondent admitted that receiving such a letter would mean to him that new counsel had been hired.

Q. If she had said she had been retained by Mrs. Dozier would that have meant to you that Mrs. Dozier hired her to be her lawyer?

A. Yeah, like -- it would have been great to have something in writing to that extent.

Q. And doesn't she actually say that in writing in this letter, Exhibit 210? The first sentence, "Please be advised that my office has been retained by Rezeda Mukhamadiyeva." Is that the first sentence?

A. Correct.

Q. Did I read that correctly?

A. You did.

Sigalov TR. 166, line 9-22. Additionally, the evidence included testimony from Mrs. Dozier that she told Respondent in person that she was seeking new counsel. Mrs. Dozier TR. 460-461; Sigalov TR. 162, line 16-19. She did not authorize him to do any more work for her. Mrs. Dozier TR. 463, line 20-24. This is sufficient evidence for the Board to have found Respondent knew he was terminated from representing Mrs. Dozier, yet despite that, continued to incompetently represent her.

Respondent next objects to the Board's findings that he was not honest with Mrs. Dozier about the status of the Motion to Reopen. Respondent argues he was honest with Mrs. Dozier that the first Motion to Reopen was rejected by the court. Based on the

evidence, Respondent did not tell her this in early May, he told her this in August, after Mrs. Dozier questioned his veracity. When Mrs. Dozier contacted Respondent between May and the end of August, Respondent told her the motion had been filed, was pending, and he was waiting on a decision. Sigalov TR. 160, line 15-25; Mrs. Dozier TR. 449, line 3-9. He did not notify his clients that the motion had been rejected in May. Mr. Dozier TR. 395, line 7-9. In mid-August Mrs. Dozier became concerned about her legal status and met with attorney Thibeau. At that time, Mrs. Dozier learned no motion to reopen was on file. Mrs. Dozier then met with Respondent in mid-August and confronted him about there being no motion. He told her the first motion was filed wrong, that he fixed the errors, and re-sent the motion. Mrs. Dozier TR. 449 – 456; TR. 493-494. He gave her a copy of the rejected motion but not the corrected motion. Mrs. Dozier TR. 455-456; Relator Ex. 201 at 7-9. He lead her to believe he had fixed the errors, but he did not attempt to file a second Motion to Reopen until August 31. Rel. Ex. 206 at 3, Sigalov TR. 159, line 12 – 160, line 1. After their meeting Respondent called Mrs. Dozier to say he had been to court and found that the motion was on file. Mrs. Dozier TR. 459, line 6-10. On August 20, 2007 he went further and faxed Mr. Dozier the motion to reopen to prove it had been filed and had been pending since May. Mr. Dozier TR. 396, line 1-24; TR. 398, line 11-16; Relator Ex. 203. The fax was of a copy of the May motion, but Respondent did not explain that the May motion had never been re-filed after it was rejected. *Id*; Mrs. Dozier TR. 457-458. Thus, there was clear and convincing evidence in the record for the Board to find that from May through August Respondent lied each time he told his clients that the motion was pending.

For these reasons, the Board's decision was supported by clear and convincing evidence, therefore Respondent's objections should be overruled.

**b. Beriashvili Grievance – Count Three.**

The initial dispute in the Beriashvili grievance was whether Beriashvili was notified of the date of his June 26, 2007 immigration master hearing. Respondent claimed that at the March 27, 2007 master hearing he and Beriashvili were told of the June 26 date. Beriashvili denies this and the testimony of Immigration Attorney Douglas Weigle, who was called as an expert witness, substantiated Beriashvili's testimony. Board Decision at 12. The Immigration Court mailed the notice for the June 26 hearing only to Respondent on March 27. Not knowing the date of the new hearing, Beriashvili called Respondent several times after March 27 and was told each time by Respondent that he had not heard anything from the Court. Board Decision at 12. Beriashvili never received anything in writing from Respondent about the June 26 date. *Id.* at 13. Beriashvili did not attend the June 26 hearing and was ordered removed from the United States. All of the Board's decisions were supported by clear and convincing evidence as outlined in Relator's Post-Hearing Brief at 26-34.

