

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against WILLIAM P. KASZYNSKI,  
an Attorney at Law of the  
State of Minnesota.  
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**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 petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 22, 1981. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On November 27, 1991, respondent received an admonition for refusal to honor his letter of protection to a medical provider in a personal injury action in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

Pursuant to Rule 8(d)(4)(i), Rules on Lawyers Professional Responsibility, the Director of the Office of Lawyers Professional Responsibility (Director) submits to a Lawyers Professional Responsibility Board Panel (Panel) these charges of unprofessional conduct for its determination of whether probable cause exists to believe public discipline of respondent is warranted.

## INTRODUCTION

1. Prior to August 1996, respondent's practice of law consisted primarily of collection, Social Security disability and family law. In late July 1996, respondent's client in a Social Security matter, Juan Olivetti, asked respondent if he would be interested in representing people with immigration problems. Olivetti told respondent that he knew many people in the Hispanic community and could refer many immigration clients to respondent.

2. Respondent informed Olivetti that he had no background or training in immigration law and that he did not speak Spanish. Olivetti told respondent that immigration law was easy and that it was primarily a matter of filling out some forms and making a few appearances. Olivetti told respondent that he was very familiar with immigration law and procedures from previous employment with Phillip Fishman, a Minneapolis immigration attorney.

3. Respondent agreed to accept clients referred by Olivetti.

## COUNT I

### FALSE ADVERTISING

4. On about September 9, 1996, Olivetti spoke with Mario Duarte, editor of *La Prensa*, a bilingual newspaper serving the Hispanic community in the metropolitan Twin Cities area, about placing an advertisement for respondent. Olivetti took in a proposed ad that Duarte's advertising manager formatted and faxed to respondent for his approval. The advertisement was in Spanish and falsely stated that respondent's office had lawyers with 16 years of experience in immigration law. When respondent placed the ad he was the only attorney in the firm and he had no experience in immigration law. The ad also said "we speak Spanish." When the ad was placed, the only person in the office who spoke Spanish was Juan Olivetti. The telephone numbers given in the ad were for Olivetti's home and cellular telephones.

5. On September 25, 1996, respondent wrote to Duarte stating that the false ad needed no changes. On October 8, 1996, respondent wrote to Duarte asking him to add "St. Paul" to the ad the next time he ran it. Respondent noted that "our ad is working out very well."

6. In December 1996 respondent placed a second false ad in *La Prensa*.

7. Based upon respondent's false advertisement a number of persons, including but not limited to, Victor Martinez (§§ 26-34), Pedro Ortega (§§35-49), Maria Figueroa (§§50-65), Felipe Duarte Bautista (§§ 115-121), Tomas Remedios Morales (§§ 122-127), Alfonso Martinez (§§ 128-141), Natividad DeLuna (§§ 203-208), sought respondent's services on immigration matters.

8. Respondent's conduct in placing and continuing false advertising in *La Prensa* violated Rules 7.1, 7.4 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

## COUNT II

### ENGAGING IN A PATTERN OF AIDING IN THE UNAUTHORIZED PRACTICE OF LAW AND FAILURE TO ADEQUATELY SUPERVISE A SUBORDINATE ATTORNEY AND A NON-ATTORNEY LEGAL ASSISTANT/INTERPRETER

9. When respondent began representing immigration clients, he relied heavily on Olivetti's knowledge and experience in immigration law and procedures. Olivetti told respondent that he had most recently worked as a translator/assistant for immigration attorney Phillip Fishman and that he and Fishman had had a disagreement so that Olivetti was not longer working with or referring clients to Fishman. Respondent made no attempt to contact Fishman about Fishman's experience with Olivetti. Respondent failed to return Fishman's phone calls when Fishman called to warn him about his concerns about Olivetti.

10. Between 1995 and 1996 Olivetti had worked for Fishman as an ad hoc, free-lance Spanish translator but had never performed any legal assistant duties for

Fishman. Fishman discontinued using Olivetti's services when he became concerned about Olivetti's lack of candor and trustworthiness in the summer of 1996.

11. Olivetti falsely told respondent that he had been to William Mitchell law school and had clerked for Judge Diana Murphy. Respondent did not attempt to verify either of these false claims. Olivetti also falsely informed respondent that he had a doctorate from a Mexican university. Respondent did nothing to verify this claim and allowed Olivetti to use firm business cards and firm letterhead falsely stating that he had a Ph.D. degree.

12. During the months of August through October 1996, respondent and Olivetti accepted more than 40 clients. During this time, respondent relied heavily on Olivetti's judgment regarding the legal remedies available to his clients and the procedures necessary to accomplish those remedies.

13. Initially Olivetti worked as an unpaid volunteer for respondent. Clients brought in by Olivetti or in response to respondent's ad in *La Prensa* met with respondent and Olivetti together. Olivetti developed an intake form to use in interviewing the clients regarding their immigration matters. Olivetti would interview the clients, asking questions and receiving the answers in Spanish, while respondent listened. Olivetti translated or summarized the questions and answers for respondent. After the interview and completion of the intake sheet, respondent advised the client whether he would be able to assist the client with the problem presented. If the client decided to hire respondent, he had the client sign a nonrefundable retainer agreement, typically charging \$1,500 for each suspension of deportation, and \$1,000 for a motion to reopen a case. Respondent relied upon Olivetti to establish the amount of the fees, based upon what Olivetti told him other lawyers were charging for the same services.

14. In October 1996 respondent hired Olivetti as his legal assistant. Both before and shortly after respondent hired Olivetti, several individuals warned

respondent that Olivetti had been “coaching” clients, engaging in unauthorized practice and mistranslating.

15. Respondent refused to heed these warnings, berated those who said anything negative about Olivetti and failed to either investigate Olivetti or to more closely supervise Olivetti’s work.

16. Respondent allowed Olivetti to use his offices to advise and communicate with clients and failed to regularly supervise Olivetti’s in-person office conferences or his written and oral communications with clients, thereby enabling Olivetti to give clients legal advice and misinformation and to hold himself out as an attorney. *See e.g.*, Fernando Ramirez Salinas (¶¶ 142-152), Felix Villeda (¶¶ 153-162), Rosalba and Alfonso Ibarra (¶¶ 209-223), Carlos Acevado (¶¶ 224-233), *infra*.

17. Respondent gave Olivetti unsupervised responsibility for client files and failed to regularly review those files. Respondent did not regularly review intake forms, petitions and other documents filed with INS drafted by Olivetti.

18. On about May 5, 1997, respondent hired an associate attorney Martha Burns, who is fluent in Spanish. This was Burns’ first employment as an attorney since her admission to the bar in October 1995. Ms. Burns’ had not taken a course in immigration law and her only immigration experience was a clinical practicum in 1992 or 1993. Respondent gave Burns little training and/or supervision in immigration law and procedures. In fact, respondent gave Burns misinformation about the applicability of the new law effective April 1, 1997, for cases in which aliens were seeking suspension of deportation but had not been served with an Order to Show Cause (OSC) or had charges filed with the immigration court before April 1, 1997. Respondent advised Burns that as long as the client had sent in a letter requesting an appointment for OSC processing before April 1, 1997, the clients would be processed under the old law (suspension of deportation) rather than the new tougher law (cancellation of removal).

*See e.g.*, Natividad and Maria Torres (¶¶ 92-105), Martha Pavon (¶¶ 106-114), Alfonso Martinez (¶¶ 128-141).

19. Respondent's conduct (a) in allowing his non-lawyer assistant to give legal advice to clients and to hold himself out as an attorney or one authorized to provide legal advice; (b) in failing to properly supervise that employee's oral and written communications with clients, (c) in failing to review documents drafted by the employee and (d) in failing to make reasonable efforts to ensure that his inexperienced new associate provided competent legal advice violated Rules 5.1, 5.3 and 5.5(a), MRPC.

### COUNT III

#### ENGAGING IN A PATTERN OF MISCONDUCT IN REPRESENTING IMMIGRATION CLIENTS INCLUDING INCOMPETENCE, NEGLIGENCE, FAILURE TO COMMUNICATE, TAKING FRIVOLOUS POSITIONS AND CHARGING UNREASONABLE FEES

20. Respondent agreed to meet with clients referred by Olivetti beginning in August 1996. Prior to accepting retainers from these clients, respondent took no steps to educate himself about immigration law and procedure. After respondent began representing a significant number of clients, he took only minimal steps to learn immigration law and procedure. Respondent failed to gain adequate knowledge or skills necessary to represent immigration clients competently. He failed to engage in the thorough preparation necessary to provide competent representation. *See e.g.*, Victor Martinez (¶¶ 26-34), Pedro Ortega (¶¶ 35-49), Maria Figueroa (¶¶ 50-65), Luis Dominguez-Lopez (¶¶ 66-73), Pascasio Rosas (¶¶ 74-85), Raymundo Cadenas (¶¶ 86-91), Natividad and Maria Torres (¶¶ 92-105), Martha Pavon (¶¶ 106-114), Felipe Duarte Bautista (¶¶ 115-121), Tomas Remedios Morales (¶¶ 122-127), Alfonso Martinez (¶¶ 128-141), Fernando Ramirez Salinas (¶¶ 142-152), Felix Villeda (¶¶ 153-162), Jorge Ramirez Sevilla (¶¶ 163-171), Antonio Ruiz (¶¶ 172-177), Rigoberta Martinez (¶¶ 178-187), Epifanio Dominguez (¶¶ 188-202), Natividad DeLuna (¶¶ 203-208), Rosalba and Alfonso Ibarra (¶¶ 209-223).

