

FILED

AUG 30 2005

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY: *William*

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

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4			
5	IN THE MATTER OF A MEMBER)	Nos. 03-0342, 03-0603, 03-0654
6	OF THE STATE BAR OF ARIZONA,)	03-0655, 03-0947, 03-1326
7)	03-1384, 03-1434, 03-1469
8	DOROTHEA P. KRAEGER,)	03-1700, 03-1816, 04-0016
9	Bar No. 015475)	04-0823, 04-0994, 04-1097
10)	04-1179, 04-1190, 04-1316
11)	
12)	HEARING OFFICER'S
13	RESPONDENT.)	REPORT

PROCEDURAL HISTORY

12 The State Bar filed a Complaint on October 29, 2004 and an Amended
13 Complaint on November 22, 2004. Respondent filed an Answer to the Amended
14 Complaint on January 7, 2005. The parties filed a Tender of Admissions and
15 Agreement for Discipline by Consent (Tender) and a Joint Memorandum in
16 Support of Agreement for Discipline by Consent (Joint Memo) on May 19, 2005.
17 A hearing on the Tender and Joint Memo was held on June 17, 2005.

FINDINGS OF FACT

21 1. At all times relevant, Respondent was an attorney licensed to practice law
22 in the State of Arizona, having been admitted to practice in Arizona on October
23 22, 1994. Respondent is also admitted to practice law in Georgia and Virginia,
24 having been admitted to practice in those jurisdictions in 1988.

1 2. By order dated March 23, 2005, Respondent was placed on interim
2 suspension by the Arizona Supreme Court.

3
4 3. To the extent that Respondent alleges that the misconduct in the counts in
5 the formal complaint was caused by or contributed to by staff members,
6 Respondent failed to adequately supervise those staff members in violation of ER
7 5.3.

8
9 4. During the time period of October 2001 to July 2002, Respondent admits
10 that she was out of her office for significant periods of time due to the extended
11 illness and death of her mother.

12 **COUNT ONE (File No. 03-0342/McQueen)**

13
14 5. In April of 1997, Stephen McQueen, a Canadian citizen, retained the
15 services of Respondent to handle a Labor Certification and Application for
16 Permanent Residency. Mr. McQueen was employed in Arizona as a pharmacist.

17
18 6. As fees and costs for Respondent's services, Mr. McQueen paid
19 Respondent a total of \$4,010 to handle the matter.

20 7. During the time period that Respondent represented Mr. McQueen,
21 Respondent failed to adequately communicate with him about the status of the
22 case. Occasionally, Respondent failed to return phone calls from Mr. McQueen.

23
24 8. Once, Respondent scheduled a telephone appointment with Mr. McQueen
25 to provide him with a status update regarding his case, but Respondent did not

1 keep the appointment. Respondent affirmatively asserts that due to the nature of
2 her practice, she was often called to court on short notice to assist clients in
3 emergency circumstances.
4

5 9. On or about January 14, 2003, Mr. McQueen contacted the DES himself to
6 obtain the status of his application as Respondent had failed to update him on the
7 status. At that time, Mr. McQueen was informed by DES that his case had been
8 cancelled in December of 1999 due to a "failure to respond with information
9 requested by the DES within a given time frame."
10

11 10. Respondent either failed to timely learn of the cancellation of Mr.
12 McQueen's case or failed to inform Mr. McQueen that his case had been
13 cancelled. Respondent affirmatively asserts that she prepared and filed a second
14 labor certification application that Mr. McQueen and his employer signed.
15

16 11. Upon reviewing his initial application, Mr. McQueen discovered that there
17 were several mistakes in the application, including his job title, and his length of
18 employment. Respondent affirmatively asserts that the mistakes were corrected
19 in the second application.
20

21 12. In or about January of 2003, Mr. McQueen terminated Respondent's
22 services and requested a refund of fees paid.
23

24 13. Respondent agreed to provide, and did provide, a refund to Mr. McQueen
25 in the amount of \$3500. Respondent explains that the difference between Mr.

1 McQueen's payment and reimbursement corresponded to filing fees and costs
2 expended. After numerous attempts to pick up the check, Mr. McQueen obtained
3 the check from Respondent. However, when Mr. McQueen deposited the check,
4 it was returned for insufficient funds. Shortly thereafter, Respondent provided a
5 cashier's check to Mr. McQueen and paid his bank fees. Respondent
6 affirmatively asserts that the attorney's fees had been earned, and that the refund
7 was offered as a professional courtesy.
8
9

10 **COUNT THREE (File No. 03-0654/Fonseca)**

11 14. In or about August of 2001, Respondent agreed to represent pro bono
12 Cristina Rodriguez-Romero de Fonseca and her husband Eduardo Carlos
13 Fonseca-Lopez in regard to their and their children's immigration petitions. At
14 that time, Mr. Fonseca, a Mexican artist (known as FoLe'), had been hired by the
15 city of Queen Creek to paint a mural.
16

17 15. When the representation commenced, the FONSECAS and their children were
18 in the country in visitor status. Respondent was to file appropriate applications to
19 change Mr. Fonseca's status from visitor to O-1 status, and Ms. Fonseca's and the
20 children's status to O-2 dependents prior to the expiration of their visitor status.
21

22 16. On more than one occasion, Respondent informed the FONSECAS that the
23 change of status petition was filed prior to the expiration of Mr. Fonseca's visitor
24 status. As proof, Respondent provided the FONSECAS with a copy of a check,
25

1 which she told them was filed with the petition. The check had an INS receipt
2 number printed on the back.

3
4 17. On or about March 5, 2002, Respondent sent the Fonsecas a copy of the
5 INS filing receipt. The receipt indicated that the petition had not been filed until
6 February 15, 2002, three months after Mr. Fonseca's visitor status had expired
7 and five months after Ms. Fonseca and her children's status had expired.
8 Respondent advised Mr. Fonseca to disregard the date on the receipt. Respondent
9 affirmatively asserts that, at the time, she believed that there was an error on the
10 receipt.
11

12 18. The INS filing receipt showed a different filing number than the INS
13 receipt number printed on the check that Respondent had shown the Fonsecas
14 earlier as proof of timely filing.
15

16 19. Respondent agrees that the earlier information provided to the Fonsecas
17 was incorrect. Respondent affirmatively asserts that she believed the information
18 to be true at the time she provided it to them. Respondent further asserts that she
19 relied on her paralegal to timely file the petition, and it was not timely filed.
20 Respondent further asserts that this matter occurred during the time period of her
21 mother's illness and subsequent death.
22
23
24
25

1 20. As a result of failing to timely file the petition, the Fonsecas lacked legal
2 status. Respondent failed to adequately explain to the Fonsecas that they were
3 without legal status.
4

5 21. Thereafter, in or about August 2002, Mr. Fonseca returned to Mexico to be
6 treated for an illness. Prior to leaving, Mr. Fonseca and/or Ms. Fonseca contacted
7 Respondent's office and left numerous messages and e-mails regarding the issue
8 of the trip to Mexico. Respondent asserts that, though she did have contact with
9 Mr. Fonseca, she failed to adequately explain to him the consequences of leaving
10 the country. Respondent affirmatively asserts that she told Mr. Fonseca he would
11 need a non-immigrant waiver to return with his O-1 visa.
12

13 22. In or about November 2002, Mr. Fonseca e-mailed Respondent prior to
14 attempting re-enter the United States. In response, Respondent informed Mr.
15 Fonseca that his tourist visa was still valid, and that he could re-enter the country.
16 However, Mr. Fonseca was denied re-entry on his tourist visa.
17

18 23. After Mr. Fonseca was denied re-entry on his tourist visa, Ms. Fonseca and
19 others had numerous meetings with Respondent to attempt to resolve the
20 situation. During those meetings, Respondent continued to insist that she had
21 timely filed the petitions. Those statements were false. Respondent asserts that
22 she made those statements in reliance on information she had received from her
23 staff.
24
25