The Board found that in an attempt to show that he had notified Beriashvili of the June hearing date, Respondent produced a letter written on his letterhead and dated June 12, 2007, which purports to advise Beriashvili of the June 26 hearing date. Rel Ex. 221. The Board found that the letter appeared to be a fabrication. Board Decision at 13. The Board found that the June 12 letter was printed on letterhead that showed Respondent's Dayton office to be at 5055 N. Main Street. However, Respondent did not move to the 5055 N. Main Street address until the end of June and he did not receive the new

letterhead with the 5055 N. Main Street address until August 2007. The Board found that this letter, Rel Ex. 221, was prepared at a later time “to try to cover up Respondent’s failure to notify Beriashvili off this very important hearing date.” Board Decision at 13.

There is sufficient evidence to support these findings. Sigalov did not move into the new Dayton address until the end of June 2007. Relator Ex. 258, Wright Depo at 18. Furthermore, Sigalov did not receive letterhead from his printer with the new Dayton address until August 2007. Relator Ex. 259, Vollet Depo at 20-21; Relator Ex. 248.<sup>9</sup> Additionally, Respondent’s own letter dated July 22, 2007 supports the fabrication. This letterhead, Rel. Ex. 226, contained the old Dayton office address at 1927 N. Main Street. Beriashvili brought the original of Rel. Ex. 226 to the hearing. Beriashvili TR. 536-538. The Board found it suspicious that Respondent produced to Relator a different version of the July 22, 2007 letter (Rel. Ex. 225) that was printed on the new 5055 N. Main Street letterhead. Board Decision at 14, fn. 3.

The Board further found that after the discrepancy about the letterhead was revealed at the March 23 and 24, 2010 hearings, Respondent produced an affidavit from Carol Rogers. Respondent Ex. S-100.<sup>10</sup> The Rogers affidavit proclaimed that she had received a letter from Respondent purportedly on June 27, 2007 on the 5055 N. Main Street letterhead. Board Decision at 14. The affidavit said Respondent sent the letter by fax. A copy of the letter was attached to the affidavit. Contrary to the affidavit the attached letter did not come from Rogers’ files but from Respondent. The Board found

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<sup>9</sup> Vollet took over the printing business in April 2007. He produced all invoices for printing letterhead from April through December 2007. Sigalov produced no printing invoices. The first invoice for the new Dayton letterhead was dated August 13, 2007. Vollet printed no letterhead for Sigalov until August 13, 2007. The invoice is normally delivered with the job Ex. 259 Vollet TR. 5, 20-21; Sigalov 6-1-10 TR. 27; TR. 142-144.

<sup>10</sup> Respondent produced the Roger’s affidavit at the April 20, 2010 hearing.

the letter not to be authentic because there was no fax header on the letter (Respondent Ex. S-100 at 3). Board Decision at 14. Respondent then submitted a second version of the June 27 letter to Rogers, this one showing a fax header at the top. Respondent Ex. S-101. The Board found the authenticity of the second letter to be suspect because Respondent brought the second letter to Rogers' office in person and asked her son, Alexander Rogers to email it back to Respondent. Alexander Rogers' emailed the letter to Respondent on the morning of the hearing on April 20, 2010. Respondent printed it out and submitted it to the Panel on April 20, 2010. Respondent Ex. S-102. The Board found the second version of the letter, with the fax header, to have come from Respondent. Board Decision at 15. The Board also found that the subsequent June 2007 letters on the new Dayton letterhead submitted by Respondent were also suspect since the letter head is misaligned with the letter text and the copies are not first generation copies. *Id.* See Respondent Ex. S-105, 106, and 107. All of these findings are supported by clear and convincing evidence, which is identified in Relator's Post-Hearing Brief at 27-29.

When Beriashvili did not attend the June 27, 2007 Immigration Court hearing, Respondent was unable to reach Beriashvili by phone, but he failed to ask for a continuance. Instead, he told the Court that Beriashvili was still at home in Columbus, he did not think Beriashvili was coming, and he had "no excuse" for him. The court ordered Beriashvili removed from the United States for failing to appear at the hearing. Later, Respondent offered to appeal the decision. Respondent did not explain this course of action, given the Immigration Court's instruction that the decision was final unless a Motion to Reopen was filed. Rel Ex. 224. The Board found that an appeal was "totally ineffective in stopping deportation." Board Decision at 16. Beriashvili paid Responded

\$110 for the appeal filing fee. Respondent did not file the appeal within 30 days, as was required by the Court rules. Nor did he file a motion to reopen. Eight months later, Respondent filed the notice of appeal, which did nothing to stay the deportation. Rel. Ex. 228.

