FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against HERBERT AZUBUIKE IGBANUGO, a Minnesota Attorney, Registration No. 191139.	**PETITION FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on July 15, 1988. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history:

A. On July 29, 2004, respondent was issued an admonition for improperly handling a client's nonrefundable retainer, in violation of Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC), as interpreted by Lawyers Professional Responsibility Board Opinion No. 15.

B. On February 2, 2007, respondent was issued an admonition for failing to adequately communicate with a client, failing to appear for the client's immigration hearing, failing to assert a claim of ineffective assistance of counsel

in the client's case and failing to explain to the client that he did not intend to assert such a claim, in violation of Rules 1.4(b) and 1.7, MRPC.

C. On May 12, 2009, respondent was issued a Panel admonition for failing to maintain his trust account books and records in the required manner, resulting in shortages in his trust account balance, in violation of Rule 1.15(a), (c)(3) and (h), MRPC.

FIRST COUNT

Ivanov Matter

1. In February 1995 Nikolay Ivanov and Nora Ivanova, and their son, Aleksandr Ivanov ("the Ivanovs"), lawfully entered the United States from the Republic of Georgia. The Ivanovs' native language is Russian. Although Nikolay and Nora's English skills have improved while they have been in the United States, those skills remain at a basic level.

2. On June 7, 2002, the Ivanovs entered into a contract for legal services with Blackwell, Igbanugo, Engen & Saffold, P.A., the law firm with which respondent was then associated, for representation regarding an asylum application to the immigration court. This contract provided for a $5,000 flat fee.

3. The Ivanovs thereafter entered into the following additional contracts for legal services:

a. On September 30, 2004, the Ivanovs entered into a contract with Blackwell & Igbanugo P.A. ("Blackwell Firm"), the law firm with which respondent was then associated, for representation in an appeal of the denial of the Ivanovs' asylum application to the Board of Immigration Appeals (BIA) for a $3,000 flat fee.

b. On January 11, 2006, the Ivanovs entered into a contract with the Blackwell Firm for representation in an appeal of the denial of the Ivanovs'

asylum application to the Eighth Circuit Court of Appeals ("Court of Appeals") for a $10,500 flat fee.

c. On March 17, 2006, the Ivanovs entered into a contract with the Blackwell Firm for representation of Aleksandr regarding his immigration status for a $1,500 flat fee.

d. On June 29, 2006, the Ivanovs entered into a contract with the Blackwell Firm for representation of Aleksandr regarding his immigration status for a $750 flat fee.

e. On October 10, 2007, the Ivanovs entered into a contract with Igbanugo Partners Int'l Law Firm, PLLC" ("Igbanugo Firm"), which is the firm with which respondent currently practices, for representation of Aleksandr regarding his immigration status for a $3,500 flat fee.

4. A translator was usually present during the Ivanovs' meetings with respondent. Their understanding of the above contracts, and the "rider to contract for legal services" discussed below, is based on respondent's explanation of those contracts through the translator.

5. Respondent is the founding and sole shareholder and partner of the Igbanugo Firm. Respondent serves as "Supervising Attorney" for all or most of the Igbanugo Firm's immigration clients, including the Ivanovs.

6. With the exception of the June 7, 2002, contract, all of the Ivanovs' contracts for legal services provided that the flat fee covered the cost of two master calendar hearings and one individual hearing. The contracts further provided that $500 would be charged for each additional master calendar hearing and $750 would be charged for each additional individual hearing.

7. On March 27, 2006, September 27, 2006, January 17, 2007, and August 22, 2007, respondent or an associate attended additional master calendar hearings on behalf of Aleksandr Ivanov pursuant to the March 17, 2006, and/or June 29, 2006, contracts for

legal services. Consistent with the language in these contracts, the Ivanovs were charged an additional $2,000 ($500 times four) for these hearings.

8. The Ivanovs' arrangement with respondent regarding their contracts with him was that they would make monthly payments in a specified amount against the total amount due on those contracts. The Ivanovs made payments to respondent consistent with this arrangement.

9. In January 2006, respondent filed with the Court of Appeals an appeal of the denial of the Ivanovs' asylum application, as contemplated by the January 11, 2006, contract for legal services.

10. On April 24, 2007, the Court of Appeals vacated the immigration court's denial of the Ivanovs' asylum application and granted asylum to the Ivanovs.

