

FILE NO. C4-99-1780

STATE OF MINNESOTA

IN SUPREME COURT

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION FOR
DISCIPLINE**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The above-entitled matter came on for hearing on March 21, 2000, before the undersigned, acting as referee by appointment of the Minnesota Supreme Court. Betty M. Shaw, Senior Assistant Director, appeared for the petitioner, the Director of the Office of Lawyers Professional Responsibility (hereinafter "Director"). William P. Kaszynski (hereinafter "Respondent") did not appear for the proceedings.

The proceedings were conducted on the Director's October 15, 1999, petition for disciplinary action, November 4, 1999, supplementary petition for disciplinary action, and February 22, 2000, second supplementary petition for disciplinary action.

The findings and conclusions made below are based upon Respondent's admissions, the Director's request for admissions deemed admitted, the Director's exhibits, the testimony presented, and the reasonable inferences to be drawn from the exhibits and testimony.

Based upon the evidence, and upon all of the files, records and proceedings herein, the referee makes the following:

FINDINGS OF FACT

1. The facts of record of this Referee's March 20, 2000 Order Deeming Director's Requests for Admission Admitted, are incorporated herein. In that Order, this Referee deemed

4/12/00

admitted the requests for admission in the Director's Interrogatories and Requests for Admission to Respondent dated January 7, 2000. These admissions therefore make up a substantial portion of this Referee's following Findings of Fact.

I. BACKGROUND

2. Respondent was admitted to practice law in Minnesota on May 22, 1981.

3. Respondent has the following 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) (Resp. Ans. ¶ 2; Exhibit 1).

4. 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 (Resp. Ans. ¶ 3).

5. 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 (Resp. Ans. ¶ 3).

6. Respondent agreed to accept clients referred by Olivetti (Resp. Ans. ¶ 3).

II. IMMIGRATION LAW BACKGROUND

The following Findings of Fact (6 through 15) are based on the testimony of Duthoy, Davis, Mattos, Cangemi, and Toews:

7. Prior to April 1, 1997, if an illegal alien was arrested and placed in deportation proceedings, he or she could apply for a discretionary remedy called suspension of deportation. An application for suspension of deportation could only be filed after an individual had been placed in deportation proceedings. An individual was not formally "in proceedings" until, prior to April 1, 1997, an Order to Show Cause (OSC) was filed with the Immigration Court.

8. The minimum requirements for suspension included good moral character, at least seven years continuous presence in the U.S., no other means of immigrating, and extreme hardship to the alien.

9. For people placed in proceedings after April 1, 1997, suspension of deportation was not an option. Suspension had been replaced by a new discretionary remedy, cancellation of removal. OSCs were no longer issued. OSCs had been replaced by Notices to Appear (NTA).

10. The minimum standards for cancellation of removal included good moral character, at least ten years continuous presence in the U.S. and exceptional and extremely unusual hardship to the applicant's parent, child, or spouse who was a U.S. citizen or legal permanent resident. Even the most extreme personal hardship to the illegal alien would no longer qualify that person for cancellation of removal. In addition, there was now an annual nationwide cap of 4,000 visas for individuals granted cancellation.

11. Suspension of deportation/cancellation of removal was never routinely granted. An immigration judge, in the exercise of his or her discretion, granted suspension or cancellation only in exceptional circumstances. Economic conditions in a person's home country could be

considered a hardship factor but was not sufficient by itself to meet the standard of extreme hardship needed to qualify for suspension/cancellation. If suspension/cancellation was granted, the individual would receive legal permanent residence. If suspension/cancellation was denied, he or she would be deported or granted the right to depart to his/her home country voluntarily.

12. After September 30, 1996, the issuance of an OSC or an NTA cut off the accruing of "continuous presence" for purposes of suspension of deportation or cancellation of removal.

13. A request for processing is a momentous decision. If the person's case for suspension was not very strong, it meant certain deportation and loss of all the years of continuous presence the person had accrued. When the INS received a request for an OSC processing interview, it would assign the matter to an agent who would send out a notice for interview as time permitted. OSC processing interviews were very low priority for the agents' time. These agents' priorities were to arrest criminal aliens and to enforce employer compliance.

14. Because of the increase in the number of requests for processing by September 1996, the INS office in Bloomington, Minnesota, was estimating that, except under the most compelling humanitarian circumstances, it would take a minimum of four to six months to get a processing interview. After the processing interview, the INS would issue an OSC and serve it on the INS District Counsel, who would file it with the Immigration Court. If the OSC had not been filed with the court before the April 1, 1997, deadline, the individual would not be eligible for suspension of deportation (Exhibit 206).

15. The Bloomington INS office required that any letter requesting processing contain basic biographical information about the individual (which could be provided on a form G-325) so that the INS could do a preliminary background check before setting up the OSC processing interview. Without this basic biographical information, the INS would not set up an interview.

16. The Bloomington INS office holds regular quarterly meetings with members of the immigration bar to answer questions about its policies and interpretation of the law. Immigration attorneys in the Twin Cities area were aware, or would have been told if they had asked, that enforcement agents would not pursue their clients if the attorney withdrew a request for processing because an interview had not been scheduled in time to have the OSC filed before April 1, 1997. The INS routinely honored that request because processing interviews were a low priority. If a processing appointment had been scheduled for an individual and the person did not appear for the interview, the INS did not go looking for that person unless the individual had a criminal record or outstanding warrants.

III. FALSE ADVERTISING

Rule 7.1 Communications Concerning a Lawyer's Services Rule 7.4 Communications of Fields of Practice

17. On about September 9, 1996, Olivetti spoke with Mario Duarte, editor of *La Prensa*, a bilingual newspaper serving the Hispanic community in the Twin Cities metropolitan area, about placing an advertisement for Respondent (Req. for Admiss. 1).

18. Olivetti took in a proposed ad that Mario Duarte's advertising manager formatted and faxed to Respondent for his approval (Req. for Admiss. 2; Exhibit 2). When Respondent placed the ad he was the only attorney in the firm and he had no experience in immigration law (Req. for Admiss. 4). The advertisement was in Spanish and falsely stated that Respondent's office had lawyers with 16 years of experience in immigration law (Req. for Admiss. 3; Exhibit 4). When the ad was placed, the only person in the office who spoke Spanish was Juan Olivetti (Resp. Ans. ¶ 6). The ad also said "we speak Spanish" (Exhibits 2, 4; Resp. Ans. ¶ 6).

19. Respondent knew what the ad said about his experience and that it was false (Exhibit 12, Response to Qs. 19, 20).

20. The telephone numbers given in the ad were for Olivetti's home and cellular telephones (Exhibits 6, 7 and 12; Response to Q.20 (phone numbers in Exhibit 7 were for Respondent's office) (phone numbers in Exhibit 6 were for Olivetti's phones)).

21. On September 25, 1996, Respondent wrote to Mario Duarte stating that the false ad needed no changes (Exhibit 3). On October 8, 1996, Respondent wrote to Mario 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" (Exhibits 5 and 6).

22. In December 1996 Respondent placed a second false ad in *La Prensa* (Req. for Admiss. 5; Exhibit 7).

23. Based upon Respondent's false advertisement a number of persons, including but not limited to, Victor Martinez, Pedro Ortega, Maria Figueroa, Felipe Duarte Bautista, Tomas Remedios, Alfonso Martinez, and Natividad DeLuna sought Respondent's services on immigration matters (Victor Martinez test.; Exhibit 174, p. 14 (2-16); Req. for Admiss. 36; Req. for Admiss. 113; Exhibit 73 (no charge for initial conference); Alfonso Martinez test.; Resp. Ans. ¶ 98).

IV. MISCONDUCT REGARDING EMPLOYEES

Rule 5.5(a) Aiding In The Unauthorized Practice Of Law

Rule 5.3 Failure to Adequately Supervise A Non-Attorney Legal Assistant/Interpreter

24. 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 no longer working with or referring clients to Fishman (Resp. Ans. ¶ 7). 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 (Req. for Admiss. 7).

25. 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 (Req. for Admiss. 6; Allen-Binsfeld test.).

26. Olivetti falsely told Respondent that he had been to William Mitchell College of Law 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 (Exhibit 8; Resp. Ans. ¶ 3).

27. Juan Olivetti recruited numerous clients to retain Respondent's services (Exhibit 12, Response to Q. 19). During the months of August through October 1996, Respondent and Olivetti accepted more than 40 clients (Resp. Ans. ¶ 8; Exhibit 203C). 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 (Req. for Admiss. 8).

28. 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 interpreted or summarized the questions and answers for Respondent (Resp. Ans. ¶ 9). Respondent also relied upon Olivetti regarding the amount of the fees to charge for various services (Req. for Admiss. 8).

29. In October 1996 Respondent hired Olivetti as his legal assistant (Exhibit 9). Both before and shortly after Respondent hired Olivetti, several individuals warned Respondent that Olivetti had been "coaching" clients, engaging in unauthorized practice and mistranslating (Exhibits 9, 11; Allen Binsfeld test.). Respondent refused to heed these warnings and berated those who said anything negative about Olivetti (Exhibits 9, 11; Allen Binsfeld test.).

30. On September 27, 1996, when Misti Allen Binsfeld encountered Respondent in the hall at the INS in Bloomington, she warned Respondent that he should be careful about Olivetti because, from their experience, he had "hurt a lot of people" (Allen Binsfeld test.). Respondent's reply was that her statement was unfounded and that Fishman had not treated Olivetti respectfully (Allen Binsfeld test.).

31. When Fishman was able to reach Respondent by phone, in late September or early October 1997, he told Respondent that Olivetti had provided incorrect information and instructed their clients to provide incorrect information (Allen Binsfeld test.).

32. 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 (Req. for Admiss. 9; Cadenas test.).

33. 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 drafted by Olivetti and filed with the INS (Req. for Admiss. 9).

34. Olivetti lied to clients, made promises that could not be kept and repeatedly reassured the clients that all was well (Req. for Admiss. 16, 23, 28, 33, 78; Martinez, Cadenas test.; Exhibit 174, p. 21 ll. 7-25). Olivetti intentionally wrote inaccurate dates of entry on

documents filed with the INS in order to make it appear that clients were statutorily eligible for suspension or cancellation when, in fact, they were not (Exhibit 189, pp. 55, 30, 21, 33; Burns test.).

35. Examination of Respondent's clients' files indicate that Olivetti prepared most, if not all, of the applications for suspension of deportation (Exhibits 119; 193, pp. 35-52; 189, pp. 33-39; 181, pp. 42-47), corresponded with clients in Spanish, and had frequent unsupervised telephone and in-person conversations with clients about their immigration matters (Exhibits 26, 40, 70, 80, 83, 96, 108, 152, Burns, Cadenas, Hernandez and Martinez test.).

36. During Olivetti's tenure, Respondent's practice grew dramatically and then dropped off substantially (Exhibit 203C). Respondent's deposits to his trust account significantly increased and then declined (Exhibit 203B). After Olivetti was discharged, Respondent's business profitability began to decline so that by September 1997 Respondent was no longer paying the employer withholding taxes taken from his employees' paychecks (Resp. Ans. ¶114).

37. Carlos Acevedo, a Mexican citizen, had illegally entered the United States in 1982 (Exhibit 175, p. 46), had been arrested by INS in 1994, and failed to attend the immigration hearing (Exhibit 175, pp. 38-39).

38. In early April 1997, Acevedo went to Respondent's office, where he met with Juan Olivetti (Exhibit 175, pp. 7-12). Olivetti gave Acevedo a business card from Respondent's office, which represented him as "Juan Olivetti, Ph.D., Legal Assistant" (Exhibit 157; Exhibit 175, pp. 8-9). 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 (Exhibit 175, pp. 13-16). Olivetti told Acevedo that Respondent

would arrange his immigration affairs for \$1,500 (Exhibit 175, p. 18). Olivetti also erroneously told him that Respondent could obtain a visa to bring Acevedo's wife and children up from Mexico (Exhibit 175, pp. 47, 51). Respondent allowed Olivetti to meet with and give legal advice to Acevedo in Respondent's offices.

39. 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 (Exhibit 157; Exhibit 175, pp. 18-19, 23-24, 48).

40. Acevedo had previously consulted Karen Ellingson of Oficina Legal regarding immigration issues. Ms. Ellingson advised Acevedo that he had no legal remedy (Exhibit 175, pp. 12-14). On May 5, 1997, Ms. Ellingson spoke with Respondent about Acevedo's case and sent him Acevedo's file (Exhibit 159; Ellingson test.). Ellingson related to Respondent the history of the Acevedo matter, that he was subject to an order of deportation in absentia and that any contact with the INS, including an application for a work permit, would trigger the INS's execution of the outstanding warrant for Acevedo's arrest (Ellingson test.).

41. 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 (Exhibit 158; Exhibit 175, pp. 27-28). In Acevedo's presence, Olivetti filled in Respondent's name on the payee portion (Exhibit 175, pp. 28, 31-33). Acevedo still had not met with Respondent (Exhibit 175, pp. 35, 43). Olivetti later endorsed the back of the money orders and cashed them, keeping the funds for himself (Exhibit 158). At the May 5 meeting, Olivetti told Acevedo that he would have his work permit by the end of May or beginning of June (Exhibit 175, pp. 34, 50, 59). 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 (Exhibit 175, pp. 49-50, 59, 63-65).

