

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1250 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 18 DB 2007
v.	:	
	:	Attorney Registration No. 20802
	:	
MICHAEL LEVINE,	:	
Respondent	:	(Out of State)

ORDER

PER CURIAM:

AND NOW, this 1st day of June, 2007, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated March 21, 2007, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Michael Levine is suspended on consent from the Bar of this Commonwealth for a period of one year, to run consecutive to the suspension imposed by this Court on June 20, 2006, at No. 1129 Disciplinary Docket No. 3, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: June 1, 2007

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL : No. 18 DB 2007
Petitioner :
v. : Attorney Registration No. 20802
MICHAEL LEVINE :
Respondent : (Out of State)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Marc S. Raspanti, Laurence H. Brown and Robert E. J. Curran, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on February 21, 2007.

The Panel approves the Joint Petition consenting to a one year suspension to run consecutive to the one year and one day suspension ordered on June 20, 2006 at No. 1129 Disciplinary Docket No. 3 and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney after the imposition of discipline.


Marc S. Raspanti, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: March 21, 2007

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. ___ Disciplinary Docket No. ___
Petitioner :
: Disciplinary Board No. R DB 2007
:
: Attorney Registration No. 20802
MICHAEL LEVINE :
Respondent : (Out of State)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT PURSUANT TO RULE 215(d), Pa.R.D.E

The Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patti S. Bednarik, Esquire, Disciplinary Counsel, and the Respondent, Michael Levine, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully state and aver the following:

1. Respondent, Michael Levine, was born in 1943, was admitted to practice law in the Commonwealth of Pennsylvania on April 4, 1975, maintains his residence at 17600 N. Bay Road, #906, Sunny Isles, FL 33160, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

2. The Office of Disciplinary Counsel received four complaints against Respondent from his former clients for his handling of their immigration matters: Krassas, Covone, Peterkin and Barnes. Petitioner sent DB-7 Letters and DB-7A Letters to Respondent about these matters, and Respondent answered these letters.

3. Mr. Levine is unrepresented by counsel in these proceedings, but he consulted with counsel prior to signing this Joint Petition.

FILED

FEB 21 2007

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

4. After reviewing all the evidence, Respondent, Michael Levine, has agreed to enter into this Joint Petition.

Specific Factual Admissions and
Rules of Professional Conduct Violated

A. KRASSAS MATTER

5. Ms. Amparo Krassas retained Respondent to help her change her immigration status to permanent resident status.

6. Ms. Krassas signed a retainer agreement on April 30, 2005. At that time, Ms. Krassas paid Respondent a non-refundable retainer of \$1,200 and Respondent advised her paperwork she would need to give to him to submit to USCIS with her immigration application.

7. On May 9, 2005, Ms. Krassas met with Respondent again, gave him \$745 in filing fees for filing an I-130, an I-485, an I-765 and for the costs of fingerprints. Ms. Krassas paid all the fees and costs in full by May 9, 2005, and gave Respondent all the documentation that he required in order to submit an application to change her immigration status.

8. Respondent had two accounts at Wachovia Bank, Account No. 2000016074236, which is Respondent's Trust Account (hereinafter Trust Account), and Account No. 2000143926793, which was Respondent's Business Operations Account (hereinafter Operations Account).

9. On May 10, 2005, Respondent deposited Ms. Krassas' filing fee into his Trust Account. Respondent told Ms. Krassas that he would file the paperwork in about a week.

10. About two months later, on or about July 7, 2005, Respondent filed the paperwork for Ms. Krassas' case with the INS; however, he failed to sign the check

drawn on his Trust Account, and there were numerous mistakes in the application that he submitted to USCIS.

11. Ms. Krassas received a Rejection Notice from INS dated July 14, 2005, which stated that her paperwork had been received on July 11, 2005, but her Application package was rejected due to Respondent's failure to remit the filing fees, and the deficiencies in the application documents; e.g., Respondent failed to fill in Ms. Krassas' Country of Birth and other required information.

12. By the end of business on July 14, 2005, Respondent's Trust Account showed a deficit of \$1,267.28. Respondent still had not made any disbursements from the account on behalf of Ms. Krassas and he should have been maintaining the filing fees that she had paid him, \$745, in an account separate and apart from his personal funds.

13. The Rejection Notice explained that a priority date could not be established, and Respondent should resubmit the entire application with the proper documentation to the address listed on the bottom of the Rejection Notice with the correct costs for filing fees.

14. Ms. Krassas made numerous telephone calls to Respondent and follow-up visits in order to get Respondent to correct the deficiencies in the documents that he prepared on her behalf.

15. By July 14, 2005, Respondent was out of trust with respect to the \$745 Ms. Krassas had paid him for filing fees since he had not yet disbursed any funds on her behalf. By July 14, 2005, Respondent had depleted all the money in his Trust Account and showed a deficit of \$1,267.28.

16. On July 27, 2005, Respondent disbursed the sum of \$745 payable to the USCIS to pay the filing fees on behalf of Ms. Krassas to file her Application package to change her immigration status. In order to pay Ms. Krassas' filing fees, Respondent made a deposit into his Trust Account on July 20, 2005 in the amount of \$8,000.

17. This \$8,000 deposit consisted of funds paid to Respondent by Sandra Trust, his then wife, who was also owner of International Health Recruiters.

