DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	:	
EDUARDO JUSTO DE POMAR, ESQUIRE	:	**Disciplinary Docket Nos. 2016-D290 and 2017-D168**
Respondent,	:	
A Member of the Bar of the District of Columbia Court of Appeals Bar Number: 492823 Date of Admission: June 6, 2005	:	

AMENDED PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar R. XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondent Eduardo Justo de Pomar, Esquire ("Respondent") respectfully submit this Amended Petition for Negotiated Disposition in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals.

I. STATEMENT OF THE NATURE OF THE MATTER BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION

In the first matter, Disciplinary Counsel received a complaint from Alma Zapata-Espinal, whom Respondent represented in her immigration case.

Ms. Zapata-Espinal alleged that Respondent had mishandled her asylum case and had charged her filing fees that were not paid to USCIS in her case.

In the second matter, Disciplinary Counsel received a complaint from Eduardo Macario, whom Respondent also represented in his immigration matter. Mr. Macario through his successor counsel alleged that Respondent had mishandled his case, failed to communicate with him, had prejudiced his case and failed to seek his objectives.

II. STIPULATION OF FACTS AND RULE VIOLATIONS

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on June 6, 2005, and assigned Bar number 492823.

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2. On March 29, 2013, Alma Zapata-Espinal was detained by Immigration Customs and Enforcement at the Texas border. Ms. Zapata-Espinal was found inadmissible to the United States and placed in expedited removal proceedings.

3. On April 1, 2013, Ms. Zapata-Espinal was released under an order of supervision to be interviewed later.

4. In February 2014, when Ms. Zapata-Espinal reported to the DHS office, DHS placed a GPS ankle bracelet monitor on her as a condition of her release.

5. On February 18, 2014, Ms. Zapata-Espinal visited Respondent's office to discuss her immigration matter and possible avenues of relief to remain in the U.S.

6. Respondent quoted Ms. Zapata-Espinal a fee of $3,000 to handle her asylum case but did not provide Ms. Zapata-Espinal a retainer agreement. Respondent also mentioned to Ms. Zapata-Espinal that each hearing he attended on her behalf would cost her an additional $250.

7. Respondent wrote down on a piece of paper the documents he wanted the client to bring him. Respondent also handwrote that the $3,000 would cover "asylum and court completed until it is decided" and he added that it didn't cover "appeals, waivers, changes, filing costs". Lastly, he included "you will go get your GED".

8. Ms. Zapata-Espinal made six payments to Respondent towards her legal fee. She paid Respondent a total of $3,815.00.

Date	***Amount***	***Amount paid to date***
2/24/2014	$1,000.00	$1,000.00
4/1/2014	$725.00	$1,725.00
4/28/2014	$900.00	$2,625.00
5/19/2014	$375.00	$3,000.00

10/5/2015	$465.00	$3,465.00
2/19/2016	$350.00	$3,815.00

9. Respondent deposited Ms. Zapata-Espinal's payments in his Bank of America checking account ending in #8200. The #8200 account was not a trust account.

10. Respondent did not have a trust account at the time of the representation.

11. On March 25, 2014, Respondent filed an asylum petition, a form I-589 application, with USCIS in Ms. Zapata-Espinal's case. This application did not trigger the 150-day rule to apply for employment authorization based on the asylum claim because Ms. Zapata-Espinal was in removal proceedings.

12. On April 30, 2014, Ms. Zapata-Espinal contacted Respondent to update her address.

13. USCIS scheduled a credible fear interview for May 6, 2014. Respondent notified USCIS that he would not attend the interview with the client.

14. On April 28, 2014, USCIS notified Respondent that the asylum interview was cancelled, based on a request received from Respondent's office.

15. The credible fear interview was re-scheduled for August 8, 2014. Ms. Zapata-Espinal did not appear for the interview because the scheduling notice was sent to her old address, and she was unaware of the new date.

16. The credible fear interview was then scheduled for September 17, 2014. Respondent notified USCIS that he would not attend the interview with the client.

17. Ms. Zapata-Espinal appeared for the credible fear interview. The asylum officer found she had a credible fear of returning to her country and referred the matter to the Immigration Court where she would be able to file a defensive asylum application and start the 150-day clock to apply for employment authorization.