11. On June 29, 2007, the Igbanugo Firm and the Ivanovs entered into a "rider to contract for legal services." This rider apparently supplemented the Ivanovs' January 11, 2006, contract and provided as follows:

> In consideration of the professional services to be rendered by IGBANUGO PARTNERS and our discounted fees and costs for your matter, you agree at the outset of representation that IGBANUGO PARTNERS is entitled to attorneys' fees and costs for successful litigation against the government in the federal court(s) and for litigating the fee request pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2414(d) & 5 U.S.C. § 504 et. seq., in the event of a court order or settlement agreement.

12. On or about August 22, 2007, respondent filed with the Court of Appeals a motion for attorney's fees and supporting documents pursuant to the EAJA. Respondent's motion sought $32,129 in attorney's fees, $26,036 of which was for work in connection with the Ivanovs' petition for review to the Court of Appeals, and $6,093 of which was for work on the petition for attorney's fees pursuant to the EAJA.

13. By order dated September 20, 2007, the Court of Appeals granted the Ivanovs' petition for attorney's fees pursuant to the EAJA. The court awarded $32,129 in attorney's fees and $250 as reimbursement of the Ivanovs' filing fee.

14. Respondent told the Ivanovs about the EAJA fee award. The Ivanovs understood that, as a result of the award, they would no longer be responsible for payment of respondent's fees.

15. The Igbanugo Firm retained the fees awarded by the Court of Appeals in their entirety and did not credit any portion of those fees against the fees then owed by the Ivanovs for work on the appeal to the Court of Appeals.

16. Respondent determined to bring a lawsuit in the name of the Igbanugo Firm against the Ivanovs for attorney's fees and costs he alleged to be unpaid. At the time, the Ivanovs were no longer respondent's clients. Accordingly, at respondent's directive, a complaint requesting a $12,569 judgment for attorney's fees and costs was prepared, and arrangements were made to serve a summons and the complaint on the Ivanovs. The complaint specifically alleged that the fees and costs requested were due under the Ivanovs' January 11, 2006, June 29, 2007, and October 10, 2007, contracts for legal services.

17. On December 14, 2010, at respondent's directive, a process server served a summons and the complaint against the Ivanovs on an unknown individual at 1350 Nicollet Mall, Unit 1004, Minneapolis, MN ("Nicollet Mall address"). Respondent had provided the process server with the Nicollet Mall address and had directed the process server to serve whoever answered the door at that address.

18. On March 16, 2011, at respondent's directive, an Igbanugo Firm associate filed with the Hennepin County district court the summons and complaint, and an

affidavit of service signed on January 12, 2011, alleging service on Nikolay Ivanov at the Nicollet Mall address.[1]

19. In fact, however, neither Nikolay nor Nora has ever resided at the Nicollet Mall address and neither was actually personally served with the November 9, 2010, summons and complaint at that location or any other. The Nicollet Mall address is an address at which the Ivanovs' son, Aleksandr, previously resided, independent of the Ivanovs.

20. At the time of service and filing of the summons, complaint and affidavit of service, the Igbanugo Firm's billing and other records reflected the following address for the Ivanovs: 690 Broadway Street NE, Minneapolis, MN 55413. In fact, the Ivanovs had continuously resided at that address for more than 15 years.

21. A certificate of representation and parties subsequently filed by an Igbanugo Firm associate incorrectly informed the court that the Ivanovs' address was the Nicollet Mall address. As a result, all of the court's notices were sent to the Ivanovs at the Nicollet Mall address and returned to the court as undeliverable.

22. The Igbanugo Firm's complaint against the Ivanovs includes the following statement: "On January 11, 2006; June 29, 2007 and October 10, 2007, Defendants Nikolay Ivanov and Nora Ivanov [sic], as clients, executed legally binding contracts with the above-named Plaintiff for legal services regarding various legal matters." This statement was false. The "above-named Plaintiff" was the Igbanugo Firm, but the Ivanovs' January 11, 2006, contract was with the Blackwell Firm.