21. Respondent neglected to diligently pursue client matters and failed to keep clients reasonably informed about the status of their matters or to inform clients about the changes in the law and the impact those changes might have on their cases. *See e.g.*, Pedro Ortega (¶¶ 35-49), Luis Dominguez-Lopez (¶¶ 66-73), Pascasio Rosas (¶¶ 74-85), Raymundo Cadenas (¶¶ 86-91), Natividad and Maria Torres (¶¶ 92-105), Martha Pavon (¶¶ 106-114), Felipe Duarte Bautista (¶¶ 115-121), Tomas Remedios Morales (¶¶ 122-127), Alfonso Martinez (¶¶ 128-141), Fernando Ramirez Salinas (¶¶ 142-152), Felix Villeda (¶¶ 153-162), Epifanio Dominguez (¶¶ 188-202).

22. Respondent acted incompetently and charged excessive fees in taking cases where the client had no legal remedy. *See e.g.*, Maria Figueroa (¶¶ 50-65), Luis Dominguez-Lopez (¶¶ 66-73), Pascasio Rosas (¶¶ 74-85), Raymundo Cadenas (¶¶ 86-91), Felipe Duarte Bautista (¶¶ 115-121), Antonio Ruiz (¶¶ 172-177), Epifanio Dominguez (¶¶ 188-202), Natividad DeLuna (¶¶ 203-208), Carlos Acevado (¶¶ 224-233), Sergio Lopez (¶¶ 234-236).

23. Respondent acted incompetently, took frivolous positions and charged excessive fees by filing requests for work permits when the client had no basis for work authorization at the time. *See e.g.*, Victor Martinez (¶¶ 26-34), Alfonso Martinez (¶¶ 128-141), Fernando Ramirez Salinas (¶¶ 142-152), Felix Villeda (¶¶ 153-162), Rigoberta Martinez (¶¶ 178-187).

24. Respondent acted incompetently, took frivolous positions and charged excessive fees for filing or preparing motions to reopen and applications for suspension of deportation or cancellation of removal for clients statutorily ineligible for that relief. *See e.g.*, Maria Figueroa (¶¶ 50-65), Luis Dominguez-Lopez (¶¶ 66-73), Martha Pavon (¶¶ 106-114), Felix Villeda (¶¶ 153-162).

25. Respondent improperly submitted applications for waiver of filing fees when clients had already given respondent checks or money orders made payable to

the INS for those filing fees. *See e.g.*, Maria Figueroa (¶¶ 50-65), Luis Dominguez-Lopez (¶¶ 66-73), Epifanio Dominguez (¶¶ 188-202).

A. Victor Martinez Matter

26. Victor Martinez is a Mexican citizen who entered the United States with a student visa on December 1, 1988. His wife also entered the United States with a student visa in April 1989. Their older daughter is a U.S. citizen who was born in Boulder, Colorado, in 1982 when Mr. and Mrs. Martinez were in the United States studying English. Their second daughter was born in the United States in June 1989.

27. After seeing respondent's ad in the September 26, 1996, issue of *La Prensa* newspaper Martinez made an appointment to consult respondent because he was concerned about his status and wanted to remain in the United States. Martinez was impressed by the fact that respondent had sixteen years of immigration law experience and offered a free consultation.

28. Martinez met with respondent and Juan Olivetti for the first time in late September or early October 1996. He took with him his immigration related documents including passports and visas. Because Martinez is bi-lingual his conversations with respondent and Olivetti were in English. He told them about his younger daughter's medical problems and expressed his concerns about changes in the law that were to become effective soon.

29. Both Olivetti and respondent told Martinez that he had a very good case, and that because of his daughter's medical problems his case for residency would be easy. Both told him he could get his work permit within two weeks, his wife could get a work permit about a month later and that they could receive their permanent residency about six months after that. Martinez told them he wanted to think it over before signing a contract.

30. On October 10, 1996, Martinez, his wife and daughter came to respondent's office and Martinez signed a retainer agreement. Martinez gave respondent a check for \$2,000 but asked him to hold it for a week so that he could put enough money in the bank to cover the check. Martinez returned to respondent's office on October 17, 1996, and signed an application for work authorization. On about November 8, 1996, Martinez paid respondent another \$500 in attorney fees.

31. At first Martinez was very impressed with Juan Olivetti. Olivetti told him that he had worked for the INS in Texas and had handled more than 10,000 cases. Olivetti told Martinez other reassuring lies including that respondent had obtained permanent residence for three clients and eight work permits in one day.

32. Later Martinez became skeptical about Olivetti and told respondent about Olivetti's claims.

33. On December 5, 1996, Martinez and seven of respondent's other clients, went to the INS to obtain work permits. All eight were rejected. Because Martinez was the only one who spoke English well, he asked the INS agents what had happened. The INS agent told him that the lawyer he had must not be very good because all of the forms were filled out incorrectly and respondent had not provided the information and documentation needed in order to issue work authorizations. The INS agent told Martinez that the denial might not be because he had a bad case, but because the paperwork was improperly done.

34. On December 9, 1996, Martinez went to respondent's office to confront respondent with what had happened at the INS. Martinez told respondent he wanted his money back. Respondent told Martinez that lawyers have high salaries and that respondent could not give Martinez back all of his money. Respondent said that according to the contract he did not have to return any money but he that would refund \$1,000 of the \$2,500 Martinez had paid.

## B. Ortega Matter

35. Pedro A. Ortega, a citizen of Argentina, entered the United States legally in October 1995 on a tourist visa for which he had obtained an extension until October 27, 1996. At the end of September 1996, Ortega saw respondent's advertisement in *La Prensa*, promising "attorneys with 16 years of experience in the area of immigration."

36. Ortega asked his friend, *La Prensa* publisher Mario Duarte to contact the office and give him a note of introduction. Duarte called Juan Olivetti, described the nature of Ortega's problem and wrote a note of introduction on the back of his card.

37. Ortega went to respondent's office with Duarte's card of introduction and met with Olivetti whom he reasonably believed to be an attorney in respondent's law office. Ortega gave Olivetti his entire file, including his first visa extension.

38. Ortega asked respondent, by way of Olivetti's translation, to assist him in further extending his visa, which was due to expire on October 27, 1997. Olivetti assured Ortega that there would be no problem in getting him an extension of his visa. On October 7, 1996, respondent had Ortega sign a fee agreement quoting a nonrefundable fee of \$1,500 for suspension of deportation proceedings.

39. Respondent and Olivetti also told Ortega that they could also obtain a work permit and legal residency for him. In addition, respondent through Olivetti offered to assist Ortega in bringing his family from Argentina for permanent legal residence in the United States. Ortega paid respondent \$500 in cash toward respondent's fees.

40. Ortega could not have obtained a work permit based on his tourist visa, did not have any basis for legal residency, and could not have brought his family to the United States under anything other than a tourist visa.

41. On or about October 15, 1996, Ortega returned to respondent's office to sign what he thought were papers necessary for his visa extension and to give respondent \$70 cash for the visa extension filing fee .

42. Respondent took no action to file an application for a visa extension. Despite Ortega's repeated inquiries of respondent's office, no one informed Ortega that there was any problem in obtaining an extension of the visa. Olivetti repeatedly assured him that everything was in process and that the delay was with the immigration service.

43. On October 31, 1996, Ortega went to respondent's office to sign additional papers. At that time respondent asked for additional payments on his attorney fees and for \$155 for a filing fee. Ortega returned on November 1, 1996, with the money. Respondent or Olivetti prepared applications for suspension of deportation and for work authorization, but never prepared an extension of visa application.

44. Respondent knew that Ortega last entered the United States in 1995 and therefore did not meet the minimum qualifications for suspension of deportation or work authorization. The application fee for suspension of deportation is \$100. There was no reasonable basis for respondent to prepare the applications or request a money order in excess of the amount needed for the filing fee.

45. In the fall and winter of 1996-1997 Ortega made numerous visits to respondent's office regarding the progress of his visa extension. Each time Olivetti assured him it was in process.

46. In February 1997, Ortega contacted Centro Legal regarding a marriage dissolution and learned that, because his visa had not been extended on time, he was in the United States illegally. He learned for the first time that he could no longer extend his visa, could be deported, and could not have received the other immigration benefits promised by respondent.

47. On March 4, 1997, Ortega and his pastor Anthony Machado met with respondent and Olivetti. Respondent could not answer Ortega's questions about why the visa extension had not been filed. Olivetti and respondent asked Machado to provide a letter stating that Ortega was employed by his church so that they could file an immigration petition for Ortega as a church worker. Machado declined to do so because Ortega volunteered at the church and the church could not afford to pay him.

48. Ortega through Machado asked respondent to return his file and the money he had paid. Respondent returned his file and the unused filing fees but refused to return any attorneys fees Ortega had paid.

49. On September 23, 1997, Ortega returned to Argentina in order to avoid being barred from returning to the United States for unlawful presence.

#### C. Figueroa Matter

50. Maria Figueroa, a Mexican citizen, first illegally entered the United States in 1989. In August 1993, she was arrested and charged with entry without inspection. Ms. Figueroa was represented by counsel at the March 30, 1994, deportation hearing. She was pregnant and was granted a voluntary departure date of September 30, 1994. Ms. Figueroa had her baby in May 1994, and voluntarily departed on September 15, 1994. In November 1994, Figueroa re-entered the United States without inspection.

51. In October 1996, based on respondent's ad in *La Prensa*, Figueroa contacted respondent's offices for an appointment. On October 16, 1996, Figueroa met with respondent and Juan Olivetti, told them about her arrest and departure in 1994 and gave them her immigration papers reflecting the 1993 arrest and 1994 departure. Respondent and Olivetti indicated that they could help her and had her sign a fee agreement for suspension of deportation. Figueroa paid respondent \$750 of the \$1,500 flat fee respondent required.

