

In the Matter of Kevin M. Gibbons, Bar No.018362, PDJ-2011-9075 filed November 1, 2011. Attorney Suspended, Probation, Fee arbitration and Costs imposed.

Pursuant to Rule 57(a)(4)(A), Ariz.R.Sup.Ct., the PDJ approved the Agreement for Discipline by Consent submitted by the parties and suspended Kevin M. Gibbons for two years retroactive to June 1, 2011, the date he was placed on interim suspension. Respondent either must initiate and participate in mandatory fee arbitration in several cases involving solely fee disputes or have written payment plans with those clients before he can be considered for reinstatement to active status. Respondent will also be assessed the costs of the disciplinary proceedings. Upon reinstatement, Respondent also will be on probation for two years, with the State Bar's Law Office Management Assistance program, including a practice monitor, complete the Trust Account Ethics Enhancement Program, and be subject to any additional terms imposed by the disciplinary panel as a result of reinstatement hearings.

In one matter, Respondent failed to honor medical liens for several patients after settling their cases. His staff failed to communicate with the doctor's office staff regarding the medical liens. After the bar charge was filed, Respondent paid \$3,235.37 of his personal funds to the doctor. The State Bar staff examiner found trust account management and administration issues involving failure to conduct complete monthly three-way reconciliations and failure to properly supervise his non-lawyer staff.

In a second matter, an immigration judge began to notice discrepancies between the information contained in applications for cancellation of removal and bond documents prepared by Respondents' firm. Respondent signed most of these applications for cancellation of removal and the bond documents. On February 25, 2010, the judge held a master calendar hearing on an alien's application for cancellation of removal that listed a United States citizen child. The application did not contain any information about the child, including name, birth date or birthplace. When the judge questioned Respondent, he informed the court that the alien's wife had moved out of state with the child and the alien had no information available to put on the application concerning the child.

On March 8, 2010, another attorney from the Gibbons Law Firm advised the court that the alien could not proceed with his application for cancellation of removal because he did not have a qualifying relative. The attorney advised the court that the alien's wife had a miscarriage. This attorney also informed the court that no qualifying relative existed upon which to base the cancellation application.

From March 2010 until late November 2010, the immigration judge discovered several other cases with similar issues and noted the discrepancies on the record at hearings or in written opinions. In December 2010, a second immigration judge noted similar problems in a case handled by the Gibbons Law Firm. In late January 2011, a third immigration judge noticed similar discrepancies and issued an order to show cause in yet another immigration case.

In early February 2011, an associate with the Gibbons Law Firm prepared motions to withdraw/motions to change relief from cancellation of removal to voluntary departure in several files. Respondent signed all of these motions but failed to explain why this relief was no longer available to the aliens.

In March 2011, all three immigration judges sent six referrals to the Executive Office of Immigration Review regarding Respondent. These referrals were then forwarded to the State Bar, which also reviewed additional files. The State Bar found that 28 immigration files handled by Respondent or the Gibbons Law Firm contained similar issues about the veracity or accuracy of an alien's date of entry or qualifying relative.

Respondent and his staff were not diligent in preparing applications for cancellation of removal and did not seek to obtain verification or documentation to support the entry dates or the qualifying relatives until after the applications were filed and they were preparing for an individual hearing. Respondent also failed to timely communicate with his clients and inform them that they did not qualify for cancellation of removal and the only relief available to them was voluntary departure. Respondents' fees were unearned in part for those cases with inadequate or untimely investigations. Respondent and his staff failed to promptly make refunds to clients. Although Respondent was required to have made a reasonable inquiry before filing the applications, motions, briefs or other documents, he signed pleadings containing non-meritorious claims.

Respondent failed to adequately supervise his non-lawyer and attorney staff. He failed to recognize a systemic problem at his law firm until much later than he should have realized there was a problem; failed to discover that his staff was engaged in the unauthorized practice of law by signing documents that should have been reviewed and signed by an attorney; assisted others to violate the Ethical Rules; engaged in conduct involving dishonesty and misrepresentations; and committed misconduct prejudicial to the administration of justice.

Aggravating factors: prior disciplinary history, dishonest or selfish motive, multiple offenses, failure to comply with the State Bar's investigation, vulnerable victim, and substantial experience in the practice of law.

Mitigating factor: timely good-faith effort to rectify the consequences of his misconduct.

Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 1.5, 1.15, 1.16, 3.1, 3.3 (b), 5.1, 5.3, 5.5, and 8.4 (a), (c) and (d), and Rules 43 (b) (2) (C) and 54 (c), Ariz. R. Sup. Ct.

The agreement is accepted and costs awarded in the amount of \$8,098.10. The proposed final judgment and order is reviewed, approved and signed