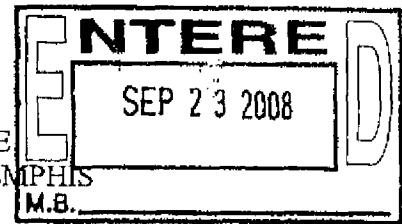


IN THE CHANCERY COURT OF TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS



TIMOTHY DARNELL FLOWERS  
Petitioner,

No. CH - 07-1953-3  
BOPR No. 2005-1564-9-JJ

v.

BOARD OF PROFESSIONAL  
RESPONSIBILITY OF THE  
SUPREME COURT OF  
TENNESSEE

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ORDER

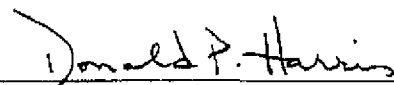
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Pursuant to the Memorandum Opinion (attached hereto as Exhibit A) entered by this Court on September 17, 2008 by the Honorable Donald Harris, Senior Judge, it is hereby ORDERED, ADJUDGED, and DECREED that:

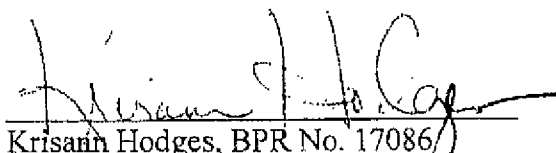
1. The Hearing Panel's finding that Mr. Flowers violated Rule 1.4 (a)(b) of the Rules of Professional Conduct (hereinafter "RPC") in relation to the disciplinary complaint of Kadija Jalloh is hereby set aside.
2. In relation to the disciplinary complaint of Isata Jalloh, the Hearing Panel's finding that Mr. Flowers violated Disciplinary Rules 1-102(A)(1)(5)(6), 6-101(A)(3) and RPCs 3.4(c), 4.4(a), and 8.4(a)(d) by conditioning his truthfulness and level of cooperation with Mr. Salomon on his former client's agreement to not file a disciplinary complaint against him is hereby set aside.
3. In all other respects, the judgment of the Hearing Panel finding twenty-three (23) instances of disciplinary violations is hereby affirmed.

4. Costs of this matter shall be taxed to Mr. Flowers.

SO ORDERED:

  
DONALD P. HARRIS, SENIOR JUDGE  
Sitting by Designation of the  
Tennessee Supreme Court  
10/23/08

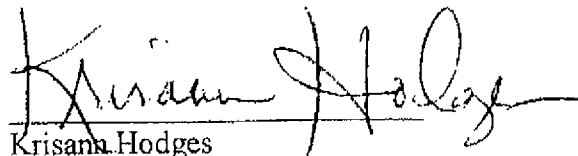
APPROVED FOR ENTRY:

  
Krisann Hodges, BPR No. 17086  
Disciplinary Counsel  
1101 Kermit Drive, Suite 730  
Nashville, Tennessee 37217  
(615) 361-7500

**A TRUE COPY-ATTEST**  
Dewun R. Settle, Clerk & Master  
By  D.C. & M.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER has been mailed to Timothy D. Flowers, Attorney at Law, 200 Poplar Avenue, Suite 104, Memphis, TN 38103, on this 23rd day of September, 2008.

  
Krisann Hodges

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE,  
AT MEMPHIS

TIMOTHY DARNELL FLOWERS

Petitioner,

v.

BOARD OF PROFESSIONAL  
RESPONSIBILITY OF THE  
SUPREME COURT OF  
TENNESSEE

No. CH - 07-1953-3  
BOPR No. 2005-1564-9-JJ

MEMORANDUM

This case is before the court on a Petition for Certiorari and Supersedeas filed by the petitioner, Timothy Darnell Flowers.<sup>1</sup> The petition seeks a review and stay of the judgment of the hearing panel filed August 6, 2007, in a lawyer disciplinary proceeding against Mr. Flowers.

The hearing panel found multiple violations of applicable rules of professional conduct and various aggravating factors. As a result, the hearing panel entered its judgment suspending Mr. Flowers' license to practice law for a period of one year. The panel further found that reinstatement should be conditioned upon the filing of a petition for reinstatement pursuant to Rule 9, §19, of the Rules of the Supreme Court and ordered Mr. Flowers to make restitution of unearned fees to Mouminy Bah (\$710.00); Fowzia Mohamed (\$810.00); and Amadou Tidjani Bah (\$3,360.00). Finally, Mr. Flowers was ordered to pay the Board's costs.

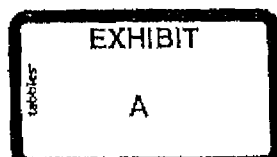
STANDARD OF REVIEW

In reviewing the findings and conclusions of the hearing panel in a disciplinary proceeding, the court must be guided by Rule 9, section 1.3 of the Rules of the Supreme Court which provides in pertinent part as follows:

The Respondent-attorney (hereinafter "Respondent") or the Board may have a review of the judgment of a hearing panel in the manner provided by [Tennessee Code Annotated section] 27-9-101 et seq., except as otherwise provided herein. The

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<sup>1</sup>Since Mr. Flowers is the petitioner in this case and was the respondent in the matter being reviewed, he will be referred to in this Memorandum as Mr. Flowers. The Board of Professional Responsibility will be referred to as the Board or BOPR.



review shall be on the transcript of the evidence before the hearing panel and its findings and judgment. If allegations of irregularities in the procedure before the panel are made, the trial court is authorized to take such additional proof as may be necessary to resolve such allegations. The court may affirm the decision of the panel or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the panel's findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in the light of the entire record.

In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the panel as to the weight of the evidence on questions of fact.

Tenn. Sup. Ct. R. 9, §1.3 (2007)

With that standard in mind, the court has carefully reviewed the evidence that was introduced during the evidentiary hearing on June 21, 2007, and the entire record. The court's findings with regard to each complaint filed against Mr. Flowers are set forth below.

#### COMPLAINT OF MAMADOU PAME (File No. 27773c-9-JJ)

With regard to the Complaint of Mamadou Pame, the panel found:

Between December 9, 2004 and January 21, 2005, the Board forwarded three (3) notice letters to Respondent and enclosed copies of Mr. Pame's complaint (dated December 9 & 30, 2004, and January 19, 2005), requesting Respondent to respond to the complaint, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed with the Tennessee Supreme Court seeking the temporary suspension of his law license. Respondent did not submit his initial response in this file until January 21, 2005 and only after receiving the third notice letter.

Complainant Mamadou Pame paid Respondent \$1,500 in attorney fees between October 31, 2002 and April 28, 2003 in Mr. Pame's immigration matter pending before the Board of Immigration Appeals (hereinafter "BIA"), and Respondent characterized these payments as payments for a non-refundable retainer and brief preparation, according to Respondent's receipts. (Tr. pp. 123-125) However, Respondent never prepared any written employment contract signed by himself and Mr. Pame for representation in Mr. Pame's legal matter. He failed to prepare any document setting out a limited scope of representation.

