

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of :
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 :
NURY A. TURKEL, ESQUIRE : **Disciplinary Docket No. 2019-D148**
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Respondent, :
 :
 :
A Member of the Bar of the :
District of Columbia Court of Appeals. :
Bar Number: 978639 :
Date of Admission: December 8, 2008 :
 :

PETITION FOR NEGOTIATED DISCIPLINE

Disciplinary Counsel and Respondent agree to enter a negotiated discipline pursuant to D.C. Bar Rule XI, § 12.1 and Board Rule 17. Respondent is the subject of the above-referenced investigation by Disciplinary Counsel pursuant to D.C. Bar Rule XI §§ 6(a)(2), 8(a), and Board Rule 2.1.

Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals.

I. Statement of the Nature of the Matter

This matter was initiated by a disciplinary complaint alleging ineffective assistance of counsel, pursuant to Matter of Lozada, 19 I&N Dec. 637 (BIA 1988)

filed by successor counsel to Respondent's former immigration client, A.S. A.S.'s family retained Respondent to assist him in obtaining asylum in the U.S. A.S. alleged that Respondent failed to enter his appearance with the Immigration Court after the asylum officer interview resulted in referral to the Immigration Court. A.S. further alleged that neither he nor Respondent attended the Immigration Court's hearing on that referral because neither he nor Respondent received notice from the government that his case was scheduled for a court hearing. The Immigration Court then entered an in-absentia order placing A.S. into removal proceedings. A.S. alleged that Respondent failed to advise him that an in-absentia order meant he could be removed from the U.S. A.S. alleged that his family then retained Respondent to represent him in removal proceedings and Respondent failed to file a timely motion to reopen.

During our investigation, Disciplinary Counsel determined that Respondent did not maintain complete financial records and was unable to provide complete records pertaining to the payments he received for his representation of A.S.

II. Stipulation of Facts and Charges

The conduct and standards that Respondent stipulates are as follows:

1. On or about August 16, 2013, A.S. entered the United States on a B2 visitor visa, he was 14 years old.
2. On July 24, 2014, the legal guardian of A.S. retained Respondent to

represent A.S. in an affirmative asylum application. Respondent provided A.S. and his legal guardian with a retainer agreement to represent A.S. regarding his I-589 asylum petition based on status as a Uyghur. Respondent charged a flat fee of \$4,000. The scope of the representation was to represent the client in preparing and filing an I-589 asylum application and then appearing at the interview before an officer of the U.S. Citizenship and Immigration Services ("USCIS) who would make the initial determination of the application.

3. A.S.'s family paid Respondent the legal fee of \$4,000.

4. On May 5, 2015, Respondent filed A.S.'s asylum application (I-589) with USCIS.

5. On May 19, 2016, A.S. attended his asylum interview with Respondent at the Boston Asylum office.

6. On July 28, 2016, A.S. moved. A.S. alleged that his family notified Respondent of the new address, but the parties differ on when Respondent became aware of the move.

7. A.S.'s sister alleged that she became concerned that Respondent did not file a change of address for A.S., so she decided to update their address with USPS. A.S.'s sister did not file a change of address form with USCIS.

8. On September 21, 2016, A.S.'s asylum officer issued a letter

indicating the application interview did not result in approval of the application, referring to the matter for a de novo hearing before the Immigration Court at a date to be scheduled.

9. Respondent did not file a notice of entry of appearance as attorney with the Immigration Court.

10. On December 11, 2016, A.S.'s guardian retained Respondent to handle the removal proceedings before the Immigration Court.

11. The parties agreed to a fee of \$4,000 to handle the motion to reopen the case.

12. On December 30, 2016, A.S.'s legal guardian paid Respondent \$2,000 by check. She deposited the funds directly into Respondent's trust account.

13. Respondent did not check with the Court about the scheduling of the Master Calendar hearing.

14. On January 10, 2017, Respondent filed a change of address for A.S. with USCIS.

15. Neither Respondent nor A.S. received notice that the Master Calendar hearing, which the Court had scheduled for June 14, 2017.

16. As neither Respondent nor A.S.'s family received the notice of the

June 14, 2017, hearing, no one attended the hearing, and the judge issued an in-absentia removal order.

17. In September 2017, Respondent learned of the in-absentia order when he checked with the clerk of the court about the status of the case.

18. Respondent did not explain to A.S. or his family that an in-absentia order meant A.S. could be removed from the United States.

19. A.S.'s legal guardian retained Respondent to contest the in-absentia order against him and file a motion to reopen.

20. On September 6, 2017, Respondent filed an entry of appearance with the Immigration Court, which restated the proper address for A.S. as had been filed with USCIS on January 10, 2017.

21. On December 21, 2017, the Immigration Judge issued the order of removal in A.S.'s case due to his failure to appear on June 14, 2017.

22. By statute, A.S. was required to file a motion to reopen within 180-days of the December 21, 2017, order.

23. In March 2018, Respondent enlisted the assistance of another attorney, to help draft A.S.'s motion to reopen.

24. In April 2018, the Guardian asked Respondent about the progress of the case. Respondent told her he and the other attorney intended to file the motion

within the next few days.

25. Respondent and the other attorney missed the 180-day deadline for filing the motion to reopen.

26. Respondent did not tell his client or the client's family that he had missed the deadline. Respondent also did not respond to requests for status updates by the client and his family. Respondent believed his co-counsel was handling these communications.

