BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A NON-MEMBER OF THE STATE BAR OF ARIZONA,	)	Nos. 02-1969, 02-2458 03-0624, 03-0920
ERIC R. BOWMAN,	)	
RESPONDENT.	)	**HEARING OFFICER'S REPORT AND RECOMMENDATION**

PROCEDURAL HISTORY

Three Probable Cause Orders were filed on September 17, 2003 and a fourth on December 11, 2003. On December 19, 2003, the State Bar filed a four-count Complaint that was served by mail on December 22, 2003. On January 20, 2004, the Disciplinary Clerk filed a Notice of Default. Respondent, a non-member of the Arizona State Bar, answered by letter dated January 13, 2004. The parties were unable to reach a settlement at a conference held on March 18, 2004. At a telephonic pre-hearing conference held on May 10, 2004, Respondent stated that he was not intending to participate in the hearing. He was advised of his right to do so and of the possible consequences for not doing so.

A hearing was held on May 12, 2004, Bar Counsel was present; Respondent was not. Mr. Emilian Andrei testified through an interpreter by telephone from Romania. Ms. Laura Lorimar testified in person. Ms. Sonia Fonesca-Garcia testified in person through an interpreter. Mr. William DeSantiago testified in person. Mr. Aman Vashisht and Ms. Aruna Gautam testified by telephone from New York. Mrs. Sarah Dixon testified by telephone from Florida. Ms. Brenda Lovett testified by telephone.

FINDINGS OF FACT

Based on the clear and convincing evidence presented at the hearing, I find the following facts:

1. Respondent voluntarily waived his presence at the hearing. He was aware of the place, date,

and time of the hearing. He stated his intent not to appear. He failed to appear understanding his right to do so as well as some of the potential consequences for not doing so. Respondent indicated at the pre-hearing conference that he was in the process of Awinding down@ his law practice in Arizona before the Immigration and Naturalization Service (AINS@).

2. Respondent is licensed to practice law in Pennsylvania.

Count One (File No. 02B1969)

3. In March 2002, Ms. Aruna Gautam paid Respondent $1,673 to assist her and her husband, Aman Vashisht, to obtain an H-1 visa from the U.S. Consulate in Mexico, so they could travel to India to see her sick mother. (Exh. 1-3; Tr. 5/12/04, at 93, 103.) Respondent=s engagement letter stated that $1,500 flat fee was for the preparation of documents and representation at one interview with the U.S. Consulate Office in Nogales, Sonora, Mexico, $65 for office expenses, and $54 for visa fees. (Exh. 2.) At the time she retained Respondent, she and her husband resided in the State of New York and had been referred to Respondent by an immigration lawyer in New York. (Tr. 5/12/04, at 96B97.)

4. Respondent repeatedly told Ms. Gautam that he was unable to obtain an appointment at the U.S. Consulate Office. (*Id*. at 98.) Through a friend, Ms. Gautam and Mr. Vashisht found another lawyer who was within a few days able to obtain an appointment. (*Id*. at 98, 104.) After obtaining the appointment, Ms. Gautam again called Respondent who told her that he was still unable to obtain an appointment with the Consulate Office. (Exh. 1.) The U.S. Consulate stamped Ms. Gautam=s and her husband=s visas on May 9, 2002.

5. Ms. Gautam requested that Respondent refund the money they had given Respondent. (Exh. 1.) Initially, Respondent agreed to refund $1,500. (*Id*.; Tr. 5/12/04, at 94.) However, Respondent sent them

a personal check drawn on his IOLTA Trust account at Valley Bank of Arizona for only $1,000 dated August 20, 2002. (Exh. 4; Tr. 5/12/04, at 95.) That check did not clear because of insufficient funds in Respondents= account. (Exh. 5; Tr. 5/12/04, at 95, 104.)

6. Despite numerous phone calls and emails, for years Respondent intentionally did not replace the $1,000 check. (Tr. 5/12/04, at 95, 100, 110B11.) In response to the State Bar=s inquiry, in a letter dated January 15, *2003*, Respondent stated that he Awill send her a cashiers check out *this week*.@ (Exh. 13, at 20; emphasis added.) No check arrived. Well over a year later, on the day of the disciplinary hearing Ms. Gautam and Mr. Vashisht received from Respondent what purported to be a cashier=s check in the amount of $1,000. (Tr. 5/12/04, at 95, 100, 110B11.)