Before the appeal was filed Beriashvili was arrested and detained by immigration officials. The Board found that Beriashvili “needlessly spent the next nine months in jail.” Board Decision at 17. The Board further found that Respondent’s filing the appeal exacerbated Beriashvili’s problems, because it divested the immigration court from ruling on a motion to reopen new counsel filed. *Id.*

**Violations Found By Board: Prof. Cond. R. 1.1 [Competence],  
1.3 [Diligence], 1.4(a) [Communication], and 1.2 [Scope of Representation]**

Respondent objects to the Board’s finding on the grounds that the findings are not supported by clear and convincing evidence. Objections at 29-34. However, all of these findings are supported by clear and convincing evidence, which is identified in Relator’s Post-Hearing Brief at 30-32.

Respondent also argues that since Relator stated in the Second Amended Complaint that Respondent did send Beriashvili a letter notifying him of the June hearing, that is an admission that Respondent sent the letter so the letter was not a fabrication. Objections at 30. Paragraph 34 of the Second Amended Complaint states:

34. On March 27, 2007, the Court mailed notice that the Master Hearing was scheduled for June 26th. As before, the Court only mailed notice to the Respondent. Respondent did not mail a copy of the notice to Mr. Beriashvili, *but did send him a letter notifying him of the hearing date two weeks before the hearing.* Mr. Beriashvili did not receive the letter.

The italicized phrase is not an admission, it is merely a statement of Respondent’s version of the evidence, which is how Relator drafted the Complaints. The paragraph

clearly puts into dispute the letter since the next sentence states Beriashvili's version of the evidence that he never received the letter.

Next Respondent argues Beriashvili waited a month after learning of the hearing he missed to contact Respondent, which somehow undermines Beriashvili's testimony he knew about the importance of the hearing. Objections at 30. The evidence is undisputed that Respondent waited a month to notify Beriashvili of the hearing outcome. Rel. Ex. 226. As soon as Beriashvili learned he was order deported because he did not appear at the June hearing he called Respondent and set an appointment for the beginning of August. Beriashvili TR. 538-539.

Respondent argues "as a practical matter" that if Respondent had failed to give Beriashvili notice he could have filed a Motion to Reopen, which would have been simpler than fabricating evidence. Objections at 32. This argument does not undermine the Board's finding that there was clear and convincing evidence of fabrication; it only serves to highlight the Respondent's incompetence in not filing a Motion to Reopen once his client told him he did not know about the hearing. Respondent admits Beriashvili's *failure to receive* the letter was grounds to file a Motion to Reopen. *Id.* Yet, Respondent offered no explanation for why he failed to file the Motion to Reopen. Respondent tries to justify the non-filing in his Objections, stating that he could not file the motion because it would be a misrepresentation of his sending the June 12 letter. Objections at 32-33. This argument is nonsensical given Respondent's admission he could file the Motion to Reopen based on Beriashvili's *failure to receive* the notice. Objections at 32; Sigalov TR. 208-209. Respondent knew that the motion was the only means to stay the

deportation order. Sigalov TR. 208-209. Yet, Respondent never explained why he did not file the motion on those grounds.

Respondent justifies his failure to file the appeal for eight months because Beriashvili allegedly told him not to file an appeal. Objections at 33-34. Despite Respondent's testimony to this effect, there is clear and convincing evidence that Beriashvili wanted Respondent to file papers to keep him from being deported. After Beriashvili paid the filing fee for the appeal, Respondent reported to him that the judge had rejected the appeal but he, Respondent, would try again. Beriashvili TR. 542-543. Each month Beriashvili called to inquire about the status of the case. Respondent said he was still working on the case and nothing had happened yet. *Id.* 545. Respondent (falsely) assured him he could not be deported while the appeal was pending. *Id.* 541.<sup>11</sup> In January 2008 ICE took Beriashvili to their Columbus office and ordered him to appear March 3. Beriashvili called Respondent and told him what happened. Respondent and Beriashvili met in Cincinnati February 3, 2008. Respondent had him sign more appeal papers. Respondent promised to file the papers before March 3<sup>rd</sup> and to appear with him at immigration March 3<sup>rd</sup>. *Id.* 546-549. Respondent did not appear at immigration with his client. Beriashvili insisted his attorney had filed papers. However immigration knew nothing had been filed by Respondent. *Id.* 549-553. Beriashvili was arrested and detained. *Id.* 554. Only then did Respondent file something – albeit the wrong pleading<sup>12</sup> – a notice of appeal on March 3, 2008. Rel. Ex. 228.