Respondent requested a copy of the Immigration Judge's decision in Mr. Pame's case by signing and filing such request with the Immigration Court as Mr. Pame's attorney, on November 5, 2002. Respondent prepared a 3 ½ page letter to the BIA which was characterized as a brief in Mr. Pame's matter, signed Mr. Pame's name to this brief, and on May 8, 2003, mailed this letter/brief to the BIA on Mr. Pame's behalf. Respondent did not send Mr. Pame a copy of the May 8, 2003, brief either before or after he filed it with the BIA.

Respondent prepared the May 8, 2003, brief in his capacity as a licensed attorney, the brief was Respondent's work product, and Respondent has no written evidence of an agreement for Respondent to sign Mr. Pame's name to the brief or that Mr. Pame had agreed for Respondent to limit his services to document preparation without Respondent having any obligation to appear before the BIA as Mr. Pame's attorney. Respondent did not send Mr. Pame any correspondence requesting this complainant to pick up his file, after Respondent filed the May 8, 2003 brief.

Mr. Flowers admitted the foregoing facts in his answer to the original complaint filed by the BPR. He now challenges the hearing panel's conclusions from those facts. In Paragraph 7 of its Findings of Fact, Conclusions of Law and Judgment, the hearing panel concluded:

By engaging in undisclosed and extensive participation and preparation as an attorney for Mr. Pame's legal matter, respondent engaged in misleading conduct in violation of RPC 8.4(a)(c)(d). By failing to properly communicate with the client and failing to properly explain his role to the client sufficiently, or to permit the client to make informed decisions, respondent has violated RPCs 1.4(a)(b), & 8.4(a)(c)(d). By failing to timely respond to the Board's request for a response to the disciplinary complaint, respondent has violated RPCs 8.1(b), & 8.4(a)(d).

Rule 8.4 of the Rules of Professional Conduct provides in paragraphs (a), (c) and (d) that it is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or (d) engage in conduct that is prejudicial to the administration of justice.<sup>2</sup> Rule 1.4 of the Rules of Professional Conduct provides in paragraph (a) that a lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time, and in paragraph (b) that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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2. In several cases, the hearing panel found a violation of another Rule of Professional Conduct and Rule 8.4(a)(d). Because every violation of a Rule of Professional conduct involves engaging in conduct that violates the Rules of Professional Conduct and is prejudicial to the administration of justice, these violations will not be separately discussed.

Mr. Flowers first alleges the hearing panel's conclusion that he had engaged in "undisclosed and extensive participation and preparation as an attorney for Mr. Pame's legal matter" is not supported by all the evidence of record. A review of the record reveals that Mr. Pame's had represented himself before the Immigration Court and had been denied asylum in this country. Mr. Pame then contacted Mr. Flowers about appealing his case to the Board of Immigration Appeals. Mr. Flowers filed a notice of appeal before the BIA to which he signed Mr. Pame's name. He also requested a transcript of the proceedings before the Immigration Court. According to Mr. Flowers, it takes three to four hours to review such a transcript. He then prepared a brief, in letter form, to which he signed Mr. Pame's name and filed it with the Board of Immigration Appeals. The court finds the hearing panel's conclusion was supported by evidence that was material and substantial in light of the entire record.

Mr. Flowers next argues that the hearing panel's finding that he engaged in misleading conduct by failing to enter his appearance as representing Mr. Pame is contrary to the BPR's Formal Ethics Opinion 2007-F-153 which provides that "an attorney may prepare a leading pleading including, but not limited to, a complaint, or demand for arbitration, request for reconsideration or other document required to toll a statute of limitations, administrative deadline or other proscriptive rule, so long as the attorney does not continue undisclosed assistance of the pro se litigant." The same ethics opinion also provides, however, that "an attorney in Tennessee may not engage in extensive undisclosed participation in litigation in behalf of a pro se litigant as doing so permits and enables the false appearance of being without substantial professional assistance." Since the court has already determined the panel's finding regarding "extensive undisclosed participation" was supported by the evidence, it follows that the panel's conclusion Mr. Flowers engaged in misleading conduct is also supported by the evidence.

Mr. Flowers next asserts the panel's finding that he failed to properly communicate with the client sufficiently to permit the client to make informed decisions was not supported by the evidence. Mr. Flowers admitted, however, that he failed to provide Mr. Pame a copy of the letter brief that he filed with the Board of Immigration Appeals, either before or after he signed Mr. Pame's name to it and filed it. If, as Mr. Flowers claims, Mr. Pame was representing himself before the Board of Immigration Appeals, he certainly should have been made aware of the arguments he was making to them. The court is of the opinion the evidence supports the conclusion reached by the hearing panel. Mr. Flowers does not challenge the hearing panel's determination that he failed to timely respond to a request for a response to a disciplinary complaint.

#### COMPLAINT OF FOWZIA MOHAMED (File No, 28174-9-JJ)

With regard to the complaint of Fowzia Mohamed, the hearing panel found:

Between May 2 and June 22, 2005, the Board forwarded four (4) notice letters to Respondent and enclosed copies of Ms. Mohamed's complaint (dated May 2, May 18, June 8, and June 22, 2005) requesting Respondent to respond to the complaint, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed seeking the temporary

suspension of his law license. Respondent did not submit his initial response in this file until July 14, 2005, and only after receiving the fourth notice letter.

Respondent admits that he accepted representation of Fowzia Mohamed in her asylum case on February 9, 2001. He further admits that he agreed to file appeal for her to the BIA which was due on March 12, 2001, received \$750 in attorney fees and \$110 in filing fees, but failed to file the appeal for her by March 12, 2001. Respondent admits that he did not send Ms. Mohamed any letter or e-mail advising that he had failed to timely file the appeal, but in January, 2003, Respondent assigned responsibility for filing a motion to reopen in Ms. Mohamed's case to Wendy Newberry, an associate of Respondent's office at the time. Ms. Newberry filed the motion to reopen in Ms. Mohamed's matter on January 27, 2003.

Respondent never received any written correspondence or e-mail from Ms. Mohamed, or had any phone conversation with her wherein she agreed for Respondent's law office to file the motion to reopen which was filed in January of 2003. No one with Respondent's law office ever sent the complainant any written correspondence or e-mail explaining why Respondent was considering filing a motion to reopen nearly 2 years after the immigration judge's decision denying the claim, and Respondent never sent this complainant any correspondence to confirm in writing that she had agreed for Respondent to file the motion to reopen which was filed in January, 2003.

Respondent did not send this complainant a full copy of her case file after he concluded his representation, and several documents were missing from the file he did maintain. Respondent had not, as of the June 21, 2007 hearing, made the \$860 refund of fees and costs to this complainant which Respondent first proposed to make within his July 22, 2005 initial written response, and which he agreed again to make at his December 6, 2006 deposition.

