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BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE
BAR ASSOCIATION

NOV 08 2010

DISCIPLINARY BOARD

In re

ROSA DEL CARMEN RODRIGUEZ

Lawyer (WSBA No. 34334).

PUBLIC FILE NO. 09#00101

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

This matter came on for hearing before the undersigned hearing officer on October 19, 20 and 21, 2010. Senior Disciplinary Counsel Kevin Banks represented the Washington State Bar Association. Leland G. Ripley, Attorney at Law, represented Respondent Rosa Del Carmen Rodriguez.

I. SECOND AMENDED FORMAL COMPLAINT

The Second Amended Formal Complaint charged Respondent with the following acts of misconduct:

Count 1: By making one or more materially false statements under oath at her WSBA deposition when she knew them to be false, Respondent committed the crime of perjury (RCW 9A.72.020) and/or the crime of false swearing (RCW 9A.72.040) and/or engaged in dishonesty, deceit and/or misrepresentation, in violation of RPC 8.4(b) and/or 8.4(c) and/or RPC 8.4(d) and/or RPC 8.4(i) and/or RPC 8.4(l) (violation of duty under ELC 5.3(e) to furnish a full and complete response to the grievance).

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION I

049

- 1 2. At all times material to the allegations in the Second Amended Formal Complaint,
2 Respondent practiced immigration and criminal law in Seattle, Washington.
- 3 3. At all times material to the allegations in the Second Amended Formal Complaint,
4 Respondent was an associate attorney in the law office of Rios Cantor, P.S. She was
5 hired into that position in December of 2003, shortly after she passed the Washington
6 State Bar examination.
- 7
- 8 4. Two things are at issue in this case:
- 9 a. Respondent's representation of Salvador Rivas Velasco beginning in the week of
10 Thanksgiving 2006, and
- 11 b. Responses that Respondent gave to the WSBA in the course of its investigation
12 of a grievance arising out of that representation.
- 13

14 **Prior Counsel's Representation of Mr. Velasco**

- 15 5. In a decision entered on August 14, 2006, Mr. Velasco was denied asylum and
16 cancellation of removal. Exhibit A112. Mr. Velasco posted a bond and was given a
17 date by which to voluntarily depart from the United States. This option, if exercised,
18 avoids automatic ineligibility for certain kinds of re-entry for a period of ten years, and
19 avoids forfeiture of the bond. Id.
- 20
- 21 6. Under the August 14 decision, Mr. Velasco could have stayed in the United States
22 pending any appeal to the Board of Immigration Appeals ("BIA"), ***so long as the appeal***
23 ***was filed by September 13, 2006.*** Catherine Willmore, who at that time was Mr.
24 Velasco's attorney, failed to file the appeal. The voluntary departure became no longer
25 an option and an Order of Removal took effect.
- 26

- 1 7. On November 6, 2006, Mr. Velasco was arrested for breach of a bond and detained at
2 the Northwest Detention Center in Tacoma. The arrest was a complete shock to Mr.
3 Velasco, who reasonably believed that Ms. Willmore had filed a timely appeal.
4
5 8. Ms. Willmore would have received notice of her error within days of September 28,
6 2006, when "Notice Immigration Bond Breached" was mailed to her. Exhibit A113.
7
8 9. For reasons unknown, Ms. Willmore waited until the week of Thanksgiving 2006 to
9 contact Respondent's firm to ask it to seek approval for a late-filed appeal.

10 **The Hiring of Respondent's Firm**

- 11 10. Ms. Willmore contacted Manuel Rios, a principal of Rios Cantor, P.S. Respondent was
12 a third-year associate at the firm at that time. The firm handles a thousand or more
13 cases per year with small number of attorneys. E Transcript, 298:14-21.
14
15 11. Mr. Rios told Respondent that Ms. Willmore had failed to file a BIA appeal, resulting in
16 Mr. Velasco's arrest, detention and imminent deportation. He said that he was leaving
17 for the holiday, and asked Respondent if she would handle the matter. Respondent
18 agreed to do so. E-Transcript, 274:15-275:8.
19
20 12. At that point, the only thing standing between Mr. Velasco and a flight to his home
21 country of El Salvador was the necessity for the United States Government to obtain
22 travel documents for him. The time pressure on Respondent in this assignment was
23 extreme.

