

**FILED**

JUL 12 2012

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ROLANDO M. ADAME,**  
Lawyer (Bar No. 16006).

Proceeding No. 12#00007

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

An Order of Default having been entered on May 15, 2012, the undersigned Hearing Officer, in accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC), held a default hearing on July 12, 2012.

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

1. The Formal Complaint (Bar File No. 4) charged Rolando Martinez Adame ("Respondent") with nine counts of misconduct as set forth therein. No additional evidence or exhibits were offered at the default hearing.

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

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

*MA*

1 **Count 1**

2 4. By failing to appear at a hearing in his client Otoniel Garcia's criminal matter on one  
3 or more occasions and take action to determine whether a new hearing date had been set after  
4 failing to appear, Respondent violated RPC 1.3, RPC 3.2 and RPC 8.4(d).

5 **Count 2**

6 5. By failing to promptly respond to reasonable requests for information from Mr.  
7 Garcia and to keep Mr. Garcia informed about the status of a case, Respondent violated RPC  
8 1.4(a)(2) and RPC 1.4(a)(3).

9 **Count 3**

10 6. By charging Mr. Garcia \$1,250 and providing very few services that benefited Mr.  
11 Garcia, Respondent violated RPC 1.5(a).

12 **Count 4**

13 7. By failing to appear at one or more hearings in Yakima County Superior Court and  
14 by failing to communicate with the Court and opposing counsel regarding his failures to appear,  
15 Respondent violated RPC 1.3, RPC 3.2 and RPC 8.4(d).

16 **Count 5**

17 8. By failing to keep his clients reasonably informed about the status of their matters  
18 and his unavailability, and by failing to explain the matters to the extent reasonably necessary to  
19 permit the clients to make informed decisions about the representation, Respondent violated  
20 RPC 1.4(a)(3) and RPC 1.4(b).

21 **Count 6**

22 9. By failing to appear at one or more hearings in Yakima County Superior Court and  
23 by failing to communicate with the Court and opposing counsel regarding his failures to appear,  
24

1 Respondent violated RPC 1.3, RPC 3.2 and RPC 8.4(d).

2 **Count 7**

3 10. By failing to keep his client Carlos Renteria, Jr. reasonably informed about the status  
4 of his matter and his unavailability, and by failing to respond to reasonable requests for  
5 information, and by failing to explain Mr. Renteria's matter to the extent reasonably necessary  
6 to permit Mr. Renteria to make informed decisions about the representation, Respondent  
7 violated RPC 1.4(a)(3), RPC 1.4(a)(4) and RPC 1.4(b).

8 **Count 8**

9 11. By retaining \$2,000 in fees when he performed little or no work on Mr. Renteria's  
10 matter and in failing to refund all or some of the fee to Mr. Renteria, Respondent violated RPC  
11 1.5(a) and RPC 1.16(d).

12 **Count 9**

13 12. In failing to adequately explain in his flat fee agreement with Mr. Renteria that the  
14 funds would be earned upon receipt, would not be placed in a trust account, that the flat fee did  
15 not affect Mr. Renteria's right to terminate the representation, and that Mr. Renteria may or may  
16 not have a right to a refund of the fee if the representation was terminated, as required by RPC  
17 1.5(f)(2), Respondent violated RPC 1.5(b).

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

20 Count 1

21 13. By failing to appear at a hearing in Mr. Garcia's criminal matter on one or more  
22 occasions and take action to determine whether a new hearing date had been set after failing to  
23 appear, Respondent violated RPC 1.3, RPC 3.2, and RPC 8.4(d).

24 14. Respondent initially acted negligently in failing to appear at hearing for Mr. Garcia.

1 15. Upon receiving multiple requests for information about the status of his case from  
2 Mr. Garcia or his relatives, Respondent's subsequent failure to appear at court hearings on  
3 behalf of Mr. Garcia was knowing. See American Bar Association's Standards for Imposing  
4 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) at 17 (defining knowledge  
5 as "the conscious awareness of the nature or attendant circumstances of the conduct but without  
6 the conscious objective to accomplish a particular result").