7. In addition to the $1,673 paid Respondent in March 2002, Ms. Gautam paid a $10 bank fee because of the insufficient funds check and at least $15 in telephone charges in attempting to contact Respondent. (Exh. 7; Tr. 5/12/04, at 107, 111.)

Based on these findings of fact and applying the Rules of the Arizona Supreme Count in effect at the time of Respondent=s conduct for each count, the State Bar has proven by clear and convincing evidence that Respondent *intentionally* violated ER 1.3 (failing to act with reasonable diligence); ER 1.4 (communication); ER 1.15 and Arizona Supreme Court Rule 44 (safekeeping of property/ trust accounts); ER 1.16 (failing to promptly return unearned fees); ER 8.4 (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent=s clients were prejudiced by Respondent=s misconduct. They had to obtain different counsel at additional expense, were deprived of the money they had paid Respondent, and were forced to engage in prolong attempts to recover the funds.

Based on the available evidence, I do not conclude that Respondent violated ER 1.2 (scope of

representation) and Arizona Supreme Court Rule 43 (failing to maintain complete records of client funds).

Count Two (File No. 02-2458)

8. Between September 2002 and February 2003, Sarah and Roy Dixon gave Respondent $5,000 to obtain an E-2 Non-immigrant Treaty-Investor Visa through the U.S. Consulate located in Nogales, Sonora, Mexico. (Exh. 26, at 48; Tr. 5/12/04, at 135.) Additionally, the Dixons sought Respondent=s assistance with the purchase and incorporation of an Arizona business. (Tr. 5/12/04, at 126-29.)

9. During the course of the representation, Respondent failed to return phone calls and maintain necessary communication with the Dixons. (Exh. 18-19; Tr. 5/12/04, at 128.)

10. Respondent failed to timely make an appointment with the U.S. Consulate requiring the Dixons to return to the United Kingdom so they would not be in the United States illegally. (Tr. 5/12/04, at129-32.) There, the Dixons initiated the process to obtain visas. (*Id*. at 136.) Mrs. Dixon testified that it had cost them an extra $5,500 to make the unnecessary trip to England and 144 British pounds for the visa paperwork. (*Id*.)

11. Respondent failed to file incorporation papers as promised with the Arizona Corporation Commission and failed to properly prepare the E-2 investment visa forms. (Tr. 5/12/04, at 133, 139.)

12. On or about February 18, 2003, Respondent accompanied the Dixons to the U.S. Consulate in Nogales where the Dixons received the E-2 visas. (Exh. 26, at 48-50.)

13. In a letter dated May 5, 2003, Sarah Dixon advised the State Bar with copy to Respondent that the Amatter has now been rectified and completed to our full satisfaction.@ (Exh. 26, at 47.) However, at the hearing Sarah Dixon testified that while they received the visas which was what they wanted, the service Respondent provided was not worth $5,000. (Tr. 5/12/04, at 140-43.)

Based on these findings of fact, the State Bar has proven by clear and convincing evidence that Respondent *knowingly* violated ER 1.3 (failing to act with reasonable diligence); ER 1.4 (failing to communicate). Respondent=s clients were prejudiced because of Respondent=s lack of diligence, his clients were required to unnecessarily return to the United Kingdom and begin the visa process there.

Based on the available evidence, I do not find Respondent violated ER 1.2 (objectives of representation); ER 5.5 (unauthorized practice of law); ER 8.4(d) (engaged in conduct that is prejudicial to administration of justice); ER 8.4(c) (engaging in fraudulent conduct).