1 24. Respondent affirmatively asserts that she offered, at one or more of the
2 meetings, to take remedial measures to assist Mr. Fonseca in remedying his
3 status, including filing a non-immigrant visa waiver application. The FONSECAS
4 declined her offers.
5

6 25. Upon Ms. Fonseca's request, Respondent provided Ms. Fonseca with a
7 copy of a check purportedly used to file the petition. However, the check
8 provided by Respondent had a different case number on it. Respondent alleges
9 that she believed that the check had the correct number.
10

11 **COUNT FOUR (File No. 03-0655/Radford)**

12 26. In or about February of 1998, Melanie Radford retained Respondent to
13 represent her in an immigration matter. That matter eventually included an H1B
14 Visa Application, Renewal and Transfer related to Ms. Radford's change in
15 employment.
16

17 27. In relation to that matter, Respondent was to transfer Ms. Radford's H1B
18 and H4 Visas from her prior employment to her new employment. Ms. Radford
19 believed that the transfer was being done by Respondent in or about late June of
20 2001, shortly after her new employer signed the transfer forms.
21

22 28. On or about November 4, 2002, Ms. Radford was asked by her new
23 employer to produce evidence that her H1B had been properly transferred as they
24 had not yet received any confirming paperwork.
25

1 29. When Ms. Radford requested Respondent produce evidence that the
2 transfer application had been timely submitted, Respondent showed her a copy of
3 a check payable to the INS which Respondent claimed related to Ms. Radford's
4 transfer application. However, the check bears a number that does not relate to
5 anything filed on Ms. Radford's behalf. Respondent affirmatively asserts that she
6 believed the check was correct and corresponded to Ms. Radford's case.
7

8
9 30. In addition to the check, Respondent also produced for Ms. Radford a UPS
10 Domestic Return Receipt addressed to the INS Service Center CA date stamped
11 July 2, 2001 as proof of filing. However, the receipt is not related to Ms.
12 Radford's case.

13
14 31. Ms. Radford subsequently learned that her H1B application had not been
15 filed in July of 2001. Respondent however continued to insist to Ms. Radford that
16 it had been timely filed, and suggested that perhaps the application had been lost
17 by INS or shredded. Respondent, however, failed to take timely steps to ascertain
18 the status of the application.
19

20 32. On or about January 11, 2003, Respondent submitted the H1B application
21 for Ms. Radford, claiming it to be a "re-application." The LCA to be filed with
22 the H1B application was rejected as Respondent failed to include the employer's
23 phone number.
24
25

1 33. Meanwhile, in or about October of 2000, Ms. Radford also retained
2 Respondent to handle another immigration matter relating to an EB2 appeal and
3 Motion to Re-Open. Respondent asserts that the case was denied due to a change
4 of law in that area.
5

6 34. In relation to the EB2 appeal, Respondent informed Ms. Radford that the
7 Notice of Appeal was sent to the CA Service Center by certified mail in April of
8 2002 and that the main body of the appeal was sent by fed-ex to the
9 Administrative Appeals Unit in Washington, D.C. in May of 2002.
10

11 35. Ms. Radford received a notice from the CA Service Center dated
12 November 14, 2002, stating that her appeal had been dismissed as untimely as it
13 had not been filed until June 24, 2002.
14

15 36. Subsequently, Ms. Radford requested Respondent provide her with proof
16 that the appeal had been timely filed. As proof, Respondent showed Ms. Radford
17 a UPS Domestic Return Receipt stamped April 8, 2002 with the name "Radford"
18 handwritten on the back. However, the receipt showed that it had been sent to the
19 Board of Immigration Appeals, VA, not the CA Service Center. Respondent
20 asserts that a staff member sent the appeal to the wrong appellate body. This
21 action occurred during the time period of Respondent's mother's illness and
22 subsequent death.
23
24
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1 37. When Ms. Radford confronted Respondent about the receipt discrepancy,
2 Respondent continued to insist that the appeal had been timely filed, and stated
3 that she had shown her the wrong receipt. Respondent then produced a second
4 UPS receipt stamped March 22, 2002 by the CA Service Center. Respondent
5 asserts that she believed that she was providing the correct information.
6

7 38. Thereafter, Respondent advised Ms. Radford to file a Motion to Re-Open,
8 which was filed on or about December 6, 2002.
9

10 39. On or about February 3, 2003, Ms. Radford received notice from the CA
11 Service Center that her Motion to Re-Open was denied as it did not state new
12 facts and was not supported by new evidence. The dismissal letter further
13 indicated that "A review of the evidence submitted with the appeal indicated that
14 the appeal was sent directly to the BIA rather than California Service Center.
15 Paralegal Zascha Hall indicated that a temporary staff member 'inadvertently sent
16 the package to the BIA instead of the right Service Center' in her letter of June
17 18, 2002."
18
19

20 40. Respondent did not adequately respond to Ms. Radford's initial attempt to
21 communicate with her about this issue. Later, Respondent stated that she had no
22 knowledge of the misfiling, and that she was unaware of any letter written by
23 Zascha Hall to INS.
24
25

1 41. Ms. Radford was not timely informed by Respondent of the incorrect filing
2 and subsequent late filing.

3 **COUNT FIVE (File No. 03-0947/Safar)**
4

5 42. Respondent represented Donald Safar and his family in immigration
6 matters beginning in approximately 1994.

7 43. When the Safars initially filed their applications for permanent residency,
8 Mr. Safar's son, Ryan, was nineteen years old. Mr. Safar states that Respondent
9 failed to advise him that once Ryan turned twenty-one years old, he would "age
10 out" and become ineligible for an adjustment in status to become a permanent
11 resident as a derivative claim of Mr. Safar's application/status. Respondent
12 denies failing to advise the Safars about the "age out" issue. For purposes of this
13 agreement, the State Bar accepts her assertion.
14

15 44. By the time of the September 12, 2001, interview, Ryan Safar was over 21
16 years of age. At the interview, the Safars learned that Ryan was ineligible to
17 apply for permanent residency with the family because of his age. Respondent
18 asserts that Ryan's age, combined with a retrogression in the family preference
19 category made him ineligible.
20

21 45. After the first interview, a second interview was set for early 2002. The
22 INS officer requested information from the Safars concerning Mr. Safar's
23 mother's affidavit of support.
24
25

1 46. Mr. Safar was unaware that they required a joint sponsor to file an affidavit
2 of support because his mother did not meet the minimum income requirements.
3 Respondent failed to adequately explain the minimum income affidavit
4 requirements to the Safars.
5

6 47. At the second interview, Respondent submitted the same affidavit of
7 support that she submitted at the first interview. She did not update the affidavit.
8 The Safars' applications for permanent residency were denied.
9

10 48. Respondent subsequently filed a Motion to Reopen. Respondent did not
11 address the joint sponsorship issues. Mr. Safar terminated the representation prior
12 to the time the brief was due.
13

14 49. At times during the representation, Respondent failed to adequately
15 communicate with the Safars.

16 **COUNT SIX (File No. 03-1326/Overgaard)**

17 50. Cordell Overgaard is the owner of Rancho Paso Grande, LLC, a horse
18 ranch in Arizona.
19

20 51. Mr. Overgaard retained the services of Respondent to obtain a work permit
21 for Alvaro Aristizabal, a Columbian national, to train Paso Fino horses at the
22 ranch.
23

24 52. On or about June 28, 2002, Mr. Overgaard went to Respondent's office and
25 signed a petition for submission to the INS regarding the work permit, and also

1 provided Respondent with a \$130 filing fee check. Respondent informed him that
2 the INS should respond within a few weeks.

3
4 53. Respondent did not submit the petition until September, 2002, at which
5 time Mr. Aristizabal's status had expired.

6 54. In or about late December, 2002, Respondent suggested to Mr. Overgaard
7 that Mr. Aristizabal should request premium processing, which would force the
8 INS to adjudicate the case quickly. Mr. Overgaard agreed, and signed the
9 paperwork and provided Respondent with a \$1000 filing fee check for the
10 processing on January 3, 2003.

