

Restitution

1	Count One	Mrs. Aruna Gautam	\$ 698.00
2	Count Four	Mr. Emilian Andrei and Ms. Laura Lorimar	<u>\$6,000.00</u>
		TOTAL	\$6,698.00

Discussion

4 The Hearing Officer, as well as the Commission, found clear and convincing evidence
5 that Respondent violated Rule 42, Ariz. R. S. Ct., specifically:

6	ER 1.2 (scope of representation)	1 Violation
7		
8	ER 1.3 (diligence)	3 Violations
9	ER 1.4 (communication)	4 Violations
10	ER 1.5 (fees)	1 Violation
11	ER 1.15(a) (safekeeping property)	3 Violations
12	ER 1.16 (termination of representation)	3 Violations
13	ER 8.4 (misconduct)	1 Violation
14		
15	ER 8.4(d) (conduct prejudicial to the administration of justice)	2 Violations
16	SCR 43 (trust account records/maintenance)	1 Violation
17		
18	SCR 44 (duty to deposit/safeguard client property/funds)	1 Violation
19		
20	SCR 53(f) (failure to furnish information or respond promptly)	1 Violation

21 Respondent is not licensed to practice law in Arizona, but is licensed to practice in
22 Pennsylvania. Respondent voluntarily waived his presence at the hearing and stated his
23 intent not to appear. At the pre-hearing conference, Respondent stated that he was in the
24 process of "winding down" his law practice in Arizona before the Immigration and
25 Naturalization Service (INS).
26

A brief summary of the Hearing Officer's findings of fact are as follows:

1 In Count One, Respondent represented clients in obtaining a H-1 Visa from the
2 U.S. Consulate in March 2002. The clients paid Respondent a flat fee of \$1,500 for
3 document preparation and one interview with the U.S. Consulate Office in Nogales,
4 Sonora, Mexico. Respondent thereafter repeatedly told the clients that he was unable to
5 obtain an appointment at the U.S. Consulate Office. The clients were forced to retain a
6 second lawyer, who secured an appointment within a few days, and then requested a refund
7 from Respondent. Although initially agreeing to refund the \$1,500.00 flat fee, Respondent
8 sent the clients a check for \$1,000.00, which was returned for insufficient funds. The
9 clients paid Respondent a total of \$1,673.00 and incurred additional fees which included a
10 \$10.00 fee for a returned check and \$15.00 in telephone charges. The client was ultimately
11 able to cash the \$1,000.00 check.
12

13 In Count Two, Respondent was retained for \$5,000.00 to obtain an E-2 Non-
14 Immigrant Treaty-Investor Visa through the U.S. Consulate, Nogales, Sonora, Mexico and
15 to assist with the purchase and incorporation of an Arizona business in September 2002.
16 Respondent failed to adequately communicate with his clients. Respondent did not return
17 the clients' phone calls, failed to timely secure an appointment with the U.S. Consulate,
18 failed to properly prepare the E-2 Investment Visa forms, and failed to file incorporation
19 papers. The clients were forced to return to the United Kingdom so they would not be in
20 the United States illegally and to begin the visa process there. Respondent ultimately
21 obtained the E-2 visas on behalf of the clients, but the clients testified that Respondent's
22 services were not worth \$5,000.00.
23
24

25 In Count Three, Respondent was retained to represent a client in an INS
26 proceeding. The client paid Respondent \$1,500. Respondent thereafter failed to file a pre-

1 hearing statement and failed to appear for scheduled hearings. When the client went to
2 Respondent's office, it was vacant. Because the client could not locate Respondent, she
3 was forced to obtain new counsel and was unable to retrieve her file containing documents
4 that supported her 10 years of continued presence in the United States. Respondent
5 eventually delivered the client's file to the State Bar pursuant to subpoena.

