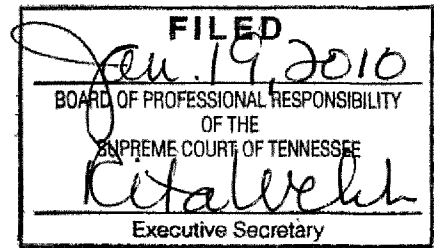


**IN THE DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**In Re: TIMOTHY DARNELL FLOWERS, Docket No. 2008-1756-9-KH
BOPR #19382, Respondent, an Attorney
License to Practice Law in Tennessee
(Shelby County)**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND JUDGMENT**

This matter came to be heard on October 21, 22 and 23, 2009 before this hearing panel of the Board of Professional Responsibility of the Supreme Court of Tennessee on a petition filed by the Board, by and through Disciplinary Counsel. Having heard and considered all testimony and evidence submitted, the Panel submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent, Timothy Darnell Flowers, is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee. The Respondent's most recent address as registered with the Board of Professional Responsibility is 200 Poplar Avenue, Suite 104, Memphis, TN 38103, being in Disciplinary District IX. His Board of Professional Responsibility number is 19382.

2. The Board filed a Petition for Discipline, Docket Number 2008-1769-9-KH, on June 20, 2008. Respondent filed an Answer to the Petition for Discipline on July 14, 2008 and an Amended Answer on July 15, 2008. The Board filed a Supplemental Petition for Discipline on August 27, 2008. The Respondent filed an Answer to the

Supplemental petition on September 17, 2008. This petition involves twelve complaints which the panel specifically addresses in seriatim.

I.

A. COMPLAINT OF FATIMATA BA – 30288-9-JJ (Petition for Discipline)

3. Fatimata Ba filed an application for asylum after entering the United States. Ms. Ba paid Respondent \$1,500.00 to represent her in the asylum matter and subsequent appeal.

4. At a hearing on the application for asylum held on September 8, 2003, the Immigration Judge denied the Complainant's request. Respondent filed an appeal of the decision denying her asylum with the Board of Immigration Appeals (hereinafter "the BIA"). The appeal was dismissed on August 26, 2004. Thereafter, Respondent filed a Petition for Review in the U.S. Court of Appeals for the Sixth Circuit on or about September 27, 2004. (Amended Answer, ¶ 11-13).

5. Respondent admits that he never filed a Notice of Entry of Appearance with the U.S. Court of Appeals for the Sixth Circuit. He further admits that this form is easily obtainable on the federal court's website and it is the requirement of the Sixth Circuit that such a Notice be filed on the case. (Amended Answer ¶¶ 14-15).

6. A briefing letter was sent by the Court on November 10, 2004 setting forth a briefing schedule. Respondent admits that by December 10, 2004, he had still not filed a Notice of Entry of Appearance and the appeal was dismissed for lack of prosecution. (Amended Answer, ¶¶ 16-17).

7. On June 19, 2007, Complainant Fatimata Ba sent a complaint to the Board regarding a complaint of disciplinary misconduct against Respondent. (Exhibit 3).

8. In a response dated June 21, 2007, Respondent generally denied the allegations in the complaint. He suggested that the Board change its procedures. (Exhibit 4).

9. Respondent testified that he does not have case file notes, time sheets, billing statements or receipts, internal memoranda, or other documents for Ms. Ba's case.

10. Respondent testified that his only purpose in filing the appeal was to stay the Order of Deportation.

11. Respondent testified that he has no documentation to demonstrate that he notified Ms. Ba that the appeal had been dismissed. Further, he has no documentation of a fee agreement. According to Respondent, his use of written fee agreements was "hit or miss".

12. Respondent also testified that in cases such as Ms. Ba's, his translator/employee would often communicate with clients in person. There was not testimony from any translator/employee. Respondent testified that he directed the translator to tell Ms. Ba about the scope of his representation.

13. Attached to Ms. Ba's complaint is a letter dated May 15, 2007 and addressed to Respondent. The letter inquires as to the status of her appeal. The appeal had been dismissed approximately two and a half years earlier. (Exhibit 3).

14. Respondent testified that he does not have documentation demonstrating whether a response was sent to her May 15, 2007 letter.

15. Ms. Ba did not testify in person or by deposition.

16. Petitioner has failed to prove by preponderance of the evidence a violation of RPC 1.4 and 3.2. However, Petitioner has demonstrated by a preponderance of the evidence a violation of RPC ,1.1, 1.3 and 1.6.

B. COMPLAINT OF ELIZABETH CUBILLOS – 30214-9-JJ (Petition for Discipline)

17. Elizabeth Cubillos hired Respondent to represent her in a removal hearing before Immigration Court in Miami, Florida. She paid Respondent \$2,000.00 in early October 2005 to secure his representation.

18. Ms. Cubillos removal hearing was set for December 12, 2005, at 1:00 p.m. in Miami, Florida. Respondent admits that on December 12, 2005, at 1:00 p.m., Respondent appeared before the Immigration Judge and orally requested a continuance so that he could have more time to prepare the case. His oral motion for a continuance was denied on the basis that he had plenty of time to prepare. (Amended Answer ¶ 25).

19. Respondent admits in his Answer that he took on representation of another client who also had a hearing set for 1:00 p.m. that same day and that he was planning to leave Miami by 4:45 p.m. (Amended Answer, ¶ 4). Respondent testified, however, that he did not promise the new client that he could represent him that day.