11
12 55. In or about late January of 2003, Respondent contacted Mr. Overgaard and
13 informed him that the INS had sent a request for evidence requested a copy of Mr.
14 Aristizabal's Form I-94, which she said she had already provided.

15
16 56. Immigration denied the case based on abandonment for failure to respond
17 to the request for evidence.

18
19 57. Respondent later informed Mr. Overgaard that she had fully provided the
20 information requested.

21 58. Thereafter, Respondent failed to properly notify Mr. Overgaard or Mr.
22 Aristizabal of the decision or of the time to appeal. Respondent's staff did leave
23 messages for Mr. Overgaard to contact her office, but did not provide the
24
25

1 substantive case information in the messages. Respondent asserts that her staff
2 called because his case had been denied.

3 **COUNT SEVEN (File No. 03-1384/DeJong)**
4

5 59. In or about December of 2000, Dick DeJong retained Respondent to file for
6 permanent residency for him and his wife. Mr. DeJong paid a flat fee of \$2500.
7 Respondent affirmatively alleges that the fee was earned. In addition, she
8 prepared an H-1B Petition on Mr. DeJong's behalf free of charge. Such petitions
9 were normally charged at \$1800.
10

11 60. Thereafter, Mr. DeJong was informed that the applications were filed in
12 October of 2001. However, Respondent's office did not send him copies of the
13 applications even after he requested them. Respondent affirmatively asserts that
14 this matter occurred during the time period of her mother's illness and subsequent
15 death.
16

17 61. Prior to submitting his July 21, 2003 bar charge against Respondent, the
18 last correspondence that Mr. DeJong had received from Respondent was in or
19 about February of 2002.
20

21 62. In or about April and May of 2003, Mr. DeJong sent numerous messages to
22 Respondent by e-mails, fax and registered mail. Respondent did not timely
23 respond to the inquiries.
24
25

1 63. At times during the representation, Respondent failed to adequately
2 communicate with Mr. DeJong.

3
4 64. Later, after receiving Mr. DeJong's bar charge, Respondent communicated
5 with Mr. DeJong about the status of his matter, and continued her representation
6 of him.

7 **COUNT EIGHT (File No. 03-1434/Klaus)**

8
9 65. In or about August of 2002, Ron Klaus retained the services of Respondent
10 to obtain visas for his family in Costa Rica. Respondent asserts that Mr. Klaus
11 paid \$1500 for filing on I-130 and K-3 packages. The fees were earned.
12 Respondent prepared the related immigrant package free of charge.

13
14 66. Mr. Klaus believed that his application would be filed in October of 2002.
15 The application was returned as the filing fee had changed. The date on the
16 returned application was January 31, 2003.

17
18 67. Respondent failed to consistently adequately communicate with Mr. Klaus
19 during the representation. For instance, during a three-week period, Respondent
20 failed to return Mr. Klaus' phone calls.

21
22 68. Subsequent to filing the bar charge, Respondent began to communicate
23 with Mr. Klaus, and he remained a client.
24
25

1 **COUNT NINE (File No. 03-1469/Rivera)**

2 69. In or about August of 2002, Adan Rivera retained the services of
3 Respondent to assist him in an immigration matter. At the time of the retention,
4 an order of deportation had already been entered against Mr. Rivera. Mr. Rivera
5 was charged a \$5,000 fee that he paid over time for a 9th Circuit Appeal.
6

7 70. Respondent informed Mr. Rivera that she would pursue an appeal.
8 Respondent further informed Mr. Rivera that he could remain and continue
9 working legally in the country during the process.
10

11 72. Patricia Fregoso, Mr. Rivera's girlfriend, also retained Respondent to assist
12 her in her immigration matter.
13

14 73. Ms. Fregoso and Mr. Rivera contend that, thereafter, they did not
15 consistently receive adequate communication from Respondent regarding the
16 status of their matters.
17

18 74. Mr. Rivera received a notice to go to the Las Vegas INS office to pickup
19 his work permit. When Mr. Rivera received the notice, he attempted to contact
20 Respondent for advice.

21 75. Mr. Rivera and Ms. Fregoso allege that after Respondent's office did not
22 respond to them, they went to the INS office in Las Vegas to ascertain the status.
23 Respondent alleges that the Las Vegas office of INS told them to go to the
24 Phoenix office. Respondent alleges that she did communicate with Mr. Rivera
25

1 and Ms. Fregoso, and warned them not to go to the Phoenix office without seeing
2 her first, and advised them of the consequences of going there.

3
4 76. Mr. Rivera and Ms. Fregoso went to the Phoenix INS office to attempt to
5 obtain Mr. Rivera's work permit and/or to ascertain the status of his case. Upon
6 arriving at the Phoenix INS office, Mr. Rivera was detained by INS.

7
8 77. Mr. Rivera and Ms. Fregoso each notified Respondent of the situation.
9 Respondent informed them that she would seek a stay of deportation. Respondent
10 did obtain a stay of deportation pending consideration of the Habeas Corpus
11 Petition. Nonetheless, Mr. Rivera was subsequently deported.

12
13 78. Respondent filed a Petition for Habeas Corpus, applications for a TRO and a
14 preliminary injunction for which Mr. Rivera did not pay.

15
16 79. The United States District Court later found that Respondent's position in the
17 Petition for Habeas Corpus was inconsistent with the facts and that the
18 Respondent's claim that a motion to reopen had been filed and wrongly denied
19 was not supported by the evidence within the file examined by the Court.

20 **COUNT TEN (File No. 03-1700/Salvatierra)**

21
22 80. Edgar Galdamez-Alvarez and Delia Salvatierra first contacted Respondent to
23 represent them regarding an immigration matter. At the time that Mr. Galdamez-
24 Alvarez and Ms. Salvatierra first contacted Respondent, Edgar was already in
25 violation of a voluntary departure date granted to him at a prior deportation

1 hearing. Respondent affirmatively asserts that she knew he had been granted
2 voluntary departure but believed he had departed and re-entered illegally.

3
4 81. Respondent advised Mr. Galdamez-Alvarez and Ms. Salvatierra that because
5 they were married she could obtain a waiver for Edgar pursuant to INA section
6 245(i). During the entire three year period that Respondent represented Edgar
7 Galdamez-Alvarez, she repeatedly advised him that the case would be favorably
8 resolved. Respondent asserts that this advice was based on her understanding that
9 he had voluntarily departed.
10

11 82. On or about August 7, 2003, the day before the interview appointment,
12 Respondent met with Mr. Galdamez-Alvarez and Ms. Salvatierra, and reviewed
13 possible questions. Respondent confirmed that there was still a deportation order
14 in effect, and restated that it would be resolved during the interview. Respondent
15 asserts that this statement was based on her understanding that Mr. Galdamez had
16 voluntarily departed and returned illegally.
17
18

19 83. At the interview, Edgar Galdamez-Alvarez was taken into custody on the
20 deportation order. Mr. Galdamez-Alvarez and Ms. Salvatierra state that
21 Respondent repeatedly lied to the interviewer by stating that Edgar had never told
22 her that he had not left the country. Respondent asserts that it was her
23 understanding that Mr. Galdamez had departed voluntarily.
24
25

1 84. Thereafter, Respondent informed Mr. Galdamez-Alvarez and Ms.
2 Salvatierra that she knew, and had contacted, an INS attorney in California who
3 would assist them by signing off on a motion to re-open the deportation order.
4

5 85. On or about August 11, 2003, Respondent asked Ms. Salvatierra to drop off
6 two cost checks, one for a Stay of Deportation, and one for the Motion to Re-
7 Open. When Ms. Salvatierra dropped off the checks, she picked up a copy of the
8 Motion to Re-Open at that time, and was told that she could pick up a copy of the
9 Motion for Stay the next day.
10

