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FILED

MAR 28 2012

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ROLANDO MARTINEZ ADAME,

Lawyer (Bar No. 16006).

Proceeding No. 11#00011

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),
this matter came before the undersigned Hearing Officer on written submissions.

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

1. The Second Amended Formal Complaint, a copy of which is attached hereto,
charged Rolando Martinez Adame 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 Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that the violations charged in
the Formal Complaint are admitted and established.

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1 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
2 **REGARDING RECOMMENDED SANCTION**

3 **Facts Relating to Count 1**

4 4. In or about October 2005, Respondent and the Mexican Consulate of Seattle
5 (“Consulate”) entered into an agreement for Respondent to provide legal services, at the rate of
6 \$225 per hour, to Mexican nationals for the time period October 2005 through September 2006.

7 5. On or about December 14, 2005, the Consulate paid Respondent an advance fee
8 deposit of \$5,000 for these services.

9 6. During the contract period, Respondent earned fees and was entitled to be paid a
10 total of \$1,687.50.

11 7. The remaining \$3,312.50 of the advance fee deposit belonged to the Consulate.

12 8. Respondent paid himself the entire \$5,000 advance fee deposit during the contract
13 period for his own use rather than the \$1,687.50 he had earned and to which he was entitled.

14 9. Respondent was not entitled to the entire \$5,000, thereby appropriating and
15 converting \$3,312.50 in funds that belonged to the Consulate.

16 **A. Count 1: Violations of RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c)**

17 **Violation of RPC 1.15A(b)**

18 10. By paying himself the entire \$5,000.00 advance deposit, Respondent converted for
19 his own use \$3,312.50 in client funds that he had not earned and to which he was not entitled,
20 thereby violating RPC 1.15(A)(b).

21 11. ABA Standard §4.11 applies to Respondent’s violation of RPC 1.15A(b):

22 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
23 client property and causes injury or potential injury to a client.

24 12. Respondent acted intentionally in converting \$3,312.50 for his own use. His knew
that he only had earned \$1,687.50 in fees, yet he withdrew all of the Consulate’s funds for his

1 own use. He knew he was not entitled to these additional funds.

2 13. There was actual injury to the Consulate in that they were deprived of the funds
3 they had entrusted to Respondent. They were also deprived of any interest that would have
4 accrued on the \$3,312.50.

5 14. The presumptive sanction for Respondent's violation of RPC 1.15A(b) is
6 disbarment.

7 **Violation of RPC 8.4(b)**

8 15. By taking and appropriating \$3,312.50 in funds belonging to the Consulate,
9 Respondent violated RPC 8.4(b) by engaging in serious criminal conduct by committing the
10 crime of theft in the first degree, which is defined in part as wrongfully obtaining or exerting
11 unauthorized control over the property or services of another or the value thereof, with intent to
12 deprive him of such property or services¹.

13 16. Respondent's theft of the Consulate's funds reflects adversely on his honesty,
14 trustworthiness, and fitness as a lawyer.

15 17. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(b).

16 5.11 Disbarment is generally appropriate when:

- 17 (a) a lawyer engages in serious criminal conduct, a necessary element of
18 which includes intentional interference with the administration of justice,
19 false swearing, misrepresentation, fraud, extortion, misappropriation, or
20 theft; or the sale, distribution or importation of controlled substances; or
21 the intentional killing of another; or an attempt or conspiracy or
22 solicitation of another to commit any of these offenses; or
23 (b) a lawyer engages in any other intentional conduct involving dishonesty,
24 fraud, deceit, or misrepresentation that seriously adversely reflects on the
lawyer's fitness to practice.

22 ¹ In 2005/2006 when this conduct occurred, a person was guilty of theft in the first degree if he or she
23 committed theft of property or services that exceeded \$1,500 in value. The amount was increased to
24 \$5,000 in 2009.

1 18. Respondent acted intentionally in taking and appropriating \$3,312.50 of the
2 Consulate's funds for his own use. His conduct involved both dishonesty and deceit. He knew
3 that he had only earned \$1,687.50 in fees, yet he withdrew all of the Consulate's funds for his
4 own use. He knew he was not entitled to these additional funds.

5 19. There was actual injury to the Consulate in that they were deprived of the funds
6 they had entrusted to Respondent. They were also deprived of any interest that would have
7 accrued on the \$3,312.50.

8 20. The presumptive sanction for Respondent's violation of RPC 8.4(b) is disbarment.

9 **Violation of RPC 8.4(c)**

10 21. By taking and converting \$3,312.50 in funds belonging to the Consulate,
11 Respondent violated RPC 8.4(c).

12 22. Respondent's conduct involved both dishonesty and deceit and seriously adversely
13 reflects on his fitness to practice.

14 23. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(c).

15 5.11 Disbarment is generally appropriate when:

- 16 (a) a lawyer engages in serious criminal conduct, a necessary element of
17 which includes intentional interference with the administration of justice,
18 false swearing, misrepresentation, fraud, extortion, misappropriation, or
19 theft; or the sale, distribution or importation of controlled substances; or
20 the intentional killing of another; or an attempt or conspiracy or
21 solicitation of another to commit any of these offenses; or
22 (b) a lawyer engages in any other intentional conduct involving dishonesty,
23 fraud, deceit, or misrepresentation that seriously adversely reflects on the
24 lawyer's fitness to practice.

21 24. Respondent acted intentionally in converting and taking \$3,312.50 of the
22 Consulate's funds for his own use. His knew that he only had earned \$1,687.50 in fees, yet he
23 withdrew all of the Consulate's funds for his own use. He knew he was not entitled to these
24 additional funds.

1 25. There was actual injury to the Consulate in that they were deprived of the funds
2 they had entrusted to Respondent. They were also deprived of any interest that would have
3 accrued on the \$3,312.50.

4 26. The presumptive sanction for Respondent's violation of RPC 8.4(c) is disbarment.

5 **Facts Relating to Counts 2 - 4**

6 27. On or about October 30, 2006, Respondent and the Consulate entered into an
7 agreement for Respondent to provide legal services to Mexican nationals at the rate of \$225 per
8 hour for the time period November 1, 2006 through October 31, 2007.

9 28. The Consulate paid Respondent an advance fee deposit of \$5,000 for the
10 representation. The agreement also required Respondent to open a bank account into which the
11 \$5,000 was to be deposited.

12 29. The agreement required Respondent to provide bi-monthly financial statements to
13 the Consulate, including details of the hours spent on each case and the balance of funds
14 remaining.

15 30. On or about December 6, 2006, the Consulate paid Respondent the \$5,000 advance
16 fee deposit.

17 31. Respondent deposited the entire \$5,000 into his general operating account and not
18 into a trust account.

19 32. Respondent's general operating account contained funds belonging to Respondent.

20 33. At the time Respondent deposited the Consulate's \$5,000 advance fee deposit into
21 his general operating account, he had no entitlement to the funds. The entire \$5,000 belonged to
22 the Consulate.

