

APR 30 2013

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

Proceeding No. 12#00105

JAMES ROBERT WATT,

Lawyer (Bar No. 12177).

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),
the undersigned Hearing Officer held a default hearing on April 30, 2013.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING CHARGED VIOLATIONS**

1. The First Amended Formal Complaint (Bar File No. 14), a copy of which is
attached, charged James R. Watt with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in
the First Amended Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the
First Amended Formal Complaint (Bar File No. 14) is admitted and established as follows:

4. Count 1. By engaging in a business arrangement with Mr. Martinez which was a

1 conflict of interest, Respondent violated RPC 1.7(a).

2 5. Count 2. By engaging in a business arrangement with a non-lawyer who took a
3 substantial portion of the fees paid by his clients, Respondent violated RPC 5.4(a).

4 6. Count 3. By engaging in a business arrangement with a non-lawyer who solicited
5 clients for him, and then keeping a portion of the fees paid by the client, Respondent violated
6 RPC 7.2(b).

7 7. Count 4. By allowing his employee to take money from the Garcias and Ms.
8 Torres as an advance fee deposit and/or costs and failing to deposit the money into an IOLTA
9 account, Respondent violated RPC 1.15A(c)(1), RPC 5.3(b), and 5.3(c)(1).

10 8. Count 5. By failing to return the unearned fee, Respondent violated RPC 1.5(a)
11 and RPC 1.16(d).

12 9. Count 6. By failing to respond to Mr. Villegas-Garcia's requests for an accounting,
13 failing to respond to Mr. Villegas-Garcia's phone calls, and failing to return unearned fees,
14 Respondent violated RPC 1.16(d).

15 10. Count 7. By failing to respond to numerous requests for documents related to all
16 of the grievances described above, failing to appear at his deposition, and failing to cooperate
17 with the Association's investigations, Respondent violated RPC 8.4(l) (through ELC 5.3(e) and
18 (f)).

19 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
20 **REGARDING RECOMMENDED SANCTION**

21 11. The following standards of the American Bar Association's Standards for
22 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively
23 apply in this case:

24 12. ABA Standard 4.3 applies to the violation of RPC 1.7(a) (Count 1):

1 **4.3 Failure to Avoid Conflicts of Interest**

2 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest
3 and does not fully disclose to a client the possible effect of that conflict, and
 causes injury or potential injury to a client.

4 13. Respondent knew his business arrangement with Mr. Martinez created a conflict of
5 interest.

6 14. There was a significant risk that the representation of Respondent's clients would
7 be materially limited by Respondent's responsibilities to Mr. Martinez and his own personal
8 interests.

9 15. The presumptive sanction for Count 1 is suspension.

10 16. Exhibit 1 was admitted at the hearing held on April 30, 2013. Exhibit 1 is the
11 record of Respondent's prior discipline.

12 17. ABA Standard 8.0 also applies to Respondent's violation of RPC 1.7(a).

13 **8.0 Prior Discipline Orders**

14 8.1 Disbarment is generally appropriate when a lawyer:

- 15 (a) intentionally or knowingly violates the terms of a prior disciplinary order
 and such violation causes injury or potential injury to a client, the public,
 the legal system, or the profession; or
16 (b) has been suspended for the same or similar misconduct, and intentionally
17 or knowingly engages in further similar acts of misconduct that cause
 injury or potential injury to a client, the public, the legal system, or the
 profession.

18 18. Respondent was suspended for two years in 2002, in part for engaging in a conflict
19 of interest. He knowingly engaged in acts that resulted in another conflict of interest.

20 19. The presumptive sanction is disbarment.

21 20. ABA Standard 7.0 applies to the violations of RPC 5.4(a) (Count 2), RPC 7.2(b)
22 (Count 3), RPC 5.3(b) and RPC 5.3(c)(1) (Count 4), RPC 1.5(a) (Count 5), RPC 1.16(d)
23 (Counts 5 and 6), and RPC 8.4(l) (Count 7):
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2 **7.0 Violations of Duties Owed as a Professional**

3 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
4 conduct that is a violation of a duty owed as a professional with the intent to
5 obtain a benefit for the lawyer or another, and causes serious or potentially
6 serious injury to a client, the public, or the legal system.

