

**IN RE: KENNETH D. BYRD****NO. BD-2012-088****S.J.C. Order of Term Suspension/Stayed entered by Justice Lenk on October 2, 2012.<sup>1</sup>****SUMMARY<sup>2</sup>**

The respondent was admitted to the Massachusetts bar on December 13, 1999. From 2006 through 2010, he practiced immigration law and maintained his law office in Los Angeles, California, but he was not licensed to practice law in that state.

Client One was a native of Guatemala living in the United States without authorization who was seeking permanent residency. On April 29, 2008, the immigration court sent notice to Client One of a hearing on May 30, 2008. The client did not receive the notice and failed to appear. As a result, the court ordered his removal. Upon receipt of the order of removal Client One retained the respondent to represent him in reopening the removal order. They entered into a fee agreement requiring Client One to pay a non-refundable retainer of \$700, which the client paid.

The respondent proceeded to file an inadequate and incompetent motion unsupported by affidavit notwithstanding that, at a minimum, affidavits were required. When the motion to reopen was denied and Client One was ordered removed from the United States, the client discharged the respondent and demanded the return of his file and a refund of the fee he paid. The respondent provided only a portion of the file and did not refund any part of his fee.

The respondent provided the client with incompetent representation in violation of Rule 3-110 of the California Rules of Professional Conduct and 8 C.F.R. §1003.102(o). By not promptly returning all of the client's papers and property and by failing to account for and refund unearned fees, the respondent violated Rule 3-700(D) and Rule 4-100(B)(3) of the California Rules of Professional Conduct. Further, the fee charged to the client was grossly disproportionate to the value of services the respondent provided and thus the respondent charged an unconscionable and excessive fee in violation of Rule 4-200 of the California Rules of Professional Conduct and 8 C.F.R. § 1003.102(a)(1).

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

Client Two filed an application for naturalization with the U.S. Citizenship and Immigration Services (USCIS). To be eligible for citizenship, Client Two had to prove good moral character. Client Two, however, had been convicted of an aggravated felony which is not only a ground for a finding of a lack of good moral character but is also ground for removal from the United States. When his application was denied, Client Two hired the respondent, who charged the client a non-refundable retainer of \$7,500, which the client paid.

Thereafter, the respondent neglected the client's case and failed to take any action to vacate Client Two's criminal conviction, which the respondent knew to be a requisite for citizenship. On March 13, 2009, Client Two received notification from USCIS to appear at an April 21, 2009 interview in connection with the pending application. He contacted the respondent, who told the client that he should appear at the interview on his own without the respondent. The respondent knew but did not inform Client Two that the client could not satisfy the requirement of good moral character and that it was possible that he would be taken into custody and arrested at the interview due to his conviction. The respondent violated Rule 3-110 of the California Rules of Professional Conduct and 8 C.F.R. §1003.102(o) by failing to take any action of substance to vacate his client's conviction or reduce his sentence, and he violated Rule 3-500 of the California Rules of Professional Conduct and 8 C.F.R. §1003.102(r) by failing to warn Client Two that he might be taken into custody if he appeared at the 2009 interview.

Client Two discharged the respondent on March 31, 2009, and was able to secure a continuance of the interview date. He requested that the respondent return his file and that he provide him with an accounting of the respondent's time. He also demanded a full refund of the fees he paid.

The respondent did not provide a refund or an accounting. By charging a non-refundable fee of \$7,500 for incompetent services of little or no value, the respondent violated Rule 4-200 of the California Rules of Professional Conduct and 8 C.F.R. §1003.102(a)(1). The respondent also violated Rule 3-700(A)(2) of the California Rules of Professional Conduct by not refunding the unearned portion of his fee, and Rule 4-100(B)(3) of the California Rules of Professional Conduct by failing to provide the client with an accounting. Later, in response to a request for an accounting by bar counsel, the respondent intentionally misrepresented the services provided and inflated the time spent on the client's case in violation of Rules 8.1(a) and 8.4 (c) and (d) of the Massachusetts Rules of Professional Conduct.

Client Three was a native of the Philippines who was ordered removed from the United States. She retained the respondent to reopen the removal proceedings based on her marriage to a United States citizen. The respondent charged and collected \$2,000 in fees to represent her.

Although Client Three supplied the respondent with documentation proving that her marriage was *bona fide*, including copies of the couple's marriage certificate, bank statements, investment records, life insurance policies and birth certificates, the respondent failed to include them in his motion to reopen, which was also not supported by the requisite I-130 Petition for Alien Relative or other application for relief. Moreover, the motion itself was filed late.

The motion to reopen was denied on the grounds that it was inadequately supported and untimely. The respondent did not immediately inform the client of the decision and, when he did, advised the client that the "best option is to return to the Philippines and apply for a green card through the consulate," which was incorrect and incompetent advice. Thereafter, Client Three discharged the respondent and demanded the return of her file.

The respondent provided incompetent services and collected an unconscionable fee in violation of Rule 3-110 and Rule 4-200 of the California Rules of Professional Conduct and § 8 C.F.R. §1003.102(a)(1), §1003.102(o) and (u). By failing to return the unearned portion of his fee, the respondent violated Rule 3-700(D) of the California Rules of Professional Conduct. In not promptly informing his client of the adverse decision and not providing her with a copy of it promptly after her request, he violated Rule 3-500 of the California Rules of Professional Conduct and § 8 C.F.R. §1003.102(r).

In aggravation, the respondent received an admonition in 2006 for relocating his law practice to California without notifying a client that he had moved, for failing promptly to refund the client's retainer upon discharge and for using a deceptive name for his law practice on his stationary. See Admonition No. 06-07, 22 Mass.Att'y Disc.R. 856 (2006).

Bar counsel filed a petition for discipline on August 30, 2011. On April 11, 2012, the respondent filed an amended answer, and the parties filed a stipulation of facts and disciplinary violations. By that time, the respondent had reimbursed the clients for the full amount of fees paid to him and had entered into a peer monitoring agreement with a California lawyer experienced in handling immigration cases. The parties jointly recommended that the respondent be suspended for six months, with the suspension stayed for two years on the condition that the respondent participate in the monitoring agreement for two years and that the monitor provide monthly reports of the respondent's participation in the monitoring agreement to the Office of Bar Counsel.

On September 10, 2012, the board voted to recommend that the Supreme Judicial Court for Suffolk County accept the parties' stipulation and joint recommendation for discipline. On October 2, 2012, the county court (Lenk, J.) ordered that the respondent be suspended from the practice of law for six months, suspended for two years subject to the conditions recommended by the parties.