52. On or about November 5, 1996, Figueroa gave respondent money orders for \$70 and \$155 made payable to the INS to be used for filing fees. Respondent requested an excess filing fee. The filing fee for a Motion to Reopen is \$110.

53. On January 24, 1997, respondent served a Motion to Reopen and Application for Stay of Deportation. Based upon the information Figueroa told him and the documents in her file, there was no basis to prepare and file a motion to reopen. With money orders payable to the INS in her file, there was no reasonable basis to apply for a fee waiver.

54. Respondent did not advise Figueroa of the fact that her 1994 departure ended her case and that by filing a motion to reopen she would alert the INS to her undocumented presence in the country. Figueroa had had no contact with INS since her re-entry into the country until respondent filed the motion to reopen and stay of deportation documents.

55. On February 5, 1997, the INS filed a Motion in Opposition based on the fact that Figueroa's 1994 departure made her ineligible to reopen the proceedings.

56. On February 18, 1997, an agent of the INS sent respondent a courtesy copy of a letter mailed to Figueroa requesting her appearance at INS offices to discuss her immigration status. The INS also advised respondent that the Notice of Entry of Appearance as Attorney and Figueroa's Application for Stay of Deportation were not properly executed as respondent failed to sign either form.

57. When Figueroa learned that the INS had scheduled an appointment for March 5, 1997, to discuss her status and that respondent had not properly signed his Notice of Entry of attorney she became upset and discharged respondent. Respondent sent letters of withdrawal to the INS, District Counsel and the court.

58. Figueroa rehired respondent to represent her at her meeting with immigration. On March 3, 1997, Olivetti sent a letter to Figueroa, confirming that respondent was again representing her, and that the INS had been notified to that

effect. Respondent obtained a continuance of the March 5, 1997, meeting with INS until March 12, 1997.

59. On March 11, 1997, the clerk of the immigration court sent respondent a copy the court's February 27, 1997, decision denying Figueroa's motion to reopen. The order of the immigration judge notes:

The respondent through counsel, has failed to provide any basis for reopening her case. First, the record suggest that the respondent departed the United States pursuant to a voluntary departure order entered on March 30, 1994. Accordingly, a motion to reopen would be inappropriate (the motion may in fact have put the INS on notice that the respondent has returned to the U.S. illegally) Matter of Wang, 17 I&N Dec. 565 (BIA 1980). Secondly, the motion provides no basis for reopening and does not state any relief that the respondent qualifies for. Finally, even assuming the respondent has not departed the U.S. since her hearing, her motion to reopen is untimely and cannot be granted under the regulations 8CFR 3.2(c)(2).

60. Respondent did not tell Figueroa about the February 27, 1997, order until late May or June 1997.

61. On March 12, 1997, respondent and Olivetti represented Figueroa at the meeting with the INS. Figueroa was fingerprinted and photographed. After the meeting, respondent advised her that they were attempting to get her a work permit, and asked her to call in two weeks. On March 12, 1997, the INS issued an OSC why Figueroa should not be deported.

62. Figueroa called respondent at the end of March, and again in April, to inquire about her work permit, but received no response. In early May, she spoke with Olivetti, who told her that they were going to meet with the INS on May 15 to get her a work permit. Figueroa called after the 15<sup>th</sup>, and spoke with Olivetti, who apologized, said they were very busy, and to wait a few more weeks and call back.

63. On April 22, 1997, respondent received notice of a hearing date on Figueroa's deportation. Respondent did not immediately notify Figueroa of the hearing

date or make any efforts to obtain a work permit pending the final hearing on her deportation.

64. In June 1997 Figueroa called and spoke with Martha Burns who informed her that Olivetti no longer worked for respondent. Burns informed Figueroa that she was not listed as respondent's client. Figueroa made an appointment to see respondent, and asked him what had happened to her work permit. Respondent informed her that they had closed her file, because Olivetti had informed him that the INS had arrested and deported her back to Mexico. Respondent for the first time provided Figueroa with a copy of the February 27, 1997, order denying the motion to reopen her case.

65. Following this meeting, Figueroa consulted with attorneys at Centro Legal, who advised her to leave the country voluntarily, which she did in September 1997.

#### D. Dominguez-Lopez Matter

66. Luis Dominguez-Lopez, a Mexican citizen, entered the United States illegally on or about January 15, 1985. In August 1994, he was arrested and charged with entering without inspection. He retained Richard Meshbeshner to represent him in seeking suspension of deportation. At a continued hearing in January 1996, the Immigration Judge denied his application for suspension of deportation. Dominguez did not appeal the January 1996 order but accepted voluntary departure by March 18, 1996. With the help of attorney Leo Pritschet, Dominguez extended the voluntary departure date until September 19, 1996.

67. In late July Dominguez contacted Juan Olivetti who brought him to respondent in early August 1996. Dominguez paid respondent approximately \$1,500 to bring a motion to reopen his case. On September 30, 1996, Dominguez gave respondent two checks for \$155 each made out to the INS for filing fees.

68. Respondent did nothing to obtain a further extension of Dominguez' grant of voluntary departure or to seek a stay of deportation. Respondent thereby

subjected Dominguez to a final order of deportation and bar from future entry into the United States for five years.

69. On December 11, 1996, respondent attempted to file a Motion to Reopen the suspension of deportation case thereby alerting the INS to Dominguez' illegal presence in the country. Respondent failed to clearly explain to Dominguez the legal risks involved in bringing a motion to re-open his case.

70. The Office of District Counsel filed a December 20, 1996, memorandum in opposition. The INS memo gave three reasons why respondent's motion to reopen was improper. First, the motion was untimely. INS regulations (8 C.F.R. 3.23(b)(4)(i) provides that a motion to reopen must be filed not later than 90 days after the date the final decision was rendered or before September 30, 1996, whichever is later. The final decision in Dominguez' case was January 25, 1996. Second, respondent failed to state the relief he was seeking or to attach a copy of any application for relief. Third, because Dominguez had now stayed in the United States beyond his voluntary departure date he was barred from future eligibility for adjustment of status, suspension of deportation or voluntary departure for five years. In addition, respondent based his argument for reopening on ineffective assistance of counsel naming Phillip Fishman as one of Dominguez' former counsel. Fishman had never represented Dominguez and Dominguez never told respondent that Fishman had represented him.

71. Respondent's motion papers were returned to him because respondent had not paid the required filing fee. Despite the check for filing fees which Dominguez gave to respondent in September 1996, respondent wrote to Dominguez on January 20, 1997, asking for the filing fee and suggesting that Dominguez complete the enclosed "Application for Fee Waiver" if he could not pay respondent the \$110 filing fee. An application for a fee waiver was inappropriate because Dominguez had already given respondent two checks for \$155 each dated September 26 and 30, 1996, payable to the INS for the filing fees, which should have been in Dominguez' file.

72. On April 19, 1997, respondent wrote to Immigration Judge Vinikoor attempting to refile the Motion to Reopen, Application for Fee Waiver and Notice of Entry of Appearance as Attorney.

73. Dominguez consulted new counsel about his matter.

#### E. Rosas Matter

74. Pascasio Rosas is legal permanent resident of the United States. In 1995, with the help of an immigration attorney, Rosas submitted a petition to the INS to immigrate his wife and seven children. There was nothing further that the family could do until their priority date became current. Until the family members obtained their visas they were ineligible for work permits.

75. On November 1, 1996, while Pascasio was temporarily in Mexico, Pascasio's son, Lauro, his wife Nicolasa, and his daughter, Alberta went to respondent's office and opened an immigration case for Pascasio and the rest of the family. Lauro gave respondent copies of the documents previously filed with the INS.

76. Respondent informed them that he could arrange their cases quickly and obtain work permits for the family, even though there was nothing to do in their case but wait for the visas. Lauro signed a retainer agreement on Pascasio's behalf for eight suspension of deportation applications and gave respondent \$3,000, even though the family was not under deportation proceedings and had no need to file suspension applications.

77. The Rosas also gave respondent \$1,350 in money orders payable to the INS for filing fees.

78. On April 28, 1997, Juan Olivetti wrote to Pascasio Rosas falsely stating that their I-30 petitions had been incorrectly filled out but that respondent's office had corrected the mistakes and that INS had told them they would soon receive the exact date they could go and get work permits.

79. On May 13, 1997, respondent wrote to the Nebraska office of the INS enclosing a Notice of Appearance form and requesting an update of the Petition for Alien Relative which had been filed by Rosas' previous attorney.

80. On June 16, 1997, respondent's associate, Martha Burns, filed with the Nebraska office of the INS a frivolous application for work permit for the Alberta Rosas, stating that the Bloomington office was refusing to grant work permits. This application was frivolous because Alberta was not eligible for a work permit until her visa was issued. The Nebraska office referred the letter back to the Bloomington office, which denied the application on July 18, 1997.

81. In June 1997, Pascasio went to respondent's office and met with respondent. Martha Burns translated. Pascasio told respondent he had 90 days to obtain work permits for the older children. Respondent did not explain that it was impossible to obtain the work permits until the family members obtained their visas.

82. Respondent did not properly advise the Rosas about the law relevant to their case. For example, he did not inform them that as long as the family remained undetected they could adjust their status under 245(i). He did not warn them about the consequences of the 3 and 10-year bar for unlawful presence in the United States. Respondent did not tell the Rosas family that because some of the children might turn 21 before their priority dates occurred, separate petitions needed to be filed.

83. Respondent did not advise Alberta Rosas, who had resided continuously in the United States since May 1988, that as the unmarried daughter of a lawful permanent resident who obtained his residency through Amnesty (Pascasio), she was eligible for Family Unity benefits under the law. Respondent failed to recognize or inform Alberta of this benefit.