23 34. On or about March 26, 2007, the Consulate asked Respondent to go with Dr. Rosa
24

1 | Martinez, a Mexican national, to a hearing.

2 | 35. On or about July 14, 2007, Respondent met with Roberto Caldera Arroyo of the
3 | Consulate and was instructed to stop all work on the Martinez matter.

4 | 36. At the end of the contract period, \$105.75 of the Consulate's funds remained in
5 | Respondent's operating account.

6 | 37. Respondent did not refund the \$105.75 of Consulate funds to the Consulate at the
7 | end of the contract period. Instead, Respondent kept the remaining funds for his own use.

8 | **B. Count 2: Violation of RPC 1.15A(c)(1)**

9 | 38. By depositing the Consulate's \$5,000 advance fee deposit into his operating
10 | account, Respondent violated RPC 1.15A(c)(1), which provides that a lawyer must deposit and
11 | hold client funds in a trust account, separate from his own funds.

12 | 39. ABA Standard §4.12 applies:

13 | 4.12 Suspension is generally appropriate when a lawyer knows or should
14 | know that he is dealing improperly with client property and causes injury
or potential injury to a client.

15 | 40. Respondent acted knowingly in depositing the Consulate's funds into his operating
16 | account and not a trust account.

17 | 41. There was actual and potential injury to the Consulate. By depositing the
18 | Consulate's funds into his operating account, Respondent not only violated the terms of his
19 | contract with the Consulate, he also subjected the Consulate's funds to possible garnishment by
20 | Respondent's creditors. The Consulate was also deprived of any interest that the deposit would
21 | have earned had it been deposited into a separate trust account.

22 | 42. Suspension is the presumptive sanction.
23 |
24 |

1 **C. Count 3: Violations of RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c)**

2 **Violation of RPC 1.15A(b)**

3 43. Respondent converted the Consulate's funds by depositing the entire \$5,000
4 advance fee deposit into his general operating account for his own use, without any entitlement
5 to the funds, in violation of RPC 1.15A(b).

6 44. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(b):

7 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
8 client property and causes injury or potential injury to a client.

9 45. Respondent acted knowingly. He knew that according to his agreement with the
10 Consulate, Consulate funds were to be deposited into a separate trust account and not his
11 operating account. He knew that he was required to deposit unearned fees into his trust account.
12 He knew that by depositing the Consulate's funds in his account, he would have unfettered
13 access to the money before he was entitled to receive the funds.

14 46. There was actual and potential injury to the Consulate as the Consulate was
15 deprived of its funds. There was potential injury to the Consulate because, by depositing the
16 Consulate's funds in his operating account, Respondent subjected the funds to possible
17 garnishment by his creditors.

18 47. The presumptive sanction for Respondent's violation of RPC 1.15A(b) is
19 disbarment.

20 **Violation of RPC 8.4(b)**

21 48. By depositing \$5,000 in funds belonging to the Consulate into his general
22 operating account, thereby appropriating the funds, Respondent violated RPC 8.4(b) by
23 committing the crime of theft in the first degree, which is defined in part as wrongfully
24 obtaining or exerting unauthorized control over the property or services of another or the value

1 thereof, with intent to deprive him of such property or services.²

2 49. Respondent's theft of the Consulate's funds reflects adversely on his honesty,
3 trustworthiness, and fitness as a lawyer.

4 50. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(b).

5 5.11 Disbarment is generally appropriate when:

6 (a) a lawyer engages in serious criminal conduct, a necessary element of
7 which includes intentional interference with the administration of justice,
8 false swearing, misrepresentation, fraud, extortion, misappropriation, or
9 theft; or the sale, distribution or importation of controlled substances; or
10 the intentional killing of another; or an attempt or conspiracy or
11 solicitation of another to commit any of these offenses; or

12 (b) a lawyer engages in any other intentional conduct involving dishonesty,
13 fraud, deceit, or misrepresentation that seriously adversely reflects on the
14 lawyer's fitness to practice.

15 51. Respondent acted intentionally in appropriating \$5,000 of Consulate's funds for
16 his own use. He knew that at the time he deposited the \$5,000, he had not earned the \$5,000
17 and that he had no entitlement to the money.

18 52. There was actual injury to the Consulate in that they were deprived of the funds
19 they had entrusted to Respondent. There was potential injury in that the Consulate's funds were
20 subject to possible garnishment by Respondent's creditors. The Consulate was also deprived of
21 any interest that would have accrued on the funds.

22 53. The presumptive sanction for Respondent's violation of RPC 8.4(b) is disbarment.

23 **Violation of RPC 8.4(c)**

24 54. By converting and taking \$5,000 in funds belonging to the Consulate by depositing
those funds into his general operating account, Respondent violated RPC 8.4(c).

² In 2005/2006 when this conduct occurred, a person was guilty of theft in the first degree if he or she committed theft of property or services that exceeded \$1,500 in value. The amount was increased to \$5,000 in 2009.

1 55. Respondent's conduct involved both dishonesty and deceit and seriously adversely
2 reflects on his fitness to practice.

3 56. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(c).

4 5.11 Disbarment is generally appropriate when:

- 5 (a) a lawyer engages in serious criminal conduct, a necessary element of
6 which includes intentional interference with the administration of justice,
7 false swearing, misrepresentation, fraud, extortion, misappropriation, or
8 theft; or the sale, distribution or importation of controlled substances; or
9 the intentional killing of another; or an attempt or conspiracy or
10 solicitation of another to commit any of these offenses; or
11 (b) a lawyer engages in any other intentional conduct involving dishonesty,
12 fraud, deceit, or misrepresentation that seriously adversely reflects on the
13 lawyer's fitness to practice.

14 57. Respondent acted intentionally in appropriating and converting \$5,000 of the
15 Consulate's funds for his own use. He intentionally chose the account into which he deposited
16 the Consulate's funds, and he knew the money belonged to the Consulate. He also knew that he
17 had not earned the fees when he deposited them into his general operating account.

18 58. There was actual injury to the Consulate in that they were deprived of the funds
19 they had entrusted to Respondent. They were also deprived of any interest that would have
20 accrued on the \$5,000. There was potential injury in that the Consulate's funds were subject to
21 possible garnishment by Respondent's creditors

22 59. The presumptive sanction for Respondent's violation of RPC 8.4(c) is disbarment

23 **D. Count 4: Violation of RPC 1.15A(c)**

24 60. By depositing the Consulate's funds in his general operating account, Respondent
failed to hold the advance fee deposit of \$5,000 separate from his own funds, thereby violating
RPC 1.15A(c).

61. ABA Standard §4.12 applies to Respondent's violation of RPC 1.15A(c):

1 4.12 Suspension is generally appropriate when a lawyer knows or should
2 know that he is dealing improperly with client property and causes injury
or potential injury to a client.

3 62. Respondent's conduct in depositing the Consulate's funds in his general account
4 was knowing.

