FILE NO. A13-2350

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against HERBERT AZUBUIKE IGBANUGO, a Minnesota Attorney, Registration No. 191139.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION FOR DISCIPLINE.**

A contested hearing in the above-captioned matter was heard on May 6, 7, 8, 9 and 12, 2014, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Timothy M. Burke appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent Herbert Azubuike Igbanugo appeared *pro se* and was personally present throughout the proceedings.

Jason A. Nielson, associate counsel at Igbanugo Partners Int'l Law Firm, PLLC, appeared with Respondent during the hearing and on behalf of Respondent during direct examination, cross examination and re-direct examination of Respondent.

The hearing was conducted on the Director's October 18, 2013, petition for disciplinary action and January 29, 2014, supplementary petition for disciplinary action.

The Director presented the live testimony of the following witnesses:

Emeka Kenneth Abosi

Katie De Grio Channing

Raymond Gwenigale

Nikolay Ivanov

Nora Ivanova

Ronald Lietz

Katsiaryna Radziuk

Mr. Igbanugo (Respondent) testified at the hearing and presented the live testimony of the following witnesses:

Sadou Bah

Dave Chapman,

Jerzy Guzior,

Laurel Igbanugo

Donnavon Lyons,

Maria Morales

Ulises Linares-Morales

Daryl Norring

Leah Olson,

R. Leo Pritschet

Dyan Williams.

Director's Exhibits Nos. 1 to 89, 91, 93-97 and Respondent's Exhibits Nos. 101-150, 153, 155 (pp. 1-3 and 7-18 only), 156-162, 168-179 and 181-183 were received into evidence.

Each party was asked to submit any proposed findings, conclusions and recommendation and a brief on or before May 23, 2014. Each party did so in a timely and complete fashion.

PROCEDURAL HISTORY

1. October 18, 2013: At the direction of the Lawyer's Professional Responsibility Board, the Director of the Office of Lawyer's Professional Responsibility (hereafter Director) issued a Petition for Disciplinary Action against the above named Respondent. Service was admitted by Respondent on October 29, 2013.
2. November 18, 2013: Respondent serves the Director and files his Answer to the Petition with the Supreme Court.
3. December 19, 2013: The Director files the Petition with the Supreme Court.
4. February 4, 2014: The Director issues a Supplementary Petition for Discipline and files the same with the Supreme Court on February 6, 2014.
5. February 12, 2014: By Order of the Supreme Court the matter is referred to the Honorable Paul A. Nelson, Retired Judge of the District Court of Minnesota to hear, and to make and report his findings of fact and recommendations for the disposition of said matter to the Court on or before June 11, 2014.
6. February 24, 2014: An Order was issued by the Referee setting a pretrial hearing and status conference on March 5, 2014.
7. February 26, 2014: The Respondent issues his Answer to the Supplementary Petition.
8. March 5, 2014: A pretrial hearing is held and on March 10, 2014 a Scheduling Order is issued. A further pretrial hearing is scheduled for April 18, 2014.
9. April 7, 2014: A motion in limine hearing is held via telephone on the Director's motion to take testimony by way of deposition for one witness. The motion is granted and an order is issued.

10. April 18, 2014: Respondent requests a motion in limine to permit evidence at the trial that is generally precluded by Rule 20(a) of the Rules of Lawyer's Professional Responsibility. The matter is argued at the pretrial hearing.
11. April 21, 2014: An order is issued denying the Respondent's request.
12. May 6,7,8,9 and 12, 2014. A full hearing is held on the Petitions at the Minnesota Judicial Center, St. Paul, Minnesota.
13. May 23, 2014: Both the Director and Respondent submit proposed findings and written arguments to the undersigned.

In his answers to the petition for disciplinary action ("R. ans.") and to the supplementary petition for disciplinary action ("R. supp. ans."), Respondent admitted certain factual allegations, denied others, and denied any rule violations. The findings and conclusions made below are based upon Respondent's admissions, the documentary evidence the parties submitted, the testimony presented, the demeanor and credibility of Respondent and the other witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony. For each factual finding made below, the undersigned evaluated the relevant documents and testimony in light of all the testimony received. The parties' arguments were duly considered in applying the findings of fact to the conclusions as to whether a rule violation occurred and any discipline recommended.

Based upon the evidence outlined above, and upon all of the files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

Background of Respondent

1. Respondent was born in Nigeria and came to the United States as a foreign student in September 1980. (Paragraphs 1-11 are based on submissions made by Resp.)
2. Respondent obtained his undergraduate degrees in International Relations and Economics from the University of Minnesota in 1983 and 1984 respectively, and his Juris Doctor Degree from Hamline University School of Law in 1987.
3. From 1988 to 2000, Respondent practiced law at Hassan & Reed, Ltd., which was founded by Jeffery A. Hassan and Larry E. Reed in 1985. The firm subsequently admitted as partners Judge James Clark of the Ramsey County District Court as well as the Honorable Keith Ellison of Minnesota's 5th Congressional District who was elected to the U.S. Congress in 2006.
4. In 2000, Respondent and Jerry Blackwell, along with two other partners, established Blackwell Igbanugo Engen & Saffold P.A. The law firm subsequently changed its name to Blackwell Igbanugo P.A. (Blackwell Igbanugo). By 2003, the firm had grown to 80-plus attorneys and support staff and expanded to Washington D. C. and Troy, Michigan.
5. Six years later, on or around November 1, 2006, Respondent and Mr. Blackwell officially ended their partnership, Blackwell Igbanugo dissolved, and Respondent established his own law firm, Igbanugo Partners Int'l Law Firm, PLLC (Igbanugo Partners.)
6. Igbanugo Partners first operated out of the former Blackwell Igbanugo location at 3601 W. 76th Street, Edina, MN, before relocating to its current location at 250 Marquette Avenue, Suite 1075, Minneapolis, MN 55401 in December 2006.

7. Respondent heads Igbanugo Partners' International Trade Law practice group focusing exclusively on helping U.S. companies and organizations comply with the U.S. Foreign Corrupt Practices Act [FCPA] in Sub-Saharan Africa.
8. Respondent also heads Igbanugo Partners' U.S. Immigration & Nationality Law practice group. He has practiced immigration law for over 25 years and has represented 15,000 to 20,000 clients from numerous countries and diverse cultures.
9. In addition, several years ago Respondent founded Sub-Saharan Africa Development Enterprises and Strategy Group (SADESG), a U.S. based, infrastructure development and finance brokerage services-focused consulting firm. SADESG caters to U.S. multi-national corporations, small and medium sized companies, NGOs and public organizations operating in Sub-Saharan Africa. The firm is also involved in Court Modernization and the training of Judges in the Court systems of Sub-Saharan African nations.
10. Respondent is admitted to practice law in the States of Minnesota and New York and before multiple U.S. Federal District Courts; the Second, Third, Fourth, Fifth, Seventh, Eighth, and Ninth Circuit Courts of Appeals; the U.S. Court of International Trade; and the U.S. Supreme Court.
11. Respondent is widely acknowledged as an expert in Immigration Law by colleagues practicing in that field. (Chapman, Guzior, Pritschet test.)

Ivanov Matter

12. 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 (R. ans. p. 6 ¶ 1, Ex. 7, p. 4; Ivanov test.; Ivanova

test.). The Ivanovs' native language is Russian (R. ans. p. 6 ¶ 1, Ex. 7, p. 4; Ivanov test.; Ivanova test.). Although Nikolay and Nora's English skills have improved while they have been in the United States, those skills remain at a basic level. A Russian interpreter was used during their testimony. (Ivanov test.; Ivanova test).

13. 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 (R. ans. p. 7 ¶ 2; Ex. 1). This contract provided for a $5,000 flat fee (R. ans. p. 7 ¶ 2; Ex. 1).

14. The Ivanovs thereafter entered into the following additional contracts for legal services (R. ans. p. 7 ¶ 3):

a. On September 30, 2004, the Ivanovs entered into a contract with Blackwell Igbanugo P.A. ("Blackwell Igbanugo"), 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 (R. ans. p. 7 ¶ 3; Ex. 2).

b. On January 11, 2006, the Ivanovs entered into a contract with Blackwell Igbanugo for representation in an appeal of the denial of the Ivanovs' asylum application to the Eighth Circuit Court of Appeals for a $10,500 flat fee (R. ans. p. 7 ¶ 3; Ex. 3).

c. On March 17, 2006, the Ivanovs entered into a contract with Blackwell Igbanugo for representation of Aleksandr regarding his immigration status for a $1,500 flat fee (R. ans. p. 7 ¶ 3; Ex. 4).

d. On June 29, 2006, the Ivanovs entered into a contract with Blackwell Igbanugo for representation of Aleksandr regarding his immigration status for a $750 flat fee (R. ans. p. 7 ¶ 3; Ex. 5).

e. On October 10, 2007, the Ivanovs entered into a contract with Igbanugo Partners Int'l Law Firm, PLLC ("Igbanugo Partners"), which is the firm with which Respondent currently practices, for representation of Aleksandr regarding his immigration status for a $3,500 flat fee (R. ans. p. 7 ¶ 3; Ex. 9).

15. An interpreter was sometimes present during the Ivanovs' meetings with respondent (Ivanov test.; Ivanova test). 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 (Ivanov test.; Ivanova test).
16. Respondent is the sole shareholder and partner of Igbanugo Partners (R. ans. p. 8 ¶ 5; Ex. 13 p. 7 ¶ 1; De Grio test.; Gwenigale test.). Although Respondent generally assigns one or more associates in the firm to a matter, Respondent was the lawyer in the firm with ultimate supervisory responsibility and who was ultimately responsible for representation of the firm's immigration clients, including the Ivanovs (R. ans. p. 8 ¶ 5; Ex. 13, p. 7 ¶ 1; De Grio test.; Gwenigale test.)
17. 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 (R. ans. p. 8 ¶ 6; Exs. 1-5, 9). 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 (R. ans. p. 8, ¶ 6; Exs. 1-5, 9).
18. 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 (R. ans. p. 8 ¶ 7; Ex. 19 p. 74). Consistent with the language in these contracts, the Ivanovs were

charged an additional $2,000 ($500 times four) for these hearings (R. ans. p. 8 ¶ 7; Ex. 19 p. 74; Ex. 20, p. 3).

19. 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 (R. ans. p. 8, ¶ 8). The Ivanovs made payments to Respondent consistent with this arrangement although not always in the amount required (Ivanova test., R. test.).

20. In January 2006, Respondent filed with the Eighth Circuit Court of Appeals an appeal of the denial of the Ivanovs' asylum application, as contemplated by the January 11, 2006, contract for legal services (R. ans. p. 8, ¶ 9; Ex. 7, p. 5).

