

FILED

Aug 7, 2025

Disciplinary
Board

Docket # 049

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

DIANA E. MOLLER,

Lawyer (Bar No. 24707).

Proceeding No. 24#00038

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND HEARING OFFICER'S
RECOMMENDATION

The undersigned Hearing Officer held a hearing on February 19-21, 2025, and March 5, 2025, under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Diana E. Moller appeared at the hearing and was represented by counsel, Kenneth S. Kagan. Disciplinary Counsel Marina Busse appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Diana E. Moller (Respondent) with the following counts of misconduct:

Count 1: By failing to act with reasonable diligence in filing a client's VAWA application, Respondent violated RPC 1.3.

Count 2: By failing to place a \$500 flat fee into a trust account, Respondent violated RPC 1.15A(c)(2).

Count 3: By failing to timely produce the client file, Respondent violated RPC 1.16(d).

1 urgent action. During Respondent's representation of E.F., E.F. often repeated her desire for
2 urgent action.

3 7. Respondent informed E.F. that Respondent could "expedite" E.F.'s matter for an
4 additional fee of \$500. E.F. agreed to pay the expedite fee.

5 8. On June 16, 2021, E.F. and Respondent executed a fee agreement (VAWA fee
6 agreement) for "a flat fee of \$4000 for the VAWA I360, \$2500 for the Adjustment of Status and
7 \$750 for FOIA and related record requests."

8 9. On June 16, 2021, E.F. made a payment of \$2,230, which included a \$2,000 initial
9 payment on the VAWA fee agreement, a \$200 consultation fee, and a \$30 administrative fee.

10 10. Respondent never sent E.F. a bill for the remaining balance of the VAWA fee
11 agreement or for the expedite fee. E.F. did not make any additional payments.

12 11. On July 6, 2021, Respondent informed E.F. that Respondent's mother's house had
13 caught fire and that her mother was seriously injured. Respondent also told E.F. that Respondent
14 would be busy dealing with the consequences of that event for some time. E.F. was the first client
15 Respondent contacted after the fire.

16 12. Respondent told E.F. that, despite the events in Respondent's personal life,
17 Respondent would be able to dedicate adequate time to E.F.'s case. Respondent told E.F. that if
18 the VAWA application was not filed within 60 days, Respondent would not charge an expedite
19 fee.

20 13. On July 23, 2021, Respondent emailed E.F. that Respondent was "back in the office
21 and happy to be getting back to work, especially on your case."

22 14. On October 5, 2021, E.F. emailed Respondent and asked Respondent to "let me know
23 where you are at with my case and if it's something that you can do or if I need to look for a
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1 different attorney.”

2 15. On October 5, 2021, Respondent replied and assured E.F. that Respondent was the
3 right person to handle E.F.’s matter and that Respondent would be “digging in deep into [E.F.’s]
4 case first.”

5 16. On November 1, 2021, E.F. met with Respondent in person to discuss getting a work
6 permit renewed via an application for an Employment Authorization Document (EAD).

7 17. Respondent and E.F. agreed to a separate flat fee of \$500 for the EAD renewal.

8 18. Respondent and E.F. did not execute a written fee agreement for the EAD renewal.
9 Respondent told E.F. that she wanted to prepare an Addendum to their fee agreement, but did not
10 do so.

11 19. On November 1, 2021, Respondent received \$500 from E.F., which Respondent
12 deposited into Respondent’s operating account.

13 20. Respondent had not entirely completed the EAD renewal application at the time the
14 funds were deposited, in part because E.F. had not provided all the documents Respondent
15 requested. Nevertheless, the Hearing Officer finds that Respondent had done work exceeding
16 value of the \$500 by the time that the fees were paid.

17 21. Respondent submitted the Declaration regarding E.F.’s lawful entry with the I-765
18 EAD Application in a timely manner on January 14, 2022. The validity of E.F.’s current work
19 permit was extended 180 days by the timely submission of the renewal application. An emergency
20 federal regulation subsequently increased the extension of E.F.’s work permit validity to 540 days,
21 so she was never without valid employment authorization.

22 22. On December 1, 2021, and again on December 9, 2021, E.F. emailed Respondent to
23 request an update on the status of the VAWA case and inquire whether Respondent would file
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1 the case before the end of the year.

2 23. On December 14, 2021, Respondent replied that Respondent would send documents
3 out for translation for the VAWA application, and that Respondent hoped to have the VAWA
4 application filed by the end of the year.

5 24. Respondent did not send the documents out for translation at that time.

6 25. Respondent did not file the VAWA application by the end of 2021.