84. By chance, the Rosas family visited the office of Centro Legal in early January 1998 and received the assistance required to file separate and timely I-130 petitions.

85. On January 19, 1998, Lauro and his wife met with respondent and asked for a refund. Respondent refused to refund the retainer or filing fees. On January 30, 1998, respondent sent letters to Lauro and Pascasio, requesting additional payment of \$1,000.

#### F. Cadenas Matter

86. On August 11, 1996, Raymundo Cadenas and his wife Juana Reyes Cadenas, met with respondent to discuss obtaining a work permit for Juana. Raymundo Cadenas is a legal resident. In 1994 Raymundo had petitioned to immigrate his wife and children and the family was waiting for their visa priority date. There was nothing further that the family could do besides wait for their priority date to become current. Until the family members obtained their visas they were ineligible for work permits in the United States.

87. Juana had entered the United States illegally in 1993. Neither Juana nor the children were in deportation proceedings at the time Cadenas consulted respondent. Cadenas gave respondent all of the documents from their previous immigration cases.

88. Respondent had Cadenas sign a retainer agreement for four applications for suspension of deportation, a petition for alien relative, and one petition to adjust status. The agreement quoted a flat fee of \$4,500 due by November 30, 1996. Cadenas paid respondent \$1,000 on September 30, 1996.

89. On November 18, 1996, respondent sent a letter to the INS requesting OSC processing for Juana Cadenas. On May 8, 1997, respondent wrote again to the INS regarding a date for processing Juana Cadenas. Respondent did not advise her that by requesting processing after April 1, 1997, she would be ordered to leave the country because she did not meet the ten-year residency requirements for cancellation of removal and might become subject to a 3 or 10-year bar to immigrating.

90. After the August 11, 1996, meeting, the Cadenas family called repeatedly about the status of their case but were never able to speak to respondent. In June 1997, Juana Cadenas stopped by respondent's office to ask respondent about the status of her case and was told that they did not have a file opened with respondent.

91. On July 9, 1997, Raymundo went to respondent's office to find out what was going on. It had been almost a year and Juana still had not received her work permit. Cadenas met with respondent. Martha Burns interpreted. Respondent and Burns told him that he was not to stop by the office without an appointment. Respondent informed Cadenas that since he had not obtained a work authorization for Juana they wanted a refund of his \$1,000. Respondent replied that he owed Cadenas nothing.

#### G. Torres Matter

92. Natividad and Olga Torres retained respondent to help them obtain legal residency in the United States. Mr. and Mrs. Torres do not speak or read English very well. On August 16, 1996, Mr. Torres signed a retainer agreement in English for representation in two suspension of deportation cases for a fee of \$3,000. Juan Olivetti served as the communication link between the Torres and respondent during the initial meeting and at subsequent meetings in the fall and winter of 1996-1997.

93. Natividad Torres entered the United States illegally in August 1988. Olga entered with their two Mexican born children on December 31, 1992, or January 1, 1993. At their first or second meeting with respondent, respondent through Olivetti told them that they would qualify for suspension of deportation and could become permanent residents. Respondent and Olivetti incorrectly advised them that even though Olga and the children had resided in the United States less than the statutory minimum seven years the whole family could qualify for permanent residence based on the amount of time Natividad had lived in the United States

94. On September 9, 1996, respondent wrote to the INS requesting OSC processing for the Torres family. Respondent did not provide biographic information or other information required by the INS before it will set a processing appointment. Judy Farber returned about a dozen of respondent's letters requesting processing in September 1996, because they did not supply sufficient background information for the INS to schedule an OSC processing appointment. Respondent did not provide a second request containing the required information until January 9, 1997.

95. On April 16, 1997, respondent sent a form letter to the Torres and his other immigration clients asking for their patience and telling them that INS had stopped processing cases because it had been flooded with requests because of the new law. Respondent indicated that they hoped to know about the status of their case in a month.

96. On April 21, 1997, respondent sent the Torres a letter saying that pursuant to their request he was closing their file. He provided an itemization of the time worked on their case and enclosed a refund check of \$537.50 drawn on his business account. The Torres were surprised to get the letter because they had not asked respondent to close their case.

97. The Torres immediately went to respondent's office, returned the refund check and asked him to continue working on their case. At respondent's office they were told that the letter was a mistake because another person of the same name had asked to have his case closed. On April 28, 1997, respondent wrote to the Torres confirming that he would continue with their case. Respondent did not explain to the Torres that suspension of deportation was no longer available and that Mr. Torres could not qualify for cancellation of removal because he did not meet the ten year residency requirement. He did not explain that Mrs. Torres and the children could not qualify for legal residency under either suspension or cancellation.

98. In May 1997 the Torres bought a home and gave the new address to someone in respondent's office.

99. On December 4, 1997, the INS sent the Torres a letter asking them to appear for an interview on December 17, 1997, to discuss their immigration status. On December 17, 1997, the Torres appeared for their appointment but the INS agent had cancelled the appointment and the interview appointment was rescheduled for April 9, 1998.

100. On March 31, 1998, Burns wrote to the Torres telling them that she or respondent would be present with them for the April 9, 1998, appointment and that they should call the office if they had any questions. She did not explain to them the legal consequences of attending that interview. She did not consult with them about whether it was advisable for them to keep the appointment.

101. The Torres attended the April 9, 1998, interview and were served with a Notice to Appear (NTA). Based upon that interview the immigration court issued a May 19, 1998, notice of a September 29, 1998, hearing date. At this point the Torres family had no legal remedy. They would either be ordered deported or allowed to voluntarily depart.

102. On September 23, 1998, Burns wrote to the Torres asking them to call respondent's office about the September 29, 1998, hearing. The Torres met with respondent and Burns at respondent's offices just before the scheduled hearing. Respondent or Burns advised them to go to the hearing by themselves and to request a continuance so that they would have time to try to get more proof to help their case. The Torres appeared on September 29, 1998, without counsel and received another hearing date of December 1, 1998.

103. On the day before their December 1, 1998, hearing, the Torres met with respondent and Burns. Burns explained to them that none of them qualified under the new law for cancellation of removal. Based upon the advice Burns gave them the Torres chose not to attend the December 1, 1998, hearing. Shortly thereafter they

received an order of deportation in absentia requiring them to appear on February 10, 1999, for the first available plane out of the country.

104. The Torres were very distressed because they were well rooted in Minnesota and had purchased a home that would now have to be sold quickly.

105. With the assistance of other attorneys the Torres were able to obtain a May 5, 1999, departure date.

#### H. Pavon Matter

106. On September 10, 1996, Martha Pavon, an illegal alien who had resided in the United States since September 1988, consulted with respondent and Juan Olivetti regarding the possibility of obtaining permanent residence. Ms. Pavon speaks very little English and does not read English. Juan Olivetti translated the information exchanged in her initial meetings with respondent and read her the contents of the fee agreement that she signed.

107. Ms. Pavon had never been arrested or otherwise had any contact with the INS. She is unmarried and has a young daughter who is a U.S. citizen. She signed a retainer agreement on September 10, 1996, and paid respondent \$1,000.

108. Respondent did not explain to Pavon the risks and benefits of requesting processing in light of the change in the law to become effective April 1, 1997. Respondent then failed to make a request for an OSC processing appointment for four months. After April 1, 1997, respondent did not withdraw his request for processing even though suspension of deportation was no longer available to Pavon and Pavon could not qualify for cancellation of removal.

109. By letter dated October 1, 1997, respondent's associate Martha Burns notified Ms. Pavon of an October 17, 1997, processing appointment with the INS. Since Ms. Pavon would have resided in the United States for only nine years by the time of the appointment with the INS, she could not meet the minimum requirements for

cancellation of removal under the new law. In addition, under the new law the issuance of an NTA following the appointment would end the accumulation of her time toward residency so that even if Ms. Pavon had been in the country for ten years by the time of her deportation hearing, she still would not have been statutorily eligible for legal residence.

110. Respondent did not explain to Pavon the consequences of attending the INS appointment. He did not tell Pavon that by appearing for processing she was "turning herself in" to the INS and would be asked to admit that she was a deportable alien. Based on her admissions at the interview she would be given an NTA and charges would be filed with the Executive Office for Immigration Review (EOIR). Respondent did not explain that since she did not qualify for cancellation of removal, she would either be deported or granted voluntary departure immediately after the hearing on her petition for cancellation of removal.

111. On October 21, 1997, respondent's associate Martha Burns wrote to Pavon requesting information and \$100 for INS filing fee to process her suspension of deportation.

112. In November 1997 Pavon gave respondent \$100 and \$70 in money orders for the "suspension of deportation" and work authorization application fees. Pavon's application for suspension of deportation was frivolous because she was not eligible for suspension of deportation after receiving an NTA and did not meet the minimum statutory qualifications for cancellation of removal.

113. On June 15, 1998, the INS sent Pavon an NTA at a hearing scheduled for October 27, 1998. Ms. Pavon contacted respondent's office before the October 27, 1998, hearing date and spoke with Ms. Burns who advised her to appear without counsel and ask for a continuance so that she could consider her options.

114. Ms. Pavon appeared without counsel and was given a January 5, 1999, hearing date. Ms. Burns accompanied Pavon to the January 5 hearing where she requested voluntary departure for Pavon.

#### I. Duarte Bautista Matter

115. On January 17, 1997, Felipe Duarte Bautista and his girlfriend, a legal resident, met with respondent and Juan Olivetti in response to an ad that they saw in *La Prensa*. Duarte asked respondent whether he thought it would be possible to get legal status and a work permit. Duarte is an undocumented alien who first came into the United States in late 1990. Duarte told respondent that he had been arrested in 1995, that he had not had a hearing and thought he had been ordered deported in absentia in 1996.