Count Three (File No. 03B0624)

14. On October 17, 1997, the Immigration and Naturalization Service (AINS@) served Sonia Fonseca-Garcia (AFonseca@) with a notice to appear for removal from the United States. (Exh. 36, at 218.) Initially, Ms. Fonseca employed Jose Luis Penalosa, Jr. to represent her. (Exh. 34, at 192.) But in March 1998, she first employed Respondent in connection with this matter. (Exh. 36, at 218.) Respondent appeared on Ms. Fonseca=s behalf before the Arizona Executive Office for Immigration Review (AEOIR@) in 1998 where Respondent admitted most of the allegations against Ms. Fonseca. (*Id*. at 218B19.) A merit=s hearing was scheduled for August 1999, but apparently was continued. At some point, Ms. Fonseca returned to Mr. Penalosa for representation in the INS proceedings. (Exh. 34, at 72.)

15. On March 8, 2000, Mr. Penalosa withdrew. (*Id*. at 72B73.) In an engagement letter dated February 14, 2000 (first page) and March 13, 2000 (remaining pages), Ms. Fonseca again employed Respondent; this time to represent at her in an immigration removal hearing set for March 20, 2000. (Exh. 36, at 209.) Ms. Fonseca paid Respondent $1,500 in cash. (Tr. 5/12/04, at 69, 72.) At the hearing to avoid deportation, she had to establish that she had resided continuous in the United States for 10 years,

was of good moral character, and her deportation would cause extreme hardship. (Tr. 5/12/04, at 85.) On March 26, 2000, Respondent filed a Notice of Appearance before the Office of the Immigration Judge, EOIR. (Exh. 34, 35.)

16. The hearing was reset to July 26, 2001, then May 7, 2002, and then March 25, 2003. (Exh. 36, at 212**B**15.) Failure to appear could result in Ms. Fonseca=s deportation. (*Id*.) Although Respondent apparently prepared a pre-hearing statement,[1] it appears that it was never filed. (*Compare Id*. at 216**B**30 *with* Exh. 34.) Respondent=s office advised Ms. Fonseca of the March 2003 hearing. (Tr. 5/12/04, at 66**B**67.)

17. In February 2003, Ms. Fonseca went to Respondent=s office and discovered it vacant. (Exh. 27; Tr. 5/12/04, at 67**B**68.) She could not find Respondent and had to retain new counsel, William DeSantiago of Catholic Social Services. (Exh. 34, at 75; Tr. 5/12/04, at 74, 84.)

18. Mr. DeSantiago reviewed the court file and told the court that no documentation had been provided in support of Ms. Fonseca=s application. (Exh. 34; Tr. 5/12/04, at 85.) He attempted to secure Ms. Fonseca=s file from Respondent, but was unable to find Respondent. (Tr. 5/12/04, at 71, 86.) Because Mr. DeSantiago was unable to obtain from Respondent Ms. Fonseca=s documents supporting her presence in the United States, Mr. DeSantiago had to seek a continuance of the hearing. (*Id*. at 87.)

19. Respondent eventually delivered Ms. Fonseca file to the State Bar pursuant to a subpoena duces tecum in March 2004. (Tr. 5/12/04, at 70.) The file included documents relevant to Ms. Fonseca=s

[1]It appears that the document Respondent prepared was essentially the same pre-hearing statement that Mr. Penalosa prepared and filed on July 23, 1999. (Exh. 36, at 951**B**63.)

ability to prove she has resided in the United States for ten continuous years. (Exh. 36; Tr. 5/12/04, at 7, 86B88.)

20. Respondent failed to respond to the State Bar=s inquiry. In April 2003, following Ms. Fonseca=s complaint, the State Bar requested Respondent to respond her complaint. (Exh. 28, 29, 31.) Only after the third request did Respondent submit a response, dated November 23, 2003. (Exh. 32.)

Based on these findings of fact, the State Bar has proven by clear and convincing evidence that Respondent *intentionally* violated ER 1.3 (failing to act with reasonable diligence); ER 1.4 (failing to keep his client reasonably informed); ER 1.15 (failing to promptly deliver her file); ER 1.16 (failing to take reasonable steps to protect his clients interests upon termination); ER 8.4(d) (conduct prejudicial to the administration of justice); and Arizona Supreme Court Rule 53(f) (failing to respond promptly to a State Bar complaint). Respondent=s conduct potentially could have caused serious prejudiced to his client. Respondent abandoned his client shortly before a judicial hearing which could have resulted in her deportation. Moreover, without the documentation she had given to Respondent to attempt to demonstrate she was in the United States for 10 continuous years, Ms. Fonseca faced a significant risk of being deported. The harm is potential because it is unknown whether the documents held by Respondent were sufficient to prevent Ms. Fonseca=s deportation. Based on the available evidence, I do not find Respondent violated ER 8.4(c) (engaging in conduct involving dishonesty).

