

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

BARBARA ANN SUSMAN,

Attorney-Respondent,

No. 6186506.

Commission No. 2024PR00059

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorneys, Scott Renfroe and Kate E. Levine, pursuant to Supreme Court Rule 753(b), complains of Respondent, Barbara Ann Susman, who was licensed to practice law in the State of Illinois on November 9, 1983, and alleges that Respondent has engaged in the following conduct that subjects her to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(Lack of Diligence, Failure to Communicate, and Failure
to Return Unearned Fee – Barsbold Myagmar)*

1. On or about August 6, 2018, an immigration judge entered an order denying Barsbold (“Bobby”) Myagmar (“Myagmar”), a citizen of Mongolia, cancellation of his proposed removal from the United States under section 240A(b)(1) of the Immigration and Nationality Act (“the Act”) in matter number A200-837-152. To be statutorily eligible for relief for cancellation from removal under section 240A(b)(1) of the Act, Myagmar was required to show that his removal would result in exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child. Myagmar has a spouse who is a lawful

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permanent resident of the United States and a child who is a United States citizen. The immigration judge determined that Myagmar did not establish a basis to avoid his removal.

2. Prior to September 4, 2018, attorney Jason Sager (“Sager”) agreed to represent Myagmar in an appeal of the decision to deny his removal from the United States. Myagmar paid a fee to Sager, as well as \$110 in filing fees, to file a notice of appeal in matter number A200-837-152.

3. On September 4, 2018, Sager filed his appearance and a notice of appeal on behalf of Myagmar with the Board of Immigration Appeals in matter number A200-837-152. The notice of appeal asserted that the immigration judge erred by failing to consider all facts and laws likely to change the outcome in the court’s August 6, 2018, decision denying Myagmar’s application for cancellation of removal, and stated that those facts and laws would be set forth in a separate brief.

4. On or about September 28, 2018, Myagmar terminated Sager’s services, and Sager filed a motion to withdraw his representation of Myagmar in matter number A200-837-152. That motion was not allowed by the Board of Immigration Appeals until it issued its written decision denying Myagmar’s appeal on July 6, 2020, as set forth in paragraph 13, below.

5. On September 29, 2018, Respondent met with Myagmar to discuss matters relating to his appeal of the decision to allow his removal from the United States, and Respondent agreed to represent Myagmar in that appeal. At their initial meeting, Myagmar paid Respondent \$2,000 toward her requested fee of \$5,000.

6. On or about October 4, 2018, Respondent downloaded an appearance form from the National Immigrant Justice Center website to enter her appearance before the Board of Immigration Appeals for Myagmar in matter number A200-837-152. Respondent never filed her appearance on Myagmar’s behalf in matter number A200-837-152.

7. After their September 29, 2018, meeting, Respondent or a member of Respondent's staff met with Myagmar at least one additional time to discuss matters relating to his appeal of the removal decision and to exchange information. At those meetings, Respondent or the staff member told Myagmar that Respondent would be filing a brief and taking appropriate steps with the Board of Immigration Appeals to proceed with Myagmar's appeal.

8. Respondent never drafted a brief explaining the effect that Myagmar's removal would have on Myagmar's spouse or on the couple's child, pursuant to section 240A(b)(1) of the Act, which was necessary to establish the existence of an exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child in the event Myagmar was removed from the United States.

9. Between Myagmar's last meeting with Respondent or her staff member in 2018 and April 6, 2019, Myagmar attempted to communicate with Respondent by telephone, by email, and by text message on several occasions. Respondent did not return Myagmar's telephone messages or respond to his emails. On September 28, 2018, Respondent sent Myagmar a text message responding to his inquiry "what should I do Susman" [*sic*] by telling him to contact his former attorney and request his file, because unspecified documents from the file were needed for his appeal. On December 25, 2018, Respondent answered Myagmar's text message wishing her and her family a Merry Christmas with the message: "MERRY CHRISTMAS, BOBBY! Thank you![hope u r working on those documents!]" During that time, Respondent never wrote Myagmar a letter specifying what documents she needed to pursue his appeal, when they were needed, how he might obtain them from another source, or the effect their absence would have on the likelihood his appeal would be successful, nor did Respondent directly contact Myagmar's former attorney, Sager, to request a copy of his file.

