

FILE NO. C4-99-1780
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against WILLIAM P. KASZYNSKI,
an Attorney at Law of the
State of Minnesota.

SECOND SUPPLEMENTARY
PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this second supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a October 15, 1999, petition for disciplinary action and a November 4, 1999, supplementary petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

COUNT VII

Continued Pattern of Incompetence, Neglect and Failure to Communicate
Robles Matter.

267. Gilberto and Liliana Robles reentered the United States from Mexico without inspection on or about October 15, 1988. Mr. Robles is bilingual in Spanish and English. The Robles have a U.S. citizen son who was born in 1992. All of Mr. and Mrs. Robles' family live in the U.S.

268. In November 1996, Mr. and Mrs. Robles learned from others in the Hispanic community that the immigration laws were being changed to make it more difficult to remain in the United States.

269. Respondent's legal assistant, Juan Olivetti, referred Mr. and Mrs. Robles to respondent. Mr. and Mrs. Robles retained respondent in about November 1996 and told him that they wished to obtain work permits and eventually become permanent residents of the United States. During the representation, the Robles paid respondent \$3,000 - \$5,000.

270. Respondent did not explain adequately to the Robles that in order to obtain work permits they would have to voluntarily place themselves in deportation proceedings.

271. In November 1996, it was well known by the immigration bar that changes in the law which would become effective April 1, 1997, would require ten years continuous presence in the U.S. (instead of the seven years required under the old law) as a threshold qualification for permanent residence. Additionally, it was well known that simply submitting a request for processing to the INS by April 1, 1997, did not ensure application of the old law. Orders to Show Cause had to be filed in the immigration court by April 1, 1997, for the old law to apply.

272. Respondent did not accurately or completely advise Mr. and Mrs. Robles regarding the law change or its effect on their chance to achieve permanent residence.

273. On December 9, 1996, respondent submitted to the INS notices of entry of appearance and biographic information forms on behalf of the Robles and requested a processing interview (Exhibit 207). Respondent cited no compelling humanitarian reasons in support of the request for an immediate interview.

274. On August 15, 1997, the INS notified Mr. and Mrs. Robles of their September 3, 1997, processing appointment (Exhibit 208). Respondent did not advise the Robles that they were not eligible for cancellation of removal. Respondent did not advise them that if they placed themselves into deportation proceedings by attending the interview they would be forced to leave the country unless respondent's theory of "estoppel" or his claim that the INS was wrongly applying the law in a "retroactive"

manner was ultimately successful. Respondent did not explain to the Robles that his theory was at best novel and very unlikely to succeed.

275. Mr. and Mrs. Robles appeared at the processing appointment on September 3, 1997. That same day, the INS issued to the Robles notices to appear in removal proceedings finding them to be deportable aliens and directing them to appear before an immigration judge at a date and time to be set (Exhibit 209). The INS's issuance of these notices to appear clearly indicated that the INS was processing the Robles under the new law effective April 1, 1997.

276. On September 19, 1997, Ms. Burns, submitted to the INS applications for suspension of deportation, supporting documents and a filing fee on behalf of Mr. and Mrs. Robles (Exhibit 210). The application showed October 15, 1988, as the Robles' date of entry into the United States. Ms. Burns cited no compelling humanitarian reasons to support the Robles' application. (The Robles' file also contains an October 8, 1997, cover letter to the INS enclosing applications for suspension of deportation, the filing fee and supporting documents.) (Exhibit 211).

277. On September 30, 1997, the immigration court issued to the Robles notices of a January 27, 1998, hearing (Exhibit 212).

278. On October 16, 1997, the INS returned to respondent and Ms. Burns the applications and other documents they submitted on October 8 because they had failed to submit the fingerprint cards in their sealed envelopes as required (Exhibit 213).

279. Martha Burns appeared with the Robles at the January 27, 1998, hearing. The hearing took only 15 minutes. Ms. Burns requested voluntary departure for the Robles, or "maybe" cancellation of removal or suspension of deportation. Ms. Burns presented no evidence regarding the length of time the Robles had been in the U.S. or the hardship that would result to them and their family if they were deported.

280. The judge concluded that the Robles' applications for suspension of deportation were untimely and denied them for lack of jurisdiction, and denied the

request for cancellation of removal because the Robles had not been continuously present in the United States for the requisite ten years (Exhibit 214). The judge's order granted the Robles voluntary departure on or before May 27, 1998, and specifically stated that any appeal was due by February 26, 1998.