18. In June 2015, Respondent incorrectly notified Ms. Zapata-Espinal that a work permit application could be filed on her behalf based on her pending asylum application. In his letter, Respondent asked Ms. Zapata Espinal to mail in passport size photos along with a $465.00 filing fee.

19. On October 5, 2015, Ms. Zapata-Espinal gave Respondent $465 in cash for the filing fee work permit application. Respondent deposited the $465 in his #8200 checking account.

20. Respondent filed the application but did not pay a filing fee because a filing fee was not required. Despite this, Respondent kept the $465 and did not refund it.

21. On October 7, 2015, USCIS received the application for Ms. Zapata- Espinal for the work permit application.

22. On December 31, 2015, USCIS denied the application for the work permit application and stated that the asylum office administratively closed Ms. Zapata-Espinal's asylum case when she failed to appear for her interview in April 2014.

23. On February 25, 2016, Respondent filed a second application for a work permit.

24. On February 26, 2016, Respondent filed a second, I-589 application with the Arlington Immigration Court.

25. On June 27, 2016, USCIS denied the work permit application because, according to USCIS records, Ms. Zapata-Espinal's application was premature.[1]

26. In July 2016, Ms. Zapata Espinal discharged Respondent because she was dissatisfied with his services. Respondent explained to Ms. Zapata-Espinal that

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[1] An asylum applicant may be able to obtain work authorization if 150 days have passed after they filed their application, and there has been no decision on their case from USCIS or the IJ. 8 U.S.C.A. § 1158(d)(2); 8 C.F.R. § 208.7(a).

the denial of the work authorization could be appealed but it would cost more money. The client responded that she had already paid for everything.

27. On August 8, 2016, successor counsel to Ms. Zapata-Espinal sent Respondent correspondence notifying him that the client had retained his firm and requesting a copy of her client file.

28. Subsequently, Respondent contacted the client despite having notice that she was represented by counsel.

29. Respondent did not complete the entire asylum case for the client, but he failed to refund any of the $3,000 he was paid.

30. On August 12, 2016, Ms. Zapata-Espinal filed a disciplinary complaint against Respondent.

31. On February 28, 2018, Respondent refunded $500 to the client.

32. Respondent's conduct violated the following District of Columbia Rules of Professional Conduct:

a. Rule 1.1(a), in that Respondent failed to provide competent representation;

b. Rule 1.1(b), in that Respondent failed to serve his client with requisite skill and care;

c. Rule 1.3(a), in that Respondent failed to represent his client with zeal and diligence within bounds of the law;

d. Rule 1.3(b)(1), in that Respondent intentionally failed to seek his client's lawful objectives;

e. Rule 1.4(b), in that Respondent failed to explain a matter to extent reasonably necessary to permit his client to make informed decisions regarding the representation;

f. Rule 1.5(a), in that Respondent's charged and collected an unreasonable fee;

g. Rule 1.5(b), in that Respondent did not communicate to his client in writing the basis or rate of his fee and the scope of the representation before or within a reasonable time after commencing the representation;

h. Rule 1.15(a), in that Respondent failed to hold advances of unearned fees and unincurred costs that were in his possession in connection with a representation separate from his own funds,

i. Rule 1.15(b), in that Respondent did not maintain an account with an "approved depository" for trust funds;

j. Rule 1.15(e), in that Respondent failed to obtain informed consent from the client to a different arrangement and engaged in commingling; and

k. Rule 1.16(d), in that, in connection with any termination of representation, Respondent failed to take timely steps to the extent reasonably practicable to protect the client's interests, such as refunding any advance payment of fee or expense that has not been earned or incurred.

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33. In January 2017, Eduardo Macario Ramirez, a Guatemalan national, was detained by Immigration and Customs Enforcement for driving while under the influence (DWI).

34. Mr. Macario was detained in Farmville, Virginia and a removal hearing was scheduled for February 21, 2017.

35. Elsi Nolasco, a friend of Mr. Macario, contacted Respondent and paid him a consultation fee to discuss Mr. Macario's case. Mr. Macario wished to be released from detention and adjust his status in the United States.

36. On January 9, 2017, Ms. Nolasco met with Respondent.

37. On January 13, 2017, Ms. Nolasco paid Respondent, $1,500 in cash, to represent Mr. Macario and request his release on bond from ICE detention.

38. Ms. Nolasco asked Respondent to visit Mr. Macario to discuss his case with him personally, but Respondent did not do so.