24 **Respondent's Representation of Mr. Velasco**

- 25 13. Respondent obtained the file from Ms. Willmore and reviewed it to decide what to do for
26 Mr. Velasco.

1 14. Respondent decided to move for leave to file a late notice of appeal on the ground of
2 ineffective assistance of counsel. At all times during Respondent's representation of
3 Mr. Velasco, Mr. Velasco was eligible for Temporary Protected Status ("TPS"), which is
4 obtained through an application process. However, a competent application for TPS
5 would have taken a couple of weeks to prepare, and Mr. Velasco's impending
6 deportation necessarily occupied Respondent's full attention at the outset of the
7 representation.
8

9 15. The WSBA's expert witness, Bart Stroupe, confirmed that moving for leave to file a late
10 notice of appeal on the ground of ineffective assistance of counsel was not the only
11 strategy that Respondent might have pursued, but it was a good one. E Transcript,
12 117:5-15
13

14 16. Respondent and the WSBA's expert both credibly testified as follows: Immigration law
15 and practice ordinarily requires an ineffective assistance of counsel claim to be
16 accompanied by proof of a Bar complaint against the ineffective counsel. However, the
17 9th Cir. Court of Appeals has held that this is not necessary where the error is admitted
18 and patent.
19

20 17. Respondent did not obtain Mr. Velasco's informed consent to forego a Bar complaint
21 against Ms. Willmore.
22

23 18. Respondent instead procured Ms. Willmore's signature on a declaration admitting to
24 her sole culpability for a patent error. Respondent reasonably believed that such a
25 declaration would (i) be sufficient under the 9th Circuit standards, and (ii) eliminate a
26 number of steps in the preparation of a motion that had to be filed as soon as possible.

- 1 19. Respondent's decision to forego a Bar complaint did not foreclose Mr. Velasco from
2 later filing one if he wished to do so.
- 3 20. Respondent prepared a declaration of Mr. Velasco, and a notice of appearance for
4 herself, both of which bear a printed version of Mr. Velasco's name on the signature
5 lines. (Exhibit 118, pp. 000010 and 000020).
- 6
- 7 21. Respondent finalized and caused to be mailed the motion for leave to file a late notice
8 of appeal, under cover of a letter dated November 22, 2006. Exhibit A118.
- 9 22. On or about November 27, 2006, Respondent received a check from the Law Office of
10 Catherine Willmore, made out to Respondent. Exhibit A117. The amount of the check
11 was \$2,110.00, which Respondent understood to be in payment of a \$110.00 filing fee,
12 plus legal fees for representing Mr. Velasco. The memo on the check said "Rivas
13 Velasquez," a name by which Mr. Velasco also was known.
- 14
- 15 23. Respondent did not know why the check was made out to her. She gave it to the
16 accountant at Rios Cantor, P.S., but the accountant would not take it. He told her to
17 cash it and bring the money back to him. Respondent asked him to accept it with her
18 endorsement, but he told her that it would be easier for him if she would cash it and
19 bring the money to him. Respondent complied with these instructions. E Transcript,
20 275:18-276:9.
- 21
- 22 24. It was apparent from the face of the check that funds were paid from Ms. Willmore's law
23 firm. But the check does not establish the *original* source of the funds, i.e., whether
24 they were from Ms. Willmore's personal funds or fees received by Ms. Willmore from
25 Mr. Velasco.
- 26

1 25. Respondent had nothing to do with the fee agreement between Rios Cantor, P.S. and
2 Mr. Velasco and/or Ms. Willmore, except that Ms. Willmore inexplicably made the check
3 out to Respondent.

4 26. Respondent at all times understood her client to be Mr. Velasco.

5 27. On December 2, 2007, unbeknownst to Respondent, Ms. Willmore appeared at a
6 hearing to get Mr. Velasco released on bond. There being no case pending, and no
7 relief therefore available to Mr. Velasco, the Immigration Judge denied the request.