281. On February 4, 1998, respondent had Mr. Robles sign a notice of appeal to the Board of Immigration Appeals ("Board") that respondent had prepared, *see* Exhibit 215. (Mr. Robles also signed, at that time, an appeal fee waiver request.) The notice of appeal sought to appeal that portion of the immigration court's January 27, 1998, order dismissing the Robles' applications for suspension of deportation for lack of jurisdiction. Specifically, respondent stated as the issue on appeal:

Whether an alien who voluntarily sought benefits prior to April 1, 1997, and would have been eligible for Suspension of Deportation under section 241(a)(1)(b) of the Immigration Act, but was not served with a Notice to Appear until after April 1, 1997, and would have been ineligible for Cancellation of Removal under section 240A(b) under the Immigration Act, should be allowed to proceed under the 'old law'

The certificate of service accompanying the notice of appeal reflected that Martha Burns served the notice of appeal on the INS by mail on February 17, 1998, although respondent actually signed the certificate.

282. Ms. Burns sent the notice of appeal and other documents to the Board on or about February 17, 1998, by certified mail (Exhibit 215). Board procedures require that the notice and other documents must be received by the Board by the due date for an appeal to be timely (Exhibit 216). Timely mailing is not sufficient. Therefore, immigration attorneys routinely use couriers and follow-up to be certain that important documents are actually received on time.

283. On March 4, 1998, the Board issued to respondent filing receipts reflecting a March 2, 1998, receipt of the Robles' notice of appeal (Exhibit 217). Respondent made

no effort at that time to determine why the Board did not receive the items sent by certified mail on February 17 until March 4, 1998.

284. On June 22, 1998, the Board determined the Robles' appeal to be untimely and dismissed it (Exhibit 218). Respondent did not immediately file a motion for reconsideration. Instead, on July 14, 1998, Ms. Burns wrote a letter to the Board disputing its contention that the notice of appeal was not received until March 2, 1998, and asking the Board to reconsider its dismissal (Exhibit 219).

285. On July 28, 1998, the Board issued to the Robles a notice reflecting its receipt of the July 14 communication on July 17 (Exhibit 220). The Board accepted the letter as a motion for reconsideration and reminded respondent of the obligation to file a notice of entry of attorney or representative.

286. Also on July 28, 1998, the Board issued to respondent a rejection notice for motion because neither the required filing fee (or waiver) nor a certificate of service of the July 14 motion on the INS was enclosed (Exhibit 221). The rejection notice specifically stated that rejection of the motion did not extend the deadline for filing a motion for reconsideration and cautioned that simply mailing the motion by the deadline was not sufficient. Any resubmission of the motion had to be received by the Board by the July 22, 1998, deadline. The Board's notice specifically recommended the use of an overnight courier service to ensure timely filing.

287. On October 1, 1998, respondent submitted to the Board by certified mail Ms. Burns' July 14, 1998, letter, a notice of entry of appearance, an affidavit of service and appeal fee waiver request (Exhibit 222). Respondent stated, "Due to your office's negligence in failure [sic] to properly date stamp and sign the Post Office's Domestic Return Receipt, we are requesting that the appeal be allowed to proceed." On October 8, 1998, the Board issued its filing receipt reflecting receipt of respondent's October 1, 1998, motion on October 8, 1998 (Exhibit 223).

288. By order dated August 16, 1999, the Board denied respondent's motion for reconsideration because it was not received by the July 22, 1998, deadline (Exhibit 224).

289. On September 15, 1999, respondent sent to the Eighth Circuit Court of Appeals a petition for review and served the petition by mail on the INS on September 20, 1999 (Exhibit 225). The Court of Appeals received respondent's petition on September 16, 1999, and forwarded a briefing schedule to respondent (Exhibit 226).

290. On October 26, 1999, the INS filed a motion to dismiss as untimely the Robles' petition for review (Exhibit 227). The INS noted in its motion that the petition for review was due 30 days from the date of the Board's August 16, 1999 order, or by September 15, 1999, but the Court of Appeals did not receive the petition until September 16, 1999.

291. On October 27, 1999, the Court of Appeals wrote to the parties confirming receipt of the INS's motion to dismiss and stating that the briefing schedule would be suspended while the motion was under consideration (Exhibit 228).