11 86. Ms. Salvatierra was later told that the Motion to Reopen filed by
12 Respondent was inadequate. The Respondent asserts that the motion was well-
13 grounded in fact and law. Respondent further asserts that the Motion to Reopen
14 which is normally charged at \$3500, was prepared free of charge.
15

16 87. When Ms. Salvatierra attempted to pick up the Motion for Stay,
17 Respondent informed her that she was withdrawing from the case. However,
18 later, Respondent informed her that she would continue to work on the case and
19 wished to remain as their counsel. Respondent asserts that the day Ms.
20 Salvatierra came to pick up the motion, she terminated the representation, gave
21 Ms. Salvatierra a letter confirming the termination in writing, and gave her a
22 complete copy of her file. Respondent sent the same information to Mr.
23 Galdamez.
24
25

1 88. Thereafter, Respondent did not adequately communicate with Ms.
2 Salvatierra or Mr. Galdamez-Alvarez. Mr. Galdamez-Alvarez and Ms.
3 Salvatierra later learned that Respondent never filed the Motion for Stay.
4

5 89. Respondent never responded to any phone calls by Ms. Salvatierra since
6 September 2, 2003. Respondent asserts that the relationship terminated on
7 August 13, 2003.
8

9 **COUNT ELEVEN (File No. 03-1816/Beard)**

10 90. In or about June of 2002, Julia and Len Beard retained Respondent to
11 represent Julia, an English citizen, in obtaining an E-2 investor visa. Respondent
12 asserts that the fee was \$2500 of which the Beards paid \$1250. Respondent
13 asserts that the Beards paid nothing for the immigrant paperwork which led to
14 Ms. Beard's current "green card."
15

16 91. Thereafter, for several months, the Beards had difficulty communicating
17 with Respondent. Respondent cancelled appointments or missed appointments,
18 and failed to timely return phone calls. Respondent affirmatively alleges that this
19 occurred during the time period of her mother's illness and subsequent death.
20

21 92. On or about October 7, 2002, Respondent told the Beards that the
22 paperwork was complete.
23

24 93. The Beards set the interview appointment themselves.

25 94. Respondent also failed to timely assist the Beards in drafting various

1 aspects of the business plan that was needed for the process. Respondent alleges
2 that she did not agree to draft the business plan, and could not have done so.

3
4 95. The night before the March 18, 2003, consular interview, a friend of
5 Respondent's contacted the Beards and informed them that Respondent was at the
6 emergency room with a burst eardrum, and that Respondent would cancel the
7 interview appointment, and reschedule it.

8
9 96. When the Beards contacted Respondent's office the following morning,
10 they were informed that she was in court in another matter. The Beards later
11 learned that Respondent had failed to cancel their interview appointment, and had
12 simply failed to appear. Respondent and/or her staff told the Beards that several
13 appointments were made and cancelled at the Nogales office. However, it was
14 not until April 30, 2003 that an appointment was made. Respondent asserts that it
15 usually takes at least three weeks to obtain an interview at the Nogales Consulate.
16

17
18 97. When the Beards finally went to their April 30, 2003, interview
19 appointment, they learned that further information was needed. Respondent
20 asserts that it is not unusual for a consulate to request additional evidence on an
21 E-2 visa.

22
23 98. Respondent subsequently advised the Beards that moving up their planned
24 wedding date would simplify the process. After they married, Respondent
25

1 changed the application to a family based immigration visa and application for
2 permanent residency.

3
4 99. It was later discovered by the Beards' subsequent counsel that Respondent
5 made a misstatement on the application filed after the marriage, in that
6 Respondent stated that Julia Beard had not previously applied for any type of
7 visa. Respondent alleges that the application only asks for immigrant visas as
8 opposed to non-immigrant visas. Thus, Respondent affirmatively states that the
9 information provided was accurate.
10

11 **COUNT TWELVE (File No. 04-0016/Brown)**

12
13 100. Respondent represented Simon Brown and his family in immigration
14 matters intermittently over several years beginning in or about 1997.

15 101. Mr. Brown's parents paid Respondent for an I-140 and related permanent
16 residence paperwork. On or about May 26, 1998, Mr. Brown's father's I-140
17 application was approved, opening the way for Mr. Brown's permanent residency
18 application. Time was of the essence, as Mr. Brown was turning 21 and was
19 going to "age out" if the matter was not handled promptly. Nonetheless,
20 Respondent failed to act promptly in the matter, and Mr. Brown's application for
21 permanent residency was harmed. Respondent asserts that she flagged Mr.
22 Brown's residency application as an "age-out" following the CA Service Center's
23 existing procedures.
24
25

1 102. On September 1, 2000, Mr. Brown received his I-20 from the University of
2 Arizona, where he was enrolled in an undergraduate program. On September 7,
3 2000, he received an F-1 visa from the USA embassy in London. Respondent
4 asserts that she provided those services to Mr. Brown free of charge.
5

6 103. In March 2002, Mr. Brown went on vacation to Mexico. Upon returning
7 to the United States, he learned that his I-20 had expired, and that it needed to be
8 renewed within 30 days.
9

10 104. Mr. Brown or his mother immediately contacted Respondent for
11 assistance. After Mr. Brown obtained a new I-20 from the University of Arizona,
12 Respondent told Mr. Brown that she would deliver the form to the INS within the
13 thirty-day time period. Respondent asserts that she did not charge for these
14 services.
15

16 105. Respondent also advised Mr. Brown to apply for Work Authorization and
17 an Optional Training Program. Mr. Brown supplied Respondent with the
18 completed paperwork for these benefits.
19

20 106. Respondent eventually filed the I-539 with the I-20 issued by the
21 University of Arizona.
22

23 107. Mr. Brown learned that the University of Arizona had not received
24 confirmation that his student status had been extended. Mr. Brown also learned
25 that his Optional Training Package could not be processed because his status had

1 not been updated. Respondent affirmatively alleges that she told Mr. Brown that
2 he would not be eligible for OPT until he was reinstated.

3
4 108. Mr. Brown later received a notice of deficiency from INS indicating that
5 additional documentation was needed for the I-20 within twelve weeks. Upon
6 contacting Respondent, she informed him of the information he needed to gather.
7 Mr. Brown gathered the information, and provided it to Respondent, who
8 promised to timely submit it to the INS. Respondent asserts that she did provide
9 it to the INS timely. The INS never received the additional information from
10 Respondent. As a result, Mr. Brown was unable to continue his studies.
11

12
13 109. Meanwhile, on or about September 1, 2002, Respondent filed an appeal of
14 a June 2002, decision of the INS to refuse Mr. Brown's petition for permanent
15 residency because he had "aged out." Mr. Brown presumes that the appeal was
16 based on the new Child Status Protection Act, but was never provided with a copy
17 of the appeal.
18

19 110. Thereafter, Mr. Brown had difficulty communicating with Respondent. On
20 at least six occasions, Respondent asked Mr. Brown, or one of his parents, to meet
21 her at the INS office to pick up his student visa and work permit; Respondent
22 failed to appear for any of these meetings. Respondent, however, continued to
23 assure Mr. Brown that his status would be all right once reinstated. Respondent
24
25

1 affirmatively alleges that this occurred during the time period of her mother's
2 illness and subsequent death.

3
4 111. Mr. Brown's father also made arrangements on several occasions to meet
5 Respondent and pick up Mr. Brown's approval notice and/or work permit from
6 her. However, Respondent either cancelled the meetings, or failed to appear for
7 the meetings. Again, Respondent asserts that this happened during the time
8 period of her mother's illness and subsequent death.
9

10 112. Eventually, Respondent's office stated that they had lost the approval
11 notice, and were filing for a replacement. Mr. Brown's father asked for a copy,
12 and never received one.
13

14 113. In March 2003, Mr. Brown learned that his student visa was denied based
15 on the INS's conclusion that Respondent failed to submit the additional
16 documentation that had been requested by INS, and that Mr. Brown had timely
17 provided to Respondent.
18

19 114. Respondent informed Mr. Brown and/or his family that she would appeal.
20 Mr. Brown's mother provided Respondent with a check payable to the INS for the
21 appeal costs. However, the INS never cashed the check.
22

23 **COUNT THIRTEEN (File No. 04-0994/Montanez)**

24 115. Cristina Montanez retained Respondent in or about December of 2002 to
25 represent her in an immigration matter.