8 Exhibit A120.

9
10 28. On January 10, 2007, the BIA granted Respondent's motion for a late appeal and set a
11 briefing schedule. Exhibit A122, p. 000002.

12 29. The BIA's acceptance of the late filed appeal gave Mr. Velasco an avenue for relief and
13 therefore a basis to seek release on bond. Respondent did not discuss with Mr.
14 Velasco this or any other means by which he might be released from detention pending
15 appeal.

16
17 30. On February 2, 2007, **Ms. Willmore** again tried and failed to get Mr. Velasco released
18 on bond. This time, Ms. Willmore failed to provide the Immigration Judge with any
19 information upon which a decision to release could be based. Ms. Willmore withdrew
20 the request and told the Immigration Judge that a new lawyer would set another bond
21 hearing for Mr. Velasco. Exhibit A125.

1 31. Shortly after this hearing, Respondent and Ms. Willmore spoke about it. Respondent
2 asked Ms. Willmore why she was appearing for Mr. Velasco after Respondent took over
3 his representation. This shows that the Respondent understood that the responsibility
4 for representing Mr. Velasco was fully hers. E Transcript, 309:1-22.

5
6 32. In that conversation, Ms. Willmore asked Respondent if she would set a new bond
7 hearing for Mr. Velasco. Respondent replied that she would have to ask her boss (Mr.
8 Rios). Id.

9 33. Respondent reported this conversation to Mr. Rios, and Respondent perceived that Mr.
10 Rios was upset with Ms. Willmore. Mr. Rios instructed Respondent to find out what Mr.
11 Velasco wanted to do, and if he was having Ms. Willmore continue representing him for
12 some parts of his case. E Transcript, 309:11-22.

13
14 34. Respondent did not follow Mr. Rios's instruction to talk to Mr. Velasco. Respondent
15 took no steps to set a bond hearing for Mr. Velasco after the early February
16 conversations about it.

17 35. Respondent's appeal brief was timely received by the BIA on February 21, 2007.

18 36. The only issues appealed by Respondent were asylum and cancellation of removal.

19 37. Respondent and the WSBA expert witness credibly testified to the very high standard of
20 proof required for each of these forms of relief. There was no evidence that Mr. Velasco
21 could have met these standards, even if more fact gathering had occurred.¹
22

23
24 ¹ The WSBA proved that an easily obtained correction of Mr. Velasco's children's
25 birth certificates would have vitiated one ground for the Immigration Judge's denial of
26 cancellation of removal. But he denied cancellation of removal on the **additional** ground
that Mr. Velasco did not show exceptional and unusual hardship. The WSBA's expert saw
nothing to indicate that Mr. Velasco's circumstances met this standard.

- 1 38. Mr. Velasco remained eligible for TPS through a process of application, but unlike
2 asylum and cancellation of removal, TPS would not have allowed his children to remain
3 in the United States, it did not provide an authorization to work, and it would not lead to
4 permanent status. Prevailing on his appeal, however unlikely, would have been a vastly
5 superior outcome. The option to apply for TPS remained open to Mr. Velasco for sixty
6 days after final action on his appeal.
- 7
- 8 39. By interoffice memo dated March 5, 2007, "ST," probably associate Stephanie Thorpe,
9 documented her visit to Ms. Willmore's office on March 2 "to let her know that the price
10 for the BIA brief was \$750 as soon as possible." The memo goes on to say, "She asked
11 for a copy of the brief. I will e-mail her a copy per Manny's instructions."
- 12
- 13 40. Respondent knew nothing about the events that the memo memorialized. She saw the
14 memo for the first time after the firm ceased to represent Mr. Velasco.
- 15
- 16 41. On or about March 15, 2007, Rios Cantor, P.S. received notice of the BIA's adverse
17 decision on Mr. Velasco's appeal. Exhibit A129, p. 2.
- 18
- 19 42. Ordinarily, Respondent would have sent a copy of this decision to the client explaining
20 to the client that the appeal was denied, and setting forth options and the deadline for
21 any appeal to the 9th Circuit Court of Appeals. However, by that time, Mr. Rios had
22 taken the lead in the matter. E Transcript, 310:2-13.
- 23
- 24 43. Krystal Campbell, a Legal Assistant at Rios Cantor, sent a copy of the decision with a
25 letter to Mr. Velasco stating that the firm was not Mr. Velasco's legal representation, that
26 its role had been to help Ms. Willmore with his appeal, that his appeal had been lost,

1 and that he would have to retain a lawyer if he wanted to appeal to the 9th Circuit Court
2 of Appeals. Exhibit A129.