5 63. There was actual and potential injury to the Consulate. By depositing the
6 Consulate's funds into his operating account, Respondent not only violated the terms of his
7 contract with the Consulate, he also subjected their funds to possible garnishment by his
8 creditors.

9 64. Suspension is the presumptive sanction for Respondent's violation of RPC
10 1.15A(c).

11 **Facts Relating to Count 5**

12 65. On or about November 10, 2007, Respondent wrote a payroll check in the amount
13 of \$643.03 to his employee, Maria Mendez. The check was drawn on Respondent's pooled
14 IOLTA account at US Bank.

15 66. The funds on deposit in Respondent's IOLTA account belonged to Respondent's
16 clients and not to Respondent. Respondent had no entitlement to the funds.

17 **E. Count 5: Violations of RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c)**

18 **Violation of RPC 1.15A(b)**

19 67. Respondent converted client funds by writing a payroll check to his employee
20 drawn on his IOLTA account at US Bank, in violation of RPC 1.15A(b).

21 68. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(b):

22 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
23 client property and causes injury or potential injury to a client.

24 69. Respondent acted intentionally. He knew that the funds on deposit in his IOLTA

1 account were client funds, that these funds did not belong to him, and that they were not to be
2 used to pay his business expenses. Respondent intentionally invaded client trust funds in order
3 to pay his employee's wages.

4 70. There was actual injury to the Respondent's clients as they were deprived of their
5 funds.

6 71. The presumptive sanction for Respondent's violation of RPC 1.15A(b) is
7 disbarment.

8 **Violation of RPC 8.4(b)**

9 72. By writing a payroll check to his employee drawn on his IOLTA account, thereby
10 appropriating and taking client funds, Respondent violated RPC 8.4(b) by committing the crime
11 of theft in the first degree, which is defined in part as wrongfully obtaining or exerting
12 unauthorized control over the property or services of another or the value thereof, with intent to
13 deprive him of such property or services.

14 73. Respondent's theft of client funds reflects adversely on his honesty,
15 trustworthiness, and fitness as a lawyer.

16 74. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(b).

17 5.11 Disbarment is generally appropriate when:

- 18 (a) a lawyer engages in serious criminal conduct, a necessary element of
19 which includes intentional interference with the administration of justice,
20 false swearing, misrepresentation, fraud, extortion, misappropriation, or
21 theft; or the sale, distribution or importation of controlled substances; or
22 the intentional killing of another; or an attempt or conspiracy or
23 solicitation of another to commit any of these offenses; or
24 (b) a lawyer engages in any other intentional conduct involving dishonesty,
fraud, deceit, or misrepresentation that seriously adversely reflects on the
lawyer's fitness to practice.

75. Respondent acted intentionally. He knew that the funds on deposit in his IOLTA
account were client funds, that these funds did not belong to him, and that the funds were not to

1 be used to pay his business expenses. Respondent intentionally invaded client trust funds in
2 order to pay his employee's wages.

3 76. There was actual injury to the Respondent's clients as they were deprived of the
4 funds they had entrusted to Respondent.

5 77. The presumptive sanction for Respondent's violation of RPC 8.4(b) is disbarment.

6 **Violation of RPC 8.4(c)**

7 78. By converting and taking client funds to pay his employee, Respondent violated
8 RPC 8.4(c).

9 79. Respondent's conduct involved both dishonesty and deceit and seriously adversely
10 reflects on his fitness to practice.

11 80. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(c).

12 5.11 Disbarment is generally appropriate when:

- 13 (a) a lawyer engages in serious criminal conduct, a necessary element of
14 which includes intentional interference with the administration of justice,
15 false swearing, misrepresentation, fraud, extortion, misappropriation, or
16 theft; or the sale, distribution or importation of controlled substances; or
17 the intentional killing of another; or an attempt or conspiracy or
18 solicitation of another to commit any of these offenses; or
19 (b) a lawyer engages in any other intentional conduct involving dishonesty,
20 fraud, deceit, or misrepresentation that seriously adversely reflects on the
21 lawyer's fitness to practice.

22 81. Respondent acted intentionally in appropriating and converting client funds to pay
23 his employee. He intentionally chose the account from which to write the payroll check. He
24 intentionally chose his IOLTA account, knowing that the funds in his IOLTA account belonged
to his clients and not to him.

82. There was actual injury to the Respondent's clients as they were deprived of the
funds they had entrusted to Respondent.

83. The presumptive sanction for Respondent's violation of RPC 8.4(c) is disbarment.

1 **Facts Relating to Counts 6-11**

2 84. On December 1, 2007, Respondent and the Consulate entered into a contract for
3 Respondent to provide legal services at the rate of \$225 per hour to Mexican nationals during
4 the time period December 2007 – October 31, 2008.

5 85. On December 1, 2007, the Consulate paid Respondent an advance fee deposit of
6 \$4,000. The agreement required Respondent to open a bank account and deposit the \$4,000
7 advance fee deposit in that account.

8 86. Respondent deposited the advance fee deposit into his pooled IOLTA account
9 instead.

10 87. The agreement provided that it would be in effect until the \$4,000 was exhausted,
11 and that in the event the funds were exhausted, any pending cases would “be concluded at an
12 amount mutually agreed between the Consulate and the attorney.”

13 88. The contract Respondent required to provide bi-monthly reports to the Consulate
14 that indicated the services rendered, including details of the hours spent on each case and the
15 balance remaining.

16 89. The Consulate neither authorized Respondent to do any work on its behalf during
17 the time period December 1, 2007 – October 31, 2008, nor did it refer any work to him during
18 that time period.

19 90. Respondent did not perform any work for the Consulate during the contract period
20 for which he was entitled to be paid.

21 91. Respondent did not earn the \$4,000 advance fee deposit or any part thereof.

22 92. Respondent has not refunded any of the funds to the Consulate, despite its repeated
23 requests that he do so.

1 93. Respondent provided no billing statements during the time period December 1,
2 2007 – October 31, 2008.

3 94. The consulate repeatedly requested that Respondent provide an accounting of their
4 funds and a refund of funds not expended during the contract period. Respondent refused,
5 despite numerous disbursements made from Consulate funds held in his IOLTA account.

6 **F. Count 6: Violations of RPC 1.15A(e), RPC 1.5(b), and RPC 1.4(a)**

7 **Violation of RPC 1.15A(e)**

8 95. Despite multiple requests by the Consulate, Respondent failed to provide any
9 written accounting of the funds belonging to the Consulate for the contract year December 2007
10 – October 31, 2008, thereby violating RPC 1.15A(e).

11 96. ABA Standard §4.12 applies to Respondent's violation of RPC 1.15A(e):

12 4.12 Suspension is generally appropriate when a lawyer knows or should
13 know that he is dealing improperly with client property and causes injury
or potential injury to a client.