Count Four (File No. 03-0920)

21. In 1992, Mr. Emilian Andrei, a citizen of Romania, sought asylum in the United States. (Exh. 56, at 1856B62.) On December 19, 2001, at a removal hearing in Chicago, Illinois, an Immigration Judge granted a voluntary departure request on behalf of Mr. Andrei and ordered that he be removed to Romania

if he failed to depart United States by April 18, 2002. (*Id*. at 1665G65H, 1704-05) Mr. Andrei another attorney, who moved to reopen the case. On March 1, 2002, the court denied the motion to reopen the proceedings. (*Id*. at 2736-37.) Mr. Andrei appealed and on May 21, 2002, Mr. Andrei was granted a second extension of time to June 10, 2002, in which to file an appeal from the order denying the motion to reopen. (*Id*. at 1669.)

22. On June 4, 2002, Ms. Laura Lorimar paid Respondent $10,000 on behalf of her husband, Mr. Emilian Andrei. (Exh. 39, 41, 44, 46, 55; Tr. 5/12/04, at 31-32.) Respondent=s assistant gave Ms. Lorimar a receipt for $10,000. (Exh. 46.) Ms. Lorimar=s documentation indicates that Mr. Andrei on May 28, 2002, received two cash advance loans, one for $1,000 and one for $4,800. (Exh. 41, 55.) Ms. Lorimar obtained a Wells Fargo cashier=s check drawn in the favor the ABowman Firm@ on the same date in the amount of $4,800. (Exh. 39.) That on June12, 2002, check number #899 cleared Mr. Andrei=s bank account in the amount of $4, 200. (Exh. 40.) The $10,000 receipt is dated June 4, 2002, and references both the Wells Fargo cashier check number and Mr. Andrei=s personal check number as well as an additional number (# 105). (Exh. 46.)

23. In return for the $10,000, Respondent was to file an appeal on behalf of Mr. Andrei=s asylum case, initiate a proceeding that would allow Mr. Andrei to remain in the United States based on his recent marriage to Ms. Lorimar (I-130 petition) and seek a work permit (I-765.) (Tr. 5/12/04, at 31-32.) No written document was offered that explained the precise scope of the expect work. The receipt states it is for a Aretainer@ in Mr. Andrei=s asylum case. (Exh. 46.) Respondent stated that he was too retained to represent Mr. Andrei=s appeal of his Order of Deportation based on ineffective assistance of prior counsel. (Exh. 44, 49, 57.) Mr. Andrei contended that he should be allowed to remain in the United States based on

a claim of asylum, his skill as a tool and die maker (I-765 work permit), and his recent marriage to Ms. Laura Lorimar (I-130 petition). (Exh. 56, at 1681B84.) Mr. Andrei stated that he hired Respondent to handle all his INS documents for the marriage, obtain a permanent resident card, work permit. (Exh. 37, 48.) Mr. Andrei understood that what was Anot to be used was to be reimbursed.@ (Tr. 5/12/04, at 11.)

24. On June 4, 2002, Brenda Lovett, assistant to Respondent, requested by FAX Mr. Andrei=s file from his former attorney in Chicago Avia overnight.@ (Exh. 58, at 1906B08.)

25. Three days later, on June 7, 2002, Respondent filed a 7-page brief on behalf of Mr. Andrei captioned ARespondents= Brief [sic] on Motion to Reopen.@ (Exh. 56, at 1677.) The brief asserted that Mr. Andrei=s prior counsel in Chicago, Illinois, had been ineffective in representing him. (*Id*. at 1679.) According to Respondent=s brief in order to establish ineffective assistance of counsel, the movant must offer an affidavit setting forth the agreement and representation by counsel, inform counsel against whom a claim is made and give counsel an opportunity to respond, and state whether a bar complaint had been filed. (*Id*. at 1681; citing *Matter of Lozada*). Respondent=s file contained a copy of the affidavit of Mr. Andrei dated July 30, 2002, and notarized by a Chicago notary. (Exh. 58, at 1889.)