21. On April 24, 2007, the Eighth Court of Appeals vacated the immigration court's denial of the Ivanovs' asylum application and granted asylum to the Ivanovs (R. ans. p. 8, ¶ 10; Ex. 7, pp. 5-6).

22. On June 29, 2007, Igbanugo Partners and the Ivanovs entered into a "rider to contract for legal services." (R. ans. p. 8 ¶ 11; Ex. 6.) This rider 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. (R. ans. p. 8 ¶ 11; Ex. 6.)

23. On or about August 22, 2007, Respondent filed with the Eighth Circuit Court of Appeals a motion for attorney's fees and supporting documents pursuant

to the EAJA (R. ans. p. 8 ¶ 12; Ex. 7). 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 Eighth Circuit Court of Appeals, and $6,093 of which was for work on the petition for attorney's fees pursuant to the EAJA (R. ans. p. 8 ¶ 12; Ex. 7, Exs. 10, 12 and 14 thereto).

24. By order dated September 20, 2007, the Eighth Circuit Court of Appeals granted the Ivanovs' petition for attorney's fees pursuant to the EAJA (R. ans. p. 8 ¶ 13; Ex. 8). The court awarded $32,129 in attorney's fees and $250 as reimbursement of the Ivanovs' filing fee (R. ans. p. 8 ¶ 13; Ex. 8).
25. A staff member in Respondent's office told the Ivanovs about the EAJA fee award (R. ans. p. 8 ¶ 14; Ivanov test.; Ivanova test.). The Ivanovs both testified that it was their understanding that, as a result of the award, they would no longer be responsible for payment of Respondent's fees. Nora Ivanova's testimony as to the Respondent's statement to her was that "they will pay me and you won't have to pay me more." (Ivanov test.; Ivanova test.)
26. Igbanugo Partners 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 (R. ans. p. 9 ¶ 15; Ex. 19 pp. 14-78; Ex. 20 pp. 3-5).
27. Respondent testified that the June 29, 2007 rider (Ex. 6) assigned all of the fees to him and that the Ivanov's thus had no claim or right to them. (R. test.)
28. Respondent brought a lawsuit in the name of Igbanugo Partners against the Ivanovs for attorney's fees and costs he alleged to be unpaid (R. ans. p. 11 ¶ 16). At the time, the Ivanovs were no longer Respondent's clients (R. ans. p. 11 ¶ 16). At Respondent's directive, a complaint requesting a $12,569 judgment for attorney's fees and costs was prepared. Arrangements were

made to serve a summons and the complaint on the Ivanovs (R. ans. p. 11 ¶ 16, Gwenigale test.; Lietz test.; Ex. 10). 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 (R. ans. p. 11 ¶ 16; Ex. 10 pp. 4-5).

29. On December 14, 2010, at Respondent's directive, Raymond Lietz, 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") (Gwenigale test.; Lietz test.; Ex. 10 p. 6). The process server had obtained the Nicollet Mall address from Raymond Gwenigale, a member of respondent's firm. At the time that the process server was originally hired to serve a number of complaints respondent had declined the process server's offer to provide additional services that would have verified whether the address was accurate. Lietz was told that the addresses were good and that he was to serve everyone at the address. (Lietz test.; Gwenigale test.).

30. On March 16, 2011, at Respondent's directive, Raymond Gwenigale, an Igbanugo Partners 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 (Gwenigale test.; Ex. 10).[1]

31. Neither Nikolay nor Nora ever resided at the Nicollet Mall address and neither was personally served with the November 9, 2010, summons and complaint at that location or any other (Ivanov test.; Ivanova test.). The

[1] No affidavit of service reflecting personal service on Nora Ivanova was provided (Ex. 10).

Nicollet Mall address is an address at which the Ivanovs' son, Aleksandr, previously resided, independent of the Ivanovs (Ivanov test.; Ivanova test.).

32. At the time of service and filing of the summons, complaint and affidavit of service, the Igbanugo Partners' billing and other records reflected the following address for the Ivanovs: 690 Broadway Street N.E., Minneapolis, Minnesota 55413 (R. ans. pp. 11-12, ¶ 20; Ex. 6. Ex. 9; Ex. 19 pp. 12-169). The Ivanovs had continuously resided at that address for more than 15 years (Ivanov test.; Ivanova test.).

33. A certificate of representation and parties subsequently filed by an Igbanugo Partners associate incorrectly informed the court that the Ivanovs' address was the Nicollet Mall address (Ex. 11). 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 (Exs. 12, 15, 16; Ivanov test.; Ivanova test.).

34. The Igbanugo Partners' 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" (R. ans. p. 12 ¶ 22; Ex. 10 p. 4). The "above-named Plaintiff" was Igbanugo Partners, but the Ivanovs' January 11, 2006, contract was with Blackwell Igbanugo (Ex. 3; Ex. 10 p. 4). Respondent testified that the fees had been assigned to the new law firm at the time of dissolution of Blackwell Igbanugo. (The issue as to whether the correct firm was identified as plaintiff did not arise as the matter ultimtely proceeded by default.)

35. The $12,569 in fees and costs requested in the Igbanugo Partners' complaint against the Ivanovs included fees and costs due under contracts between Igbanugo Partners and the Ivanovs other than those specifically identified in

the complaint (R. ans. p. 12 ¶ 23; Ex. 13 p. 8). In particular, this $12,569 included $2,000 for attendance at additional master calendar hearings pursuant to the March 17, 2006, and/or June 29, 2006, contracts regarding Aleksandr's immigration status (Ex. 13 p. 8; Ex. 19 p. 74; Ex. 20 p. 3). Respondent's sworn declaration at the time of the default hearing indicated that. (Ex. 13)

36. Respondent acknowledged that not all of the contracts were listed in the complaint. (R. test.)

37. Finally, the billing statements that served as the basis for the $12,569 requested in the Igbanugo Partners' complaint against the Ivanovs contain errors and improper charges (Exs. 19, 20). For example, these billing statements (a) included a $500 charge for attendance at a 2009 master calendar hearing that did not concern the Ivanovs (Ex. 19 p. 28; Ex. 20 p. 5)[2]; and (b) failed to clearly reflect the crediting of the $250 filing fee awarded by the Court of Appeals (Ex. 19 pp. 56-69; Ex. 20 p. 4).

38. As a result of the Ivanovs not having been served with the Igbanugo Partners' 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 (Ivanov test.; Ivanova test.; Exs. 12, 15, 16).

39. Igbanugo Partners moved for a default judgment against the Ivanovs (R. ans. p. 13 ¶ 26; Ex. 13). The hearing on that motion was held on July 13, 2011 (Ex. 14 p. 1).

40. Prior to the July 13, 2011, hearing, Igbanugo Partners submitted two affidavits to the court in support of its request for a default judgment (R. ans.

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[2] Nora Ivanova testified that respondent's representation ended in 2007, after she and her family were granted asylum.

p. 13 ¶ 27; Ex. 13). One of these affidavits was in the name of, and signed by, Respondent (R. ans. p. 13 ¶ 27; Ex. 13 pp. 7-8). Neither of these affidavits informed the court of the EAJA recovery (R. ans. p. 13 ¶ 27; Ex. 13). 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 (R. ans p. 13 ¶ 27; Ex. 13).

41. 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." (R. ans. p. 13 ¶ 28; Ex. 13 p. 8.)
42. 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 (R. ans. p. 14 ¶ 29; Ex. 14).
43. Respondent thereafter discussed with Gwenigale collection measures, including garnishment of the Ivanovs' bank accounts. (Gwenigale test.) One or more of the Ivanovs' bank accounts were attached and funds frozen (Ivanova test., Ivanov test.). Upon learning of the garnishment, Ivanova contacted her bank (Ivanova test.). Ultimately, the funds in the Ivanovs' bank accounts were released, although the Ivanovs lost approximately $250 in bank charges assessed as a result of the garnishment (Ivanova test.).
44. Once the improper service was brought to the attention of the Respondent he promptly took action to vacate the judgment. (Ex. 151)
45. Upon learning of Igbanugo Partners' judgment against them, the Ivanovs submitted a complaint against respondent to the Director (R. ans. p. 14 ¶ 30; Ivanova test.). In his February 22, 2013, response to the Ivanovs' complaint,

Respondent characterized that complaint as "unholy and misplaced." (R. ans. p. 14 ¶ 30; Ex. 17 p. 4).

46. The Ivanov's testified that during the Respondent's representation of them in their immigration matters that he treated them with respect and that his legal services were successful.

Abosi Matter

47. In March 1992, Emeka Kenneth Abosi entered the United States on a visitor visa from his native Nigeria (R. ans. p. 14 ¶ 32; Abosi test.). He remained in the United States without authorization after the six-month visitor visa expired (R. ans. p. 14 ¶ 32). In September 1994, Abosi married a United States citizen (R. ans. p. 14 ¶ 32; Abosi test.). In early 1995, Abosi applied for an adjustment of status to permanent resident based upon his marriage to a U.S. citizen. (R. ans. p. 14 ¶ 32; Abosi test.).

48. The government questioned the validity of Abosi's marriage (R. ans. p. 14 ¶ 33). In mid-2000, Abosi retained Respondent to represent him (R. ans. p. 14 ¶ 33; Abosi test.). At the time, Respondent was a partner in Blackwell Igbanugo (R. ans. p. 14 ¶ 33; R. test.).

49. Ultimately, Respondent was successful in having Abosi's status adjusted to lawful permanent resident, which occurred on December 2, 2000 (R. ans. p. 14 ¶ 34). Abosi paid Respondent in full for his legal services and was satisfied with the result. (Abosi test.)

50. On January 30, 2002, when Abosi returned to the United States from a trip to Nigeria, he was cited at the Minneapolis-St. Paul airport for possession of a small amount of marijuana, a petty misdemeanor offense (R. ans. p. 14 ¶ 35; Abosi test.). Abosi simply paid the $100 fine (R. ans. p. 14 ¶ 35).

51. On November 6, 2002, Abosi made another trip to Nigeria (R. ans. p. 14 ¶ 36; Abosi test.). Upon Abosi's return to the United States from this trip, his earlier conviction for marijuana possession was noted (R. ans. p. 14 ¶ 36; Abosi test.). Abosi was detained and interviewed at the Minneapolis-St. Paul airport (R. ans. p. 14 ¶ 36; Abosi test.).

52. As a result of this earlier petty offense, Abosi was classified as an arriving alien under immigration law and was charged as being subject to removal (R. ans. p. 14 ¶ 37). On May 30, 2003, removal proceedings were formally initiated against Abosi by the issuance of a notice to appear (R. ans. p. 14 ¶ 37). Abosi again retained Respondent to represent him in the matter (R. ans. p. 14 ¶ 37; Abosi test.). Abosi considered Respondent to be a friend and "trusted him "very much" (Abosi test.).