20. Respondent did not call Mrs. Cubillos' husband, to testify in the hearing. .

21. Ms. Cubillos' request for relief was denied by the Immigration Court. Respondent told her that she would need to pay an additional \$1,600.00 to appeal the case. Ms. Cubillos paid Respondent \$610.00 in cash immediately following the removal hearing. Further, she paid Respondent \$500.00 by money order on April 4, 2006 and \$300.00 by check on September 6, 2006. (Amended Answer, ¶¶ 32-34).

22. Respondent filed a timely Notice of Appeal with the BIA, however, he never filed anything else in the matter. Respondent did not file a brief in support of his client's appeal. Respondent did not ask for oral argument to support his client's appeal. (Amended Answer, ¶¶ 35-37).

23. For the fee, Respondent merely completed the Notice of Appeal form. (Exhibit 7). Ms. Cubillos was able to secure a copy of the Notice of Appeal from Respondent's secretary when she went to Respondent's office in April 2006. (Amended Answer, ¶ 39).

24. Respondent admits that on May 13, 2007, Ms. Cubillos discovered that her appeal had been denied on May 10, 2007 by calling an automated service for the clerk of the BIA. (Amended Answer, ¶ 42).

25. Petitioner's expert, Linda Ross and Respondent's expert, Mona Mansour each testified that it was critical for an attorney in a BIA appeal to present the best legal argument possible. For a similar fee as the Respondent charged, Ms. Mansour always filed a brief with the BIA.

26. Ms. Cubillos testified that she requested her file from Respondent who failed to provide her the file. Mr. Flowers could not state whether he did return the file.

27. As to the representation of Ms. Cubillos, the Petitioner has demonstrated by preponderance of the evidence violations of R.P.C. 1.1, 1.3, 1.4, 1.15 and 1.16. Petitioner failed to prove by a preponderance of the evidence a violation of Rule 3.2.

C. COMPLAINT OF FATMATA BARRY – 30012-9-JJ (Petition for Discipline)

28. On March 19, 2007, the Board received a complaint alleging ethical misconduct against Respondent submitted by Fatmata Barry. Ms. Barry complains that Respondent did not file a brief to support her appeal to the BIA. (Exhibit 8).

29. A notice letter and copy of the complaint was forwarded by the Board to Respondent on March 20, 2007. (Exhibit 9; Amended Answer, ¶ 50).

30. Receiving no response, the Board sent another letter dated April 30, 2007, to Respondent requesting his response to the complaint. (Exhibit 10; Amended Answer, ¶ 51).

31. Again, receiving no response, the Board sent another letter dated May 21, 2007, by certified mail to Respondent advising that a response was required. (Exhibit 11; Amended Answer, ¶ 52).

32. In an undated response received after the Board's request for response, Respondent generally denied the allegations in the complaint. The response appears to have been sent on or around June 4, 2007. (Exhibit 12; Amended Answer, ¶ 53).

33. Fatmata Barry hired Respondent to appeal a finding by an immigration judge entered in April 2005 that denied her request for asylum. (Amended Answer, ¶ 55). She paid Respondent \$1,000.00 to appeal the case. Respondent filed a timely Notice of Appeal on May 25, 2005. Respondent did not request an opportunity to file a brief or to make oral argument. (Amended Answer, ¶¶ 56-57). The BIA affirmed the Immigration Judge's denial of Ms. Barry's application for asylum. (Amended Answer, ¶ 58).

34. Petitioner has demonstrated by preponderance of the evidence violation of R.P.C. 1.1, 1.3, 1.15(a) and 8.1(b). Specifically, Respondent failed to file a brief.

Respondent's expert testified that she always filed a brief when handling an appeal to the BIA. Respondent's failure to do so demonstrates a lack of competence and diligence as required by the rules. Finally, Respondent's continued neglect to file a response to board complaints violates 8.1.

35. Petitioner claims that Respondent failed to communicate with Ms. Barry. Fatmata Barry did not testify. Respondent testified that he always communicated with Ms. Barry through an interpreter and that he did inform Ms. Barry of the outcome of the appeal. Petitioner has failed to demonstrate by preponderance of the evidence violations of R.P.C. 1.4, and 3.2.

D. COMPLAINT OF NESTOR RAUL GARCIA/KARL WARDEN – 29918-9-JJ (Petition for Discipline)

36. On May 9, 2005, an Immigration Judge in Miami, Florida ruled that Nestor Raul Garcia failed to provide the need for asylum. On May 25, 2005, Mr. Garcia retained Respondent to represent him in an appeal of the May 9, 2005 decision. Complainant paid \$1,130.00 to Respondent for legal services. (Amended Answer, ¶¶ 67-68).

37. Within the next few weeks, Mr. Garcia called Respondent inquiring about the status of the appeal. Respondent told him that everything was fine and that the appeal had been filed. (Amended Answer, ¶ 75).

38. Respondent admits that Mr. Garcia made numerous attempts to communicate with Respondent from May 25, 2005 until October 2005. (Amended Answer, ¶ 75). Mr. Garcia was never informed that the Notice of Appeal was not filed. He was informed that "everything is fine" and "the appeal has been filed". (Amended Answer, ¶ 75).

