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BEFORE THE BOARD OF PROFESSIONAL CONDUCT APR 17 2017
OF

THE SUPREME COURT OF OHIO

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Harlan Daniel Karp, Esq.
850 Euclid Avenue, Suite 1330
Cleveland, Ohio 44114

17-023 2 3

No. _____

Attorney Registration No. (0042411)

Respondent,

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio.)

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

FILED

MAY 04 2017

Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes relator, Disciplinary Counsel, and alleges that respondent, Harlan Daniel Karp, an attorney at law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

Count One – Veronika Gadzheva

1. Respondent was admitted to the practice of law in the State of Ohio on November 6, 1989.
2. As an attorney, respondent is subject to the Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
3. In early 2015, G&G Star Enterprises, doing business as Fred Astaire Dance Studio in Morristown, New Jersey, filed an I-129 Petition for Non-Immigrant Worker (I-129 or petition) on behalf of Veronika Gadzheva. The petition requested that Gadzheva, a

- Bulgarian ballroom dancer, be permitted to enter the United States on an O-1B visa due to her extraordinary ability in the arts (dance).
4. Upon review, the United States Citizen and Immigration Services (USCIS) granted G&G's petition and permitted Gadzheva to enter the United States.
 5. Gadzheva entered the United States on or about May 11, 2015 and was permitted to remain until February 27, 2018 or until G&G withdrew the I-129 that it had filed on her behalf.
 6. Gadzheva immediately began working for G&G; however, problems soon began to develop in the employment relationship, and Gadzheva wished to change employers.
 7. In or about July 2015, Gadzheva obtained an offer of employment from Londance III Studio in Laguna Niguel, California.
 8. On July 22, 2015, Gadzheva emailed respondent regarding the transfer of her O-1 visa to a new employer. Gadzheva had been referred to respondent by a friend.
 9. Respondent agreed to represent Gadzheva and to file a new I-129 petition on her behalf.
 10. On July 27, 2015, respondent advised Gadzheva that his attorney fee was \$750, plus she would have to pay a filing fee of \$325.¹ He further advised Gadzheva that she needed to provide documentation concerning her existing O-1 visa and that once she had provided these items, he would "look at things right away."
 11. On or about July 27, 2015, Gadzheva provided the requested documents to respondent.
 12. On July 28, 2015, Gadzheva emailed respondent and inquired into how she should pay for his services. Respondent advised her that the \$325 filing fee had to be paid in

¹ Respondent's July 27, 2015 email to Gadzheva actually states that the filing fee is \$320; however, it was a typographical error. In other correspondence, respondent advises Gadzheva that the filing fee is \$325.

advance; however, she could pay the \$750 legal fees in two installments – “half down, half upon approval.”

13. On July 30, 2015, Gadzheva emailed respondent and inquired into whether she could move to California immediately or whether she had to wait for the new I-129 to be approved. On the same day, respondent replied and stated that she could move as soon as the new I-129 had been filed and that it “may take a week” because he had to have her new employer sign some documents.
14. On July 31, 2015, Gadzheva wired \$325 to respondent’s IOLTA for the filing fee.
15. Between August 3, 2015 and September 10, 2015, respondent and Gadzheva exchanged several emails and phone calls regarding the filing of a new I-129 petition. During this period of time, Gadzheva inquired several times into how long the process would take, and she requested that respondent complete the process as soon as possible because her employment situation with G&G was untenable.
16. On August 17, 2015, respondent emailed Patricia West, the owner and operator of Londance III Studio, and requested that she provide information regarding Londance and the anticipated employment relationship with Gadzheva, i.e. proposed job title, compensation, number of employees, and tax ID number. In this email, respondent specifically stated that he would email West the completed I-129 for her signature.
17. On August 24, 2015, West provided the requested information to respondent.
18. On September 8, 2015, Gadzheva emailed respondent and inquired into whether he had received the requested information from West. On the same day, respondent replied and confirmed that he had received the information from West.