53. 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 (R. ans. p. 15 ¶ 38; Ex. 35 pp. 2-3; Abosi test.; R. test.). Abosi testified that he felt that the legal fees in this matter were not "reasonable" and that the legal service was not appropriate (Abosi test.). His initial understanding was that this was a simple matter and that it would be resolved as quickly as possible (Abosi test.).

54. On September 11, 2009, the immigration court denied Respondent's motion to terminate removal proceedings (R. ans. p. 15 ¶ 39). On September 23, 2009, a bench warrant was issued for Abosi's arrest (R. ans. p. 15 ¶ 39; Abosi test.; R. test.). That same day, Respondent and Abosi attended an immigration court hearing (R. ans. p. 15 ¶ 39; Abosi test.; R. test.). Abosi was arrested after the hearing (R. ans. p. 15 ¶ 39; Abosi test.; R. test.). Respondent was present when Abosi was taken into custody (R. ans. p. 15

¶ 39; Abosi test.; R. test.). Abosi was thereafter held at an immigration detention center at the Sherburne County Jail in Elk River, Minnesota (R. ans. p. 15 ¶ 39; Abosi test.; R. test.).

55. Both Abosi and respondent were completely taken by surprise by his detention. Respondent argued forcefully with the officers taking Abosi into custody. Respondent met in a conference room with Abosi before being taken away and discussed that he would immediately be filing a motion to seek his release. (R. test.) The full extent and nature of the conversation is unclear and disputed.

56. 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 (R. ans. p. 15 ¶ 40; Ex. 35 p. 3). The immigration court denied Respondent's request for reconsideration. (R. ans. p. 15 ¶ 40; Ex. 35 p. 3)

57. Also on September 23, 2009, Respondent filed and served a request for a bond hearing (R. ans. p. 15 ¶ 41). A hearing on Respondent's request, which respondent attended, was held on September 29, 2009 (R. ans. p. 15 ¶ 41). The court denied Respondent's bond request and ordered Abosi to remain in custody (R. test.). Abosi testified that neither the request for a bond hearing or that the immigration court had denied the request was communicated to him (Abosi test.). Respondent, however, testified that he always provides copies of orders and one would have been sent to Abosi in jail and to his home address. (R. test.) No copy of any transmittal letter to Abosi or any family member was submitted. Respondent also testified that he did notify Abosi's wife by phone (R. test) although the respondent's personal phone log (Ex. 121) does not reflect such a call.

58. Respondent did not meet with Abosi while he was in custody (Abosi test.; R. test.; Ex. 35 p. 41). Respondent left for a short trip to Washington, D.C. to attend a conference shortly after the September 23, 2009 hearing and said that he told Abosi that they would talk when he returned. (R. test.) Respondent testified that a trip to the detention facility was not necessary as he knew all the facts and that time involved to travel to Elk River in Sherburne County was substantial. His comment was that "I'm a lawyer; not a shrink" (Resp. test.) Respondent stated that he called Abosi once at the Sherburne County facility and left a message for him to call back but that no return call was made. Neither the personal call log (Ex. 121) or the cell phone records (Ex. 173) show any record of that call.

59. Abosi was distraught and, in his words, was "panicked" and needed to speak with respondent. His testimony was that numerous calls were made to Respondent but never returned (Abosi test.). In his affidavit to the OLPR dated July 16, 2013 he stated that there were 20-30 calls (Ex. 113, page 5). Ultimately, on October 13, 2009 Abosi wrote to Respondent requesting his file and advised him that he was hiring new counsel (Ex. 24.).

60. Respondent produced at trial his cell phone records from September 2, 2009 through November 1, 2009. (Ex. 173) Also received was a list of all incoming (not outgoing) calls to the firm number, 612-7460-0360 (Ex.118). In addition, respondent produced his personal phone log which was a handwritten record of calls made (Ex.121). Also received was a list of relevant phone numbers including the Sherburne County jail, Abosi's wife, brother, sister and Abosi's cell number (Ex. 175). The records indicate that the following calls were made to or from the law firm:

    September 25, 2009 at 10:35 A.M. – Call waiting from Abosi's wife

    September 28, 2009 at 12:39 P.M – Call from Abosi's wife

October 3, 2009 at 8:50 A.M. – Call from Abosi's sister in Atlanta

October 3, 2009 at 2:17 P.M. – Call to Abosi's sister in Atlanta

October 12, 2009 –Call to Abosi's wife from respondent as shown on respondent's handwritten log.

61. Abosi's wife and brother spoke with respondent (R. ans. p. 16 ¶ 43). 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 (R. ans. p. 16 ¶ 43). Respondent had not previously discussed with Abosi the option of filing such a petition (Abosi test.).

62. 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 (R. ans. p. 16 ¶ 44; Ex. 24). Abosi stated that because he was in custody, he did not have access to his file or billing information (R. ans. p. 16 ¶ 44; Ex. 24). Abosi stated he wanted to review his payments prior to determining whether to pay Respondent the additional fees (R. ans. p. 16 ¶ 44; Ex. 24).

63. Respondent responded to Abosi's letter on October 16, 2009 (R. ans. p. 16 ¶ 45; Ex. 25). In his response, respondent stated that he was releasing Abosi's file to his wife "immediately." (R. ans. p. 16 ¶ 45; Ex. 25.) Respondent did not, however, provide the requested accounting (R. ans. p. 16 ¶ 45; Abosi test.). 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." (R. ans. p. 16 ¶ 45; Ex. 25 p. 1.) 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." (R. ans. p. 16 ¶ 45; Ex. 25 p. 2.) As a result, Abosi decided to seek new representation (Abosi test.).

64. 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 (R. ans. p. 16 ¶ 46; Ex. 26). Respondent produced Abosi's file in response to Bachmeier's request (R. ans. p. 16 ¶ 46).

65. Bachmeier thereafter represented Abosi in removal proceedings before the immigration court , the petty misdemeanor marijuana offense in Hennepin County district court, a cancellation of removal proceeding and citizenship proceedings. Abosi is now a United States citizen. (Abosi test.).

66. After Abosi terminated the representation, Respondent began to pursue collection of his unpaid attorney's fees (Abosi test.; Exs. 27, 29-31). Abosi contested the amount of fees claimed by Respondent as inflated based upon the parties' contracts and what Abosi had already paid (Exs. 28, 32; Abosi test.). Respondent sent Abosi a series of letters that became increasingly harassing (Exs. 27, 29, 30, 41, 42; Abosi test.). In particular, Respondent sent Abosi a May 11, 2010, letter that contained the following statements (Ex. 29):

- 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 were harassing to Abosi (Abosi test.).

67. Respondent, at the time of trial, indicated that the letter was not about money but trying to get Abosi to "stop gossiping and putting him down in the African community." He said it was an "emotional reaction" and that "anything done in anger is seldom correct." "I wouldn't write that letter today." (R. test.)

68. The fee agreements between respondent and Abosi can be summarized as follows (R. ans. p. 17 ¶ 1-2):

a. Blackwell Igbanugo 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;[3] (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;[4] 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 (Ex. 21 pp. 1-9; Ex. 35 pp. 4-5); and

b. Igbanugo Partners entered into the following fee agreements with Abosi:

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[3] This fee agreement was not signed by someone on behalf of the Blackwell Igbanugo.

[4] This fee agreement was not signed on behalf of the Blackwell Igbanugo or by 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 (Ex. 21 pp. 10-18; Ex. 35 pp. 4-5).

The total amount of these fee agreements is $25,100 consisting of $11,750 for the fee agreements in the name of Blackwell Igbanugo and $13,350 for the fee agreements in the name of Igbanugo Partners (Ex. 21; Ex. 35 p. 4).

69. 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 Igbanugo Partners. Abosi made his last payment to respondent on July 29, 2009 (Abosi test.; Ex. 23, Ex. 35 p. 6).

70. In March 2011, Respondent filed a Hennepin County district court lawsuit against Abosi through Igbanugo Partners, (R. ans. p. 18 ¶ 54; Ex. 31). 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." (R. ans. p. 18 ¶ 54; Ex. 31). 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 Igbanugo Partners

(R. ans. p. 18 ¶ 54; Ex. 31). The complaint failed to credit any portion of the $13,906 in payments made by Abosi (Ex. 31).

71. On March 5, 2012, a hearing before the district court occurred (R. ans. p. 18 ¶ 55; Ex. 34). Abosi appeared *pro se* (R. ans. p. 18 ¶ 55; Ex. 34 p. 1). Raymond Gwenigale, an attorney in Igbanugo Partners, represented Respondent at the hearing (R. ans. p. 18 ¶ 55; Ex. 34 p. 1). During the hearing, Respondent improperly disclosed confidential client information by giving the following testimony in an attempt to impeach Abosi's honesty:

> 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. (Ex. 34 p. 86.)

72. The court warned Respondent and ordered the testimony stricken for violating Abosi's attorney-client privilege (Ex. 34 p. 86).

73. On June 15, 2012, the district court issued findings of fact, conclusions of law and order for judgment in favor of Abosi (R. ans. p. 19 ¶ 56; Ex. 35). The district court concluded that Respondent could not seek to enforce the fee agreements between Abosi and Blackwell Igbanugo because the lawsuit was brought in the name of Igbanugo Partners (R. ans. p. 19 ¶ 56) and Respondent presented no evidence of an assignment or conveyance by Blackwell Igbanugo of its contract rights with Abosi to Igbanugo Partners (Ex. 35 pp. 5, 7).

74. With respect to the contracts between Igbanugo Partners 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 (R. ans. p. 19 ¶ 57; Ex. 35 pp. 5-6, 8-9). The district court further found that Abosi had paid Respondent $9,906, leaving a balance due of $3,444 (R. ans. p. 19 ¶ 57; Ex. 35 pp. 6, 9).

75. Finally, the district court found that, as a result of Respondent's failure to communicate with Abosi, as he alleged, following his September 23, 2009, detainment, in violation of Rule 1.4, Minnesota Rules of Professional Conduct (MRPC), Respondent forfeited entitlement to $500 of the $3,444 balance otherwise remaining due respondent (Ex. 35 pp. 10-12). 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 (Ex. 35 pp. 9-12). The court granted judgment in favor of Abosi (Ex. 35 p. 12).

76. Respondent appealed the district court's judgment to the Minnesota Court of Appeals (R. ans. p. 19 ¶ 59; Exs. 36-39). Abosi, who could not afford counsel, did not file a brief or appear for oral argument (Abosi test.; Exs. 36-39).