1 116. At the time that Ms. Montanez retained Respondent, the Board of
2 Immigration Appeals had already dismissed Ms. Montanez's appeal, and had
3 given her a voluntary departure date of January 9, 2003.
4

5 117. Respondent informed Ms. Montanez that she would move to reopen her
6 case, and that the motion had to be filed by December 24, 2002. Respondent later
7 told Ms. Montanez that she had stayed up all night completing the paperwork.
8 Respondent did not file the motion until March of 2003.
9

10 118. Subsequently, the INS notified Ms. Montanez that she needed to depart the
11 country.
12

13 119. Ms. Montanez later learned that Respondent did not file the motion until
14 March of 2003. In or about June of 2003, the Board of Immigration Appeals
15 dismissed the motion.
16

17 120. Respondent subsequently informed Ms. Montanez that she would file an
18 appeal to the 9th Circuit.
19

20 121. Thereafter, Respondent failed to keep Ms. Montanez informed as to the
21 status of her case. Ms. Montanez later learned that her 9th Circuit appeal had been
22 dismissed due to Respondent's failure to respond to the Court's order to show
23 cause regarding jurisdiction of the case. Respondent affirmatively alleges that no
24 valid legal justification for jurisdiction existed.
25

1 122. In or about May of 2004, Respondent filed another motion to reopen Ms.
2 Montanez's case with the Board of Immigration Appeals.

3
4 123. On May 25, 2004, Ms. Montanez received another letter from the INS
5 requesting her departure.

6 124. Thereafter, Respondent did not adequately communicate with Ms.
7 Montanez about the case. Respondent asserts that Ms. Montanez dropped by the
8 office frequently and spoke with Respondent through an interpreter.
9

10 **COUNT FOURTEEN (File No. 04-1316)**

11 125. In or about 2004, Respondent was retained to represent Sergey Eryomenko
12 in an immigration matter. Respondent was paid a \$5000 flat fee for the
13 representation. Respondent asserts that the fees were earned. Respondent later
14 represented Mr. Eryomenko on appeal at no additional charge.
15

16 126. Mr. Eryomenko had been convicted of evading a police officer, and
17 classified as "removable" as an aggravated felon. He was placed in the custody
18 of the Homeland Security at the end of October of 2003.
19

20 127. Upon information and belief, Mr. Eryomenko, who was originally from
21 Uzbekistan, had claimed that he was unable to return to Uzbekistan because of
22 religious persecution.
23
24
25

1 128. At a hearing on May 26, 2004, Respondent was notified of a July 12, 2004,
2 deadline for filing applications for relief from removability and of an August 2,
3 2004, hearing date.
4

5 129. Respondent failed to file the necessary application for asylum before the
6 July 12, 2004, deadline. Respondent asserts that her failure to do so was due to
7 staffing issues.
8

9 130. Subsequently, at the August 2, 2004 hearing, Mr. Eryomenko conceded the
10 charge of removability, and was ultimately found "removable".

11 131. Respondent, on August 4, 2004, filed a motion to reconsider as well as a
12 motion to reopen the case, claiming that Mr. Eryomenko's matter should be
13 reopened due to her ineffective assistance of counsel by her failure to file his
14 application by the deadline. She affirmatively alleges that the self-complaint was
15 a procedural prerequisite to moving to re-open Mr. Eryomenko's case.
16

17 132. Respondent self-reported her misconduct to the State Bar.
18

19 133. The court, in an August 17, 2004, order, granted Mr. Eryomenko's motion
20 to reopen. Respondent continued to represent Mr. Eryomenko until the order of
21 interim suspension was entered.
22
23
24
25

1 **COUNT FIFTEEN (File No. 04-0823/Giaconi)**

2 134. In or about January 2001, Respondent was retained by Gianni Giaconi to
3 assist him in obtaining a visa. Mr. Giaconi paid a flat fee of \$3500 over time.
4 Respondent asserts that the fee was earned.
5

6 135. After his planned business venture failed to materialize, Respondent
7 indicated to Mr. Giaconi that she would file for a P-3 non-immigrant visa that
8 would allow him to apply for permanent resident status while in the U.S.
9

10 136. During the course of Respondent's representation, Mr. Giaconi frequently
11 experienced difficulty in contacting Respondent. Respondent affirmatively
12 alleges that she communicated with him through an Italian interpreter when
13 available, but that Mr. Giaconi's inability to speak any English at all made
14 communication with him very difficult.
15

16 137. Respondent, on more than on occasion, cancelled appointments with Mr.
17 Giaconi at the last minute, causing him difficulty in obtaining the services of a
18 translator. Respondent affirmatively alleges that this occurred during the time
19 period of her mother's illness and subsequent death.
20

21 138. In or about November 2002, Mr. Giaconi received notification from the
22 Immigration and Naturalization Service ("INS") that his visa petition had been
23 denied because the necessary documents had not been provided to the INS.
24 Respondent affirmatively alleges that she supplied the requested documents.
25

1 139. Respondent agreed to file an appeal and pay the filing fee.

2 140. Respondent provided to Mr. Giaconi a copy of a check made payable to the
3
4 INS for the filing fee.

5 141. In or about December 2002 Mr. Giaconi received notice from the INS that
6 the processing of his application has been halted as the check by which
7 Respondent had paid the necessary fees had been returned by the bank for
8
9 insufficient funds.

10 142. In March 2003 Mr. Giaconi was informed by the INS that as payment had
11 not been received to compensate for the check returned for insufficient funds his
12 appeal had been rejected as improperly filed. Respondent alleges that the appeal
13
14 is still pending.

15 **COUNT SIXTEEN (04-1179/Gomez)**

16 143. In or about October 2003, Ingris Gomez was referred to and retained
17
18 Respondent for representation in an immigration matter. Respondent alleges that
19 she was paid \$3500 to prepare a motion to reopen and the fee was earned.
20 Respondent alleges that at that time, Ms. Gomez had already lost her case.
21 Respondent filed a Habeas Corpus Petition and related application for which Ms.
22
23 Gomez never paid.

24 144. Respondent told Ms. Gomez that she would inform her of the progress of
25
her matter.

1 145. In or about December 2003, Ms. Gomez received a letter ordering her to go
2 to CIS on February 4, 2004, and did so. When she arrived, Ms. Gomez was taken
3 into custody and informed that the decision in her case was final and was pending
4 deportation.
5

6 146. Ms. Gomez, between October 2003, and February 2004, was not informed
7 as to the status of her immigration appeal or that her appeal had been denied.
8 Respondent affirmatively alleges that Ms. Gomez understood that Respondent
9 would be filing a "Motion to Reopen" rather than an appeal. Respondent failed
10 to adequately communicate with Ms. Gomez during this period of time.
11

12 147. Ms. Gomez learned that Respondent had filed a "Motion to Reopen" rather
13 than an appeal.
14

15 148. Respondent failed to timely file the Motion to Reopen, having filed it after
16 the 90-day filing deadline. Respondent affirmatively alleges that she needed
17 information from the FOIA request that did not arrive until after the filing date to
18 complete the motion and made an equitable tolling argument to the court on that
19 basis.
20

21 149. Respondent failed, in her Motion to Reopen, to provide sufficient new
22 evidence to warrant the reopening of Ms. Gomez's case, according to the ruling
23 of the Immigration Judge. Respondent affirmatively alleges that she made legal
24 arguments in the Motion to Reopen.
25

1 **COUNT SEVENTEEN (04-1190/Rusev)**

2 150. In or about February 1997, Respondent was retained by Rosen Rusev and
3 his wife, Galena Rusev, for representation in their immigration matters.
4

5 151. After learning that Mr. and Mrs. Rusev had entered the country in 1991 and
6 had remained after their visas expired, Respondent recommended that they apply
7 for political asylum. Respondent prepared and filed an application for asylum in
8 June 1997.
9

10 152. During the course of Respondent's representation, Mr. Rusev routinely
11 encountered difficulty in contacting Respondent.