7 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
8 conduct that is a violation of a duty owed as a professional and causes injury or
9 potential injury to a client, the public, or the legal system.

10 21. Respondent knowingly conducted his business arrangement with Mr. Martinez.

11 22. Respondent's conduct caused serious injury to Ms. Torres and Mr. Valdovinos,
12 who paid for a lawyer to represent Mr. Valdovinos, but only received minimal services from
13 Respondent, and endured stress because of Respondent's conduct.

14 23. Respondent's conduct caused serious injury to Mr. Garcia, who paid for a lawyer
15 to represent him, but only received services from Mr. Martinez, and suffered a great deal of
16 stress. Mr. Garcia was also seriously injured because he was at risk of deportation and unable to
17 obtain employment authorization.

18 24. The presumptive sanction for Count 2 is disbarment.

19 25. The presumptive sanction for Count 3 is disbarment.

20 26. Respondent had direct supervisory authority over Mr. Martinez and knowingly
21 failed to make reasonable efforts to ensure that Mr. Martinez's conduct was compatible with the
22 RPC.

23 27. Respondent knew that Mr. Martinez was improperly dealing with client property.
24 This conduct caused serious potential injury to Ms. Torres, Mr. Valdovinos and the Garcias,
whose money should have been held in an IOLTA account.

28. The presumptive sanction for Count 4 (RPC 5.3) is disbarment.

1 29. Respondent acted knowingly when he failed to return unearned fees to Mr.
2 Birrueta Lemus.

3 30. Respondent's conduct caused injury to Mr. Birrueta Lemus.

4 31. The presumptive sanction for Count 5 is suspension.

5 32. Respondent acted knowingly when he failed to return any unearned fees or provide
6 an accounting to Mr. Villegas-Garcia.

7 33. Respondent's conduct caused injury to Mr. Villegas-Garcia, who did not receive
8 an accounting or a refund of the \$2,000.

9 34. The presumptive sanction for Count 6 is suspension.

10 35. Respondent knowingly failed to cooperate with the Association's investigation.

11 36. Respondent's conduct caused actual injury to the lawyer discipline system as a
12 whole, which depends on lawyer cooperation and honesty to function.

13 37. Respondent's conduct also caused actual harm to the Office of Disciplinary
14 Counsel in the form of increased effort and costs.

15 38. The presumptive sanction for Count 7 is suspension.

16 39. ABA Standard 4.1 applies to the violation of RPC 1.15A(c)(1) (Count 4):

17 **4.1 Failure to Preserve the Client's Property**

18 4.12 Suspension is generally appropriate when a lawyer knows or should know that he
19 is dealing improperly with client property and causes injury or potential injury to
a client.

20 40. Respondent knew that Mr. Martinez was improperly dealing with client property,
21 causing potential injury to the Garcias, whose money should have been held in an IOLTA
22 account.

23 41. The presumptive sanction for Count 4 (RPC 1.15A) is suspension.

24 42. The Hearing Officer should determine a presumptive sanction for each ethical

1 violation. Anschell, 149 Wn.2d at 502. But where the Hearing Officer finds multiple ethical
2 violations, the “ultimate sanction imposed should at least be consistent with the sanction for the
3 most serious instance of misconduct among a number of violations.” In re Disciplinary
4 Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA
5 Standards at 6).

6 43. The following aggravating factors set forth in Section 9.22 of the ABA Standards
7 apply in this case:

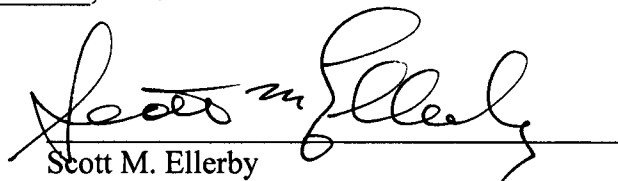
- 8 (a) prior disciplinary offenses [Respondent was suspended for two years in
9 2002. This discipline was based on his practicing law while his license
10 was suspended and for conflicts of interest and lack of diligence in
11 representing clients];
12 (b) dishonest or selfish motive;
13 (d) multiple offenses;
14 (e) bad faith obstruction of the disciplinary proceeding by intentionally
15 failing to comply with rules or orders of the disciplinary agency; and
16 (i) substantial experience in the practice of law [Respondent was admitted to
17 practice in 1981].