18. Respondent claimed, and Ms. Trust verified, that this money was given to Respondent in payment for fees he had previously earned in representing employers who wanted to recruit nurses from overseas. Thus, Respondent placed his own monies into his Trust Account in order to repay funds that he should have maintained on Ms. Krassas' behalf.

19. By form letter dated January 12, 2006, Respondent advised his clients, including Ms. Krassas, that he was immediately leaving the active practice of law, closing his office, and turning over all his files to Kenneth Alan Forman, Esq. Respondent further advised his clients that Mr. Forman had agreed to handle his clients' cases for far less money than he normally charged.

20. Ms. Krassas was not able to request a refund or accounting because Respondent did not provide his former clients with any forwarding address or any way to contact him.

21. Respondent failed to provide Ms. Krassas with a refund of unearned fees or an accounting even though he closed his office without completing the legal work for which he had been paid in advance.

22. Ms. Krassas filed a disciplinary complaint since Respondent had not completed the work that he had been paid to do. After discussions with Disciplinary Counsel Bednarik and Complainant, Respondent represented Ms. Krassas at an immigration hearing on May 9, 2006.

23. A few months later, Ms. Krassas was awarded her temporary resident card.

B. COVONE MATTER

24. Claudio Covone was born in Brazil, and had been a United States resident since 1972.

25. Mr. Covone and his sister had visited Brazil with the intent to help their father relocate to the United States in August 2005.

26. When Mr. Covone returned to the United States after his trip to Brazil, his name had been flagged by United States Customs as a result of his conviction for a felony charge of passing fraudulent checks in a shopping mall in Nassau County, New York in 1995.

27. Mr. Covone had pled guilty to a charge of passing fraudulent checks in 1995. He was placed on probation for a period of three years, and was ordered to pay restitution. He paid the restitution, and his probation was terminated in 1996.

28. Mr. Covone was told by the customs agent that as a result of his felony charge ten years previously, he would have to appear before a United States Immigration Judge on September 26, 2005, to determine whether he would lose his status as a United States resident.

29. Mr. Covone then looked in the Yellow Pages to find an immigration attorney to represent him on this immigration matter, and found Respondent's name.

30. Mr. Covone met with Respondent on August 31, 2005, at his office located at 1133 Plantation Drive, Suite #211, Plantation, FL 33324. Mr. Covone explained the nature of his immigration problem and asked Respondent to represent him. Respondent advised him that he had a very good chance of having the charge waived, and that he would be able to maintain his status as a United States resident since his probation had expired almost ten years previously.

31. On August 31, 2005, Mr. Covone signed a retainer agreement whereby Mr. Covone agreed to pay a flat rate of \$6,000 for Respondent to represent him in this immigration matter. Mr. Covone paid Respondent an advanced nonrefundable retainer of \$2,500 by check number 2028 on August 31, 2005, Respondent acknowledged receipt of the payment of \$2,500 on the retainer agreement. Mr. Covone agreed to pay an additional \$1,750 on October 1, 2005 and an additional \$1,750 on November 1, 2005. Nothing in the Fee Agreement stated that the two installments of \$1,750 were nonrefundable. Respondent did not charge Mr. Covone separately for the filing fees in that they were included in the flat fee.

32. On August 31, 2005, Respondent deposited Mr. Covone's check totaling \$2,500 into his Operations Account.

33. Respondent was scheduled to represent Mr. Covone at his first appearance before the United States Customs and Immigration Service on September 26, 2005.

34. Prior to that date, Mr. Covone received a telephone call from an attorney who worked in Respondent's office, David Malot, Esq. Mr. Malot told Mr. Covone that Respondent was in the hospital, and would not be able to represent him on September 26, 2005. However, Respondent had arranged for Arnold Hecker,

Esq., to represent Mr. Covone on September 26, 2005. Mr. Hecker was not a member of Respondent's law firm.

35. Mr. Hecker met with Mr. Covone and advised him that Respondent was in the hospital due to psychological and personal problems. Mr. Hecker agreed to represent Mr. Covone on September 26, 2005 for a fee of \$1,500 for that one appearance.

36. Mr. Hecker advised Mr. Covone that Respondent had agreed to deduct \$1,500 from the amount that Mr. Covone owed him for the representation. Thus, Mr. Covone paid \$1,500 to Mr. Hecker to represent him at the September 26, 2005 hearing with the understanding that Respondent would resume the representation after that one appearance.

37. Mr. Hecker gave Mr. Covone a letter dated September 26, 2005, in which he confirmed their understanding: 1) Mr. Covone had retained Respondent to represent him to handle his USCIS case which involved a deferred inspection and relinquishment of his green card due to past criminal felony for \$6,000; 2) Mr. Covone paid \$1,500 to Mr. Hecker to represent him on September 26, 2005; 3) Respondent had agreed to deduct \$1,500 from the money that Mr. Covone owed Respondent for legal services; and 4) Respondent would resume the representation after he recovered.

38. Thereafter, Mr. Covone telephoned Respondent's office, and David Malot told Mr. Covone that he had to pay \$250 to Respondent by October 1, 2005. This sum represented the rest of the \$1,750 payment which Mr. Covone had agreed to pay by October 1, 2005, after subtracting the \$1,500 that Mr. Covone had paid Mr. Hecker for representing him on September 26, 2005.