42. On May 24, 1997, Acevedo's employer called Respondent's office to inquire about the status of Acevedo's work permit and case (Exhibit 175, p. 35). The receptionist told Acevedo that he had no file with their office (Exhibit 175, pp. 35-36).

43. On May 25, 1997, Acevedo went to Respondent's office and for the first time met with Respondent and his new associate Martha Burns (Exhibit 175, p. 36). 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 (Exhibit 175, pp. 36-37).

44. On December 15, 1997, the INS arrested Acevedo, and deported him later that month (Exhibit 175, p. 45).

45. There was no relief available to Acevedo and any action taken on Acevedo's behalf would only lead to his deportation (Ellingson test.).

Rule 5.1 Failure To Adequately Supervise A Subordinate Attorney

46. 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 (Resp. Ans. ¶ 10; Burns test.). Ms. Burns had not taken a course in immigration law and her only immigration experience was a clinical practicum in 1992 or 1993 (Req. for Admiss. 10; Burns test.).

47. Respondent gave Burns little training and/or supervision in immigration law and procedures (Req. for Admiss. 11; Burns test.). 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 (Req. for Admiss. 12). 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) (Resp. Ans. ¶ 10; Burns test.).

V. MISCONDUCT IN REPRESENTING IMMIGRATION CLIENTS

Rule 1.1 Competence

Rule 1.3 Diligence

Rule 1.4 Communication

Rule 3.1 Meritorious Claims and Contentions

Rule 1.5 Fees

48. Even though substantial materials and resources are available to assist attorneys beginning practice in the area of immigration practice, Respondent did not have even a basic knowledge of immigration law and procedures (Duthoy, Davis, Mattos, Ellingson, test.).

49. Respondent agreed to meet with clients referred by Olivetti beginning in August 1996 (Resp. Ans. ¶ 11). In September and October 1996, Respondent sent letters requesting processing for dozens of clients. INS agent Judy Farber had to return 95 percent of the initial requests because they did not contain the information needed by INS to process the request. Farber sent Respondent a long letter indicating exactly what was deficient about each request. Despite several additional communications with Respondent, the problem persisted (Farber test.).

50. Respondent frequently sent applications for suspension of deportation to the Office of District Counsel which continued to be deficient even after the Office sent Respondent written explanations about how to correct the problems with the written materials he had submitted (Rogers test.).

51. After representing immigration clients for three months, Respondent did not know that he was required to fill out an I-9 immigration form before hiring his own employees (Exhibit 12).

52. Respondent indiscriminately applied for processing on behalf of his clients. Between September 1996 and March 1997 Respondent requested processing for between 85 and 112 people -- four to five times the number of requests of the next two attorneys requesting processing combined (Farber test.).

53. INS attorney Annett Toews observed that Respondent's written submissions were deficient in that Respondent often provided little more than the bare application when a typical suspension of deportation application was accompanied by substantial documentation for each element that must be proved to obtain suspension of deportation (Toews test.). Hardship factors, such as medical conditions or school records showing that a U.S. citizen child would suffer extreme hardship if his or her parent was deported, were not developed. The applications he filed were also inaccurate.

54. INS attorney Annett Toews also observed that Respondent was frequently unprepared for immigration hearings. At times it appeared from Respondent's statements and body language that he was hearing important information for the first time as his client testified (Toews test.).

55. 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, Luis Dominguez-Lopez and Epifanio Dominguez (Duthoy, Davis test.).

A. VICTOR MARTINEZ MATTER

56. 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 (V. Martinez test.).

57. After seeing Respondent's newspaper advertisement 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 (Martinez test.).

58. 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 (Martinez test.). Because Martinez is bi-lingual his conversations with Respondent and Olivetti were in English (Req. for Admiss. 13; Martinez test). 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 (Req. for Admiss. 14; Martinez test.).

59. 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 (Req. for Admiss. 15; Martinez test.). 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 (Req. for Admiss. 16; Martinez test.).

60. On October 10, 1996, Martinez, his wife and daughter came to Respondent's office and Martinez signed a retainer agreement (Exhibit 13). 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 test.). Martinez returned to Respondent's office on October 17, 1996, and signed an application for work authorization (Exhibit 14). On about November 8, 1996, Martinez paid Respondent another \$500 in attorney fees (Exhibit 15).

61. 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 (Martinez test., Cangemi test.).

62. Respondent did not make a timely request for OSC processing and follow-up with the INS to ensure that the OSC was filed before April 1, 1997. He also improperly filed an application for employment authorization when Martinez was not yet in proceedings and no suspension of deportation application was pending (Martinez, Davis test.).

63. 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 (Martinez test.). 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 that he would refund \$1,000 of the \$2,500 Martinez had paid (Req. for Admiss. 19; Exhibit 16; Martinez test.). The fee Respondent

charged for his attempt to obtain a work permit on December 5, 1996 was excessive (Martinez, Davis test.)

B. ORTEGA MATTER

64. 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 (Exhibits 17, 174, p. 5, 6, 7, ll. 23-24). 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" (Exhibit 174, p. 51, ll. 14-15). Ortega asked his friend, *La Prensa* publisher Mario Duarte, to contact Respondent's office and give him a note of introduction (Exhibit 174, p. 8, ll. 16-21). Duarte called Juan Olivetti, described the nature of Ortega's problem and wrote a note of introduction on the back of his card (Exhibit 174, p. 13, ll. 11-21, 174, No. 2).

65. 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 (Req. for Admiss. 20; Exhibit 174, p. 14, l. 20, p. 15, l. 13, p. 51, ll. 16-23). Ortega gave Olivetti his entire file, including his first visa extension (Req. for Admiss. 21; Exhibits 17, 174, p. 16, ll. 3-7, p. 19, ll. 18-19). Ortega asked Respondent, by way of Olivetti's interpretation, to assist him in further extending his visa, which was due to expire on October 27, 1997 (Req. for Admiss. 22; Exhibit 174, p. 22). Olivetti assured Ortega that there would be no problem in getting him an extension of his visa (Req. for Admiss. 23; Exhibit 174, p. 13, ll. 17-21, p. 27, ll. 3-7).

66. Respondent and Olivetti also told Ortega that they could also obtain a work permit and legal residency for him (Req. for Admiss. 24; Exhibit 174, p. 21, ll. 7-25). In addition, Respondent, through Olivetti, offered to assist Ortega in bringing his family from Argentina for permanent legal residence in the United States (Exhibit 174, p. 21, ll. 7-25).

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 (Req. for Admiss. 25; Duthoy test.).

67. On October 7, 1996, Respondent had Ortega sign a fee agreement quoting a non-refundable fee of \$1,500 for suspension of deportation proceedings (Exhibit 18). Ortega also paid Respondent \$500 in cash toward Respondent's fees for his assistance in bringing Ortega's family from Argentina for permanent legal residence in the United States. (Exhibits 18 and 19).

68. 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 (Req. for Admiss. 26; Exhibit 19; Exhibit 174, p. 26, ll. 5-25). Respondent took no action to file an application for a visa extension (Req. for Admiss. 27; Duthoy test.).

69. 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 (Exhibit 174, p. 28, l. 23, p. 29, l. 8, p. 31, l. 8, p. 32, l. 21). Olivetti repeatedly assured him that everything was in process and that the delay was with the immigration service (Req. for Admiss. 28; Exhibit 174, p. 28, l. 23, p. 29, l. 8, p. 31, l. 8, p. 32, l. 21).

70. 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 (Exhibit 174, p. 27, l. 8, p. 28, l. 6). Ortega returned on November 1, 1996, with the money. *See* Exhibit 19. The application fee for suspension of deportation is \$100 (Req. for Admiss. 31). There was no reasonable basis for Respondent to request a money order in excess of the amount needed for the filing fee (Duthoy test.).

71. Respondent or Olivetti prepared applications for suspension of deportation and for work authorization, but never prepared an extension of visa application (Req. for Admiss. 29). 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 (Req. for Admiss. 30).

72. In the fall and winter of 1996-1997 Ortega made numerous visits to Respondent's office regarding the progress of his visa extension (Req. for Admiss. 32; Exhibit 174, p. 28, ll. 23-24). At each visit, Olivetti assured him it was in process (Req. for Admiss. 33; Exhibit 174, p. 31, ll. 14-15, p. 31, l. 22, p. 32, l. 14).

73. On March 4, 1997, Ortega and his pastor Anthony Machado met with Respondent and Olivetti (Exhibit 174, p. 36, l. 14, p. 38, l. 5). Respondent could not answer Ortega's questions about why the visa extension had not been filed (Req. for Admiss. 34; Exhibit 174, p. 32, ll. 15-21). 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 (Exhibit 174, p. 37, l. 25, p. 38, l. 17). Machado declined to do so because Ortega volunteered at the church and the church could not afford to pay him (Req. for Admiss. 35; Exhibit 174, p. 38, ll. 8-13). 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 attorney fees Ortega had paid (Exhibit 174, p. 40, l. 12, p. 41, l. 5).

74. On September 23, 1997, Ortega returned to Argentina in order to avoid being barred from returning to the United States for unlawful presence (Duthoy test.). Respondent's representation of Ortega caused Ortega harm in that it placed him in illegal status potentially damaging his ability to return to the U.S. in the future (Duthoy test.).

75. Respondent's fee of \$700 was excessive in that he did no work on the issue for which he was hired and any work toward suspension of deportation was frivolous and useless (Duthoy test.).

C. FIGUEROA MATTER

76. Maria Figueroa, a Mexican citizen, first illegally entered the United States in 1989 (Exhibit 179, p. 6). In August 1993, she was arrested and charged with entry without inspection (Exhibit 186, pp. 72-74). Ms. Figueroa was represented by counsel at the March 30, 1994, deportation hearing (Exhibit 186, p. 60; Exhibit 179, p. 6). She was pregnant and was granted a voluntary departure date of September 30, 1994 (Exhibit 186, p. 60). Ms. Figueroa had her baby in May 1994 (Exhibit 186, p. 11), and voluntarily departed on September 15, 1994 (Exhibit 179, p. 7; Exhibit 186, pp. 35-36). In November 1994, Figueroa re-entered the United States without inspection (Exhibit 27).

77. In October 1996, based on Respondent's ad in *La Prensa*, Figueroa contacted Respondent's offices for an appointment (Req. for Admiss. 36; Exhibit 179, pp. 4-5). 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 (Req. for Admiss. 37; Exhibit 179, pp. 6-7, 10-12). Respondent and Olivetti indicated that they could help her and had her sign a fee agreement for suspension of deportation (Exhibit 179, pp. 7-9). Figueroa paid Respondent \$750 of the \$1,500 flat fee Respondent required (Exhibit 20).

78. 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 (Exhibit 21; Exhibit 179, pp. 15-16 and 31-32). The filing fee for a motion to reopen is \$110 (Req. for Admiss. 38).

79. On January 24, 1997, Respondent served a motion to reopen, application for stay of deportation, and application for fee waiver (Exhibit 22). Based upon the information Figueroa told Respondent and the documents in her file, there was no basis to prepare and file a motion to reopen (Req. for Admiss. 39; Duthoy test.). With money orders payable to the INS in her file and in light of Figueroa's payment of fees to Respondent, there was no reasonable basis to apply for a fee waiver (Req. for Admiss. 40; Exhibits 21, 22; Duthoy test.). 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 (Req. for Admiss. 41; Exhibit 26; Exhibit 179, pp. 14, 29; Duthoy test.).

80. Figueroa had had no contact with the INS since her re-entry into the country until Respondent filed the motion to reopen and stay of deportation documents (Req. for Admiss. 42). 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 (Exhibit 23; Exhibit 179, p. 18). 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 (Exhibit 24; Exhibit 179, p. 18). 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 (Exhibit 24).

81. 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 (Exhibit 179, p. 19). Respondent sent letters of withdrawal to the INS, District Counsel and the court (Exhibit 179, pp. 19-20; Exhibit 186, pp. 20-23). Figueroa rehired Respondent to represent her at her meeting with immigration

(Exhibit 179, pp. 20-21). 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 (Exhibit 26; Exhibit 179, p. 21). Respondent obtained a continuance of the March 5, 1997, meeting with the INS until March 12, 1997 (Exhibit 27).

82. On March 11, 1997, the clerk of the immigration court sent Respondent a copy of 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 suggests 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).

(Exhibit 25).

83. Respondent did not tell Figueroa about the February 27, 1997, order until late May or June 1997 (Req. for Admiss. 43).

84. On March 12, 1997, Respondent and Olivetti represented Figueroa at the meeting with the INS (Exhibit 179, pp. 21-23). After the meeting, Respondent advised her that they were attempting to get her a work permit, and asked her to call in two weeks (Req. for Admiss. 45).

85. On March 12, 1997, the INS issued an OSC why Figueroa should not be deported (Exhibit 27).

86. Figueroa called Respondent at the end of March, and again in April, to inquire about her work permit, but received no response (Req. for Admiss. 46). 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 (Req. for Admiss. 47). Figueroa called after the 15th, and spoke with Olivetti, who apologized, said they were very busy, and to wait a few more weeks and call back (Req. for Admiss. 48). On April 22, 1997, Respondent received notice of a hearing date on Figueroa's deportation (Exhibit 28). 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 (Req. for Admiss. 49).