Respondent's final argument is that the Board's findings with regard to dishonesty were based on evidence adduced at the hearing that was not set forth in the

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<sup>11</sup> A motion to reopen operates as a stay of the removal order. An appeal does not. Weigle TR. 621-622.

<sup>12</sup> Respondent should have filed a motion to Reopen. Weigle TR. 654.

Second Amended Complaint. The Board found a violation of dishonesty based on Respondent's statements to the Bar Association and the Panel that he had provided notice to Beriashvili when he did not and on Respondent's not telling Beriashvili between April and June 2007 that he did not know the new hearing date when he had received notice of the new hearing date. Board Decision at 34. However, Respondent's objections are without merit since he was put on notice of these allegations of misconduct in the Second Amended Complaint:

¶ 33. On March 27, 2007 Mr. Beriashvili and Respondent attended a second Master Hearing. Respondent and Mr. Beriashvili agree that the hearing did not take place due to video equipment problems, but disagree as to whether a new hearing date was announced. Mr. Beriashvili states the Court simply announced that the hearing would be rescheduled, and that the parties would receive notice of the new date. Respondent alternately alleged in his written response to this grievance that the specific rescheduled date of June 26<sup>th</sup> was announced. However, when interviewed, Respondent changed his response, he stated that he was uncertain whether June 26<sup>th</sup> was specifically mentioned or not.

¶34. On March 27, 2007, the Court mailed notice that the Master Hearing was scheduled for June 26<sup>th</sup>. As before, the Court only mailed notice to the Respondent. Respondent did not mail a copy of the notice to Mr. Beriashvili, but did send him a letter notifying him of the hearing date two weeks before the hearing. Mr. Beriashvili did not receive the letter.

¶ 35. In April, May and June, Mr. Beriashvili called Respondent asking for the rescheduled hearing date. Each time Respondent answered that he had not heard anything from the court. Respondent denies these phone calls, and does not maintain any record of client calls.

A fair reading of these allegations are sufficient to put Respondent on notice that he was being charged with being dishonest with Relator about the new date being announced at the March hearing and that he was being charged with being dishonest with his client about not knowing the date of the hearing when his client called. *In re Ruffalo* (1968), 390 U.S. 544 requires fair notice of the charges. Relator was given fair notice.

For these reasons, the Panels' findings are supported by clear and convincing evidence and should be affirmed.

**c. Koba Khakhnelidze Grievance – Count Six**

The Board found that Respondent did little besides collecting a retainer from Mr. Khakhnelidze, showing up for the asylum hearing and winning it. Board Decision at 24. The Board found in the 10 months Respondent had to prepare for the hearing he undertook no effective action to prepare himself to represent his client. *Id.* at 23.

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 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.

Board Decision at 24. The Board further found that the three paragraph appellate brief Respondent filed after deportation was ordered contained no factual or legal import. The Immigration Court of Appeals stated, in denying the appeal, "Respondent has done little on appeal to challenge the Immigration Judge's decision." *Id.*; Rel. Ex. 240 at 9. These findings were supported by clear and convincing evidence, mainly the testimony of Koba Khakhnelidze and expert Douglas Weigle. See Relator's Post-Hearing Brief at 35-40. As a result, the Board found that Respondent's actions violated the Ohio Rules of Professional Conduct 1.1 [Competence], 1.3 [Diligence], and 1.5(a) [Fees and Expenses].

**Violations Found By Board: Prof. Cond. R. 1.1 [Competence];  
1.3 [Diligence]; and 1.5(a) [Fees and Expenses]**

Respondent objects to the Board's findings and conclusions by first arguing that Respondent testified that he met with Khakhnelidze two times before the hearing not just one time. Objections at 39. However, Respondent did not testify he met twice before the day of the hearing, just that he met twice. Sigalov TR. 232: 5-7. Khakhnelidze agrees they met twice, the second time being the morning of the hearing. Khakhnelidze TR. 586:10-12.