18 44. No mitigating factors identified in ABA Standard 9.32 apply.

19 RECOMMENDATION

20 45. Based on the ABA Standards and the applicable aggravating and mitigating
21 factors, the Hearing Officer recommends that Respondent James R. Watt be disbarred.
22 Respondent shall pay restitution to Maria Torres/Manuel Valdovinos in the amount of \$5,000,
23 Mary Garcia/Simon Garcia in the amount of \$6,000, Blanca Birrueta/Erasmus Birrueta Lemus in
24 the amount of \$3,300, and Octavio Villegas-Garcia in the amount of \$2,000. Reinstatement
should be conditioned on payment of costs of the proceeding and restitution as set out above.

DATED this 30th day of April, 2013.

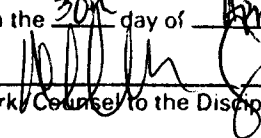

Scott M. Ellerby

Hearing Officer

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF COL & HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Kime's W&H Respondent/Respondent's Counsel
at 2317 160th Ave NE Redmond, WA 98052, by Certified first class mail
postage prepaid on the 30th day of April, 2013


Clerk/Counsel to the Disciplinary Board

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FEB 20 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES R. WATT,
Lawyer (Bar No. 12177).

Proceeding No. 12#00105

FIRST AMENDED FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent James R. Watt was admitted to the practice of law in the State of Washington on October 29, 1981.

Maria R. Torres and Manuel Valdovinos Grievances

2. In 2011, Respondent maintained law offices in Redmond, Washington and Pasco, Washington.

3. Respondent's assistant, Tony Martinez, worked in Respondent's Pasco office.

4. Mr. Martinez is not a lawyer.

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1 5. Mr. Martinez also had his own business, Forms Immigration Consulting Firm
2 (Forms), located within Respondent's Pasco Law office.

3 6. On June 9, 2011, Manuel Valdovinos, a Mexican citizen, was arrested for Driving
4 Under the Influence. He was held in the Yakima jail.

5 7. On June 14, 2011, Mr. Valdovinos' fiancée, Maria Torres, met with Mr. Martinez.

6 8. Mr. Martinez told Ms. Torres that his office was affiliated with Respondent and
7 that she was in essence hiring Respondent.

8 9. Mr. Martinez assured Ms. Torres that, if she hired him and Respondent, Mr.
9 Valdovinos would be released soon.

10 10. Ms. Torres paid Mr. Martinez \$5,000, an advance fee for legal services. Neither
11 Respondent nor Mr. Martinez deposited these fees into an IOLTA account.

12 11. Mr. Martinez provided a receipt to Ms. Torres with the words, "Forms
13 Immigration Consulting Firm" at the top, and "The Law Office of James Watt" at the bottom.
14 The receipt stated, "Scope of Service: immigration service/stopping deportation, CASE
15 #R478932."

16 12. Respondent represented Mr. Valdovinos on his immigration matter, not his
17 criminal case.

18 13. Respondent received \$500 from Mr. Martinez to represent Mr. Valdovinos.

19 14. Respondent and Mr. Valdovinos signed a Form G-28 Notice of Appearance which
20 listed Respondent as his lawyer in immigration court.

21 15. In September 2011, Mr. Valdovinos was transported to the immigration detention
22 center in Tacoma, WA.

23 16. Respondent sent another lawyer in his place to attend Mr. Valdovinos's initial bail
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1 hearing.

2 17. Mr. Martinez told Ms. Torres that she would have to pay \$600 more for
3 representation at the next court appearance.