7 26. In December, 2021, Respondent's mother suffered additional medical complications.
8 Respondent spent time managing her mother's medical and living situation. These circumstances
9 took Respondent away from her legal practice for some time.

10 27. On January 11, 2022, E.F. emailed Respondent to confirm that Respondent had filed
11 the EAD renewal application and to request a timeline for when the VAWA application would be
12 filed.

13 28. Respondent did not respond.

14 29. On January 20, 2022, E.F. sent a follow up email to Respondent inquiring about the
15 status of the EAD renewal application. E.F. also asked Respondent to confirm whether
16 Respondent had the capacity to handle E.F.'s case given the challenges Respondent was facing
17 regarding care for Respondent's mother.

18 30. On January 20, 2022, Respondent informed E.F. that Respondent believed
19 Respondent had already filed the EAD renewal, but that after receiving E.F.'s voicemail,
20 Respondent realized that Respondent "hadn't quite finalized it." Respondent told E.F. that after
21 discovering the error, Respondent had finalized and mailed the EAD application.

22 31. On February 4, 2022, E.F. asked whether Respondent needed any additional
23 information from E.F. and requested a timeline for when Respondent expected to file the VAWA
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1 application.

2 32. On February 16, 2022, E.F. asked if Respondent could file the VAWA application by
3 March 2022.

4 33. Respondent did not respond.

5 34. Between February 16, 2022, and March 7, 2022, E.F. made several additional attempts
6 to follow up with Respondent regarding the status of the VAWA application.

7 35. Respondent did not respond until March 7, 2022.

8 36. On March 7, 2022, Respondent told E.F. that Respondent was experiencing additional
9 personal difficulties relating to the care of Respondent's elderly mother.

10 37. Between March 9, 2022, and March 22, 2022, E.F. made several additional attempts
11 to follow up with Respondent regarding the status of the VAWA application.

12 38. Respondent did not respond.

13 39. On March 22, 2022, E.F. sent an email to Respondent indicating that E.F. did not want
14 to keep waiting and E.F. felt it was time to seek a new lawyer. E.F. requested a refund and a copy
15 of the client file.

16 40. On March 22, 2022, Respondent replied that Respondent had been working hard on
17 E.F.'s case. Respondent assured E.F. that E.F.'s VAWA application was Respondent's "number
18 one priority," and that Respondent was doing everything possible to file the application by the
19 end of the month.

20 41. On April 13, 2022, Respondent assured E.F. that Respondent was "making great
21 progress" on E.F.'s case. Respondent asked for additional information from E.F., which E.F.
22 provided the following day.

23 42. On April 22, 2022, E.F. paid Respondent \$450 dollars for the translation of documents.
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1 These were the same documents Respondent had promised to obtain translations of in December
2 of 2021.

3 43. Respondent deposited the \$450 into Respondent's trust account.

4 44. On April 29, 2022, Respondent paid \$299 to a translator for the translation of E.F.'s
5 documents.

6 45. On May 10, 2022, E.F. emailed Respondent to ask whether the VAWA application
7 would be filed that week.

8 46. Between May 13, 2022, and May 23, 2022, E.F. sent several follow up
9 communications via email, voicemail and text message.

10 47. Respondent did not respond.

11 48. On May 25, 2022, E.F. informed Respondent that E.F. could not keep waiting and that
12 E.F. would pick up the client file later that week.

13 49. On May 25, 2022, Respondent replied that Respondent's mother had had a health
14 emergency, and Respondent had been occupied with attending to that matter. Respondent stated
15 that "[n]evertheless, I expect to be done with your case by May 31 and ready to file the VAWA
16 application."

17 50. Respondent did not file the VAWA application by May 31, 2022.

18 51. On June 6, 2022, E.F. emailed Respondent to ask if Respondent had everything
19 Respondent needed to file the application. E.F. asked Respondent to provide a date for when the
20 application would be filed.

21 52. On June 10, 2022, E.F. met with Respondent at Respondent's office and signed the
22 finalized forms for the VAWA application.

23 53. In June of 2022 the government's average processing time for VAWA applications
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1 was estimated at 26 months. These average processing times do not provide a true estimation of
2 when an application will be processed because they regularly vary, and the processing time may
3 shorten or lengthen after an application is filed.

4 54. Later in the evening on June 10, 2022, Respondent emailed E.F. to request additional
5 documentation.

6 55. On June 11, 2022, E.F. emailed Respondent the requested documentation.

7 56. On June 13, 2022, Respondent emailed E.F. that Respondent had “a short list of things
8 to ask you for.”

9 57. On June 22, 2022, E.F. sent a text to Respondent asking for the list of items
10 Respondent needed.