Respondent next argues the Board was wrong to find no corroborating evidence was offered. Respondent argues that corroborating evidence by Mrs. Khakhnelidze was accepted by the immigration court without her having to testify. But the Immigration Court offered Respondent several times to have Mrs. Khakhnelidze testify, but Respondent chose not to call her. Rel. Ex. 242 at 20-21. This argument also ignores Attorney Weigle's testimony that corroborating evidence regarding country conditions should be submitted but was not. Weigle TR. 663-664; 676: 2-11; 678:15-25.

Next, Respondent argues that Khakhnelidze did not have any documents to submit at the hearing, but he testified that he did; however, they were not in English. Khakhnelidze TR. 587 – 589; TR 603:3-7, 23 – 604:16. He also testified at the immigration hearing that he had a patient history for his son with him, but that too was in Georgian. Rel. Ex. 242 at 17.

Respondent attempts to defend his three paragraph appellate brief on the grounds that even Weigle admitted that one argument (missing the one year deadline to file an asylum petition) was a difficult argument. The more difficult the argument, the more Respondent should have prepared his client for the hearing and researched the law.

Additionally, Respondent could have but did not, emphasize the stronger claims (Conventions Against Torture Act and withholding from removal) instead of the weaker asylum claim. Weigle TR. 660:14- 661:1.

Respondent also claims Khakhnelidze made false statements about the underlying facts that caused him to flee Georgia. Objections at 42-43. At the Immigration hearing Khakhnelidze testified that he knew one of the three men he saw stealing and detained him. At a hearing this man admitted his actions and the other two men were freed. Rel. Ex. 242 at 10. Respondent did not ask Khakhnelidze any details about the incident during the immigration hearing, so that is all that was revealed to the Immigration Court. Rel. Ex. 242. At the hearing in the case at bar Khakhnelidze testified one of the men was KGB. Khakhnelidze TR. 583. Respondent did not ask Khakhnelidze any details about who these men were at the immigration hearing so their connection to the KGB was not revealed. Now, Respondent is arguing Khakhnelidze was untruthful about this detail. On the contrary, this discrepancy only serves to highlight the incompetence of Mr. Sigalov in not asking his client any questions about the incident during the immigration hearing.

Finally, Respondent objects to the Board's finding that he charged an excessive fee. Mr. Khakhnelidze testified he paid \$1,400 in cash to Respondent to represent him. The amount paid is in dispute. Respondent maintains Khakhnelidze only paid \$1,100 but admits he charged \$1,500 in total. Respondent did not keep or give receipts or keep deposit slips or otherwise account for client payments other than by jotting the amounts down on the file folder. Sigalov TR 226-227. The Board did not issue a finding on the amount paid, only that the amount ranged from \$1,000 to \$1,400. Regardless of the exact amount paid, the Board found the work done by Respondent consisted of taking a fee,

showing up at the immigration hearing and winging it. Such evidence is sufficient to support the Board's finding that the fee was excessive given the little work done, the incompetent and non-diligent work performed by Respondent,<sup>13</sup> the inexperience of the attorney, the large amount of time available to prepare for trial and draft the appellate brief, and the utter failure at trial and on appeal. No expert testimony is required to support the finding, as long as there is evidence that a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee was in excess of a reasonable fee. Prof. Cond. R. 1.5(a).

For these reasons, the Board's findings are supported by clear and convincing evidence and its recommendation on the grievance should be accepted.

**C. The Recommended Sanction Of Disbarment Is Appropriate Where Respondent Attempted To Submit False Evidence To The Board's Hearing Panel**

The Board has discretion to consider aggravating factors in deciding the sanction. The Board found as aggravation that Respondent was dishonest, had a pattern of misconduct, had multiple offenses, submitted false evidence, false statements and other deceptive practices during the process, refused to acknowledge the wrongful nature of his conduct and that this victims were vulnerable and harmed by his misconduct. Board Decision at 30. As a result of these aggravating factors, the Panel recommended disbarment, stating in part:

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.