4 18. Respondent eventually met with Mr. Valdovinos and told him to agree to voluntary
5 departure. The court granted this request on November 8, 2011. Mr. Valdovinos now lives in
6 Mexico.

7 19. Sometime thereafter, Mr. Martinez told Ms. Torres that she still owed \$1,500 and
8 that he would sue her for not paying.

9 20. Mr. Martinez routinely deposited client funds, including those from Ms. Torres,
10 into his personal bank account.

11 21. Respondent knew that Mr. Martinez was not depositing client funds into an
12 IOLTA account.

13 22. Client's checks were routinely made payable to Mr. Martinez, not Respondent.

14 23. Respondent received seven or eight client referrals a month from Mr. Martinez.

15 24. Respondent allowed Mr. Martinez to keep client fees in exchange for
16 recommending Respondent's services.

17 25. Mr. Martinez would routinely charge according to Mr. Martinez's own fee
18 schedule and then hire Respondent to provide legal representation. Respondent and Mr.
19 Martinez shared legal fees.

20 26. Respondent knew of and approved the business arrangement described above.

21 27. Under this arrangement, Respondent's loyalty to his clients was overshadowed by
22 the fact that Mr. Martinez (and not the client) was responsible for paying him.

23 28. Mr. Martinez made decisions about the legal services the clients would receive.
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1 29. There was a significant risk that the representation of Respondent's clients would
2 be materially limited by Respondent's responsibilities to Mr. Martinez and his own personal
3 interests.

4 30. Respondent knew the business arrangement with Mr. Martinez described above
5 created a conflict of interest.

6 31. Respondent had direct supervisory authority over Mr. Martinez and knowingly
7 failed to make reasonable efforts to ensure that Mr. Martinez's conduct was compatible with the
8 RPC.

9 32. Respondent knew that Mr. Martinez was improperly dealing with client property.
10 This conduct caused serious potential injury to Ms. Torres and Mr. Valdovinos, whose money
11 should have been held in an IOLTA account.

12 33. Respondent's conduct caused serious injury to Ms. Torres and Mr. Valdovinos,
13 who paid for a lawyer to represent Mr. Valdovinos, but they only received minimal services
14 from Respondent, and endured stress because of Respondent's conduct.

15 **Mary A. Garcia Grievance**

16 34. Mary Garcia is a U.S. citizen. Her husband, Simon Garcia, is from Mexico.

17 35. Mr. Garcia entered the country illegally in 2000.

18 36. In February 2011, Mr. and Ms. Garcia (the Garcias) met with Mr. Martinez at the
19 Law Offices of James Watt in Pasco, WA.

20 37. Respondent did not attend the initial meeting but did speak to the Garcias on the
21 phone during the meeting.

22 38. Respondent agreed to represent Mr. Garcia to apply for permanent residency and
23 employment authorization. He did not discuss fees with the Garcias.

24 39. At Mr. Martinez's request, Ms. Garcia wrote two checks totaling \$3,000, payable

1 to Magdalene Hayes, who was Mr. Martinez's girlfriend. Ms. Garcia later provided another
2 money order for \$1,930 to Ms. Hayes for legal services.

3 40. These were advance fees for legal services and should have been deposited into an
4 IOLTA account. These fees were not deposited into an IOLTA account.

5 41. Ms. Garcia also provided a money order for \$1,070 to the United States
6 Citizenship and Immigration Services (USCIS)

7 42. This was for costs and should have been deposited into an IOLTA account. These
8 costs were not deposited into an IOLTA account.

9 43. Respondent did not meet with the Garcias in person.

10 44. Respondent spoke with Ms. Garcia three times on the phone, attempting to find out
11 the status of Mr. Garcia's case. He told Ms. Garcia that he would find out about the status of
12 the case from Mr. Martinez.

13 45. Respondent received \$500 from Mr. Martinez for work on the case.

14 46. Mr. Martinez accompanied Mr. Garcia to the Yakima immigration office to be
15 fingerprinted. He promised to get Mr. Garcia a valid social security card, but failed to do so.