87. In June 1997 Figueroa called and spoke with Martha Burns who informed her that Olivetti no longer worked for Respondent (Exhibit 179, pp. 26-28). Burns informed Figueroa that she was not listed as Respondent's client (Req. for Admiss. 50). Figueroa made an appointment to see Respondent, and asked him what had happened to her work permit (Req. for Admiss. 51). 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 (Req. for Admiss. 52). Respondent, for the first time, provided Figueroa with a copy of the February 27, 1997, order denying the motion to reopen her case (Req. for Admiss. 53).

88. Following this meeting, Figueroa consulted with attorneys at Centro Legal, who advised her to leave the country voluntarily, which she did in September 1997 (Duthoy test.; Exhibit 179, p. 28).

89. Respondent's motion to reopen was frivolous and incompetent because Figueroa had voluntarily departed the country in September 1994, more than 90 days had elapsed since her voluntary departure, and Respondent had not obtained INS advance approval to file the motion (Duthoy test.). Even assuming Respondent's motion was appropriate and had been granted, Figueroa was not, at that time, eligible for any relief (Duthoy test.).

90. Respondent's representation of Figueroa was harmful to her in that it led to her and her U.S. citizen children being placed back into proceedings and cutting off her time in the country that might, at some subsequent point, have been applied for purposes of cancellation of removal (Duthoy test.).

D. DOMINGUEZ-LOPEZ MATTER

91. Luis Dominguez-Lopez, a Mexican citizen, entered the United States illegally on or about January 15, 1985 (Exhibit 32). In August 1994, Dominguez was arrested and charged with entering without inspection (Req. for Admiss. 55; Exhibit 32)). Dominguez retained Richard Meshbesher to represent him in seeking suspension of deportation (Req. for Admiss. 56). At a continued hearing in January 1996, the immigration judge denied Dominguez' application for suspension of deportation (Req. for Admiss. 57; Exhibit 29, p. 1). Dominguez did not appeal the January 1996 order but accepted voluntary departure by March 18, 1996 (Req. for Admiss. 58; Exhibit 29). With the help of attorney Leo Pritschet, Dominguez extended the voluntary departure date until September 19, 1996 (Req. for Admiss. 59; Exhibit 29, pp. 2-3).

92. In late July 1996, Dominguez contacted Juan Olivetti who brought him to Respondent in early August 1996 (Req. for Admiss. 60). Dominguez paid Respondent approximately \$1,500 to bring a motion to reopen his case (Req. for Admiss. 61). Respondent failed to clearly explain to Dominguez the legal risks involved in bringing a motion to re-open his case (Req. for Admiss. 64).

93. On September 30, 1996, Dominguez gave Respondent two checks for \$155 each made out to the INS for filing fees (Exhibit 30).

94. Respondent did nothing to obtain a further extension of Dominguez' grant of voluntary departure or to seek a stay of deportation (Req. for Admiss. 62). Respondent thereby

subjected Dominguez to a final order of deportation and a five year bar from future entry into the United States (Davis test.).

95. On December 11, 1996, Respondent attempted to file a motion to reopen the suspension of deportation case (Exhibit 31) thereby alerting the INS to Dominguez' illegal presence in the country (Req. for Admiss. 63; Davis test.). 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)) provide 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 (Exhibit 32). In addition, Respondent based his argument for reopening on ineffective assistance of counsel naming Phillip Fishman as one of Dominguez' former counsel (Req. for Admiss. 65; Exhibit 32, p. 2). Fishman had never represented Dominguez and Dominguez never told Respondent that Fishman had represented him (Req. for Admiss. 66; Exhibit 33).

96. Respondent's motion papers were returned to him because Respondent had not paid the required filing fee (Req. for Admiss. 67; Exhibit 35). Respondent attempted to file a supporting affidavit after the motion papers had already been returned for lack of payment of the filing fee (Exhibit 183, pp. 10, 25, 62).

97. 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 (Req. for Admiss. 68; Exhibits 30 and 34). 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 and because he had paid Respondent \$1,500 for attorney fees (Req. for Admiss. 61, 69; Exhibit 30; Davis test.).

98. Even as late as March 26, 1997, Respondent had not yet obtained the information essential to making a non-frivolous motion to reopen based on ineffective assistance of counsel (Exhibit 183, p. 28).

99. 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 (Exhibit 35). On June 2, 1997, the immigration judge denied the motion to reopen and request for fee waiver and termed the motion "frivolous" (Exhibit 183, p. 3, emphasis in original).

100. Dominguez consulted new counsel about his matter (Req. for Admiss. 70).

101. Respondent did not timely seek the information essential to make a claim based on ineffective assistance of counsel, seek an extension of his voluntary departure date, timely file the initial motion to reopen, or seek to refile the motion for four more months (Michael Davis test.; Exhibit 183, pp. 28, 15, 25).

102. Respondent committed numerous procedural errors in attempting to file the December 11, 1996, motion to reopen, and failed to comply with the requirements of *In the Matter of Lozada* when seeking to reopen based upon ineffective assistance of counsel (Exhibits 31-35, 183, pp. 3, 23, 25; Davis test.).

103. Respondent's conduct in filing an untimely and unsupported motion to reopen was frivolous (Exhibit 183, p. 3; Davis test.).

104. Respondent's \$1,500 fee was excessive for the work performed (Davis test.).

E. ROSAS MATTER

105. Pascasio Rosas is a legal permanent resident of the United States (Req. for Admiss. 71). In 1995, with the help of an immigration attorney, Rosas submitted a petition to the INS to immigrate his wife and seven children (Req. for Admiss. 72; Exhibit 36). There was nothing further that the family could do until their priority date became current (Req. for Admiss. 73; Duthoy test.). Until the family members obtained their visas they were ineligible for work permits (Req. for Admiss. 74; Duthoy test.).

106. 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 (Resp. Ans. ¶ 32; Exhibit 37). Lauro gave Respondent copies of the documents previously filed with the INS (Req. for Admiss. 75). 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 (Req. for Admiss. 76).

107. Lauro signed a retainer agreement on Pascasio's behalf for eight suspension of deportation applications and gave Respondent \$3,000 (Exhibits 37 and 38), even though the family was not under deportation proceedings and had no need to file suspension applications (Req. for Admiss. 77). The Rosas also gave Respondent \$1,350 in money orders payable to the INS for filing fees (Exhibit 39).

108. 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 (Req. for Admiss. 78; Exhibit 40).

109. On May 13, 1997, Respondent wrote to the Nebraska INS office enclosing a notice of appearance form and requesting an update of the petition for alien relative, which had been filed by Rosas' previous attorney (Exhibit 41). On June 16, 1997, Respondent's associate, Martha Burns, filed with the Nebraska INS office an application for work permit for Alberta Rosas, stating that the Bloomington office was refusing to grant work permits (Exhibit 42). Alberta was not eligible for a work permit until her visa was issued (Req. for Admiss. 79; Duthoy test.). The Nebraska office referred the letter back to the Bloomington office, which denied the application on July 18, 1997 (Req. for Admiss. 80; Exhibit 43).

110. In June 1997, Pascasio went to Respondent's office and met with Respondent. Martha Burns interpreted (Resp. Ans. ¶ 35). Pascasio told Respondent he had 90 days to obtain work permits for the older children (Req. for Admiss. 81). Respondent failed to explain that it was impossible to obtain the work permits until the family members obtained their visas (Req. for Admiss. 82). Respondent failed to 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 when their priority date arrived under 245(i) for a \$1,000 fine. 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 (Req. for Admiss. 83; Duthoy test.). Respondent's failure to so advise the Rosas family subjected them to potential

harm in that if they had been detected by the INS prior to October 1, 1997 (180 days after April 1, 1997), they would have been required to wait for their priority date from outside the U.S. If they had been detected by the INS after October 1, 1997, they would have been subject to a three-year bar from obtaining a visa (Duthoy test.).

111. Respondent failed to recognize or 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. (Req. for Admiss. 83; Duthoy test.). At the time the Rosas family consulted Respondent, Family Unity benefits for Alberta was the only relief available to them. Respondent instead pursued benefits (work permits and suspension of deportation) for which the Rosas family was not eligible (Duthoy test.).

112. 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 (Duthoy test.).

113. 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 (Resp. Ans. ¶ 36). On January 30, 1998, Respondent sent letters to Lauro and Pascasio, requesting additional payment of \$1,000 (Req. for Admiss. 84; Exhibit 44).

F. CADENAS MATTER

114. Raymundo Cadenas is a legal resident (Req. for Admiss. 85). Raymundo's wife, Juana, entered the United States illegally in 1993 (Req. for Admiss. 89). In 1994 Raymundo had petitioned to immigrate his wife and their children, and the family was waiting for their visa priority date (Req. for Admiss. 86). There was nothing further that the family could do besides

wait for their priority date to become current (Req. for Admiss. 87; Duthoy test.). Until the family members obtained their visas they were ineligible for work permits in the United States (Req. for Admiss. 88; Duthoy test.).

115. Cadenas was introduced to Juan Olivetti by a mutual friend. Olivetti told Cadenas that he was an attorney and that he and the other attorney he worked with could arrange their papers and get Juana a work permit in two to three months (Cadenas test.).

116. On August 11, 1996, Raymundo and Juana met with Respondent to discuss obtaining a work permit for Juana (Resp. Ans. ¶ 37). Neither Juana nor the children were in deportation proceedings at the time Cadenas consulted Respondent (Req. for Admiss. 90). Cadenas gave Respondent all of the documents from their previous immigration cases (Req. for Admiss. 91). 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 (Exhibit 45). The agreement quoted a flat fee of \$4,500 due by November 30, 1996. Cadenas paid Respondent \$1,000 on September 30, 1996. See Exhibit 45. In addition to the \$1,000 retainer, Cadenas paid Olivetti \$340 cash for filing fees (Cadenas test.).

117. 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 (Req. for Admiss. 93).

118. On November 18, 1996, Respondent sent a letter to the INS requesting OSC processing for Juana (Exhibit 46). On May 8, 1997, Respondent wrote again to the INS regarding a date for processing Juana (Exhibit 47). Respondent failed to advise Juana 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 (Req. for Admiss. 92; Duthoy test.).

119. 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 (Req. for Admiss. 94). 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 (Cadenas test.). Cadenas informed Respondent that since he had not obtained a work authorization for Juana he wanted a refund of his \$1,000 (Req. for Admiss. 95). Respondent replied that he owed Cadenas nothing (Cadenas test.).

120. At the time they consulted Respondent, Juana Cadenas was clearly not eligible for any of the benefits (work permit, suspension of deportation) Respondent attempted to obtain for them (Duthoy test.).

121. Respondent caused potential harm to Juana Cadenas in that she would have had no defense to deportation if Respondent had succeeded in putting her into proceedings as he attempted to do (Davis test.).

G. TORRES MATTER

122. Natividad Torres entered the United States illegally in August 1988 (Exhibit 177, pp. 5-7, 43). Olga entered with their two Mexican born children on December 31, 1992, or January 1, 1993 (Exhibit 176, pp. 5, 9).

123. Natividad and Olga Torres retained Respondent to help them obtain legal residency in the United States (Exhibit 176, pp. 6, 7; Exhibit 177, pp. 7, 47-48). Mr. and Mrs. Torres do not speak or read English very well (Exhibit 176, p. 6; Exhibit 177, p. 8). 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 (Exhibit 48; Exhibit 176, pp. 6-7; Exhibit 177, p. 8)). 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 (Exhibit 176, pp. 7-8, 11, 13, 60; Exhibit 177, pp. 9-12, 15-17)

124. At their first or second meeting with Respondent, Respondent through Olivetti, told the Torres' that they would qualify for suspension of deportation and could become permanent residents (Exhibit 176, pp. 7, 9, 40-41, 63-64; Exhibit 177, pp. 9, 49). Respondent and Olivetti 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 (Req. for Admiss. 96; Exhibit 176, pp. 7, 74-75; Exhibit 177, pp. 10-11; Duthoy test.). In fact, each individual must qualify independently (Duthoy test.).

125. On September 9, 1996, Respondent wrote to the INS requesting OSC processing for the Torres family (Exhibit 49). Respondent did not provide biographic information or other information required by the INS before it will set a processing appointment (Req. for Admiss. 97). 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 (Req. for Admiss. 98; Farber test.).

126. Respondent did not provide a second request containing the required information until January 9, 1997 (Req. for Admiss. 99; Exhibit 50). Respondent's four-month delay in re-submitting the Torres' request for processing, in light of the April 1, 1997, law change, increased the likelihood that an OSC would not be issued by the INS prior to April 1, 1997, and that the Torres would thus be subject to the new, harsher law (Duthoy test.).

127. 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 (Exhibit 51). Respondent indicated that they hoped to know about the status of their case in a month.

128. On April 21, 1997, Respondent sent the Torres a letter saying that pursuant to their request he was closing their file (Exhibit 52). 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 (Exhibit 176, pp. 19-20; Exhibit 177, p. 21). The Torres immediately went to Respondent's office, returned the refund check and asked him to continue working on their case (Req. for Admiss. 100; Exhibit 176, pp. 19-20; Exhibit 177, pp. 21-22). 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 (Req. for Admiss. 101; Exhibit 176, pp. 19, 77; Exhibit 177, p. 22). On April 28, 1997, Respondent wrote to the Torres confirming that he would continue with their case (Exhibit 53).