39. Mr. Covone paid \$250 by check No 6669 to Respondent, dated September 29, 2005.

40. When Mr. Covone went to Respondent's office to pay the second installment of the fee, David Malot, Esq., assured him that Respondent would be well enough to continue the representation. At the same time that Mr. Covone delivered the money, Mr. Covone also delivered all the documents that Respondent had previously requested, including letters from family and friends and tax information for the past three years.

41. By letter to Respondent dated September 29, 2005, Mr. Covone stated the following:

- a) he assumed that Respondent would have already spoken to Mr. Hecker about the hearing on September 26, 2005 that he had attended;
- b) he was attaching a copy of the letter that he had received from Mr. Hecker which confirmed that Respondent had agreed to permit Mr. Covone to deduct the \$1,500 that he had paid Mr. Hecker for the representation so that Respondent's total fee would be \$4,500;
- c) he would receive another notification to appear at USCIS, and that Respondent, as attorney of record, would also receive notice from USCIS;
- d) David Malot had told him that Respondent would call him to explain the next step of the case;
- e) he had copies of letters from friends and family, and he would deliver the original letters to Respondent to be signed and notarized;
- f) he would be in contact with Respondent's office; and
- g) if Respondent had any questions or needs further information, he should call him.

42. Respondent deposited Mr. Covone's check for \$250 into his Operations Account on October 5, 2005, thus commingling his client funds with his personal funds. This brought the total of funds Mr. Covone paid Respondent for his legal services to \$2,750.

43. Mr. Covone did not hear from Respondent until late November or early December 2005, when the following conversation took place:

- a) Respondent advised Mr. Covone that he had been looking through his files, and he realized that Mr. Covone owed him \$1,750;
- b) Mr. Covone expressed surprise that Respondent was requesting the final payment when he had not done anything to represent him since the first day that he had retained him in August 2005;
- c) Respondent asked Mr. Covone to meet him in Respondent's car to make the final payment instead of meeting him in his office;
- d) Mr. Covone was uncomfortable meeting with Respondent in his car, because it seemed unprofessional;
- e) Respondent asked him if he had any money, because he wanted to know whether he would be interested in starting a business with him or whether he would be willing to lend him some money;
- f) Mr. Covone advised Respondent that he did not have any money, and he just wanted to know the status of his case; and,
- g) Mr. Covone advised Respondent that he would call Respondent back later.

44. When Mr. Covone returned Respondent's telephone call, Mr. Covone advised Respondent that he wanted to meet with Respondent at his office. At that time, Respondent told Mr. Covone that he was having personal and financial problems, and that his wife had taken over the office where he used to work. Respondent told Mr. Covone that he was going to open an office near Sunrise, Florida.

45. Thereafter, Respondent called Mr. Covone and advised him that he was no longer at the office near Sunrise, Florida, and that his office was now located on Pine Island Road in Plantation, Florida. Mr. Covone and Respondent made arrangements to meet at Respondent's office on Pine Island Road.

46. On December 2, 2005, Respondent met with Mr. Covone at his office on Pine Island Road. At that time, Respondent assured Mr. Covone that he had recovered and would be able to represent him competently in the immigration matter.

47. Mr. Covone paid Respondent the final payment of \$1,750 by check No. 7184 dated December 2, 2005 for representing him in the immigration matter. By that time, Mr. Covone paid Respondent a total of \$4,500, in addition to the \$1,500 that he had paid Mr. Hecker. Respondent gave Mr. Covone a letter confirming that he had been paid in full, and that he would represent him on a date to be determined by United States Customs and Immigration Service.

48. On December 2, 2005, Respondent deposited Mr. Covone's funds of \$1,750 into his Operations Account, thus commingling those of his clients with his personal funds.

49. Since Respondent's Fee Agreement only stated that the first \$2,500 was nonrefundable, Respondent should have kept the money that Mr. Covone paid him on October 5, 2005 and December 2, 2005 in his Trust Account until such time as the fees were earned since Respondent failed to get his client's informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

50. Respondent failed to do any work on Mr. Covone's legal matter and failed to earn the \$4,500 he had been paid.

51. By form letter dated January 12, 2006, addressed to "My Clients," Respondent informed Mr. Covone that he was leaving the practice of law, and that he had turned over his files to Kenneth Forman, Esq. Respondent provided Mr.

Forman's address and telephone number, and urged his clients to allow Mr. Forman to handle their cases, and advised them that he would charge them "far less than what he usually charges."

52. Respondent failed to provide his clients with a forwarding address or any way to contact him.

53. After receiving Respondent's letter advising him that he was leaving the practice of law, Mr. Covone never heard from Respondent again.

54. Mr. Covone had no way to contact Respondent since he had closed his office and the telephone number for the office had been disconnected. Therefore, he could not request a refund even though Respondent had not earned the fee that he charged Mr. Covone.

55. Mr. Covone had paid in full, i.e., \$4,500 to Respondent and \$1,500 to Mr. Hecker, for Respondent to represent him in his immigration case, and Respondent failed to do any work on this matter.