39. Respondent admits that he did not file a timely Notice of Appeal.

Respondent should have filed the Notice of Appeal by June 8, 2005; however, it was not filed until November 11, 2005. Respondent admits that the appeal was not timely and that he filed a Motion to Accept Late Filing requesting permission to late file the appeal. Respondent claimed that his failure to file the appeal was due to clerical error by a staff person in his office. Respondent claimed that the error demonstrated ineffective assistance of counsel as a basis for requesting permission to file the Notice of Appeal late. (Amended Answer, ¶ 70).

40. The Respondent's Motion to Accept Late Filing was denied. As part of its Order, the BIA stated that any further challenges or attempts to reopen the case should be filed with the Immigration Court. (Amended Answer, ¶¶ 72-73).

41. Mr. Garcia was not informed by Respondent or Respondent's office that the Notice of Appeal had not been filed.

42. It was not until late October or early November 2005 that Respondent told Mr. Garcia that the Notice of Appeal had not been filed.

43. On February 15, 2007, the Board received a complaint alleging ethical misconduct against Respondent submitted by Attorney Karl Warden on behalf of Nestor Raul Garcia. (Exhibit 13).

44. A notice letter and copy of the complaint were forwarded by the Board to Respondent on February 20, 2007. (Exhibit 14; Amended Answer, ¶ 63). Receiving no response, Petitioner sent another letter dated April 16, 2007 requesting a response. Respondent finally provided a response. (Amended Answer, ¶¶ 64-65).

45. There was much focus by parties on the circumstances of the making and execution of Mr. Garcia's affidavit in support of the Motion to Accept a late filing. Both Mr. Garcia and Respondent testified about the making of the affidavit.

46. The Panel finds that Mr. Garcia read and understood the contents of the affidavit. Indeed, he admitted on cross-examination that he could speak and read English.

47. The Panel finds that there was a conflict between Mr. Garcia and the Petitioner when the affidavit was executed. Although the better practice would have been to have Mr. Garcia consult another attorney before execution of the affidavit, Mr. Garcia was properly advised in the affidavit of the conflict and waived the conflict in the affidavit.

48. Petitioner has proven by preponderance of the evidence violations of R.P.C. 1.1, 1.3, 1.4 and 8.1(b).

49. Petitioner has failed to prove by preponderance of the evidence a violation of Rule 1.15(a), 1.7(b) and 3.2.

E. COMPLAINT OF M'MAH SIRA CAMARA – 29659-9-JJ (Petition for Discipline)

50. On November 2, 2006, the Board received a complaint alleging ethical misconduct against Respondent submitted by Complainant M'Mah Sira Camara including a sworn affidavit supporting her allegations. (Exhibit 22).

51. M'Mah Sira Camara hired Respondent to represent her in removal proceedings before the Immigration Court in Memphis, Tennessee. The hearing was held on February 5, 2004. Her request for asylum was denied.

52. M'Mah Sira Camara is a Muslim from Guinea. She was a victim of female genital mutilation in her native country. Female genital mutilation ("FGM") is a common practice in Guinea among Complainant's ethnic group. It is considered a permanent and continuing act of persecution which might be sufficient to gain asylum. Respondent did not raise the issue of FGM before the immigration court.

53. Mona Mansour, Esquire, testified as an expert witness for Respondent on a number of issues. She agreed that female mutilation ("FGM") is a common practice in Guinea. It can be considered a permanent and continuing act of persecution which is typically sufficient to gain asylum.

54. Respondent testified that Ms. Camara told him that the basis of her petition was political persecution. Respondent testified that he did not inquire about FGM when interviewing Ms. Camara. However, Respondent did ask if there were other reasons. Ms. Camara did not provide any other reasons.

55. M'Mah Sira Camara did not testify live or by deposition.

56. Petitioner has failed to prove by preponderance of the evidence any violation of the Rules of Professional Conduct as it relates to the Complainant.

F. COMPLAINT OF CAMILO RODRIGUEZ – 29979-9-JJ (Petition for Discipline)

57. On March 6, 2007 the Board received a complaint alleging ethical misconduct against Respondent submitted by Camilo Rodriguez.

58. Camilo Rodriguez hired Respondent to represent him in an appeal of an asylum case in June 2005. Respondent told Camilo Rodriguez that his fee would be \$2,500.00. Complainant paid \$1,100.00 on the same date as the initial consultation. (Amended Answer, ¶¶ 91-93).

59. Respondent filed a Notice of Appeal to the BIA. (Exhibit 21).

60. In box 6 of the Notice of Appeal, Respondent simply posted the following issue for appeal: "Whether the Immigration Judge erroneously (sic) found the respondents to not have meet (sic) her (sic) burden of proof for asylum, withholding of removal and relief under the Torture Convention?". (Exhibit 21).

61. Respondent did not request oral argument or an opportunity to file a brief in the appeal. A briefing schedule was set by the BIA. (Amended Answer, ¶ 95).

62. Respondent indicated that he would not file a brief in the appeal, therefore, no further legal argument would be made. (Amended Answer, ¶ 95).

63. A briefing schedule was set by the BIA, however. Respondent did not file a brief.

64. Mr. Rodriguez testified by way of deposition. He was a well-known anthropologist in Columbia employed by the government in an area of the country where there was construction of a pipeline. Mr. Rodriguez's public statement concerning the pipeline made him a target of FARC for violence or death.