12 153. During the course of Respondent's representation, Respondent failed to
13 adequately communicate with Mr. and Mrs. Rusev. Respondent failed to inform
14 them of the adverse ruling in their immigration case and missed or rescheduled
15 numerous appointments. Respondent alleges that Mr. Rusev often contacted her
16 on her cell phone and often came to the office without a scheduled appointment.
17
18

19 154. Respondent timely filed notice of appeal to the adverse ruling by the
20 Immigration court but failed to file an appellate brief after indicating on the notice
21 of appeal that she would be doing so and after having requested an extension of
22 time in which to do so. Respondent alleges that she did not receive the notice
23 granting the extension of time until after the extended due date.
24

25 **COUNT EIGHTEEN (04-1097/Henriksen)**

1 155. In or about October 1999, Respondent was retained by Doug Henrikson
2 (“Henriksen”) to represent him in his immigration matters.

3
4 156. Henriksen had been working in the United States since June 1991 on a TN
5 visa, had married a United States citizen, Danielle Martelle, in November 1998,
6 and was seeking lawful permanent residency.

7
8 157. Henriksen was involved in a motorcycle accident in October 1999 and was
9 left paralyzed from the chest down and wheelchair bound.

10 158. The forms necessary for Henriksen’s permanent residency were filed by
11 Respondent in November 1999.

12
13 159. When Henriksen’s marriage began to falter, he no longer qualified for
14 permanent residency and Respondent suggested that he pursue an investor visa.
15 Respondent instructed Henriksen to disregard the previously filed application for
16 permanent residency. The application for an investor visa was filed in October
17 2001.

18
19 160. When Henriksen was notified of a scheduled interview regarding his
20 application for permanent residency, he did not appear pursuant to instructions
21 from Respondent. Henriksen subsequently learned that this application was
22 deemed abandoned and was denied. Respondent alleges that she was ethically
23 obligated to tell Mr. Henriksen not to attend as he was divorced prior to the
24 interview and was no longer eligible.
25

1 161. During the course of the representation Henriksen frequently and routinely
2 encountered difficulty in being able to communicate with Respondent due to
3 Respondent's failure to return phone calls and due to Respondent's frequent
4 cancellation of meetings. Respondent affirmatively alleges that this occurred
5 during the time period of her mother's illness and subsequent death.
6

7 162. Respondent purported to have prepared and filed an application for a
8 humanitarian visa for Henriksen in or about December 2002. However, in or
9 about August or September 2003, Henriksen learned that the INS had no record of
10 such an application having been filed. Respondent asserts that she went to the
11 Phoenix District office of INS three times to request humanitarian parole with Mr.
12 Henriksen.
13
14

15 163. Respondent failed to produce any evidence in support of her claim that she
16 had filed Henriksen's application for a humanitarian parole in December 2002.
17 Respondent affirmatively alleges that she has produced evidence that an
18 application for a humanitarian parole was filed in July of 2003. Respondent
19 asserts that no action was taken on the application and that an information officer
20 told her that Mr. Henriksen would not be removed because he was handicapped.
21 That application was denied.
22
23
24
25

1 **CONDITIONAL ADMISSIONS & DISMISSED ALEGATIONS**

2 **COUNT ONE (File No. 03-0342/McQueen):** Respondent, in exchange for the
3 stated form of discipline, conditionally admits that her conduct, as set forth
4 herein, violated the following Rules of Professional Conduct and Rules of the
5 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, and 8.4(d).
6

7 The State Bar has agreed, as part of this settlement, and in light of evidentiary
8 concerns to dismiss the allegation of violation of ER 8.4(c) and 1.16(d).
9

10 **COUNT TWO (File No. 03-0603/Smeltzer):** The State Bar has agreed, as part
11 of this settlement, and in light of evidentiary concerns, to dismiss the allegations
12 contained in this count.
13

14 **COUNT THREE (File No. 03-0654/Fonseca):** Respondent, in exchange for the
15 stated form of discipline, conditionally admits that her conduct, as set forth
16 herein, violated the following Rules of Professional Conduct and Rules of the
17 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, and 8.4(d).
18

19 The State Bar has agreed, as part of this settlement, and in light of evidentiary
20 concerns to dismiss the allegation of violation of ER 8.4(c).
21

22 **COUNT FOUR (File No. 03-0655/Radford):** Respondent, in exchange for the
23 stated form of discipline, conditionally admits that her conduct, as set forth
24 herein, violated the following Rules of Professional Conduct and Rules of the
25 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, and 8.4(d).

1 The State Bar has agreed, as part of this settlement, and in light of evidentiary
2 concerns to dismiss the allegation of violation of ER 8.4(c).

3
4 **COUNT FIVE (File No. 03-0947/Safar):** Respondent, in exchange for the
5 stated form of discipline, conditionally admits that her conduct, as set forth
6 herein, violated the following Rules of Professional Conduct and Rules of the
7 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, and 8.4(d).

8
9 **COUNT SIX (File No. 03-1326/Overgaard):** Respondent, in exchange for the
10 stated form of discipline, conditionally admits that her conduct, as set forth
11 herein, violated the following Rules of Professional Conduct and Rules of the
12 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4 and 8.4(d).

13
14 The State Bar has agreed, as part of this settlement, and in light of evidentiary
15 concerns to dismiss the allegation of violation of ER 8.4(c).

16
17 **COUNT SEVEN (File No. 03-1384/DeJong):** Respondent, in exchange for the
18 stated form of discipline, conditionally admits that her conduct, as set forth
19 herein, violated the following Rules of Professional Conduct and Rules of the
20 Supreme Court: Rule 42, specifically ER 1.4.

21
22 The State Bar has agreed, as part of this settlement, and in light of evidentiary
23 concerns to dismiss the allegation of violation of ERs 1.2 and 1.3.

24
25 **COUNT EIGHT (File No. 03-1434/Klaus):** Respondent, in exchange for the
stated form of discipline, conditionally admits that her conduct, as set forth

1 herein, violated the following Rules of Professional Conduct and Rules of the
2 Supreme Court: Rule 42, specifically ER 1.4.

3
4 The State Bar has agreed, as part of this settlement, and in light of evidentiary
5 concerns to dismiss the allegation of violation of ER 1.3.

6 **COUNT NINE (File No. 03-1469/Rivera):** Respondent, in exchange for the
7 stated form of discipline, conditionally admits that her conduct, as set forth
8 herein, violated the following Rules of Professional Conduct and Rules of the
9 Supreme Court: Rule 42, specifically ERs 1.2, 1.3, 1.4, and 8.4(d).

10
11 The State Bar has agreed, as part of this settlement, and in light of evidentiary
12 concerns to dismiss the allegation of violation of ERs 1.1 and 8.4(c).

13
14 **COUNT TEN (File No. 03-1700/Salvatierra):** Respondent, in exchange for the
15 stated form of discipline, conditionally admits that her conduct, as set forth
16 herein, violated the following Rules of Professional Conduct and Rules of the
17 Supreme Court: Rule 42, specifically ERs 1.2, 1.3, 1.4, and 8.4(d).

18
19 The State Bar has agreed, in exchange for this agreement and in light of
20 evidentiary concerns, to dismiss the allegations of violations of ERs 1.15, 1.16(d)
21 and 8.4(c). The State Bar has also agreed to dismiss the allegation of a violation
22 of ER 1.1 in exchange for this agreement.