26. In the Order denying the appeal, the Board noted that during the 11 months the appeal had been pending, Respondent Adid not attempt to supplement the record in an attempt to support his factual assertions in the brief filed with this Board,@ and that the record Aremains devoid of reliable evidence@ establishing ineffective assistance of counsel. (*Id*. at 1667.) A copy of an Affidavit by Mr. Andrei executed on July 30, 2002, (after the brief was filed) was in Respondent=s file, but did not appear in the certified INS file. (*Compare* Exh. 58, at 1889 *with* Exh. 56.)

27. In response to the State Bar=s inquires, Respondent contended that after his investigation into

the allegation of ineffective assistance of prior counsel, Respondent concluded that prior counsel was not ineffective and therefore he refused to pursue the claim. (Exh. 35, at 197B98; Exh. 44, at 1649; Letter Answer dated 1/13/2004, at 2.)

28. On August 1, 2002, Respondent filed with the INS an I-130 alien spouse petition and I-765 application for employment authorization with checks for the applicable fees. (Exh. 38, 46, 47, 52.) His assistant, Brenda Lovitt, sent the receipt notices to Ms. Lorimar. (Exh. 38.)

29. Shortly thereafter, Ms. Lorimar received a courtesy copy of an INS notice dated August 16, 2002, that INS had stopped processing the applications because the check submitted as payment by Respondent was returned by the bank. (Exh. 47, 52, 53.) INS sent the original of the notice to Respondent. (*Id*.; Tr. 5/12/04, at 35.)

30. Thereafter, Ms. Lorimar met with Respondent who said that he would refile the applications. (Tr. 5/12/04, at 48B49.) Thereafter, when Ms. Lorimar received a second notice that Respondent=s checks to the INS were again insufficient, she attempted to recontact Respondent numerous times. (Tr. 5/12/04, at 18B20, 48B51.) Eventually, she learned that Respondent=s phone and had been disconnected and discovered that he had vacated his office at 1951 W. Camelback Road, Phoenix, Arizona. (Exh. 48; Tr. 5/12/04, at 40.) Respondent had left suddenly. (Tr. 5/12/04, at 52.)

31. Neither Mr. Andrei nor Ms. Lorimar indicated to Respondent that they were terminating his services. (Exh. 48; Tr. 5/12/04, at 23-24.)

32. On May 19, 2003, the Board of Immigration Appeal issued its per curiam dismissing the appeal. (Exh. 56, at 1667.) Mr. Andrei was deported to Romania.

33. Respondent intentionally did not return any of the money they had paid him. (Exh. 44, 48, 49.)

Nor did Respondent refile either the I-130 petition nor the I-765 application. (Exh. 48, 51, 54.)

34. Respondent knowingly failed to provide Mr. Andrei=s new counsel with Mr. Andrei=s file. Mr. Andrei employed Azulay, Horn, Khalaf & Yoo of Chicago to continue his immigration litigation. In a letter dated August 30, 2003, that firm requested from Respondent Mr. Andrei=s file. (Exh. 58 at1886.) In his letter dated November 23, 2003, Respondent acknowledged that he had received a request for a copy of the Andrei file be sent to his new attorneys. (Exh. 49.) As of May 12, 2004, the firm still had not received the file. (Exh. 59.)

35. On March 24, 2004, the State Bar issued a subpoena duces tecum for Respondent=s Aentire file, including work-product, billing statements, court orders, pleadings, or any other court records or other documents relating to, or describing Respondent=s representation of@ Mr. Emilian Andrei. Exhibit 58 is a copy of Respondent=s file for Mr. Andrei. Exhibit 58 contains no billing statements and the only work product of Respondent in the file is his assistant=s request to the prior attorney for Mr. Andrei=s file, Respondent=s brief on behalf of Mr. Andrei, and the transmittal letter sending a copy of the brief to Mr. Andrei.