3 44. Respondent had no role in the preparation of this letter and did not see it until after it
4 had been sent.

5 45. Mr. Velasco retained new counsel who timely applied for and got him TPS.

6
7 **Investigation by Mr. Velasco's new attorney**

8 46. In early May of 2007, Cynthia Irvine, a new attorney for Mr. Velasco, contacted Mr.
9 Rios. She told him that she was investigating possible ineffective assistance of counsel
10 on the part of both Ms. Willmore and Respondent as a ground for an emergency motion
11 to reopen Mr. Velasco's case and stay his removal from the United States.

12 47. Ms. Irvine informed Mr. Rios that it appeared that Respondent had submitted
13 documents to the BIA bearing forged signatures of Mr. Velasco, and that she had never
14 met with Mr. Velasco. Mr. Rios took this as a courtesy call, and as a possible
15 opportunity to avoid a Bar complaint if Respondent was willing to sign a declaration
16 admitting to patently ineffective representation. Mr. Rios told Ms. Irvine that he did not
17 believe the allegations, that he would believe whatever Respondent said about them,
18 and that he would ask Respondent about them.

19
20 48. Mr. Rios asked Respondent if she had met with Mr. Velasco. She told him that she had,
21 so he told Ms. Irvine that the firm was not going to admit to Mr. Velasco's allegations.

22
23 49. Ms. Irvine also called Respondent. At that time, Respondent did not have the file in
24 front of her. She first told Ms. Irvine that she had not met with Mr. Velasco. She then
25 said that another associate had met with him. She then said that either she or another
26

1 associate had met with him. Finally, she said that she had taken a notary with her to
2 the Detention Center and obtained Mr. Velasco's signature on his declaration.

3 **The Questioned Documents and Respondent's Testimony**

4 50. WSBA's forensic handwriting expert was qualified and credible in opining that the
5 signature on Mr. Velasco's declaration (Exhibit 118, p. 000010), as well as the signature
6 on the notice of appearance (Exhibit 118, p. 000020), were not written by Mr. Velasco.

7
8 51. That expert could neither establish nor rule out Respondent as the writer of the
9 questioned signatures.

10 52. Respondent testified in her September 2008 deposition that she went to the Detention
11 Center on November 22, 2006, and obtained Mr. Velasco's signatures. Exhibit 150, pp.
12 26-30. Respondent was shown attorney sign-in logs from the Detention Center for that
13 date, upon which her name did not appear. Instead of reconsidering the date, she gave
14 several explanations for why that might be, including the possibility of having been
15 waived through without signing in. Id.

16
17 53. By letter dated November 17, 2008, Respondent retracted her testimony that she visited
18 Mr. Velasco on November 22, stating that she visited him on November 20, 2006, and
19 noting that this was consistent with her response to the WSBA dated July 3, 2007, when
20 her memory of events was better. Exhibit A153. The July 3, 2007 response is not in
21 evidence.

22
23 54. In order to meet with Respondent, Mr. Velasco would have had to leave the Tacoma
24 Detention Center's area B-3, where he was held, and go to the attorney consultation
25 area. Records of the comings and goings of area B-3 detainees on November 20,
26

1 2006, do not contain any record of Mr. Velasco's leaving for, or returning from, the
2 attorney consultation area. Exhibit 114.

3 55. Said record contains several errors, such as a detainee leaving for one destination and
4 returning from another, or returning without ever having been recorded as leaving.
5 Having reviewed the detail in said record, and having taken into account its purpose of
6 accounting for all movement of detainees, the undersigned concludes that an error
7 omitting **both** leaving and returning is unlikely.

8
9 56. The area B-3 attorney sign-in log for November 20 shows that Respondent signed in for
10 a court appearance for a client who was not Mr. Velasco. Exhibit A115.