19. On September 10, 2015, Gadzheva emailed respondent and inquired into whether he had filed the I-129 yet.
20. On September 11, 2015, respondent replied to Gadzheva's email and falsely stated, "Yes: Sent."
21. Respondent did not actually file the I-129 until April 15, 2016.
22. On October 2, 2015, Gadzheva wired \$750 to respondent for his legal fees.
23. On October 5, 2015, and in reliance on respondent's July 30, 2015 email, Gadzheva notified respondent that she was leaving for California that same day. *See* Paragraph 13. Gadzheva thanked respondent for his services and stated that she hoped she received approval of the I-129 petition soon. Even though he had not yet filed the I-129, respondent replied the same day and falsely stated, "It should arrive this week. I will email it to you."
24. On October 14, 2015, Gadzheva emailed respondent and inquired into whether he had received approval of the I-129 yet. Even though he had not yet filed the I-129, respondent replied the same day and falsely stated "Not yet – but I should in a few days."
25. On October 20, 2015, G&G Enterprises requested revocation of the I-129 petition that it had filed on Gadzheva's behalf, and it was subsequently revoked. Because respondent had not yet filed a new petition, Gadzheva was now considered "out of status." In addition, Gadzheva may have begun accruing days of "unlawful presence" in the United States. At 180 days of unlawful presence, Gadzheva could potentially face a three-year bar for re-entry to the United States, and at 360 days, Gadzheva could potentially face a ten-year bar for re-entry to the United States.

26. On November 5, 2015, Gadzheva emailed respondent and inquired into whether he had received approval of the I-129 yet. Even though he had not yet filed the I-129, respondent replied the same day and falsely stated "Still pending. Give it another week or two."
27. On November 11, 2015, Gadzheva emailed respondent and inquired into whether she could receive checks from her new employer and any independent customers before receiving approval of the I-129 petition. Even though he had not yet filed the I-129, respondent replied the same day and stated that Gadzheva may receive checks from her employer, but that she should try and receive cash from independent customers.
28. On December 3, 2015, Gadzheva emailed respondent and inquired into whether she could return to Europe before the new I-129 petition was approved. Despite the fact that Gadzheva was "out of status," respondent falsely stated that she could travel to Europe because her existing O-1 visa was "still good." Gadzheva ultimately decided, however, not to travel to Europe until the new I-129 petition had been approved.
29. Between December 3, 2015 and April 15, 2016, Gadzheva and her employer, Patricia West, called respondent at least 20 times regarding the status of the I-129 petition. Even though he had not yet filed the petition, respondent consistently told Gadzheva and West that the petition had been filed and that it would be approved shortly. He told them that the immigration process moves slowly and led them to believe that he had other clients who were waiting for approvals as well. He also told them that certain times of the year, such as around Christmas, were very busy times for USCIS, which caused additional delays. Even when Gadzheva inquired into starting the process over and filing a new I-129, respondent told her to wait another two weeks.

30. Between December 3, 2015 and April 14, 2016, Gadzheva and West also requested at least eight times that respondent provide some type of proof that he had filed an I-129 on behalf of Gadzheva including, but not limited to, the receipt number for the petition. Although respondent promised to provide the receipt number multiple times, he did not do so until April 25, 2016 (after he had actually filed the petition). Moreover, respondent falsely advised Gadzheva and West not to contact USCIS directly about the pending petition because it would delay the process even further.
31. On April 14, 2016, West had a heated conversation with respondent. She told him that this had been going on too long, and she demanded that he provide the receipt number for the petition that he had allegedly filed on behalf of Gadzheva. On the following day, West contacted Hammond Young Immigration Law, LLC (HYIL) in Silver Spring, Maryland regarding the situation with respondent and for possible representation. At no point, however, did West or Gadzheva formally terminate respondent's services.
32. On April 15, 2016, and over seven months after he initially stated he had filed a petition, respondent filed an I-129 on behalf of Gadzheva. Prior to filing this petition, respondent did not provide it to West for her signature or review. Instead, respondent forged West's signature on two different places on the petition. One of the signatures was under a disclaimer that stated in relevant part:

I certify, under penalty of perjury, that I have reviewed this petition and that all of the information contained in the petition, including all responses to specific questions, and in the supporting documents, is complete, true and correct.