23
24 **COUNT ELEVEN (File No. 03-1816/Beard):** Respondent, in exchange for the
25 stated form of discipline, conditionally admits that her conduct, as set forth

1 herein, violated the following Rules of Professional Conduct and Rules of the
2 Supreme Court: Rule 42, specifically ERs 1.2, 1.3, 1.4, and 8.4(c) and (d).

3
4 The State Bar has agreed, as part of this settlement, and in light of evidentiary
5 concerns to dismiss the allegation of violation of ER 3.3 and 8.4(c). The State
6 Bar has also agreed to dismiss the allegation of a violation of ER 1.1 in exchange
7 for this agreement.

8
9 **COUNT TWELVE (File No. 04-0016/Brown):** Respondent, in exchange for
10 the stated form of discipline, conditionally admits that her conduct, as set forth
11 herein, violated the following Rules of Professional Conduct and Rules of the
12 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, 3.2, and 8.4(d).

13
14 The State Bar has agreed, as part of this settlement, and in light of evidentiary
15 concerns to dismiss the allegation of violation of ER 8.4(c).

16
17 **COUNT THIRTEEN (File No. 04-0994/Montanez):** Respondent, in exchange
18 for the stated form of discipline, conditionally admits that her conduct, as set forth
19 herein, violated the following Rules of Professional Conduct and Rules of the
20 Supreme Court: Rule 42, specifically ER 1.2, 1.3, and 1.4.

21
22 **COUNT FOURTEEN (File No. 04-1316/Eryomenko):** Respondent, in
23 exchange for the stated form of discipline, conditionally admits that her conduct,
24 as set forth herein, violated the following Rules of Professional Conduct and
25 Rules of the Supreme Court: Rule 42, specifically ER 1.1, 1.2, and 1.3.

1 **COUNT FIFTEEN (File No. 04-0823/Giacconi):** Respondent, in exchange for
2 the stated form of discipline, conditionally admits that her conduct, as set forth
3 herein, violated the following Rules of Professional Conduct and Rules of the
4 Supreme Court: Rule 42, specifically ER 1.2, 1.3, 1.4, and 8.4(d).

6 The State Bar has agreed, as part of this settlement, and in light of evidentiary
7 concerns to dismiss the allegation of violation of ER 8.4(c).

8
9 **COUNT SIXTEEN (File No. 04-1179/Gomez):** Respondent, in exchange for
10 the stated form of discipline, conditionally admits that her conduct, as set forth
11 herein, violated the following Rules of Professional Conduct and Rules of the
12 Supreme Court: Rule 42, specifically ERs 1.1, 1.2, 1.3, 1.4, and 8.4(d).

13
14 The State Bar has agreed, as part of this settlement, and in light of evidentiary
15 concerns to dismiss the allegation of violation of ER 8.4(c).

16 **COUNT SEVENTEEN (File No. 04-1190/Rusev):** Respondent, in exchange for
17 the stated form of discipline, conditionally admits that her conduct, as set forth
18 herein, violated the following Rules of Professional Conduct and Rules of the
19 Supreme Court: Rule 42, specifically ERs 1.2, 1.3, 1.4, and 8.4(d).

20
21 **COUNT EIGHTEEN (File No. 04-1097/Henriksen):** Respondent, in exchange
22 for the stated form of discipline, conditionally admits that her conduct, as set forth
23 herein, violated the following Rules of Professional Conduct and Rules of the
24 Supreme Court: Rule 42, specifically ERs 1.2, 1.3, 1.4, and 8.4(d).

1 The State Bar has agreed, as part of this settlement, and in light of evidentiary
2 concerns to dismiss the allegation of violation of ER 8.4(c).

3
4 **ABA STANDARDS**

5 The ABA *Standards* list the following factors to consider in imposing the
6 appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the
7 actual or potential injury caused by the lawyer's misconduct, and (4) the
8 existence of aggravating or mitigating circumstances. ABA *Standard* 3.0.

9
10 A review of ABA *Standard* 4.0 (Violations of Duties Owed to Clients)
11 indicates that disbarment is the presumptive sanction for Respondent's
12 misconduct. *Standard* 4.41 (Lack of Diligence) specifically provides:

13
14 Disbarment is generally appropriate when:

15 (a) a lawyer abandons the practice and causes **serious or potentially**
16 **serious injury to a client:** or

17 (b) a lawyer knowingly fails to perform services for a client and
18 causes serious or potentially serious injury to a client; or

19 (c) lawyer engages in a pattern of neglect with respect to client
20 matters and **causes serious or potentially serious injury to a client.**

21 Respondent engaged in a pattern of violations of the rules including failing
22 to diligently represent or communicate with clients, and making negligent
23 misstatements to clients concerning the status of their cases. Although there is
24 some dispute between the parties in this matter as to the exact harm caused to
25 clients in these cases, the parties agree that lack of diligence and failure to

1 adequately communicate in immigration cases had the potential to seriously
2 injure clients; therefore, disbarment is the presumptive sanction.

3
4 **AGGRAVATING AND MITIGATING FACTORS**

5 This Hearing Officer then considered aggravating and mitigating factors in
6 this case, pursuant to *Standards* 9.22 and 9.32, respectively. Aggravating and
7 mitigating circumstances can serve to justify an increase or decrease in the degree
8 of discipline to be imposed. *Matter of Ockrassa*, 165 Ariz. 576, 799 P.2d 1350
9 (1990).
10

11 This Hearing Officer agrees with the parties that there are three applicable
12 aggravating circumstances in this matter:

- 13
14 (c) a pattern of misconduct;¹
15 (d) multiple offenses; and
16 (i) substantial experience in the practice of law.

17 The Hearing Officer agrees with the parties that there are six mitigating
18 factors present in this matter:

- 19
20 (a) absence of a prior disciplinary history;
21 (c) personal or emotional problems;²
22

23
24 ¹ Although present, little weight is given to this factor, as a pattern of neglect was considered as
25 primary misconduct in application of the presumptive sanction of disbarment, *Standard*
4.41(c). In addition, Respondent does not have a history of similar prior offenses which could
warrant application of this factor.

² See sealed hearing exhibits 9, 11 and 12.

1 (d) timely good faith effort to make restitution or to rectify consequences of
2 misconduct;

3 (e) full and free disclosure to disciplinary board or cooperative attitude
4 toward proceedings;

5 (g) character or reputation;³ and,

6 (l) remorse.⁴

7
8 Given the significant mitigation present in the record, a decrease in the
9 presumptive sanction of disbarment to suspension is justified. A proportionality
10 review of cases with similar misconduct will provide further guidance as to the
11 appropriateness of the agreed upon sanction.
12

13 PROPORTIONALITY REVIEW

14
15 To have an effective system of professional sanctions, there must be
16 internal consistency, and it is appropriate to examine sanctions imposed in cases
17 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567
18 (1994) (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the
19 discipline in each case must be tailored to the individual case, as neither
20
21
22

23
24 ³ The evidence establishes that Respondent has made outstanding contributions to the legal system and
Respondent is highly regarded by the immigration bench. See Respondent's exhibits 1-8 and 10.

25 ⁴ Although not offered by the parties, this Hearing Officer also finds that mitigating factor of remorse is
present. See hearing transcript, pp. 181-184 and Respondent's exhibit 4. The presence of this factor
further supports the Agreement.

1 perfection nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz.
2 604, 615 (1984).