77. 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 (Ex. 39). The Minnesota Court of Appeals modified the district court's judgment (Ex. 39).[5]

78. At the hearing in this matter, however, Respondent submitted Exhibit 153 that, while not a formal assignment of contract rights, indicates that all immigration files were transferred to Igbanugo Partners. There is no evidence that the immigration accounts receivable in the Blackwell Igbanugo firm dissolution did not inure to the benefit of Respondent's current law firm.

79. 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." (R. ans. p. 20 ¶ 62; Ex. 41.) Respondent's letter also contained the following statement (R. ans. p. 20 ¶ 62; Ex. 41):

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

80. 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 (Ex. 41; Abosi test.).

81. On June 25, July 25, and August 21, 2013, Respondent's law firm sent Abosi billing statements asserting that he owed $17,451.59 (Exs. 42-44). Respondent

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[5] 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 Partners in the amount of $2,944 (Ex. 39 p. 11).

testified that those billing statements were sent in error and that when he saw the billing on a staff member's desk he immediately took action to correct the error. There was no explanation for why the billing staff was not immediately notified of the result of the Court of Appeals decision or of any efforts to avoid resending the erroneous bill.

82. In spite of the letter of June 4, 2013 Abosi reasonably concluded that Respondent was still seeking the original sum as stated in the complaint (Abosi test.)

83. There was no testimony or exhibits provided in the hearing of this matter that showed a total amount due to Respondent's firm in the sum of $17,451.59, the amount claimed in the collection complaint.

84. Abosi was reluctant to file the ethics violation but was persuaded to do so by family members. He sincerely wished to put the entire matter behind him. While a visit to the jail by Respondent may not have necessarily provided Abosi with further information, for Abosi, the fact that the Respondent did not come to the jail or otherwise communicate with him was the sole reason that he switched lawyers and ultimately filed the complaint (Ex.34 pages 62-72, Abosi test.).

Rozhko/Radziuk Matter

85. In 2008, Rustam Rozhko and Katsiaryna Radziuk separately and lawfully entered the United States on visitor visas from Ukraine and Belarus, respectively (R. ans. p. 21 ¶ 65; Ex. 45 pp. 1-2; Ex. 65 pp. 1-2). Rozhko and Radziuk married while in the United States (R. ans. p. 21 ¶ 65; Ex. 45 p. 2; Radziuk test.). Rozhko and Radziuk's native language is Russian (R. ans. p. 21 ¶ 65; Radziuk test.).

86. On April 8, 2009, Rozhko filed an application for asylum *pro se* (R. ans. p. 21 ¶ 66; Ex. 45). Rozhko identified Radziuk as his wife on the application and she was included as a party to all the immigration proceedings that followed (R. ans. p. 21 ¶ 66; Ex. 45 p. 2).

87. 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 Ukraine (R. ans. p. 21 ¶ 67; Ex. 45 pp. 11-15). 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 due to beatings while in police custody (R. ans. p. 21 ¶ 67; Ex. 45 pp. 16 *et seq.*). Also attached were copies of his and Radziuk's passports, visas and marriage certificate (R. ans. p. 21 ¶ 67; Ex. 45 pp. 16 *et seq.*).

88. On August 13, 2009, Rozhko's application for asylum was referred to an immigration judge for adjudication in removal proceedings (R. ans. p. 22 ¶ 68; Ex. 47). 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." (R. ans. p. 22 ¶ 68; Ex. 46.)

89. On October 23, 2009, Rozhko and Radziuk retained Igbanugo Partners to represent them in the immigration proceeding (R. ans. p. 22 ¶ 69; Ex. 49). Respondent assigned Katie De Grio, an associate attorney in his office, to work on the matter (R. ans. p. 22 ¶ 69; De Grio test.; Ex. 50 pp. 3-4 and 7-8).

90. De Grio appeared before the immigration court with Rozhko and Radziuk on October 29, 2009 (R. ans. p. 22 ¶ 70; De Grio test.; Ex. 51 p. 1). At that time, De Grio filed notices of entry of appearance identifying both De Grio and respondent as attorneys for Rozhko and Radziuk (R. ans. p. 22 ¶ 70; Ex.

50; De Grio test.). A Russian translator was not present at this hearing (R. ans. p. 22 ¶ 70; Ex. 51; Radziuk test.).

91. 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 (Ex. 51 p. 8; Ex. 52 p. 3). These biometrics requirements apply in every asylum matter (R. test.; Gwenigale test.; De Grio test.) and a failure to comply with them can result in the asylum application being deemed abandoned. *See*, 8 C.F.R. § 1003.47(d).

92. 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 (R. ans. p. 22 ¶ 72; Ex. 51 pp. 8-9).

93. Also on October 29, 2009, the immigration court issued a notice of hearing, scheduling another hearing in the matter for April 28, 2010 (R. ans. p. 22 ¶ 73; Ex. 52). The hearing was subsequently continued by the immigration court to January 12, 2011, in order to accommodate the priority of another, unrelated case (R. ans. p. 22 ¶ 73; Ex. 54; Ex. 55 pp. 45-46.) Had the hearing been conducted on April 28, 2010, as originally scheduled, the biometrics Rozhko and Radziuk had provided previously would have been valid (De Grio test.).

94. Once the hearing was rescheduled, neither De Grio nor respondent followed up to ensure that the court had current biometrics for Rozhko and Radziuk as of January 12, 2011, or that all required original documents were timely served and filed. (Ex. 55 pp. 17-20, 26-29, 129-30; Radziuk test.; R. test.)

95. 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 (R. ans. pp. 22-23 ¶ 75; Ex. 53; De Grio test.). These documents were only a small portion of the documents that were necessary to support Rozhko and Radziuk's claim for asylum (Ex. 55 pp. 135-36, 140-41).

96. De Grio left respondent's firm in July 2010 (R. ans. p. 23 ¶ 76; De Grio test.). At that time or shortly thereafter, respondent told Gwenigale that he had possession of the Rozhko and Radziuk file and was personally handling the matter on their behalf (Gwenigale test.). Respondent thereafter failed to ensure that action was taken to comply with the biometrics requirements or that the necessary original documents were served and filed (Ex. 55 pp. 17-20, 26-29, 129-30).

97. Another hearing was held in Rozhko and Radziuk's asylum matter on January 12, 2011 (R. ans. p. 23 ¶ 77; Ex. 55). (A Russian translator was present at this hearing (R. ans. p. 23 ¶ 77; Ex. 55 p. 2.)) Respondent attended this hearing as attorney for Rozhko and Radziuk (R. ans. p. 23 ¶ 77; Ex. 55 p. 3). Again, by the time of the January 12, 2011, hearing, neither Respondent nor anyone in his firm had taken action to ensure that Rozhko and Radziuk complied with the biometrics requirements or that the necessary original documents were served and filed (Ex. 55 pp. 17-20, 26-29, 129-30).

98. At the January 12, 2011, hearing, the government's counsel noted that the required biometrics information had not been collected (R. ans. p. 23 ¶ 78; Ex. 55 pp. 17-23). 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 (R. ans. p. 23 ¶ 78; Ex. 55 pp. 17-

23). Based on this failure, the government's counsel moved to have the asylum application deemed abandoned and dismissed (R. ans. p. 23 ¶ 78; Ex. 55 pp. 17-23). Respondent objected, arguing that the failure had been De Grio's and his responsibility, and not the responsibility of Rozhko and Radziuk (R. ans. p. 23 ¶ 78; Ex. 55 pp. 17-23).

99. Initially, the immigration court determined that it would grant the government's motion (R. ans. p. 24 ¶ 79; Ex. 55 p. 23; Radziuk test.). After listening to a recording of the October 29, 2009, hearing, however, the court reversed its position (R. ans. p. 24 ¶ 79; Ex. 55 pp. 33, 48; Radziuk test.). 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 (R. ans. p. 24 ¶ 79; Ex. 55 pp. 47-48).

100. During Rozhko's testimony, the immigration court inquired regarding the location or disposition of the original exhibits attached to his asylum application (R. ans. p. 25 ¶ 80; Ex. 55 pp. 129-30). Rozhko stated that the originals of those exhibits were at his home and that respondent had not asked him to produce them (R. ans. p. 25 ¶ 80; Ex. 55 pp. 129-30).

101. 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 (R. ans. p. 26 ¶ 81; Ex. 55 pp. 139-40). 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 (R. ans. p. 26 ¶ 81; Ex. 55 pp. 140-41).

102. Also on January 12, 2011, the immigration court issued a notice of hearing scheduling the next hearing for March 9, 2011 (R. ans. p. 27 ¶ 82; Ex. 57). The court subsequently continued this hearing for reasons unrelated to the parties to August 24, 2011 (R. ans. p. 27 ¶ 82; Exs. 60, 62, 63).

103. Upon returning to his office after the January 12, 2011, hearing, respondent for the first time gave the client file to Gwenigale to work on the matter (Gwenigale test.).

104. 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 (Radziuk test.; Gwenigale test.; Ex. 64 pp. 207-08). Gwenigale and respondent failed to ensure that these documents were provided to the government and court as directed (Radziuk test.; Ex. 64, pp. 168-172, 188-190).

105. 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 (R. ans. p. 28 ¶ 85; Ex. 58; Gwenigale test.). On January 20, 2011, the USCIS issued notifications to Rozhko and Radziuk to appear for the collection of biometrics information (R. ans. p. 28 ¶ 85; Ex. 59). Rozhko and Radziuk thereafter appeared at USCIS as directed and the required biometrics information was collected (R. ans. p. 28 ¶ 85; Radziuk test.).

106. 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 (R. ans. p. 28 ¶ 86; Ex. 61). Gwenigale had previously provided the "closing argument" to respondent for his review, along with the Rozhko and Radziuk client file (Gwenigale test.). This submission was

made more than three months beyond the deadline set by the court during the January 12, 2011, hearing (Ex. 55 pp. 140-41; Exs. 57, 61). 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 (Ex. 64, pp. 1, 8-72).

107. Another hearing was held in Rozhko and Radziuk's asylum matter on August 24, 2011 (R. ans. p. 29 ¶ 87; Ex. 64). Respondent attended this hearing as attorney for Rozhko and Radziuk (R. ans. p. 29 ¶ 87; Ex. 64 p. 165). (A Russian translator was present at this hearing (R. ans. p. 29 ¶ 87; Ex. 64 p. 163)).

108. During the August 24, 2011, hearing, the immigration court noted that the original exhibits to the asylum application had not been received (R. ans. p. 29 ¶ 88; Ex. 64 pp. 168-72, 188-90; Radziuk test.). Respondent found the original exhibits in his file (R. ans. p. 29 ¶ 88; Ex. 64 pp. 168-72, 188-90; Radziuk test.).