27. In January 2019, A.S.'s legal guardian hired successor counsel to assist A.S. in reopening his immigration case.

28. On April 1, 2019, A.S., through his new counsel, filed a disciplinary complaint.

29. A.S. as part of the bar complaint requested a refund of the legal fees paid to Respondent.

30. Respondent refunded \$2,000 of the legal fees paid to him for the December 2016 engagement.

31. When Disciplinary Counsel asked Respondent to produce records accounting for the legal fees Respondent received from A.S.'s family, Respondent produced only a copy of his trust account bank statement for January 2017 and a trust deposit receipt for the client's above-referenced \$2,000 payment.

32. Respondent violated the following D.C. Rules of Professional Conduct or parallel violations under 8 CFR 1003.102 (EIOR grounds for discipline)¹:

a. Rules 1.1(a) and 1.1(b), in that Respondent failed to provide competent representation and failed to serve his client with the skill and care commensurate with that generally afforded to clients by other lawyers in similar matters;

b. Rules 1.3(a) and 1.3(c), in that he failed to represent his client diligently and failed to act with reasonable promptness in representing his client;

c. Rules 1.4(a) and (b), in that he failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and failing to explain a matter to the extent reasonably necessary to permit his client to make informed decisions regarding the representation;

d. Rule 1.15(a), in that Respondent failed to maintain complete financial records;

¹ The parties agree that choice of laws issues need not be resolved in a Negotiated Petition. See *In re Jenkins*, 23-BG-0545 (D.C. 2023).

e. Rule 1.16(d), in that Respondent failed to take timely steps to the extent reasonably practicable to protect a client's interests by refunding any advance fee or expense that had not been earned or incurred.

III. Statement of Promises

Disciplinary Counsel has not made any promises regarding the underlying matter other than to recommend the sanction set forth in this negotiated disposition.

IV. The Agreed-Upon Sanction

A. Agreed Sanction

Respondent and Disciplinary Counsel have agreed that the appropriate sanction for the stipulated misconduct and Rule violations in this matter is a 30-day suspension, fully stayed in favor of a one-year probation with conditions.

Respondent and Disciplinary Counsel have agreed to the following conditions of this negotiated disposition:

1. Respondent must take three hours of pre-approved continuing legal education related to the maintenance of trust accounts, record keeping, and/or safekeeping client property. Respondent must take three hours of pre-approved continuing legal education in Immigration law. Respondent must certify and provide documentary proof that he has met this requirement to the Office of Disciplinary Counsel at any time before the Court issues an Order and no later than six months

of the Court's final order.

2. From the date on which this agreement is signed by Respondent, he shall not engage in any misconduct in this or any other jurisdiction. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may request that Respondent be required to serve the suspension previously stayed herein.

B. Relevant Precedent

As set forth below, the agreed-upon sanction in this matter is appropriate given the range of sanctions in cases involving incompetence, lack of diligence and neglect, failure to communicate, failure to maintain financial records, and failure to protect a client's interests, as well as the mitigating factors present. Cases involving some of the same Rule violations have resulted in sanctions ranging from Informal Admonitions to short suspensions.

Sanctions for violations of somewhat similar groupings of Rules in other cases have ranged from a 45-day suspension to a four-month suspension, and some of the suspensions have been partially or fully stayed in favor of probation. Violations of Rule 1.15(a) may result in different sanctions depending upon the misconduct.

The cases that have resulted in Informal Admonitions involve substantial mitigation such as the attorney's: lack of disciplinary history, prompt

communication about the outcome of the case, acceptance of responsibility for the misconduct, payment of restitution to the client, informing the client that he or she may have a malpractice claim and providing the client with the attorney's malpractice insurance carrier, and taking steps to protect or salvage the client's legal interests in order to lessen the effect of the misconduct. See Isadore B. Katz Esquire, BDN 2008-D484 (July 8, 2009) (attorney violated Rules 1.1(a), 1.1(b), 1.3(a), and 1.3(c) by failing to file malpractice claim before statute of limitations expired); *In re Dharma Devarajan*, Esquire, BDN 2006-D113 (May 24, 2007) (attorney with no disciplinary history violated Rules 1.1(a), 1.1(b), and 1.3(a) by failing to file personal injury lawsuit but immediately notified professional liability insurance carrier of the incident and advised client).

The cases that have resulted in short suspensions involve, *inter alia*, aggravating factors such as failure to accept responsibility during disciplinary proceedings, and failure to inform the client of court decisions. See *In re Outlaw*, 917 A.2d 684 (D.C. 2007) (60-day suspension for attorney who failed to file personal injury action before expiration of statute of limitations); *In re Ontell*, 593 A.2d 1038 (D.C. 1991) (30-day suspension where attorney neglected two cases, allowing default judgment in one and dismissal in another – but was candid in disciplinary proceedings and voluntarily compensated one client financially for damages

resulting from his misconduct); *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension for attorney who failed to file asylum application for client and lied to client about status of the application but later made restitution and assisted successor counsel); *In re Banks*, 577 A.2d 316 (D.C. 1990) (60-day suspension with all but 30-days stayed in favor of one-year probation where attorney failed to file personal injury complaint before statute of limitations expired and had prior disciplinary history).

C. Mitigating Circumstances

A 30-day stayed suspension is justified in this case because it is within the range of sanctions and takes into account the mitigating factors, which include: (a) Respondent has no prior discipline; (b) Respondent has taken full responsibility for his misconduct and has demonstrated remorse; (c) Respondent has fully cooperated with Disciplinary Counsel and volunteered for an interview; (d) Respondent has refunded in full the sum received in the December 2016 engagement.

WHEREFORE, the Office of Disciplinary Counsel requests that the Executive Attorney assign a Hearing Committee to review the petition for negotiated disposition pursuant to D.C. Bar Rule XI, § 12.1(c).

Respectfully submitted,

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