23. Further, the $12,569 in fees and costs requested in the Igbanugo Firm's complaint against the Ivanovs actually included fees and costs due under contracts between the Igbanugo Firm and the Ivanovs other than those specifically identified in the complaint. In particular, this $12,569 included $2,000 for attendance at additional

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[1] No affidavit of service reflecting personal service on Nora Ivanova was provided.

master calendar hearings pursuant to the March 17, 2006, and/or June 29, 2006, contracts regarding Aleksandr's immigration status.

24. Finally, the billing statements that served as the basis for the $12,569 requested in the Igbanugo Firm's complaint against the Ivanovs contain numerous errors, ambiguities and unsubstantiated and improper charges. For example, these billing statements (a) included an additional $610 charge under the September 30, 2004, contract for legal services that is not provided for by the contract, (b) included a $500 charge for attendance at a 2009 master calendar hearing that did not actually concern the Ivanovs, and (c) failed to clearly reflect the crediting of the $250 filing fee awarded by the Court of Appeals.

25. As a result of the Ivanovs not having been served with the Igbanugo Firm's complaint against them, and the court's notices of filing having been sent to, and returned from, the Nicollet Mall address, the Ivanovs were not informed of the lawsuit against them and did not file or serve an answer to the complaint.

26. The Igbanugo Firm moved for a default judgment against the Ivanovs. The hearing on that motion, which respondent attended, was held on July 13, 2011.

27. Prior to the July 13, 2011, hearing, the Igbanugo Firm submitted two affidavits to the court in support of its request for a default judgment. One of these affidavits was in the name of, and signed by, respondent. Neither of these affidavits informed the court of the EAJA recovery. Further, because the matter proceeded by default, respondent did not submit any of the contracts for legal services, billing statements, records of payments or other documents to the court.

28. In his affidavit to the court, respondent made the following statement, "I am deeply disturbed by the Ivanovs [sic] unholy efforts to steal my services without paying just compensation of which they were contractually bound." Respondent's statement in this regard had no substantial purpose other than to embarrass or burden the Ivanovs.

29. On July 13, 2011, the court issued its order for default judgment awarding judgment in favor of respondent and against the Ivanovs in the amount of $13,121, i.e., the $12,569 in fees and costs requested in the complaint, plus additional costs of $552. Respondent thereafter undertook action to collect on the judgment, including attaching one or more of the Ivanovs' bank accounts.

30. Upon learning of the Igbanugo Firm's judgment against them, the Ivanovs submitted a complaint against respondent to the Director. In his February 22, 2013, response to the Ivanovs' complaint, respondent characterized that complaint as "unholy and misplaced."

31. Respondent's conduct in the Ivanov matter, including failing to adequately communicate with them, charging an unreasonable fee, failing to adequately explain his legal fees in connection with the EAJA rider, bringing frivolous and harassing litigation, making false statements to the court both overtly and by omission, and making harassing statements regarding a former client while seeking to collect attorney's fees, violated Rules 1.4(a)(3), 1.5(a) and (b), 3.1, 3.3(a)(1), 4.4(a), and 8.4(c) and (d), MRPC.

SECOND COUNT

Abosi Matter

32. In March 1992, Emeka Kenneth Abosi entered the United States on a visitor visa from his native Nigeria. He remained in the United States without authorization after the six-month visitor visa expired. In September 1994, Abosi married a United States citizen. In early-1995, Abosi applied for an adjustment of status to permanent resident based upon his marriage to a U.S. citizen.

33. The government questioned the validity of Abosi's marriage. In mid-2000, Abosi retained respondent to represent him. At the time, respondent was a partner in the Blackwell Firm.

34. Ultimately, respondent was successful in having Abosi's status adjusted to lawful permanent resident, which occurred on December 2, 2000. Abosi paid respondent in full for his legal services.

35. On January 30, 2002, upon returning to the United States from a trip to Nigeria, Abosi was cited at the Minneapolis-St. Paul airport for possession of a small amount of marijuana, a petty misdemeanor offense. Abosi paid the fine.

36. On November 6, 2002, Abosi made another trip to Nigeria. Upon Abosi's return to the United States from this trip, his earlier conviction for marijuana possession was noted. Abosi was detained and interviewed at the Minneapolis-St. Paul airport.

37. As a result of his earlier conviction, Abosi was classified as an arriving alien under immigration law and was charged as being subject to removal. On May 30, 2003, removal proceedings were formally initiated against Abosi by the issuance of a notice to appear. Abosi again retained respondent to represent him in the matter.