116. Respondent told Duarte that he might qualify for residency and a work permit. Respondent requested a \$2,000 retainer to petition for suspension of deportation. Duarte paid respondent \$2,000 in four payments between January 17 and March 11, 1997.

117. On March 31, 1997, respondent sent a letter to the INS requesting OSC processing. The letter contained serious factual errors including a statement that Duarte entered the United States in 1973, when in fact Duarte had first entered the country in late 1990. Respondent did not advise Duarte that he could not qualify for suspension of deportation because he could not accrue seven years residence before April 1, 1997.

118. In April 1997 respondent sent Duarte a form letter saying that his request for processing had been filed and that it usually took six months to receive a response to the request. Respondent did not advise Duarte that by requesting processing he was alerting the INS to his illegal presence in the country.

119. When Duarte had heard nothing from respondent by November 1997 Duarte called the Office of the District Counsel in Bloomington, Minnesota, to determine whether his case had been filed.

120. When Duarte learned that his case was not yet pending he insisted on speaking to respondent who told him that his case was on file somewhere else. Duarte then called the immigration offices in Chicago, Lincoln, and Denver, and again was told that no case had been filed.

121. When Duarte called respondent's office again he spoke to Martha Burns who insisted that he make an appointment. Duarte met with Burns and respondent on November 18, 1997. When he learned that there was no progress on his case, he demanded a refund and a copy of his file. Respondent gave Duarte copies from his file but refused to refund any money.

#### J. Remedios-Morales Matter

122. On October 23, 1996, Tomas Remedios-Morales went to respondent's office to inquire about the possibility of obtaining a work permit. Remedios told respondent that he had first illegally entered the United States eight years ago but had been arrested in 1994 and ordered deported. In spite of this information, respondent through Olivetti told Remedios that his chances to obtain a work permit were good.

123. On October 23, 1996, Remedios signed a retainer agreement and paid respondent \$250 toward a \$1,500 flat fee for a suspension of deportation. Respondent did not explain to Remedios that by requesting a processing appointment he would be alerting the INS to his illegal presence in the United States. He did not explain that he had no legal basis for a work permit because an application for suspension of deportation would be frivolous on its face. Remedios' recent deportation meant that he had less than two years residence that counted toward the minimum seven year

residency requirement for suspension. If Remedios turned himself in for processing, he would be deported.

124. Respondent's own billing records indicate that he did no work on Remedios' matter between October 23, 1996, and April 30, 1997, when he sent a letter to the INS requesting Remedios' file.

125. Remedios made a \$250 payment to respondent on November 1, 1996. Between November 1996 and November 1997 Remedios made numerous calls to respondent's office but was never able to speak with respondent about his case. After their initial meeting in October 1996, Remedios did not hear from respondent again until he received a form letter dated May 20, 1997, introducing Martha Burns as respondent's new associate attorney.

126. When respondent received Remedios' file from INS it confirmed what Remedios had told respondent in October 1996. Remedios had been ordered deported in absentia in August 1995. Remedios was therefore ineligible for any relief.

127. On November 7, 1997, respondent's associate Martha Burns wrote to Remedios informing him that they were closing his case and sending him copies of his file. Respondent refused to refund any fees.

#### K. Alfonso Martinez Matter

128. In response to respondent's ad in *La Prensa* Alfonso Martinez met with respondent for an intake interview in October 1996. Martinez, his wife and two children are undocumented Mexican citizens who first entered the United States in 1989 or 1990. Martinez has two Mexican-born children and one child born in the United States after 1990. Martinez and his family wanted to find out whether they were eligible for legal residency and work authorization. Respondent through Juan Olivetti told Martinez that he and his wife could get work permits right away and obtain legal residency a little later.

129. On November 5, 1996, Martinez signed a retainer agreement for four applications for suspension of deportation for a total fee of \$3,000. Martinez paid respondent \$1,500.

130. On November 16, 1996, Martinez gave respondent seven money orders payable to the INS worth a total of \$915 to be used for filing fees (\$70 each for 2 work permits and \$155 each for 5 applications for suspension of deportation). Because one daughter was a U.S. citizen Martinez needed only four suspension of deportation filing fees. The filing fee for suspension of deportation was only \$100 per application not \$155. Martinez had therefore advanced \$375 more than necessary for filing fees. By requesting the wrong amount on the money orders respondent would not be able to file the suspension applications without advancing the funds or obtaining new money orders from Martinez.

131. On November 18, 1996, Martinez and his wife reviewed and signed biographical information forms. On November 21, 1996, Olivetti wrote to Martinez returning their passports, copies of their birth certificates and copies of the money orders they had provided.

132. On December 12, 1996, respondent attempted to file an application for suspension of deportation for Alfonso and Aurea Martinez in order for them to obtain work permits. Prior to filing the application, respondent did not familiarize himself with the immigration law and procedures necessary to obtain work permits or to successfully file applications for suspension of deportation.

133. The application for suspension was returned by the court because applications for suspension of deportation can be made only after an individual has been charged and a case has been filed with the EOIR. Neither Alfonso nor Aurea Martinez had been arrested or placed in proceedings so that there was no pending case when respondent filed the application for suspension of deportation on their behalf. The time and money spent for the filing fee was wasted and of no value to Martinez.

134. On December 18, 1996, Juan Olivetti wrote to Martinez and others indicating that one would not be able to obtain a work permit until after he had had a hearing before an immigration judge..

135. According to respondent's billing statement, on January 6, 1997, respondent spent two hours reviewing "G-328 [sic] and EOIR-40" forms (biographic information and suspension application forms) and eighteen minutes writing a cover letter to the Immigration Judge enclosing the forms and \$100.

136. On February 3, 1997, respondent sent a standard form letter to all immigration clients including Martinez informing him that he would be out of the office the week of February 10 and insisting that clients have an appointment before coming to the office.

137. On March 11, 1997, respondent wrote a letter to the INS requesting an OSC processing appointment. Respondent did not clearly explain to Martinez that if he did not receive a processing appointment and then have the OSC served and filed before April 1, 1997, he could not qualify for suspension of deportation. Respondent did not inform Martinez that any case filed after April 1, 1997, would be processed under the new law (IIRIRA) in which cancellation of removal with much higher and stricter requirements had replaced suspension of deportation. Respondent did not inform him that under the new law an undocumented alien must have continuously resided in the United States for ten (not seven) years and must show extreme and unusual hardship to a close family member who is a citizen or legal resident of the U.S (not just extreme hardship to himself).

138. On April 16, 1997, respondent sent a form letter sent to his immigration clients including Martinez telling them that it would likely be six months before he would receive a processing appointment. Martinez had heard about the new law, called or went to respondent's office and asked him what effect the new law would

have on his case. Respondent erroneously told him that the new law would not affect his case because they had submitted "his papers" before the law changed.

139. The next communication from respondent was a May 20, 1997, form letter to immigration clients introducing respondent's new associate attorney Martha Burns.

140. Martinez heard nothing more from respondent for almost a year. On April 28, 1998, he received a letter from Martha Burns explaining that under IIRIRA, effective April 1, 1997, Martinez and his family did not meet the ten year residency requirement for cancellation of removal. The letter asked him to call the office to discuss his options. On June 9, 1998, Burns redated and resent the April 28, 1998, letter.

141. Martinez was so angry about the way in which respondent handled his case that he did nothing for several months. In early 1999 Martinez called the office and made an appointment to talk with respondent on February 18, 1999. At that appointment Martinez asked respondent to refund his money. Martinez did not agree to have the money orders payable to the INS for filing fees applied to respondent's fees. Nevertheless, respondent applied the money orders to his fees and refunded only \$227.50 which was \$447.50 less than the amount of unused filing fees given to respondent.

#### L. Ramirez-Salinas Matter

142. Fernando Ramirez met with respondent and Juan Olivetti in respondent's offices on August 16, 1996. Ramirez had been arrested by the INS and received an OSC on January 12, 1996. He retained respondent to help him apply for suspension of deportation and obtain a work permit. Ramirez told respondent and Olivetti that he had first entered the United States in 1987 but that he had left and re-entered the country several times after that. He told them that his last entry was in December 1995.

143. Respondent and Olivetti did not question Ramirez about his various trips outside of the United States to determine whether a good faith argument could be made

that that the trips were brief, casual and innocent or whether Ramirez residence would have to be calculated from 1995, his last date of entry.

144. On August 16, 1996, Ramirez and respondent signed a \$2,000 flat fee agreement for an application for suspension of deportation and a work permit and paid him \$1,000.

145. On September 9, 1996, respondent sent a letter to INS requesting a processing appointment. The letter did not contain the minimum biographic information needed for the INS to process the request.

146. According to respondent's billing statement he spent two hours on October 18, 1996, preparing Ramirez' application for suspension of deportation. Respondent then failed to file the application for suspension of deportation before applying for work authorization.

147. On November 26, 1996, Juan Olivetti wrote to Ramirez asking him to sign and return his application for work authorization and telling him that he was to obtain his work permit on December 5, 1996.

148. On December 5, 1996, the INS denied Ramirez' application for employment authorization. There was no basis for work authorization as respondent had not yet filed an application for suspension of deportation.

149. On December 16, 1996, respondent wrote the Office of District Counsel protesting its failure to provide an official explanation for the rejection of Mr. and Mrs. Ramirez' application for a work permit.

150. Respondent did nothing further on Ramirez' matter until he prepared a second work permit application on March 26, 1997 and mailed Ramirez' application for suspension of deportation to the Office of District Counsel with a check for the filing fee.

151. Respondent failed to file the suspension application with EOIR.

152. On November 21, 1997, respondent wrote to Ramirez closing his case and returning his file but refused to refund any fees.