16 47. Mr. Martinez helped the Garcias fill out some USCIS forms. Mr. Martinez signed a
17 number of the documents as the person who prepared them, with the Firm Name and Address
18 listed as "FORMS IMMIGRATION CONSULTING FIRM," not the Law Office of James Watt.

19 48. On March 20, 2012, the USCIS issued a Notice of Decision denying Mr. Garcia's
20 application for permanent resident status.

21 49. Mr. Martinez routinely deposited client funds into his personal bank account.

22 50. Respondent knew that Mr. Martinez was not depositing client funds into an
23 IOLTA account.

24

1 51. Respondent received seven or eight client referrals a month from Mr. Martinez.

2 52. Respondent allowed Mr. Martinez to keep client fees in exchange for
3 recommending Respondent's services.

4 53. Mr. Martinez would routinely charge according to Mr. Martinez's own fee
5 schedule and then hire Respondent to provide legal representation. Respondent and Mr.
6 Martinez shared legal fees.

7 54. Respondent knew of and approved the business arrangement described above.

8 55. Under this arrangement, Respondent's loyalty to his clients was overshadowed by
9 the fact that Mr. Martinez (and not the client) was responsible for paying him.

10 56. Mr. Martinez made decisions about the legal services the clients would receive.

11 57. There was a significant risk that the representation of Respondent's clients would
12 be materially limited by Respondent's responsibilities to Mr. Martinez and his own personal
13 interests.

14 58. Respondent knew the business arrangement described above with Mr. Martinez
15 created a conflict of interest.

16 59. Respondent had direct supervisory authority over Mr. Martinez and knowingly
17 failed to make reasonable efforts to ensure that Mr. Martinez's conduct was compatible with the
18 RPC.

19 60. Respondent's conduct caused serious injury to Mr. Garcia, who suffered a great
20 deal of stress, and paid for a lawyer to represent him, but he only received services from Mr.
21 Martinez.

22 61. Respondent knew that Mr. Martinez was improperly dealing with client property.
23 This conduct caused potential injury to the Garcias, whose money should have been held in an
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1 IOLTA account.

2 62. Respondent caused serious injury to Mr. Garcia, who was at risk of deportation
3 and unable to obtain employment authorization.

4 **COUNT 1**

5 63. By engaging in a business arrangement (relating to all of the grievances above)
6 with Mr. Martinez which was a conflict of interest, Respondent violated RPC 1.7(a).

7 **COUNT 2**

8 64. By engaging in a business arrangement (relating to all of the grievances above)
9 with a non-lawyer who took a substantial portion of the fees paid by his clients, Respondent
10 violated RPC 5.4(a).

11 **COUNT 3**

12 65. By engaging in a business arrangement (relating to all of the grievances above)
13 with a non-lawyer who solicited clients for him, and then kept a portion of the fees paid by the
14 client, Respondent violated RPC 7.2(b).

15 **COUNT 4**

16 66. By allowing his employee to take money from the Garcias and/or Ms. Torres as an
17 advance fee deposit and/or costs and failing to deposit the money into an IOLTA account,
18 Respondent violated RPC 1.15A(c)(1), RPC 5.3(b), and/or 5.3(c)(1).

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20 **Blanca Birrueta Grievance**

21 67. On July 2, 2012, Respondent filed a notice of appearance on behalf of Erasmo
22 Birrueta Lemus in United States District Court, Eastern District of Washington.

23 68. Respondent received \$3,300 from Mr. Birrueta Lemus and his wife, Blanca
24 Birrueta, to represent Mr. Birrueta Lemus in this criminal case.

1 represent him in immigration proceedings including an application for cancellation of removal.

2 81. Respondent was not prepared for Mr. Villegas-Garcia's immigration court hearing.

3 82. The judge gave Mr. Villegas-Garcia two hours to return with a completed
4 application. Respondent claimed they could not go to his office and did not assist Mr. Villegas-
5 Garcia.

6 83. Mr. Villegas-Garcia and his wife, Veronica Villegas, went to a library, completed
7 the application, and returned later that afternoon to immigration court with Respondent.