38. Between May 2003 and September 2009, respondent represented Abosi in removal proceedings before the immigration court and regarding a motion to withdraw Abosi's guilty plea to the petty misdemeanor marijuana offense in Hennepin County district court.

39. On September 11, 2009, the immigration court denied respondent's motion to terminate removal proceedings. On September 23, 2009, a bench warrant was issued for Abosi's arrest. That same day, respondent and Abosi attended an immigration court hearing. Abosi was arrested after the hearing. Respondent was present when Abosi was taken into custody. Abosi was thereafter held at an immigration detention center in Elk River, Minnesota.

40. On September 23, 2009, respondent filed and served a motion for reconsideration of the court's determination, to which the government responded on September 24, 2009. The immigration court denied respondent's request for reconsideration.

41. Also on September 23, 2009, respondent filed and served a request for a bond hearing. A hearing on respondent's request, which respondent attended, was held on September 29, 2009. The court denied respondent's bond request and ordered Abosi to remain in custody. Respondent did not inform Abosi of his request for a bond hearing or that the immigration court had denied the request.

42. Following his September 23, 2009, arrest, Abosi and members of his family repeatedly attempted to reach respondent by telephone. Respondent did not respond to their calls. Respondent did not meet with Abosi at any time while he was in custody.

43. On approximately October 13, 2009, Abosi's wife and brother were finally able to speak with respondent. Respondent told them that a *habeas corpus* petition was necessary to secure Abosi's release and such a petition would require an additional $5,000 in attorney's fees and that Abosi would need to pay $5,000 towards his outstanding bill for total of $10,000. Respondent had not previously discussed with Abosi the option of filing such a petition.

44. By letter dated October 13, 2009, Abosi requested that, by October 16, 2009, respondent provide his wife with a copy of his entire file and a complete accounting of his fee payments. Abosi stated that because he was in custody, he did not have access to his file or billing information. Abosi stated he wanted to review his payments prior to determining whether to pay respondent the additional fees.

45. Respondent responded to Abosi's letter on October 16, 2009. In his response, respondent stated that he was releasing Abosi's file to his wife "immediately." Respondent did not, however, provide the requested accounting. Respondent informed Abosi that his only options were to await a written decision that could then be appealed to the BIA or to "go into Federal District Court on a habeas corpus petition." Finally, respondent stated that he would only go forward on Abosi's behalf if Abosi made a "$5,000 payment on the outstanding account and a $5,000 down

payment on the habeas petition." As a result, Abosi decided to seek new representation.

46. By letter dated November 5, 2009, attorney Gregory Bachmeier informed respondent that he had been substituted as counsel for Abosi and, based on an authorization he attached, requested a copy of Abosi's complete file. On information and belief, respondent produced Abosi's file in response to Bachmeier's request.

47. Bachmeier thereafter represented Abosi in removal proceedings before the immigration court and also on the petty misdemeanor marijuana offense in Hennepin County district court.

48. On November 20, 2009, Bachmeier and the prosecutor entered into an agreement to suspend prosecution of Abosi for the petty misdemeanor marijuana offense.

49. On November 30, 2009, Bachmeier served and filed an application for cancellation of removal on Abosi's behalf. A hearing on Abosi's application for cancellation of removal occurred on January 20, 2010. On that date, the immigration court issued an order granting the cancellation of removal.

50. Bachmeier represented Abosi in citizenship proceedings and Abosi is now a United States citizen.

51. After Abosi terminated the representation, respondent began to aggressively pursue collection of his unpaid attorney's fees. Abosi contested the amount of fees claimed by respondent as inflated based upon the parties' contracts and what Abosi had already paid. Respondent sent Abosi a series of letters that became increasingly harassing. In particular, respondent sent Abosi a May 2010 letter that contained the following statements:

- You are merely trying to escape your financial obligation to me. And unless you and your wife never again maintain any type of business or personal account in this country, I will get my money from you. You

have mistaken my kindness for weakness. I did not get where I am today allowing people, like you, to 'punk me.' Perhaps you need to be taught a lesson in life;

- So unless you want me to own all of your future earnings in your shipping business, or at least most of it, you will start by telephone my brother and telling him that you were wrong about me 'messing you up,' and I am demanding this of you; and

- And if I as much as hear from any other source that you have said any negative thing about me, my firm and your very difficult case, **I will come after you with 'hell and brimstone.' But please do not forget that after you answer to me, you will also answer to God, the father, who sees the evil that men do. What I am saying to you is you will additionally suffer divine justice because this is sheer evil and wickedness.** (Emphasis added.)