11 58. On June 27, 2022, E.F. sent a text to Respondent asking Respondent to “. . . please
12 submit my application, I waited for the list but you never sent it. You've been saying that you will
13 file it since April I don't want to wait anymore. Time keeps passing, it's been over a year since
14 you've had my file. Please I'm begging you to finish it and file it as is, I just need this done.”

15 59. Respondent did not respond.

16 60. By June 2022, Respondent had all of the necessary information to file the VAWA
17 application.

18 61. Between June 27, 2022, and July 8, 2022, E.F. sent several follow up communications
19 to Respondent.

20 62. Respondent did not respond.

21 63. On July 13, 2022, E.F. asked Respondent for a timeline on when the case would be
22 filed.

23 64. Between July 19, 2022, and August 4, 2022, E.F. sent several follow up
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1 | communications asking about the status of the case and requesting a timeline for when
2 | Respondent planned to file the application.

3 | 65. In August 2022, Respondent told E.F. that the VAWA application would be filed by
4 | August 10, 2022.

5 | 66. On August 8, 2022, E.F. asked Respondent to send E.F. a copy of the declaration
6 | Respondent was planning to file with the VAWA application so that E.F. could review it.

7 | 67. On August 10, 2022, Respondent informed E.F. that Respondent had been delayed in
8 | filing the application due to issues with Respondent's mother's health. Respondent assured E.F.
9 | that Respondent would return to the office the following day and that Respondent would send
10 | E.F. a copy of the declaration.

11 | 68. Respondent did not send E.F. a copy of the declaration.

12 | 69. On September 8, 2022, E.F. terminated the representation.

13 | 70. A typical timeframe for completing and filing a VAWA application for a client is
14 | between three to six months.

15 | 71. Respondent represented E.F. for nearly 15 months.

16 | 72. Respondent never completed the declaration, one of the most important elements of a
17 | VAWA application.

18 | 73. During the period that Respondent represented E.F., Respondent did not complete any
19 | of the services outlined in the VAWA fee agreement, which was signed on June 16, 2021.

20 | 74. By the close of the hearing, Respondent had not refunded any of the flat fee that E.F.
21 | paid to Respondent under the VAWA fee agreement. After the close of the hearing, in July 2025,
22 | Respondent provided to ODC a check for \$2,000 as a refund of the portion of the flat fee paid by
23 | E.F.

1 75. Respondent's conduct was knowing.

2 76. The Hearing Officer does not find by a clear preponderance of the evidence that the
3 delayed filing of the VAWA application caused E.F. to endure a longer processing time for the
4 VAWA application once it was filed. The processing times that were listed by ICE in June 2022
5 were not a guarantee but rather an average of what was happening at the time.

6 77. Nevertheless, Respondent's failure to act caused injury to E.F., who paid \$2,000
7 towards a flat fee for services that were never provided. E.F. paid \$450 for the translation of
8 documents that cost \$299. Respondent did not return the excess funds related to the translation
9 for one year. Further, the delay in filing the VAWA petition raised a risk to E.F. for potential
10 changes in immigration law, policy, or processing times.

11 78. Respondent's failure to act caused unnecessary stress and anxiety to E.F.

12 **Respondent's Failure to Produce E.F.'s Client File**

13 79. On September 8, 2022, E.F. hired lawyer Kati Ortiz.

14 80. On September 8, 2022, Ortiz provided Respondent a release signed by E.F. and
15 requested E.F.'s file from Respondent.

16 81. On September 8, 2022, Respondent replied to Ortiz that Respondent was "saddened
17 by this but will get everything together as quickly as possible."

18 82. From September 8, 2022, through November 2, 2022, Ortiz sent weekly emails
19 reminding Respondent that Ortiz could not move forward without the client file and renewing
20 Ortiz's request for E.F.'s file.

21 83. Respondent sent several responses acknowledging receipt of these requests, saying
22 she "was working on it," and promising to produce the file imminently.

23 84. On November 23, 2022, Ortiz sent Respondent a final request for E.F.'s file, but
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1 Respondent did not respond or provide the file to Ortiz.

2 85. On November 29, 2022, E.F. emailed Respondent to request the file.

3 86. Respondent did not respond or provide the file to E.F. During this time, Respondent
4 was suffering from her own medical conditions.

5 87. On or around December 1, 2022, Ortiz filed E.F.'s VAWA application without
6 receiving E.F.'s client file from Respondent. The document collection that E.F. had done for
7 Respondent aided her in helping Ortiz prepare the VAWA application.

8 88. On April 27, 2023, which was after E.F. filed a grievance against Respondent and over
9 a year after E.F. had paid \$450 dollars for the translation of documents which cost \$299,
10 Respondent sent E.F. a refund in the amount of \$115.10.