39. Respondent did not provide Ms. Nolasco or Mr. Macario a retainer agreement.

40. Respondent did not deposit the legal fees in a trust account.

41. On January 17, 2017, Respondent deposited the fees in his Bank of America checking account ending in #8200.

42. From January 13, 2017 to February 21, 2017, Respondent did not meet or have any conversations with Mr. Macario Ramirez.

43. On February 21, 2017, Respondent appeared at the removal hearing before Immigration Judge Snow. He submitted a notice of entry of appearance, EOIR-28.

44. Respondent conceded to the court that Mr. Macario was not eligible for any form of relief and requested voluntary departure for him to return to Guatemala.

45. Mr. Macario was not aware that Respondent would ask for his voluntary departure and did not agree with that decision.

46. At the end of the hearing, the Judge granted Mr. Macario voluntary departure.

47. Mr. Macario through the interpreter, addressed the Judge and said, "I need some kind of refuge."

48. The Court instructed Mr. Macario to talk to his lawyer, "Well, your lawyer didn't ask for that, so you'll have to talk to your lawyer if you want to change things."

49. At that point, Respondent falsely told the Judge that he was not aware Mr. Macario wanted some other type of relief. "I wasn't aware of this fact, your honor. I wasn't aware".

50. Following the hearing, Mr. Macario telephoned Respondent to ask why he requested voluntary departure. Respondent told the client that his case was completed. Mr. Macario told Respondent that it was unfair that Respondent did not do anything on his behalf, and he was paid in full.

51. On March 1, 2017, Mr. Macario filed a *pro se* request to reopen his case based on his fear of returning to Guatemala because he had been the victim of labor trafficking.

52. On March 16, 2017, Steven Smith, successor counsel, for Mr. Macario forwarded a request to Respondent for the client's file. Respondent replied and enclosed the client file.

53. On May 19, 2017, Mr. Smith on behalf of Mr. Macario filed a complaint with the Office of Disciplinary Counsel.

54. In his response to the complaint, Respondent admitted that he did not provide Ms. Nolasco or Mr. Macario with a retainer agreement and that he deposited the legal fees in his #8200 account on Monday, January 16, 2017.

55. Respondent falsely stated to Disciplinary Counsel that he waived his fee to appear in court and argue the case.

56. Respondent falsely stated to Disciplinary Counsel that he had completed the representation by appearing on behalf of the client and submitting the evidence to the court on the same day he received payment.

57. Respondent's conduct violated the following Virginia and/or District of Columbia Rules of Professional Conduct:

a. Virginia Rule 1.1(a) and/or D.C. Rule 1.1(a), in that Respondent failed to provide competent representation;

b. Virginia Rule 1.1(b) and/or D.C. Rule 1.1(b), in that Respondent failed to serve his client with the requisite skill and care;

c. Virginia Rule 1.3(a) and/or D.C. Rule 1.3(b), in that Respondent failed to represent his client with zeal and diligence within the bounds of the law;

d. Virginia Rule 1.3(b)(1) and/or D.C. Rule 1.3(b)(1), in that Respondent intentionally failed to seek his client's lawful objectives;

e. Virginia Rule 1.3(b)(2) and/or D.C. Rule 1.3(b)(2), in that Respondent intentionally prejudiced or damaged his client;

f. Virginia Rule 1.4(b) and/or D.C. Rule 1.4(b), in that Respondent failed to explain a matter to extent reasonably necessary to permit his client to make informed decisions regarding the representation;

g. D.C. Rule 1.5(b), in that Respondent did not communicate to his client in writing the basis or rate of his fee and the scope of the representation before or within a reasonable time after commencing the representation;

h. D.C. Rule 1.15(a), in that Respondent failed to hold advances of unearned fees and unincurred costs that were in his possession in connection with a representation separate from his own funds,

i. D.C. Rule 1.15(b), in that Respondent did not maintain an account with an "approved depository" for trust funds;

j. D.C. Rule 1.15(e), in that Respondent failed to obtain informed consent from the client to a different arrangement and thereby engaged in commingling;

k. Virginia Rule 3.3(a)(1) and/or D.C. Rule 3.3(a)(1), in that Respondent knowingly made a false statement of fact to a tribunal;

l. D.C. Rule 8.1(a), in that Respondent knowingly made false statements of fact to Disciplinary Counsel in connection with a disciplinary matter.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II, *supra*, other than those set forth above, or any sanction other than that set forth below.