109. 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 (R. ans. p. 29 ¶ 89; Ex. 64 p. 183; Exs. 65-66; Radziuk test.). Respondent objected to the court's determination, arguing that the failure to provide the required original exhibits was a minor procedural issue (R. ans. p. 29 ¶ 89; Ex. 64 pp. 184-85, 196). Respondent stated, "It's my fault." (R. ans. p. 29 ¶ 89; Ex. 64 p. 196.)

110. 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 (R. ans. p. 29 ¶ 90; Ex. 64 pp. 188-90, 217; Exs. 65, 66).

111. 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 (Ex. 64 pp. 188-90). Rozhko and Radziuk opted for the form of voluntary departure that would allow them to appeal the court's determination (Radziuk test.). The court informed Rozhko and Radziuk that the requirements of *Matter of Lozada, 19 I. &N. Dec. 637 (BIA), Interim Decision 3059* (See also 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 (Ex. 64 pp. 198-99).

112. At the August 24, 2011, hearing, respondent requested to withdraw as counsel for Rozhko and Radziuk (R. ans. p. 30 ¶ 92; Ex. 64 pp. 196, 205, 209-10). Rozhko and Radziuk agreed to Respondent's withdrawal and the court ordered Respondent's withdrawal (R. ans. p. 30 ¶ 92, Ex. 64 pp. 209-10).

113. Ms. Radziuk testified that at the August 24 hearing that "We were just lost and knew that they were going to be sent to a place where they could be killed."

114. Rozhko and Radziuk ultimately hired a new attorney after they did a pro se appeal of the August 24, 2011, decision to the BIA (Radziuk test.; Ex. 67). On October 10, 2012, the BIA remanded the matter for further proceedings in the immigration court (Ex. 67). 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 (Ex. 67 p.2). 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 (Radziuk test.).

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

115. On July 18, 2012, respondent appeared before the immigration court on behalf of a client (R. ans. p. 30 ¶ 95; Ex. 69). The client was identified at trial as Donnovan Lyons who testified on behalf of Respondent. During the immigration hearing, the court (Judge Susan Castro) found that Respondent had failed to diligently and competently handle the client's matter by failing to timely file biometric data and ordered Respondent to self-report these violations to the Director within 30 days of the hearing (Ex. 69 pp. 8-9, 19-22, 26-27, 34). Respondent agreed on the record to do so (Ex. 69 pp. 19-22). 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 (Ex. 69 pp. 34-36). The issue again involved the alleged failure of senior firm attorneys, here Mr. Gwenigale, to do appropriate follow up and Respondent's duty as lead attorney.

116. The Respondent's officer manager, Leah Olson, testified that after the Lyons hearing an emergency firm meeting was held to address the failure to obtain biometrics. Two staff members were immediately terminated (Olson test.)

117. Respondent offered a number of reasons for the failure to self-report, e.g. waiting for a listing from the immigration judge of I-751 proceedings his firm had handled and an argument that he did not have to report as the judge's order was *ultra vires.*

118. A letter reporting the incident was drafted by August 15, 2012. Respondent was apprised of the 30 day deadline by a staff attorney and the letter, had it been sent on that date, would have, arguably, complied with the

immigration judge's order. Respondent chose not to send it or otherwise contact the Director. It was not received by the Director until September 26, 2012. (Ex. 70; Ex. 72 p. 1).

119. Respondents self-report was not compliant with the court-ordered 30-day deadline.

120. Donnavon Lyons, the client in this matter, testified that he was pleased that the Respondent accepted responsibility and that, by doing so, he was given another opportunity to prevail in his case. He was ultimately successful on February 13, 2013 with respondent having represented him throughout. (Lyons test.)

Sabhari Matter

121. In the early 1990s, Ali Sabhari immigrated to the United States (Ex. 80, Affidavit of Ali Sabhari, p. 1 ¶ 2). He then married Susan Sabhari (Ex. 80, Affidavit of Ali Sabhari, p. 1 ¶ 2).

122. The Sabharis retained Blackwell Igbanugo, the law firm with which Respondent was then associated, to represent them in immigration-related matters (R. supp. ans. p. 2 ¶ 99; Ex. 80, Sabhari Aff., p. 1 ¶ 3).

123. The Sabharis entered into the following contracts for legal services (R. supp. ans. p. 2 ¶ 100):

a. On December 30, 2005, the Sabharis entered into a contract for legal services with Blackwell Igbanugo and a rider to that contract for representation on a complaint for declaratory relief in federal district court regarding a Form I-130 marriage petition (R. supp. ans. p. 2 ¶ 100; Ex. 74). The contract provided for a $25,000 flat fee (R. supp. ans. p. 2 ¶ 100; Ex. 74 p. 1).

b. On January 4, 2006, the Sabharis entered into a contract for legal services with Blackwell Igbanugo and a rider to that contract for representation

in a complaint for declaratory relief in federal district court (R. supp. ans. p. 2 ¶ 100; Ex. 96). The contract provided for a $15,000 flat fee (R. supp. ans. p. 2 ¶ 100; Ex. 96).

c. On September 25, 2006, the Sabharis entered into a contract for legal services with Blackwell Igbanugo and a rider to that contract for representation in a petition for review and briefing to the Eighth Circuit Court of Appeals regarding an asylum matter (R. supp. ans. p. 2 ¶ 100). The contract provided for a $6,500 flat fee (R. supp. ans. p. 2 ¶ 100).

d. On April 5, 2007, the Sabharis entered into a contract for legal services with Igbanugo Partners, the firm of which respondent is the founder and sole shareholder and with which Respondent then practiced (and continues to practice), and a rider to that contract for representation on a response to the government's appeal to the Eighth Circuit Court of Appeals regarding the district court's ruling on the form I-130 (R. supp. ans. p. 2 ¶ 100; Ex. 76). The contract provided for a $14,500 flat fee (R. supp. ans. p. 2 ¶ 100; Ex. 76 p. 1)).

124. During Respondent's representation of the Sabharis, Respondent filed requests in federal district court and to the Eighth Circuit Court of Appeals for an award of fees pursuant to the Equal Access to Justice Act (EAJA) (R. supp. ans. p. 4 ¶ 101; Ex. 77). Ultimately, Respondent received $52,500 from the government pursuant to the EAJA (R. supp. ans. p. 4 ¶ 101).

125. Igbanugo Partners retained the fees received pursuant to the EAJA in their entirety and did not credit any portion of those fees against the fees the Sabharis owed to the Igbanugo Partners (R. supp. ans. p. 4 ¶ 102).

126. Respondent determined to bring a lawsuit in the name of Igbanugo Partners against the Sabharis for attorney's fees and costs he alleged to be unpaid (R. supp. ans. p. 9 ¶ 103; Ex. 78). At the time, the Sabharis were no

longer Respondent's clients (R. supp. ans. p. 9 ¶ 103). Accordingly, at Respondent's directive, in or about June 2011 a complaint against the Sabharis seeking payment under the parties' retainer agreements was served and filed (R. supp. ans. p. 9 ¶ 103; Ex. 78). In October 2011, the Igbanugo Partners moved for default judgment (R. supp. ans. p. 9 ¶ 103; Ex. 79).

127. During the default hearing, the firm stated that the Sabharis owed $38,799.94 (R. supp. ans. p. 9 ¶ 104). The amount the Igbanugo Partners claimed, however, failed to credit any of the EAJA award (R. supp. ans. p. 9 ¶ 104). The motion for default judgment was denied (R. supp. ans. p. 9 ¶ 104).

128. On or about May 16, 2012, the Sabharis served and filed a motion for summary judgment (R. supp. ans. p. 9 ¶ 105; Ex. 80).

129. By order filed September 11, 2012, the court granted the Sabharis' motion for summary judgment (R. supp. ans. p. 10 ¶ 106; Ex. 85). The court found that Igbanugo Partners was not entitled to keep the entire EAJA award, rejected the argument that the retainer agreements allowed the Igbanugo Partners to do so, and ordered the Igbanugo Partners to refund to the Sabharis $13,700.06 in "excess fees." (R. supp. ans. p. 10 ¶ 106; Ex. 85 p. 10.)

130. Igbanugo Partners appealed, and in September 2013 the Minnesota Court of Appeals affirmed (R. supp. ans. p. 10 ¶ 107; Ex. 86). Respondent attempted to file a petition for review with the Minnesota Supreme Court, but the Court denied the petition as untimely (R. test.).

Silva Matter

131. On April 29, 2009, U.S. citizen Yadira Silva and her foreign national husband Roman Rodriguez retained Respondent for Ms. Silva's I-130

marriage based Immigrant Visa petition for Mr. Rodriguez, as well as Mr. Rodriguez's immigrant visa processing at the U.S. Department of State's [DOS] National Visa Center [NVC] and the U.S. Consulate in Ciudad Juarez, Mexico (R. supp. ans. p. 18 ¶ 109; Ex. 87).

132. When the parties retained Respondent, their interests were the same and there was no conflict of interest.

133. Prior to this time, respondent had worked for Rodriguez's extended family for over a decade (R. supp. ans. p. 18 ¶ 110; R. test.). Respondent has very good friends among Rodriguez's relatives, including a deceased uncle of Rodriguez's who referred over 100 people to respondent as clients over many years (R. supp. ans. p. 18 ¶ 110; R. test.).

134. On or about June 26, 2013, Silva met with respondent and requested respondent to provide to her a copy of respondent's file (R. supp. ans. p. 19 ¶ 111; Ex. 183). Respondent chose not to provide a copy of the file to her immediately as he was otherwise occupied at the time and the file was quite voluminous (R. supp. ans. p. 19 ¶ 111, R. test.). Respondent subsequently stated to the Director that he was concerned that Silva, a United States citizen, who was experiencing marital difficulties with her husband, might use Rodriquez's immigration status, a withdrawal of an immigration petition and/or threats of deportation against Rodriguez (R. supp. ans. p. 19 ¶ 111).

135. While the circumstances surrounding the June 26 office visit are uncertain, as Ms. Silva never testified, Respondent requested that she leave his office. It is clear that the visit was less than amicable. Mr. Rodriguez was not present at the meeting and according to Respondent's testimony never indicated that he wished to terminate Respondent's representation. Neither Ms. Silva nor Mr. Rodriguez made any follow-up requests for the file after June 26, 2013.

136. The complaint filed by Ms. Silva was not on the basis that the original file had not been provided to her but on the events allegedly taking place during the June 26 office visit (Ex. 183).