The above statements served no substantial purpose other than to burden or harass Abosi.

52. The fee agreements between respondent and Abosi can be summarized as follows:

a. The Blackwell Firm entered into the following fee agreements with Abosi: (a) March 1, 2004, for the filing of an application for waiver for a $4,000 flat fee;[2] (b) August 20, 2004, for the filing of a petition for alien relative and application for adjustment of status for a $2,750 flat fee;[3] and (c) October 28, 2005, for an appeal to the BIA for a $5,000 flat fee. All three of these fee agreements provided that the flat fee covered the cost of two master calendar hearings and one individual hearing, and entitled respondent to bill Abosi $500 for each additional master calendar hearing and $750 for each additional individual hearing; and

[2] This fee agreement was not signed by someone on behalf of the Blackwell Firm.
[3] This fee agreement was not signed on behalf of the Blackwell Firm or by Abosi.

b. The Igbanugo Firm entered into the following fee agreements with Abosi: (a) April 21, 2008, for a motion to vacate conviction and appeal to the BIA for a $8,000 flat fee; (b) July 1, 2009, for an expedited motion to terminate removal proceedings with the BIA and a motion for an expedited ruling by the immigration judge for a $2,500 flat fee; and (c) August 31, 2009, for dismissal of a new charge of inadmissibility for a $2,850 flat fee. All three of these fee agreements provided that the flat fee covered the cost of two master calendar hearings and one individual hearing, and entitled respondent to bill Abosi $500 for each additional master calendar hearing and $750 for each additional individual hearing.

The total amount of these fee agreements is $25,100 consisting of $11,750 for the fee agreements in the name of the Blackwell Firm and $13,350 for the fee agreements in the name of the Igbanugo Firm.

53. During the course of respondent's representation, Abosi paid respondent a total of $13,906, of which $9,906 was paid on the contracts between Abosi and the Igbanugo Firm. Abosi made his last payment to respondent on July 29, 2009.

54. In March 2011, respondent filed a Hennepin County district court lawsuit against Abosi through the Igbanugo Firm, of which respondent was the founding and sole partner and shareholder. The complaint sought $17,160.07 in attorney's fees and cited the October 28, 2005, April 21, 2008, July 1, 2009, and August 31, 2009, fee agreements as the basis for this number, in addition to ". . . other obligations of the clients as yet determined, and for prejudgment interest." The face value of the fee agreements identified in the complaint was $18,350, of which $13,350 was due on agreements between Abosi and the Igbanugo Firm. The complaint failed to credit any portion of the $13,906 in payments made by Abosi.

55. On March 5, 2012, a hearing before the district court occurred. Abosi appeared *pro se*. Raymond Gwenigale, an attorney in the Igbanugo Firm, represented

respondent at the hearing. Respondent also questioned Abosi. During the hearing, respondent improperly disclosed confidential client information by giving the following testimony:

> Now, the actual sworn declaration that he answered at the airport, maybe you're not familiar with it, Mr. Abosi admits to using marijuana outside of the United States. And, as his counsel he admitted to me that he smokes marijuana. I mean, he is a marijuana smoker. He admitted that. So, to come here and sit here and say that he never smoked marijuana is perjury.

The court warned respondent and ordered the testimony stricken for violating Abosi's attorney-client privilege.

56. On June 15, 2012, the district court issued findings of fact, conclusions of law and order for judgment in favor of Abosi. The district court concluded that respondent could not seek to enforce the fee agreements between Abosi and the Blackwell Firm because the lawsuit was brought in the name of the Igbanugo Firm and respondent presented no evidence of an assignment or conveyance by the Blackwell Firm of its contract rights with Abosi to the Igbanugo Firm.

57. With respect to the contracts between the Igbanugo Firm and Abosi, the district court found that (1) respondent provided no evidence regarding the exact number of hearings he attended that would have entitled him to more than the face amount of the contracts; (2) that it was reasonable to infer that respondent did not intend to charge any interest to Abosi; and (3) that the total amount due from Abosi to respondent on the contracts was the face amount of those contracts, i.e., $13,350. The district court further found that Abosi had paid respondent $9,906, leaving a balance due of $3,444.