11 89. On April 27, 2023, which was after E.F. filed a grievance against Respondent and
12 nearly eight months after Ortiz had initially requested E.F.'s file, Respondent sent the client file
13 to Ortiz.

14 90. Respondent's conduct was knowing.

15 91. Respondent's repeated statements to Ortiz and to E.F. that Respondent "was working
16 on [providing the file]" were not true.

17 92. Respondent's repeated false assurances to Ortiz and that Respondent would promptly
18 produce E.F.'s client file caused unnecessary confusion and delay in Ortiz's ability to represent
19 E.F.

20 93. E.F. was injured by Respondent's failure to provide the client file which forced E.F.
21 to perform additional work to compile the same documentation for a new lawyer. That lawyer
22 had to start from scratch, causing additional unnecessary delay in the filing of E.F.'s VAWA
23 application.

1 94. E.F. was also injured by Respondent’s failure to provide the translated documents to
2 E.F. until after E.F.’s VAWA application had already been filed, depriving E.F. of the benefit of
3 using those documents and the translation for which E.F. had paid.

4 **Respondent’s Failure to Cooperate with ODC’s Disciplinary Investigation**

5 95. On November 29, 2022, E.F. filed a grievance against Respondent.

6 96. On December 9, 2022, ODC emailed Respondent a copy of the grievance with a
7 request for a response within 30 days.

8 97. On January 9, 2023, Respondent sent ODC an email requesting additional time to
9 respond due to illness. ODC agreed to extend the response deadline to January 20, 2023.

10 98. Respondent did not respond by January 20, 2023.

11 99. On January 25, 2023, ODC emailed Respondent a letter warning Respondent that if
12 no response was received within 10 days, by February 6, 2023, ODC could subpoena Respondent
13 for a deposition.

14 100. On February 7, 2023, Respondent responded by email, stating that she was
15 suffering from a significant health problem, and said she would respond by February 10. On
16 February 13, ODC emailed Respondent and asked whether a response would be sent that week.
17 On February 16, Respondent responded that she had been “so sick this week, it is unbearable.”
18 Respondent provided no further response before March 6, 2023.

19 101. On March 6, 2023, ODC issued a subpoena for Respondent’s deposition for March
20 28, 2023.

21 102. On April 27, 2023, nearly five months after the grievance was filed, Respondent
22 provided a preliminary response to the grievance and the documents requested by ODC.

23 103. Respondent’s failure to cooperate with the disciplinary investigation was caused
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1 in large part by her illness, but also was knowing.

2 104. Respondent's repeated false assurances to ODC that Respondent would promptly
3 produce requested documents caused unnecessary confusion and delay to the disciplinary process.

4 105. Respondent's failure to promptly respond to ODC's requests for information
5 caused injury in that ODC had to expend additional resources in order to compel Respondent's
6 response.

7 **Findings related to Aggravating and Mitigating Factors**

8 106. Respondent is responsible for the care of Respondent's elderly mother, who suffers
9 from dementia and other health problems. During the course of Respondent's representation of
10 E.F., Respondent was dealing with the aftermath of a traumatic house fire in Respondent's
11 mother's home in Spokane. Respondent's responsibilities during this time included, among other
12 things, managing her mother's care, finding new and adequate housing for Respondent's mother,
13 managing communication with contractors and insurance adjusters, and overseeing the
14 organization and salvaging of Respondent's mother's remaining possessions. These
15 responsibilities diverted Respondent from her representation of E.F.

16 107. Respondent, who had previously struggled with depression and anxiety,
17 experienced a significant increase in Respondent's mental health symptoms after the house fire.

18 108. Respondent's mental health struggles did not impact Respondent's cognitive
19 functioning.

20 109. Respondent's mental health conditions interfered with her ability and energy to
21 work. Her mental health conditions were exacerbated by the demands placed on her by her
22 mother's situation and then by her own illnesses.

23 110. In November 2022, Respondent underwent a routine surgery. After the surgery,
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1 Respondent developed several unexplained symptoms, including acute nausea, which had a
2 significant impact on Respondent's health.

3 111. During the course of Respondent's representation of E.F., Respondent was aware
4 that the events transpiring in Respondent's personal life were impeding Respondent's ability to
5 handle E.F.'s case. Respondent was also aware that filing the VAWA application quickly was of
6 particular importance to E.F. Despite the demands placed on Respondent by her mother's status
7 and the burdens of her own mental health conditions, Respondent knew or should have recognized
8 that she could not provide the representation she had agreed to provide to E.F. and that she could
9 not comply with her obligations to provide client files or to cooperate during ODC's investigation.
10 Respondent could have mitigated the harm to E.F. by explaining that Respondent was not going
11 to be able to complete E.F.'s application in the manner they had initially agreed to. Instead,
12 Respondent made repeated assurances to E.F. that Respondent would be filing the application
13 imminently. Similarly, Respondent knew or should have known that she was not able to provide
14 the client file in a timely manner or respond to ODC in a timely manner. Instead, Respondent
15 made repeated assurances to the contrary.