14 97. Respondent acted intentionally in refusing to account to the Consulate for its funds
15 because he was hiding the fact that he had taken all of their funds without entitlement to do so
16 from them. Respondent knew the terms of his contract with the Consulate and deliberately
17 chose to ignore his obligations. Respondent was to provide bi-monthly billing statements
18 indicating the details of hours spent on each case and the remaining account balance of funds.
19 Respondent provided no billing statements for the December 1, 2007 – October 31, 2008
20 contract period. His refusal to provide accountings was intentional because he was hiding from
21 the Consulate the fact that he had taken all of their funds without entitlement to do so.

22 98. There was serious actual harm in that the Consulate never received a billing
23 statement or an accounting, and was unaware that Respondent had converted the entire \$4,000
24

1 of Consulate funds held in his trust account.

2 99. The presumptive sanction is suspension.

3 **Violation of RPC 1.5(b)**

4 100. By refusing to respond to the Consulate's requests for information concerning the
5 fees he was charging them, Respondent violated RPC 1.5(b).

6 101. ABA Standard §4.61 applies to Respondent's violation of RPC 1.5(b):

7 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a
8 client with the intent to benefit the lawyer or another, and causes serious
injury or potential serious injury to a client.

9 102. Respondent acted knowingly in refusing to supply information about his fees to the
10 Consulate. His refusal to provide the information about his fees enabled him to keep hidden
11 from the Consulate the fact that he had taken their funds without entitlement to do so, thus
12 benefitting himself.

13 103. There was serious injury to the Consulate as they were not only deprived of their
14 funds as a result of Respondent's theft, but by refusing to provide them with information, they
15 were not aware that the theft had even taken place. As a result, they were deprived of the
16 opportunity to seek recourse against Respondent.

17 104. The presumptive sanction is disbarment.

18 **Violation of RPC 1.4(a)**

19 105. By failing to keep the Consulate informed about the status of their matter and
20 failing to comply with their reasonable requests for information, Respondent violated RPC
21 1.4(a).

22 106. ABA Standard 4.4 applies to Respondent's violation of RPC 1.4(a):

23 4.42 Suspension is generally appropriate when:
24

- 1 (a) lawyer knowingly fails to perform services for a client and causes injury
or potential injury to a client; or
2 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.
3

4 107. Respondent acted knowingly in failing to provide information to the Consulate.
He knew that under the terms of the contract, he was required to provide bi-monthly billing
5 statements, yet he refused to do so. That refusal is knowing conduct.
6

7 108. There was injury to the Consulate in that they were unaware that Respondent had
appropriated their money, thereby depriving them of not only their funds, but the opportunity to
8 seek recourse against him.
9

10 109. The presumptive sanction is suspension.

11 **G. Count 7: Violation of RPC 1.15A(f)**

12 110. By failing to pay the Consulate the \$4,000 that they were entitled to receive,
Respondent violated RPC 1.15A(f).
13

14 111. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(f):

- 15 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

16 112. Respondent acted knowingly in refusing to pay the Consulate the funds it had
17 delivered to Respondent as an advance fee deposit for work to be performed during the
18 December 1, 2007 – October 31, 2008 contract period. Respondent knew that he had not earned
19 the \$4,000 advance fee deposit and had, in fact, converted to his own use.

20 113. There was serious injury to the Consulate as it has been deprived of those funds.

21 114. The presumptive sanction is disbarment.

22 **H. Count 8: Violation of RPC 1.15A(g)**

23 115. By not maintaining the Consulate's funds in trust until any dispute over the fees
24

1 was resolved, Respondent violated RPC 1.15A(g).

2 116. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(g):

3 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
4 client property and causes injury or potential injury to a client.

5 117. Respondent acted knowingly in refusing to maintain the Consulate's \$4,000 in a
6 trust account until any dispute with the Consulate over fees was resolved. Once Respondent
7 became aware of the fact that the Consulate believed they still had funds on deposit with
8 Respondent, he was obligated to deposit the funds in a trust account. He did not do so. He was
9 also obliged to take reasonable action to resolve the dispute, which he did not do.

10 118. The Consulate suffered actual harm as they were deprived of their funds. They
11 were further harmed when Respondent intentionally refused and/or made no attempt to resolve
12 the dispute as to the fees.

13 119. The presumptive sanction is disbarment.

14 **I. Count 9: Violation of RPC 1.15(h)(3)**

15 120. By failing to provide the Consulate with a billing statement or otherwise providing
16 notice of his intent to withdraw earned fees, Respondent violated RPC 1.15A(h)(3).

17 121. ABA Standard 4.11 applies to Respondent's violation of RPC 1.15A(h)(3).

18 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
19 client property and causes injury or potential injury to a client.

20 122. Respondent acted intentionally. He didn't provide billing statements or otherwise
21 provide notice of his intent to withdraw fees because he was hiding from the Consulate the fact
22 that he had taken their funds from them without entitlement to do so.

23 123. The Consulate was seriously harmed as they were unaware of Respondent's claim
24 of having performed work and were not able to dispute his claim before he disbursed the funds.

1 The Consulate has been deprived of their \$4,000.

2 **J. Count 10: Violations of RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c)**

3 **Violation of RPC 1.15A(b)**

4 124. Respondent converted \$4,000 in Consulate funds for his own use by paying
5 himself and otherwise using the Consulate's advance fee deposit for his own purposes.

6 125. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(b):

7 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
8 client property and causes injury or potential injury to a client.

9 126. Respondent acted intentionally. He knew he had done no work for the Consulate
10 during the December 2007 – October 2008 contract period, yet he continued to take funds from
11 the Consulate and convert them to his own use.

12 127. There was serious injury to the Consulate as they were deprived of their funds.

13 128. The presumptive sanction for Respondent's violation of RPC 1.15A(b) is
14 disbarment.

15 **Violation of RPC 8.4(b)**

16 129. By writing checks to himself for work that he did not perform and taking money to
17 which he was not entitled, thereby appropriating and taking client funds, Respondent violated
18 RPC 8.4(b) by committing the crime of theft in the first degree, which is defined in part as
19 wrongfully obtaining or exerting unauthorized control over the property or services of another
20 or the value thereof, with intent to deprive him of such property or services.

21 130. Respondent's theft of client funds reflects adversely on his honesty,
22 trustworthiness, and fitness as a lawyer.

23 131. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(b).

24 5.11 Disbarment is generally appropriate when:

- 1 (a) a lawyer engages in serious criminal conduct, a necessary element of
2 which includes intentional interference with the administration of justice,
3 false swearing, misrepresentation, fraud, extortion, misappropriation, or
4 theft; or the sale, distribution or importation of controlled substances; or
5 the intentional killing of another; or an attempt or conspiracy or
6 solicitation of another to commit any of these offenses; or
- 7 (b) a lawyer engages in any other intentional conduct involving dishonesty,
8 fraud, deceit, or misrepresentation that seriously adversely reflects on the
9 lawyer's fitness to practice.

10 132. Respondent acted intentionally. He knew that he had not been authorized to do
11 any Consulate work during the contract period and that he had no entitlement to the funds he
12 withdrew from his IOLTA account.

13 133. There was serious injury to the Consulate as they were deprived of the funds they
14 had entrusted to Respondent.