56. After Respondent left the practice of law in January 2006, he failed to refund any unearned fees to Mr. Covone.

57. By the end of business on March 8, 2006, Respondent's account balance in his Wachovia Bank Operations Account had a deficit balance of \$1,003. Most of Mr. Covone's funds were disbursed out of Respondent's Operations Account and made payable to "Cash." None of the funds disbursed out of Respondent's Operations Account had been disbursed on behalf of Mr. Covone, and this money was used to pay Respondent's business and personal expenses.

C. PETERKIN MATTER

58. On December 22, 2005, Mr. Jimmy Herard and Ms. Cassandra Ennis-Herard retained Respondent to help Ms. Cassandra Ennis-Herard change her immigration status to permanent resident status based on her husband's status as a citizen. Complainant, Elaine Peterkin, who is Cassandra Ennis-Herard's aunt, accompanied the Herards to this first meeting with Respondent.

59. At that meeting, Respondent told the Herards that he would charge \$2,000 to handle this immigration case, and an additional \$750 for filing fees. Respondent requested an advanced non-refundable retainer of \$1,000.

60. Ms. Peterkin paid \$1,000, by check number 177 made payable to Respondent. In the notation section of the check, she noted "lawyer fee."

61. At the meeting on December 22, 2005, Respondent told the Herards and Ms. Peterkin that it would take him a few days to complete the paperwork, and Respondent requested that they call him in a few days to schedule an appointment to sign the completed paperwork, so Respondent could send it to the Immigration Office.

62. Respondent negotiated Ms. Peterkin's check on December 23, 2005.

63. On January 3, 2006, Respondent submitted an application package with incomplete handwritten documents, along with some but not all of the required documentation necessary to begin the processing of an immigration petition. The forms were not signed by the clients.

64. Shortly thereafter, the application package was returned with a Rejection Notice, stating that the documents were incomplete and Respondent failed to send a filing fee or had sent an incorrect filing fee.

65. Ms. Peterkin and the Herards attempted to call Respondent four to six times between approximately December 26, 2005 and January 20, 2006. Each time they called, they got an answering machine. They left a message, requesting that Respondent return their calls.

66. Respondent failed to return their telephone calls.

67. Finally, in approximately the third week of January 2006, Ms. Peterkin reached Respondent on his cell phone. He told her to meet him at his new office located at 600 N. Pine Island Road, Plantation, Florida 33324 on January 30, 2006 at 10:00 a.m.

68. Ms. Peterkin and the Herards went to Respondent's office on January 30, 2006, but Respondent failed to show up for their appointment.

69. A receptionist at Respondent's office told Ms. Peterkin and the Herards that Respondent was no longer working at that office, and they did not know how to locate him. The office was completely empty, and it was clear that Respondent had moved.

70. Respondent thereafter notified Ms. Peterkin and the Herards that he was leaving the practice of law, and that he had turned over his files to Kenneth Forman, Esq. Respondent provided Mr. Forman's address and telephone number, and urged them to allow Mr. Forman to handle their cases, and advised them that he would charge them "far less than what he usually charges."

71. Respondent failed to provide his clients with a forwarding address or any contact information so they were not able to call him and request an accounting or a refund of fees.

72. As a result of Respondent's notice that he was closing his office, the Herards obtained their legal file from Mr. Forman, and retained Attorney David Molot to represent Cassandra in her immigration case. Ms. Peterkin paid a fee to Mr. Molot in the amount of \$1,000 on behalf of the Herards to file the correct paperwork.

73. On March 14, 2006, during a conversation with Disciplinary Counsel Patti S. Bednarik of the Office of Disciplinary Counsel about Ms. Peterkin's complaint, Respondent stated that he did not intend to take Ms. Peterkin's money and fail to do the work, but things were in an upheaval in Respondent's life and he was closing his office. Respondent told Ms. Bednarik that he believed he would soon "come into some money" and he intended to make restitution to Ms. Peterkin as soon as he had the money.

74. By letter of March 14, 2006, this office sent Respondent a DB-7 Request for Statement of Respondent's Position.

75. On April 17, 2006, this office received Respondent's undated reply to the DB-7 Letter. In his reply, Respondent stated that he was willing to complete the Herards' case and meet with Ms. Peterkin and the Herards on April 22, 2006; that he would not charge them an additional fee as long as they paid the INS filing fee of \$745; and he was willing to attend their final interview with the INS when it was scheduled in the future.

76. On April 21, 2006, during a phone call with Ms. Bednarik, Respondent claimed that he had contacted Ms. Peterkin and came to an agreement that he would either reimburse Ms. Peterkin for the \$1,000 fee she had given him on behalf of the Herards, or in the alternative, he would convince the Herards' new counsel to do her case pro bono.

77. By letter of April 21, 2006, Disciplinary Counsel Bednarik advised Respondent that she had spoken to Ms. Peterkin to confirm the terms of the agreement that Respondent claimed he had reached with Ms. Peterkin. Ms. Peterkin confirmed that Respondent had agreed to refund \$1,000 to her no later than May 10, 2006, but stated that Respondent did not discuss having her new attorney agree to do the work pro bono in that she had already paid her new attorney \$1,000 to proceed with the Herards' immigration case.

78. Aside from filing incomplete and incorrect papers with the USCIS, Respondent failed to send a check for the correct filing fee that caused Ms. Herard's immigration papers to be rejected, and Respondent failed to perform any work on behalf of the Herards.