10. On or about April 6, 2019, Respondent telephoned Myagmar to ask that he pay her an additional \$2,500 in fees to “complete” his appeal. On April 29, 2019, Myagmar met with Respondent to give her a check in the amount of \$2,000.

11. After April 6, 2019, Myagmar made several unsuccessful attempts to contact Respondent by telephone to obtain information about the status of his appeal. Between April 6, 2019, and January 3, 2020, when she sent him a text message, Respondent did not respond to Myagmar’s attempts to contact her.

12. At no time between September 29, 2018, and July 6, 2020, did Respondent file an appearance, a brief, or any other pleading or document on behalf of Myagmar or take any other action in the Board of Immigration Appeals to advance Myagmar’s appeal in matter number A200-837-152.

13. On or about July 6, 2020, the Board of Immigration Appeals held removal proceedings regarding Myagmar’s appeal seeking relief of cancellation of the immigration judge’s August 6, 2018, order that Myagmar be removed. Neither Respondent nor Myagmar appeared at the hearing. The Board considered all evidence before it, which included the findings of fact and determination of credibility made by the immigration judge, the brief filed by the Department of Homeland Security, and the notice of appeal filed by Mr. Sager.

14. On July 6, 2020, the Board of Immigration Appeals dismissed Myagmar’s appeal. In its decision, the Board noted that Myagmar had the burden of proof to establish that he was eligible for relief from removal and merited a favorable exercise of discretion and that Myagmar failed to meet that burden.

15. On or about July 6, 2020, the Board of Immigration Appeals sent Myagmar a written notice of its decision to dismiss his appeal, which Myagmar received shortly thereafter.

16. Prior to July 23, 2020, Myagmar sought the advice of attorney Ivan Tomic (“Tomic”) regarding the dismissal of his appeal. Between July 23, 2020, and August 3, 2020, Tomic sent three emails messages to Respondent requesting that she inform him what action, if any, she had taken on behalf of Myagmar. Tomic also left at least two telephone messages for Respondent, which were not returned.

17. On August 3, 2020, Tomic sent an email to Respondent stating as follows:

After repeated calls and emails, you have refused to communicate with me regarding this case. My client informs me that he paid you \$4,000 to do his appeal. Thus far, I do not see your name on the BIA decision. This will be my last email to you, given that you have refused to cooperate with me in the interest of your former client.

18. On August 3, 2020, Respondent responded by email to the above email from Tomic with a request that Myagmar execute a power of attorney in order for her to provide to Tomic the file materials she had relating to her representation of Myagmar. Respondent also demanded that Tomic produce proof of his assertion that Myagmar paid her \$4,000. Tomic responded with a copy of Respondent’s receipt for Myagmar’s September 29, 2019, cash payment of \$2,000 and Myagmar’s April 6, 2020, check to Respondent in the amount of \$2,000. Tomic informed Respondent of his opinion that her demand that his client provide her with a power of attorney to turn over the client file to Tomic was unreasonable.

19. At no time after August 3, 2020, did Respondent return to Myagmar or Tomic any portion of her file materials in his matter. At no time did Respondent refund any portion of the fee Myagmar paid to her to represent him in his appeal.