Based on these findings of fact, the State Bar has proven by clear and convincing evidence that Respondent *intentionally* has violated ER 1.2 (failing to abide by client=s decisions); ER 1.4 (reasonably communicate); ER 1.5 (unreasonable fee); ER 1.15 and 1.16 (failure to return unearned fees); ER 8.4(d) (engaged in conduct prejudicial to the administration of justice); Arizona Supreme Court Rule 43 (failing to maintain records); Arizona Supreme Court Rule 44 (trust account/safeguard property). Potentially, Respondent=s conduct seriously prejudiced his clients. Mr. Andrei was deported and Ms. Lorimar was separated from her husband. The harm is potential because it is unknown whether any of Mr. Andrei=s

claims, if properly litigated, would have prevented his removal. Nevertheless, Mr. Andrei and Ms. Lorimar suffered significant actual prejudice when Respondent refused to refund any of the $10,000.

Based on the available evidence, I do not find that Respondent violated ER 1.3 (failing to act with reasonable diligence); ER 8.4(c) (engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

DISCUSSION OF CONCLUSIONS OF LAW

Respondent clearly failed to accomplish the objectives of his various representations at issue here. But in the first three counts, there was not clear and convincing evidence that he intentionally failed to abide by his client=s decisions concerning the objectives of the representations. In my view, the two most serious counts concern his apparently non-English speaking clients, Ms. Fonseca and Mr. Andrei. In Ms. Fonseca=s case, Respondent abandoned her shortly before an INS hearing, yet keep her property that was directly relevant to the issue of her deportation. In Mr. Andrei=s case Respondent accepted a fee of $10,000 knowing his client was facing removal and concluding shortly after the appeal was filed, if not before, that his client had no case. Yet, according to Respondent=s file (Exh. 58), Respondent took no other action to litigate his removal status. Respondent virtually assured his client Mr. Andrei would be removed to Romania, when his office never paid the application fees for the I-130 alien spouse petition and I-765 application for employment authorization.

Given the totality of this record, a $10,000 fee for filing a 7-page brief even under extreme time limitations does not appear reasonable. *See In the Matter of Connelly*, 203 Ariz. 413, 55 P.3d 756, && 26 (2002); ER 1.5. This is especially evident when the attorney apparently does not filed his client=s affidavit in support of the brief because the attorney concludes that the brief is meritless, yet does not withdraw it, or

pursue any other avenue to attempt to achieve his client=s objectives. There is no evidence in the record to suggest that this was a non-refundable Aflat-fee.@ Respondent never asserted such in his filings with the State Bar. Instead, he characterizes the fee as Aretainer funds.@ (Letter Answer, dated 1/13/2004, at 3.) A non-refundable retainer is a fee paid to guarantee that the attorney will be available for the client if required. *Connelly*, at && 28 n.7. Although Respondent did not provide any written fee agreement, and none was produced with his file, the record is clear that Mr. Andrei was employing Respondent to extract him from his immigration matters. His clients believed that the unused portion of the fee would be returned. And, there is no evidence that Respondent pursued his clients= other objectives that might have precluded Mr. Andrei=s removal.

DISCUSSION OF SANCTIONS

Sanctions are imposed to: (1) protect the public, (2) deter attorney misconduct, and (3) preserve the public=s confidence in the State Bar=s ability to regulate attorneys. *See In Matter of Peasley*, SDB03B0015BD, && 64 (filed 5/28/04); *In Matter of Moak*, 205 Ariz. 351, 71 P.3d 343, && 7 (2003). While not required for determining attorney discipline, the ABA *Standards for Imposing Lawyer Sanctions* (1992) (A*Standards*@), can be a useful starting point in deciding upon appropriate sanctions. *See In Matter of Clark*, ___Ariz.___, 87 P.3d 827, && 9 n.2 (2004).