65. Mr. Rodriguez testified that he did not hear from Respondent for many months after he retained him. He said that he made several telephone calls to Respondent but was unable to obtain any information.

66. Mr. Rodriguez visited Memphis in February and found Respondent in front of the immigration office. He had a translator, Maria Izasa with him. According to Mr. Rodriguez and Ms. Izasa, Respondent indicated that everything was fine and that he would inform Mr. Rodriguez about the appeal.

67. Mr. Rodriguez learned that the appeal was denied when his work permit was revoked.

68. After learning of the outcome of the appeal, Mr. Rodriguez went to the office to secure his file. He observed that there were files and records on the floor. Ms. Izasa confirmed the testimony that Respondent's offices were in a state of disorganization when she visited. He requested a copy of his file from the Respondent and it was never provided.

69. Jennifer Hall, an immigration lawyer from Kentucky testified that she eventually represented Mr. Rodriguez and his family. Ms. Hall testified that Mr. Rodriguez's daughter was actually deported to Columbia as a result of the Rodriguez family not being informed about the denial of Mr. Rodriguez's appeal. Ms. Hall was eventually successful in having the daughter returned to the United States.

70. Respondent did not offer any records that he timely informed Mr. Rodriguez of the outcome of the appeal or any notes indicating attempts made to communicate with Mr. Rodriguez.

71. Petitioner has proven by preponderance of the evidence violation of Rule 1.1, 1.3, 1.4, 1.15, and 1.16(d).

G. COMPLAINT OF ILIYASSOU BAH – 29690-9-JJ (Supplemental Petition for Discipline)

72. Respondent was retained by Iliyassou Bah in December 2003 to represent her in a removal proceeding before the Immigration Court in Memphis, Tennessee, for a fee of \$1,500.00. Complainant is from Guinea. (Answer to Supplemental Petition, ¶ 18).

73. Ms. Bah's application was denied on the basis that she needed corroborating proof of FGM. (Answer to Supplemental Petition, ¶ 22).

74. On October 20, 2006, Complainant Ilayassou Bah sent a complaint to the Board including several exhibits supporting her complaint. (Exhibit 24).

75. The Board forwarded a copy of this complaint to Respondent on November 15, 2006. (Exhibit 25; Answer to Supplemental Petition, ¶ 6).

76. Having received no response from Respondent, the Board sent a letter dated December 4, 2006, to Respondent advising that his response was late. (Exhibit 26).

77. Again, having received no response from Respondent, the Board sent a letter dated February 13, 2007, informing Respondent of the potential consequences of his failure to respond. (Exhibit 27; Answer to Supplemental Petition, ¶ 8).

78. On August 22, 2007, Disciplinary Counsel sent a facsimile to Respondent advising him that the Board was still missing an initial response to Complaint No. 29690-9-JJ. (Answer to Supplemental Petition, ¶ 9).

79. Having still received no response from Respondent, the Board sent a Notice of Petition for Temporary Suspension to Respondent via certified mail on May 4, 2007. (Exhibit 28; Answer to Supplemental Petition, ¶ 10).

80. Despite the Notice of Temporary Suspension, the Board still received no response from Respondent. (Answer to Supplemental Petition, ¶ 11).

81. Disciplinary Counsel sent a facsimile to Respondent on October 31, 2007, alerting him that no response had been received and that he should send a response by November 16, 2007. (Exhibit 29; Answer to Supplemental Petition, ¶ 11).

82. Respondent sent a letter to the Board dated January 28, 2008, requesting more time in which to answer the complaint. Respondent agreed to provide a written response and corroborating evidence on February 1, 2008, the date of a scheduled meeting between Respondent and Disciplinary Counsel. (Answer to Supplemental Petition, ¶ 12).

83. On April 2, 2008, Disciplinary Counsel sent another notice of Temporary Suspension. (Exhibit 31; Answer to Supplemental Petition, ¶ 13).

84. He did not provide a written response until April 14, 2008. (Answer to Supplemental Petition, ¶14; Exhibit 30).

85. Respondent filed a timely appeal for Ms. Bah on April 27, 2004. However, the appeal was dismissed on October 14, 2005. Ms. Bah then asked Respondent to file an appeal with the Sixth Circuit Court of Appeals. She hired Respondent to file the federal appeal for a fee of \$3,250.00. She paid \$1,000.00 of the total fee on or around October 20, 2005, to begin the work. (Answer to Supplemental Petition, ¶ 27).

86. Respondent admits that the petition for review at the Sixth Circuit Court of Appeals was due on November 14, 2005. (Answer to Supplemental Petition, ¶ 28).

87. Respondent testified that he was unable to locate his client after filing the petition for review. (Answer to Supplemental Petition, ¶ 28).

88. Respondent testified that the petition for review was dismissed on or around February 22, 2006, due to Respondent's failure to comply with the briefing schedule set by the Sixth Circuit Court of Appeals.

89. Respondent testified that since Ms. Bah's check was returned, he just let the case "lapse." Therefore, he did not comply with the briefing schedule set by the court.

90. Respondent testified that he had no documentation demonstrating that he attempted to locate his client and notify her of the status of the appeal.