292. Also on October 27, 1999, respondent mailed to the Court of Appeals a motion and supporting documents to extend the time for the filing of the Robles' brief (Exhibit 229). Respondent stated as a basis for the motion that a certified record was necessary to enable him to complete the Robles' brief and that such a record had not yet been provided.

293. On November 18, 1999, respondent served and filed a motion in opposition to the INS's motion to dismiss (Exhibit 230). Respondent failed to address the basis for the motion to dismiss; that is, that he filed his petition for review with the Court of Appeals one day beyond the deadline. Rather, respondent's motion focused on his claim that the INS retroactively applied the immigration laws and that the Robles' February 17, 1998, mailing of the notice of appeal to the Board constituted a timely appeal of the immigration court's decision.

294. Also on November 18, 1999, respondent wrote to Mr. and Mrs. Robles advising them of the status of the pending appeal, Martha Burns' departure from the firm, and respondent's plans to close his law practice by the end of the year (Exhibit 231).

295. On November 23, 1999, the Court of Appeals granted the INS's motion to dismiss the Robles' petition on the basis that it was untimely and therefore the Court lacked jurisdiction to consider it (Exhibit 232). Respondent notified the Robles of the dismissal on December 6, 1999 (Exhibit 233). Respondent enclosed the Robles' file and stated, "I would be willing to appeal your case further, but I will no longer be practicing law effective the end of this year."

296. On January 6, 2000, the INS issued to the Robles notices directing them to depart the United States on January 26, 2000 (Exhibit 234).

297. On January 26, 2000, the Robles received "Bag and Baggage" letters from the INS directing them to report to the American consul regarding their deportation (Exhibit 235). The Robles hired new counsel who has obtained a stay of deportation. However, it is very likely that the Robles will be forced to leave the United States and return to Mexico in the near future. Because their circumstances in returning to Mexico will be so dire, they are planning to leave their American born son in the care of United States relatives so that he will not face the prospect of living homeless on the streets.

Breuer Forestal Matter.

298. On August 26, 1996, Barbara Breuer Forestal consulted with Juan Olivetti, respondent's legal assistant, regarding her immigration status. Ms. Forestal does not speak English. Ms. Forestal had entered the United States from Chile without inspection in December 1992. She had married Ernst Forestal, a legal permanent resident, earlier in 1996. Mr. Olivetti assured Ms. Forestal that she would receive a work permit within three months and her permanent residence in six months. Mr. Olivetti stated that respondent would require a \$1,500 retainer for these services.

299. On September 9, 1996, Ms. Forestal, although clearly ineligible for suspension of deportation, retained respondent to represent her in a "suspension of deportation matter" (Exhibit 236). Ms. Forestal paid respondent \$700 and agreed to pay an additional \$800 by January 1, 1997. Ms. Forestal later gave respondent two checks made payable to the INS for filing fees.

300. On September 9, 1996, respondent submitted to the local INS office a notice of entry of appearance for Ms. Forestal and wrote, "We would respectfully request an appointment for . . . processing her for suspension of deportation proceedings and OSC processing" (Exhibit 237). Because respondent had failed to include the required biographic information, the INS failed to act on this request.

301. On September 26, 1996, respondent filed with the immigration judge in Chicago the notices of entry of appearance (on the wrong form) on behalf of Ms. Forestal and 13 other immigration clients. There was no apparent reason for such a filing at that time (Exhibit 238).

302. During the entire period in which respondent represented Ms. Forestal (September 1996 to late 1998), respondent failed to take any meaningful substantive action on Ms. Forestal's behalf.

303. In August 1998, Mr. and Mrs. Forestal separated and in late 1998, Ms. Forestal consulted Centro Legal regarding a divorce and her ongoing immigration matter. On information and belief, Centro Legal notified respondent that Ms. Forestal wished to discharge him and requested her file.

304. On approximately March 3, 1999, respondent sent to Ms. Forestal, c/o Centro Legal, a \$500 bill and Ms. Forestal's file (Exhibit 239).

305. Respondent's misconduct in the Robles and Forestal matters, including lack of diligence, competence, and communication and failure to properly instruct and supervise Martha Burns violated Rules 1.1, 1.3, 1.4 and 5.1 Minnesota Rules of Professional Conduct.

Dated: February 22, 2000.



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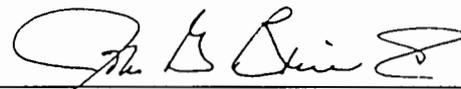
and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: Feb. 24, 2000.



JOHN G. BRIAN III
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD