

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1289 Disciplinary Docket No. 3
Petitioner :
v. : No. 17 DB 2006
ALLAN G. GALLIMORE, : Attorney Registration No. 56717
Respondent : (Allegheny County)

ORDER

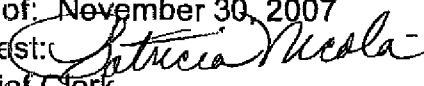
PER CURIAM:

AND NOW, this 30th day of November, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 24, 2007, it is hereby

ORDERED that Allan G. Gallimore is suspended from the Bar of this Commonwealth for a period of three months, followed by a period of probation for six months. During the period of probation, Respondent shall do the following:

1. Take eight hours of Pennsylvania Continuing Legal Education credits in the area of Ethics and/or Immigration Law or a combination of both; and
2. At least ten days prior to the expiration of the period of probation, provide to the Board his Certificates of Attendance for the courses taken.

It is further ORDERED that Respondent refund \$750.00 to Igork Villegas as a condition of reinstatement. Respondent shall comply with all the provisions of Rule 217, Pa.R.D.E., and shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As of: November 30, 2007
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 17 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 56717
	:	
ALLAN G. GALLIMORE	:	
Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On May 16, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Allan G. Gallimore, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of his representation of a client in an immigration matter. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on August 31, 2006 before a District IV Hearing Committee comprised of Chair Thomas S. Talarico, Esquire, and Members Joshua L. Berger, Esquire, and Vicki Kuffic Horne, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on January 22, 2007, finding that Respondent engaged in professional misconduct and recommending that he be suspended for three months, that the suspension be stayed and two years of probation imposed, with conditions.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Allan G. Gallimore, was born in 1954 and was admitted to the practice of law in Pennsylvania in 1989. His attorney registration mailing address is

Delerme & Gallimore, 401 Wood Street, Pittsburgh PA 15222. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior record of discipline consisting of an informal admonition administered on January 13, 2004, and a private reprimand administered on December 17, 2004.

4. On March 24, 2001, Respondent entered into a written fee agreement with Igork Villegas to represent Mr. Villegas in his immigration matter.

5. Mr. Villegas paid Respondent a \$100 retainer. Respondent requested an additional \$650 that was to be paid in installments of \$300 by April 30, 2001 and \$350 by May 30, 2001.

6. Mr. Villegas paid the \$650 in full by May 30, 2001.

7. Respondent agreed to file on behalf of his client an I-129 Petition for Non-Immigrant Worker with the then-Immigration and Naturalization Service (INS) in his attempt to obtain an H-1B visa for temporary employment.

8. Mr. Villegas had received an offer of employment based upon his education and experience in the computer field. Mr. Villegas's employer/sponsor/petitioner for the I-129 Petition was Global Net Worldwide. Cupertino Castro was the president of the company.

9. Mr. Castro completed a "Labor Condition Application for H-1B Non-Immigrants" and signed it on April 23, 2001, to evidence his consent to the conditions set forth in the Application.

10. Respondent also had Mr. Castro sign a "Notice of Entry of Appearance as Attorney or Representative "G-28", dated April 23, 2001, naming Respondent as counsel for Mr. Villegas.

11. In July 2001 Respondent attempted to file the I-129 Petition on behalf of his client with the INS.

12. Along with the I-129 Petition, Respondent submitted an I-129W "H-1B Data Collection & Filing Fee Exemption", certified by Respondent and dated July 20, 2001. It listed Global Net Worldwide as "petitioner" and Mr. Villegas as "beneficiary".

13. The I-129W should have been certified by Mr. Villegas's employer, Mr. Castro, rather than by Respondent.

14. Along with the I-129 Petition, Respondent also submitted to the INS two checks drawn on his Stanton Federal Savings Bank account, captioned "Deleme & Gallimore."

a. Check number 1510, dated July 16, 2001, was made payable to "Immigration & Nat'l Service" in the amount of \$1,000.

b. Check number 1513, dated July 16, 2001, was made payable to "Immigration & Nat'l Service" in the amount of \$110.

15. The payment of the \$1,000 processing fee represented an advance of costs by Respondent.

16. Respondent recognized that time was of the essence in completing the Non-Immigrant Application for the client.

17. By Notice of Action dated July 31, 2001, the INS informed Respondent that because he had failed to include a properly completed I-129W form, the I-129 Petition and fees were being returned to Respondent.

18. Under cover of a letter dated August 12, 2001, Respondent resubmitted the I-129 Petition to the United States Citizenship and Immigration Services (CIS), formerly the INS, along with a Form I-129W signed by Respondent and dated August 6, 2001.

19. Respondent again failed to submit a properly completed I-129W on behalf of Mr. Villegas, in that Mr. Villegas's employer needed to certify the I-129W.

20. There is no evidence that the checks forwarded by Respondent to the CIS were ever cashed.

21. Respondent obtained Mr. Castro's signature on a Form I-129W dated October 23, 2001.

22. Respondent did not resubmit the properly completed I-129W.

23. The only Petition before the CIS for evaluation was improperly completed.

24. From June 2001 through October 2002, Mr. Villegas attempted to contact Respondent approximately two times per month to inquire about the status of his immigration matter.

a. Each time Mr. Villegas was able to speak to Respondent, Respondent assured him that his Petition was pending and that he was

permitted to remain in the United States during the consideration of his Petition.

b. Neither at that time, nor thereafter, did Respondent inform Mr. Villegas that the originally filed I-129 Petition and I-129W had been returned to Respondent and that they had to be resubmitted, and furthermore that the Petition before the CIS was improper.