91. Petitioner has proved by preponderance of the evidence an egregious violation of Rule 8.1(b) by the Respondent.

92. Complaint Bah did not testify live or by deposition. (Answer to Supplemental Petition, ¶ 94). Respondent testified that he, through an interpreter gave Ms. Bah clear instructions regarding the need for corroborating evidence of FMG. According to the unrecbutted testimony, Ms. Bah did not produce the evidence and the petition for asylum was denied. (Answer to Supplemental Petition, ¶ 94). Based upon the uncontroverted testimony of Respondent, the panel finds that the Petitioner failed to demonstrate by a preponderance of the evidence a violation of Rules 1.1, 1.3, 1.4, 3.1 and 3.2 of the Rules of Professional Conduct.

H. COMPLAINT OF AYAN ADEN ROBLE – FILE NO. 29715-9-JJ
(Supplemental Petition for Discipline)

93. On November 27, 2006, the Board received a complaint from Ayan Aden Roble. (Exhibit 32).

94. A copy of the complaint was sent to Respondent. Respondent repeatedly failed to timely respond to the request for information. (Exhibits 33-39).

95. Respondent represented Ayan Aden Roble in the completing and filing of her asylum claim before the Houston Asylum Office, the Memphis Immigration Court, and the Board of Immigration Appeals (“BIA”). (Answer, Supplemental Petition, ¶ 37).

96. Respondent filed an appeal to the BIA on behalf of this client, but he did not file a brief. The appeal to the BIA was denied. (Answer, Supplemental Petition, ¶ 39).

97. Respondent advised Ms. Roble that she could file a petition for review to the Sixth Circuit Court of Appeals; however, he advised her that he would not file it for her. (Answer, Supplemental Petition, ¶ 41).

98. Petitioner has demonstrated by a preponderance of the evidence violations of Rule 1.1, 1.3 and 8.1(b).

99. Petitioner failed to demonstrate by a preponderance of the evidence violations of Rules 1.4, 1.16(d) and 3.2 of the Rules of Professional Conduct.

I. COMPLAINT OF AMADOU W. BARRIE – FILE NO. 29922-9-JJ
(Supplemental Petition for Discipline)

100. Respondent was retained to represent Amadou Barrie in an asylum case for a fee of \$1,500.00. (Answer, Supplemental Petition, ¶ 51).

101. At the first hearing before the Immigration Judge in 2002, another attorney from Respondent’s office, Wendy Newberry, represented Mr. Barrie. His application for political asylum was granted. (Answer, Supplemental Petition, ¶¶ 52-53). Petitioner claims that several months later, Mr. Barrie received a call informing him that the Immigration Judge was requesting original documents (birth certificate, etc.) rather than the copies that had been provided to the Court.

102. Petitioner claims that he had already provided the originals to Respondent and that in an effort to comply with the Court's request, Mr. Barrie made a special trip to Washington, D.C. to the Sierra Leone Embassy for another set of original documents. Petitioner asserts that he provided the new set of original documents to Respondent.

103. On May 20, 2004, the Judge denied the application for asylum. Petitioner claims the denial was due to the deficiencies with the documentation submitted by Respondent.

104. Also on May 20, 2004, Mr. Barrie directed Respondent to appeal the finding by the Immigration Judge. Respondent agreed to prepare a notice of appeal to the BIA for a fee of \$650.00. On August 12, 2005, the BIA dismissed the appeal. (Answer, Supplemental Petitioner, ¶ 63).

105. Mr. Barrie did not appear at the hearing either live or by deposition. Respondent testified that Mr. Barrie never produced any additional documentation relating to the birth certificate and the asylum petition was denied. Respondent testified that he called Mr. Barrie and advised him of the adverse decision. This testimony is un rebutted.

106. On February 21, 2007, the Board sent a letter advising Respondent of Complaint No. 29933-9-JJ and requesting a response. (Answer, Supplemental Petition, ¶ 44; Exhibit 33).

107. Having received no response, the Board sent a letter to Respondent on March 20, 2007, advising of the potential consequences of failing to respond to a complaint of misconduct. (Answer, Supplemental Petition, ¶ 45; Exhibit 35).

108. Having still received no response, the Board sent a Notice of Petition for Temporary Suspension to Respondent on March 30, 2007. (Answer, Supplemental Petition, ¶ 46; Exhibit 36).

109. On or around April 9, 2007, (as indicated by the facsimile stamp), Respondent sent Answer to Summary of Complaint to the Board. (Answer, Supplemental Petition, ¶ 48; Exhibit 37).

110. The Board sent another request to Respondent on January 18, 2008 advising Respondent that a copy of his client file and other documentation was needed. (Answer, Supplemental Petition, ¶49; Exhibit 38).

111. The Board sent a letter on April 2, 2008, to Respondent advising him that his immediate attention was required to the information required in the January 18, 2008 letter. The requested documents were never provided. (Answer to Supplemental Petition, ¶50; Exhibit 39).

112. Petitioner has proven by a preponderance of the evidence a violation of Rule 8.1(b). Petitioner had failed to prove any other violation in connection with Mr. Barrie.

J. COMPLAINT OF ALEX TANDIONO – FILE NO. 30827c-9-JJ
(Supplemental Petition for Discipline)

113. On October 11, 2007, the Board received a complaint of misconduct filed by Alex Tandiono. (Exhibit 40).

114. On February 8, 2008, the Board forwarded a copy of the complaint to Respondent requesting a response within ten (10) days. (Answer, Supplemental Petition, ¶ 71; Exhibit 41).