20. Respondent did not provide services to Myagmar to warrant a fee in the amount of \$4,000.

21. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to handle Myagmar’s appeal with the Board of Immigration Appeals with reasonable diligence and promptness, by conduct including failing to file an appearance, a brief, or any other document, or to appear on his behalf at the Board’s hearing, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct;
- b. failure to refund her unearned fee to Myagmar in the amount of \$4,000 or to return the file materials she had relating to her representation of Myagmar to Myagmar or Tomic, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct;
- c. failure to keep Myagmar reasonably informed about the status of his appeal at the Board of Immigration Appeals, by conduct including failing to provide Myagmar or Tomic with information between September 29, 2019, and August 3, 2020, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct; and
- d. failure to promptly comply with requests by Myagmar or Tomic regarding Myagmar’s matter, by conduct including failing to respond to telephone calls and emails from Myagmar or Tomic and text messages from Myagmar, or to provide a copy of Myagmar’s file materials to Tomic, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct.

COUNT II

(Lack of Diligence and Failure to Communicate – Sahil Chokshi)

22. In 2017, Respondent met with Sahil Chokshi (“Chokshi”) to discuss matters relating to Chokshi’s desire to request renewal of his Deferred Action for Childhood Arrivals (“DACA”) immigration status. At that time, Chokshi told Respondent, who had handled similar requests for Chokshi in the past, that his DACA status was due to expire.

23. At the conclusion of their meeting, Respondent and Chokshi agreed that Respondent would prepare and file with the United States Citizenship and Immigration Services (“USCIS”) a request to renew Chokshi’s DACA status. Chokshi paid Respondent a \$2,000 fee

and \$500 in filing costs in connection with Respondent's agreement to prepare and file Chokshi's DACA renewal request.

24. In late 2017, Chokshi received a communication from USCIS in the mail, which contained the original DACA application Respondent had prepared on Chokshi's behalf, together with Respondent's unnegotiated check in payment of the costs for filing the application. The communication from USCIS stated that the application had been filed late and therefore would not be accepted.

25. After Chokshi received the communication from USCIS, he telephoned Respondent to request information about what additional action was available to him. Respondent asked Chokshi to bring the communication to her office, which he did. At their subsequent meeting in Respondent's office, Respondent informed Chokshi that the government had suspended the DACA program and that there was no point in filing a DACA renewal for 2018.

26. In 2020, the government reopened the DACA program and began accepting new applications. Prior to August 6, 2020, Chokshi contacted Respondent to request that she file a DACA renewal application for 2020. Respondent requested fees and costs in the amount of \$2,500. On August 6, 2020, Chokshi paid Respondent \$2,500.

27. At no time after Respondent agreed to file Chokshi's 2020 DACA application did Respondent file that application or take any other action of his behalf. Chokshi made several unsuccessful attempts to contact Respondent by telephone to obtain information about the status of his DACA renewal. Respondent did not respond to Chokshi's attempts to contact her.

28. On January 22, 2021, Chokshi sent Respondent an email informing her that, over the preceding several months, he had left voicemails for her as well as messages with a member of Respondent's staff, none of which Respondent had returned, and requested that she contact him

to inform him of the status of his DACA renewal application. Respondent did not reply to Chokshi's email.

29. Sometime before May 10, 2022, Chokshi contacted attorney Anish Parikh ("Parikh") and asked Parikh to prepare and file the DACA renewal documents with USCIS on his behalf.

30. On May 10, 2022, and September 14, 2022, Parikh sent emails to Respondent to explain that he had been retained to complete a DACA renewal request for Chokshi, and to request that Respondent make her file on the DACA renewal matter available to Parikh. Parikh further requested that Respondent confirm whether she had filed any DACA applications for Chokshi in the past several years and informed Respondent that she was in possession of documents given to her by Chokshi that Parikh required in order to complete the DACA application, including Chokshi's original Indian passport. During this period, Parikh also telephoned Respondent and left messages requesting a return call.

31. Respondent did not reply to any of the requests made by Chokshi or Parikh asking her to communicate with them or to provide to Chokshi his original documents, including his original Indian passport.