79. Respondent failed to refund any of the unearned fees to Ms. Peterkin.

D. BARNES MATTER

80. On February 15, 2001, Complainant Estriana Barnes retained Respondent to represent her daughter, Andrea Barnes, and her son, Cleveland Brown, in immigration matters.

81. Ms. Barnes wanted Respondent to assist her children in becoming permanent residents, i.e., to adjust their immigration status, to include obtaining their green cards, social security numbers and work permits.

82. Respondent prepared a fee agreement in which he stated that the total fee to be charged for each client, Andrea Barnes and Cleveland Brown, was \$1,500 each, \$200 of which was non-refundable. Respondent charged \$110 for filing fees to file Cleveland Brown's I-130 Petition. The Fee Agreement did not specify the

amount of filing fees with the exception of the \$110 costs of filing an I-130 Petition. Respondent did not give a copy of the Fee Agreement to his clients.

83. At the time that Respondent began representing Estriana Barnes, Cleveland Brown and Andrea Barnes, an I-130 Petition had already been submitted and approved for Andrea Barnes by her former attorney.

84. On February 15, 2001, Estriana Barnes paid Respondent a fee of \$200 toward the case for Cleveland Brown, and Respondent provided her with Receipt No. 198561.

85. Respondent filed an I-130 Petition on behalf of Cleveland Brown, which showed a receipt date of July 26, 2001 by USCIS, and the Notice Date was April 25, 2002. The I-130 petition for Cleveland Brown was approved by USCIS.

86. On May 1, 2002, Estriana Barnes visited Respondent, and paid him a fee of \$650 for "INS and attorney fees" for Andrea Barnes, Receipt No. 568234, and paid Respondent an additional fee of \$325 for Andrea Barnes, Receipt No. 568233.

87. On November 1, 2002, Estriana Barnes paid Respondent a fee in the amount of \$325 for Andrea Barnes, Receipt No. 089859, in which Respondent noted "final payment," and brought the total fees paid by Estriana Barnes on behalf of her daughter Andrea to \$1,500.

88. On March 2, 2005, Estriana Barnes went to Respondent's office, and paid him a fee of \$1,500 for Andrea Barnes, Receipt No. 369248. Respondent told her that this was for attorney fees. He signed the receipt indicating that the balance due for Andrea Barnes was \$0 as to attorney fees, but she still showed an outstanding balance of \$1,745 for USCIS filing fees. Since Estriana Barnes had

already paid \$1,500 to Respondent for Andrea Barnes' legal fees, it appears that she was double-billed.

89. On March 2, 2005, Respondent deposited \$1,500 cash into his Operations Account, which were the fees that he had received from Estriana Barnes on Andrea's behalf, which he commingled his personal funds.

90. As of the end of business on March 4, 2005, the balance in his Operations Account showed a deficit balance of \$353.11. Respondent was out of trust with respect to Ms. Barnes' funds within two days of receiving them.

91. On March 8, 2005, Respondent entered his appearance with INS on behalf of Estriana Barnes. On that same date, Ms. Barnes met with Respondent and paid him an additional fee of \$1,500 for Cleveland Brown, Receipt No. 369250. The receipt showed that no balance was due for attorney fees, but showed he owed an additional \$1,560 for USCIS filing fees.

92. Respondent failed to deposit the money that Estriana Barnes paid for Cleveland Brown's legal fees into any banking account. Instead, he cashed the check, and used those client funds for his personal use.

93. On March 23, 2005, Estriana Barnes visited Respondent's office and paid Respondent a fee of \$1,745 to cover the INS filing fees due Andrea Barnes, Receipt No. 747309.

94. On March 25, 2005, Respondent deposited the sum of \$1,200 cash into his Trust Account. A notation on the Deposit Ticket indicated that the deposit was on behalf of "Barnes."

95. Respondent failed to deposit \$545 of the \$1,745 that he had received from Estriana Barnes for filing fees, and he spent that money for personal use without his client's consent or authority.

96. By the end of business on April 11, 2005, Respondent's Trust account balance showed a deficit balance of \$2.07. Thus, Respondent was out of trust with respect to \$1,200 that he had received from Estriana Barnes and deposited into his Wachovia Bank Trust Account. At this point in time, Respondent failed to disburse any of Estriana Barnes' funds as filing fees to USCIS or for any purpose related to the representation of Adrian Barnes or Cleveland Brown.

97. On July 13, 2005, Complainant went to Respondent's office and paid \$1,570 for filing fees owed by Cleveland Brown, Receipt No. 747229.

98. Respondent failed to maintain these funds separate and apart from his personal funds. Respondent spent his client's funds on his personal expenses or to pay other clients' filing fees and other disbursements without his client's knowledge or consent.

99. With the exception of the \$200 non-refundable retainer that Respondent charged in February 2001, Respondent violated his duty to deposit and maintain the advanced retainers and filing fees that he received into his attorney trust account until he disbursed those sums to USCIS on behalf of Andrea Barnes or Cleveland Brown or earned the legal fees.

100. During the course of the representation, Andrea Barnes and Cleveland Brown called Respondent on a regular basis to find out the status of the case.