7 16. The actual injury is that Mr. Garcia received little or no benefit from the  
8 representation and suffered inconvenience and stress from unnecessary delay in his criminal  
9 proceedings. He and his family members made special trips to attend scheduled hearings, only  
10 to find that Mr. Adame was not there, resulting in continuances. There was also actual injury to  
11 the Court and the prosecution, whose limited resources were consumed with multiple  
12 unnecessary hearings.

13 17. The following standard of the American Bar Association's Standards for Imposing  
14 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to  
15 Respondent's violations of RPC 1.3:

16 ***4.4 Lack of Diligence***

17 Absent aggravating or mitigating circumstances, upon application of the  
18 factors set out in Standard 3.0, the following sanctions are generally appropriate  
19 in cases involving a failure to act with reasonable diligence and promptness in  
20 representing a client:

21 4.41 Disbarment is generally appropriate when:

- 22 (a) a lawyer abandons the practice and causes serious or potentially  
23 serious injury to a client; or  
24 (b) a lawyer knowingly fails to perform services for a client and  
causes serious or potentially serious injury to a client; or  
(c) a lawyer engages in a pattern of neglect with respect to client  
matters and causes serious or potentially serious injury to a client.

25 **4.42 Suspension is generally appropriate when:**

- (a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client, or

1                   **(b) a lawyer engages in a pattern of neglect and causes injury or**  
2                   **potential injury to a client.**

3                   4.43 Reprimand is generally appropriate when a lawyer is negligent and does  
4                   not act with reasonable diligence in representing a client, and causes  
5                   injury or potential injury to a client.

6                   4.44 Admonition is generally appropriate when a lawyer is negligent and does  
7                   not act with reasonable diligence in representing a client, and causes little  
8                   or no actual or potential injury to a client.

9                   18. ABA Standard 7.0 applies to Respondent's violations of RPC 3.2 and RPC 8.4(d).

10                  Standard 7.0 applies generally to "duties owed as a professional," and it encompasses duties to  
11                  both clients and the legal system:

12                   ***7.0 Violations of Duties Owed as a Professional***

13                   Absent aggravating or mitigating circumstances, upon application of the  
14                   factors set out in Standard 3.0, the following sanctions are generally appropriate  
15                   in cases involving false or misleading communication about the lawyer or the  
16                   lawyer's services, improper communication of fields of practice, improper  
17                   solicitation of professional employment from a prospective client, unreasonable  
18                   or improper fees, unauthorized practice of law, improper withdrawal from  
19                   representation, or failure to report professional misconduct.

20                   7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
21                   conduct that is a violation of a duty owed as a professional with the intent  
22                   to obtain a benefit for the lawyer or another, and causes serious or  
23                   potentially serious injury to a client, the public, or the legal system.

24                   **7.2 Suspension is generally appropriate when a lawyer knowingly  
engages in conduct that is a violation of a duty owed as a professional  
and causes injury or potential injury to a client, the public, or the  
legal system.**

                  7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
conduct that is a violation of a duty owed as a professional and causes  
injury or potential injury to a client, the public, or the legal system.

                  7.4 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence that is a violation of a duty owed as a  
professional, and causes little or no actual or potential injury to a client,  
the public, or the legal system.

Count 2

                  19. By failing to promptly respond to reasonable requests for information from Mr.  
Garcia and to keep Mr. Garcia informed about the status of a case, Respondent violated RPC  
1.4(a)(2) and RPC 1.4(a)(3).

1 20. Respondent initially acted negligently in failing to adequately communicate with Mr.  
2 Garcia.

3 21. Upon receiving multiple requests for information about the status of his case from  
4 Mr. Garcia and family, Respondent's subsequent failure to adequately communicate with Mr.  
5 Garcia was knowing.

6 22. The actual injury is that Mr. Garcia received little or no benefit from the  
7 representation, was uninformed about Respondent's ability to represent him in his case, and  
8 suffered inconvenience and stress from unnecessary delay in his criminal proceedings.

9 23. ABA Standard 4.4 applies by analogy to communication with clients, as adequate  
10 communication is a part of a lawyer's duty to be diligent.

11 **4.42 Suspension is generally appropriate when:**

- 12 (a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client, or  
13 (b) a lawyer engages in a pattern of neglect and causes injury or  
potential injury to a client.