25. Even though I-129 Petitions can take some time to be processed, there was no evidence that Respondent undertook any action from at least October 2001 through October 2002 to determine the status of the Petition with the CIS.

26. On August 8, 2002, because Mr. Villegas became concerned about his immigration matter, he consulted with another attorney, Joyce Gallagher Ramirez, who agreed to initiate a Freedom of Information Act (FOIA) request and advise Mr. Villegas of the results.

27. Within a few days of consulting with Ms. Ramirez, Mr. Villegas again met with Respondent, who assured Mr. Villegas that the Petition was pending and Mr. Villegas was authorized to remain in the United States.

a. Because of Mr. Villegas's concern over the status of the Petition, he confided in Respondent for the first time that he had been the victim of persecution in Venezuela, his country of origin.

b. Mr. Villegas had not previously inquired about the issue of political asylum as he believed that he would be granted an H-1B visa.

c. Mr. Villegas inquired whether he could petition for political asylum.

d. Respondent advised his client that he might be able to obtain political asylum but the prospect of a favorable outcome was not guaranteed.

e. Respondent provided his client with an I-159 Application for Asylum and told him to collect evidence in support of his claim.

f. Respondent advised his client to file the I-159 Application himself.

28. Respondent failed to advise his client that the limitation period for filing a political asylum claim was one year after the applicant's last entry into the United States and, therefore, such an application would be untimely in Mr. Villegas's case.

29. In September 2002 Mr. Villegas learned from Ms. Ramirez that CIS did not locate a file for him relating to any submission by Respondent of an I-129 and I-129W.

30. Mr. Villegas met with Respondent to discuss the results of the FOIA request and Respondent told Mr. Villegas the result "appeared to be unusual", or words to that effect.

31. On October 29, 2002, and November 8, 2002, Mr. Villegas sent Respondent faxes about the CIS's inability to locate any records pertaining to him.

32. In mid – to – late 2002 Mr. Castro's company ceased doing business and Mr. Villegas was forced to rely on his asylum claim as a basis for his attempt to remain in the United States.

33. Mr. Villegas attempted to contact Respondent during the time that he was collecting information, as Respondent had advised him to do, in support of his asylum claim.

34. Respondent did not respond to Mr. Villegas's inquiries.

35. Mr. Villegas met with Respondent at his office on March 12, 2004.

36. During the consultation Respondent surrendered Mr. Villegas's file to him and agreed to write a letter on his behalf to the CIS.

37. When Mr. Villegas reviewed his file he learned for the first time that Respondent had filed the I-129 Petition without the required I-129W and that the Petition had to be resubmitted.

38. Respondent wrote a letter to the CIS on March 12, 2004, wherein he referred to the I-129 Petition he submitted in August of 2001, which lacked a proper I-129W.

39. In July 2004 Mr. Villegas retained new counsel.

40. Respondent did not refund to Mr. Villegas any portion of the \$750 advance payment of fee.

41. Respondent cooperated with Petitioner's investigation and expressed sincere remorse.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

3. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

IV. DISCUSSION

This matter is before the Board for consideration of Respondent's misconduct while representing his client in an immigration matter. The charges contained in the Petition for Discipline were not answered by Respondent; therefore, the factual allegations are deemed admitted, pursuant to Pa.R.D.E. 208(b)(3).

Respondent entered into a fee agreement with Igork Villegas to represent him in his efforts to obtain a non-immigrant worker visa. Respondent failed to file the appropriate petitions in accordance with the requirements of the INS (later the CIS). When Respondent initially filed the Petition it was returned to him with an indication of the error, but Respondent failed to correct the defect before filing the Petition for the second time. The defect had to do with obtaining the signature of Mr. Villegas's employer, Mr. Castro. Respondent finally obtained the correct signature on the I-129W form, but there is no evidence that he resubmitted the properly completed form. During this time frame Mr. Villegas inquired about the status of his matter and was informed that the Petition was being considered by the INS. Mr. Villegas became concerned to the point where he consulted with another attorney to determine the status of his matter. Ultimately Mr. Villegas obtained his file from Respondent, at which time he learned that his Petition had not been properly submitted. Mr. Villegas retained new counsel and has not received a refund of his monies from Respondent.

The Hearing Committee recommended a three month stayed suspension with two years of probation, based on the nature of the misconduct and Respondent's prior history of an informal admonition and a private reprimand, both administered in 2004. Both

prior discipline matters involved Respondent's failure to refund a fee to a client after failing to complete the client's work. The Board is persuaded that a three month period of suspension is appropriate; however, a six month period of probation better addresses the issues of this case. Two years is a long time and the Board is not convinced that such a lengthy probation is warranted for a situation involving one client matter. The evidence suggests that Respondent did take initial steps to discharge his duty to his client, but thereafter failed to monitor his files. The Board also agrees with the Committee's recommendations as to conditions and recommends that Respondent refund \$750 to his client Igork Villegas and take eight hours of Continuing Legal Education credits in either ethics or immigration law or a combination of both.

V. RECOMMENDATION


The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Allan G. Gallimore, be suspended from the practice of law for a period of three months, followed by a period of probation for six months. During the period of probation, Respondent shall do the following:

1. Take eight (8) hours of PA Continuing Legal Education credits in the area of Ethics and/or Immigration Law or a combination of both; and
2. At least ten (10) days prior to the expiration of the period of Probation, provide to the Board his Certificates of Attendance for the courses taken.

It is further recommended that Respondent be required to refund \$750 to Igork Villegas as a condition of reinstatement, and that he pay the expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Robert L. Storey, Board Member

Date: July 24, 2007

Board Member Curran recused
Board Member Saidis dissented for nine month suspension