129. Respondent failed to explain to the Torres that suspension of deportation was no longer available and that Natividad could not qualify for cancellation of removal because he did not meet the ten year residency requirement. He also failed to explain that Olga and the children could not qualify for legal residency under either suspension or cancellation (Req. for Admiss. 102; Exhibit 176, pp. 24, 32-33, 37, 41, 48, 75; Exhibit 177, pp. 25-26, 30, 35, 39; Duthoy test.).

130. In May 1997 the Torres bought a home and gave the new address to someone in Respondent's office (Req. for Admiss. 103; Exhibit 176, pp. 21-22, 46).

131. 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 (Exhibit 54). Respondent failed to advise the Torres that this processing interview should be cancelled because none of them qualified for cancellation of removal (Duthoy test.). 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 (Exhibit 176, p. 26; Exhibit 177, pp. 27-28).

132. 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 (Exhibit 55). Burns did not explain to the Torres the legal consequences of attending that interview (Req. for Admiss. 104; Exhibit 176, pp. 29, 37-38; Exhibit 177, pp. 29-30). Burns did not consult with the Torres about whether it was advisable for them to keep the appointment (Exhibit 176, pp. 29, 37-38; Exhibit 177, pp. 29-30).

133. 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 (Exhibit 56). At this point the Torres family had no legal remedy. They would either be ordered deported or allowed to voluntarily depart (Duthoy test.).

134. On September 23, 1998, Burns wrote to the Torres asking them to call Respondent's office about the September 29, 1998, hearing (Exhibit 57). 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 (Exhibit 176, p. 32; Exhibit 177, pp.

33, 42). The Torres appeared on September 29, 1998, without counsel and received another hearing date of December 1, 1998 (Exhibit 176, pp. 33-34, 52, 72; Exhibit 177, pp. 34, 42).

135. 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 (Exhibit 176, pp. 36-37, 41; Exhibit 177, pp. 35-36, 41). Based upon the advice Burns gave them the Torres chose not to attend the December 1, 1998, hearing (Exhibit 176, pp. 38-39; Exhibit 177, pp. 35-36). 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 (Exhibit 58).

136. 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 (Exhibit 177, pp. 36, 54).

137. With the assistance of Centro Legal the Torres were able to obtain a May 5, 1999, departure date (Exhibit 177, p. 40). Centro Legal filed for the Torres a motion to reopen based on ineffective assistance of counsel based on their complaint to the Director's Office. The immigration judge scheduled a hearing on the motion (Duthoy test.). Both Respondent and Burns testified at the hearing and were "adamant" that their representation of the Torres had been appropriate (Duthoy test.). The judge concluded that Respondent and Burns had ineffectively represented the Torres, granted the motion to reopen and allowed the Torres' voluntary departure (Duthoy test.).

H. PAVON MATTER

138. Martha Pavon is an illegal alien who had resided in the United States since September 1988 (Exhibit 178, pp. 7-8, 9). Pavon had never been arrested or otherwise had any

contact with the INS (Req. for Admiss. 105; Exhibit 178, p. 17). Pavon is unmarried and has a young daughter who is a U.S. citizen (Exhibit 178, pp. 9, 47).

139. On September 10, 1996, Pavon consulted with Respondent and Juan Olivetti regarding the possibility of obtaining permanent residence (Exhibit 59; Exhibit 178, p. 11). Pavon speaks very little English and does not read English (Exhibit 178, pp. 12, 49). Juan Olivetti interpreted the information exchanged in Pavon's initial meetings with Respondent and read her the contents of the fee agreement (Exhibit 178, pp. 12, 56). She signed a retainer agreement on September 10, 1996, and paid Respondent \$1,000 (Exhibit 59).

140. Respondent failed to explain to Pavon the risks and benefits of requesting processing in light of the change in the law to become effective April 1, 1997 (Req. for Admiss. 106; Exhibit 178, p. 13; Duthoy test.). Respondent then failed to make a request for an OSC processing appointment for four months (Exhibit 60). After April 1, 1997, Respondent failed to 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 (Req. for Admiss. 107; Duthoy test.).

141. By letter dated October 1, 1997, Respondent's associate Martha Burns notified Pavon of an October 17, 1997, processing appointment with the INS (Exhibit 61). Since 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 (Req. for Admiss. 108; Duthoy test.). 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 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 (Req. for Admiss. 109; Duthoy test.).

142. Respondent failed to explain to Pavon the consequences of attending the INS appointment (Exhibit 178, pp. 24, 28, 32). 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 (Exhibit 178, pp. 24, 28, 32), or that based on her admissions at the interview she would be given an NTA (Exhibit 62) and charges would be filed with the Executive Office for Immigration Review (EOIR) (Req. for Admiss. 110). Respondent also failed to 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 (Req. for Admiss. 111; Exhibit 178, pp. 24-32; Duthoy test.).

143. Pavon was not eligible for suspension of deportation after receiving an NTA and did not meet the minimum statutory qualifications for cancellation of removal (Req. for Admiss. 112; Duthoy test.).

144. 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 (Exhibit 63).

145. On June 15, 1998, the INS sent Pavon an NTA at a hearing scheduled for October 27, 1998 (Exhibit 64). Pavon contacted Respondent's office before the October 27, 1998, hearing date and spoke with Burns who advised her to appear without counsel and ask for a continuance so that she could consider her options (Exhibit 178, pp. 34-35). Pavon appeared without counsel and was given a January 5, 1999, hearing date (Exhibit 65; Exhibit 178, pp. 35-

36). Burns accompanied Pavon to the January 5 hearing where she requested voluntary departure for Pavon (Exhibit 66; Exhibit 178, pp. 36-40).

I. DUARTE BAUTISTA MATTER

146. Felipe Duarte Bautista is an undocumented alien who first came into the United States in late 1990 (Req. for Admiss. 115).

147. On January 17, 1997, Duarte and his girlfriend, a legal resident, met with Respondent and Juan Olivetti in response to an ad that they saw in *La Prensa* (Req. for Admiss. 113). Duarte asked Respondent whether he thought it would be possible to get legal status and a work permit (Req. for Admiss. 114). 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 (Req. for Admiss. 116). Respondent told Duarte that he might qualify for residency and a work permit (Req. for Admiss. 117).

148. Respondent requested a \$2,000 retainer to petition for suspension of deportation (Exhibit 67). Duarte paid Respondent \$2,000 in four payments between January 17 and March 11, 1997 (Exhibit 68).

149. On March 31, 1997, Respondent sent a letter to the INS requesting OSC processing (Exhibit 69). 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 (Req. for Admiss. 118).

150. 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 (Req. for Admiss. 119). Respondent did not advise Duarte that by requesting processing he was alerting the INS to his illegal presence in the country (Req. for Admiss. 119).

151. 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 (Exhibit 70).

152. Respondent applied for relief for which Duarte was not qualified. Even if Duarte had been eligible, Respondent was not diligent in applying for OSC processing (Davis test.).

153. Respondent's \$2,000 fee was unreasonable in that Duarte had no legal remedy for which he was eligible when he sought legal services from Respondent (Davis test.).

154. Respondent caused potential harm to Duarte in that he would have had no defense to deportation if Respondent had succeeded in putting him into proceedings as Respondent attempted to do (Davis test.).

155. Duarte called Respondent's office and spoke to Martha Burns, who insisted that he make an appointment (Req. for Admiss. 123). Duarte met with Burns and Respondent on November 18, 1997 (Exhibit 185, p. 7). When he learned that there was no progress on his case, he demanded a refund and a copy of his file (Req. for Admiss. 124).

J. REMEDIOS-MORALES MATTER

156. On October 23, 1996, Tomas Remedios-Morales went to Respondent's office to inquire about the possibility of obtaining a work permit (Resp. Ans. ¶ 59). Remedios told Respondent that he had first illegally entered the United States eight years ago but had been arrested in 1994 and ordered deported (Req. for Admiss. 125). Remedios signed a retainer agreement and paid Respondent \$250 toward a \$1,500 flat fee for a suspension of deportation (Exhibit 71).

157. 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 (Req. for Admiss. 127; Davis test). However, Respondent did not explain to Remedios that he had no legal basis for a work permit because an application for suspension of deportation would be frivolous on its face, or that by requesting a processing appointment he would be alerting the INS to his illegal presence in the United States (Req. for Admiss. 126).

158. 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 (Req. for Admiss. 128; Exhibit 73).

159. Remedios made a \$250 payment to Respondent on November 1, 1996, and later made a second \$250 payment (Exhibit 72, 73; Resp. Ans. ¶ 62).

160. 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 (Req. for Admiss. 129). 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 (Req. for Admiss. 130; Exhibit 75).

161. When Respondent received Remedios' file from INS it confirmed what Remedios had told Respondent in October 1996 (Req. for Admiss. 131). Remedios had been ordered deported in absentia in August 1995 (Resp. Ans. ¶ 63). Remedios was therefore ineligible for any relief (Req. for Admiss. 132; Exhibit 74).

162. 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 (Exhibit 76). Respondent refused to refund any fees (Req. for Admiss. 133).

163. Respondent's \$500 fee was unreasonable in that Remedios had no legal remedy for which he was eligible when he sought legal services from Respondent (Davis test.).

164. Respondent caused potential harm to Remedios in that Remedios would have had no defense to deportation if Respondent had succeeded in putting Remedios into proceedings as he attempted to do (Davis test.).

K. ALFONSO MARTINEZ MATTER

165. In response to Respondent's ad in *LaPrensa* 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 (A. Martinez test.).

166. On November 5, 1996, Martinez signed a retainer agreement for four applications for suspension of deportation for a total fee of \$3,000 (Exhibit 77). Martinez paid Respondent \$1,500 (Exhibit 77).

167. Martinez gave Respondent seven money orders dated November 16, 1996 and 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) (Exhibits 78 and 90; Resp. Ans. ¶ 66). Because one daughter was a U.S. citizen Martinez needed only four suspension of deportation filing fees (Req. for Admiss. 134). The filing fee for suspension of deportation was only \$100 per application, not \$155 (Req. for Admiss. 135). Martinez had therefore advanced \$375 more than necessary for filing fees (Req. for Admiss. 136). 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 (Req. for Admiss. 137).

168. Despite accurate information regarding the Martinez' first date of entry (Exhibit 189, pp. 56, 61), Respondent prepared for Mr. and Mrs. Martinez' signatures on G325 biographical information forms on or about November 18, 1996, which provided false or inaccurate entry dates to make it appear that the Martinez qualified for suspension of deportation when in fact they did not (Exhibit 79).

169. 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, but Respondent charged them at his hourly rate for the letter (Exhibits 80; 90).

170. On December 12, 1996, Respondent attempted to file an application for suspension of deportation for Alfonso Martinez in order for them to obtain work permits before he had been placed in deportation proceedings (Exhibits 81; 82). 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 (Req. for Admiss. 139; Exhibit 82). 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 (Req. for Admiss. 140). The time and money spent for the filing fee was wasted and of no value to Martinez (Req. for Admiss. 141).

171. 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 (s)he had had a hearing before an

immigration judge. Respondent charged Martinez at his hourly rate even though he paid Olivetti only \$10 per hour for his services (Exhibits 83; 90; 12).

172. 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. Respondent had previously charged Martinez for 1.5 hours of time to review the same application in December 1996 (Exhibits 90; 189, pp. 33-39).

173. 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 10th and insisting that clients have an appointment before coming to the office. He charged Martinez \$37.50 for this letter (Exhibits 84; 90).

174. On March 11, 1997, Respondent wrote a letter to the INS requesting an OSC processing appointment containing serious factual errors (Exhibit 85; Martinez test.).

175. Respondent failed to 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 (Req. for Admiss. 142; Duthoy test.). Respondent failed to inform Martinez that any case filed after April 1, 1997, would be processed under the new law (IIRIRA) in which cancellation of removal, which has 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 10 (not 7) 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) (Req. for Admiss. 143; Duthoy test.).

176. On April 16, 1997, Respondent sent a form letter to his immigration clients, including Martinez, telling them that it would likely be six months before he would receive a processing appointment. He charged Martinez \$37.50 for this letter (Exhibits 86; 90).

177. 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 (Req. for Admiss. 144; A. Martinez test.). Respondent erroneously told him that the new law would not affect his case because they had submitted "his papers" before the law changed (Req. for Admiss. 145).

178. The next communication from Respondent was a May 20, 1997, a form letter to immigration clients introducing Respondent's new associate attorney Martha Burns (Exhibit 87). Martinez heard nothing more from Respondent for almost a year (Req. for Admiss. 147).

179. On April 28, 1998, Martinez 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 (Exhibit 88). The letter asked him to call the office to discuss his options. Respondent charged Martinez \$75 for this letter (Exhibit 90). On June 9, 1998, Burns redated and resent the April 28, 1998, letter (Exhibit 89), again charging Martinez \$75 for the letter (Exhibit 90).