3
4 Recent cases providing guidance in determining a proportional sanction
5 include the following:

6 In *Matter of Augustine*, Arizona Supreme Court No. State Bar-04-0114-D,
7 Disciplinary Commission Nos. 02-0207, 02-1137, 02-1916 (2004), the Supreme
8 Court after the lawyer defaulted in the case in chief, but appeared for the
9 aggravation/mitigation hearing, suspended the lawyer for two (2) years and also
10 ordered restitution, probation and costs. The misconduct found in connection
11 with the three count complaint included violations of ER 1.3 (Diligence), ER 1.4
12 (Communications), ER 1.15(b) (Safekeeping Property), ER 1.16(d) (Declining or
13 Terminating Representation), 8.1(b) (Bar Admission and Disciplinary Matters:
14 knowingly failing to respond to a lawful demand for information from a
15 disciplinary authority), 8.4(c) (Misconduct-involving dishonesty), 8.4(d)
16 (Misconduct-prejudicial to the administration of justice) as well as Ariz.R.Sup.Ct.
17 53(f) (Grounds for Discipline: Failure to furnish information) and 53(d) (Grounds
18 for Discipline: Evading Service or refusal to cooperate). The hearing officer
19 found aggravating factors of 9.22(c) a pattern of misconduct, (d) multiple
20 offenses, (e) bad faith obstruction of the disciplinary proceeding, (i) substantial
21 experience in the practice of law, and (j) indifference to making restitution. The
22
23
24
25

1 hearing officer found mitigating factors of 9.32(a) absence of a prior disciplinary
2 record, (b) absence of a dishonest or selfish motive, (c) personal or emotional
3 problems, (g) character or reputation, (h) physical and mental disability or
4 impairment, and (l) remorse. The Disciplinary Commission found the hearing
5 officer's recommendation of a six month and one day suspension was based on
6 "clearly erroneous findings and conclusions relating to the presence of mitigating
7 factors 9.32(c) personal and emotional problems, 9.32(h) physical disability and
8 9.32(i) mental disability" and recommended the two year suspension that the
9 Supreme Court ultimately imposed.

12 In *Matter of Mendoza*, SB-03-0112-D (2003), the attorney consented to a
13 suspension for 18 months, followed by probation for 2 years and a requirement to
14 participate in LOMAP and MAP pursuant to an 11-count complaint. The
15 attorney's violations included the failure to keep a client advised of the risk in
16 proceeding in light of a settlement offer, a repeated pattern of lack of diligence,
17 failure to safeguard client's property, the failure to respond to dispositive motions
18 as well as the failure to respond to the Bar. Violations of ERs 1.2, 1.3, 1.4, 1.15,
19 1.16, 3.2, 8.1 and 8.4 were found as well as violations of Rules 43, 44 and 51
20 (effective prior to December 2003). The presumptive sanction was suspension
21 pursuant to *Standard 4.42*. The Commission found the three aggravating factors:
22 pattern of misconduct, multiple offenses and failure to cooperate and provide
23
24
25

1 information in the investigation of the charges. Mitigation factors were: no prior
2 disciplinary history, no selfish or dishonest motive, personal and emotional
3 problems, withdrawal from private practice and the fact that he had not been the
4 subject of additional charges of misconduct.
5

6 In *Matter of McGuire*, SB-99-0029-D (1999), the attorney was suspended
7 for two years, having been the subject of a 4-count complaint alleging that he
8 failed to adequately communicate with clients, failed to prepare necessary
9 documents, abandoned his clients and then failed to return unearned fees and
10 client's property. The attorney also failed to cooperate with the State Bar and
11 after the attorney failed to file an Answer to the Complaint default was entered.
12 *Standard 4.42* was found to apply, with suspension the presumptive sanction.
13 The attorney's lack of prior disciplinary history was found in mitigation, multiple
14 offenses and bad faith obstruction of the disciplinary proceeding by intentionally
15 failing to comply with the rules or orders of the disciplinary agency were found in
16 aggravation.
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20 In *Matter of Bertz*, No. SB-03-0024-D (2003), the attorney was disbarred
21 for numerous violations in a twenty-count complaint including numerous
22 violations of failing to diligently represent clients, and failing to adequately
23 communicate with clients. There were numerous aggravating factors including
24 failure to cooperate with the disciplinary process, and multiple offenses. In
25

1 mitigation, the lawyer had no prior disciplinary record, and was inexperienced in
2 the practice of law. It should be noted that the allegations in this matter were
3 deemed admitted by way of default. In the proportionality section of the report in
4 that case, the Hearing Officer cited to numerous other disbarment cases for
5 lawyers with similar misconduct.
6

7 This Hearing Officer is satisfied that the agreed-upon sanction providing
8 for a four-year suspension and two years of probation is well within the range of
9 an appropriate sanction for similar misconduct involving a lack of diligence and
10 inadequate communication, with potentially serious injury occurring to multiple
11 clients.
12

13 RECOMMENDATION

14 The purpose of lawyer discipline is not to punish the lawyer, but to protect
15 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859
16 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the
17 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.
18 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in
19 the bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361
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1 (1994), particularly important in this case which has apparently attracted
2 considerable public attention.⁵ A member of the public attended this hearing.

3
4 In imposing discipline, it is appropriate to consider the facts of each case,
5 the American Bar Association's *Standards for Imposing Lawyer Sanctions*
6 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.
7 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

8
9 While at the commencement of this hearing the undersigned seriously
10 questioned the sanction the parties tendered and cautioned counsel that clear and
11 convincing evidence would be required to overcome the presumption of
12 disbarment,⁶ after careful consideration and deliberation, it is recommended that
13 disbarment would be inappropriate in this case. Respondent's conduct affected
14 several clients over a contemporaneous period due to a significant personal
15 tragedy and clearly poor office management. However, Respondent was a stellar
16 contributor to the specialized immigration bar, bench and public during her
17 career. She maintained those values that led her to such worthy recognition and
18 prominence throughout her professional life,⁷ albeit they failed her as she was
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22 ⁵ See hearing transcript, pp. 78-79, 155-156.

23 ⁶ See hearing transcript, pp. 156-158.

24 ⁷ She apologetically expressed them at the hearing. See hearing transcript, pp. 41, 49, 57, 62-63, 70,
25 78, 83, and especially 92-94.

1 overcome with personal difficulties. Indeed, it may have been her desire to serve
2 that, unmanaged, led her to this disaster. Respondent is not one the Bar would
3 want to purge itself of; disbarment is indeed too permanent and severe. However,
4 a lengthy suspension followed by a rigorous reinstatement and watchful probation
5 which would include practice management oversight would be appropriate in
6 hopes that Respondent would once again contribute her talents to the profession.
7

8
9 Upon consideration of the facts, application of the *Standards*, including
10 aggravating and mitigating factors, and a proportionality analysis, this Hearing
11 Officer recommends acceptance of the Tender of Admissions and Agreement for
12 Discipline by Consent and the Joint Memorandum in Support of Agreement for
13 Discipline by Consent which provides for the following:
14

15 1. Respondent shall be suspended for a period of four years retroactive to
16 March 23, 2003, the date Respondent was placed on Interim Suspension.
17

18 2. Upon reinstatement, Respondent shall be placed on probation for two
19 years. The terms of probation are as follows:

20 a. Respondent shall contact the director of the State Bar's Law Office
21 Management Assistance Program (LOMAP) within 30 days of the date of the
22 order of reinstatement. The director of LOMAP shall develop a probation
23 contract, and its terms shall be incorporated herein by reference. The probation
24 period will begin to run when all parties have signed the probation contract.
25

4
5 violate the Rules of Professional Conduct or other rules of the Supreme Court of
6 Arizona.

7 d. Respondent shall submit to fee arbitration in Files Nos. 03-0655, 03-
8 0947, 03-1326, 03-1469, 03-1700, 03-1816, 04-0994, 04-0823, 04-1179, 04-
9 1190, 04-1097, if the client wishes to do so. Clients shall be advised in writing
10 that fee arbitration is available at no charge to them.⁸

11
12 e. In the event that Respondent fails to comply with any of the
13 foregoing conditions, and the State Bar receives information, bar counsel shall
14 file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule
15 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty
16 days after receipt of said notice, to determine whether the terms of probation
17 have been violated and if an additional sanction should be imposed. In the event
18 there is an allegation that any of these terms have been violated, the burden of proof
19 shall be on the State Bar of Arizona to prove non-compliance by clear and
20 convincing evidence.
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⁸ See Tender, Restitution, pp.41-44 and hearing transcript, pp.10-11 and 94-104.