16 CONCLUSIONS OF LAW

17 Violation Analysis

18 The Hearing Officer finds that ODC proved the following by a clear preponderance of the
19 evidence:

20 112. Count 1 of the Formal Complaint charged Respondent with failing to act with
21 reasonable diligence in filing E.F.'s VAWA application, in violation of RPC 1.3.

22 113. RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness
23 in representing a client.

1 114. Prolonged delay and procrastination reflect poorly on the profession, cause the
2 client unnecessary frustration and anxiety, and may impair or even destroy the client's legal
3 position. In re Disciplinary Proceeding Against Lopez, 153 Wn.2d 570, 591, 106 P.3d 221 (2005);
4 RPC 1.3 cmt [3]. Furthermore "[e]ven when the client's interests are not affected in substance . . .
5 unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's
6 trustworthiness." RPC 1.3 cmt [3].

7 115. Respondent agreed to represent E.F. and file the VAWA application, aware of
8 E.F.'s desire for urgency. Once Respondent realized that the overwhelming circumstances in
9 Respondent's personal life were impeding Respondent's ability to provide the agreed upon
10 services to E.F., Respondent had the option to withdraw from the matter. Respondent elected not
11 to do so, and therefore retained the responsibility to diligently pursue E.F.'s matter.

12 116. Respondent failed to act with reasonable diligence and promptness, even though
13 she repeatedly assured E.F. she would do so.

14 117. Respondent had everything that Respondent needed to complete and file the
15 VAWA application by June of 2022, yet Respondent did not complete and file the VAWA
16 application or complete the draft declaration.

17 118. Based on the foregoing, the Hearing Officer concludes that Respondent failed to
18 act with reasonable diligence in filing E.F.'s VAWA application, and thereby violated RPC 1.3.

19 119. Count 3 of the Formal Complaint charged Respondent with failing to timely
20 produce the client file, in violation of RPC 1.16(d).

21 120. RPC 1.16(d) provides that "[u]pon termination of representation, a lawyer shall
22 take steps to the extent reasonably practicable to protect a client's interests, such as . . .
23 surrendering papers and property to which the client is entitled and refunding any advance
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1 payment of fee or expense that has not been earned or incurred.”

2 121. Respondent did not produce the E.F.’s file in a timely manner and Respondent did
3 not take reasonably practicable steps to protect E.F.’s interests. Although she faced personal
4 burdens, Respondent chose to tell Ortiz and E.F. that she “was working on it” rather than fulfill
5 her responsibility or provide truthful statements to E.F. and Ortiz.

6 122. Based on the foregoing, the Hearing Officer concludes that Respondent failed to
7 take reasonably practicable steps to protect E.F.’s interests and failed to surrender E.F.’s property,
8 including documents to which E.F. was entitled, and thereby violated RPC 1.16(d).

9 123. Count 4 of the Formal Complaint charged Respondent with failing to promptly
10 respond to disciplinary counsel’s requests for a response to the grievance in violation of RPC
11 8.4(l) and/or 8.1(b) (through a violation of ELC 5.3(f)).

12 124. ELC 5.3 (f) provides that “[a]ny lawyer must promptly respond to any inquiry or
13 request made under these rules for information relevant to grievances or matters under
14 investigation.” RPC 8.4(l) establishes that it is professional misconduct for a lawyer to “violate a
15 duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection
16 with a disciplinary matter.”

17 125. The Hearing Officer finds that ODC requested Respondent’s response to the
18 grievance in this matter and Respondent failed to promptly respond.

19 126. Based on the foregoing, the Hearing Officer concludes that Respondent failed to
20 promptly respond to disciplinary counsel’s request for a response to the grievance and thereby
21 violated RPC 8.4(l) through a violation of ELC 5.3(f).

22 The Hearing Officer finds that ODC did not prove the following by a clear preponderance
23 of the evidence:

1 127. Count 2: The Hearing Officer finds that ODC did not prove Count 2 by a clear
2 preponderance of the evidence. Count 2 is therefore dismissed.