137. On or about July 17, 2013, the Director mailed to Respondent notice of investigation of Silva's complaint against respondent (R. supp. ans. p. 20 ¶ 112).

138. By letter dated August 15, 2013, Respondent provided a copy of the file to Silva and Rodriguez (R. supp. ans. p. 20 ¶ 113; Ex. 97). Respondent provided the file because Silva filed a complaint with the Director and because there was now an irreconcilable conflict between the parties (R. supp. ans. p. 20 ¶ 113; Ex. 97, R. test.).

139. Before receiving Ms. Silva's complaint respondent had called Mr. Rodriguez three or four times in an attempt to get the parties into his office to discuss the matter. He was not successful (R. test.).

140. Neither Ms. Silva nor Mr. Rodriguez ever notified Respondent that they were terminating his representation (R. test.).

Firm Policies, Practices and Culture

141. All phone calls are expected to be returned, if at all possible, within 24 hours after receipt. This requirement is stressed by respondent and everyone in the firm is aware of it and trained on it (Olson, Williams and R. test. Ex. 156-159 also applicable to paragraphs 139-143 below).

142. The firm holds team meetings each week to discuss ongoing cases, including status and next steps. These include a review of the firm's Docket that lists all the upcoming hearings before the Immigration Court and other courts, as well as interviews before USCIS that attorneys must attend. Also discussed is the Status Report for Clients in Removal Proceedings, which includes a list of all the clients in removal proceedings, with their next hearing date, the case status and next steps in their case, to ensure that filing requirements are being monitored and handled in a timely manner.

143. If a team meeting is not held during a week due to conflicting priorities, Respondent will meet with case managers or collaborating attorneys to discuss case matters that must be dealt with that week. Respondent also discusses cases daily with team members as needed, particularly when urgent matters arise.

144. The firm also frequently use email correspondences and LawLogix reminders to communicate about specific cases, assign tasks, track progress, and relay due dates and other important information. In addition, they rely on our systems, procedures and processes to help ensure that case managers or collaborating attorneys are attending to their share of duties, instead of repeatedly checking up on them.

145. The firm has an open-door policy that encourages teamwork and collaboration.

146. In addition, the firm has a Case Management and Client Service Manual to document our office policies, including team members' duties and responsibilities and professional ethics issues. This guidance specifically outlines the steps that attorneys and Case Managers (attorneys, law clerks and paralegals) must take to ensure that filing requirements and due dates are met. The Manual includes detailed instructions on how and when to update reminders, case notes and summary case dispositions in LawLogix, the firm's online case management system.

147. The firm uses flat fee billing almost exclusively. Immigration practice appears compartmentalized and each matter and a corresponding Contract for Legal Services lists the flat fee and payment obligations. A number of those flat fee amounts were reviewed by immigration lawyers in the area and were found to be within the range charged by them (Ex. 155.)

148. Respondent utilized the in-house accounting services of the accounting firm of Boeckermann Grafstrom & Mayer, LLC, and has accounting clerks/bookkeepers.

149. The firm has between 250-300 active cases at any one time. Other than the respondent's assertion that that number was manageable there was no evidence from any source as to the reasonableness of that number of clients for a firm of their size.

150. In addition to respondent there are currently two other staff attorneys with the firm. There was no testimony as to the number of the support staff.

151. While not necessarily a firm policy, Respondent testified, as did others, (Olson and Williams test.) that legal representation continued for all clients even if legal fees were in arrears.

152. Respondent testified that the firm has faced financial challenges and has had to write off, in the recent past, hundreds of thousands of dollars in unpaid fees (Ex. 170).

Immigration Practice

After a lengthy contested hearing with 19 witnesses and nearly 200 exhibits totaling well in excess of a thousand pages a few findings are necessary and appropriate to describe immigration practice as it appears from the limited perspective of this trial and the undersigned.

153. Immigration practice is, by and large, an administrative law practice involving administrative agencies, administrative courts and subject primarily to complex federal regulations. The Federal Courts become involved in the area of appeals. Appeals and proceedings in the Federal District Court as well as the 8th Circuit Court of Appeals figure prominently here.

154. The practice appears to be highly compartmentalized. The Respondent's Contracts for Legal Services would list a specific type of proceeding or hearing. Examples from those contracts include the following: Velarde Hearing and Supplemental I-130 Evidence, Refiling of I-130 Petition, 212h waiver before the Immigration Court, I-130 Petition and Adjustment of Status Application, Appeal to BIA of Decision of Immigration Judge. There

were numerous others. To the uninitiated these references or procedures could, at the very least, be confusing.

155. The very nature of immigration practice means that most clients will not have English as their native language nor will they likely be cognizant of the administrative or court procedures they must navigate.

156. The flow of cases through the immigration process, if these matters are any indication, is markedly different from that which is the norm in the District Courts of Minnesota. For example, in the Rozhko-Radziuk matter the initial pro se filing for asylum was on April 8, 2009. On August 7, 2009 Rozhko was ordered to appear before the immigration court on October 29, 2009 (a master calendar). He did so with Katie DeGrio and the matter was initially set for hearing on April 28, 2010. This date was continued by the court to January 12, 2011, a period of over 14 months. Their final immigration hearing (handled by their new counsel) was held on May 22, 2013 and they are still awaiting a final decision. Similar time frames appear in the other matters involved here.

157. Strict compliance with non-substantive administrative requirements (e.g. biometrics and filing of original documents) appears to be extremely important and a failure to meet them can have a devastating effect on persons seeking relief. (See findings in the Rozhko-Radziuk and Lyons matters).

Aggravating Factors and Claimed Mitigation

1. Respondent committed a number of violations of the Rules of Professional Conduct in multiple matters over a period of time.

2. Some of Respondent's misconduct was intentional.

3. Many of the victims of Respondent's misconduct were vulnerable. Abosi, the Ivanovs, Rozhko, Radziuk, and Silva all are immigrants to this country, and do not speak English as a first language (Ivanova test.; Radziuk test.; Abosi test.; R. test.).

4. Respondent, by and large, does not recognize the wrongful nature of some of his misconduct, refused to acknowledge committing any wrongdoing and except as specifically noted in the findings, exhibited no remorse for his misconduct (R. ans.; R. supp. ans.; R. test.). Respondent steadfastly maintained throughout the proceedings that he committed little, if any, misconduct. (R. ans.; R. supp. ans.; R. test.).

5. When presented with allegations of wrongdoing, Respondent consistently harassed, bullied and/or blamed others (*See, e.g.*, R. ans. p. 35, ¶ 97, p. 45, ¶ 24; R. test.; Ex. 17 p. 4; Ex. 127 pp. 1-4; Ex. 128)

6. On multiple occasions during the disciplinary investigation in this proceeding, respondent made statements and accusations about the then-assigned assistant Director, and the Director's Office as a whole (Ex. 88 pp. 2-3; Ex. 89 pp. 1-3; Ex. 91)

7. Respondent has substantial experience in the practice of law, both in general, and in immigration law, in particular (R. test. Chapman, Guzior and Pritschet test.).

8. Respondent has the following history of prior discipline (Exs. 93-95).

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), MRPC, as interpreted by Lawyers Professional Responsibility Board Opinion No. 15 (Ex. 93).

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 (Ex. 94).

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 (Ex. 95).

9. Respondent offered the evidence of witnesses as to respondent's character, and in some cases, his expertise and reasonableness of fees (Norring test.; Guzior test.; Bah test.; M. Morales test.; V. Morales test.; Chapman test.; Pritschet test.). These witnesses were generally unaware of the nature of the allegations against respondent (Norring test.; Guzior test.; Bah test.; M. Morales test.; V. Morales test.; Chapman test.; Pritschet test.).

10. The Respondent's law firm currently has in place policies, procedures and a software system that, if followed by attorneys and staff, should reduce the likelihood of failures to complete administrative tasks in a timely fashion (Olson, Williams and R. test., Exhibits 156-159).

CONCLUSIONS OF LAW

Ivanov Matter

Rule 1.4(a) (3): Communication.

Respondent's conduct violated Rule 1.4 (a) (3) MRPC.

While there is no evidence or claim that the Respondent failed to adequately keep the Ivanovs apprised of the status of the immigration matters themselves there was a failure to adequately explain to the Ivanovs the nature and the meaning of the EAJA rider and the subsequent proceedings. They did not know how that affected or

did not affect their responsibility to pay legal fees. The Ivanovs testified credibly that as a result of the EAJA award that they understood that they would not be responsible for payment of for the remainder of Respondent's fees. Neither the Contract for Legal Services or the Rider adequately or clearly explained that position. The Respondent's claim that there was a "meeting of the minds" on this was not supported by the evidence.

Rule 1.5(a): Fees

Respondent's conduct in the Ivanov matter violated Rule 1.5(a) MRPC.

The evidence showed that there were errors and improper charges on the billing statements

Rule 1.5(b): Fees

Respondent's conduct in the Ivanov matter violated Rule 1.5(b) MRPC

The Respondent failed to adequately explain the meaning of the EAJA rider to the Ivanovs. The ruling of the Minnesota Court of Appeals in the Sabhari case cited herein applies as to the interpretation of the Contract for Legal Services and Rider as the identical forms were used in this matter.

Rule 3.1: Meritorious Claims and Contentions

Respondent's conduct did not violate Rule 3.1, MRPC

Respondent did not file a frivolous collections lawsuit against the Ivanovs because he had a good faith belief that the Ivanovs owed him legal fees based on the contracts for legal services and that he had a good-faith argument that the EAJA fees belonged to him and his firm based on the Rider to the Contract for Legal Services. He notified the Eighth Circuit Court of Appeals that the EAJA fees belonged to the firm. Respondent also never charged any fees to the Ivanovs for the work on the motion for attorney's fees under EAJA, which was highly contested by the U.S. government. The Respondent's legal position was ultimately found to be incorrect in the Court of

Appeals. (This issue is discussed in the Memorandum accompanying these findings and conclusions.)

Rule 3.3 (a) (1): Candor toward the Tribunal

Respondent's conduct did not violate Rule 3.3(a) (1), MRPC

Respondent did not make false statements to the court either overtly or by omission in his collections lawsuit. In view of his legal position on the EAJA fees his failure to mention it is understandable. It is, however, a very close question as disclosure of the receipt of those EAJA fees would have provided the court with a complete picture of the fee situation.

Respondent reasonably relied on Mr. Raymond Gwenigale, an attorney who was then at the firm, to provide the Ivanovs' address to the process server, Ronald Lietz. Mr. Gwenigale mistakenly provided the Nicollet Mall address that was listed on the March 17, 2006 contract with Aleksandr Ivanov.