58. Finally, the district court found that, as a result of respondent's failure to communicate with Abosi following his September 23, 2009, detainment, in violation of Rule 1.4, MRPC, respondent forfeited entitlement to $500 of the $3,444 balance otherwise remaining due respondent. The court also determined that, as a result of his

provision of incompetent counsel regarding the motion to withdraw Abosi's guilty plea to the petty misdemeanor marijuana offense, respondent forfeited an additional $2,850 making the total balance owed by Abosi zero. The court granted judgment in favor of Abosi.

59. Respondent appealed the district court's judgment to the Minnesota Court of Appeals. Abosi, who could not afford counsel, did not file a brief or appear for oral argument.

60. By its opinion dated April 8, 2013, the Minnesota Court of Appeals affirmed all of the findings and conclusions of the district court, with the exception of the finding that respondent provided incompetent counsel thus forfeiting legal fees in connection with the motion to withdraw Abosi's guilty plea to the petty misdemeanor marijuana offense. The Minnesota Court of Appeals affirmed the modified district court's judgment.[4]

61. Respondent thereafter continued to harass Abosi, including harassment based on Abosi's religion, and asserted a frivolous collection claim for $17,451 in attorney's fees despite the decision of the Minnesota Court of Appeals.

62. On June 4, 2013, respondent wrote to Abosi stating that he disagreed with the appellate court decision and that Abosi had escaped paying the full amount of his fees on a "technicality." Respondent's letter also contained the following statement:

> I do know that you present yourself to Pastor Nnaemeka Uchegbu as a Christian and God-fearing man and discussed this mater extensively with him. So you will ultimately answer to God for your **theft of my legal services**. Likewise, you must also answer to God for your false report with evil intent to the Minnesota Lawyers Professional Responsibility Board. The Lawyers Board is incapable of making any findings of

[4] By virtue of its reversal of the district court's determination that respondent forfeited entitlement to the entire remaining balance of fees otherwise due him, the Minnesota Court of Appeals granted judgment to the Igbanugo Firm in the amount of $2,944.

> impropriety with respect to my successful representation in your immigration matter.

Respondent's conduct in making these statements had no substantial purpose other than to burden or harass Abosi based on his religion and for having filed an ethics complaint.

63. On June 25, 2013, respondent sent Abosi a billing statement asserting that he owed $17,451.59. Respondent's claim was frivolous and in violation of the affirmed and modified judgment of the Minnesota Court of Appeals.

64. Respondent's conduct in the Abosi matter, including failing to return client communications or keep a client adequately informed as to the status of their matter, seeking to collect an unreasonable fee, filing a frivolous claim for legal fees, seeking to collect attorney's fees in violation of a court order for judgment denying the amount claimed by respondent, improper disclosure of client confidences during a hearing to collect unpaid attorney's fees, and harassing statements, including on the basis of the client's religion, to a former client while seeking to collect attorney's fees violated Rules 1.1, 1.4(a) and (b), 1.5(a), 3.1, 3.4(c), 4.4(a), and 8.4(d) and (g), MRPC.

THIRD COUNT

Rozhko/Radziuk Matter

65. In 2008, Rustam Rozhko and Katsiaryna Radziuk separately and lawfully entered the United States on visitor visas from the Ukraine and Belarus, respectively. Rozhko and Radziuk married while in the United States. Rozhko and Radziuk's native language is Russian.

66. On April 8, 2009, Rozhko filed an application for asylum *pro se*. Rozhko identified Radziuk as his wife on the application and she was included as a party to all the immigration proceedings that followed.

67. In his asylum application, Rozhko stated that the police arrested him and murdered his friend as a result of their membership in an oppositional party in the

Ukraine. Among the attachments to Rozhko's application were copies of various reports and other documents connected to his arrest, the harassment to which he was subsequently subjected and his friend's death. Also attached were copies of his and Radziuk's passports, visas and marriage certificate.

68. On August 13, 2009, Rozhko's application for asylum was referred to an immigration judge for adjudication in removal proceedings. On August 7, 2009, the immigration court issued to Rozhko and Radziuk notices to appear before it on October 29, 2009, "to show why you should not be removed from the United States."