14 Count 3

15 24. By charging Mr. Garcia \$1,250 and providing few services (Respondent did attend a  
16 DOL hearing, *see* paragraph 22 of Formal Complaint) that benefited Mr. Garcia, Respondent  
17 violated RPC 1.5(a).

18 25. Respondent charged Mr. Garcia an unreasonable fee of \$1,250. Respondent was  
19 negligent by providing Mr. Garcia with very few services while charging him substantial fees.

20 26. There was actual injury to Mr. Garcia who paid for legal services for which he  
21 received little, if any, benefit and was forced to hire new counsel at further expense.

22 27. ABA Standard 7.0 presumptively applies to Respondent's charging unreasonable  
23 fees:

1           **7.3 Reprimand is generally appropriate when a lawyer negligently**  
2           **engages in conduct that is a violation of a duty owed as a professional**  
3           **and causes injury or potential injury to a client, the public, or the**  
4           **legal system.**

5           Count 4

6           28. By failing to appear at one or more hearings in Yakima County Superior Court and  
7           by failing to communicate with the Court and opposing counsel regarding his failures to appear,  
8           Respondent violated RPC 1.3, RPC 3.2 and RPC 8.4(d).

9           29. Respondent initially acted negligently in failing to appear at hearings and give notice  
10           of his unavailability to the court while representing clients in Yakima County Superior Court.

11           30. After being administratively removed and/or sanctioned by the court for failing to  
12           appear in several matters in Yakima County Superior Court, Respondent's subsequent failure to  
13           appear for hearings or provide notice to the court and prosecution of his absences was knowing.

14           31. There was actual injury to Respondent's clients, as they suffered inconvenience and  
15           stress from unnecessary delay in their criminal proceedings. Further, Mr. Sosa and Mr. Cabrera  
16           were jailed due to his failures to appear. There was also actual injury to the Court, the  
17           prosecution, and the Public Defender's Office, whose limited resources were consumed with  
18           multiple unnecessary hearings.

19           32. Respondent engaged in a pattern of neglect in failing to attend multiple hearings.

20           33. ABA Standard 4.4 presumptively applies to Respondent's violations of RPC 1.3:

21           **4.42 Suspension is generally appropriate when:**

- 22           **(a) a lawyer knowingly fails to perform services for a client and**  
23           **causes injury or potential injury to a client, or**  
24           **(b) a lawyer engages in a pattern of neglect and causes injury or**  
              **potential injury to a client.**

              34. ABA Standard 7.0 presumptively applies to Respondent's violations of RPC 3.2 and  
              RPC 8.4(d):

1           **7.2 Suspension is generally appropriate when a lawyer knowingly**  
2           **engages in conduct that is a violation of a duty owed as a professional**  
3           **and causes injury or potential injury to a client, the public, or the**  
4           **legal system.**

5           Count 5

6           35. By failing to keep his clients reasonably informed about the status of their matters  
7           and his unavailability, and by failing to explain the matters to the extent reasonably necessary to  
8           permit the clients to make informed decisions about the representation, Respondent violated  
9           RPC 1.4(a)(3) and RPC 1.4(b).

10          36. Respondent initially acted negligently in failing to appear at hearings and  
11          communicate with clients.

12          37. After being administratively removed and/or sanctioned by the court for failing to  
13          appear in several matters in Yakima County Superior Court, Respondent's subsequent failure to  
14          communicate with his clients about their cases and appear for hearings was knowing.

15          38. Respondent's clients suffered actual injury, as they were uninformed about  
16          Respondent's ability to represent him in their cases and suffered inconvenience and stress from  
17          unnecessary delay in their criminal proceedings. Further, Mr. Sosa and Mr. Cabrera were jailed  
18          due to Respondent's failure to appear.

19          39. Respondent engaged in a pattern of neglect in failing to communicate with multiple  
20          clients.

21          40. ABA Standard 4.4 presumptively applies to Respondent's violations of RPC  
22          1.4(a)(3) and RPC 1.4(b):

23           **4.42 Suspension is generally appropriate when:**

- 24           **(a) a lawyer knowingly fails to perform services for a client and**  
              **causes injury or potential injury to a client, or**  
              **(b) a lawyer engages in a pattern of neglect and causes injury or**  
              **potential injury to a client.**



1           Count 6

2           41. By failing to appear at one or more hearings on Mr. Renteria's behalf in Yakima  
3 County Superior Court and by failing to communicate with the Court and opposing counsel  
4 regarding his failures to appear, Respondent violated RPC 1.3, RPC 3.2 and RPC 8.4(d).