15 134. The presumptive sanction for Respondent's violation of RPC 8.4(b) is disbarment.

16 **Violation of RPC 8.4(c)**

17 135. By converting and taking \$4,000 in Consulate funds to pay himself when he had
18 no entitlement to the funds and otherwise using the funds for his own use, Respondent violated
19 RPC 8.4(c).

20 136. Respondent's conduct involved both dishonesty and deceit and seriously adversely
21 reflects on his fitness to practice.

22 137. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(c).

23 5.11 Disbarment is generally appropriate when:

- 24 (a) a lawyer engages in serious criminal conduct, a necessary element of
which includes intentional interference with the administration of justice,
false swearing, misrepresentation, fraud, extortion, misappropriation, or
theft; or the sale, distribution or importation of controlled substances; or
the intentional killing of another; or an attempt or conspiracy or
solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty,
fraud, deceit, or misrepresentation that seriously adversely reflects on the
lawyer's fitness to practice.

1 138. Respondent acted intentionally in appropriating and converting Consulate funds to
2 his own use. He intentionally wrote checks to himself from his IOLTA account, knowing that
3 he had done no work for the Consulate and that he was not entitled to the funds.
4

5 139. There was actual injury to the Consulate in that they were deprived of the funds
6 they had entrusted to Respondent.

7 140. The presumptive sanction for Respondent's violation of RPC 8.4(c) is disbarment.

8 **K. Count 11: Violations of RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c)**

9 **Violation of RPC 1.15A(b)**

10 141. Respondent converted client funds by writing a payroll check to his employee
11 drawn on his IOLTA account at US Bank, in violation of RPC 1.15A(b).

12 142. ABA Standard §4.11 applies to Respondent's violation of RPC 1.15A(b):

13 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
14 client property and causes injury or potential injury to a client.

15 143. Respondent acted intentionally. He knew that the funds on deposit in his IOLTA
16 account were client funds. He knew that these funds did not belong to him and were not to be
17 used to pay his business expenses. Respondent intentionally invaded client trust funds in order
18 to pay his employee's wages.

19 144. There was actual injury to the Respondent's clients as they were deprived of their
20 funds.

21 145. The presumptive sanction for Respondent's violation of RPC 1.15A(b) is
22 disbarment.

23 **Violation of RPC 8.4(b)**

24 146. By writing a payroll check to his employee drawn on his IOLTA account, thereby

1 appropriating and taking client funds, Respondent violated RPC 8.4(b) by committing the crime
2 of theft in the first degree, which is defined in part as wrongfully obtaining or exerting
3 unauthorized control over the property or services of another or the value thereof, with intent to
4 deprive him of such property or services.

5 147. Respondent's theft of client funds reflects adversely on his honesty,
6 trustworthiness, and fitness as a lawyer.

7 148. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(b).

8 5.11 Disbarment is generally appropriate when:

9 (a) a lawyer engages in serious criminal conduct, a necessary element of
10 which includes intentional interference with the administration of justice,
11 false swearing, misrepresentation, fraud, extortion, misappropriation, or
12 theft; or the sale, distribution or importation of controlled substances; or
13 the intentional killing of another; or an attempt or conspiracy or
14 solicitation of another to commit any of these offenses; or

15 (b) a lawyer engages in any other intentional conduct involving dishonesty,
16 fraud, deceit, or misrepresentation that seriously adversely reflects on the
17 lawyer's fitness to practice.

18 149. Respondent acted intentionally. He knew that the funds on deposit in his IOLTA
19 account were client funds. He knew that these funds did not belong to him and were not to be
20 used to pay his business expenses. Respondent intentionally invaded client trust funds in order
21 to pay his employee's wages.

22 150. There was actual injury to the Respondent's clients as they were deprived of the
23 funds they had entrusted to Respondent.

24 151. The presumptive sanction for Respondent's violation of RPC 8.4(b) is disbarment.

Violation of RPC 8.4(c)

152. By converting and taking client funds to pay his employee, Respondent violated
RPC 8.4(c).

153. Respondent's conduct involved both dishonesty and deceit and seriously adversely

1 reflects on his fitness to practice.

2 154. ABA Standard §5.11 applies to Respondent's violations of RPC 8.4(c).

3 5.11 Disbarment is generally appropriate when:

- 4 (a) a lawyer engages in serious criminal conduct, a necessary element of
5 which includes intentional interference with the administration of justice,
6 false swearing, misrepresentation, fraud, extortion, misappropriation, or
7 theft; or the sale, distribution or importation of controlled substances; or
8 the intentional killing of another; or an attempt or conspiracy or
9 solicitation of another to commit any of these offenses; or
10 (b) a lawyer engages in any other intentional conduct involving dishonesty,
11 fraud, deceit, or misrepresentation that seriously adversely reflects on the
12 lawyer's fitness to practice.

13 155. Respondent acted intentionally in appropriating and converting client funds to pay
14 his employee. He intentionally chose the account from which to write the payroll check, and he
15 intentionally chose his IOLTA account. He knew that the funds in his IOLTA account belonged
16 to his clients and not to him.

17 156. The presumptive sanction for Respondent's violation of RPC 8.4(c) is disbarment.

18 **Facts Relating to Count 12**

19 157. On or about February 17, 2010, in response to a request by the Association during
20 its investigation of the grievance filed by the Consulate, Respondent faxed to the Association a
21 document purported to be a copy of a telephone message slip dated March 26, 2007.

22 158. The message slip purported to reflect the Consulates' instructions to Respondent
23 regarding the Dr. Martinez case.

24 159. The copy of the telephone message slip Respondent provided to the Association
had been altered by Respondent to omit critical information about the scope of the
representation of Dr. Martinez that had been authorized by the Consulate

160. Respondent offered and put off as true the altered version of the telephone message
slip with the intent to misrepresent to the Association the scope of the representation that had

1 | been authorized by the Consulate.

2 | 161. Respondent knew that the altered telephone message slip he provided to the
3 | Association was a false statement of material fact.

4 | **L. Count 12: Violations of RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c)**

5 | **Violation of RPC 8.1(a)**

6 | 162. By knowingly making a false statement of material fact in connection with a
7 | disciplinary matter, Respondent violated RPC 8.1(a).

8 | 163. Respondent's conduct involved both dishonesty and deceit and seriously adversely
9 | reflects on his fitness to practice.

10 | 164. ABA Standard 5.11 applies:

11 | 5.11 Disbarment is generally appropriate when:

- 12 | (a) a lawyer engages in serious criminal conduct, a necessary element of
13 | which includes intentional interference with the administration of justice,
14 | false swearing, misrepresentation, fraud, extortion, misappropriation, or
15 | theft; or the sale, distribution or importation of controlled substances; or
16 | the intentional killing of another; or an attempt or conspiracy or
17 | solicitation of another to commit any of these offenses; or
18 | (b) a lawyer engages in any other intentional conduct involving dishonesty,
19 | fraud, deceit, or misrepresentation that seriously adversely reflects on the
20 | lawyer's fitness to practice.