32. Chokshi never signed any documents prepared by Respondent in connection with his desire to renew his expired DACA status. Instead, with Parikh's assistance, Chokshi was approved for a green card, or permanent resident card, which allowed Chokshi to live and work permanently in the United States.

33. By letter dated April 22, 2024, Respondent refunded Chokshi fees and costs in the amount of \$2,500 and returned his original Indian passport to him.

34. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to handle Chokshi's DACA renewal request with reasonable diligence and promptness, by conduct including failing to prepare or obtain Chokshi's signature on the required DACA renewal forms for 2020 or later, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct;
- b. failure to keep Chokshi reasonably informed about the status of his DACA renewal request, by conduct including failing to provide Chokshi or his subsequent attorney, Parikh, with information between August 6, 2020, and September 14, 2022, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct; and
- c. failure to promptly comply with the reasonable requests for information made by Chokshi or his subsequent attorney, Parikh, about the DACA renewal matter, by conduct including failing to respond to telephone messages and emails from Chokshi or Parikh between August 6, 2020, and September 14, 2022, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct.

COUNT III

(Failure to Respond to Lawful Demand for Information)

33. On September 11, 2020, Myagmar requested that the Administrator investigate Respondent's handling of his appeal in matter number A200-837-152, as outlined in Count I, above. As a result, the Administrator initiated investigation 2020IN02691 into Respondent's alleged conduct.

34. By letters dated September 14, 2020, January 13, 2021, April 5, 2021, and November 5, 2021, counsel for the Administrator notified counsel for Respondent of the initiation of the investigation, asked for Respondent's response to Myagmar's allegations, and notified her that a subpoena would be issued if she did not respond.

35. On November 12, 2021, counsel for Respondent requested and received an extension of seven days in which to respond to counsel for the Administrator's letters. As of November 24, 2021, Respondent still had not submitted a response to any of those letters.

36. On November 24, 2021, counsel for the Administrator issued a subpoena *duces tecum* requiring Respondent to appear at the Commission's Chicago office on December 21, 2021, and to produce her file, billing, and time records responsive to Myagmar's allegations by December 7, 2021.

37. Before December 21, 2021, Respondent submitted a copy of certain of the file materials relating to her representation of Myagmar.

38. On December 21, 2021, Respondent appeared for a sworn statement and testified that she kept handwritten time records, which her staff would then input into electronic time sheets. She stated that the handwritten records were stored in a filing cabinet. Counsel for the Administrator requested that Respondent produce her handwritten time records and the related computer time records showing the work she had done for Myagmar and the amount of time she expended on completing those tasks. As of March 31, 2023, Respondent had not produced any time records in the Myagmar matter.

39. By email dated March 31, 2023, counsel for the Administrator reiterated her request for those records. Respondent did not produce any handwritten or computer time records in the Myagmar matter.

40. On August 11, 2022, Chokshi requested that the Administrator investigate Respondent's handling of his DACA renewals, as outlined in Count II, above. As a result, the Administrator initiated investigation 2022IN02649 into Respondent's alleged conduct.

41. By letter dated August 16, 2022, and email dated March 31, 2023, counsel for the Administrator notified counsel for Respondent of the initiation of the investigation relating to Chokshi's allegations, asked for Respondent's response to those allegations, and notified her that

a subpoena would be issued if she did not respond to Chokshi's request for investigation and produce Respondent's time records relating to her representation of Myagmar.

42. By email dated April 4, 2023, counsel for Respondent sought and was granted a 30-day extension to respond to the requests.

43. On January 31, 2024, counsel for the Administrator sent a letter to counsel for Respondent with a subpoena *duces tecum* requiring Respondent to appear at the Commission's Chicago office on February 27, 2024, and to produce her file, billing, and time records responsive to Chokshi's allegations and the time records relating to Myagmar's allegations by February 13, 2024.

44. As of February 14, 2024, counsel for the Administrator had not received any of the records required pursuant to the subpoena, and as a result, sent a letter to counsel for Respondent that the materials expected from Respondent were overdue.