115. Having received no response, the Board sent a Notice of Temporary Suspension to Respondent on February 28, 2008 (Answer, Supplemental Petition, ¶ 72; Exhibit 42).

116. On March 12, 2008, Respondent faxed an Answer to Complaint to the Board. (Answer, Supplemental Petition, ¶ 73; Exhibit 43).

117. On March 13, 2008, Disciplinary Counsel sent a letter to Respondent acknowledging receipt of the Answer and requesting documents and further information. (Answer, Supplemental Petition, ¶ 74; Exhibit 44).

118. Having received no response to the March 13, 2008 letter, the Board sent a letter on March 28, 2008, again requesting additional information. (Answer, Supplemental Petition, ¶ 75; Exhibit 45).

119. Having still received no response, the Board sent another letter on April 16, 2008, requesting a response. (Answer, Supplemental Petition, ¶ 76; Exhibit 46).

120. Respondent was retained by Alex Tandiono to represent him in an appeal to the BIA. (Answer, Supplemental Petition, ¶ 78).

121. Respondent testified that he cannot confirm whether he sent Mr. Tandiono notice of the outcome of the appeal. The appeal was denied.

122. On May 9, 2007, Mr. Tandiono applied to renew his work permit. On August 20, 2007, he received notice that the application for renewal of the work permit had been denied on the basis that the appeal to the BIA had been dismissed. He was informed that the BIA denied Complainant's appeal and issued a final voluntary removal Order on March 19, 2007. Respondent did receive the Order but failed to communicate with his client.

123. Mr. Tandiono decided to terminate Respondent's services and requested a copy of his file be sent. Respondent's office advised his wife that he needed to send \$20.00 in order to get the file. His wife sent the money and a letter requesting the file on or around August 27, 2007. (Answer, Supplement Petition, ¶¶ 84-85).

124. Respondent admits that as of the date of the complaint, he has failed to return the file to Mr. Tandiono or his new counsel. (Answer, Supplemental Petition, ¶ 86). In his response, Respondent admits that he has misplaced Mr. Tandiono's file. Further, he admits that the appeal to the BIA was denied on March 19, 2007. He cannot confirm whether notice was ever sent to Mr. Tandiono of the denial.

125. Petitioner has demonstrated by a preponderance of the evidence violations of Rule 1.1, 1.3, 1.4, 1.15, 1.16 and 8.1(b) of the Rules of Professional Conduct.

K. COMPLAINT OF AMADOU LY – FILE NO. 30915c-9-JJ (Supplemental Petition for Discipline)

126. On December 21, 2007, the Board received a complaint from Amadou Ly, by and through counsel, Chaba Samb. (Exhibit 47).

127. Having received no response to Disciplinary Counsel's letter, the Board sent a Notice of Petition for Temporary Suspension on March 18, 2008. (Answer, Supplemental Petition, ¶ 90; Exhibit 48).

128. Respondent faxed an Answer to Summary of Complaint to the board on March 31, 2008. (Answer, Supplemental Petition, ¶ 91; Exhibit 49).

129. On April 1, 2008, the Board sent a letter to Respondent requesting further information. (Answer, Supplemental Petition, ¶ 93).

130. Having received no response to the April 1, 2008 letter, the Board sent another letter dated April 16, 2008, to Respondent requesting the additional information. (Answer to Supplemental Petition, p. 10).

131. Having still received no response, the Board sent a letter dated May 19, 2008, requesting the additional information. (Answer, Supplemental Petition, ¶ 94).

132. Respondent was retained by Amadou Ly to represent him in an appeal to the BIA for a fee of \$500.00. Mr. Ly's application for asylum had been denied by the Immigration Court on February 22, 2000. (Answer, Supplemental Petition, ¶ 97).

133. Respondent filed a notice of appeal and an attachment raising issues concerning the denial of asylum. He failed to provide answers to the issues raised or provide support for his client's position justifying asylum. Respondent did not file a brief. The appeal to the BIA was denied on March 23, 2003. (Answer, Supplemental Petition, ¶ 98).

134. Respondent cannot produce a fee agreement or documentation limiting the scope or representation.

135. Petitioner has demonstrated by a preponderance of the evidence violations of Rule 8.1(b) of the Rules of Professional Conduct. Petitioner failed to demonstrate by a preponderance of the evidence any other violations.

L. COMPLAINT OF PEDRO FERNANDEZ-MARTINEZ – FILE NO. 30916c-9-JJ (Supplemental Petition for Discipline)

136. On November 30, 2007, the Board received a complaint from Pedro Fernandez-Martinez regarding ethical misconduct by Respondent. The complaint was originally assigned to CAP, however, it was reassigned to Disciplinary Counsel due to Respondent's failure to respond. (Exhibit 50).

137. Having received no response to Disciplinary Counsel's letter, the Board sent a Notice of Petition for Temporary Suspension to Respondent on March 18, 2008. (Answer, Supplemental Petition, ¶ 104; Exhibit 51).

138. On March 31, 2008, Respondent faxed an Answer to Summary of Complaint including attachments relating to the Complainant's case. (Answer, Supplemental Petition, ¶ 105; Exhibit 52).