21 | 165. Respondent intentionally submitted the altered document to the Association in
22 | order to mislead the Association.

23 | 166. There was actual harm to both the Association and to the Consulate. The
24 | Association initially relied on the false statement contained in the message slip and did not learn
the truth until disciplinary counsel met with a Consulate representative and reviewed the
Consulate's file, which contained a true copy of the actual telephone message.

167. The presumptive sanction is disbarment.

Violation of RPC 8.4(b)

1 168. By offering and putting off as true the altered version of the telephone message
2 slip, Respondent misrepresented the scope of the representation that had been authorized by the
3 Consulate, with the intent to injure the Association and to justify his fees, thereby committing
4 the crime of forgery, in violation of RCW 9A.60.020 (forgery), and thereby violating RPC
5 8.4(b).

6 169. Respondent's conduct in committing forgery reflects adversely on his honesty,
7 trustworthiness, and fitness as a lawyer

8 170. ABA Standard §5.11 applies:

9 5.11 Disbarment is generally appropriate when:

- 10 (a) a lawyer engages in serious criminal conduct, a necessary element of
11 which includes intentional interference with the administration of justice,
12 false swearing, misrepresentation, fraud, extortion, misappropriation, or
13 theft; or the sale, distribution or importation of controlled substances; or
14 the intentional killing of another; or an attempt or conspiracy or
15 solicitation of another to commit any of these offenses; or
16 (b) a lawyer engages in any other intentional conduct involving dishonesty,
17 fraud, deceit, or misrepresentation that seriously adversely reflects on the
18 lawyer's fitness to practice.

19 171. Respondent acted intentionally in offering and putting off as true the altered
20 version of the telephone message slip. He knew that the message slip he provided to the
21 Association was forged, and he intended to misrepresent to the Association the scope of the
22 representation that had been authorized by the Consulate, in order to deceive the Association,
23 and to justify his fees.

24 172. There was injury to the Association during its investigation and to the Consulate as
the Association relied on the statements contained in the altered document that Respondent had
provided. It took additional time and resources by both the Consulate and the Association to
ascertain the truth falsity of the altered message slip.

173. The presumptive sanction is disbarment.

1 **Violation of RPC 8.4(c)**

2 174. By altering the telephone message slip and then putting it off as true, Respondent
3 violated RPC 8.4(c) by engaging in conduct involving dishonesty, deceit, or misrepresentation.

4 175. Respondent's conduct seriously adversely reflects on his fitness to practice.

5 176. ABA Standard §5.11 applies:

6 5.11 Disbarment is generally appropriate when:

- 7 (a) a lawyer engages in serious criminal conduct, a necessary element of
8 which includes intentional interference with the administration of justice,
9 false swearing, misrepresentation, fraud, extortion, misappropriation, or
10 theft; or the sale, distribution or importation of controlled substances; or
11 the intentional killing of another; or an attempt or conspiracy or
12 solicitation of another to commit any of these offenses; or
13 (b) a lawyer engages in any other intentional conduct involving dishonesty,
14 fraud, deceit, or misrepresentation that seriously adversely reflects on the
15 lawyer's fitness to practice.

16 177. Respondent intentionally provided the altered telephone message slip to the
17 Association to misrepresent to the Association the scope of the representation that had been
18 authorized by the Consulate, to injure the Association, and to justify his fees.

19 178. There was serious injury to the Association and to the Consulate as the Association
20 relied on the statements contained in the forged document and had to spend additional time and
21 resources to determine the falsity of the altered message slip.

22 179. The presumptive sanction is disbarment.

23 **PRESUMPTIVE SANCTION**

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

181. The presumptive sanction for Respondent's conduct is disbarment.

1 182. The following aggravating factors set forth in Section 9.22 of the ABA Standards
2 apply in this case:

- 3 (a) prior disciplinary offenses--Respondent received a Reprimand in April
2011 for practicing while suspended;
- 4 (b) dishonest or selfish motive;
- (d) multiple offenses;
- 5 (e) bad faith obstruction of the disciplinary proceeding by intentionally
6 failing to comply with rules or orders of the disciplinary agency--failure
to file answer to second amended formal complaint as required by ELC
10.5(a)]³;
- 7 (g) refusal to acknowledge wrongful nature of conduct;
- (i) substantial experience in the practice of law--Respondent was admitted in
8 Washington in 1986;
- (j) indifference to making restitution.

9
10 183. ABA Standards § 9.32 sets forth a list of mitigating factors. It appears that no
11 mitigating factors apply in this matter:

12 184. The presumptive sanction is disbarment.

13 RESTITUTION

14 185. Respondent is ordered to pay restitution to the Mexican Consulate of Seattle in the
15 amount of \$12,312.50.

16 186. Respondent's reinstatement to practice is conditioned on his payment in full of the
17 restitution ordered.

18 RECOMMENDATION

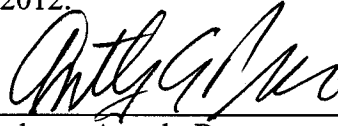
19 187. Based on the ABA Standards and the applicable aggravating factors, the Hearing
20 Officer recommends that Respondent Rolando Martinez Adame be disbarred.

21 188. Reinstatement is conditioned on proof of payment of all restitution ordered as well
22

23 ³ ELC 10.5(a) provides: "Failure to file an answer as required may be grounds for discipline and for an
24 order of default under rule 10.6." See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer's "total
nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process").

1 as payment of all costs associated with this matter.

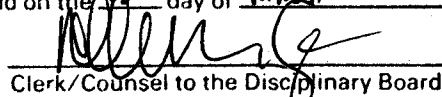
2 DATED this 27 day of MARCH, 2012.

3 

4 Anthony Angelo Russo,
5 Hearing Officer

6
7
8 CERTIFICATE OF SERVICE

9 I certify that I caused a copy of the FOF, COL & HO's Recommendation
10 to be delivered to the Office of Disciplinary Counsel and to be mailed
11 to Roland HAME, Respondent/ Respondent's Counsel
at 4208 STATE AVENUE, SUITE #1, NISSA LAKE, WA 98047 by Certified/first class mail
postage prepaid on the 28th day of March, 2012

12 
Clerk/ Counsel to the Disciplinary Board

FILED

JAN 04 2012

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ROLANDO MARTINEZ ADAME,

Lawyer (Bar No. 16006).

Proceeding No. 11#00011

SECOND 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 Rolando Martinez Adame was admitted to the practice of law in the State of Washington on June 9, 1986.

FACTS RELATING TO COUNT 1

2. For approximately ten years, Respondent has been retained by the Mexican Consulate in Seattle ("Consulate") to provide legal services to Mexican nationals residing in Washington State.

3. Each year, Respondent and the Consulate entered into an agreement that spelled out

1 the duties and relationship of the parties.

2 4. In or about October 2005, the Consulate and Respondent entered into an agreement
3 for Respondent to provide legal services to Mexican nationals at the rate of \$225 per hour for
4 the time period October 2005 through September 2006.