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<sup>13</sup> Attorney Weigle testified that the appellate brief was neither competent nor diligent. Weigle TR. 665-666.

*Id.* at 31. The Panel also refused to find a mitigating factor based on full and free disclosure to the Board since the Panel found that Respondent submitted false evidence and testimony to the Panel. *Id.* at 29. The Board adopted the Panel's findings of fact, conclusions of law, and recommendations and recommended, "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." *Id.* at 31.

Respondent objects to this sanction as contrary to the facts and law. Objections at 46-50. However, as has already been shown, clear and convincing evidence supported the Board's factual findings of false evidence and testimony.

Respondent also argues the sanction is too severe. Respondent cited to several cases that issued a six month suspension for dishonest conduct during the investigation. These cases are inapplicable in this case given the fact that the Board found, among other things, multiple instances of dishonesty, a pattern of misconduct, multiple violations, and harm to multiple clients, including two who were jailed and almost deported. At a minimum, multiple violations of the Rules and Code support an indefinite suspension. For example, in *Disciplinary Counsel v. Schiller* (2009), 123 Ohio St. 3d 200, 2009-Ohio-4909, the Court imposed an indefinite suspension when multiple rule violations were found in an 11 count complaint case. In *Schiller*, the Court found the attorney neglected several bankruptcy cases, missed hearings, repeatedly broke promises to clients, and took a long time to file a bankruptcy case. ¶ 1-11. In addition, the Court found aggravating factors of a pattern of misconduct, multiple rule violations, and causing harm to vulnerable clients. ¶ 12. The *Schiller* Court required two years of probation following his reinstatement. ¶ 25. In *Toledo Bar Ass'n. v. Baker* (2009), 122

Ohio St. 3d 45, 2009 -Ohio- 2371 the Court again imposed an indefinite suspension against an attorney in a multiple count case. The respondent lied to his clients, failed to file on time and did not account for his fee, among other violations. Although mental disability was an aggravating factor, the respondent received an indefinite suspension.

Like the respondent in *Schiller*, Sigalov has been charged with 30 violations of the disciplinary rules. The Board found him in violation of all but 4 relating to Count Four, the Vance grievance. There are many violations that are repeated multiple times, such as lack of competence, diligence, and dishonesty. As was found in *Schiller*, Respondent has aggravating factors of multiple rule violations, a pattern of misconduct, and causing harm to vulnerable clients. Unlike *Schiller*, the harm includes two clients who were arrested and jailed and a third client whose family still faces deportation. The loss of freedom and the loss of seeking asylum in this country are among the most severe injuries an incompetent lawyer can inflict on his clients. This aggravating factor alone should increase the sanction beyond an indefinite suspension.

Furthermore, the evidence of fabrication of evidence, submitted to this tribunal calls for an even more severe sanction than an indefinite suspension. Fabrication of evidence alone results in a six month suspension. See, *Cleveland Bar Ass'n v. McMahon* (2007), 114 Ohio St.3d 331, 2007-Ohio-3673; *Disciplinary Counsel v. Broeren* (2007), 115 Ohio St.3d 473, 2007-Ohio-5251; and *Cincinnati Bar Ass'n v. Florez* (2003), 98 Ohio St. 3d 448, 2003-Ohio-1730. However in this case, Respondent went to great lengths to fabricate evidence. First, he fabricated the June 12, 2007 and July 22, 2007 letters to Beriashvili. To bolster his testimony he then created additional false letters and submitted them as evidence immediately before the April 20, 2010 hearing date in this

case. He further notarized and submitted an affidavit from insurance agent, Carol Rogers, which upon cross examination turned out to be untrue. Only because of the continuance granted to Respondent on April 20, 2010 was Relator able to investigate the fabricated evidence and subpoena the witnesses to hearing on June 1, 2010. Without this testimony, Respondent may have indeed succeeded in bolstering his false claims.

Sigalov's misconduct and dishonesty, coupled with all the aggravating factors, lead to but one conclusion. Disbarment is the only appropriate sanction.

### CONCLUSION

For the foregoing reasons, Relator respectfully requests that the recommendation of the Board that, based on his remarkable record of fraud and deceit, Respondent Vlad Respondent, be permanently disbarred from the practice of law in the State of Ohio.

Dated: March 28, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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