A.B.A. *Standards*

In applying the *Standards*, the Supreme Court considers A(a) the duty violated; (b) the lawyer=s mental state; (c) the potential or actual injury caused by the lawyer=s misconduct; and (d) the existence of aggravating or mitigating factors.@ *Peasley*, at && 33; *Moak*, at && 8 (citing *Standard* 3.0). When an attorney is found to have violated a multitude of ethical standards, generally the most serious violation serves

as the baseline for the punishment. *Moak* at & 9.

ADisbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and caused serious or potentially serious injury to a client, the public, or the legal system.@ *Standard* 7.1. Intending to obtain or retain a pecuniary benefit, Respondent repeatedly engaged in unethical conduct over a course of a year with four different clients that caused, or potentially caused, serious injury to his clients.

AGGRAVATING AND MITIGATING FACTORS

The *Standards* employ a series of aggravating and mitigating circumstances that serve to increase or decrease the presumptive degree of discipline for violation of any given *Standard*. *Standards* 9.0. Here, several aggravating circumstances exist: dishonest or selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge wrongful nature of conduct, vulnerability of victim; substantial experience in the practice of law; and indifference to making restitution. *Standard* 9.22(b)(c)(d)(g)(h)(j)(i). Two of the complainants apparently did not speak English very well. All the victims relied on Respondent to enable them to lawfully remain in the United States. Particularly reprehensible is the fact that for years, Respondent retained all of Sonia Fonesca=s documentation necessary in her attempt to establish that she has continuously remained in the United States for 10 years, and that Respondent, after realizing that Mr. Andrei=s appeal would fail, took no further action to prevent his removal from the country despite the $10,000 payment.

The only mitigating circumstance established in the record is the delay in the disciplinary proceedings. *Standard* 9.32(j). Two of the complaints were received by the State Bar in 2002. *See Peasley*, at & 59 (2 years for the State Bar to issue a probable cause order). Ms. Aruna Gautam formal complaint was filed September 30, 2002. (Exh. 1.) Mrs. Sarah Dixon complaint was received by the State

Bar on December 19, 2002. (Exh. 18.) Under the circumstances of this case, however, it does not appear that the delay prejudiced Respondent, only his former clients.

In Respondent=s letter dated January 13, 2004, for the first time, Respondent asserted that Aover the last two years I was forced to change the way I practiced law due to a seriously ill wife, and two elementary aged kids.@ He further stated that his wife was on her Adeath bed@ and he had to close his practice to attend to her and his children. If this were substantiated as causing his misconduct, it would be mitigating. *Standard* 9.32(c); *cf*. *Peasley*, & 54 n.18 (noting the requirement of a nexus between an impairment and the misconduct). Respondent, however, has not provided any collaborating documentation or testimony that establishes these circumstances. Nor, in his letter to the State Bar the previous year, dated January 15, 2003, did Respondent mention any personal problems as an excuse for his conduct. (Exh. 13, at 20.)

PROPORTIONALITY REVIEW

Although not required by rule, in the past the Arizona Supreme Court often consulted similar cases in an attempt to assess the proportionality of the sanction. *See In Matter of Struthers*, 179 Ariz. 216, 226, 877 P.2d 789, 799 (1994). At one time, the Court thought it helpful if the Commission=s orders set forth proportionality considerations in its sanction recommendations. *In Matter of Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988). More recently, the Arizona Supreme Court has criticized the concept of proportionality review as Aan imperfect process.@ *In Matter of Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases Aare ever alike.@ *Id*.

While Respondent=s conduct is less reprehensible than the conduct this Court found to exist in the *Peasley* case, Respondent has demonstrated a clear pattern of willful misconduct motivated by self-interest

leading to the abandonment of clients. In Arizona, such repeated conduct can warrant disbarment. *See In Matter of Hirschfeld*, 192 Ariz. 40, 960 P.2d 640, && 18B19 (1998); *see also In Matter of Brady*, 186 Ariz. 370, 375, 923 P.2d 836, 841 (1996) (repeated derelictions of duty placed clients in jeopardy of serious harm); *In Matter of Duckworth*, 185 Ariz. 197, 198, 914 P.2d 900, 901 (1996) (repeated engagement in unethical conduct); *In Matter of Kobashi*, 181 Ariz. 253, 255, 889 P.2d 661, 663 (1995) (failure to pursue client=s case with reasonable diligence, failure to promptly return client=s property, failure to maintain adequate communication with clients).