101. On many occasions, Respondent simply advised them that these cases take time.

102. On other occasions, Respondent would advise Andrea and Cleveland Barnes that they needed to bring in particular documents, i.e., passport, photographs, birth certificates, citizenship papers, check stubs, etc. Upon Respondent's requests, Andrea Barnes or Cleveland Brown would promptly bring whatever documents Respondent requested.

103. Andrea Barnes and Cleveland Brown never mailed any documents to Respondent so that there could be no misdelivery due to the mail.

104. Estriana Barnes and her children did not call to find out the status of the case very often in 2003, because Respondent had initially told them that it would take quite awhile. Therefore, the only contact that they had with Respondent was a print-out which he had sent, stating that the case was at a standstill as of January 20, 2003, but to be patient, because everything was going well.

105. Estriana Barnes recalls that she went to see Respondent's office numerous times to find out the status of the case, including but not limited to the following dates: February 15, 2001, November 1, 2002, May 1, 2002, sometime in July 2004, March 2, 2005, March 8, and 23, 2005, April 18, 2005, and July 13, 2005.

106. During those meetings, Respondent and Estriana Barnes discussed whatever documents were needed, what needed to be paid, and Respondent explained that things take time. Sometimes, Cleveland Brown and Andrea Barnes accompanied their mother to these meetings.

107. Respondent filed an I-130 Petition for Alien Relative for Petitioner Estriana Barnes and an I-485 Application to Register Permanent Residence or Adjust Status for Andrea Barnes with USCIS, which was received by USCIS on July 26, 2005.

108. On August 3, 2005, USCIS sent Respondent two Rejection Notices on Andrea Barnes' I-485 Application to Register Permanent Residence or Adjust Status and on Estriana Barnes' I-130 Petition. The Rejection Notices indicated that Respondent either failed to include checks for either application or wrote checks in the wrong amounts. The correct filing fee for the I-485 was \$315 and an additional \$70 for a fingerprint fee. The correct filing fee for the I-130 was \$185. Both notices advised Respondent to resubmit the applications/petitions with the appropriate fees to the address listed on the Rejection Notices. Respondent also failed to notify Andrea Barnes that she needed to provide evidence of a physical examination. There were other deficiencies in the application package in addition to the nonpayment of filing fees.

109. Notwithstanding the instructions to resubmit the applications/petitions with the appropriate filing fees, Respondent failed to do so.

110. Respondent failed to advise Estriana or Andrea Barnes that the application for change of status had been rejected.

111. By letter of September 21, 2005, Respondent sent Andrea Barnes a copy of a letter from the USCIS dated September 14, 2005, requesting that Andrea Barnes submit to a medical examination and provide a supplemental form I-693.

112. Prior to receiving the letter from Respondent dated September 21, 2005, Respondent had never previously advised Andrea Barnes that she needed to get a physical examination and provide evidence of the examination to USCIS.

113. Andrea Barnes called and confronted Respondent about the fact that he had never advised her to get a medical examination. Thereafter, Ms. Barnes had a medical examination and provided the documentation to Respondent.

114. Respondent failed to refile any documents on Ms. Barnes' behalf, and failed to file any documents on behalf of Cleveland Brown to USCIS aside from the I-130 that he had filed in 2001.

115. By letter of January 12, 2006, addressed to "To My Clients," Respondent notified Andrea Barnes that he was immediately leaving the active practice of law and closing his offices. He notified Andrea Barnes that he would be turning over all his files to Attorney Kenneth Allen Forman, advised Ms. Barnes that she had two options: 1) she could contact Mr. Forman and ask that her file be returned to her; or 2) she could retain Mr. Forman to follow through with their cases.

116. On February 10, 2006, Andrea Barnes called and confronted Respondent about his lack of honesty, and the fact that he had misled her to believe that he would handle her case. Respondent told her that he didn't know what to tell her, that he was sick, homeless, and destitute. He stated that he could not talk with her and that he had to go. Andrea Barnes told Respondent that her mother had worked very hard for the money that she paid him, to which Respondent replied that he was broke and hung up on her.

117. In summary, Estriana Barnes paid Respondent \$7,815 to handle immigration matters for Andrea Barnes and Cleveland Brown. The documents that he filed on behalf of Andrea Barnes were rejected as a result of his failure to include the appropriate filing fees, and his failure to advise Ms. Barnes to get medical documentation of her health condition.

118. Aside from filing the I-130 Petition for Cleveland Brown in 2001, Respondent never filed any documents, applications or petitions on behalf of Cleveland Brown even though Respondent had been paid to do so, and had

collected filing fees to do so, and Cleveland Brown had provided him with all of the documentation that Respondent had requested.

119. Neither Andrea Barnes' nor Cleveland Brown's immigration cases progressed in any meaningful manner from the time that Respondent accepted their representation in February 2001 until the time that he terminated the representation in January 2006.

120. Respondent failed to provide his clients with any forwarding address or any way to contact him. Therefore, his clients could not request an accounting or refund of unearned fees.