3 **Sanction Analysis**

4 128. A presumptive sanction must be determined for each ethical violation. *In re*
5 *Anschell*, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
6 Bar Association’s Standards for Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. &
7 Feb. 1992 Supp.) are presumptively applicable in this case:

8 ABA Standard 4.4 applies to Respondent’s failure to provide diligent representation.

9 Under ABA Standard 4.42, suspension is generally appropriate when a lawyer knowingly
10 fails to perform services for a client and causes injury or potential injury to a client, or a lawyer
11 engages in a pattern of neglect and causes injury or potential injury to a client.

12 129. As to Count 1, the Hearing Officer finds that Respondent’s conduct was knowing.
13 The ABA Standards define knowledge as “the conscious awareness of the nature or attendant
14 circumstances of the conduct but without the conscious objective or purpose to accomplish a
15 particular result.” Respondent’s conduct was knowing in two respects. First, she knew that E.F.
16 wanted the VAWA petition filed, and Respondent never filed it despite having all the information
17 and materials necessary. Second, Respondent was aware from the start of the representation of
18 E.F.’s desire for urgency, yet she did not represent E.F. with any urgency. . Although Respondent
19 informed E.F. of the events that had transpired in Respondent’s personal life, Respondent also
20 assured E.F. that these events would not impact Respondent’s ability to handle E.F.’s case.
21 Respondent set several deadlines for when Respondent expected to have the application
22 completed and did not meet with any of them.

23 130. Respondent’s failure to perform the agreed upon services caused actual injury to
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1 E.F. because E.F. paid \$2,000 towards a flat fee for services that were never provided. E.F. paid
2 \$450 for the translation of documents that cost \$299. Respondent did not return the excess funds
3 related to the translation for a year, and did not refund the \$2,000 until after the close of the
4 hearing in this matter. E.F. was forced to find another lawyer and start the case over, and without
5 the money she had paid Respondent to accomplish the same task. Respondent's conduct also
6 caused E.F. unnecessary stress and anxiety during the representation, and presented E.F. with
7 additional risks based on changing immigration law and policies.

8 131. The presumptive sanction for Count 1 under ABA Standard 4.42 is suspension.

9 132. ABA Standard 7.0 applies to Respondent's failure to produce E.F.'s client file
10 upon termination of the representation. Under ABA Standard 7.2, suspension is generally
11 appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a
12 professional and causes injury or potential injury to a client.

13 133. As to Count 3, the Hearing Officer finds Respondent's conduct was knowing.
14 Respondent was aware that E.F. had requested the client file through Ortiz and Respondent agreed
15 to produce the file. Had Respondent simply neglected to provide the files because of her medical
16 conditions and the trauma she was undergoing, the Hearing Officer might find that she acted
17 negligently. However, Respondent's repeated assurances that she would provide the files and
18 that she "was working on it," demonstrate that Respondent knowingly engaged in the conduct
19 alleged.

20 134. Respondent's failure to provide the file caused actual injury to E.F. because E.F.
21 was deprived of the benefit of work Respondent did on E.F.'s case. While the efforts E.F. made
22 to gather information at Respondent's request made it easier for E.F. to provide the same
23 information to Ortiz, none of the legal work that Respondent did could be used by Ortiz. E.F.

1 was also injured by Respondent's failure to provide the translated documents to E.F. until after
2 E.F.'s VAWA application had already been filed, depriving E.F. of the benefit of using those
3 documents and the translation for which E.F. had paid. E.F. was forced to compile evidence again,
4 and the new lawyer had to start from scratch.

5 135. The presumptive sanction for Count 3 under ABA Standard 7.2 is suspension.

6 136. ABA Standard 7.0 also applies to Respondent's failure to cooperate in a
7 disciplinary investigation. *In re Disciplinary Proceeding Against Scannell*, 169 Wn.2d 723, 744,
8 239 P.3d 322 (2010). Under ABA Standard 7.2, suspension is generally appropriate when a
9 lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and
10 causes injury or potential injury to the legal system.

11 137. As to Count 4, the Hearing Officer finds that Respondent's conduct was knowing.
12 Respondent was aware that ODC had requested Respondent's response to the grievance and
13 Respondent had agreed to respond. The Hearing Officer recognizes that Respondent was
14 experiencing medical difficulties during this time. As with Count 3, however, Respondent's
15 statements to ODC that she would respond if given additional time and then her failure to do so
16 demonstrate that her conduct was knowing.

17 138. Respondent's conduct caused actual and potential injury to the discipline system
18 because ODC was forced to expend additional resources to compel Respondent's response.

19 139. The presumptive sanction for Count 4 under ABA Standard 7.2 is suspension.

20 140. When multiple ethical violations are found, the "ultimate sanction imposed should
21 at least be consistent with the sanction for the most serious instance of misconduct among a
22 number of violations." *In re Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

23 141. Based on the Findings of Fact and Conclusions of Law and application of the ABA
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1 Standards, the appropriate presumptive sanction is suspension.