RECOMMENDATION

Respondent is a non-Arizona attorney who stated that he is winding down his law practice before the INS. Although not rising to the level of an aggravating factor, Respondent=s cooperation with the State Bar was not immediately forthcoming. For example, concerning Ms. Aruna Gautam=s complaint, he did not answer the State Bar=s November 19, 2002 letter until January 15, 2003. (Exh. 11B13.) Did not tender a cashier=s check to Ms. Gautam for a partial refund of the moneys she paid until the day of the hearing. Did not return Ms. Sonia Fonseca=s documentation until shortly before the hearing.

Given the totality of the circumstances in the record, I recommend the following action:

1. Respondent receive a public censure. *See* Ariz. Sup. Ct. R. 60(a)(3). This is the highest sanction Arizona can impose.

2. The Disciplinary Commission recommend to the Supreme Court of Arizona that the Court request the Disciplinary Board of the State of Pennsylvania disbar Respondent. *Standard* 2.9 (reciprocal discipline). Such action would be appropriate. *See*, *e.g.*, *In Matter of Reciprocal Discipline of Chinquist*, 2004 WL 878011 (N.D. 4/26/2004); *In Re Schwartz*, 2004 WL 728879 (La. 4/2/2004); *In*

Matter of Alsafty, 774 N.Y.S. 583 (App. Div. 2004); *State v. Williams*, 676 N.W.2d 376 (Neb. 2004); *In re Spitzer*, 845 A.2d 1137 (D.C. 2004); *In re Bustamante*, 796 N.E.2d 494 (Ohio 2003); *People v. Andrews*, 74 P.3d 969 (Colo. 2003). *Cf.* Ariz. Sup. Ct. R. 53(i); *In Matter of Wayland*, 180 Ariz. 15, 881 P.2d 347 (1994); *In Matter of Miller*, 178 Ariz. 257, 872 P.2d 661 (1994).

3. The State Bar furnish a copy of the final decision to the appropriate federal courts and agencies. *See In re Surrick*, 338 F.3d 224 (3rd Cir. 2003).

4. Enter a judgment for restitution in the following amounts:

Ms. Aruna Gautam: $698 (assuming the $1,000 cashier=s check cleared)

Ms. Sarah Dixon: 0

Ms. Sonia Fonseca: 0

Mr. Emilian Andrei and Ms. Laura Lorimar: $6,000.

Restitution is award to Apersons financially injured@ where the amount has been established by clear and convincing evidence. *See* Ariz. Sup. Ct. R. 60(a)(6). Respondent submitted no records establishing his billing practice. In his letter answer, he asserted that he charges $250 per hour in most cases. There is no record of how much time Respondent spent on the Andrei brief. His file does not reflect any other work on the Andrei case. A generous reasonable value for a meritless seven-page brief appealing a denial of a motion to reopen is $4,000. *See* ER 1.5. That assumes Respondent spent 16 hours working on the brief at a billing rate of $250 per hour. While speculative, in my view, this is sufficient evidence to establish restitution of $6,000. Respondent should bare the burden of establishing by clear and convincing evidence that this amount is not reasonable. Often, the attorney rather than the client controls the evidence concerning restitution. The client should not be unable to obtain restitution, simply because the attorney

refuses to provide the necessary evidence to establish the amount of restitution.

5. Pursuant to Arizona Supreme Court Rule 60(b), Respondent shall pay the costs and expenses incurred in these disciplinary proceedings.

DATED this _____ day of _____, 2004.

_____
John Pressley Todd
Hearing Officer 7X

Original filed with the Disciplinary Clerk
this _____ day of _____, 2004.

Copy of the foregoing mailed
this _____ day of _____, 2004, to:

Eric R. Bowman
Respondent
P.O. Box 1392
Phoenix, AZ 85001

and

Eric R. Bowman
Respondent
8585 East Hartford Drive, #110
Scottsdale, AZ 85255

Denise M. Quinterri
Bar Counsel
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, AZ 85003-1742

by: _____