121. Respondent failed to provide a refund of unearned fees and unused filing fees.

Proposed Conclusions of Law

122. By his conduct in paragraphs 5 through 121, Respondent violated the following Rules of Professional Conduct:

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

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

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

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

[before 4/23/05]

RPC 1.15(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept

in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

[before 4/23/05]
RPC 1.15(b)

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

[after 4/23/05]
RPC 1.15(a)

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

[after 4/23/05]
RPC 1.15(b)

Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

RPC 1.16(d)

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

Aggravating Circumstances

123. Respondent has prior history of professional discipline. On November 24, 1997, Respondent received a private reprimand with one year probation for violations of Rules of Professional Conduct of 1.15(a) and 1.1.5(b). During the period of probation, a practice monitor was appointed to review Respondent's handling of fund and maintenance of records, and file a report every two months. Respondent failed to comply with the condition, and therefore, his probation was extended for an additional year.

124. By Order dated June 20, 2006 by the Supreme Court of Pennsylvania, Respondent was suspended for a year and a day for violations of Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.4(b), 8.4(d) ,1.15(a), 1.16(d) in connection with his representation of three immigration clients in the case docketed to No. 1129 Disciplinary Docket No. 3, Disciplinary Board No. 163 DB 2004.

125. Respondent received a Letter of Concern on August 5, 2003, for the following misconduct: 1) he represented 22 clients while he was on inactive status from July 1, 1998 through November 1, 1998, and 2) Respondent negotiated with insurance companies on behalf of clients in Florida when he was not licensed to practice in Florida from 1995 through 1999. Respondent entered a consent decree in Florida with Florida disciplinary authorities on June 18, 1998 that he would not "forward letters appearing to be from an attorney or otherwise practice law in Florida." He has complied with that consent agreement.

Mitigating Circumstances

126. Respondent was voluntarily hospitalized at least three times due to suicidal ideations caused by financial problems and marital stress: from April 18, 2005 to April 21, 2005; September 7, 2005 through September 12, 2005 and again on October 30, 2005, discharge date is unknown. Respondent was diagnosed with

bipolar disease and depressive episodes. Respondent's illness was a substantial factor in causing his misconduct.

Specific Joint Recommendations for Discipline

127. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of one year, to run consecutively to the suspension of one year and one day that was imposed by Order of the Supreme Court dated June 20, 2006 at No. 1129 Disciplinary Docket No. 3, Disciplinary Board No. 163 DB 2004.

128. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the mandatory acknowledgments contained in Rule 215(d)(1) — (4), inclusive, Pa.R.D.E.

APPLICABLE PRECEDENT AND HOW THE RECOMMENDED DISCIPLINE
COMPARES WITH DISCIPLINE IMPOSED IN REPORTED CASES

The crux of Respondent's misconduct is neglect, lack of communication, and failure to return unearned fees and filing fees at the time that he closed down his law practice. Respondent accepted full payment and filing fees for representing four clients in immigration matters. While he arguably did some minimal work, the immigration papers that Respondent prepared were rejected either because he failed to pay the appropriate filing fees or because the application was not completed correctly or both. Thus, his clients had to retain new attorneys to redo the work that Respondent had been paid to do. Although Respondent did not totally abandon his clients since he turned his files over to another immigration attorney, his failure to

refund any fees put his clients in a position of having to pay for the same services twice.

The key aggravating factor in the instant case is Respondent's recidivism, i.e., the fact that the misconduct in these four cases are substantially similar to the misconduct for which Respondent was recently disciplined, and Respondent engaged in most of the misconduct involved in these four cases at the same time that disciplinary authorities were reviewing his past misconduct to determine the appropriate level of discipline to be imposed. The most significant mitigating factor is Respondent's psychiatric condition which was a substantial factor in causing his misconduct.

Two analogous cases to the case at hand are *Office of Disciplinary Counsel v. Susan Bell Bolno*, No. 162 DB 2000, and *Office of Disciplinary Counsel v Bentivenga*, No. 156 DB 2002, 70 D&C4th 202 (2004), in that both involved serious, multiple cases of neglect and lack of communication. Like Respondent, Ms. Bolno was found to have accepted four cases, provided minimal initial services, and then permitted the files to languish. She did not communicate with her clients or other counsel and ignored court orders to the detriment of her clients' cases. Like Respondent, Ms. Bolno stipulated to the facts underlying the disciplinary matters and stipulated to the various Rules of Professional Conduct which were violated. Ms. Bolno's misconduct was more serious than Respondent's in that she was found to have made misrepresentations and fabricated letters to cover her neglect. She also made intentional misrepresentations on her annual attorney registration form, stating that she was "inactive" in New Jersey rather than suspended. On the other hand, her conduct warranted a less serious sanction than Respondent in that she had no prior disciplinary history. Ms. Bolno argued that her misconduct was due to

personal and professional issues that prevented her from making decisions for her clients. She claimed to be indecisive and fearful of making mistakes. She was also entangled in a difficult divorce that became final in 2002, and was diagnosed with hepatitis C, which she claimed affected her ability to represent her clients. The Disciplinary Board held that Ms. Bolno failed to meet the standard of proof for mitigation set forth in *Office of Disciplinary Counsel v. Braun*. She had not sought psychiatric treatment until after Petitioner became involved. The Board opined that Respondent needed time to sort out the issues with her practice and then to prove at a reinstatement hearing that she is fit to practice law. In the Bolno case, the Disciplinary Board recommended a suspension of a year and a day, and the Supreme Court suspended Ms. Bolno for two years. Petitioner submits that if Ms. Bolno had proven that her psychiatric condition caused her misconduct, the sanction imposed would have probably been shorter.