33. On April 15, 2016, respondent also filed a Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative). Respondent also forged West's signature on this document.

34. On April 25, 2016, respondent emailed West the receipt number for the petition.
35. On or about April 26, 2016, respondent received an I-797E form (Notice of Action) from USCIS. This form is commonly referred to as a Request for Evidence or RFE. The RFE requested that respondent provide additional evidence regarding the type of status he was requesting on behalf of Gadzheva, i.e. an O-1A visa for extraordinary ability in athletics or an O-1B visa for extraordinary ability in the arts, as well as information regarding whether Gadzheva was in a lawful status at the time the petition was filed.
36. On the same day, respondent replied to the RFE and advised USCIS that the petition was seeking an O-1B classification, but that he had no objection to an O-1A classification if USCIS believed that to be more appropriate. Respondent did not address Gadzheva's status.
37. Respondent did not consult with West or Gadzheva regarding the RFE or even advise them that he had received it.
38. On May 9, 2016, a second RFE was issued requesting additional evidence regarding Gadzheva's qualifications. Respondent failed to reply to this RFE or even notify West or Gadzheva that he had received it.
39. On July 11, 2016, HYIL filed a new I-129 petition on behalf of Gadzheva and requested expedited processing. It was approved on July 22, 2016 without any requests for further information; however, because Gadzheva was "out of status" at the time it was filed, she must leave the United States in order to activate her new O-1 visa. She was – and still is – afraid to leave the country in order to activate her O-1 visa due to uncertainty as to whether she accrued any days of unlawful presence, and if so, how many days. *See* Paragraph 25.

40. On August 27, 2016, USCIS denied the I-129 petition that respondent had filed on behalf of Gadzheva due to “abandonment,” i.e. failure to respond to the second RFE. Respondent did not notify Gadzheva or West of the denial.
41. On or about January 5, 2017 and at the request of relator, respondent refunded Gadzheva the \$1,075 that she had paid him. Gadzheva, however, has paid HYIL an additional \$7,150 to try and correct the unlawful status she was placed in by respondent’s neglect of her case.

Relator’s Investigation

42. On July 15, 2016, Gadzheva filed a grievance against respondent.
43. On August 1, 2016, a Letter of Inquiry was sent to respondent.
44. On August 26, 2016, respondent replied to Gadzheva’s grievance. Enclosed with his response was an unsigned copy of the I-129 petition that he filed on behalf of Gadzheva. Moreover, respondent indicated in his response that Patricia West had given him authority to file the I-129 in April 2016.
45. On November 30, 2016, relator sent respondent a letter requesting additional information. Question No. 4 of this letter stated:

It appears that the I-129 that you filed on behalf of Ms. Gadzheva/Londance requires the signature of an Authorized Signatory. Did you sign Ms. West’s name on the form? If so, did you indicate that you were signing with authority or did you make it appear as if Ms. West signed the form? Please provide a copy of the filed I-129.

46. On December 22, 2016, respondent replied to relator’s November 30, 2016 letter. In his response, respondent stated “I signed Ms. West’s name on the form and noted I had authority. I had received information to fill out the form from her (attached). A copy of the signed version is attached. Exhibit C.”