5           42. Respondent initially acted negligently in failing to appear at hearings and give notice  
6 of his unavailability to the court while representing Mr. Renteria in Yakima County Superior  
7 Court.

8           43. After being sanctioned by the court for failing to appear in another matter (Cabrera)  
9 in Yakima County Superior Court, Respondent's subsequent failure to appear on behalf of Mr.  
10 Renteria or provide notice to the court and prosecution of his absences was knowing.

11           44. The actual injury is that his client suffered inconvenience and stress from  
12 unnecessary delay in his criminal proceedings. There was also actual injury to the Court, whose  
13 limited resources were consumed with unnecessary hearings.

14           45. ABA Standard 4.4 presumptively applies to Respondent's violations RPC 1.3:

15           **4.42 Suspension is generally appropriate when:**

- 16           **(a) a lawyer knowingly fails to perform services for a client and**  
17           **causes injury or potential injury to a client, or**  
18           **(b) a lawyer engages in a pattern of neglect and causes injury or**  
19           **potential injury to a client.**

20           46. ABA Standard 7.0 presumptively applies to Respondent's violations of RPC 3.2 and  
21 RPC 8.4(d):

22           **7.2 Suspension is generally appropriate when a lawyer knowingly**  
23           **engages in conduct that is a violation of a duty owed as a professional**  
24           **and causes injury or potential injury to a client, the public, or the**  
              **legal system.**

Count 7

1 47. By failing to keep Mr. Renteria reasonably informed about the status of his matter  
2 and his unavailability, and by failing to respond to reasonable requests for information, and by  
3 failing to explain Mr. Renteria's matter to the extent reasonably necessary to permit Mr.  
4 Renteria to make informed decisions about the representation, Respondent violated RPC  
5 1.4(a)(3), RPC 1.4(a)(4) and RPC 1.4(b).

6 48. Respondent initially acted negligently in failing to appear at hearings and  
7 communicate with his client.

8 49. After being sanctioned by the court for failing to appear in another matter in Yakima  
9 County Superior Court (Cabrera), Respondent's subsequent failure to communicate with Mr.  
10 Renteria about his case and appear on behalf of Mr. Renteria in Yakima Superior Court was  
11 knowing.

12 50. The actual injury appears to be that his client suffered inconvenience and stress from  
13 unnecessary delay in his criminal proceedings, was required to hire new counsel to conclude his  
14 case, and was not fully informed as to how his fee would be handled.

15 **4.42 Suspension is generally appropriate when:**

- 16 (a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client, or  
17 (b) a lawyer engages in a pattern of neglect and causes injury or  
potential injury to a client.

18 Count 8

19 51. By retaining \$2,000 in fees when he performed little or no work on Mr. Renteria's  
20 matter and in failing to refund all or some of the fee to Mr. Renteria, Respondent violated RPC  
21 1.5(a) and RPC 1.16(d).

22 52. Respondent acted knowingly when he took \$2,000 in fees for Mr. Renteria's matter  
23 and proceeded to do little or no work on the matter.  
24

1 53. Respondent acted knowingly in refusing to refund all or part of Mr. Renteria's fee.

2 54. Mr. Renteria was injured, as he did not obtain useful services for the payment he  
3 made and was required to hire new counsel at further expense to conclude his case.

4 55. ABA Standard 7.0 presumptively applies to Respondent's charging of  
5 unreasonable fees and failure to return unearned fees.

6 **7.2 Suspension is generally appropriate when a lawyer knowingly**  
7 **engages in conduct that is a violation of a duty owed as a professional**  
8 **and causes injury or potential injury to a client, the public, or the**  
9 **legal system.**

8 Count 9

9 56. In failing to adequately explain in his flat fee agreement with Mr. Renteria that the  
10 funds would be earned upon receipt, would not be placed in a trust account, that the flat fee did  
11 not affect Mr. Renteria's right to terminate the representation, and that Mr. Renteria may or may  
12 not have a right to a refund of the fee if the representation was terminated, as required by RPC  
13 1.5(f)(2), Respondent violated RPC 1.5(b).