Respondent also relied on the process server to properly serve the Ivanovs the summons and complaint although the Respondent's decision not to pay the process server a reasonable additional fee to insure accurate service contributed to the error. It should be noted that the legal work in pursuing this claim was mediocre at best.

Respondent moved to vacate the default judgment once he became aware that the Ivanovs did not receive proper service.

While Respondent did not exercise enough due diligence in supervising his staff attorney, in this particular matter, that does not give rise to actionable misconduct.

Rule 4.4: Respect for Rights of Third Persons

Respondent's conduct violated Rule 4.4 MRPC

Respondent's statement in his affidavit to the court: "I am deeply disturbed by the Ivanov's (sic) unholy efforts to steal my services without paying just compensation

of which they were contractually bound" had no substantial purpose other than to embarrass or burden the Ivanov's

Rule 8.4(c): Misconduct

Respondent's conduct did not violate Rule 8.4(c), MRPC.

Respondent did not commit any professional misconduct involving dishonesty, fraud, deceit or misrepresentation.

Rule 8.4(d): Misconduct

Respondent's conduct did not violate Rule 8.4(d), MPRC.

Respondent did not commit any professional misconduct that is prejudicial to the administration of justice.

Abosi Matter

Rule 1.4(a): Communication

Respondent's conduct in the Abosi matter did not violate Rule 1.4(a), MRPC.

Respondent established through his testimony, the testimony of other witnesses, his telephone log, and telephone records that Abosi and his family members did not repeatedly attempt to reach Respondent by telephone, and that Respondent did not respond to their calls.

The Minnesota Court of Appeals refrained from determining whether Respondent violated Rule 1.4 when he did not visit Abosi while he was in immigration custody. Respondent had a long-standing relationship with Abosi, had informed Abosi about the motion for bond hearing and next steps, and did not believe it was necessary to visit Abosi in jail.

Rule 1.4(b): Communication

Respondent's conduct did not violate Rule 1.4(b), MRPC.

Rule 1.5(a): Fees

Respondent's conduct violated Rule 1.5(a) MRPC.

Respondent did not violate Rule 1.5(a) by charging unreasonable fees but by failing to credit payments already made and by failing to adequately document the work done to justify the fees. At no time was evidence presented documenting the basis for the sums owed in the collection lawsuit.

Rule 3.1: Meritorious Claims and Contentions

Respondent's conduct violated Rule 3.1 MRPC.

Respondent violated Rule 3.1 by seeking fees for which he was already paid.

Rule 3.4 (c): Fairness to Opposing Party and Counsel

Respondent's conduct violated Rule 3.4 (c) MRPC

Respondent violated Rule 3.4 (c) by negligently failing to adequately inform and supervise his staff of the reduction in fees ordered by the Court of Appeals resulting in three months of billings at the original rate.

While Respondent did not knowingly disobey an obligation under the rules of a tribunal; with respect to the Minnesota Court of Appeals judgment in favor of Igbanugo Partners in the amount of $2,944 he had it within his power to insure that the billings were corrected and failed to do so. Abosi concluded that the Respondent was still seeking the original sum.

Rule 4.4(a): Respect for Rights of Third Persons

Respondent's conduct violated Rule 4.4 (a) MRPC

Respondent's conduct as evidenced by his letters to Abosi clearly and egregiously violated Rule 4.4(a) MRPC.

Rule 8.4(d): Misconduct

Respondent's conduct violated Rule 8.4(d) MRPC.

Respondent improperly disclosed client confidences during the hearing on the collections lawsuit.

Rule 8.4(g): Misconduct

Respondent's conduct clearly and egregiously violated Rule 8.4(g), MRPC

Respondent, in his letters to Abosi, harassed Abosi based on his religion.

Roshko-Radzuik Matter

Rule 1.3: Diligence

Respondent's conduct violated Rule 1.3, MRPC.

Respondent reasonably delegated the task of attending the initial master calendar hearing to a senior attorney who failed to adequately note the requirements for new biometric data. However, Respondent personally appeared at the hearing where it was discovered that biometric data and original documents had not been submitted. He was personally advised and admonished by the court about the consequences of a failure to meet those requirements at the next hearing. Nonetheless, respondent again delegated that task to an associate and at the August 24, 2011 hearing discovered that original documents were in the file with him in court. As a result, the court deemed the asylum claim abandoned and the court found that respondent had provided ineffective assistance of counsel and that she would report him.

Rule 1.4(a) (3): Communication

Respondent's conduct did not violate Rule 1.4(a) (3), MRPC

Respondent kept the client reasonably informed about the status of the matter and the only basis for a lack of communication was the failure, by an associate attorney

to initially request the original documents. This was done immediately after the first individual hearing on January 11, 2011 and the documents were provided the next day.

Rule 8.4(d): Misconduct

Respondent's conduct did not violate Rule 8.4 (d),MRPC

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

Rule 3.4(c) Knowingly disobey an obligation under the rules of a tribunal.

Respondent's conduct violated Rule 3.4 (c), MRPC

On July 18, 2012, Respondent attended a hearing before the immigration court. The required biometric information had not been provided and the court found this to be a failure to adequately and competently to represent the client. He was directed to self-report to the Director within 30 days of the hearing. Respondent agreed to do so on the record and the court continued the matter to allow additional time to submit the documentation. Respondent claimed among other things that the order was *ultra vires* and gave many more reasons for noncompliance. A letter to the Director had been prepared and was ready for signature. Had it been signed on August 15, 2012 and sent then it would have been timely. Respondent knowingly chose not to comply. That same letter was received by the Director on September 26, 2012.

Rule 8.4(d): Misconduct

Respondent's conduct violated Rule 8.4(d) MRPC

Comment: The Immigration Judge ultimately excused Respondent from filing the self-report late. Despite Respondent's delay, the Immigration Judge held the individual hearing and granted the client's Form I-751 petition to remove conditions on residence. The client is currently a lawful permanent of the United States and recently retained Respondent to represent him in his naturalization application. The client testified on Respondent's behalf at the hearing.

Sabhari Matter

Rule 1.5(a): Fees

Respondent's conduct in the Sabhari matter did not violate Rule 1.5, MRPC.

The only basis claimed for an unreasonable fee was based on the failure to credit the EAJA award against the outstanding fees.

Rule 3.1: Meritorious Claims and Contentions

Respondent's conduct did not violate Rule 3.1 MRPC

Respondent had a good-faith argument that the EAJA fees belonged to him and his firm based on the Rider to the Contract for Legal Services. He notified the Eighth Circuit Court of Appeals that the EAJA fees belonged to the firm. Respondent also never charged any fees to the Sabharis for the work on the motion for attorney's fees under EAJA, which was highly contested by the U.S. government.

Although the district court and the Minnesota Court of Appeals ruled in favor of the Sabharis and the Respondent is bound by those decisions there was no finding that the action was frivolous or had no basis in law of fact. (See the discussion regarding the EAJA fee in the Memorandum accompanying these findings and conclusions.)

Rule 8.4(d): Misconduct

Respondent's conduct in the Sabhari matter did not violate Rule 8.4(d), MPRC.

Silva Matter

Rule 1.16(d) Failure to return papers

Respondent's conduct did not violate Rule 1.16(d), MPRC.

There was no testimony by either Silva or Rodriquez and the complaint was not based on a failure to return the file but other conduct not charged. This was a dual representation and respondent credibly explained his failure to provide a "copy" of the file immediately.

Recommendations for Discipline

Based on the foregoing findings and conclusions, the undersigned recommends to the Supreme Court:

1. That respondent Herbert Azubuike Igbanugo be suspended from the practice of law for 90 days pursuant to Rule 15, RLPR, effective 14 days from the date of the Court's suspension order;

2. That the reinstatement hearing provided for in Rule 18 (a-d), RLPR, be waived;

3. That respondent, Herbert Azubuike Igbanugo, comply with Rule 26, RLPR;

4. That respondent, Herbert Azubuike Igbanugo, pay $900 in costs, plus disbursements and interest, pursuant to Rule 24, RLPR;

5. That respondent, Herbert Azubuike Igbanugo, be required to successfully complete the professional responsibility portion of the State Bar Examination within one year of the date of the Court's suspension order; and

6. That respondent, Herbert Azubuike Igbanugo, be reinstated following the expiration of the suspension, provided that at least 15 days before the expiration of the

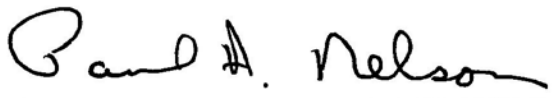
suspension, respondent files with the Clerk of Appellate Courts and serves on the Director an affidavit establishing that respondent is current with Continuing Legal Education requirements, as complied fully with Rules 24 and 26, RLPR, and has satisfactorily completed all other conditions imposed by the Court in its decision.

7. That upon reinstatement, respondent, Herbert Azubuike Igbanugo, be placed on unsupervised probation for a period of two years from the date of the Supreme Court's reinstatement order on the following terms and conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

Dated: June 4, 2014.



PAUL A. NELSON
SUPREME COURT REFEREE

MEMORANDUM

The following memorandum addresses, briefly, some items that deserve further comment or clarification beyond that which is contained in the findings or conclusions.

This complex disciplinary proceeding encompasses six different matters with several of them covering many years. Each one is examined separately and each must stand on its own facts. The same high standard of proof, clear and convincing evidence, is required for each of them and a finding of misconduct in one does not make it more likely that misconduct occurred in another.

Two of the six matters, Abosi and Subhari, have decisions from the Minnesota Court of Appeals In a third matter, the Ivanovs, the central legal issue is the same as that which was addressed in the Subhari case. In two others, Lyons and Roshko-Radzuik, there is an immigration court record and findings by an immigration court judge. Only the Silva matter has not had prior court involvement.

In addition, as the findings indicate, there has been significant federal court involvement at the District Court level and at the 8th Circuit Court of Appeals. Recent (2010) case law from the United States Supreme Court also has a bearing on the interpretation of contracts for legal services utilized by the Respondent.

As all of these matters arise from Respondent's immigration practice there are some references to appeals within that practice area, most often with the Board of Immigration Appeals (BIA).

While those prior court rulings clearly have a bearing on these disciplinary matters, their holdings, while binding as to some issues, do not necessarily mean that misconduct has occurred. The cases must be closely examined and read in context with a view towards the evidence received in this lengthy hearing and the voluminous evidence submitted.

Even though the evidentiary hearing required a total of five days (two of which were partial days) and involved testimony from 19 witnesses including Respondent, many of the facts were either admitted or were proven by documentary evidence submitted. The exhibits, numbering nearly 190, were received, for the most part,

without objection. While there was wide agreement as to many of the facts there was no agreement at all as to what they meant.