180. Martinez was so angry about the way in which Respondent handled his case that he did nothing for several months (Req. for Admiss. 147). In early 1999 Martinez called the office and made an appointment to talk with Respondent on February 18, 1999 (A. Martinez test.). At that appointment Martinez asked Respondent to refund his money (Req. for Admiss. 148; A. Martinez test.). Respondent applied the money orders payable to the INS for filing fees to his fees and refunded only \$227.50 (Exhibit 91) which was \$447.50 less than the amount of unused filing fees given to Respondent (Req. for Admiss. 150; A. Martinez test.). Martinez did

not agree to have the money orders applied to Respondent's fees (Req. for Admiss. 149; A. Martinez test.).

181. Respondent caused potential harm to Alfonso Martinez in that Martinez would have had no defense to deportation if Respondent had succeeded in putting Martinez into proceedings as he attempted to do (Duthoy test.).

L. RAMIREZ-SALINAS MATTER

182. 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 (Exhibit 92). Ramirez retained Respondent to help him apply for suspension of deportation and obtain a work permit (Req. for Admiss. 151). 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 (Req. for Admiss. 152). Ramirez told Respondent and Olivetti that his last entry was in December 1995 (Req. for Admiss. 153).

183. 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 (Req. for Admiss. 154).

184. 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 (Exhibit 93).

185. On September 9, 1996, Respondent sent a letter to INS requesting a processing appointment (Exhibit 94). The letter did not contain the minimum biographic information needed for the INS to process the request (Req. for Admiss. 155; Exhibit 94).

186. According to Respondent's billing statement he spent two hours on October 18, 1996, preparing Ramirez' application for suspension of deportation (Exhibit 95).

187. Ramirez' file contains three different applications with differing and inaccurate dates and places of residence and employment. The applications were also internally inconsistent (Exhibit 193, pp. 35-52).

188. Respondent failed to file the application for suspension of deportation before applying for work authorization (Req. for Admiss. 156). Instead, Respondent first had Ramirez apply for work authorization on November 7, 1996 (Exhibit 201, p. 38). On November 26, 1996, Juan Olivetti wrote to Ramirez asking him to sign and return a second application for work authorization and telling him that he was to obtain his work permit on December 5, 1996 (Exhibit 96). On December 5, 1996, the INS denied Ramirez' application for employment authorization (Cangemi test., V. Martinez test.; Exhibit 201, p. 41). There was no basis for work authorization as Respondent had not yet filed an application for suspension of deportation (Req. for Admiss. 157).

189. On December 16, 1996, Respondent wrote the Office of District Counsel protesting its failure to provide an official explanation for the rejection of Ramirez' application for a work permit (Exhibit 97).

190. Respondent did nothing further on Ramirez' matter until he prepared a third work permit application on February 6, 1997, which was again denied because no application for suspension of deportation had been filed (Exhibit 201, p. 51). On March 26, 1997, Respondent mailed Ramirez' application for suspension of deportation to the Office of District Counsel with a check for the filing fee (Req. for Admiss. 158; Exhibit 99), and had Ramirez file a fourth

application for a work permit. That fourth permit was also denied (Exhibit 98). The Office of District Counsel is not the appropriate place to send checks for filing fees (Rogers test.).

191. By November 21, 1997, Respondent still had not filed the suspension application with EOIR (Exhibit 100), but Respondent wrote to Ramirez closing his case, returning his file, and refusing to refund any fees (Req. for Admiss. 159; Exhibit 101).

192. Respondent never filed an application for suspension of deportation and improperly filed four applications for work authorization when no suspension application was pending (David test.).

193. Respondent's \$1,000 fee was unreasonable in that he provided no meaningful services to Ramirez (Davis test.).

M. VILLEDA MATTER

194. On February 25, 1997, Felix Villeda, a citizen of El Salvador, came to Respondent's office and consulted with Respondent and 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 (Resp. Ans. ¶ 3). 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 (Exhibit 102, Exhibit 112A).

195. 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 (Exhibit 103). 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 (Exhibit 104, Exhibit 112A).

196. 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 (Exhibit 105, Exhibit 112A).

197. 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." (Exhibit 106)

198. 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" (Exhibit 107, Exhibit 112A). Villeda was released on April 16, 1997, after his sister posted a \$3,000 bond (Exhibit 199, pp. 33-35).

199. On May 6, 1997, Olivetti sent Villeda another form G-28 which Villeda signed on May 9, 1997 (Exhibit 108).

200. On May 19, 1997, the INS notified Villeda that it had filed an NTA with the immigration court (Exhibit 109). 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 (Exhibit 110).

201. 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 (Exhibit 111). Villeda was not eligible for work authorization for six months after filing a petition for asylum (Davis, Burns test.; Exhibit 112A).

202. On May 28, 1997, Respondent submitted the Application for Suspension of Deportation (Exhibit 112). The Application for Suspension of Deportation was inappropriate because after April 1, 1997, that remedy no longer existed. The application was also inappropriate 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) (Exhibit 112A; Davis test.).

N. SEVILLA-RAMIREZ MATTER

203. 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 (Resp. Ans. ¶ 80). Jorge had first illegally entered the United States in March 1988. Francisca first illegally entered in 1987 (Req. for Admiss. 160). 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 (Exhibit 121, p. 10).

204. On August 26, 1996, Jorge Sevilla signed a retainer agreement for two suspensions of deportation and paid Respondent \$1,500 (Exhibit 113).

205. On September 9, 1996, Respondent mailed a letter to INS requesting OSC processing (Exhibit 114). The letter did not contain the background information required by INS. Judy Farber of the INS informed Respondent of the correct procedure (Req. for Admiss. 161).

206. In October 1996 Mr. and Mrs. Sevilla were arrested by the INS at work. Jorge Sevilla was transferred to Denver, Colorado (Req. for Admiss. 162). Respondent represented

Jorge in a telephone conference bond hearing on November 13, 1996 (Resp. Ans. ¶ 82). Jorge Sevilla then posted bond and returned to Minneapolis (Req. for Admiss. 163).

207. 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 (Exhibit 197, p. 67). 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 (Resp. Ans. ¶ 83; Exhibit 115).

208. Respondent filed the applications and paid the fees (Exhibit 116) but neither Mr. nor Mrs. Sevilla received work permits because Respondent had not yet filed applications for suspension of deportation (Req. for Admiss. 164).

209. 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 (Req. for Admiss. 165; Exhibits 117 and 118).

210. Mr. and Mrs. Sevilla met with Olivetti several times at Respondent's office (Req. for Admiss. 166).

211. Olivetti filled out the application for suspension of deportation (Req. for Admiss. 167). Respondent did not carefully review the application with the Sevillas before filing (Req. for Admiss. 168). The application contained several factual errors that were not corrected until the Sevilla final hearing on deportation on May 22, 1998 (Req. for Admiss. 169; Exhibits 119 and 120).

212. 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 (Req. for Admiss. 170). 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 (Req. for Admiss. 171). 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 (Davis test.; Exhibits 119, 120, 121). Specifically the judge noted that Respondent introduced no school records and the child was not even present in court (Exhibit 121). 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.

(Exhibit 121, p. 15-16).

213. Respondent's representation of the Sevilla family caused them harm in that Respondent failed to develop the factors which might have enabled Jorge and Francisca Sevilla to gain a suspension of deportation (Davis test.). Respondent's misconduct left them subject to an order for deportation (Davis test.).

O. RUIZ MATTER

214. Antonio Ruiz, a Mexican citizen, entered the United States without inspection in March 1988 (Req. for Admiss. 173). He is not married and has no children (Exhibit 122; Resp. Ans. ¶ 86).

215. 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 (Resp. Ans. ¶ 3).

216. 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 (Exhibit 122). 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 (Req. for Admiss. 172; Davis test.). Ruiz was statutorily ineligible for cancellation of removal under the law effective April 1, 1997 (Req. for Admiss. 174; Davis test.).

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

218. Ruiz was arrested in the fall of 1997, agreed to waive a deportation hearing, and returned to Mexico (Req. for Admiss. 176).

219. Respondent never prepared or filed applications for suspension, cancellation or work authorization (Exhibit 196).

220. Ruiz requested a refund of his money (Req. for Admiss. 177). Respondent refused (Req. for Admiss. 178).

221. Respondent undertook to apply for relief for which Ruiz was not qualified. Even if Ruiz had been eligible, Respondent was not diligent in applying for OSC processing (Davis test.).

222. Respondent's \$1,000 fee was unreasonable in that Ruiz had no legal remedy for which he was eligible when he sought legal services from Respondent (Davis test.).

223. Respondent caused potential harm to Ruiz in that Ruiz would have had no defense to deportation if Respondent had succeeded in putting Ruiz into proceedings as he attempted to do (Davis test.).

P. RIGOBERTA MARTINEZ MATTER

224. Rigoberta Martinez first illegally entered the United States in October 1989, and failed to appear for a deportation hearing in 1992 (Req. for Admiss. 181; Exhibit 123). Martinez and her daughter Bertha were later arrested and voluntarily left the country in 1994 (Req. for Admiss. 182).

225. In September 1996, Juan Olivetti introduced Martinez to Respondent at the El Burrito Market in St. Paul (Resp. Ans. ¶ 88).

226. Olivetti had originally referred Martinez and her family to attorney Phillip Fishman to obtain legal residency and work permits (Req. for Admiss. 179). In August 1996, Fishman and his then law clerk, Misti Allen, learned that Olivetti had either prompted Martinez to lie about her residence in the United States or had misinterpreted the information given to Fishman to make it appear that she and her family members qualified for suspension of deportation (Req. for Admiss. 180; Allen-Binsfeld test.). When Fishman learned the true facts he formally withdrew from representing Martinez (Req. for Admiss. 183; Allen-Binsfeld test.). On August 29, 1996, Fishman 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 (Exhibit 124).

227. In September 1996, Martinez explained her circumstances to Respondent and gave him the August 29 letter she received from Fishman (Req. for Admiss. 184).

228. On September 26, 1996, Martinez signed a retainer agreement and paid Respondent \$1,000 (Exhibit 125).

229. Respondent obtained Martinez' file from Fishman's office (Resp. Ans. ¶ 91). The file contained Fishman's August 29, 1996, letter and documents from the INS regarding Martinez' 1992 deportation hearing (Req. for Admiss. 185; Exhibits 123 and 124).

230. On November 7, 1996, Respondent took Martinez and two other clients to the Bloomington INS office to obtain work permits. At the INS office Martinez was detained, then released on her own recognizance and ordered to report monthly to the INS (Exhibits 11, p. 3; 126).

231. On November 25, 1996, Respondent sent a letter to Martinez (and to several other clients) asking her to meet him at the INS on December 5, 1996, to obtain her work permit (Exhibit 127). On November 26, 1996, Olivetti sent Martinez an application for work authorization to sign and return to Respondent's office (Exhibit 128). 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 (Req. for Admiss. 186).

232. 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 Martinez' behalf (Exhibit 129). 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 (Req. for Admiss. 188).

233. 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 (Duthoy test.).

234. From the file and Fishman's August 29, 1996, letter, it was clear that Martinez did not qualify for suspension of deportation or work authorization (Duthoy test.). Respondent harmed Martinez by making her illegal presence known to the INS on November 7, 1996 (Duthoy test.).

235. Respondent's fee of \$1,000 was excessive for the work performed (Duthoy test.).

Q. EPIFANIO DOMINGUEZ MATTER

236. Epifanio Dominguez and Elva Hernandez are not married (Hernandez test.). Neither Dominguez nor Hernandez are fluent in written or spoken English (Req. for Admiss. 189). Hernandez is a legal U.S. resident but Dominguez is not (Req. for Admiss. 190; Hernandez test.). Hernandez has four US citizen children. Dominguez is the father of the two youngest children (Hernandez test.). Hernandez works as a dishwasher at a Double Tree Hotel for \$8.50 per hour (Hernandez test.). Dominguez first illegally entered the United States in 1990 (Req. for Admiss. 191).

237. Dominguez and Hernandez met with Respondent on November 13, 1996. 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 (Req. for Admiss. 192). 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 (Exhibit 130). That day, they paid Respondent \$1,000 of the required \$2,000 flat fee (Exhibit 131). 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) (Exhibit 132).

238. On November 22, 1996, Respondent requested Dominguez' file from the INS (Exhibit 133). Dominguez' immigration file contained a record of his arrest, waiver of hearing and voluntary departure (Req. for Admiss. 193; Exhibit 134).

239. 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 (Req. for Admiss. 194). Olivetti did not return the money orders but put them in his pocket (Req. for Admiss. 195; Exhibits 202N and 202O).

240. 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 (Exhibits 135 and 136). 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 (Exhibits 132, 135, and 137). This motion and accompanying applications were also copied to Office of District Counsel at the INS office in Bloomington (Exhibit 138). 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 (Req. for Admiss. 196; Exhibit 136).

241. 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 (Req. for Admiss. 197; Exhibit 139).

242. In February 1997, Dominguez received from Olivetti a fake birth certificate (Req. for Admiss. 198; Exhibit 140; Hernandez test.). 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 (Req. for Admiss. 199). Olivetti encouraged Dominguez to go get a social security number, which Dominguez refused to do because it was illegal (Req. for Admiss. 200).

243. 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 (Exhibit 141).

244. 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 (Req. for Admiss. 201). No one in Respondent's office ever told Dominguez or Hernandez the true contents of the February 12, 1997, letter (Req. for Admiss. 202).