8 84. After that, Mr. Villegas-Garcia told Respondent that he no longer required his
9 services and requested an itemized bill and a refund of unearned fees.

10 85. Respondent did not provide an itemized bill or refund unearned fees, and did not
11 respond to Mr. Villegas-Garcia's numerous phone calls.

12 86. Respondent acted knowingly when he failed to return any unearned fees or provide
13 an accounting to Mr. Villegas-Garcia.

14 87. Respondent's conduct caused injury to Mr. Villegas-Garcia, who did not receive
15 an accounting or a refund of the \$2,000.

16 COUNT 6

17 88. By failing to respond to Mr. Villegas-Garcia's requests for an accounting, failing
18 to respond to Mr. Villegas-Garcia's phone calls, and failing to return unearned fees, Respondent
19 violated RPC 1.16(d).

20 21 **Non-Cooperation**

22 89. On November 30, 2011, Ms. Torres filed a grievance against Respondent.

23 90. By letter dated December 27, 2011, Respondent responded to the grievance.

1 91. On January 13, 2012, the Association received Mr. Valdovinos's grievance against
2 Respondent.

3 92. On February 28, 2012, the Association received Ms. Garcia's grievance against
4 Respondent.

5 93. By letter dated March 2, 2012, the Association requested Respondent's response to
6 Ms. Garcia's grievance. He did not respond.

7 94. On March 29, 2012, during an interview with the Association's investigator,
8 Respondent agreed to provide additional documentation relating to his business practices, but he
9 failed to do so.

10 95. On April 4, 2012, Disciplinary Counsel sent Respondent a letter again requesting
11 the specific documentation about his business practices and a letter requesting additional
12 documentation related to Mr. Valdovinos's grievance. He did not respond.

13 96. Respondent received the Association's certified letter dated April 5, 2012,
14 requesting his response to Ms. Garcia's grievance within ten days. He did not respond.

15 97. On May 4, 2012, Respondent was personally served with a subpoena requiring his
16 attendance at a deposition on May 23, 2012.

17 98. Respondent received the Association's certified letter dated May 7, 2012, again
18 requesting the documentation about his business practices. He did not respond.

19 99. On May 23, 2012, Respondent knowingly and intentionally failed to appear at his
20 deposition.

21 100. On June 1, 2012, the Association filed a Petition for Interim Suspension with the
22 Supreme Court. Respondent received a copy of the Petition, but did not respond.

23 101. On July 18, 2012, the Court issued an Order suspending Respondent from the
24

1 practice of law.

2 102. On July 23, 2012, Ms. Birrueta filed a grievance against Respondent.

3 103. By letter dated July 31, 2012, the Association requested Respondent's response to
4 Ms. Birrueta's grievance. He did not respond.

5 104. Respondent received the Association's certified letter dated September 4, 2012,
6 requesting his response to Ms. Birrueta's grievance within ten days. He did not respond.

7 105. On August 6, 2012, Mr. Villegas-Garcia filed a grievance against Respondent.

8 106. By an initial letter dated August 9, 2012, and a follow-up letter sent on October 19,
9 2012 by certified mail, the Association requested Respondent's response to Mr. Villegas-
10 Garcia's grievance. Respondent's signature is on the receipt for the certified letter. He did not
11 respond to the grievance.

12 107. Respondent's conduct caused actual injury to the lawyer discipline system as a
13 whole, which depends on lawyer cooperation and honesty to function.

14 108. Respondent's conduct also caused actual harm to the Office of Disciplinary
15 Counsel in the form of increased effort and costs.


16 **COUNT 7**

17 109. By failing to respond to numerous requests for documents related to all of the
18 grievances described above, failing to appear at his deposition, and failing to cooperate with the
19 Association's investigations, Respondent violated RPC 8.4(*l*) (through ELC 5.3(e) and (f)).

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21 **THEREFORE**, Disciplinary Counsel requests that a hearing be held under the Rules for
22 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,
23 restitution, and assessment of the costs and expenses of these proceedings.

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Dated this 20th day of February, 2013.



Erica Temple, Bar No. 28458
Disciplinary Counsel