Mr. Flowers admitted to these facts in his answer to the petition for discipline, his response to the BPR's requests for admission, and during the evidentiary hearing. Based upon these facts, the hearing panel concluded:

By engaging in a pattern of dilatoriness and a pattern of failing to timely respond to the Board in this complaint, respondent has violated RPCs 8.1(b) & 8.4(a)(d). By his neglect, his failure to move with reasonable diligence and promptness, and his failure to properly inform his client in a timely fashion about the status of her case, respondent has violated DR 1-102(A)(1)(5)(6); DR 6-101(A)(3), DR-6-101(A)(3), DR 7-102(A)(1)(2)(3) & RPCs 1.3, 1.4(a)(b), & 8.4(a)(d). His failure and refusal to refund to this complaint (sic) the fees and costs which he agrees were unearned, and which he has agreed to do for a 2 year period, is violative of RPCs 1.3, 1.4(a)(b), 1.5(a) & 8.4(a)(c)(d) & DR 1-102(A)(1)(5)(6) and DR 2-106(A).

Mr. Flowers only objection to the findings of the hearing panel with regard to this complaint is that their finding that he "failed to file the client's appeal on time and did not inform her in a timely fashion is not supported by the evidence of record." Mr. Flowers admitted, however, in his answer to the complaint for discipline and at the hearing of this case that he failed to file Ms. Mohamed's appeal on time. He testified during the evidentiary hearing that he orally advised Ms. Mohamed that he had failed to file her appeal. The appeal was to be filed on or before March 12, 2001. Mr. Flowers testified he first told Ms. Mohamed that he had failed to file her appeal in December 2002.

The hearing panel found Mr. Flowers in violation of several disciplinary rules that were in effect at the time of these events. DR 1-101(A)(1), (5) and (6) prohibited an attorney from violating a disciplinary rule or engaging in conduct that is prejudicial to the administration of justice or conduct that adversely reflects on his fitness to practice law. DR 6-101(A)(3) provided that an attorney shall not neglect a legal matter entrusted to the lawyer. DR 7-102(A)(1), (2) and (3) required an attorney to act with reasonable diligence and promptness in representing a client, to keep a client reasonably informed about the status of a matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. It is the opinion of the court that none of the violations found by the hearing panel would be affected by Mr. Flowers orally informing Ms. Mohamed that he had failed to file her appeal more than twenty-one months after the event.

#### COMPLAINT DISCOVERED DURING INVESTIGATION (File No. 28187-9-JJ)

With regard to a complaint discovered by the BPR during the investigation of other complaints, the hearing panel found the following facts:

On March 9, 2005, the Board faxed to Respondent a copy of Respondent's insufficient funds escrow account refund check in the amount of \$800 to former complainant Ahmed Bah, and within this March 9, 2005 facsimile, the Board requested that Respondent advise immediately as to the status of this serious matter. On March 10, 2005, Respondent did send to Mr. Bah a replacement cashier's check of \$800, but through mid-May of 2005, Respondent did not provide any further information or documentation explaining how the escrow account overdraft occurred and establishing that there had been no misappropriation of entrusted funds from his escrow account.

Between May 13 and July 1, 2005, the Board forwarded four (4) notices to Respondent (dated May 13, May 26, June 8, and June 22, 2005), requesting Respondent to respond to the disciplinary complaint in this file, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed with the Tennessee Supreme Court seeking the temporary suspension of his law license. On July 1, 2005, the Board faxed Respondent a final notice denying his request for an extension of time until August 1, 2005, given the prior pattern of delay, and informed him in this July 1, 2005 fax that if his written



response was not received by July 14, 2005, the petition for temporary suspension would be filed.

In early December of 2004, Respondent voluntarily agreed to refund \$800 in unearned fees and costs to Mr. Bah (complainant in File No. 27424-9-jj), and on December 8, 2004, Respondent sent written evidence to the Board establishing that he had sent this refund to his former client. On February 24, 2005, Respondent received a Private Reprimand from the Board (which involved a complaint filed against him by Ahmed Bah), and within this Private Reprimand, the Board granted mitigating credit to Respondent, given his agreement to refund this \$800 to Mr. Bah by approximately December 10, 2004. Respondent's December 8, 2004 refund check to Mr. Bah which bounced, was written from his Memphis Area Teachers' Credit Union (MATCU) escrow account.

Respondent understood he had been given mitigating credit in the February 24, 2005 Private Reprimand for having made the \$800 refund to Mr. Bah in early December, 2004, and admits he did not deposit \$800 into his MATCU escrow account on Mr. Bah's behalf before he sent this \$800 refund to Mr. Bah on December 8, 2004.

Some of these facts were admitted by Mr. Flowers in his answer to the complaint for discipline. Some were admitted during the deposition of Mr. Flowers. The remainder were included in a statement of material facts not in dispute filed by the Board. Mr. Flowers filed no pleading disputing those facts and the hearing panel granted a partial summary judgment concerning them. Based upon these facts, the hearing panel made the following findings:

By his actions in issuing a refund check to Mr. Bah out of escrow for the refund of unearned fees and costs which respondent never deposited into escrow, subverting the mitigating credit given his delay for a 3 month period of his client's refund, respondent has failed to properly segregate funds of the attorney from those of the client and his (sic) engaged in conduct which is prejudicial to the administration of justice in violation of RPCs 1.3, 1.15(b) and 8.4(a)(d). By misleading the former client that the refund was being sent out in early December 2004, respondent had violated 1.4(a)(b) and 8.4(a)(c)(d). By failing to timely respond to the disciplinary complaint in this matter, respondent has violated RPCs 8.1(b) and 8.4(a)(d).

Mr. Flowers objects to the finding that he failed to properly segregate funds of the attorney from those of the client by issuing a refund check to Mr. Bah out of escrow when he never deposited such funds is not supported by the evidence. Mr. Flowers asserts he testified during the hearing that he did not initially deposit the funds into escrow because they were attorney's fees. When he determined to make the refund, the monies were deposited in his escrow account but the check bounced because some account expenses were deducted from the account leaving insufficient funds to cover the check to Mr. Bah.

The finding to which Mr. Flowers objects were facts included in the BOPR's statement of material facts not in dispute filed before the hearing panel in support of its motion for partial summary judgment. Rule 56.03 of the Tennessee Rules of Civil Procedure requires that a party moving for summary judgment file a statement of material facts it contends are not in dispute. The Rule further provides that the non-moving party file a response demonstrating such facts are disputed five days prior to the hearing on the motion. Mr. Flowers failed to file such a response. The hearing panel granted partial summary judgment as to the BOPR's statement of material facts not in dispute. Rule 56.05 provides that when the court grants a motion for partial summary judgment specifying facts which are not in controversy, those facts are deemed established during the trial of the case.