IV. AGREED UPON SANCTION

Disciplinary Counsel and Respondent agree that the sanction to be imposed in this matter is a nine-month suspension, with 120-day stayed. Respondent shall not engage in any misconduct in this or any other jurisdiction within a year from his reinstatement. If Disciplinary Counsel has probable cause to believe that Respondent has engaged in any misconduct, Disciplinary Counsel may seek that Respondent be required to serve the remaining 120 days of the suspension previously stayed herein.

Respondent and Disciplinary Counsel have agreed that there are no additional conditions attached to this negotiated disposition that are not expressly agreed to in writing in this Petition.

Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be "justified, and not unduly lenient, taking into consideration the record as a whole." However, a justified sanction "does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h)." Bd. R. 17.5(a)(iii).

Sanctions for incompetence, neglect, failure to communicate in immigration matters with attendant dishonesty run from 30-day suspensions to disbarment, depending on the scope of the neglect and dishonesty. *See*, e.g., *In re Cole*, 967 A.2d 1264 (D.C. 2009) (30-day suspension where respondent neglected his client's asylum application, falsely assured his client that the application had been filed, and falsely explained that the delay was attributable to the court); *In re Kanu*, 5 A.3d 1 (D.C. 2010) (disbarment where respondent counseled her clients to provide false information on visa applications, failed to tell clients that their application had been denied, evaded their inquiries, and lied to them and Bar Counsel about refunding fees), *In re Perez*, 828 A.2d 206 (D.C. 2003) (60-day suspension with fitness and restitution for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(1), 1.3(b)(2), and 1.4(a) in a single immigration matter, but neglect was protracted and intentional and resulted in prejudice and damage to a vulnerable client), *In re Ryan*, 670 A.2d 375

(D.C. 1996) (four-month suspension with fitness and restitution for violating Rules 1.1, 1.3(b)(1), 1.3(b)(2), 1.16(d), 1.4(a), among other Rules, in five immigration law representations); *In re Rodriguez-Quesada*, 122 A.3d 913 (D.C. 2015) (2-year suspension with fitness and restitution for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b)(2), 1.3(c), 1.4(a), 1.4(b), 1.16(d), 3.3(a)(1), 8.4(c) and 8.4(d) in representing multiple vulnerable immigrant clients); *In re Ukwu*, 926 A.2d 1106 (D.C. 2007) (One year suspension with fitness and restitution for violating Rules 1.1(a), 1.1(b), 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 3.3(a)(1), and 8.4(d) in five immigration law representations lawyer gave knowing false testimony at the hearing); *In re Vohra*, 68 A.3d 766, 786, 789 (D.C. 2013) (three year suspension with fitness for violating Rules 1.1, 1.3, 1.4, 3.3, 8.1, and 8.4 in an immigration matter. The Respondent delayed and procrastinated his client's case, misrepresented the actual status of the case to his clients, forged a visa document, made numerous misrepresentations to Disciplinary Counsel, and testified falsely before the Hearing Committee; Respondent also had prior disciplinary history).

Mitigating Factors

Mitigating circumstances include that Respondent: 1) acknowledges his misconduct; 2) has cooperated with Disciplinary Counsel; 3) has expressed remorse and (4) refunded all fees to the clients.

Aggravating Factors

The only aggravating factor is that Respondent has a disciplinary history, having previously been informally admonished for a violation of Rule 7.1.

Justification of Recommended Sanction

A nine-month suspension all stayed but for 120 days is justified because Respondent has acknowledged his misconduct, cooperated with Disciplinary Counsel and expressed remorse.

Disciplinary Counsel has considered the resources required to prosecute the case and the likelihood of prevailing on the merits if this case went to hearing and believes that a negotiated disposition is warranted. Respondent has considered the resources necessary to defend the case and the possibility of a greater sanction if the matter where to go to hearing.

Considering the misconduct along with the mitigating and aggravating factors, the parties submit that the agreed-upon sanction is appropriate.

V. RESPONDENT'S AFFIDAVIT

In further support of this Petition for Negotiated Discipline, attached is Respondent's Affidavit pursuant to D.C. Bar R. XI, § 12.1(b)(2).

CONCLUSION

Wherefore, Respondent and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the Amended Petition for Negotiated Discipline pursuant to D.C. Bar R. XI § 12.1(c).

Dated: August 27, 2020

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