11 57. Records from Rios Cantor, P.S. show that Respondent did visit the Detention Center
12 for initial consultations on November 20, but that her visits were with clients other than
13 Mr. Velasco. Exhibit 152, p. 2. The purpose of this firm record is to document how
14 quickly the firm meets with a detained client after being retained.

15
16 58. The clients noted in the firm's initial consultation log for November 20 do not appear on
17 Respondent's sign-in to the Detention Center that day. But if those clients were not
18 held in area B-3, Respondent would not have signed in for them there. In other words,
19 attorney sign-in logs for other areas, which are not in evidence, might show that
20 Respondent signed in for those clients. Since Respondent signed in for a court
21 appearance for the client in B-3, it is reasonable to infer that this was not an initial
22 consultation that would have appeared on the firm's initial consultation log.
23
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25
26

1 59. A firm mileage expense reimbursement record for Respondent shows "11/20/06 Intakes
2 Salvador Rivas Velasquez [Velasco]." Exhibit 152, p. 3. Rios Cantor, P.S.'s informal
3 policy was to split the mileage cost between all clients visited. This record attributes all
4 mileage for a November 20 trip to the Tacoma Detention Center to Mr. Velasco. This
5 record cannot be satisfactorily reconciled with the firm's initial consultation log and
6 Detention Center's sign-in sheet, which together show that Respondent visited multiple
7 clients that day, none of whom was Mr. Velasco. The Detention Center attorney-sign in
8 and the firm's initial consultation log are more reliable records.

10 60. Having carefully considered and weighed the evidence, including witness demeanor
11 and motivation, the consistency and logical persuasiveness of the testimony, and the
12 lack of any reliable record of a Detention Center visit where a record should exist, the
13 hearing officer concludes that the clear preponderance of the evidence establishes that
14 Respondent never met with Mr. Velasco. This being the case, since Respondent
15 prepared and finalized the documents bearing signatures that were not his, she knew
16 when she submitted them to the BIA that the signatures were not genuine.

18 **Character and Reputation**

19 61. Three witnesses who have known Respondent as a lawyer for five to ten years all
20 credibly testified that they know Respondent to be ethical and of good character.
21
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Respondent's Mental State

1
2 62. With regard to her false statements to the WSBA (**Count 1**), Respondent's conduct was
3 intentional. "Intent" is defined in the American Bar Association's Standards for Imposing
4 Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) ("ABA Standards") as "the conscious
5 objective or purpose to accomplish a particular result." Respondent falsely stated that
6 she had met with Mr. Velasco and procured his signature on a declaration and notice of
7 appearance with the conscious purpose of avoiding discipline.
8

9 63. When she sent documents that she knew bore non-genuine signatures to the BIA,
10 (**Count 2**), Respondent's conduct was intentional. Her objective was to submit the
11 required paperwork as quickly as possible so that Mr. Velasco would not be deported.
12

13 64. With regard to her failure to adequately consult with Mr. Velasco about possible courses
14 of action (**Count 3**), Respondent's conduct was knowing. "Knowledge" is defined by the
15 ABA Standards as "the conscious awareness of the nature or attendant of the conduct,
16 but without the conscious objective or purpose to accomplish a particular result." After
17 she won Mr. Velasco's right to file a late appeal, she knew that he had a basis for
18 seeking a bond. She also knew that she did nothing to seek a bond, but had no
19 particular objective or result in mind.
20

21 65. With regard to her failure to clarify for Mr. Velasco who was representing him (**Count 5**),
22 Respondent's conduct was negligent. "Negligence" is defined by the ABA Standards as
23 "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result
24 will follow, which failure is a deviation from the standard of care that a reasonable
25 lawyer would exercise in the situation." Respondent had no doubt that she was
26

1 representing Mr. Velasco right up to the time that she found out that Ms. Willmore had
2 appeared with him at a bond hearing. At that point, she became confused and sought
3 instruction from a principal in the firm. She then negligently failed to follow through with
4 his instructions to discuss the matter of representation with Mr. Velasco up through the
5 time that she believed that the principal had assumed control of the matter.
6