The other case which provides insight into the appropriate discipline in this matter is *Office of Disciplinary Counsel v. Bentivegna No. 156 DB 2002*, 70 Pa.D&C4th 202 (2004). In that case, it was found that the attorney had violated multiple Rules of Professional Conduct in her handling of four bankruptcy matters. The attorney had prior disciplinary history consisting of a private reprimand for mishandling two bankruptcy matters. In addition to finding that Ms. Bentivegna had demonstrated a lack of competence and failure to communicate with her clients, the Disciplinary Board found that she ran a slipshod practice where she did not keep track of information and did not know the status of her files. She did not appear to have carefully read any of the documents in question. She also engaged in a pattern of misrepresentations. The Hearing Committee found that the attorney was not credible or remorseful at the disciplinary hearing and recommended a suspension of

six months, plus probation and a practice monitor for three years. The Disciplinary Board opined that she was unfit to practice law without a future showing of fitness, and her pattern of misrepresentation would not have prevented by a practice monitor so probation was not appropriate. The Disciplinary Board recommended that Ms. Bentivegna be suspended for a year and a day, with one dissent for disbarment due to her misrepresentations in all four cases. The Supreme Court ordered that Ms. Bentivegna be suspended two years. Unlike Respondent, Ms. Bentivegna did not offer Braun mitigation. Petitioner submits that Ms. Bentivegna would have probably received a shorter suspension were it not for the dishonesty and misrepresentations which permeated this case. Moreover, unlike Respondent, Ms. Bentivegna did not offer or prove that she had a mental illness that was a factor in causing her misconduct.

In the present case, Respondent is already suspended for a year and a day. If the joint recommendation is approved, Respondent will be suspended for two years before he may be reinstated to the practice of law. Respondent is currently 62 years old. He will have to repay the Pennsylvania Lawyers Fund for Client Security for any claims that have been approved and Respondent may have to pay some pending claims due to his misconduct in these matters before he is eligible for reinstatement. Office of Disciplinary Counsel submits that the appropriate discipline in this matter is a one-year suspension consecutive to the Respondent's current suspension of a year and a day. By that time, Respondent will either be able to demonstrate his recognition of the causes of his misconduct and a real commitment to improvement in his practice or he will not be permitted to be reinstated.

As a result of Respondent's poor financial condition and inability to pay costs prior to the imposition of suspension, it is requested that the three member panel

order the Respondent to pay the necessary expenses incurred in the investigation in this matter after imposition of discipline under Pennsylvania Rules of Disciplinary Enforcement 215(i).

WHEREFORE, Petitioner and Respondent respectfully request that pursuant to Rules 215(e) and 215(g), Pa.R.D.E., the three member panel of the Disciplinary Board approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court suspend Respondent from the practice of law for a period of one year; and the Order that the suspension run consecutive to the one year and one day suspension imposed at No. 1129 Disciplinary Docket No. 3, No. 163 DB 2004 by Order of the Supreme Court of Pennsylvania dated June 20, 2006.

Respectfully submitted,

2/13/07
Date

Michael Levine
Michael Levine
17600 N. Bay Road, #906
Sunny Isles, FL 33160
Attorney I.D. No. 20802

2/12/07
Date

Patti S. Bednarik
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Attorney I.D. No. 54664

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. ____ Disciplinary Docket No. _
Petitioner :
v. : Disciplinary Board No. ____ DB 2007
MICHAEL LEVINE : Attorney Registration No. 20802
Respondent : (Out of State)

VERIFICATION

The statements contained in the foregoing *Joint Petition in Support of Discipline on Consent* Pursuant to Rule 215(d), Pa.R.D.E., are true and correct to the best of my knowledge, information and belief, and are subject to penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

2/13/07
Date

Michael Levine
Michael Levine
17600 N. Bay Road, #906
Sunny Isles, FL 33160

2/12/07
Date

Patti S. Bednarik
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BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. ____ Disciplinary Docket No. __
Petitioner :
: Disciplinary Board No. ____ DB 2007
v. :
: Attorney Registration No. 20802
MICHAEL LEVINE :
Respondent : (Out of State)

**AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

Respondent, Michael Levine, hereby states he consents to a suspension of one (1) year, consecutive to his current suspension imposed at No. 1129 Disciplinary Docket No. 3, Disciplinary Board No. 163 DB 2004, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and himself, in the Joint Petition in Support of Discipline on Consent and further states the following:

1. This consent is freely and voluntarily rendered; it is not being subject to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with counsel in connection with the decision to consent to discipline;

2. The Respondent is aware that the Office of Disciplinary Counsel has investigated five pending disciplinary complaints against him;

3. The Respondent acknowledges the material facts set forth in the Joint Petition are true; and

4. The Respondent consents because he knows that if the charges against him continue to be prosecuted in the pending matter, he could not successfully defend against them.

The statements contained in the foregoing *Affidavit Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement*, are true and correct to the best of my knowledge, information and belief, and are subject to penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

2/13/07
Date

Michael Levine
Michael Levine
17600 N. Bay Road, #906
Sunny Isles, FL 33160
Attorney Registration No. 20802