M. Villeda Matter

153. On February 25, 1997, Felix Villeda, a citizen of El Salvador, came to respondent's office and consulted with respondent and his legal assistant, Juan Olivetti about the possibility of obtaining a work permit and legal residency in the United States. Respondent was representing Villeda's sister on a petition for political asylum.

154. On February 25, 1997, Villeda had not been arrested or otherwise had any contact with the INS. Villeda told Olivetti that he had entered the United States on December 24, 1996. Olivetti inaccurately recorded on the client intake form that Villeda had entered on December 3, 1988.

155. On March 14, 1997, Villeda came into respondent's office and gave Olivetti \$600 of the \$1,500 retainer Olivetti quoted him for an application for suspension of deportation. Olivetti filled out a second client intake form on March 14, 1997, on which he falsely represented that Villeda has entered the United States on January 8, 1987.

156. Olivetti placed in Villeda's file a handwritten draft of an application for suspension of deportation which (a) falsely stated Villeda entered the United States on February 24, 1984; (b) set forth a list of fictional addresses and employers for the period February 1, 1984, to December 24, 1996; and (c) falsely stated that Villeda had filed income tax returns for the years 1985 through 1996.

157. On March 31, 1997, respondent wrote a letter to the INS enclosing the G-28 and Biographic information forms. In this letter, respondent incorrectly stated, "Mr. Villeda first entered the U.S. on/about 12-3-88." Respondent asked the INS to "send us written confirmation of the appointment for processing as soon as practicable."

158. On April 14, 1997, the INS arrested Villeda at work. Villeda telephoned respondent regarding his arrest. Respondent faxed letters to the INS advising of his representation and requesting "a bond hearing in the very near future." Villeda was released on April 16, 1997, after his sister posted a \$3,000 bond.

159. On May 6, 1997, Olivetti sent Villeda another form G-28 which Villeda signed on May 9, 1997.

160. On May 19, 1997, the INS notified Villeda that it had filed an NTA with the immigration court. On the same day Villeda and respondent signed a retainer agreement, providing for representation in a "suspension de asuntos de deportacion" proceeding. The retainer agreement required a \$1,500 flat fee and reflected Villeda's \$700 in payments as of that date.

161. On May 23, 1997, respondent prepared an Application for Employment Authorization and a new form G-325 (Biographic Information) which reflected Villeda's actual date of entry on December 24, 1996.

162. On May 28, 1997, respondent submitted the Application for Suspension of Deportation. The Application for Suspension of Deportation was inappropriate because after April 1, 1997, that remedy no longer existed. The application was also frivolous because on its face Villeda was statutorily ineligible for either suspension of deportation or cancellation of removal (the remedy which replaced suspension of deportation after April 1, 1997).

#### N. Sevilla-Ramirez Matter

163. On about August 16, 1996, Jorge and Francisca Sevilla met with respondent and Juan Olivetti seeking respondent's help in obtaining legal residence and work authorization. Jorge had first illegally entered the United States in March 1988. Francisca first illegally entered in 1987. Francisca has diabetes and requires daily medication to control her diabetes. The Sevillas have one daughter who was born in the United States in 1991 and has lived her entire life in this country.

164. On August 26, 1996, Jorge Sevilla signed a retainer agreement for two suspensions of deportation and paid respondent \$1,500.

165. On September 9, 1996, respondent mailed a letter to INS requesting OSC processing. The letter did not contain the background information required by INS. Judy Farber of the INS informed respondent of the correct procedure.

166. In October 1996 Mr. and Mrs. Sevilla were arrested by the INS at work. Antonio Sevilla was transferred to Denver, Colorado. Respondent represented him in a telephone conference bond hearing on November 13, 1996. Jorge Sevilla then posted bond and returned to Minneapolis.

167. On November 25, 1996, respondent wrote to Jorge Sevilla telling him to be at the INS offices in Bloomington, Minnesota, on December 5, 1996, at 7:30 a.m., to obtain his work permit. On November 26, 1996, Olivetti wrote to Mr. and Mrs. Sevilla enclosing two applications for work authorization and asking them to return them so that they could obtain their work permits on December 5, 1996. Respondent filed the applications and paid the fees but neither Mr. nor Mrs. Sevilla received work permits because respondent had not yet filed applications for suspension of deportation.

168. After respondent corrected several procedural errors, he was able to obtain a continuance and change of venue for Jorge Sevilla's December 19, 1996, master calendar hearing scheduled in Denver.

169. Mr. and Mrs. Sevilla met with Olivetti several times at respondent's office. Olivetti filled out the application for suspension of deportation. Respondent did not carefully review the application with his clients before filing. The application contained several factual errors that were not corrected until the Sevilla final hearing on deportation on May 22, 1998.

170. Aliens applying for suspension of deportation bear the burden of establishing not only statutory eligibility but also showing that they warrant a favorable exercise of discretion. In order to prevail, aliens must show that deportation would

result in extreme hardship either to themselves or to a U.S. citizen or permanent resident parent, child or spouse. Respondent did not diligently prepare the Sevilla family for the hearing. The immigration judge noted that respondent offered no documentary corroboration regarding Francisca's diabetic condition or hardship to the U.S. citizen daughter. Specifically the judge noted that respondent introduced no school records and the child was not even present in court.

171. In its oral decision the court stated:

In the present case, the respondents have no unusual factors in their favor to warrant this Court in granting such an extraordinary remedy. It is possible that there may exist some evidence that could convince the Court to the contrary. The lack of medical records in the file, and the lack of any real information about the respondent's United States citizen child, are glaring deficiencies in the record. However, the burden of proof is on the respondents to present this information, and they have failed to meet their burden. Accordingly, the respondents applications for suspension of deportation are denied.

#### O. Ruiz Matter

172. Antonio Ruiz retained respondent in late February or early March 1997 to represent him in seeking suspension of deportation and work authorization. Ruiz paid respondent \$1,000 and signed a notice of entry of appearance of attorney for respondent on March 5, 1997.

173. Respondent did not send in a letter requesting OSC processing until March 31, 1997, one day before the new law eliminating suspension of deportation took effect. At that point it was impossible for Ruiz to be processed and the OSC to be filed in the immigration court before the April 1, 1997.

174. Ruiz, a Mexican citizen, entered the United States without inspection in March 1988. He is not married and has no children. Ruiz was therefore statutorily ineligible for cancellation of removal under the law effective April 1, 1997.

175. Respondent did not explain the legal consequences of the change in the law or the risks associated with proceeding with a request for processing.

176. Ruiz was arrested in the fall of 1997, agreed to waive a deportation hearing, and returned to Mexico. Respondent never prepared or filed applications for suspension, cancellation or work authorization because Ruiz agreed to depart before a deportation case was filed.

177. Ruiz requested a refund of his money. Respondent refused.

P. Rigoberta Martinez Matter

178. In September 1996, Juan Olivetti introduced Rigoberta Martinez to respondent at the El Burrito Market in St. Paul. Olivetti had originally referred Martinez and her family to attorney Phillip Fishman to obtain legal residency and work permits. In August 1996, Fishman and his law clerk Misti Allen, learned that Olivetti had either prompted Martinez to lie about her residence in the United States or had mistranslated the information given to Fishman to make it appear that she and her family members qualified for suspension of deportation.

179. Martinez first illegally entered the United States in October 1989 but had failed to appear for a deportation hearing in 1992. She and her daughter Bertha were later arrested and voluntarily left the country in 1994. When Fishman learned the true facts he formally withdrew from representing Martinez. On August 29, 1996, he sent Martinez a withdrawal letter returning \$1,000 of the retainer she had paid him, explaining that she was ineligible for suspension of deportation and had no legal remedy.

180. Olivetti convinced Martinez to retain respondent. Martinez explained her circumstances to respondent and gave him the August 29 letter she received from Fishman. On September 26, 1996, Martinez signed a retainer agreement and paid respondent \$1,000.

181. Respondent obtained Martinez' file from Fishman's office. The file contained Fishman's August 29, 1996, letter and documents from INS regarding her 1992 deportation hearing.

182. Respondent did not explain that by seeking a work permit he would be alerting the INS to her illegal presence in the country and that she might be detained and forced to leave the country.

183. On November 7, 1996, respondent took Martinez and two other clients to the INS offices in Bloomington, Minnesota, to obtain work permits. At the INS offices Martinez was detained, then released on her own recognizance and ordered to report monthly to the INS.

184. On November 25, 1996, respondent sent a letter to Martinez (and to several other clients) asking her to meet him at INS on December 5, 1996, to obtain her work permit. On November 26, 1996, Olivetti sent Martinez an application for work authorization to sign and return to respondent's office.

185. On December 5, 1996, the INS denied work authorization to Martinez and seven of respondent's other clients because respondent had not filed applications for suspension of deportation necessary to support an application for work authorization.

186. On December 16, 1996, respondent wrote to INS District Counsel Richard Soli asking him to schedule a master calendar hearing and to stay any deportation because he intended to apply for suspension of deportation on her behalf. Respondent's request was inappropriate because District Counsel's Office does not schedule master calendar hearings and a stay of deportation is appropriate only after a final order of deportation has been issued.

187. Respondent did nothing further for Martinez. In January 1997 Martinez consulted other counsel who assisted her in filing a complaint. On the advice of other counsel she voluntarily returned to Mexico in the summer of 1997.

Q. Epifanio Dominguez Matter

188. Epifanio Dominguez and Elva Hernandez met with respondent on November 13, 1996. Hernandez and Dominguez are not married. Neither are fluent in written or spoken English. Hernandez is a legal U.S. resident but Dominguez is not. He first illegally entered the United States in 1990. Dominguez told respondent that he had been arrested by the INS in 1996, signed an agreement for voluntary departure, and returned to Mexico the next day.