69. On October 23, 2009, Rozhko and Radziuk retained the Igbanugo Firm to represent them in the immigration proceeding. Respondent assigned Katie De Grio, an associate attorney in his office, to work on the matter.

70. De Grio appeared before the immigration court with Rozhko and Radziuk on October 29, 2009. At that time, De Grio filed notices of entry of appearance identifying both De Grio and respondent as attorneys for Rozhko and Radziuk. A Russian translator was not present at this hearing.

71. At the hearing, the government provided written instructions outlining the requirements for the collection of "biometrics," i.e., photographs, fingerprints and signatures, and for obtaining a biometrics confirmation document. These biometrics requirements apply in every asylum matter and a failure to comply with them can result in the asylum application being deemed abandoned. *See,* 8 C.F.R. § 1003.47(d).

72. At the October 29, 2009, hearing, the immigration court also requested that, within 30 days of the hearing, Rozhko and Radziuk serve on the government's counsel, various original documents pertaining to the asylum application, including passports, birth certificates, identity cards, membership cards, etc., and file copies of those documents with the immigration court.

73. Also on October 29, 2009, the immigration court issued a notice of hearing scheduling another hearing in the matter for April 28, 2010. (This hearing was

subsequently continued by the immigration court to January 12, 2011, in order to accommodate the priority of another, unrelated case.)

74. There was no follow up to ensure that Rozhko and Radziuk appeared for collection of the required biometrics information or that the required original documents were timely served and filed.

75. On December 3, 2009, De Grio served on the government and filed with the immigration court the original and one copy of Rozhko and Radziuk's passports, visas and arrival/departure documents. These documents were only a small portion of the documents that had been requested by the immigration court.

76. De Grio left respondent's firm in approximately July 2010. At that time, respondent failed to ensure that action was taken to comply with the biometrics requirements or that the required original documents were served and filed.

77. Another hearing was held in Rozhko and Radziuk's asylum matter on January 12, 2011. (A Russian translator was present at this hearing.) Respondent attended this hearing as attorney for Rozhko and Radziuk. Again, by the time of the January 12, 2011, hearing, respondent had taken no action to ensure that Rozhko and Radziuk complied with the biometrics requirements or that the required original documents were served and filed.

78. At the January 12, 2011, hearing, the government's counsel noted that the required biometrics information had not been collected. Respondent acknowledged that, prior to the hearing, he had merely assumed, without checking, that the required biometrics information had been collected and did not ask Rozhko or Radziuk about their compliance with those requirements. Based on this failure, the government's counsel moved to have the asylum application deemed abandoned and dismissed. Respondent objected, arguing that the failure had been his and De Grio's responsibility, and not the responsibility of Rozhko and Radziuk.

79. Initially, the immigration court determined that it would grant the government's motion. After listening to a recording of the October 29, 2009, hearing, however, the court reversed its position. The court determined that it would proceed with the taking of Rozhko's testimony, rather than deeming the asylum application abandoned and dismissing it, and would inform bar counsel at the Executive Office for Immigration Review ("EOIR") of respondent and De Grio's actions in the handling of the matter.

80. During Rozhko's testimony, the immigration court inquired regarding the location or disposition of the original exhibits attached to his asylum application. Rozhko stated that the originals of those exhibits were at his home and that respondent had not asked him to produce them.

81. At the conclusion of the January 12, 2011, hearing, the immigration court reviewed with Rozhko and Radziuk the requirements regarding collection of biometrics information and emphasized the importance of Rozhko and Radziuk's compliance with those requirements. In addition, the court stated that the original exhibits to Rozhko's asylum application must be provided to the government's counsel within one week, i.e., by January 19, 2011.

82. Also on January 12, 2011, the immigration court issued a notice of hearing scheduling the next hearing for March 9, 2011. (The court subsequently continued this hearing for reasons unrelated to the parties to August 24, 2011.)

83. Upon returning to his office after the January 12, 2011, hearing, respondent formally assigned Gwenigale to work on the Rozhko and Radziuk matter.

84. On or about January 13, 2011, Rozhko and Radziuk visited respondent's office and personally provided to him the originals of the exhibits to Rozhko's asylum application.

85. On January 14, 2011, respondent wrote to the United States Citizenship and Immigration Services office ("USCIS") regarding collection of Rozhko and

Radziuk's biometrics information. On January 20, 2011, the USCIS issued notifications to Rozhko and Radziuk to appear for the collection of biometrics information. Rozhko and Radziuk thereafter appeared at USCIS as directed and the required biometrics information was collected.

86. On April 20, 2011, Gwenigale submitted to the immigration court various original documents, including verification of collection of biometrics information, and a "Closing Argument" in support of Rozhko and Radziuk's asylum application. This submission was made more than three months beyond the deadline set by the court during the January 12, 2011, hearing. Further, Gwenigale did not provide all the original documents the court had directed respondent to provide. Most notably, Gwenigale did not include any of the original application exhibits Rozhko and Radziuk delivered to respondent on or about January 13, 2011.

87. Another hearing was held in Rozhko and Radziuk's asylum matter on August 24, 2011. Respondent attended this hearing as attorney for Rozhko and Radziuk. (A Russian translator was present at this hearing.)

88. During the August 24, 2011, hearing, the immigration court noted that the original exhibits to the asylum application had not been received. Respondent found the original exhibits in his file.

89. As a result of respondent's failure to timely produce the original exhibits, the immigration court deemed Rozhko's asylum application abandoned and dismissed it. Respondent objected to the court's determination, arguing that the failure to provide the required original exhibits was a minor procedural issue. Respondent stated, "It's my fault."

90. At the August 24, 2011, hearing, the immigration court also found that respondent had provided Rozhko and Radziuk with ineffective assistance of counsel and stated that she intended to report respondent to the EOIR.

91. The immigration court explained to Rozhko and Radziuk that they could opt for either (a) one of two forms of voluntary departure, one of which would allow them to appeal, or (b) be ordered deported at the government's expense. Rozhko and Radziuk opted for the form of voluntary departure that would allow them to appeal the court's determination. The court informed Rozhko and Radziuk that the requirements of *Matter of Lozado*, 857 F.2d 10 (1st Cir., 1988), would have to be satisfied in connection with any such appeal, i.e., either respondent had to report himself to the Director or another attorney had to do so.

92. At the August 24, 2011, hearing, respondent requested to withdraw as counsel for Rozhko and Radziuk. Rozhko and Radziuk agreed to respondent's withdrawal and the court ordered respondent's withdrawal.

93. Rozhko and Radziuk hired a new attorney and appealed the August 24, 2011, decision to the BIA. On October 10, 2012, the BIA remanded the matter for further proceedings in the immigration court. The BIA's decision was based on Rozhko and Radziuk's having "sufficiently complied with the procedural requirements for establishing attorney negligence," and the immigration court's finding that respondent provided ineffective assistance of counsel. The final immigration court hearing regarding Rozhko and Radziuk's asylum application was held on May 22, 2013, and they are awaiting a final decision.

94. Respondent's conduct in the Rozhko/Radziuk matter, including failing to timely submit biometrics information and original documents as directed by the court and failing to adequately communicate with the clients, violated Rules 1.3, 1.4(a)(3), and 8.4(d), MRPC.

FOURTH COUNT

Failure to Timely Comply with a Court Order to Self-Report

95. On July 18, 2012, respondent appeared before the immigration court on behalf of a client. During the hearing, the court found that respondent had failed to

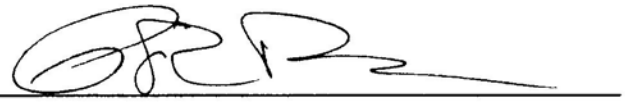
diligently and competently handle the client's matter and ordered respondent to self-report these violations to the Director within 30 days of the hearing. Respondent agreed on the record to do so. In light of this fact, the court agreed to continue the client's immigration matter until September 2012 to allow respondent additional time to submit required documentation.

96. Respondent did not self-report to the Director until September 26, 2012. Respondent's self-report was not compliant with the court-ordered 30-day deadline.

97. Respondent's conduct in failing to timely comply with the court's order to self-report to the Director, violated Rules 3.4(c) and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 15, 2013.



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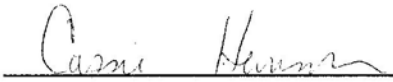

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