5 5. The Consulate agreed to pay Respondent \$5,000 as an advance fee deposit for the
6 legal services he was to provide to Mexican nationals.

7 6. On or about December 14, 2005, the Consulate paid Respondent the \$5,000
8 advance fee deposit.

9 7. Respondent deposited the \$5,000 advance fee deposit into US Bank account #1615.

10 8. US Bank account #1615 was used solely for Consulate funds.

11 9. On or about May 1, 2006, Respondent submitted a billing statement to the
12 Consulate.

13 10. The billing statement showed a balance on deposit of \$5,000 and no charges for
14 legal services.

15 11. On or about June 1, 2006, Respondent submitted a billing statement to the
16 Consulate.

17 12. The billing statement showed a balance on deposit of \$5,000 and no charges for
18 legal services.

19 13. On or about July 3, 2006, Respondent submitted a billing statement to the
20 Consulate.

21 14. The billing statement showed a balance on deposit of \$5,000 and charges of
22 \$112.50.

23 15. On or about July 3, 2006, Respondent submitted a second billing statement to the
24

1 Consulate.

2 16. The billing statement showed charges for legal services during the month of July
3 2006 totaling \$675.

4 17. On or about August 1, 2006, Respondent submitted a billing statement to the
5 Consulate.

6 18. The August 1, 2006 billing statement showed charges for legal services for the
7 month totaling \$900.

8 19. As of September 2006, the last month of the contract period, Respondent had billed
9 the Consulate and earned a total of \$1,687.50 in legal fees.

10 20. The balance of funds on deposit in account #1615 as of September 1, 2006, was
11 \$5,000.

12 21. The bank statement for account #1615 showed that no funds had been withdrawn
13 from the account until September 1, 2006.

14 22. On September 1, 2006, Respondent transferred \$2,000 from account #1615 to his
15 operating account for his own use.

16 23. On or about September 8, 2006, Respondent wrote a check for \$112.50 to himself
17 from account #1615.

18 24. The check is dated July 31, 2006 and indicates it is for July.

19 25. The check for \$112.50 was deposited into Respondent's operating account on or
20 about September 8, 2006.

21 26. On September 8, 2006, Respondent transferred \$2,500 from account #1615 to his
22 operating account for his own use.

23 27. On October 30, 2006, the remaining balance of funds in account#1615 was
24

1 \$387.50.

2 28. On November 3, 2006, Respondent transferred \$367.50 to his operating account for
3 his own use.

4 **COUNT 1**

5 29. By using and/or converting at least \$3,312.50 in client funds to which he was not
6 entitled for his own use, Respondent violated RPC 1.15(A)(b) and/or RPC 8.4(b) and/or RPC
7 8.4(c).

8 **FACTS RELATING TO COUNTS 2-4**

9 30. On or about October 30, 2006, the Consulate and Respondent entered into a written
10 agreement for Respondent to provide legal services to Mexican nationals for the time period
11 November 1, 2006 through October 31, 2007.

12 31. The Consulate agreed to pay Respondent an advance fee deposit of \$5,000 for the
13 representation, to be billed at the rate of \$225 per hour.

14 32. The agreement required Respondent to open a bank account into which the \$5,000
15 was to be deposited.

16 33. The agreement also required Respondent to provide bi-monthly financial statements
17 to the Consulate, "providing details of the hours spent on each case and the balance
18 remaining."

19 34. On or about December 6, 2006, the Consulate paid Respondent a \$5,000 advance
20 fee deposit.

21 35. The \$5,000 were funds that belonged to the Consulate.

22 36. On or about December 21, 2006, Respondent deposited the \$5,000 advance fee
23 deposit into US Bank account #8989 for his own use.

24 37. Respondent used the \$5,000 for his use.

1 38. US Bank account #8989 is Respondent's operating account and is not a trust
2 account.

3 39. For the months November and December 2006 and January 2007, Respondent
4 billed the Consulate \$1,575 for services performed on behalf of Mexican nationals.

5 40. On or about March 26, 2007, the Consulate asked Respondent to go with Dr. Rosa
6 Martinez, a Mexican national, to a hearing.

7 41. On April 30, 2007, Respondent sent a bill to the Consulate for \$731.25 for his work
8 on the Martinez matter.

9 42. On or about July 14, 2007, Respondent met with Roberto Caldera Arroyo of the
10 Consulate.

11 43. Respondent was instructed to stop all work on the Martinez matter.

12 44. In or about August, 2007, Respondent submitted a billing statement to the
13 Consulate in the amount of \$1,350.

14 45. On or about September 7, 2007, Respondent submitted a billing statement to the
15 Consulate in the amount of \$1,237.50

16 46. At the end of the contract period, \$105.75 of the Consulate's funds remained in
17 Respondent's operating account.

18 47. Respondent did not refund the \$105.75 to the Consulate at the end of the contract
19 period.

20 48. Respondent kept the remaining funds for his own use.

21 **COUNT 2**

22 49. By failing deposit the \$5,000 advance fee deposit into a trust account, Respondent
23 violated RPC 1.15A(c)(1).

1 **COUNT 3**

2 50. By using and/or converting \$5,000 in clients funds without entitlement and for his
3 own use, Respondent violated RPC 1.15A(b) and/or RPC 8.4(b) and/or RPC 8.4(c).

4 **COUNT 4**

5 51. By failing to hold the \$5,000 belonging to the Consulate separate from his own
6 property, Respondent violated RPC 1.15A(c).

7 **FACTS RELATING TO COUNT 5**

8 52. Respondent maintained an IOLTA account at US Bank, account #8971.

9 53. On or about November 10, 2007, a payroll check in the amount of \$643.03 was
10 written to Respondent's employee Maria Mendez on Respondent's IOLTA account at US Bank,
11 account #8971.

12 54. The funds on deposit in Respondent's IOLTA account #8971 belonged to
13 Respondent's clients and were not Respondent's property.

14 **COUNT 5**

15 55. By using and/or converting \$643.03 in clients funds without entitlement and for his
16 own use, Respondent violated RPC 1.15A(b) and/or RPC 8.4(b) and/or RPC 8.4(c).

17 **FACTS RELATING TO COUNTS 6-11**

18 56. On or about December 1, 2007, Respondent and the Consulate entered into a
19 written agreement for Respondent to provide legal services at the rate of \$225 per hour to
20 Mexican nationals for the time period December 1, 2007 through October 31, 2008.

21 57. The agreement provided that the Consulate pay an advance fee deposit in the
22 amount of \$4,000.

23 58. The agreement required Respondent to open a bank account and deposit the \$4,000
24 advance fee deposit in that account.

1 59. The agreement provided that it would be in effect until the \$4,000 was exhausted,
2 and that in the event the funds were exhausted, any pending cases “[would] be concluded at an
3 amount mutually agreed between the Consulate and the attorney.”