2 142. A period of six months is generally the accepted minimum term of suspension. *In*
3 *re Cohen*, 149 Wn.2d 323, 67 P.3d 1086, 1094 (2003); *In re Halverson*, 140 Wn. 2d 475 (2000).

4 **Aggravating Factors:**

5 143. The following aggravating factors set forth in Section 9.22 of the ABA Standards
6 are applicable in this case:

7 144. Multiple offenses, ABA Standard § 9.22(d). The misconduct proven in Counts 1,
8 3, and 4 involves violation of different Rules of Professional Conduct.

9 145. Refusal to acknowledge wrongful nature of conduct, ABA Standard § 9.22(g).
10 Respondent has refused to acknowledge that Respondent's conduct caused harm to E.F. Instead,
11 Respondent has argued that E.F. was not harmed by Respondent's conduct and that E.F. was
12 responsible for the delay in the filing of the VAWA petition, at least in part. At the hearing,
13 however, Respondent acknowledged that she should have withdrawn from representation.
14 Consequently, the Hearing Officer considers this only a slight aggravating factor.

15 146. Substantial experience in the practice of law, ABA Standard 9.22(i). Respondent
16 was admitted to practice in 1995.

17 147. Indifference to making restitution, ABA Standard 9.22(j). Until after the closure
18 of the hearing, Respondent refused to disgorge the \$2,000 fee E.F. paid to Respondent.

19 **Mitigating Factors:**

20 148. The following mitigating factors set forth in Section 9.32 of the ABA Standards
21 are applicable to this case:

22 149. Absence of a prior disciplinary record, ABA Standard 9.32(a). Respondent has no
23 disciplinary history.

1 150. Personal or emotional problems, ABA Standard 9.32(c). Respondent was
2 experiencing substantial personal and emotional problems during the period the misconduct
3 occurred. There is no doubt that Respondent's care for her mother after the house fire and to
4 respond to her mother's health conditions distracted her from her professional responsibilities and
5 interfered with her ability to provide representation to E.F. Further, Respondent's own mental
6 health conditions and physical conditions made it difficult for her to provide representation to
7 E.F.

8 **Recommendation:**

9 151. On balance, the ABA Standards and the applicable aggravating and mitigating
10 factors do not justify departure from the presumptive sanction of suspension. The Hearing Officer
11 has seriously considered whether the extreme circumstances in which Respondent found herself,
12 through no fault of her own, are sufficient mitigating factors to vary from the usual minimum six
13 month suspension. Respondent was undoubtedly buffeted by unexpected stress and obligations
14 caused by her mother's fire and health conditions, which then exacerbated Respondent's own
15 mental health conditions. It would have been difficult for any attorney to focus on work, and in
16 particular on urgent work, under these circumstances. However, Respondent's actions during this
17 time—notably reassuring E.F. that the work would get done, setting deadlines that were never
18 met, and assuring Ortiz and ODC that the client files and grievance response would be provided—
19 dilute the strength of this mitigating factor. Respondent had alternative exit ramps for her
20 situation that would have reduced or eliminated the injuries to others found here. Accordingly,
21 the Hearing Officer will not recommend a shorter period of suspension. Still, in light of
22 Respondent's qualifications and demonstrated practice before July 2021, the Hearing Officer
23 believes that the Bar will be better when Respondent is fully ready to return to the practice of law.

Certificate of Service

I certify that I caused a copy of the foregoing Findings of Fact and Conclusions of Law to be emailed to the Office of Disciplinary Counsel and counsel for Respondent Kenneth Scott Kagan at ken@kenkaganlaw.com on this 7th day of August, 2025



Clerk to the Disciplinary Board

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3 **Appendix A**

4 1. Respondent shall be subject to probation for a period of 24 months beginning on
5 the date Respondent is reinstated to the practice of law.

6 2. The conditions of probation are set forth below. Respondent's compliance with
7 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary
8 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
9 herein may be grounds for further disciplinary action under ELC 13.8(b).

10 **Practice Monitor**

11 a. During the period of probation, Respondent's practice will be supervised by a
12 practice monitor. The practice monitor must be a WSBA member with no record
13 of public discipline and who is not the subject of a pending public disciplinary
14 proceeding.

15 b. The role of the practice monitor is to consult with and provide guidance to
16 Respondent regarding case management, office management, and avoiding
17 violations of the Rules of Professional Conduct, and to provide reports and
18 information to the Probation Administrator regarding Respondent's compliance
19 with the terms of probation and the RPC. The practice monitor does not represent
20 the Respondent.