7 **Injury**

- 8 66. The false statements to the WSBA (**Count 1**) injured the disciplinary system, which is
9 impeded by false statements by lawyers, and the legal profession, because confidence
10 in lawyers is eroded by lawyers who give false statements within the system that they
11 take an oath to uphold.
- 12 67. The forged documents (**Count 2**) injured the legal system, which depends upon lawyers
13 to represent their clients without resorting to forged documents.
- 14 68. The failure to adequately consult with Mr. Velasco about a bond hearing (after the
15 exigency of obtaining leave to file a late notice of appeal had passed) (**Count 3**)
16 compounded injury to Mr. Velasco that was caused by his prior attorney. He was
17 unnecessarily additionally detained from early February when his appeal was accepted
18 through May when a new attorney got him released on bond.
- 19 69. The failure to communicate to Mr. Velasco which attorney was representing him (**Count**
20 **5**) injured Mr. Velasco by depriving him of information that he needed in order to get
21 timely information and make informed decisions, especially about his right to get out of
22 detention pending an appeal.
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III. CONCLUSIONS OF LAW

1. The WSBA must prove each count in the Second Amended Formal Complaint by a clear preponderance of the evidence. ELC 10.14(b). A clear preponderance is an intermediate standard of proof requiring greater certainty than simple preponderance, but not to the extent of the beyond a reasonable doubt standard. In re Disciplinary Proceeding Against Allotta, 109 Wn.2d 787, 792, 748 P.2d 628 (1988).

2. A hearing officer may give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. ELC 10.14(d).

3. The Washington Supreme Court requires the hearing officer to apply the ABA Standards in all lawyer discipline cases. In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 492, 998 P.2d 833 (2000). Applying the ABA Standards is a two-step process. First, the presumptive sanction is determined by considering (1) the ethical duty violated, (2) the lawyer's mental state, and (3) the extent of actual or potential injury caused by the misconduct. In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 77, 960 P.2d 416 (1998). Second, any aggravating or mitigating factors that might alter the presumptive sanction are considered. Id.

4. The hearing officer should determine a presumptive sanction for each ethical violation. In re Disciplinary Proceedings Against Anschell, 149 Wn.2d 484, 502, 69 P.3d 844 (2003). But where the hearing officer finds multiple ethical violations, the 'ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.' In re Disciplinary Proceedings

1 Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at
2 6.).

3 5. By testifying in her deposition that she had met with Mr. Velasco and obtained his
4 signature, Respondent engaged in false swearing under RCW 9A.72.040.²

5
6 6. RCW 9A.60.020(1)(b) provides in part: "A person is guilty of forgery if, with intent to
7 injure or defraud:... (b) He ... puts off as true a written instrument which he knows to be
8 forged." Respondent had no intent to injure anyone. But she did intend the BIA to rely
9 upon testimony that was falsely presented as Mr. Velasco's testimony in making its
10 decision on her motion. These facts establish the elements of forgery.

11 **Duties Breached and Sanctions Analysis By Count**

12 **Count 1:** By intentionally making false statements, including false swearing, to the
13 WSBA, Respondent violated RPC 8.4(b), RPC 8.4(c), RPC 8.4(d) and 8.4(l).³ The
14 presumptive sanction is disbarment under ABA Standard 5.11(a).
15

16 **Count 2:** By intentionally submitting documents that she knew were forged to the
17 BIA, Respondent violated RPC 8.4(b), RPC 8.4(c), RPC 3.3(a)(1) and RPC 3.3(a)(4). The
18 presumptive sanction is disbarment under ABA Standard 5.11(a) and 6.11.

19 **Count 3:** By knowingly failing to consult with Mr. Velasco about a bond hearing
20 once the BIA accepted a late appeal, and thereby injuring him, Respondent violated RPC
21

22
23 _____
24 ² This statute defines false swearing as the making of a false statement that the
25 maker knows to be untrue, under oath or authorized by law.

26 ³ The Rules of Professional Conduct that were in effect at the time of the charged
misconduct are attached hereto as an Appendix.

1 1.3, RPC 1.4(a) and RPC 1.4(b). The presumptive sanction is suspension under ABA
2 Standard 4.42(a).