IVANOV and SUBHARI

It is impossible to discuss Ivanov without addressing the Minnesota Court of Appeals decision in Subhari. Both matters involve collection lawsuits brought by Respondent to collect unpaid legal fees. In both instances the contracts for legal services and the "EAJA" rider were identical. The Respondent sought and obtained substantial legal fees from the U.S. government. In the Subhari case the award was $52,500 and in the Ivanov matter it was $32,129 plus a $250 filing fee.

The findings set out in detail the contracts, fees charged, payments made and the lengthy, multi-year, litigation involved. In both Subhari and Ivanov the Respondent took the position that the contract for legal services and more specifically the "EAJA" rider meant that any recovery from the federal government under the Equal Access to Justice Act (EAJA), 28 U.S.C. Sec. 2414(d) and 5 U.S.C. Sec. 504 et. seq. was assigned in full to the law firm. In neither Subhari nor Ivanov was the recovery under EAJA credited against the outstanding legal fees claimed to be owing to Respondent.

The Court of Appeals, in an unpublished opinion, *Igbanugo Partners Int'l Law Firm, PLLC v. Ali Sabhari, et. al.* A12-2187 and filed September 3, 2013 found that "the contract language clearly reflects the parties agreement that, in the event of an EAJA award, any attorney fees owed to the law firm would be offset by the EAJA award." That ruling applies to the Ivanov matter as well. The entirety of that opinion as it relates to the EAJA award is extremely important.

That the Respondent lost in both the District Court and the Court of Appeals on his EAJA award assignment argument is not, however, proof that the Respondent

violated Rule 3.1 MRPC by bringing an action that had no basis in fact or law that is not frivolous. This is not a disagreement with the District Court or the Court of Appeals but is a completely different issue. The Court of Appeals decision was just issued in September of 2013. The collection lawsuits against the Ivanovs and Sabharis were both commenced in 2011. The Court of Appeals cited *Astrue v. Ratliff,* 130 S. Ct. 2521 (June 14, 2010) as authority for the fact that the EAJA award belongs to the client. There, a unanimous Supreme Court held that the EAJA award is payable to the litigant, not the attorney, and was subject to off-set a pre-existing debt owed by the litigant to the United States.

The Respondent, in his closing argument in this matter, noted as follows at page 51:

> In the U.S, Supreme Court's decision in Astrue v. Ratliff, 130 S. Ct. 2521 (2010) Justice Sotomayor noted as follows: "(t)he EAJA's admirable purpose will be undercut if lawyers fear that they will never actually receive attorney's fees to which a court has determined the prevailing party is entitled. The point of an award of attorney's fees, after all, is to enable a prevailing litigant to pay her attorney."
>
> ....Finally she notes that for over 20 years, all EAJA fee awards were paid directly to the attorneys by the U.S, government. It was not until 2005, when the Treasury Department changed its offset program to cover attorney fee awards in federal court, that the U.S. government started paying awards to litigants in the limited circumstance of when they owe a debt to the federal government.

This case was also the subject of a law review comment: Frischetti, Joseph A. (2010) "Ratliff v. Astrue: The Collision of the Equal Access to Justice Act and the Debt Collection Improvement Act, "*Seton Hall Law Review:* Vol.40; Iss.2, Article 7. As noted in that comment there was a split among the circuits as to whether the awards went to the attorney or the litigant. The 8th Circuit was one of the circuits that held that Congress intended for attorney's fees awarded under EAJA to go to the prevailing party's attorney *Astrue v. Ratliff,* 540 F.3d 80 (8th Cir. 2008). The comment ultimately argues "that the EAJA directs payments to the clients, not his attorney, but that this process can

be circumvented through the use of assignments. Nevertheless, to fix this problem fully, Congress will need to initiate legislative reforms." (Page 726)

Respondent also submitted as Exhibit A to his closing argument a practice advisory from the Legal Action Center (American Immigration Council). That advisory "Requesting Attorney's Fees under the Equal Access to Justice Act "was dated December 15, 2008 and is included, in its entirety, in the files in this matter. There are two items of note in that advisory:

On page 3: "Before filing an EAJA fee request (if not done earlier) attorneys need a clear, written agreement with their client (and co-counsel, if any) regarding who is entitled to the fees in the event of a court award or settlement. Fees belong to the client absent a representation agreement to the contrary."

Also on page 3 is the following: "The initial work performed before the immigration service or the immigration courts is not compensable." Citing *Ardestani v. INS*, 502 U.S. 129, 135 (1991).

While the decision in the Subhari case, given the facts, the contracts and rider, is certainly the correct one it does not hold that the Respondent's position was without a basis in law or fact. The Respondent had the rider which he considered, incorrectly, to be a valid assignment.

ROSHKO-RADZUIK

Rustam Rozhko and Katsiaryna Radziuk arrived in the United States in 2008. Rozhko filed a pro se application for asylum and identified Radziuk as his wife in 2009. They retained Respondent's law firm in October of 2009 just before their first hearing in immigration court on October 29. Katie DeGrio, an attorney then with Respondent's law firm appeared with them at this master calendar hearing. The issue of "biometrics" and original documents was addressed at that point. The findings of fact address in detail the course of the case from that point forward.

There was little or no dispute as to what happened. DeGrio failed to make an entry in the law firm's software program about the need for follow up on these administrative requirements. She left the firm in 2010. The Respondent (who was identified as lead counsel) ultimately appeared at the individual hearing on this case on January 12, 2011. Those requirements had not been met by the time of that hearing. Government counsel sought to have the asylum action deemed to be abandoned and dismissed. Respondent accepted responsibility for the failure caused, in part, by DeGrio's lapse. The court initially determined that it would grant the government's motion but relented after reviewing a recording of the October 29, 2009 hearing. The Respondent personally, and clearly, was put on notice of the consequence of failure to comply with all requirements and took testimony that day. A transcript of the January 12, 2011 hearing is Exhibit 55 and is noteworthy in both its candor and tenor and is a crucial exhibit in this proceeding.

Rather than following up personally, Respondent assigned the matter to another associate, Raymond Gwenigale. At the next hearing on August 24, 2011, Respondent appeared with Rozhko and Radziuk. Incredibly, it was found that not all the original documents had been filed and were, in fact, found in Respondent's file.

An angry immigration court (Ex. 64) found that Respondent had provided Rozhko and Radziuk with ineffective counsel, deemed the asylum petition abandoned and dismissed. Respondent withdrew as counsel and Rozhko and Radziuk were advised that the requirements of the *Matter of Lozada* 19 I. & N. Dec. 637 (BIA) Interim Decision 3059, 1988 WL 235454 had to be satisfied in order for them to appeal. Those requirements included that either Respondent had to report himself to the Director of OLPR or another attorney had to do so.

Respondent argues strenuously that he reasonably delegated the matter to a senior attorney and that he complied with the requirements of Rule 5.1 MRPC in

supervising associate lawyers under his direction and control. A reading of the transcript of the January 12, 2011 hearing, however, makes it hard to understand how it is possible that the Respondent could even think that a subsequent error would be tolerated. The finding that Respondent failed to use due diligence, a violation of Rule 1.3 MRPC, is certainly affirmed by a combined reading of those two hearings.

Katsiaryna Radziuk testified here. Her recounting of the overwhelming fear that she and Rustam felt at the possibility of being deported was moving and powerful. A reading of the application for asylum by Mr. Rozhko (Ex. 45) indicates what he feared if he were returned to Ukraine.

EMEKA ABOSI

Of all of the six matters that were contained in the Director's Petitions for Discipline, this is the most troubling. The findings and conclusion set out what occurred. Repeating the Respondent's words in the letters to Mr. Abosi would not add anything. An objection often posed or a statement made by a judge (often to simply move things along) that "the document speaks for itself" is perhaps the only thing that needs to be said here.

Both Mr. Abosi and Respondent felt that they were friends. The detention on September 23, 2009 after an immigration hearing was held was shocking to all concerned (including the undersigned). Mr. Abosi had been in the United States since 1992 and on September 23, 2009, 17 years later, he finds himself in detention facing deportation. The word that he used was that he was "panicked." It is understandable for him to expect some support in the form of a visit from Respondent in jail. That did not happen and is addressed in the findings but a trip to Elk River by Respondent would have probably meant that no complaint would have been filed.

LYONS and SILVA

These two separate matters arise out of limited circumstances and are fully addressed as noted in the findings and conclusions.

OBSERVATIONS, AGGRAVATION AND MITIGATION

The number and lengths of some exhibits, the testimony and an intense view into a legal practice and an administrative court system unlike that of the state courts made this matter particularly challenging. Both counsel for the Director and the Respondent, who represented himself, did an excellent job of establishing the facts, insuring a complete record and educating the undersigned.

First, and this was not always accepted or appreciated by the Respondent, was that this was not about his expertise, experience or success in immigration law. The Respondent is recognized as an expert in immigration law. His arguments and often his testimony sometimes had more to do with what particular relief and successes he had in representing clients than the issues themselves. The questions of diligence and competence arose in the context of administrative requirements such as biometrics or documents, matters that he often delegated to others. The others came in the financial stresses that the firm was facing and the resulting collection actions.

Second, Raymond Gwenigale, a former associate made the following comment about the Respondent; "He has a strong personality, sometimes to his advantage and sometimes not." While Mr. Gwenigale had some lapses in his legal work this observation explains a great deal.

Respondent is a supremely confident, assured and competent individual who has strong religious beliefs and high expectations for himself and others. He is the

"firm" and he is "responsible for everything that happens" but also shifts the blame to others as he did in the Rozhko-Radziuk matter and in Lyons. Attorneys and staff members often lost their jobs for failing to follow through. Two staff members were terminated after the Lyons hearing. Two emergency meetings were held after the issues arose in the Rozhko-Radziuk matters considering them to be "very serious matters."

The firm has in place appropriate checks and balances and a software system that would provide adequate information to staff and attorneys. They now have checklists to follow. They have staff training and a written policy manual. The Respondent does hate mistakes. At this point a repeat of the administrative lapses that led to these matters has been lessened. There is now clarity in the law regarding EAJA fees and a real warning to the Respondent as to the dangers in suing for unpaid fees.

Except for his expressed regret as to the Abosi letter which was limited in that he argues that his letter was "culturally" appropriate he does not acknowledge any remorse for his actions. His language towards the Director's office and its attorneys (contained in letters and exhibits) and towards those who filed complaints or judges who issued rulings in the immigration court is unworthy of a professional. He believes that the Director's office has an agenda against him.

After consideration of all of the testimony and exhibits received and all inferences from them and a diligent review of them the recommended discipline is appropriate under the rules and is necessary to adequately protect the public.

PN