4 60. Respondent was required to provide bi-monthly reports to the Consulate that
5 indicated the services rendered, including details of the hours spent on each case and the
6 balance remaining.

7 61. Respondent received the \$4,000 on December 1, 2007.

8 62. On or about January 9, 2008, Respondent wrote a payroll check to his employee
9 Maria Mendez in the amount of \$508.72 drawn on his IOLTA account at US Bank, account
10 #8971.

11 63. There were insufficient funds in account #8971 and there was a negative balance on
12 January 9, 2008 in Respondent’s IOLTA account.

13 64. The next day, January 10, 2008, Respondent deposited the \$4,000 check he had
14 received from the Consulate into his pooled IOLTA trust account.

15 65. On or about January 31, 2008, the balance remaining in Respondent’s IOLTA
16 account #8971 was \$3,938.02.

17 66. On or about February 8, 2008, Respondent wrote a check to himself from IOLTA
18 account #8971 in the amount of \$675 for his own use.

19 67. The notation on the check indicates it was for “Mexican Consulate work.”

20 68. Respondent did not provide the Consulate notice of his intent to pay himself the
21 funds.

22 69. On or about February 27, 2008, Respondent wrote a check to himself from IOLTA
23 account #8971 in the amount of \$450 for his own use.

24

1 70. The notation on the check indicates it was for "Mex Consulate work."

2 71. Respondent did not provide the Consulate notice of his intent to pay himself the
3 funds.

4 72. The Consulate did not refer any new clients or new work to Respondent after
5 December 1, 2007.

6 73. Respondent did not perform any work for the Consulate during the contract period
7 for which he was entitled to paid.

8 74. On or about June 30, 2008, the balance in IOLTA account #8971 was \$2,382.40.

9 75. On or about July 31, 2008, the balance in IOLTA account #8971 was \$382.40.

10 76. On or about October 31, 2008, the final month of the contract period, the balance in
11 IOLTA account #8971 was \$377.40.

12 77. The Consulate on several occasions requested that Respondent provide the bi-
13 monthly reports required by the agreement.

14 78. Respondent did not provide the requested reports, invoices, or any other accounting
15 of the work performed or the funds remaining on deposit.

16 79. On or about October 20, 2008, the Consulate sent a letter to Respondent asking him
17 to send the required bi-monthly reports, including a statement of the "current remaining
18 balance in the Program's account."

19 80. Respondent did not provide the requested statement.

20 81. On November 17, 2008, the Consulate telephoned Respondent and requested
21 invoices for services provided in September, October and November 2008, and showing the
22 balance of the Consulate's funds on deposit.

23 82. Respondent did not provide the requested information.
24

1 83. On December 17, 2008, Patricia Morales, Mexican Consul, wrote to Respondent,
2 requesting that he return to the Consulate any funds not used during the contract period, plus
3 interest.

4 84. On or about April 17, 2009, Respondent wrote to the Consulate, indicating that all
5 of the money for the year 2008 had been used on the Dr. Rosa Martinez case and that there
6 were no remaining funds.

7 85. On April 17, 2009, Acting Consul Marisela Quijano wrote to Respondent, again
8 requesting a return of funds not expended during the contract period.

9 86. This letter was delivered by hand to Respondent's office.

10 87. Respondent did not respond to this letter.

11 88. On April 28, 2009, Ms. Quijano again wrote to Respondent, asking him to explain
12 what services he had provided between December 1, 2007 and December 1, 2008, and for
13 whom, and why he had not provided accountings as required by the contract.

14 89. In her letter, Ms. Quijano stated that the Martinez case had not been authorized for
15 funding after July 2007.

16 90. Respondent did not respond to this letter.

17 91. Respondent was not authorized to spend any of the 2007-2008 advance fee on the
18 doctor's case.

19 92. Respondent did not earn the \$4,000 advance fee or any part thereof.

20 93. Respondent has still not provided the Consulate with a written accounting of how
21 these funds were used despite the provision in his contract that he do so and the Consulate's
22 repeated requests.

23 94. Respondent has also not returned any of the funds to the Consulate, despite its
24

1 request that he do so.

2 **COUNT 6**

3 95. By failing to provide a written accounting of funds belonging to the Mexican
4 Consulate, despite multiple requests from the Consulate for an accounting, Respondent
5 violated RPC 1.15A(e) and/or RPC 1.5(b) and/or RPC 1.4(a).

6 **COUNT 7**

7 96. By failing to refund to the Consulate advance fees that he had not billed for and/or
8 not earned, Respondent violated RPC 1.15A(f)

9 **COUNT 8**

10 97. By failing to maintain the \$4,000 in his trust account until any dispute over the
11 funds was resolved and/or by failing to take reasonable action to resolve the dispute,
12 Respondent violated RPC 1.15A(g).

13 **COUNT 9**

14 98. By failing to provide the Consulate with a bill and/or other document notifying it of
15 his intent to pay himself claimed earned fees, prior to taking those fees, Respondent violated
16 RPC 1.15A(h)(3).

17 **COUNT 10**

18 99. By using and/or converting \$4,000 in clients funds without entitlement and for his
19 own use, Respondent violated RPC 1.15A(b) and/or RPC 8.4(b) and/or RPC 8.4(c).

20 **COUNT 11**

21 100. By using and/or converting \$508.72 in client funds without entitlement and for
22 his own use by writing a payroll check to his employee, Respondent violated RPC 1.15A(b)
23 and/or RPC 8.4(b) and/or RPC 8.4(c).

1 the telephone message slip.

2 112. Respondent offered and put off to the Association as true the altered version of
3 the telephone message slip when he knew it was a forgery.

4 113. Respondent offered and put off to the Association as true the altered telephone
5 message slip with the intent to defraud and/or injure the Association.

6 114. Respondent offered and put off to the Association as true the altered telephone
7 message slip with the intent to misrepresent to the Association the scope of the representation
8 that had been authorized by the Consulate and to justify his fees.

9 115. The altered telephone message slip was provided by Respondent to the
10 Association in connection with a disciplinary matter.

11 116. Respondent knew that the altered telephone message slip was a false statement of
12 material fact.

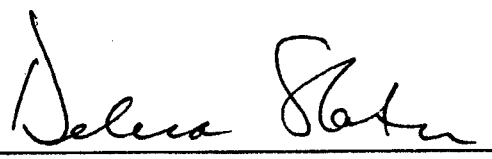
13 117. Respondent knowingly provided the altered telephone message slip to the
14 Association.

15 **COUNT 12**

16 118. By offering and/or putting off as true an altered version of the March 26, 2007
17 telephone message slip with the intent to defraud the Association and/or by misrepresenting the
18 limited nature of the Dr. Martinez representation and/or the Consulate's intent to fund the Dr.
19 Martinez representation, Respondent committed forgery (RCW 9A.60.020) and violated RPC
20 8.1(a), RPC 8.4(b) and/or RPC 8.4(c).

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.

Dated this 4th day of January 2012.



Debra Slater, WSBA No. 18346
Disciplinary Counsel

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