245. 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 (Exhibit 142).

246. In late April 1997 Dominguez and Hernandez went to Respondent's office but he refused to meet with them (Req. for Admiss. 203). They protested and Respondent told them that Olivetti had taken their file home with him (Req. for Admiss. 204). Dominguez and Hernandez returned to Respondent's office a second time and Respondent told them again that Olivetti had the file at his house (Req. for Admiss. 205). Martha Burns informed Hernandez and Dominguez 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 (Req. for Admiss. 206).

247. On June 25, 1997, Respondent returned only \$235 of the unused filing fees (Exhibit 143).

248. 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 (Req. for Admiss. 207). Respondent became angry and threatened Hernandez and her children. Hernandez filed a police report (Hernandez test.). Respondent initially failed to return the youngest children's social security cards (Hernandez test.). Hernandez discovered that her children's social security numbers are being used by others (Hernandez test.). When Dominguez applied for fee arbitration with the Ramsey County Bar Association, Respondent refused to participate (Exhibit 144).

249. In October Dominguez and Hernandez sought help from Centro Legal where the February 12, 1997, letter was correctly interpreted for them and they understood for the first time that Dominguez' case had been rejected (Duthoy test.).

250. Respondent's misconduct caused potential harm in that his improper motion to reopen might have alerted the INS to his illegal presence in the U.S. (Duthoy test.).

251. Respondent charged an excessive fee in that his work was of no value and caused potential harm, and because Respondent failed to return the \$225 in money orders taken by Olivetti (Duthoy test.; Exhibit 202).

R. DELUNA MATTER

252. 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 (Ellingson test.).

253. In response to Respondent's *LaPrensa* ad DeLuna met with Respondent on January 9, 1997, to seek a second opinion from an experienced attorney (Resp. Ans. ¶ 98). DeLuna 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" (Req. for Admiss. 208). 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 (Exhibit 146).

254. Respondent was unfamiliar with the law and legalization procedures relating to amnesty (Req. for Admiss. 209). Respondent 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 (Req. for Admiss. 210). Respondent also undertook legal research about appeals and motions to reopen following orders for deportation (Req. for Admiss. 211). This research was completely irrelevant to DeLuna's case (Req. for Admiss. 212; Ellingson test.).

255. On March 12, 1997, Respondent sent DeLuna a letter stating that he would have the motion completed the following week (Exhibit 147). 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 (Exhibit 148).

256. 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 (Exhibit 149). 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 (Req. for Admiss. 213). Respondent has not returned even the unearned portion of DeLuna's retainer (Req. for Admiss. 214).

257. It was clear from the documents DeLuna gave Respondent at the initial interview that no federal appeal was possible (Ellingson test.).

S. IBARRA MATTER

258. Rosalba and Alfonso Ibarra first illegally entered the United States in 1985 (Req. for Admiss. 215).

259. On July 13, 1996, the Ibarras met Juan Olivetti who told them he was an assistant of attorney Philip Fishman (Req. for Admiss. 216). Olivetti told them that Fishman could obtain residency and employment documentation for them (Req. for Admiss. 217).

260. Over the next several weeks, the Ibarras gave Olivetti a total of \$1,346.70 as payment for Fishman's services (Exhibit 150). They also provided Olivetti with documentation of their residency and employment in the United States since 1985 (Req. for Admiss. 219). Olivetti kept the Ibarras' money (Req. for Admiss. 220). Fishman never met the Ibarras and knew nothing about their dealings with Olivetti (Req. for Admiss. 221).

261. On November 13, 1996, at Olivetti's request, the Ibarras went to E-1320 First National Bank Building, 332 Minnesota Street, St. Paul to see their attorney (Req. for Admiss. 222). The Ibarras were expecting to meet Philip Fishman (Req. for Admiss. 223). Instead, Olivetti introduced them to Respondent (Req. for Admiss. 224). 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 (Req. for Admiss. 225). The Ibarras told Respondent that they wanted permanent residency and a work permit (Req. for Admiss. 226).

262. The Ibarra's 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 (Req. for Admiss. 228). Ms. Rios called Respondent's office and spoke to Juan Olivetti who refused to give Rios any information, asserting attorney-client privilege (Req. for Admiss. 229).

263. On November 18, 1996, Respondent wrote to the INS requesting OSC processing for thirteen of his clients, including Alfonso Ibarra (Exhibit 151). Respondent did not explain to the Ibarra's 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 (Req. for Admiss. 227).

264. On November 19, 1996, Olivetti wrote a letter to the Ibarra's in Spanish telling them about the call from Rios and the reason he refused to tell her anything (Exhibit 152).

265. 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 (Req. for Admiss. 230; Exhibit 153).

266. Having heard nothing from Respondent for a month, the Ibarra's asked Edith Rios to accompany them to an appointment to Respondent's office (Req. for Admiss. 231). On December 27, 1996, the Ibarra's and Rios met with Respondent in his office (Resp. Ans. ¶ 103). With Rios interpreting, the Ibarra's asked Respondent who their attorney was (Req. for Admiss.

232). Respondent stated that he had been their attorney for about one month and asked them for a payment of fees (Req. for Admiss. 233). The Ibarra's 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 (Req. for Admiss. 234). Respondent told the Ibarra's that he had not received any money (Resp. Ans. ¶ 103). Olivetti then came into the room and explained to the Ibarra's that he had brought their file and five others with him from Fishman's office when he came to work for Respondent (Req. for Admiss. 235). Olivetti falsely stated that he had given the Ibarra's money to Fishman (Req. for Admiss. 236). Respondent then told Rios and the Ibarra's that they expected Alfonso to have his work permit in January, but that Rosalba's work permit would take a bit longer (Req. for Admiss. 237). Respondent did not explain or discuss the Ibarra's legal status with them, but promised to keep them informed about their case (Req. for Admiss. 238). 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 (Req. for Admiss. 239; Exhibit 156).

267. 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's (Exhibit 154). Respondent never followed up the January 15, 1997 letter (Req. for Admiss. 240).

268. After waiting a month and hearing nothing from Respondent, the Ibarra's 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's, had no retainer agreement, and had never received any funds on their behalf (Duthoy test.).

269. Respondent never obtained any relief on behalf of the Ibarra (Req. for Admiss. 241).

270. 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 (Exhibit 155). Respondent returned their file, but did not refund the money (Duthoy test.).

T. LOPEZ MATTER

271. Sergio Lopez is an unmarried Mexican man who first illegally entered the U.S. in March 1986 (Req. for Admiss. 242).

272. Lopez retained Respondent in March 1997 and paid an initial retainer of \$325 (Exhibit 160).

273. 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 (Exhibit 161).

274. 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 (Exhibit 162). At that time cancellation of removal had replaced suspension of deportation as a defense to deportation (Davis, Duthoy, Mattos test.).

275. 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 (Req. for Admiss. 243).

276. 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 (Exhibit 163).

277. Respondent undertook to apply for relief for which Lopez was not qualified. Even if Lopez had been eligible, Respondent was not diligent in applying for OSC processing (Davis test.).

278. Respondent's \$325 fee was unreasonable in that Lopez had no legal remedy for which he was eligible when he sought legal services from Respondent (Davis test.).

279. Respondent caused potential harm to Lopez in that Lopez would have had no defense to deportation if Respondent had succeeded in putting Lopez into proceedings as he attempted to do (Davis test.).

U. ANTONIO SEVILLA MATTER

280. In January 1997 Antonio Sevilla retained Respondent to represent him in a suspension of deportation matter and paid him \$1,500 (Resp. Ans. ¶ 114).

281. Initially Sevilla met with Juan Olivetti. Olivetti took all of Sevilla's documentation and filled out a suspension of deportation application (Req. for Admiss. 254). The suspension application was filed on or about April 21, 1997 (Resp. Ans. ¶ 116). A Notice of Hearing was mailed to Sevilla's address but was not forwarded to him when he moved. Respondent attended the hearing but did not contact Sevilla about the hearing, so Sevilla did not appear (Req. for Admiss. 255). The judge told Respondent:

What I'm going to do is I'm going to continue the case one time to allow him to appear in court. . . . No notice will be sent to him. You will receive a written notice here today and it will be your obligation to advise him of the hearing date. If he fails to appear at that time, an in absentia order of deportation will be entered against him. Okay?

(Exhibit 165, pp. 1-2).

282. On September 18, 1997, Respondent's associate Martha Burns wrote to Sevilla giving him the wrong hearing date (Exhibit 166; Resp. Ans. ¶ 114). Sevilla failed to appear for the October 21, 1997, hearing. Respondent told Judge Dierkes that the reason Sevilla was not present was that he could have been confused about the date of the hearing based on a letter (Exhibit 166) sent by his office giving an incorrect hearing date (Resp. Ans. ¶ 114). Judge Dierkes stated "That's not a satisfactory explanation for his failure to appear as far as the Court is concerned" (Exhibit 167, p. 6). Judge Dierkes then entered an in absentia order of deportation against Sevilla (Resp. Ans. ¶ 114). Judge Dierkes told Respondent: "That's my decision, Mr. Kaszynski. Since this is an in absentia order, there is not an appeal period. It would require a motion to rescind the in absentia order if it is to be set aside" (Exhibit 167, p.6; Resp. Ans. ¶ 114)).

283. Despite the judge's clear direction, Respondent did not bring a motion to rescind the in absentia order but instead filed an appeal of the order on August 27, 1998 (Exhibits 167, 170-172; Davis test.). Appeals of in absentia removal orders are prohibited by INA § 240(b)(5)(c) [INA § 242B(c)(3) before enactment of IIRIRA] (Req. for Admiss. 256). The Board of Immigration Appeals has no jurisdiction to hear such an appeal (Req. for Admiss. 257). In its July 14, 1999, order the Board of Immigration Appeals stated:

We observe that the Immigration Judge instructed the Respondent's attorney at the conclusion of the in absentia hearing that a direct appeal of the decision could not be filed with the Board. Under these circumstances, the record will be returned to the Immigration Court without further Board action as we are precluded by the Act from considering such an appeal. (citations omitted)

(Exhibit 172).

284. In pursuing a fruitless appeal, Respondent failed to file a motion to rescind within the 180-day statutory limit so that Sevilla is now foreclosed from pursuing the appropriate remedy (Req. for Admiss. 258).

285. Respondent failed to develop any meaningful case for suspension and filed a frivolous appeal despite the immigration judge's instructions on how to proceed (Davis test.).

286. Respondent's representation harmed Antonio Sevilla in that he is now subject to an in absentia order of deportation from which there is no possible avenue of relief. Respondent "closed the door" to any future immigration for Antonio Sevilla (Davis test.).

V. ROBLES MATTER

287. Gilberto and Liliana Robles reentered the United States from Mexico without inspection on or about October 15, 1988. Mr. Robles is bilingual in Spanish and English. The Robles have a U.S. citizen son who was born in 1992. All of Mrs. Robles' family are citizens or permanent residents of the U.S. and all of Mr. Robles' family, except one brother, are citizens or permanent residents of the U.S (Robles test.).

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

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

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

291. In November 1996, it was well known by the immigration bar that changes in the law which would become effective April 1, 1997, would require ten years continuous presence in the U.S. (instead of the seven years required under the old law) as a threshold qualification for permanent residence. Additionally, it was well known that simply submitting a request for processing to the INS by April 1, 1997, did not ensure application of the old law. Orders to Show Cause had to be filed in the immigration court by April 1, 1997, for the old law to apply (Mattos, Duthoy, Davis test.). Respondent did not advise Mr. and Mrs. Robles regarding the law change or its effect on their chance to achieve permanent residence (Robles test.).

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

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

294. Mr. and Mrs. Robles appeared at the processing appointment on September 3, 1997 (Robles test.). That same day, the INS issued to the Robles notices to appear in removal proceedings finding them to be deportable aliens and directing them to appear before an immigration judge at a date and time to be set (Exhibit 209). The INS's issuance of these notices to appear clearly indicated that the INS was processing the Robles under the new law effective April 1, 1997 (Mattos test.). Respondent falsely reassured Robles that "it just takes time, everything will be all right and just keep up the payments" (G. Robles test.).

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

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

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

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

them and their family if they were deported (Robles, Mattos test.). The judge concluded that the Robles' applications for suspension of deportation were untimely, denied them for lack of jurisdiction, and denied the request for cancellation of removal because the Robles had not been continuously present in the United States for the requisite ten years (Exhibit 214). The judge's order granted the Robles voluntary departure on or before May 27, 1998, and specifically stated that any appeal was due by February 26, 1998 (Exhibit 214).

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

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

The certificate of service accompanying the notice of appeal reflected that Martha Burns served the notice of appeal on the INS by mail on February 17, 1998, although Respondent actually signed the certificate (Exhibit 216).

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

301. On March 4, 1998, the Board issued to Respondent filing receipts reflecting a March 2, 1998, receipt of the Robles' notice of appeal (Exhibit 217). Respondent made no effort at that time to determine why the Board did not receive the items sent by certified mail on February 17 until March 4, 1998 (Robles, Mattos test.).