189. On November 13, 1996, Dominguez signed a retainer agreement for respondent to represent Hernandez in a naturalization proceeding and to represent him in a motion to reopen a suspension of deportation. They paid respondent \$1,000 of the required \$2,000 flat fee that day. They also provided respondent with four money orders (American Express money orders for \$70 and \$155; New Money Express money orders for \$80 and \$155).

190. On November 22, 1996, respondent requested Dominguez' file from the INS. Dominguez' immigration file contained a record of his arrest, waiver of hearing and voluntary departure.

191. On January 7, 1997, respondent gave the American Express money orders to Olivetti to return to Dominguez but retained the New Money Express money orders in Dominguez' file. Olivetti did not return the money orders but put them in his pocket.

192. On January 21, 1997, respondent filed with the immigration judge at the EOIR, U.S. Department of Justice, in Chicago, a Motion to Reopen and Stay of Deportation, an Application for Stay of Deportation. He also filed an Application for a Fee Waiver despite the presence of money orders in Dominguez' file made out to the INS for filing fees.

193. This motion and accompanying applications were also copied to Office of District Counsel at the INS office in Bloomington. The application stated that

Dominguez had last entered the United States in 1989, when he had actually first entered in 1990, and reentered in October 1996.

194. On January 27, 1997, the EOIR in Chicago returned all documents to respondent because, according to court and INS computer records, no case was pending before the court.

195. In February 1997, Dominguez received from Olivetti a fake birth certificate. Olivetti told Dominguez that because Dominguez was now a citizen, according to the birth certificate, it was no longer necessary for him to proceed with the stay of deportation application. Olivetti encouraged Dominguez to go get a social security number, which Dominguez refused to do because it was illegal.

196. On February 12, 1997, the Office of District Counsel wrote to the EOIR with a copy to respondent indicating that the immigration court lacked jurisdiction in the matter, because no charging document had ever been issued against Dominguez.

197. When Dominguez and Hernandez returned to see Olivetti about the status of their case, Olivetti showed them the February 12, 1997, letter from District Counsel, misrepresenting to them that the letter indicated Dominguez' case was proceeding and that Dominguez would soon get his work permit. No one in respondent's office ever told Dominguez or Hernandez the true contents of the February 12, 1997, letter.

198. On April 9, 1997, respondent again wrote to District Counsel inquiring about the status of Dominguez matter and asking how Dominguez could qualify for a work permit.

199. In late April 1997 Dominguez and Hernandez went to respondent's office but he refused to meet with them. They protested and respondent told them that Olivetti had taken their file home with him. They returned to respondent's office a second time and he told them again that Olivetti had the file at his house.

200. On or about June 10 or 12, 1997, Dominguez went to respondent's office, and met with a new associate attorney, Martha Burns. She informed them that Olivetti was not an attorney, had been fired, and that their case would be reviewed to see if any money was owed to them. On June 25, 1997, respondent returned \$235 of the unused filing fees.

201. On July 3, 1997, Dominguez and Hernandez went to see respondent who told them that there was nothing further to do, and that he was not going to refund any of the attorney fees. When Dominguez applied for fee arbitration with the Ramsey County Bar Association, respondent refused to participate.

202. On July 16, 1997, Jon Lopez, of Centro Cultural Chicano helped Dominguez write a letter of complaint to the Lawyers Board. In October Dominguez and Hernandez sought help from Centro Legal where the February 12, 1997, letter was correctly translated for them and they understood for the first time that Dominguez' case had been rejected.

#### R. DeLuna Matter

203. In the early 1990s Natividad DeLuna attempted to legalize his status in the United States through an amnesty program for illegal aliens. His application for legalization/amnesty was denied. His counsel, Karen Ellingson of Oficina Legal, appealed to the Legalization Appeals Unit (LAU) but his appeal was denied. His counsel then moved to reopen. His motion to reopen was also denied. At that point his attorney told him there was no further remedy available to him.

204. DeLuna saw respondent's ad in *La Prensa* advertising attorneys with sixteen years of immigration experience. In response to the ad DeLuna met with respondent on January 9, 1997, to seek a second opinion from an experienced attorney. He gave respondent all of the documents from his case file. The file contained a

September 6, 1996, letter from the chief of the LAU stating “further motions to reopen these proceedings will not be considered.”

205. Despite the INS letter in his file, respondent agreed to appeal the matter to federal court for a fee of \$1,200. DeLuna signed a retainer agreement and paid respondent \$700.

206. Respondent was unfamiliar with the law and legalization procedures relating to amnesty. He failed to understand that DeLuna had not been ordered deported but had been denied legal residency. Respondent did not understand the issue in DeLuna’s case even after talking with DeLuna’s former counsel, Karen Ellingson. Respondent undertook legal research about appeals and motions to reopen following orders for deportation. This research was completely irrelevant to DeLuna’s case.

207. On March 12, 1997, respondent sent DeLuna a letter stating that he would have the motion completed the following week. On March 17, 1997, DeLuna sent respondent a letter expressing his frustration with the delay and asking respondent to stop further work on the matter, return his documents, and refund the \$700.

208. On March 24, 1997, respondent wrote to DeLuna informing him that he had no basis for an appeal, and that the research costs and fees amounted to \$705.00. The actual costs as set forth in the letter (\$230.00 for paralegal research and \$375.00 for respondent’s time) amounted to a total of \$605.00. Respondent has not returned even the unearned portion of DeLuna’s retainer.

#### S. Ibarra Matter

209. Rosalba and Alfonso Ibarra first illegally entered the United States in 1985. On July 13, 1996, they met Juan Olivetti who told them he was an assistant of attorney Philip Fishman. Olivetti told them that Fishman could obtain residency and employment documentation for them. Over the next several weeks, they gave Olivetti a

total of \$1,346.70 as payment for Fishman's services. They also provided Olivetti with documentation of their residency and employment in the United States since 1985.

210. Olivetti kept the Ibarra's money. Fishman never met the Ibarra and knew nothing about their dealings with Olivetti.

211. On November 13, 1996, at Olivetti's request, the Ibarra went to E-1320 First National Bank Building at 332 Minnesota Street in St. Paul to see their attorney. The Ibarra were expecting to meet Philip Fishman. Instead, Olivetti introduced them to respondent. Olivetti told them in Spanish that respondent was now their attorney and that he was a better attorney than Fishman because Fishman was reporting people to immigration.

212. The Ibarra told respondent that they wanted permanent residency and a work permit. Respondent did not explain to them that suspension of deportation, the process he intended to use to accomplish their objectives, meant that they would admit they were deportable illegal aliens and that if they lost their application for suspension of deportation they would be deported. Respondent did not tell them that if the OSC processing he requested on their behalf was not completed and the OSC filed with the court before April 1, 1997, their only defense to deportation would be an application for cancellation of removal for which their two Mexican born children could not qualify.

213. The Ibarra were so confused by what had just happened that they consulted with Edith Rios, a social worker at Centro Cultural Chicano, and asked her to find out what was happening with their case. Ms. Rios called respondent's office and spoke to Juan Olivetti who refused to give Rios any information, asserting attorney-client privilege.

214. On November 18, 1996, respondent wrote to the INS requesting OSC processing for thirteen of his clients including Alfonso Ibarra.

215. On November 19, 1996, Olivetti wrote a letter to the Ibarra in Spanish telling them about the call from Rios and the reason he refused to tell her anything.

216. Olivetti then prepared and placed in the Ibarra's file a fake cover letter from Fishman dated November 22, 1996, purporting to transfer the Ibarra's files.

217. Having heard nothing from respondent for a month, the Ibarra asked Edith Rios to accompany them to an appointment to respondent's office. On December 27, 1996, the Ibarra and Rios met with respondent in his office. With Rios translating, the Ibarra asked respondent who their attorney was. Respondent stated that he had been their attorney for about one month and asked them for a payment of fees. The Ibarra replied that they thought that their attorney had been working on their case since the middle of last summer and that they had already given Juan Olivetti more than \$1,300 for attorney fees. Respondent told them that he had not received any money.

218. Olivetti then came into the room and explained to the Ibarra that he had brought their file and five others with him from Fishman's office when he came to work for respondent. Olivetti falsely stated that he had given their money to Fishman.

219. Respondent then told Rios and the Ibarra that they expected Alfonso to have his work permit in January, but that Rosalba's work permit would take a bit longer. Respondent did not explain or discuss the Ibarra's legal status with them, but promised to keep them informed about their case.

220. At the December 27, 1996, meeting respondent agreed to work on their matter at no cost saying he would try to recover their fees from Fishman.

221. On January 15, 1997, respondent signed a letter to Fishman. The letter did not, as promised, ask for a refund of the fees which Olivetti claimed he had given Fishman on behalf of the Ibarra. Respondent never followed up the January 15, 1997 letter.

222. After waiting a month and hearing nothing from respondent, the Ibarra consulted with Ms. Rios again, and then with attorneys at Centro Legal. An attorney

for Centro Legal contacted Fishman and learned that he had never met the Ibarra, had no retainer agreement, and had never received any funds on their behalf.

223. Respondent never obtained any relief on behalf of the Ibarra. On March 12, 1997, the Ibarra wrote to respondent terminating his representation and requesting a refund of the \$1,346.70 which they had given to Olivetti. Respondent returned their file, but did not refund the money.

#### T. Acevedo Matter

224. In early April 1997, Carlos Acevedo, a Mexican citizen, went to respondent's office, where he met with Juan Olivetti. Acevedo had illegally entered the United States in 1992, had been arrested by INS in 1994 and failed to attend the immigration hearing.

225. Olivetti gave Acevedo a business card from respondent's office, which represented him as "Juan Olivetti, Ph.D., Legal Assistant." Acevedo described the circumstances of his case to Olivetti, who erroneously told him that he had a case for suspension of deportation, and that they could get him a work permit by the end of May or early June.