Based upon Rule 56 of the Tennessee Rules of Civil Procedure, the hearing panel correctly took the facts objected to during this proceeding as established during Mr. Flowers disciplinary hearing. This court is further of the opinion that the hearing panel properly granted summary judgment as to those facts when Mr. Flowers failed to respond to the BOPR's statement of material facts not in dispute.

#### COMPLAINT OF KIDIJA JALLOH (File No. 28210-9-JJ)

With regard to the complaint of Kidija Jolloh, the hearing panel found:

Between May 16 and July 19, 2005, the Board forwarded four (4) notice letters to Respondent (dated May 16, June 20, July 6, and July 19, 2005) requesting Respondent to respond to the complaint, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed with the Tennessee Supreme Court seeking the temporary suspension of his law license. Respondent did not submit his initial response in this matter until late on the afternoon of July 19, 2005, and only after being sent four notice letters.

Respondent accepted representation in Ms. Jalloh's asylum matter in September of 2003, and advised this client by correspondence dated December 9, 2003 that her individual evidentiary hearing was set before the Immigration Judge on June 17, 2004. On June 10, 2004, Respondent filed a motion for continuance of the June 17, 2004 hearing, but he did not send to this complainant a copy of the motion to continue at the time he filed it. Respondent contended in his June 10, 2004 motion that the complainant was still awaiting the receipt of essential documentation that would confirm her identity. For whatever reason, there was confusion between Respondent's office and complainant regarding whether the June 17, 2004 hearing had been continued.

The Immigration Judge did not grant the Respondent's motion for continuance of this complainant's hearing and on the morning of June 17, 2004 hearing, the Judge ordered this complainant removed in absentia since she did not appear.

Although complainant delivered her birth certificate to Respondent in October of 2004, Respondent did not file a motion to reopen Ms. Jalloh's case until March 9, 2005, and he did not send to this client a copy of the March 9, 2005 motion to reopen at the time he filed it with the Immigration Court.

Except for the sentence regarding confusion as to whether the June 17, 2004 hearing had been continued, the facts found by the hearing panel were admitted by Mr. Flowers or included in the statement of material facts not in dispute. Mr. Flowers testified at the hearing, however, that he orally informed Ms. Jalloh that he had filed a motion to continue her hearing but until that motion had been acted upon by the trial judge, she must attend the scheduled hearing. Mr. Flowers also testified that he telephoned Ms. Jalloh on the morning of her hearing and inquired as to why she was not in his office. She related that her husband had already gone to work and she did not have transportation. Mr. Flowers also testified that he orally informed Ms. Jalloh that he had filed a motion to reopen her case on March 9, 2005. According to the statement of material facts not in dispute, a copy of Ms. Jalloh's file was delivered to her on April 15, 2005.

Based upon the facts found by the hearing panel, it concluded:

By his actions in failing to timely respond to the Board regarding this disciplinary complaint, respondent has violated RPCs 8.1(b) and 8.4(a)(d). By his actions in failing to deliver to the client copies of the motions which he was filing at the time he filed them, and his failure to file the motion to reopen for a 5 month period after he received the essential documentation confirming his client's [identity], respondent violated RPCs 1.3, 1.4(a)(b) and 8.4(a)(d).

Mr. Flowers takes the position that the finding that he failed to communicate with his client is not supported by the evidence which is both material and substantial in the light of the entire record. This court agrees. Again, Rule 1.4 of the Rules of Professional Conduct provides in paragraph (a) that a lawyer shall keep a client reasonably informed about the status of a matter and comply with reasonable requests for information within a reasonable time, and in paragraph (b) that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. According to the un rebutted testimony of Mr. Flowers, he did keep Ms. Jalloh reasonably informed of the status of her case by oral communications. The hearing panel could not ignore that testimony. While Mr. Flowers did not send Ms. Jalloh copies of the motions he was filing, the court is of the opinion sending the client copies of all pleadings is not required by the rule. The hearing panel's finding that Mr. Flowers violated Rule 1.4(a)(b) with regard to Ms. Jalloh must be set aside.

Rule 1.3 of the Rules of Professional Conduct provide that a "lawyer shall act with reasonable diligence and promptness in representing a client." The motion to continue Ms. Jalloh's June 17, 2004, hearing was based upon her need to get a correct copy of her birth certificate. The birth certificate was received in October 2004 but a motion to reopen her case was not filed until March 9, 2005. The hearing panel did not believe Mr. Flowers acted with reasonable diligence and promptness in pursuing her case. While an explanation for the delay was included in the brief filed by Mr. Flowers in this court, it was not presented to the hearing panel during the hearing of this

cause. The court must conclude that the hearing panel's finding that Mr. Flowers violated RPC Rule 1.3 is supported by evidence that is both material and substantial in light of the entire record.

COMPLAINT OF MOUMINY BAH (File No. 28432-9-JJ)

With regard to the complaint of Mouminy Bah, the hearing panel found:

Between August 19 and September 19, 2005, the Board forwarded three (3) notices and enclosed copies of Mr. Bah's complaint (dated August 19, September 6, and September 17, 2005), requesting Respondent to respond to the complaint, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed with the Tennessee Supreme Court seeking the temporary suspension of his law license. Respondent did not submit his initial response in this file until September 21, 2005, and only after receiving the third notice letter.

Complainant Mouminy Bah paid Respondent \$710 to file the appeal to the BIA in Mr. Bah's asylum case in enough time for Respondent to accomplish this by the June 9, 2004 deadline. Respondent knew that this deadline was June 9, 2004, and admits that he never filed the appeal to the BIA on behalf of Mr. Bah and that he never sent this client any correspondence admitting this neglect. Complainant Mouminy Bah's appeal to the BIA has been time barred for 2 years as of the filing of the May 31, 2006.

Respondent's prior counsel promised within September 21, 2005 correspondence to the Board that Respondent would refund to complainant Mouminy Bah the \$710 in unearned fees and costs within 60 days, but as of November 21, 2005 and January 21, 2006 Respondent had not refunded the sum to Mr. Bah or to his new lawyer. As of December 6, 2006 at deposition, Respondent still had not refunded the \$710 to Mr. Bah or to his new lawyer and Respondent had been provided with the addresses of both Mr. Bah and his new lawyer. Respondent had been in touch with this complainant's new lawyer less than 60 days prior to his December 6, 2006 deposition in this disciplinary matter, and promised Mr. Bah's new lawyer he was making the refund.

Respondent did not maintain within his attorney escrow account the \$710 in unearned fees which Mouminy Bah paid him from the date of his receipt of these funds in May or June of 2004, through the date of Respondent's December 19, 2006. Respondent did not send a \$710 refund check to Mr. Bah from his operating account until June 19, 2007 - - two days before the hearing in this matter.