14 57. Respondent acted negligently in failing to adequately explain to Mr. Renteria that his  
15 funds would not be placed in a trust account, that the flat fee did not affect Mr. Renteria's right  
16 to terminate the representation, and that Mr. Renteria may or may not have a right to a refund if  
17 the representation was terminated.

18 58. Mr. Renteria suffered actual injury, as he was not fully informed as to how his fee  
19 would be handled.

20 59. ABA Standard 7.0 presumptively applies to Respondent's duty to communicate  
21 about his fees and provide written accountings upon request:

22 **7.3 Reprimand is generally appropriate when a lawyer negligently**  
23 **engages in conduct that is a violation of a duty owed as a professional**  
24

1                   **and causes injury or potential injury to a client, the public, or the**  
2                   **legal system.**

3                   60. The services Respondent provided to both Mr. Garcia and Mr. Renteria were  
4 minimal, and of little use to them. As to Mr Renteria, no amount of the fees paid can be deemed  
5 to have been earned. To Carlos Renteria, Jr., Respondent shall pay restitution in the amount of  
6 \$2,000. In view of Respondent's participation at the DOL hearing, Respondent shall pay to  
7 Otoniel Garcia restitution in the amount of \$750.

8                   61. Where the Hearing Officer finds multiple violations, the "ultimate sanction imposed  
9 should at least be consistent with the sanction for the most serious instance of misconduct  
10 among a number of violations." In re Disciplinary Proceeding Against Petersen, 120 Wn2d  
11 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Because the presumptive  
12 sanction is suspension for almost all of the violations, the ultimate sanction is suspension.

13                   62. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
14 apply in this case:

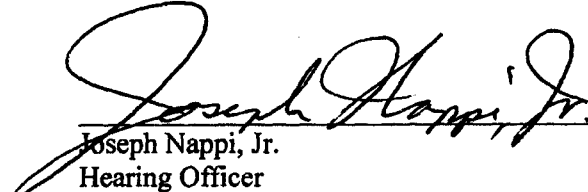
- 15                   (a) prior disciplinary offenses;
  - 16                   • Respondent was reprimanded on April 20, 2011 for practicing law  
17 while suspended and falsely certifying on his application for  
18 reinstatement that he had not done so.
- 19                   (d) multiple violations (multiple violations of the RPC);
- 20                   (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to  
21 comply with rules or orders of the disciplinary agency; and
  - 22                   • Respondent failed to file an answer to the formal complaint as  
23 required by ELC 10.5(a)
- 24                   (i) substantial experience in the practice of law
  - Respondent was admitted June 9, 1986.

63. No mitigating factors set forth in Section 9.32 of the ABA Standards apply to this  
case.

1 **RECOMMENDATION**

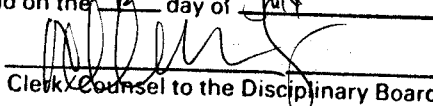
2 64. Based on the ABA Standards and the applicable aggravating and mitigating factors,  
3 the Hearing Officer recommends that Respondent Rolando M. Adame be suspended for nine  
4 months and pay restitution as follows: To Otoniel Garcia, Respondent shall pay \$750; and to  
5 Carlos Renteria, Jr., Respondent shall pay \$2,000. The restitution shall accrue interest at a rate  
6 of 12% per annum effective the date a final order of disciplines is imposed against Respondent.

7 DATED this 12<sup>th</sup> day of July, 2012.

8   
9 Joseph Nappi, Jr.  
10 Hearing Officer

11  
12  
13 **CERTIFICATE OF SERVICE**

14 I certify that I caused a copy of the PDF, LOR & HO's Recommendation  
15 to be delivered to the Office of Disciplinary Counsel and to be mailed  
16 to Rolando Adame, Respondent/Respondent's Counsel  
17 at 2006 Stafford Rd NW, Westlake, WA 98093 by Certified/first class mail,  
18 postage prepaid on the 12<sup>th</sup> day of July, 2012.

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24   
Clerk/Counsel to the Disciplinary Board