3 **Count 4:** The allegations in this count were not proved by a clear preponderance of
4 the evidence, and this count should be dismissed.

5 **Count 5:** By negligently failing to clarify with Mr. Velasco who was representing him
6 and causing him injury, respondent violated RPC 1.4(a)(2). The presumptive sanction is
7 reprimand under ABA Standard 4.43(a).

8
9 **IV. AGGRAVATING AND MITIGATING FACTORS**

10 1. The following aggravating factors apply:

- 11
- 12 • Multiple offenses: Respondent has violated more than one rule with more
13 than one kind of conduct.
 - 14 • Dishonest or selfish motive (as to false statements only): Respondent's
15 motive in making false statements to the WSBA was to protect herself
16 from discipline. In contrast, her motive in submitting forged documents to
17 the BIA was to prevent Mr. Velasco from being deported.

18 The following factor, proposed by the WSBA, does not apply as an aggravating
19 factor:

- 20 • Refusal to acknowledge wrongful nature of the conduct: This aggravator
21 is properly applied when the lawyer does not deny that he engaged in the
22 activity in question, but instead argues that the activity was not wrongful.
23 In re Disciplinary Proceeding Against Kronenberg, 155 Wn.2d 184, 196, n.
24 8, 117 P.3d 1134 (2005). Here, Respondent denied knowledge of a
25 forgery and was held to have violated criminal statutes as a result.
26 Respondent's denial will not be used to establish both violations **and** an
aggravating factor.

23 2. The following mitigating factors apply:

- 24 • Absence of a prior disciplinary record: This factor is undisputed.

- Inexperience in the practice of law: Respondent was a third-year associate in a high-volume, high-stakes practice when she took on the representation of Mr. Velasco. While this does not excuse her submission of forged signatures, her inexperience, the dire circumstances created by Mr. Velasco's prior attorney, Respondent's sincerely held motive to act quickly enough to avert a disastrous outcome for him, and the fact that she was left alone by the partner to cope with all of this, should be taken into consideration in setting the sanction.
- Good character and reputation

V. RECOMMENDATION

The hearing officer recommends that Count 4 be dismissed. Based upon the ABA Standards, absent aggravating or mitigating factors, disbarment is the appropriate sanction for Respondent's violations. However, the hearing officer gives substantial weight to the first two mitigating factors discussed above, and recommends that Respondent be suspended from the practice of law for a period of two years.

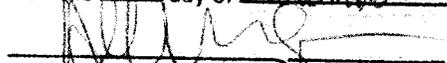
DATED: November 8, 2010



Kimberly A. Boyce
 WSBA No. 13902
 Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the OFFICE OF DISCIPLINARY COUNSEL'S RECOMMENDATION
 to be delivered to the Office of Disciplinary Counsel and to be mailed
 to KIMBERLY BOYCE Respondent/Respondent's Counsel
 at 1000 PINE STREET, SUITE 1000, SEASIDE, WA 98138 by Certified/first class mail,
 postage prepaid on the 8th day of NOVEMBER, 2010


 Clerk/Counsel to the Disciplinary Board

RPC IN EFFECT AT TIME OF CHARGED MISCONDUCT

In re Rodriguez, Pub. No. 09#00101

RPC 1.3 – DILIGENCE¹

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

RPC 1.4 – COMMUNICATION²

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

RPC 1.8 – CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES³

...
(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
 - (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;
- ...

RPC 3.3 – CANDOR TOWARD THE TRIBUNAL⁴

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

¹ RPC 1.3 has not been modified since the time of its adoption.

² RPC 1.4 was last modified in September 2006.

³ The pertinent part of RPC 1.8 was not modified during the relevant time period. However, RPC 1.8 was modified on April 24, 2007 and September 1, 2008.

⁴ RPC 3.3. was last modified in September 2006.

(4) offer evidence that the lawyer knows to be false.

...

RPC 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to:

...

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

...

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;⁵

...

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;⁶

...

⁵ Former RPC 8.4 was modified in October 2002 to include section (i).

⁶ Former RPC 8.4 was modified in October 2002 to include section (l).