6 In Count Four, Respondent was paid a \$10,000 retainer to file an appeal on behalf
7 of a client seeking asylum, to initiate a proceeding that would allow the client to remain in
8 the United States based on a recent marriage to a U.S. citizen, and to obtain a I-765 work
9 permit. The appeal was denied and the Order stated that in the 11 months that the appeal
10 was pending, Respondent failed to supplement the record with evidence to support his
11 factual assertions of ineffective assistance of counsel. Respondent thereafter filed an I-130
12 Alien Spouse Petition with the INS and I-765 Application for Employment authorization
13 with checks for the applicable fees on behalf of the clients. INS did not process the
14 applications because the checks submitted as payment by Respondent were returned by the
15 bank for insufficient funds. After agreeing to re-file the petition and application,
16 Respondent then closed his office. The client was deported to Romania. Respondent
17 failed to provide a refund to his clients and failed to forward the client's file to subsequent
18 counsel. The file was later produced to the State Bar pursuant to subpoena, but contained
19 limited work product and was void of any billing statements.
20

21 In determining the appropriate sanction, the Supreme Court considers the ABA
22 *STANDARDS* a suitable guideline. *In re Kaplan*, 179 Ariz. 175, 877 P.2d 274 (1994). The
23 Supreme Court and the Commission are consistent in utilizing them to determine
24 appropriate sanctions for attorney discipline. In imposing a sanction after a finding of
25 misconduct, consideration is given to the duty violated, the lawyer's mental state, the
26

1 actual or potential injury caused by the misconduct and the existence of aggravating and
2 mitigating factors. *See* ABA *STANDARDS* 3.0.

3 The Commission, as well as the Hearing Officer, reviewed *Standard* 7.0 Violations
4 of Duties Owed as a Professional. *Standard* 7.1 provides:

5 Disbarment is generally appropriate when a lawyer
6 knowingly engages in conduct that is a violation of a duty
7 owed as a professional with the intent to obtain a benefit for
8 the lawyer or another, and causes serious or potentially
9 serious injury to a client, the public, or the legal system.

10 Respondent repeatedly engaged in unethical conduct over a course of a year with four
11 separate clients that caused, or potentially caused, serious injury to his clients. *See* Hearing
12 Officer Report, p. 15:3.

13 Having concluded that disbarment is the presumptive sanction for Respondent's
14 misconduct, the Commission reviewed ABA *STANDARDS* 9.22 and 9.32, aggravating and
15 mitigating factors, and agreed with the Hearing Officer that seven aggravating factors are
16 present in the record: 9.22(b) dishonest or selfish motive, (c) pattern of misconduct, (d)
17 multiple offenses, (g) refusal to acknowledge wrongful nature of conduct, (h) vulnerability
18 of victim, (i) substantial experience in the practice of law, and indifference to making
19 restitution. The Commission agreed there is one factor in mitigation: 9.32(j) delay in the
20 disciplinary proceeding.

21 Upon consideration of an appropriate sanction, the Commission as well as the
22 Hearing Officer, reluctantly recommends censure, which is the most severe sanction
23 available for non-members of the State Bar of Arizona,² restitution and costs of these
24 disciplinary proceedings. It is further recommended that the Supreme Court recommend
25

26

² *See Matter of Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994).

1 that the Disciplinary Board of the State of Pennsylvania disbar Respondent and that the
2 State Bar furnish a copy of the final decision to appropriate federal courts and agencies.

3
4 RESPECTFULLY SUBMITTED this 12th day of October, 2004.

5 

6
7 Craig B. Mehrens, Chair
8 Disciplinary Commission

9 Original filed with the Disciplinary Clerk
10 this 12th day of October, 2004.

11 Copy of the foregoing mailed
12 this 12th day of October, 2004, to:

13 John Pressley Todd
14 Hearing Officer 7X
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007-2997

18 Eric R. Bowman
19 Respondent
20 P.O. Box 1392
21 Phoenix, AZ 85001

22 and

23 Eric R. Bowman
24 Respondent
25 8585 East Hartford Drive, #110
26 Scottsdale, AZ 85255

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

by: K. Weigand

/mps