139. On April 1, 2008, the Board sent Respondent a letter requesting additional information. (Answer, Supplemental Petition, ¶ 106; Exhibit 53). Respondent represented Pedro Fernandez-Martinez telephonically before the Louisiana Immigration Court on June 20, 2007, July 3, 2007, August 14, 2007, September 12, 2007, September 19, 2007, and October 24, 2007 in his deportation matter. The case was set for a merits hearing on November 27, 2007. (Answer, Supplemental Petition, ¶ 108).

140. Respondent admits that on November 6, 2007, he discovered that a preliminary hearing was set in a first-degree murder case in which he represented a defendant on the same date as Pedro Fernandez-Martinez's hearing. Respondent filed a Motion to Continue the matter, however, he failed to include any specific reasons that would support a finding of good cause for the continuance. (Answer, Supplemental Petition, ¶¶ 110-111).

141. Respondent now admits that he did not review or sign the Motion to Continue. He admits that his paralegal drafted and signed his name to the Motion.

142. The Court denied the Motion on November 20, 2007. Respondent filed a Motion to Reconsider on November 26, 2007 setting out reasons for the continuance.

The Motion to Reconsider was denied on the same date. (Answer, Supplemental Petition, ¶¶ 112-114).

143. The hearing went forward on November 27, 2007, without Respondent or any legal representative on behalf of Mr. Fernandez-Martinez. The court ordered that the Complainant be deported. (Answer, Supplemental Petition, ¶ 117).

144. Complainant paid Respondent a total of \$3,300.00 in legal fees.

145. Respondent did not return any of the fees to the complainant.

146. The Board finds by preponderance of the evidence violations of Rule 1.1, 1.3, 1.4, 1.6, 8.1(b) and 8.4(a)(d).

II.

CONCLUSIONS OF LAW

After a full review of the pleadings, evidence and testimony presented to the Hearing Panel, this Panel finds that the Board has shown by a preponderance of the evidence that Respondent Timothy Darnell Flowers, a licensed attorney in the State of Tennessee has violated various Rules of Professional Conduct.

A. Lack of Competence and Diligence

In eight cases as set forth above, the facts support a conclusion that Respondent violated R. P. C. 1.1 and 1.3. Respondent failed to act diligently in pursuing his clients' interest in multiple cases, including the cases of Fatimata Bah, Elizabeth Cubillos, Fatimata Barry, Nesterio Roul Garcia, Camilo Rodriguez, Ayan Aden Roble, Alex Tandiona and Pedro Fernandez-Martinez. Respondent charged fees for filing appeals to the BIA but only filled out an appeal form and then did so without any analysis. He elected not to file a brief or make oral arguments in these cases. Each of the immigration

lawyers who testified indicated they nearly always made a detailed analysis of the issues and filed briefs on these appeals. It was incumbent upon Mr. Flowers to act competently and diligently in pursuing these claims. He totally failed to provide competent and diligent representation to these clients.

B. Lack of Communications

In five of the cases, Petitioner has proven that Respondent failed to properly communicate with his clients and failed to keep his clients informed about the status of the case. Those cases include Elizabeth Cubillos, Nestor Raul García, Camilo Rdoriguez, Alex Tandiona and Pedro Fernancez-Martinez. For example, Mr. Rodriguez learned his appeal had been dismissed when his employment authorization was denied. Ms. Isaza and Mr. Rodriguez testified that Respondent's office and filing system was a disaster. Respondent admits that his office was disorganized and that he was often unable to locate files. In many instances, he was unable to produce a file when requested by a former client. In most of the cases in question in this matter, Respondent failed to produce any correspondence indicating regular and routine communications with his client. Respondent has violated R.P.C 1.4 on multiple occasions.

C. Failing to Maintain Client's File and Failing to Promptly Termination Representation

In a few instances, Respondent did a minimum amount of work on a file and did not refund the fee when their appeals were not timely filed or he did not appear at a hearing. For example, Respondent did not refund any portion of the \$3,300.00 fee he obtained from Mr. Martinez for a hearing that Respondent failed to attend and the client was deported. In several instances, including, Cubillos, Roble and Tandiono, Respondent

failed to provide his clients with their files when the representation was terminated. The facts in these matters and others indicate that Respondent violated R.P.C. 1.15 and 1.16.

**D. Meritorious Claims and Contentions; Expediting
Litigation and Candor toward the Tribunal**

The Panel concludes that the Petitioner has failed to prove by preponderance of the evidence any violations of Rule 3.1, 3.2 and 3.3.

E. Disciplinary Matters and Misconduct

Respondent knowingly and repeatedly failed to respond to lawful demands for information from the Board. (Barry, Garcia, Bah, Roble, Barric, Tandiono, Ly, Fernandez-Martinez). Several instances of failing to answer legitimate requests of the Board were egregious violations requiring the Petitioner to send four or five requests for information. Respondent completely failed to offer a legitimate explanation for these failures. Petitioner has demonstrated a pattern of persistent violations of R.P.C. 8.1.

F. Misconduct

R.P.C. 8.4(a) provides that it is professional misconduct for a lawyer to violate a Rule of the Rules of Professional Conduct. Further, Rule 8.4(d) provides that it is professional misconduct to engage in conduct that is prejudicial to the administration of justice. After hearing all the evidence, this Panel concludes that Respondent's lack of diligence and competency, his failure to communicate, and other violations set forth above rise to the level of misconduct pursuant to R.P.C. 8.4(a).