302. On June 22, 1998, the Board determined the Robles' appeal to be untimely and dismissed it (Exhibit 218). Respondent did not immediately file a motion for reconsideration. Instead, on July 14, 1998, Ms. Burns wrote a letter to the Board disputing its contention that the notice of appeal was not received until March 2, 1998, and asking the Board to reconsider its dismissal (Exhibit 219). On July 28, 1998, the Board issued to the Robles a notice reflecting its receipt of the July 14 communication on July 17 (Exhibit 220). The Board accepted the letter as a motion for reconsideration and reminded Respondent of the obligation to file a notice of entry of attorney or representative (Exhibit 220). Also on July 28, 1998, the Board issued to Respondent a rejection notice for motion because neither the required filing fee (or waiver) nor a certificate of service of the July 14 motion on the INS was enclosed (Exhibit 221). The rejection notice specifically stated that rejection of the motion did not extend the deadline for filing a motion for reconsideration and cautioned that simply mailing the motion by the deadline was not sufficient. Any resubmission of the motion had to be received by the Board by the July 22, 1998, deadline. The Board's notice specifically recommended the use of an overnight courier service to ensure timely filing (Exhibit 221).

303. On October 1, 1998, Respondent submitted to the Board by certified mail Ms. Burns' July 14, 1998, letter, a notice of entry of appearance, an affidavit of service and appeal fee waiver request (Exhibit 222). Respondent stated, "Due to your office's negligence in failure [sic] to properly date stamp and sign the Post Office's Domestic Return Receipt, we are requesting



that the appeal be allowed to proceed." On October 8, 1998, the Board issued its filing receipt reflecting receipt of Respondent's October 1, 1998, motion on October 8, 1998 (Exhibit 223).

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

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

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

307. Respondent did not inform Robles when he moved his office from the First Bank Building to Eaton Avenue. When Robles went to the First Bank Building and learned that Respondent had moved he went to Respondent's new office and waited until Respondent finally stopped in. At that point Robles asked Respondent to assist him in renewing his work permit. Respondent took the money for the filing fee but did not successfully renew the permit (Robles test.).

308. On October 27, 1999, the Court of Appeals wrote to the parties confirming receipt of the INS's motion to dismiss and stating that the briefing schedule would be suspended while the motion was under consideration (Exhibit 228). Also on October 27, 1999, Respondent mailed to the Court of Appeals a motion and supporting documents to extend the time for the filing of the Robles' brief (Exhibit 229). Respondent stated as a basis for the motion that a

certified record was necessary to enable him to complete the Robles' brief and that such a record had not yet been provided (Exhibit 229).

309. Respondent did not keep the Robles apprised of the status of their appeal. Robles called Respondent's office, left messages but did not receive a return call (Robles test.).

310. On November 18, 1999, Respondent served and filed a motion in opposition to the INS's motion to dismiss (Exhibit 230). Respondent failed to address the basis for the motion to dismiss; that is, that he filed his petition for review with the Court of Appeals one day beyond the deadline. Rather, Respondent's motion focused on his claim that the INS retroactively applied the immigration laws and that the Robles' February 17, 1998, mailing of the notice of appeal to the Board constituted a timely appeal of the immigration court's decision (Exhibit 230). Also on November 18, 1999, Respondent wrote to Mr. and Mrs. Robles advising them of the status of the pending appeal, Martha Burns' departure from the firm, and Respondent's plans to close his law practice by the end of the year (Exhibit 231).

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

312. On January 6, 2000, the INS issued to the Robles notices directing them to depart the United States on January 26, 2000 (Exhibit 234). On January 26, 2000, the Robles received "Bag and Baggage" letters from the INS directing them to report to the American consul regarding their deportation (Exhibit 235). Pat Mattos agreed to represent the Robles on a pro

bono basis and has obtained a stay of deportation. However, it is very likely that the Robles will be forced to leave the United States and return to Mexico in the near future. The only way they can remain in the U.S. is by an act of Congress (Mattos test.).

313. The stress of being deported to Mexico after twelve years in the United States caused Mr. Robles to suffer a facial stroke that temporarily paralyzed one half of his face. Stress has cause Mrs. Robles heart problems for which she is being currently being treated. Their older son Carlos who came to the U.S. as a preschooler has been seriously adversely affected and has quit attending school. Their younger U.S. citizen son does not speak Spanish, does very well in school and will be seriously adversely affected by the deportation. Mr. and Mrs. Robles have no family contacts or job prospects in Mexico and face the possibility of finding themselves homeless and jobless in Mexico (Gilberto and Liliana Robles test).

314. Respondent's conduct precludes them from returning to the U.S. for at least ten years. Respondent's turning them in for processing before they qualified for any defense to deportation caused them to lose the nine years of continuous residency that they had accumulated toward qualifying for cancellation of removal (Mattos, Davis test.). As their present counsel observed, "Respondent led them like lambs to the slaughter. He destroyed their lives for \$5,000" (Mattos test.).

W. FORESTAL MATTER

315. Barbara Breuer Forestal does not speak English. Ms. Forestal had entered the United States from Chile without inspection in December 1992. She had married Ernst Forestal, a legal permanent resident, earlier in 1996.

316. On August 26, 1996, Barbara Breuer Forestal consulted with Olivetti regarding her immigration status (Exhibit 239). Mr. Olivetti assured Ms. Forestal that she would receive a

work permit within three months and her permanent residence in six months. Mr. Olivetti stated that Respondent would require a \$1,500 retainer for these services (Exhibit 236).

317. On September 9, 1996, Ms. Forestal, although clearly ineligible for suspension of deportation, retained Respondent to represent her in a "suspension of deportation matter" (Exhibit 237). Ms. Forestal paid Respondent \$700 and agreed to pay an additional \$800 by January 1, 1997 (Exhibit 236). Ms. Forestal later gave Respondent two checks made payable to the INS for filing fees.

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

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

320. During the entire period in which Respondent represented Ms. Forestal (September 1996 to late 1998), Respondent failed to take any meaningful substantive action on Ms. Forestal's behalf (Exhibit 239).

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

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

323. Respondent's representation caused Forestal potential harm in that she would have had no defense to deportation had she been placed in deportation proceedings as Respondent proposed to do (Davis test.).

**VI. TRUST ACCOUNT VIOLATIONS AND
FAILURE TO SAFEGUARD CLIENT PROPERTY**

Rule 1.15 Safekeeping Property

Rule 8.4(c) Misconduct involving dishonesty, fraud, deceit or misrepresentation

324. At all times relevant, Respondent has maintained trust account number 832300065 at Firststar Bank (Resp. Ans. ¶ 3).

325. 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 (Resp. Ans. ¶ 3).

326. 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 (Exhibit 200).

327. 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 (Exhibit 200). On September 12, 1996, Respondent deposited funds sufficient to eliminate the shortage (Resp. Ans. ¶ 10).

328. 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 \$321.14 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 (Exhibits 164, 200, 201).

329. 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.) (Req. for Admiss. 244; Exhibit 164).

330. 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)

(Req. for Admiss. 245).

331. 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

(Req. for Admiss. 246).

332. 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 (Resp. Ans. ¶ 111). Respondent did not, in his responses to the February 17, 1998 or August 21, 1998 letters, or at any other time, identify any errors in the audit or provide any missing information (Req. for Admiss. 247).

333. 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 (Resp. Ans. ¶ 112). Respondent did not respond (Req. for Admiss. 248).

334. 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 (Req. for Admiss. 249).

335. 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 (Req. for Admiss. 250).

336. 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 (Resp. Ans. ¶ 3).

337. 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 (Req. for Admiss. 251).

338. Respondent routinely asked, or through Juan Olivetti asked, clients to provide checks and money orders payable to the INS for filing fees (Req. for Admiss. 252). 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 (Req. for Admiss. 253).

VII. FAILURE TO TIMELY PAY EMPLOYER WITHHOLDING TAXES
Rule 8.4(b) Misconduct involving a criminal act
Rule 8.4(d), Misconduct that is prejudicial to the administration of justice

A. FEDERAL WITHHOLDING TAXES

339. Respondent has withheld from his employees' pay, but failed to remit to the Internal Revenue Service, the taxes shown as due on his federal employer withholding returns for the quarters ending September 30, 1997, December 31, 1997, March 31, 1998, September 30, 1998, December 31, 1998, March 31, 1999, and June 30, 1999 (Resp. Ans. ¶ 114).

340. Respondent's total unpaid federal employer withholding obligation, including penalty and interest, is currently at least \$21,784.59 (Resp. Ans. ¶ 114).

B. STATE WITHHOLDING TAXES

341. Respondent failed to timely file, and pay the taxes due on, his state employer withholding for the quarter ending December 1997. Specifically, although the return and payment were due from Respondent by January 31, 1998, Respondent did not file the return and remit payment thereon until June 19, 1998 (Resp. Ans. ¶ 114).

342. Respondent has withheld from his employees' pay, but failed to remit to the Minnesota Department of Revenue, the taxes shown as due on his state employer withholding returns for the quarters ending December 1998 and March 1999 (Resp. Ans. ¶ 114).

343. Respondent's total unpaid state employer withholding obligation, including penalty and interest, is currently \$799.72 (Resp. Ans. ¶ 114).

VIII. FAILURE TO COOPERATE WITH DISCIPLINARY PROCESS

344. Throughout this proceeding, and especially since his counsel withdrew on January 4, 2000, Respondent has obstructed this proceeding by intentionally failing to comply with

discovery and other rules and with this Referee's directives. Examples of Respondent's failures to comply are listed below:

- a. Respondent failed to respond in a meaningful way to the Director's January 7, 2000, interrogatories and requests for admissions.
- b. Respondent failed to make himself available for the March 17, 2000, pre-hearing conference call despite notice in the forms of the Director's March 3, 2000, letter (Exhibit 5 to the March 5, 2000, Affidavit of Betty M. Shaw and Rule 115.10 certification) and the Court's March 10, 2000, notice of telephone conference hearing.
- c. Respondent failed to cooperate with the Director's Office's efforts to comply with this Referee's December 22, 1999, request that he and the Director communicate with each other prior to the January 24, 2000, pre-hearing regarding their respective witnesses and exhibits. For example, after receiving this Referee's December 22 letter, the Director's Office made unsuccessful efforts to reach Respondent by telephone. On January 11, January 12 and January 19, 2000, the Director's Office wrote to Respondent requesting that he contact them. Respondent's only response to these efforts was a January 11, 2000, letter in which he termed the Director's Office's efforts to reach him by telephone "harassing" and threatened legal action if those efforts were continued. (The Director's Office provided copies of these communications to the Referee on January 20, 2000.)
- d. Respondent failed to comply with this Referee's directives during the March 9, 2000, pre-hearing to communicate his settlement position to the Director's Office, provide supporting authority and other information in connection with his request to present Betty Shaw as a witness and submit a response to the Director's renewed motion regarding Respondent's failure to respond to the requests for admissions.
- e. Respondent failed to appear for the March 21, 2000, trial in this matter.

IX. AGGRAVATING FACTORS

345. Respondent has refused to acknowledge the wrongful nature of his misconduct, has attempted to portray himself as a victim and has shown a propensity to blame others for his disciplinary predicament. Examples of Respondent's conduct in this regard are set forth below.

- a. In his January 21, 2000, affidavit in support of his January 20 motion to remove Betty Shaw as "the investigator and legal counsel" in this matter, Respondent flatly denied any wrongdoing in his immigration practice and, instead, attempted to cast blame on Ms. Shaw, the district ethics committee (DEC) investigator assigned to investigate the first complaints

against Respondent, the non-profit legal aid organization Centro Legal, and the complainants themselves.

- b. In his January 18, 2000, witness list Respondent names, among others, Betty Shaw and Richard Cabrera, the DEC investigator, as witnesses. Respondent implied during the January 24, 2000, pre-hearing that Ms. Shaw and Mr. Cabrera conspired with Centro Legal to solicit unsubstantiated complaints against him. Respondent stated that up to that point, only three complaints from "normal, average, American people" had been filed against him.
- c. During the March 9, 2000, pre-hearing, Respondent made a number of statements which indicated an unwillingness to acknowledge responsibility for his conduct. For example, Respondent stated that: (i) Ms. Shaw would personally see to it that he will never again practice law; (ii) "These people [the Director's Office] don't care about being fair;" (iii) Ms. Shaw and Centro Legal coached complainants to provide testimony adverse to Respondent's; and (iv) the disciplinary investigation and proceeding was a "sham" and he was being "railroaded."
- d. In his March 17, 2000, letter to this Referee (Exhibit 248), Respondent made the following statements:
 - (i) . . . the Lawyers Board does not intend to allow me to practice law, now or in the future, no matter what the outcome of this trial is.
 - (ii) It is a sad commentary on the state of affairs in this nation when an American citizen (one who has donated time to the Chrysalis Center for Women and other organizations) can be successfully attacked by illegal aliens aided and abetted by a so-called legal aid and a so-called Board of Professional Responsibility.

346. The complainants herein here vulnerable in that most (a) did not speak or read the English language; (b) were unfamiliar with the immigration process and procedures; and (c) as is common among Mexicans in particular, put their complete trust in Respondent and were hesitant to doubt or question him.