47. Although respondent claimed that Exhibit C was a copy of the signed petition, it was not. Exhibit C indicated that respondent had signed Patricia West's name "per authority;" however, there was no such indication on the petition that respondent actually filed with USCIS. Respondent altered the copy that he provided to relator in an attempt to partially absolve himself of misconduct.
48. Respondent's conduct as outlined above violates the following Rules of Professional Conduct, specifically:
- Prof. Cond. R. 1.2(d) (prohibiting a lawyer from counseling a client to engage in conduct that the lawyer knows is illegal or fraudulent) by advising Gadzheva that it was permissible to receive paychecks from Londance even though he had not yet filed an I-129 on her behalf and by advising her to accept cash from independent customers;
 - Prof. Cond. R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client) by failing to file an I-129 petition on behalf of Gadzheva in a timely manner and by failing to respond to the second RFE issued on May 9, 2016;
 - Prof. Cond. R. 1.4(a)(1) (requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required) by failing to notify Gadzheva or West that an RFE was issued on April 26, 2016, that he responded to the RFE on the same day, or that a second RFE was issued on May 9, 2016;
 - Prof. Cond. R. 1.4(a)(2) (requiring a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished) by failing to consult with Gadzheva or West regarding the first and second RFEs;
 - Prof. Cond. R. 1.4(b) (requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) by failing to notify Gadzheva that he had not filed an I-129 on her behalf between September 11, 2015 and April 15, 2016 and by encouraging her to be patient during this same period of time, thus preventing or discouraging Gadzheva from retaining new counsel to file an I-129 on her behalf;
 - Prof. Cond. R. 8.1(b) (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter) by falsely advising relator that he had signed West's name with authority and by providing altered documentation to relator;

- Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) by leading Gadzheva and West into believing he had filed an I-129 petition on behalf of Gadzheva and that the petition was pending and by altering the copy of the I-129 petition that he provided to relator.

Count Two – IOLTA

49. Between at least June 1, 2015 and continuing until at least May 31, 2016, respondent used his IOLTA at US Bank (account no. X XXX XXXX 5607) as a personal or business account because it was “easier” than having two separate accounts.
50. During this period of time, respondent deposited earned fees into his IOLTA and allowed earned fees to accumulate in his IOLTA so as to provide a “substantial cushion” of funds in his account and avoid an overdraft.
51. During this same period of time, respondent also paid business or personal obligations directly from his IOLTA, rather than transferring earned fees to a personal or business account and paying the obligations from those accounts. He regularly made payments to credit cards ending in 8823, 2353, 0160, and 4698; he regularly made payments to a credit line ending in 2041; he authorized Bank of America and Capital One to make withdrawals from his IOLTA; and he regularly made payments to Citi Card Online, Citizens Bank, and American Express.
52. Respondent’s conduct as outlined above violates the Rules of Professional Conduct, specifically:
 - Prof. Cond. R. 1.15(a) (requiring a lawyer to hold the property of clients or third persons separate from the lawyer’s own property) by depositing earned fees into his IOLTA and/or allowing earned fees to accumulate in his IOLTA;
 - Prof. Cond. R. 1.15(b) (prohibiting a lawyer from depositing the lawyer’s own funds in a client trust account except for the sole purpose of paying or obtaining a waiver of bank service charges) by maintaining a “substantial cushion” of funds in his IOLTA to avoid an overdraft; and

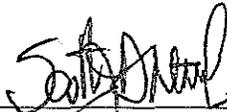
- Prof. Cond. R. 1.15(c) (requiring a lawyer to deposit funds into a client trust account and to withdraw those funds as fees are earned or expenses incurred) by allowing earned fees to accrue in his IOLTA and then using those fees to pay personal or business obligations.

Statement of Restitution Pursuant to Gov. Bar. R. V(10)(E)(1)(b)

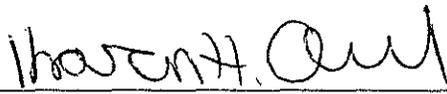
53. Respondent owes Gadzheva \$7,150 for additional legal fees and expenses that she has incurred due to his neglect and mishandling of her case.

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct, and requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel

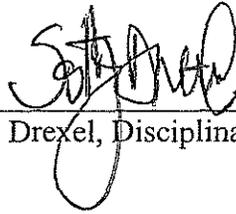


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Karen H. Osmond is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: April 17, 2017



Scott J. Drexel, Disciplinary Counsel