III. ABA STANDARDS FOR IMPOSING LAWYER'S SANCTIONS

Having concluded that the Respondent has violated numerous Rules of Professional Conduct, the Panel must consider the ABA Standards to determine the appropriate disciplinary action. The Panel concludes that Standards 4.4-- Lack of

Diligence; 4.5-- Lack of Competence; 4.6-- Lack of Candor; 7.0 --Violations of Duties Owed to the Profession; and 8.0 Prior Disciplinary Orders each apply in this situation.

AGGRAVATING FACTORS

Pursuant to A.B.A. Standard 9.22 and 9.32 the Panel must consider any aggravating or mitigating factors. The Panel first notes that there are no mitigating factors that apply in this situation, but there are several aggravating factors.

The Panel must consider prior disciplinary actions. Respondent was administratively suspended numerous times for failing to comply with Rules regarding Registration Fees and CLE compliance. He was summarily suspended on September 7, 2004 for failure to comply with CLE. He was summarily suspended on September 25, 2005 for failure to pay Board Registration Fees. He was summarily suspended on October 3, 2005 for failing to comply with CLE. The Panel notes that he received a disciplinary suspension of one (1) year following a formal hearing process. Chancery Court affirmed the one (1) year suspension and the case is now pending on appeal to the Supreme Court.

Another factor to consider for aggravation is whether there is a pattern of misconduct and multiple offenses. Having reviewed all the evidence the Panel concludes that there is indeed a pattern of misconduct involving multiple offenses which are set forth in detail above. Another potentially aggravating factor is the vulnerability of the victim. There was much discussion by the Respondent about the reasoning of In Re Lozado and the motive of complainants seeking asylum to argue the ineffective assistance of counsel. The Panel remained cognizant of the possible improper motive of complainants. However, having reviewed all the evidence including live and deposition

testimony, the Panel finds that many of the complainants in this matter were vulnerable to abuse in our system. Most did not speak English and feared involvement with the authorities. Respondent took advantage of the vulnerability of many of the complainants, taking their money for services that were not rendered.

Respondent is not a new practitioner. Rather, he has been practicing law for more than ten years and has had substantial experience in the area of immigration law. The pattern of violations and misconduct was not caused by lack of experience as a lawyer but rather by a deliberate method of practicing law. The Panel further notes that Respondent was indifferent to making restitution to complainants and in particular, Mr. Fernandez-Martinez from whom Respondent received a fee of \$3,300.00 and for whom he failed to appear at the hearing. The complainant was deported and Respondent made no effort to reimburse any part of the fee. The Panel considers the lack of effort to make restitution another aggravating factor.

JUDGMENT

Based on the foregoing facts and conclusions of law, including the aggravating factors set forth, the Panel concludes that the established violations of the Rules of Professional Conduct, many of which were admitted by the Respondent, justifies a suspension of the Respondent's license in the practice of law for a period of three (3) years. The Panel further finds that Respondent's reinstatement should be conditioned upon the filing of a petition for reinstatement under Rule 9, Section 19, in full compliance with the requirements of both the reinstatement committee and the Supreme Court. The Panel further finds that when reinstated there should be close monitoring of Respondent's practice especially in the area of law office management to assure that there are no

further violations. The Panel further finds that the Respondent should be required to pay all of the Board's costs pursuant to Rule 9, Section 24.3. The Panel also finds that Respondent should be ordered to make restitution of the unearned fee of \$3,300.00 for Mr. Fernandez-Martinez.

Respectfully submitted,

By:

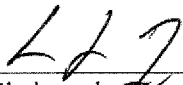


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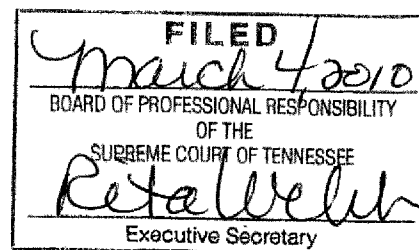


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**IN THE DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**In Re: TIMOTHY DARNELL FLOWERS,
BOPR #19382, Respondent, An Attorney
Licensed to Practice Law in Tennessee
(Shelby County)**

Docket No. 2008-1756-9-KH

**ORDER ON MOTION TO ALTER OR AMEND
JUDGMENT OF HEARING PANEL**


This matter came to be heard on a Motion to Alter or Amend Judgment of Hearing Panel filed by the Petitioner, the Board of Professional Responsibility of the State of Tennessee. Having carefully considered the motion, the hearing panel finds that the motion is well taken and that the panel should address whether the three (3) year suspension would run concurrently or consecutively to the suspension in the prior matter in the event that the Supreme Court affirms all or part of the one (1) year suspension. Having carefully considered the matter the Hearing Panel finds and hereby orders that the three (3) year suspension will run concurrently to the suspension in the prior matter in the event that the Supreme Court affirms all or part of the one year suspension.


SO ORDERED on this 2nd day of March, 2010, by me as the Hearing Panel Chair.

A handwritten signature in cursive script, reading "Donald A. Donati". The signature is written in black ink and is positioned above a horizontal line.

Donald A. Donati
Hearing Panel Chair

APPROVED:

Kenneth R. Rudstrom by 
Kenneth R. Rudstrom, Esq.

Christopher L. Taylor by 
Christopher L. Taylor, Esq.