45. On February 19, 2024, counsel for Respondent sent an email to counsel for the Administrator, which said, "I expect to receive the records this week from Ms. Susman and will tender them once I have them."

46. On February 23, 2024, counsel for the Administrator sent an email to counsel for Respondent inquiring as to the status of the production, to which counsel for the Respondent replied, "I'm sorry, once I have the documents I will forward them to you."

47. On February 26, 2024, counsel for Respondent sought and received a continuance of Respondent's sworn statement that had been scheduled to take place the following day. Counsel for Respondent and counsel for the Administrator agreed to reschedule Respondent's sworn statement for March 8, 2024.

48. On February 29, 2024, counsel for Respondent produced a copy of Respondent's file materials relating to Respondent's representation of Myagmar and Chokshi. The production did not include the time records in the Myagmar matter or any materials dated after 2016 in the Chokshi matter.

49. On March 8, 2024, Respondent appeared for her sworn statement. At the time of Respondent's sworn statement, counsel for the Administrator informed Respondent that as of that date, she had failed to produce her time records in the Myagmar matter, which she previously had testified she had maintained. Respondent stated that she intended to produce those records following the statement. Counsel for the Administrator also directed Respondent's attention to the file materials that she had produced relating to her representation of Chokshi, stating that the copy appeared to reflect that her file still contained personal documents that Chokshi and his subsequent attorney had been requesting since 2021, including Chokshi's original Indian passport and Social Security card. Finally, counsel for the Administrator directed Respondent's attention to the fact that her file relating to Chokshi did not reflect any document, communication, or service in connection with her purported representation of Chokshi since 2016. At the conclusion of the statement, Respondent stated that she would send the following items to counsel for the Administrator: her time records for Myagmar; evidence that she had returned Chokshi's original Indian passport to him; and any records reflecting services provided to Chokshi after 2016.

50. By letter dated March 25, 2024, counsel for the Administrator sent a letter to counsel for Respondent reminding counsel that Respondent had testified that she had prepared time records in the Myagmar matter and had stated that she intended to produce those records. Counsel for the Administrator further requested that Respondent produce records of any communications she had with Myagmar. Finally, since Respondent's file for Chokshi reflected

no activity after 2016, counsel for the Administrator asked Respondent to produce evidence of how the fees paid to her by Chokshi in 2017 and 2020 had been earned.

51. By email dated April 23, 2024, counsel for Respondent submitted a copy of a cashier's check payable to Chokshi in the amount of \$2,500 and stated that the check and Chokshi's original Indian passport had been delivered to him. Counsel for Respondent produced certain items from Respondent's file materials relating to her representation of Chokshi, including a record of his payment to her in the amount of \$2,040 on September 5, 2017, and Chokshi's and Mr. Parikh's emails to her, as referenced in Count II, above. Counsel for Respondent stated that Respondent was putting together the additional records requested in counsel for the Administrator's March 25, 2024, letter.

52. On July 25, 2024, counsel for the Administrator reminded counsel for Respondent that on April 23, 2024, she had stated that Respondent intended to produce additional information that counsel for the Administrator had sought in his March 25, 2024, letter, including time records for her purported services relating to her representation of Myagmar, but that he had not received anything further from Respondent.

53. As of August 27, 2024, the date a Panel of the Commission's Inquiry Board authorized the Administrator to file this complaint against Respondent, she had not produced any time records relating to her representation of Myagmar or any records showing services she had provided to Chokshi in 2016 or later.

54. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to respond to a lawful demand for information from a disciplinary authority, by conduct including failing to produce her time records relating to her representation of Myagmar or any records relating to services provided to

Chokshi in 2016 or later, in violation of Rule 8.1(b) of the Illinois Rules of Professional Conduct.

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Lea S. Gutierrez, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Scott Renfroe
 Scott Renfroe

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