Additionally, as shown below, the attorney's fees the complainants paid to Respondent represented several weeks or months wages:

<u>Name</u>	<u>Fees Paid</u>	<u>Weekly Wage</u>	<u>Source</u>
Acevado	\$ 750	Unknown	Exhibit 175, pp. 23-24
Cadenas	1,000	\$ 400	Exhibit 181, pp. 3, 4, 43
DeLuna	700	Unknown	Exhibit 182, p. 13
Dominguez/ Hernandez	1,000	\$ 340	Exhibit 184, p. 57; Elva Hernandez testimony

Dominguez-Lopez	Unknown	\$ 310	Exhibit 183, pp. 51, 57
Duarte-Bautista	1,000	Unknown	Exhibit 185, pp. 5, 23
Figueroa	750	\$ 300	Exhibit 186, pp. 25, 107, 127, 128
Ibarra	At least 1,300	\$ 550	Exhibit 187, pp. 16, 57
Lopez	325	Unknown	Exhibit 188, p. 5
Martinez, Alfonso	2,415	\$ 450	Exhibit 90; Exhibit 189, pp. 47, 48
Martinez, Rigoberta	1,000	\$ 340	Exhibit 190, pp. 16, 89
Martinez, Victor	1,500	Unknown	Victor Martinez testimony
Pavon	1,000	\$ 240	Exhibit 178, pp. 16, 17; Exhibit 192, p. 105
Ramirez	1,000	\$ 300	Exhibit 193, pp. 14, 41, 48
Remedios	500	Unknown	Exhibit 194, p. 53
Rosas	3,000	Unknown	Exhibit 195, p. 13
Ruiz	1,000	Unknown	Exhibit 196, p. 37
Sevilla	Unknown	\$ 320	Exhibit 196A, p. 22
Villeda	1,000	\$ 300	Exhibit 103; Exhibit 105, p. 4; Exhibit 199, p. 176

347. Respondent has shown an indifference to making restitution to the complainants herein. For example, Respondent refused to refund fees including some unused filing fees (Cadenas, V. Martinez, A. Martinez, Hernandez test.) and refused to participate in voluntary fee arbitration (Exhibit 144). In addition, Respondent named more than 325 Hispanic clients as potential creditors in a 1999 bankruptcy petition (Exhibit 244), in order to discharge any actual and potential claims for return of fees or malpractice which these clients might make against him.

CONCLUSIONS OF LAW

I. FALSE ADVERTISING

1. Findings of Fact 17-23 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 7.1, Communications Concerning a Lawyer's Services.

2. Findings of Fact 17-23 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 7.4, Communications of Fields of Practice.

II. MISCONDUCT REGARDING EMPLOYEES

3. Findings of Fact 24-45 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 5.5(a), Aiding in the Unauthorized Practice of Law.

4. Findings of Fact 24-45 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 5.3, Failure to Adequately Supervise a Non-Attorney Legal Assistant/Interpreter.

5. Findings of Fact 46-47 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 5.1, Failure to Adequately Supervise a Subordinate Attorney.

III. MISCONDUCT IN REPRESENTING IMMIGRATION CLIENTS

6. Findings of Fact 48-55 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1, Competence.

A. VICTOR MARTINEZ MATTER

7. Findings of Fact 56-59, 61 and 62 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1, Competence.

8. Findings of Fact 56-58, and 62 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

9. Findings of Fact 56-58, 60, 61 and 63 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

10. Findings of Fact 56-58, and 62 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

B. ORTEGA MATTER

11. Findings of Fact 64-66, 71, 73, and 74 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

12. Findings of Fact 64, 65, 68, 69 and 71 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

13. Findings of Fact 64-68, 70, 73 and 75 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

14. Findings of Fact 64-66, and 71 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

15. Findings of Fact 64, 65, 69, and 72 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

C. FIGUEROA MATTER

16. Findings of Fact 76, 77, 79-82 and 84-90 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

17. Findings of Fact 76-78 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

18. Findings of Fact 76, 77, 79, 80, 82 and 89 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

19. Findings of Fact 76, 77, 79, 83 and 86 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

D. DOMINGUEZ-LOPEZ MATTER

20. Findings of Fact 91, 92 and 94-102 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

21. Findings of Fact 91, 92, 94, 95 and 101 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

22. Findings of Fact 91-93, 97 and 104 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

23. Findings of Fact 91, 92, 95, 97-99 and 103 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

24. Findings of Fact 91 and 92 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

E. ROSAS MATTER

25. Findings of Fact 105-112 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

26. Findings of Fact 105-107 and 113 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

27. Findings of Fact 105-107, 109 and 111 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

28. Findings of Fact 105, 106, 108, 110 and 111 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

F. CADENAS MATTER

29. Findings of Fact 114-116, 118, 120 and 121 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

30. Findings of Fact 114-116 and 119 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

31. Findings of Fact 114-116 and 119 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

32. Findings of Fact 114-116, 118 and 120 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

33. Findings of Fact 114-118 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

G. TORRES MATTER

34. Findings of Fact 122-126, 128, 129 and 131-137 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

35. Findings of Fact 122, 123 and 126 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

36. Findings of Fact 122-124, 133-135 and 137 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

37. Findings of Fact 122-125, 129 and 133-135 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

38. Findings of Fact 122-124, 129, 131 and 132 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

H. PAVON MATTER

39. Findings of Fact 138-145 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

40. Findings of Fact 138-140 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

41. Findings of Fact 138-140 and 142 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

I. DUARTE BAUTISTA MATTER

42. Findings of Fact 146, 147, 149, 150, 152 and 154 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

43. Findings of Fact 146, 147 and 152 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

44. Findings of Fact 146-148, 153 and 155 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

45. Findings of Fact 146, 147 and 152 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

46. Findings of Fact 146, 147 and 150 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

J. REMEDIOS-MORALES MATTER

47. Findings of Fact 156, 157 and 161-164 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

48. Findings of Fact 156-158 and 160 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

49. Findings of Fact 156, 157, 159 and 163 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

50. Findings of Fact 156, 157 and 160 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

K. ALFONSO MARTINEZ MATTER

51. Findings of Fact 165, 167, 168, 170, 174, 175, 177 and 181 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

52. Findings of Fact 165 and 178 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

53. Findings of Fact 165-167, 169-173, 176, 179 and 180 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

54. Findings of Fact 165, 170 and 181 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

55. Findings of Fact 165, 175 and 177 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

L. RAMIREZ-SALINAS MATTER

56. Findings of Fact 182, 183, 185 and 187-192 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

57. Findings of Fact 182 and 190-192 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

58. Findings of Fact 182, 184, 191 and 193 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

59. Findings of Fact 182, 188, 190 and 192 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

60. Findings of Fact 182 and 188 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

M. VILLEDA MATTER

61. Findings of Fact 194-197, 201 and 202 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

62. Findings of Fact 194, 195, 200 and 202 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

63. Findings of Fact 194, 195, 201 and 202 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

N. SEVILLA-RAMIREZ MATTER

64. Findings of Fact 203-213 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

O. RUIZ MATTER

65. Findings of Fact 214-216, 219, 221 and 223 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

66. Findings of Fact 214-216, 219 and 221 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

67. Findings of Fact 214, 215, 220, 222 and 223 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

68. Findings of Fact 214, 215 and 217 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

P. RIGOBERTA MARTINEZ MATTER

69. Findings of Fact 224-232 and 234 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

70. Findings of Fact 224-229 and 233 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

71. Findings of Fact 224-229, 234 and 235 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

72. Findings of Fact 224-229, 231, 232 and 234 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

Q. EPIFANIO DOMINGUEZ MATTER

73. Findings of Fact 236-238, 240, 241, 243, 245 and 250 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

74. Findings of Fact 236-238, 247, 248 and 251 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

75. Findings of Fact 236-238, 240, 241 and 243 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

76. Findings of Fact 236-238, 244, 246 and 249 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

R. DELUNA MATTER

77. Findings of Fact 252-254 and 257 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

78. Findings of Fact 252, 253 and 255 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

79. Findings of Fact 252, 253, 255 and 256 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

S. IBARRA MATTER

80. Findings of Fact 258-263, 266 and 269 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

81. Findings of Fact 258-262, 266 and 269 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

82. Findings of Fact 258-263 and 266 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

T. LOPEZ MATTER

83. Findings of Fact 271-275, 277 and 279 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

84. Findings of Fact 271-273 and 276-279 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5, Fees.

U. ANTONIO SEVILLA MATTER

85. Findings of Fact 280-283, 285 and 286 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

86. Findings of Fact 280-282 and 284 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

87. Findings of Fact 280-283 and 285 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 3.1, Meritorious Claims and Contentions.

88. Findings of Fact 280-282 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

V. ROBLES MATTER

89. Findings of Fact 287-314 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

90. Findings of Fact 287-314 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

91. Findings of Fact 287-314 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.4, Communication.

W. FORESTAL MATTER

92. Findings of Fact 315-319 and 323 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.1 Competence.

93. Findings of Fact 315, 316 and 320 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.3, Diligence.

**IV. TRUST ACCOUNT VIOLATIONS AND
FAILURE TO SAFEGUARD CLIENT PROPERTY**

94. Findings of Fact 324-338 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 1.5 Safekeeping Property.

95. Findings of Fact 324-338 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 8.4(c), Misconduct involving dishonesty, fraud, deceit or misrepresentation.

V. FAILURE TO TIMELY PAY WITHHOLDING TAXES

96. Findings of Fact 339-343 establish by clear and convincing evidence that Respondent violated Minnesota Rules of Professional Conduct Rule 8.4 (b) and (d), Misconduct involving a criminal act and Misconduct that is prejudicial to the administration of justice.

VI. FAILURE TO COOPERATE WITH DISCIPLINARY PROCESS

97. Finding of Fact 344 establishes by clear and convincing evidence that Respondent failed to cooperate with the disciplinary process.

VII. AGGRAVATING FACTORS

1. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by his dishonest and selfish motives.

2. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by the extensive and pervasive pattern of his misconduct over at least a three year period.

3. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by the multiple serious offenses involved.

4. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by his intentional failure to comply with discovery and rulings of this

court, including his failure to be available for a pre-trial phone conference or to attend the referee hearing on this matter.

5. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by his refusal to acknowledge the wrongful nature of his conduct and his lack of any remorse for the harm he caused to a large numbers of clients.

6. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by the vulnerability of his client victims.

7. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by his indifference to making restitution to clients injured by his neglect and incompetence.

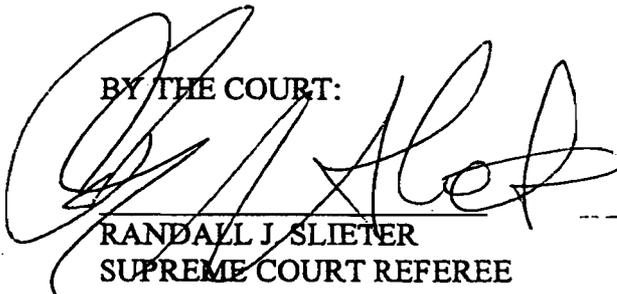
8. The above Findings of Fact establish that Respondent's misconduct is substantially aggravated by the fact that Respondent is an experienced attorney whose more than 15 years of practice should have made him aware of his professional responsibilities.

RECOMMENDATION FOR DISCIPLINE

The undersigned referee recommends that Respondent be disbarred.

Dated: ^{June 1} ~~May~~ __, 2000.

BY THE COURT:


RANDALL J. SLIETER
SUPREME COURT REFEREE

MEMORANDUM

“To determine the appropriate level of discipline, we consider these four factors: ‘the nature of the misconduct; the cumulative weight of the disciplinary violations; the harm to the public; and the harm to the legal profession.’” In re Davis, 585 N.W.2d 373, 376 (Minn. 1998) *citing* In re Margolis, 570 N.W.2d 688, 691 (Minn. 1997) (*citing* In re Jagiela, 517 N.W.2d 333, 335 (Minn. 1994)). In addition, “when considered in conjunction with other rule violations, noncooperation with the disciplinary process increases the severity of the discipline imposed.” In re Davis, 585 N.W.2d 373, 378 (Minn. 1998)

It is difficult to imagine a worse example of gross violations by an attorney when viewed with the factors set forth in In re Davis. The cumulative nature of Mr. Kaszynski’s conduct and the adverse impact that it had on the personal lives of many of his clients is very significant. Mr. Kaszynski refused to become acquainted with even the basic elements of Immigration Law. This lack of knowledge caused clients to be misled - clients who are perhaps among the most legally and personally vulnerable individuals, and who are in need of significant legal services. Further, in the worst cases, the result of Mr. Kaszynski’s incompetence was the separation of family members from each other.

Mr. Kaszynski’s misconduct and his harm to the public and legal profession was evident to the very end by his representation of immigration clients. This was also demonstrated through his response to this Petition by the Director. Mr. Kaszynski maintained in pre-trial conferences to the undersigned that this entire Petition was commenced because the Director and the Ramsey County Bar Association Ethics Committee had some form of vendetta against him. He failed to answer even the basic discovery documents, failed to appear for all appearances, and failed to appear and represent himself at the final hearing.

It is never easy for one in the legal profession to recommend such a significant discipline on another professional, especially if disbarment is recommended. However, because of the severity of Mr. Kaszynski’s misconduct, and its impact to the public and individual clients, this matter is an exception. To the undersigned referee, this is clearly an appropriate case for disbarment.


RJS