These facts were established by Mr. Flowers' answer to the supplemental petition for discipline, his answers to the request for admissions and the statement of material facts not in dispute upon which a partial summary judgment was granted. Based upon these facts, the hearing panel concluded:

By constantly misleading the Board, this complainant, and the complainant's new lawyer for nearly a 2 year period to the effect that the \$710 refund was being expeditiously made, respondent has violated RPCs 1.3, 1.4(a)(b), 1.16(d)(4)(5) and 8.4(a)(c)(d). By continuing in his pattern of dilatoriness in responding to this Board's requests for him to timely submit his answer to disciplinary complaints, respondent has violated RPCs 8.1(b) and 8.4(a)(d). By failing to file Mr. Bah's appeal by the June 9, 2004 deadline and never sending this client any correspondence admitting this neglect, respondent has neglected a legal matter and failed to properly communicate with a client in violation of RPCs 1.3, 1.4(a)(b) and 8.4(a)(d).

In his Petition for Certiorari and Supersedeas, Mr. Flowers did not challenge these findings.

#### COMPLAINT OF VICTOR PEREZ-MENDEZ (File No. 28721-9-JJ)

With regard to the complaint of Victor Perez-Mendez, the hearing panel found the following facts:

Respondent accepted representation of complainant Victor Perez-Mendez on or about March 14, 2005, agreeing to represent this client in his application for statutory cancellation of removal, for asylum and for NACARA relief at the individual evidentiary hearing set for October 4, 2005. Months prior to October 4, 2005, Respondent determined that the prospects for prevailing on the statutory cancellation removal claim were not very good. About one week prior to the October 4 2005 hearing, Respondent wrote Mr. Perez-Mendez, advising him that Respondent would not be able to handle the hearing because the TN Commission on CLE and Specialization had recently filed a petition with the TN Supreme Court to suspend Respondent's law license for failure to obtain mandatory CLE.

On October 3, 2005, the Tennessee Supreme Court filed an Order suspending Respondent and many other Tennessee lawyers from the practice due to the Respondent's and many other lawyers' failure to obtain required CLE. While Respondent was of the opinion that Mr. Perez-Mendez' chances of prevailing on the application for statutory cancellation of removal were not very good several months prior to the October 4, 2005 hearing date before the Immigration Court, Respondent did not communicate that opinion orally or in writing to Mr. Perez-Mendez, and did not seek this complainant's permission to withdraw that claim.

On September 29, 2005, Respondent filed a motion for continuance with the Immigration Court in Mr. Perez-Mendez' cases which were set for hearing on October 4, 2005. Although Respondent did file a motion for continuance in Mr. Perez-Mendez' case on September 29, 2005 due to his impending suspension for failing to obtain CLE, Respondent did not file the application, or all documents and proposed exhibits in support of the application within ten (10) working days prior to the scheduled October 4, 2005 hearing in Mr. Perez-Mendez' case.

In his October 4, 2005 order filed in Mr. Perez-Mendez' matter, Judge Pazar granted the government's motion to pretermitt Mr. Perez-Mendez' application for statutory cancellation of removal due to Respondent's failure to file the application and supporting documents within 10 days before the hearing date. Judge Pazar also continued this complainant's application for asylum, and NACARA special rule cancellation within this Order to allow this complainant to find other counsel. Immigration Judge Pazar also found within this October 4, 2005 Order that Mr. Perez-Mendez might have an action against Respondent under *Matter of Lozada*.

Respondent's law license was reinstated from the CLE suspension by the Tennessee Supreme Court on October 15, 2005. Respondent did not ever seek reconsideration of this order entered by Judge Pazar regarding Respondent having abandoned the statutory cancellation application of Mr. Perez-Mendez after Respondent's law license was reinstated from the CLE suspension.

The legal effect of Judge Pazar's ruling premitting the application for statutory cancellation bars Mr. Perez-Mendez from ever filing such an application in the future, which would not be the case had Respondent waived this claim on behalf of the client.

These facts were established during the hearing of this cause and in the statement of material facts not in dispute upon which partial summary judgment was granted. Based upon these facts, the hearing panel concluded:

By failing to file the necessary exhibits within 10 days of the date of the hearing in Mr. Perez-Mendez' statutory cancellation claim, and by failing to seek approval of his client to withdraw that claim months prior to the October 4, 2005 hearing on that claim, respondent neglected Mr. Perez-Mendez' legal matter and failed to move with reasonable promptness, which resulted in the claim being barred in the future. These actions violated RPC's 1.3 and 8.4(a)(d). By failing to sufficiently explain to the client the consequences of failing to withdraw the statutory claim since respondent realized many months prior to the October 4, 2005 hearing that said claim was weak, and by failing to seek this complainant's permission to withdraw that claim, respondent violated RPC's 1.4(a)(b) and 8.4(a)(d).

Mr. Flowers insists the hearing panel's conclusions are not supported by the evidence since there was evidence that Mr. Perez-Mendez had two other claims for the relief he was seeking for which there was a greater likelihood of success. This insistence disregards the fact that Mr. Perez-Mendez unnecessarily lost a potential claim through the failure of Mr. Flowers to pursue his case with reasonable diligence. The court is of the opinion the findings and conclusions of the hearing panel are supported by evidence which was both substantial and material in light of the entire record.

COMPLAINT OF ALIOU N'DIAYE (File No. 28789-4-JJ)

With regard to the complaint of Aliou N'Diaye, the hearing panel found the following facts:

Respondent indicated in a notice of an appeal from (EOIR-26) he filed on April 26, 2000, with the BIA on behalf of complainant Aliou N'Diaye, that he would also be filing a brief in support of this client's appeal in his asylum case. Respondent did not file a brief for Mr. N'Diaye with the BIA, and on March 21, 2002, the BIA dismissed this complainant's appeal.

Respondent claims that his failure to file a brief for Mr. N'Diaye before the BIA was a part of Respondent's legal strategy, but Respondent admits he never sent Mr. N'Diaye any correspondence informing him of this legal strategy.

Respondent filed three motions to reopen Mr. N'Diaye's case before the BIA dated September 18, 2002, October 9, 2004 and April 1, 2005, but all of three were denied as time-barred by the BIA. Respondent's September 18, 2002 Motion to Reopen based upon an alleged adjustment of status due to Mr. N'Diaye's February, 2001 marriage to a U.S. citizen, was premature since his spouse's I-130 application was not approved until May of 2004. Under most circumstances, federal regulations require motions to reopen to be filed within ninety (90) days after the adverse BIA's decision.

The motion to reopen which Respondent filed with the BIA on behalf of Mr. N'Diaye in October of 2004 was rejected in part because Respondent did not include the required filing fee, and Respondent did not understand that he was required to submit a filing fee along with this motion to reopen.

Respondent alleged that there was some oral agreement from counsel for the Department of Homeland Security to file a joint motion with Mr. N'Diaye to reopen and remand this complainant's case back to the Immigration Judge after the approval of the spouse's I-130 in May of 2004, but Respondent sent no letter to the Department of Homeland Security requesting a joint motion and has no writing or e-mail from counsel for the Department of Homeland Security wherein said Department agreed to file any such joint motion to reopen and remand. Neither the October, 2004 nor the April 1, 2005 motions to reopen which the Respondent filed in Mr. N'Diaye's asylum case contained any signature of counsel for the Department of Homeland Security and neither was a joint motion.