226. Olivetti told Acevedo that respondent would arrange his immigration affairs for \$1,500. Olivetti also told him that respondent could obtain a visa to bring Acevedo's wife and children up from Mexico. Respondent allowed Olivetti to meet with and give legal advice to Acevedo in respondent's offices.

227. During his next meeting with Olivetti on April 21, 1997, Acevedo paid Olivetti \$750.00 cash and received a receipt written on the back of one of respondent's business cards.

228. Acevedo had previously consulted Karen Ellingson of Oficina Legal regarding immigration issues. Ms. Ellingson advised Acevedo that he had no legal

remedy. On May 5, 1997, Ms. Ellingson spoke with respondent about Acevedo's case and sent him Acevedo's file.

229. At respondent's office on May 5, 1997, Acevedo gave Olivetti two money orders, one for \$70.00 and one for \$100.00, which Olivetti told him were for filing fees for a work permit and an application for suspension of deportation. In Acevedo's presence, Olivetti filled in respondent's name on the payee portion. Acevedo still had not met with respondent. Olivetti later endorsed the back of the money orders and cashed them, keeping the funds for himself.

230. At the May 5 meeting, Olivetti told Acevedo that he would have his work permit by the end of May or beginning of June. He did not explain to Acevedo the risk of deportation inherent in filing for "suspension of deportation" in order to obtain a work permit especially in light of Acevedo's 1994 arrest.

231. On May 24, 1997, Acevedo's employer called respondent's office to inquire about the status of Acevedo's work permit and case. The receptionist told Acevedo that he had no file with their office.

232. On May 25, 1997, Acevedo went to respondent's office and for the first time met with respondent and his new associate Martha Burns. They told him that respondent had received no money, Juan Olivetti no longer worked there and that no one had opened a file for him in that office.

233. On December 15, 1997, the INS arrested Acevedo, and deported him later that month.

#### U. Lopez Matter

234. Sergio Lopez retained respondent in March 1997 and paid an initial retainer of \$325. Lopez is an unmarried Mexican man who first illegally entered the U.S. in March 1986. The biographical information which respondent provided to the

INS indicated that Lopez had no close U.S. citizen or permanent resident relatives for whom his deportation would be a hardship.

235. On April 22, 1997, respondent wrote to Judy Farber expressing an intention to bring Lopez into the INS for processing. Respondent stated that they would be requesting suspension of deportation. At that time cancellation of removal had replaced suspension of deportation as a defense to deportation. While Lopez entry date of March 1986 met the minimum residence requirement, he could not meet another of the statutory requirements for cancellation, i.e. that his deportation would be an extreme hardship to his U.S. citizen or legal permanent resident mother, father, spouse or child.

236. Lopez became concerned about his case and wrote to respondent discharging him and requesting a refund. Respondent replied that he was closing Lopez' case as requested but had earned the \$325 received from him and refused a refund.

237. Respondent's misconduct in representing immigration clients included (a) failing to develop the legal knowledge and skills necessary for competent representation, (b) failing to diligently pursue client matters, (c) failing to communicate adequately with clients about the status and objectives of their cases; (d) taking frivolous positions in seeking work authorization, fee waivers, suspension of deportation, cancellation of removal and motions to reopen; (e) failing to return unused and or unearned filing and other fees and (f) charging an unreasonable fee for services violated Rules 1.1, 1.3, 1.4, 1.5(a), 3.1, 1.16(d) and 8.4(d) MRPC.

#### COUNT IV

#### TRUST ACCOUNT VIOLATIONS AND FAILURE TO SAFEGUARD CLIENT PROPERTY

238. At all times relevant, respondent has maintained trust account number 832300065 at Firststar Bank.

239. Respondent provided the Director's Office with copies of the following trust account books and records for the period June 1996 through December 1997: (a) checkbook register; (b) cash receipts journals; (c) cash disbursements journals; (d) client subsidiary ledgers; and (e) bank statements, canceled checks and deposit slips.

240. Using these records, the Director's Office audited respondent's trust account for the period June 1996 through December 1997. The Director's audit disclosed the trust account shortages and deficiencies described below.

241. On August 30, 1996, respondent's trust account check no. 1244 for \$1,500, issued by respondent as a refund of his client Ponce's retainer, was paid by the bank. At that time, Ponce had only a \$300 balance in respondent's trust account. Payment of check no. 1244 thus created a \$1,106.14 shortage (\$1,200 minus \$93.86 in respondent's funds) in the trust account. On September 12, 1996, respondent deposited funds sufficient to eliminate the shortage.

242. During the period December 9, 1996, through at least December 1997, the actual balance in respondent's trust account was continuously less than that required to cover client balances. The shortage ranged in amount from \$26 to \$5,771. The causes of the shortage were (a) check alteration and misappropriation by Juan Olivetti; (b) disbursements on behalf of clients who had trust account balances less than the amount of the disbursement; and (c) disbursements which respondent failed to attribute to any client.

243. The following trust account checks, which respondent issued to the INS to pay client filing fees, were altered by Juan Olivetti or another and the proceeds misappropriated:

<u>DATE*</u>	<u>CHECK</u>	<u>AMOUNT</u>	<u>CLIENT</u>	<u>COMMENTS</u>
12/9/96	1251	\$ 310.00	M. Lopez	Check altered to reflect Juan Olivetti as payee; endorsed by Juan Olivetti.
12/9/96	1254	155.00	S. Perez	Check altered to reflect Juan Olivetti as payee; endorsed by Juan Olivetti.
12/9/96	1256	295.00	U. Arevalo	Check altered to reflect Juan Olivetti as payee; endorsed by Juan Olivetti.
1/13/97	1270	155.00	M. Lopez	Check altered to reflect "Richard Bradley" as payee; endorsed by Richard Bradley.

(\*Date check cleared the bank.)

244. Respondent issued the following trust account checks on behalf of clients for whom respondent's own trust account books and records reflected balances insufficient to cover the checks:

<u>DATE</u>	<u>CHECK</u>	<u>PAYEE</u>	<u>AMOUNT</u>	<u>CLIENT</u>	<u>ACTUAL CLIENT BALANCE</u>
12/13/96	1279	INS	\$ 70.00	R. Martinez	\$ 0.00
1/17/97	1303	Respondent	500.00	R. Bernal	250.00
1/28/97	1301	INS	70.00	C. Rojas	0.00
2/5/97	1313	Respondent	250.00	E. Sanchez	0.00
2/10/97	1311	R. Fonseca	870.00	R. Fonseca	0.00
2/28/97	1322	Respondent	175.00	A. Torres	150.00
2/28/97	1322	Respondent	250.00	S. Rosas	200.00
3/5/97	1327	Respondent	200.00	R&S Camarena	50.00
3/14/97	1328	Respondent	100.00	R&S Camarena	(150.00)
5/23/97	1370	Respondent	750.00	D&M Quiroz	150.00
8/18/97	1386	Respondent	200.00	Lopez-Luna	0.00
9/2/97	1388	Respondent	250.00	M. Vasquez	0.00
9/3/97	1389	Respondent	250.00	M. Vasquez	(250.00)

245. Respondent issued the following trust account checks, but failed to attribute them to any client in his books and records:

<u>DATE</u>	<u>CHECK NO.</u>	<u>PAYEE</u>	<u>AMOUNT</u>
1/28/97	1300	INS	\$ 70.00
1/28/97	1302	INS	70.00
2/3/97	1307	Attorney Referral	25.00
9/9/97	1391	Respondent	500.00
9/11/97	1392	Respondent	500.00
10/23/97	1402	Respondent	500.00
12/30/97	1417	Respondent	120.00

246. On February 17, 1998, and August 21, 1998, the Director's Office provided respondent with a copy of its audit. The Director's Office asked respondent to identify any errors in the audit and provide any information missing from the audit. Respondent did not, in his responses to the February 17 or August 21 letters or at any other time, identify any errors in the audit or provide any missing information.

247. On October 9, 1998, the Director's Office again asked respondent to review its audit, to advise of any errors in client attributions, and to provide documents and/or information that would enable the Director's Office to attribute any of the previously unattributed transactions. Respondent did not respond.

248. Respondent failed to perform the trust account trial balances and reconciliations required by Rule 1.15, MRPC, and Lawyers Professional Responsibility Board Amended Opinion No. 9.

249. Respondent's trust account books and records were deficient in the following additional respects: (a) respondent did not annotate his checks, deposit slips or check register with the identity of the affected client(s); (b) respondent's cash receipts journals, cash disbursements journals and client subsidiary ledgers contained numerous errors and omissions; and (c) respondent failed to maintain client subsidiary ledgers for many of the clients for whom he had trust account activity.

250. Among the clients for whom respondent failed to maintain a subsidiary ledger was Jon Perry. Sometime prior to June 1996, respondent received and deposited to his trust

account approximately \$25,000 on behalf of Perry. These funds remained in respondent's trust account until December 1, 1997, when respondent disbursed them to Perry.

251. Respondent's failure to properly reconcile his trust account prevented him from discovering Juan Olivetti's misappropriation and the various other problems that contributed to the overall shortage in his trust account.

252. Respondent routinely asked, or through Juan Olivetti asked, clients to provide checks and money orders payable to the INS for filing fees. Respondent failed to safeguard these funds from loss or theft by placing them, sometimes for long periods of time, in client files which were kept in unlocked file cabinets or on window ledges in Olivetti's or respondent's offices.

253. Respondent's conduct in failing to properly maintain his trust account and in failing to safeguard client money orders violated Rules 1.15, and 8.4(c) MRPC, and LPRB Amended Opinion No. 9.

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

Dated: October 15, 1999.



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