21 c. At the beginning of the probation period, the Probation Administrator will select
22 a lawyer to serve as practice monitor for the period of Respondent's probation.

23 i) **Initial Challenge:** If, within 15 days of the written notice of the selection
24 of a practice monitor, Respondent sends a written request to the Probation
Administrator that another practice monitor be selected, the Probation
Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.

ii) **Subsequent Challenges:** If, after selection of a second (or subsequent)
practice monitor, Respondent believes there is good cause why that
individual should not serve as practice monitor, Respondent may, within
15 days of notice of the selected practice monitor, send a written request to
the Probation Administrator asking that another practice monitor be

1 selected. That request must articulate good cause to support the request.
2 If the Probation Administrator agrees, another practice monitor will be
3 selected. If the Probation Administrator disagrees, the Office of
4 Disciplinary Counsel will submit its proposed selection for practice
monitor to the Chair of the Disciplinary Board for appointment pursuant to
ELC 13.8(a)(2) and will also provide the Chair with the Respondent's
written request that another practice monitor be selected.

- 5 d. In the event the practice monitor is no longer able to perform the practice monitor's
6 duties, the Probation Administrator will select a new practice monitor at the
Probation Administrator's discretion.
- 7 e. During the period of probation, Respondent must cooperate with the named
8 practice monitor. Respondent must meet with the practice monitor at least once
per month. Respondent must communicate with the practice monitor to schedule
9 all required meetings.
- 10 f. The Respondent must bring to each meeting a current, complete written list of all
11 pending client legal matters being handled by the Respondent. The list must
identify the current status of each client matter and any problematic issues
regarding each client matter. The list may identify clients by using the client's
12 initials rather than the client's name.
- 13 g. At each meeting, the practice monitor will discuss with Respondent practice issues
14 that have arisen or are anticipated. In light of the conduct giving rise to the
imposition of probation, ODC recommends that the practice monitor and
15 Respondent discuss whether Respondent is diligently making progress on each
client matter, whether Respondent is in communication with each client, whether
16 Respondent has promptly billed each client, whether Respondent's fee agreements
are consistent with the RPC and are understandable to the client, whether
Respondent needs to consider withdrawing from any client matters. Meetings may
17 be in person or by telephone at the practice monitor's discretion. The practice
monitor uses discretion in determining the length of each meeting.
- 18 h. The practice monitor will provide the Probation Administrator with quarterly
19 written reports regarding Respondent's compliance with probation terms and the
RPC. Each report must include the date of each meeting with Respondent, a brief
20 synopsis of the discussion topics, and a brief description of any concerns the
practice monitor has regarding the Respondent's compliance with the RPC. The
report must be signed by the practice monitor. Each report is due within 30 days
21 of the completion of the quarter.
- 22 i. If the practice monitor believes that Respondent is not complying with any of
23 Respondent's ethical duties under the RPC or if Respondent fails to schedule or
attend a monthly meeting, the practice monitor will promptly communicate that to
24 the Probation Administrator.

1 j. Respondent must make payments totaling \$1,000 to the Washington State Bar
2 Association to defray the costs and expenses of administering the probation, as
3 follows:

4 \$250 due within 30 days of the start of the probation;

5 \$250 due within 6 months of the start of the probation period;

6 \$250 due within 12 months of the start of the probation period; and

7 \$250 due within 18 months of the start of the probation period.

8 All payments should be provided to the Probation Administrator for processing.

9 Ethics School

10 a. Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or
11 by obtaining the recorded product, and to pay registration costs of \$150 plus
12 applicable sales tax. Respondent will receive all applicable approved CLE credits
13 for time in attendance at the Ethics School.

14 b. Attendance at Ethics School is in addition to and shall not fulfill any continuing
15 legal education (CLE) requirements set out in this order.

16 c. Respondent shall contact the Ethics School Administrator, currently Claire
17 Carden, at (206) 727-8220 or clairec@wsba.org, to confirm enrollment in Ethics
18 School and related logistics.

19 d. Respondent shall complete the ethics school requirement at least three months
20 prior to completion of probation..

21 e. Respondent shall provide evidence of completion of ethics school to the Probation
22 Administrator no later than 30 days after the conclusion of the course. Proof of
23 attendance shall include the program brochure, evidence of payment, and a written
24 statement that includes the date and time of attendance.

f. Respondent may contact the Ethics School administrator directly to enroll in
Ethics School and administrative communications, e.g. regarding registration,
payment, program content and schedule, and CLE credits, may be sent directly to
Respondent.

g. The Ethics School administrator may respond to inquiries from the Probation
Administrator regarding Respondent's compliance with these conditions.