Respondent was required to file his motion to reopen in Mr. N'Diaye's case within 90 days of the BIA's March 21, 2002 decision denying the appeal or, to demonstrate a joint agreement with counsel for the Department of Homeland Security that the complainant had an approved I-130. Since the Respondent did not demonstrate any joint agreement or file any joint motion to reopen with counsel for

the Department, and since all motions to reopen were filed outside the 90 day period, all of the three motions to reopen were found time-barred by the BIA.

The foregoing facts were established by evidence offered during the hearing of this matter, Mr. Flowers' response to the Board's request for admissions and the statement of material facts not in dispute upon which partial summary judgment was granted. Based upon these facts, the hearing panel concluded:

By failing to file a brief for Mr. N'Diaye as respondent committed to do in his notice of appeal, resulting in the dismissal of Mr. N'Diaye's appeal on March 21, 2002 by the BIA, respondent has violated DR's 1-102(A)(1)(5)(6) and 6-101(A)(3). By failing to file any motion to reopen within 90 days of the BIA's March 21, 2002 dismissal order, by failing to send or understand the requirement to send a filing fee along with the October 2004 motion to reopen, by filing a motion to reopen with the BIA prematurely, alleging an adjustment of Mr. N'Diaye's status where his spouse had not yet received an approved I-130, and by failing, to ever secure any agreement by counsel for the Department of Homeland Security to jointly reopen and or remand Mr. N'Diaye's case, or to file any actual joint motion seeking such relief after May of 2004, respondent has demonstrated a lack of competency, and he has neglected the complainant's legal matter and has failed to properly explain the actual status of it to the client, in violation of RPC's 1.1, 1.3, 1.4(a)(b) and 8.4(a)(d).

In his Petition for Certiorari and Supersedeas filed in this court, Mr. Flowers challenges the findings that he demonstrated a lack of competency, that he neglected his client's legal matter and that he failed to properly explain the actual status of it to his client. The stated basis for this challenge is that it "is not supported by the evidence of record when the respondent and foreign language interpreter witness put forth uncontroverted testimony regarding communications to the client and the status of his case as well as the challenges in the case." Mr. Flowers' interpreter, Thierno Sylla, did testify he had oral communications with Mr. N'Diaye but did not describe, even generally, the nature of those communications. The only communication that Mr. Flowers described between him and Mr. N'Diaye was as follows:

Yes, Mr. N'diaye in inquiring why it was taking so long to reopen his case grew tired of the legal strategy that I was pursuing. I tried to explain to Mr. N'diaye that he was not entitled to a motion to reopen because 90 days had passed.

In the brief filed by Mr. Flowers in this court, he refers to several conversations and agreements between him and Mr. N'Diaye concerning his handling of the case. Mr. Flowers did not present evidence of those conversations and agreements during the evidentiary hearing nor are they otherwise established by the record in this case. The court is of the opinion the findings of the hearing panel with regard to the complaint of Aliou N'Diaye are supported by evidence both material and substantial in light of the entire record.



COMPLAINT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW  
(File No. 28864)

With regard to the allegation that Mr. Flowers engaged in the unauthorized practice of law, the hearing panel found as follows:

Respondent was administratively suspended from the practice of law by the Tennessee Supreme Court on September 7, 2004 for failing to obtain required CLE and was just reinstated by the Court on September 16, 2004. Respondent was administratively suspended from the practice of law by the Tennessee Supreme Court on September 26, 2005, for failing to pay this Board the annual registration fee and his law license was not reinstated from this administrative suspension until January 11, 2006, when he finally paid to the Board his annual registration fee and penalty. The \$500 which Respondent paid in October, 2005 for reinstatement of his Tennessee law license was paid to the Tennessee Commission on CLE and Specialization due to his CLE suspension, and not the Board of Professional Responsibility.

Respondent engaged in the practice of law in Tennessee by conducting phone conferences and making personal appearances in Court, by filing briefs, motions, petitions, notices of appeal, notices of appearance, requests for copies of hearing tapes and Immigration Judge decisions, and by sending other legal documents to the Immigration Courts, to the BIA and to the Sixth Circuit on behalf of clients during Respondent's administrative suspension for failing to pay the annual registration fee between September 26, 2005, and January 10, 2006.

Respondent sent no letters to his clients, to the Immigration Courts, to the BIA or to the Sixth Circuit advising the clients or the tribunals of his two administrative suspensions from the practice of law, between September 7 - 16, 2004, and September 26, 2005 - January 10, 2006. Respondent also sent no letters to his clients advising them of his third administrative suspension from the practice of law between October 3 and October 15, 2005.

Respondent admits he received on June 27, 2005, a notice sent by this Board by certified mail on June 24, 2005, informing him that the Board was presenting to the Tennessee Supreme Court a proposed order from the summary suspension of his law license if Respondent had not paid within 30 days after receipt of this notice, the annual registration fee which was due on or before March 1, 2005. Respondent admits he did not cure this deficiency by paying his annual registration fee within 30 days after June 27, 2005.

Respondent was counsel of record for approximately 60 clients with cases pending before the Memphis Immigration Court and for many other clients before the BIA between September 26, 2005, and January 10, 2006.

The foregoing facts were established by evidence offered during the hearing of this matter, Mr. Flowers' response to the Board's request for admissions and the statement of material facts not in dispute upon which partial summary judgment was granted. With regard to these facts, the hearing panel concluded:

By continuing to practice law while administratively suspended by the Tennessee Supreme Court for failure to obtain mandatory CLE, and failure to pay his annual registration fee, by failing to cure his registration fee deficiency after being given certified mail notice on June 27, 2005, and by failing to inform his clients, the Immigration Courts, the BIA, and the Sixth Circuit of his multiple suspensions between September 26, 2005 and January 10, 2006, and between October 3 and October 15, 2005, respondent has violated RPC's 3.3(a), 3.4(c), 5.5(a) and 8.4(a)(c)(d)(g).

Rule 3.3(a) of the Rules of Professional Conduct prohibits an attorney from knowingly making a false statement to a tribunal. Rule 3.4(c) prohibit a lawyer from knowingly disobeying the rules of a tribunal. Rule 5.5(a) prohibits a lawyer from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

The gist of these findings is a violation of Rule 5.5(a). It is unclear to the court why the hearing panel included the more marginal violations. Mr. Flowers asserted he did not know his license to practice law had been suspended for the failure to pay his annual registration fee. He acknowledged receiving the June 24, 2005 letter but testified he thought it was a part of the suspension relating to his failure to complete mandatory CLE and did not read it carefully. He also testified that he did not receive a copy of the order suspending his license. It is the opinion of the court that Mr. Flowers is charged with knowledge of the content of the June 24, 2005 letter and, therefore, the findings of the hearing panel are sustained by evidence both substantial and material in light of the entire record.

COMPLAINT OF CHIEF DEPUTY CLERK, US COURT OF APPEALS, SIXTH CIRCUIT  
(File No. 28986-9-JJ)

The findings of the hearing panel concerning the complaint of the Chief Deputy Clerk, U.S. Court of Appeals, were as follows:

Between 2004 and 2005, Respondent filed 18 petitions for review of final decisions of the BIA at the Sixth Circuit on behalf of 18 clients, and as of March 7, 2006, according to the Sixth Circuit's Docket Sheets, all such petitions for review had been dismissed for want of prosecution because Respondent failed to pay the filing fee, failed to file required forms, or to file his brief in many of these appeals in a timely fashion.

Before the 18 petitions included within this complaint for review were dismissed by the Sixth Circuit, court personnel phoned Respondent and gave him final opportunities to cure any procedural defects in these cases. Although

Respondent claimed that he allowed these petitions for review to be dismissed for "strategic" reasons, he did not have any correspondence from any of these former clients wherein they agreed that their appeals would be dismissed for such strategic reasons.

On December 6, 2005, Patrick Dinan, Administrative Services Manager for the Sixth Circuit advised Respondent by correspondence in the two Bah v. Gonzales cases which Respondent had filed, that Respondent's MATCU escrow account checks of \$250 in filing fees in each case, were returned due to insufficient funds. Mr. Dinan also informed Respondent that he was required to pay the \$45 penalty on each check, to make these checks good by certified check or money order by December 23, 2005, and that henceforth, Respondent must make all future payments by certified check or by money order. Prior to, or at the time of issuing the two MATCU escrow account checks to the Sixth Circuit in the total amount of \$500 in these two Bah v. Gonzales, cases, Respondent did not deposit \$500 within his MATCU escrow account on behalf of these plaintiffs.

Respondent sent three additional MATCU escrow account checks for filing fees, along with three additional petitions for review to the Sixth Circuit as late as March 2, 2006, but Respondent did not deliver to the Clerk's office of the Sixth Circuit by December 23, 2005, money orders or certified checks (with a \$45 penalty added in each case) in the two Bah v. Gonzales cases, as he was directed to do by Mr. Dinan. Respondent did receive the December 6, 2005, correspondence from Mr. Dinan, and he temporarily cured the procedural defects in the three petitions for review he filed on March 2, 2006, (Lopez-Vasquez, Jabbie and Camara) by paying the filing fees in these three cases by money order or certified check by March 15, 2006.

The petition for review in Lopez-Vasquez was dismissed by the Sixth Circuit on June 3, 2006 for lack of jurisdiction, the petition in Jabbie was dismissed on August 3, 2006, for want of prosecution, and the petition in Camara was dismissed on July 6, 2006, for Respondent's failure to file a brief - - despite being contacted one final time by phone by court personnel on June 30, 2006, prior to the Camara dismissal.

Respondent utilized an attorney escrow account at MATCU for several years until April of 2006 where he either knew or should have known that this financial institution was not approved by this Board for maintenance of attorney escrow accounts since MATCU did not provide overdraft notification on such accounts to the Board, as is required by Tenn. R. Sup. Ct. 9, '29.1B. Consequently, the Board received no notice from the institutions of any of Respondent's MATCU escrow account overdrafts as referenced in the petitions for discipline.

The foregoing facts were established by evidence offered during the hearing of this matter, Mr. Flowers' response to the Board's request for admissions, his answer to the Second Supplemental

Petition for Discipline, and the statement of material facts not in dispute upon which partial summary judgment was granted. Based upon these facts, the hearing panel concluded as follows:

By agreeing to file and accepting fees to file petitions for review with the Sixth Circuit in these 18 immigration cases which respondent acknowledged at hearing were not meritorious, or which were frivolous, only to delay or stay final orders of deportation, respondent improperly accepted frivolous matters, and charged unreasonable fees in such cases, and engaged in conduct designed to delay or burden the Department of Homeland Security, all in violation of RPC's 1.5(a), 3.1, 4.4(a), and 8.4(a)(d). By failing to ensure there were proper deposits from clients in escrow before issuing escrow checks to courts for filing fees, and by using a financial institution for his escrow account which was not approved under the overdraft notification program, respondent has violated RPC's 1.15(a)(b), 3.4(c), and 8.4(a)(d) and Tenn. R. Sup. Ct. 9, § 29.1(A)(1). By knowingly failing to pay filing fees, to file briefs, or to comply with the Federal Rules of Appellate Procedure and with the Sixth Circuit's rules and directives, respondent has knowingly refused to comply with the rules of a tribunal imposing obligations upon him, in violation of RPC's 3.4(c) and 8.4(a)(d).

Rule 1.5(a) of the Rules of Professional Conduct requires a lawyer's fees and charges for expenses to be reasonable. Rule 3.1 provides a "lawyer shall not bring or defend or continue with the prosecution or defense of a proceeding, or assert or controvert or continue to assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law." Rule 4.4(a) prohibits a lawyer in representing his or her client from using means that have no substantial purpose other than to embarrass, delay or burden a third person. Rule 1.15(a) requires a lawyer to hold property and funds of clients or third persons separate from the lawyer's own property and funds and further requires such funds be kept in a separate account maintained in an insured depository institution which participates in the overdraft notification program as required by Supreme Court Rule 9. Rule 1.15(b) provides that upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client and shall promptly deliver to the client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such funds or other property. Rule 3.4(c) prohibits a lawyer from knowingly disobeying the rules of a tribunal. Rule 9, §29.1(a)(1) requires lawyers to maintain their client's funds in trust or escrow accounts in financial institutions approved by the Board of Professional Responsibility.

Mr. Flowers takes the position that the findings of the hearing panel were not supported by the evidence when he put forth uncontroverted testimony of his legal strategy. That strategy, based upon Mr. Flowers' testimony, was to file the appeal in order to obtain a stay of the order of deportation and, thus, delay deportation giving the client the opportunity to seek other relief from removal, to earn additional money working in this country, or to make living and transportation arrangements in and to the country of destination. Mr. Flowers apparently failed to recognize that his strategy of filing an appeal in order to delay the Department of Homeland Security from implementing the orders of deportation is precisely what is prohibited by Rule 4.4(a) of the Rules of

Professional Conduct. In the opinion of the court, the findings of the hearing panel with regard to this complaint were sustained by evidence both substantial and material in light of the entire record.

COMPLAINT OF ISATA JALLOH BY RONALD S. SALOMON, ESQ. (File No. 29134-9-JJ)

The findings of the hearing panel related to the complaint of Isata Jalloh made by Ronald S. Saloman were contained in paragraphs 55 through 57 of the Findings of Fact, Conclusions of Law and Judgment, as follows:

55. Respondent accepted representation of complainant, Isata Jalloh, on or about August 14, 2002, and represented this complainant at evidentiary hearing on her asylum application before the Immigration Judge on October 27, 2002. This complainant had undergone female genital mutilation (FGM) in her home country of Sierra Leone as a young female, but Respondent failed to inquire of her prior to hearing or question her before the Immigration Judge about this possible ground of past prosecution based on her female gender and being from that part of the world, even though Respondent knew Sierra Leone is a country known for this practice. This complainant's claim for asylum was denied by the Immigration Judge on October 27, 2002, and Respondent did file an appeal with the BIA on November 27, 2002.

56. In 2005, Ronald S. Salomon, newly-retained counsel for this complainant, wrote the Respondent on November 11, 2005, and advised Respondent that he had been retained to file a *Lozada* motion seeking reopening in Ms. Jalloh's case based on Respondent's alleged ineffective assistance of counsel for failing to inquire of the client and bring before the immigration court all avenues of possible relief in the asylum case (e.g., failure to bring the FGM claim to the court). In his February 23, 2006, reply letter to Mr. Salomon, Respondent improperly stated that if Ms. Jalloh would be filing a bar complaint with the state bar association, such fact "may affect [his] level of cooperation with your *Lozada* motion to reopen...", and that "[i]f no accompanying bar complaint is filed with the bar association, I will be free to cooperate with you in this motion. If a bar complaint is filed, I will have to consult my attorney for instructions on how to proceed." (Tr. p 230-231)

57. Between May 3, and July 6, 2006, the Board forwarded three (3) notice letters to respondent and enclosed copies of Ms. Jalloh's complaint (dated May 3, May 31, and July 5, 2006), requesting respondent to respond to the complaint, advising him that his initial response was overdue, and that a further failure to respond would result in a petition being filed with the Tennessee Supreme Court seeking the temporary suspension of his law license. Respondent did not submit his initial response in this file until July 17, 2006, and only after receiving the third notice letter.

The findings contained in the paragraph numbered 55 generally track the allegations contained in Paragraph 17 of the Second Supplemental Petition for Discipline filed by the Board.

Mr. Flowers, in his answer, admitted that he had represented Ms. Jalloh in October 2002, but stated that he did not have sufficient knowledge to respond the remaining allegations of that paragraph. During the hearing, Mr. Flowers acknowledged that female genital mutilation was practiced in Sierra Leone, but there was no evidence presented as to whether he knew it at the time he represented Ms. Jalloh. Mr. Flowers also acknowledged that he did not ask her whether she had been the victim if this practice. There is no evidence in the record that Ms. Jalloh had experienced female genital mutilation. It was not covered in the Board's request for admissions and was not included in the statement of undisputed material facts. There simply was no evidence of the remaining findings contained in paragraph 55.

The findings contained in the paragraph numbered 56 generally track the allegations contained in Paragraphs 19 and 20 of the Second Supplemental Petition for Discipline filed by the Board. In his answer, Mr. Flowers admitted receiving the inquiry from Mr. Salomon but denied writing the letter referred to in the hearing panel's findings. No evidence of that letter was introduced during the hearing of this matter. The letter was not addressed in the Board's request for admissions and it was not included in the statement of material issues not in dispute. Again, there simply was no evidence in this record that Mr. Flowers wrote the letter referred to in the hearing panel's finding other than the allegations of the Second Supplemental Petition for Discipline.

The finding contained in the paragraph numbered 57 generally track the allegations of Paragraphs 15 and 16 of the Second Supplemental Petition for Discipline. These allegations were admitted by Mr. Flowers in his answer to that petition.

Based upon its findings, the hearing panel concluded as follows:

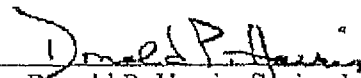
By failing to inquire about and investigate all possible avenues which could establish a basis for granting asylum for a female from Sierra Leone (such as FGM), where respondent was very familiar with conditions in this country, respondent neglected this client's legal matter in violation of DR's 1-102(A)(1)(5)(6) and 6-101(A)(3). By failing to timely respond to the Board's requests that he respond to the disciplinary complaint, respondent has violated RPC's 8.1(b) and 8.4(a)(d). By conditioning his truthfulness and level of cooperation in this former client's Lozada motion, on the client's agreement to not file a disciplinary complaint against him, respondent has violated RPC's 3.4(c), 4.4(a) and 8.4(a)(d).

The court will set aside the violations found by the hearing panel relating to neglecting his client's legal matter and conditioning his truthfulness and level of cooperation with Mr. Salomon on his former client's agreement to not file a disciplinary complaint against him on the ground these violations were not supported by evidence that was both material and substantial. The finding that Mr. Flowers failed to timely respond to the Board's requests that he respond to the disciplinary complaint was not challenged by Mr. Flowers.

## SANCTIONS IMPOSED BY THE HEARING PANEL

Mr. Flowers engaged in twenty-six courses of conduct that the hearing panel found to have violated the rules applicable to professional conduct at the time. While this court has found three of those not supported by material and substantial evidence in view of the entire record, twenty-three were supported by the evidence. The hearing panel found that several aggravating factors pursuant to ABA Standard 9.22 exist in this case. They include a prior disciplinary offense; selfish motive by failing to return unearned fees; a pattern of neglect and dilatory conduct constituting multiple offenses; his refusal to acknowledge the wrongful nature of his conduct; and an indifference to making restitution. In view of the multiple offenses that were supported by material and substantial evidence, the hearing panel's decision of a one year suspension is not arbitrary and capricious and is supported by the ABA Standards. ABA Standard 2.3 recommends disciplinary suspensions be for a period of time between six months and three years. In view of the number of violations that were supported by the evidence and the aggravating circumstances found to apply, the court is of the opinion a one-year suspension, the requirement that Mr. Flowers make restitution and the additional requirement that he petition for reinstatement were appropriate sanctions.

Counsel for the Board will prepare an appropriate order in accordance with the findings contained in this memorandum, setting aside the hearing panel's finding that Mr. Flowers violated Rule 1.4(a)(b) with regard to the complaint of Kidija Jalloh, the hearing panel's finding that Mr. Flowers neglected this client's legal matter in violation of DR's 1-102(A)(1)(5)(6) and 6-101(A)(3) in the complaint of Isata Jalloh, and the finding that Mr. Flowers violated RPC's 3.4(c), 4.4(a) and 8.4(a)(d) by conditioning his truthfulness and level of cooperation with Mr. Salomon on his former client's agreement to not file a disciplinary complaint against him also in the complaint of Isata Jalloh. In all other respects, the judgment of the hearing panel shall be affirmed and the costs of this cause shall be taxed to Mr. Flowers.

  
Donald P. Harris, Senior Judge  
Sitting by Designation of the  
Tennessee Supreme Court

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