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FILED

MAY 08 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ERIC R. VARGAS,
Lawyer (Bar No. 20364).

Proceeding No. 13#00116

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND HEARING OFFICER'S REC-
COMMENDATION

The undersigned Hearing Officer held a default hearing on May 6, 2014, under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING CHARGED VIOLATIONS

1. The Formal Complaint (Bar File No.2) charged Eric Rene' Vargas with misconduct as set forth therein.

2. Paragraph 11 of the Formal Complaint has been stricken by the Office of Disciplinary Counsel as it is an unintended duplication of Paragraph 9.

3. With the sole exception of Paragraph 11, 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.

1 4. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations
2 charged in the Formal Complaint (Bar File No. 2) is admitted and established as follows:

3 **Violations of RPC 8.4(b), 8.4(c), and RPC 8.4(i).**

4 5. By committing fourteen acts of **first degree theft** (Count One - violating RCW
5 9A.56.030), fourteen acts of **second degree theft** (Count Two – violating RCW 9A.56.040),
6 and three acts of **third degree theft** (Count Three – violating RCW 9A.050), Respondent vio-
7 lated three provisions of RPC 8.4:

- 8 • RPC 8.4(b) by committing criminal acts that reflect adversely on Respondent’s honesty,
9 trustworthiness and fitness as a lawyer;
- 10 • RPC 8.4(c) by engaging in conduct involving dishonesty; and
- 11 • RPC 8.4(i) by committing acts that reflect disregard for the rule of law.

12 6. Because Respondent’s conduct entails serious acts of theft and intentional dishones-
13 ty, ABA Standard 5.11 applies to Respondent’s violations of RPC 8.4(b), RPC 8.4(c), and RPC
14 8.4(i):

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, false
18 swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the
19 sale, distribution or importation of controlled substances; or the intentional kill-
20 ing 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 law-
yer’s fitness to practice.

21 7. The presumptive sanction for Respondent’s repeated violations of RPC 8.4(b) is
22 disbarment.

23 8. The presumptive sanction for Respondent’s repeated violations of RPC 8.4(c) is
24 disbarment.

1 9. The presumptive sanction for Respondent's repeated violations of RPC 8.4(i) is
2 disbarment.

3 **Violations of RPC 1.15A(b).**

4 10. By intentionally converting and using for his own benefit the client funds in his
5 trust accounts on thirty-one occasions, Respondent violated the RPC 1.15A(b) prohibition
6 against converting and using client funds for the lawyer's own use.

7 11. Respondent's conduct was intentional and knowing. The injury to Respondent's
8 clients was quite serious, indeed there is still missing some \$44,787.55, plus lost interest, from
9 funds that WW intended to inure to the benefit of her adult developmentally disabled daughter.

10 As such, ABA Standard 4.11 applies to Respondent's violation of RPC 1.15A(b):

11 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
12 client property and causes injury or potential injury to a client.

13 12. The presumptive sanction for Respondent's violations of RPC 1.15A(b) is disbar-
14 ment.

15 **Aggravating and Mitigating Factors.**

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

- 18 (a) prior disciplinary offenses [Respondent was suspended for two years in
19 2006 based on his conviction of two felony counts of unlawful possession
20 of controlled substances, involving obtaining the drugs from a client];
21 (b) dishonest or selfish motive;
22 (c) a pattern of misconduct [the unauthorized takings of client funds occurred
23 over a two year period and involved at least 31 separate unauthorized tak-
24 ings of client funds];

- 1 (h) vulnerability of victim [W.W. suffers from late-stage cancer, is confined
2 to a nursing home, and has limited understanding of events. Her daughter,
3 S.K. is developmentally disabled and not able to understand her financial
4 affairs. All of this left them vulnerable to financial exploitation by Re-
5 spondent.];
- 6 (i) substantial experience in the practice of law [Respondent was admitted to
7 practice in 1991];
- 8 (j) illegal conduct.

9 14. No mitigating factors are applicable in this matter.

10 **DISCIPLINE RECOMMENDATION**

11 15. Based on the ABA Standards, the applicable aggravating and mitigating factors, and
12 the Supreme Court precedent in matters involving the intentional conversion of client funds, the
13 Hearing Officer recommends that Respondent Eric R. Vargas be disbarred.

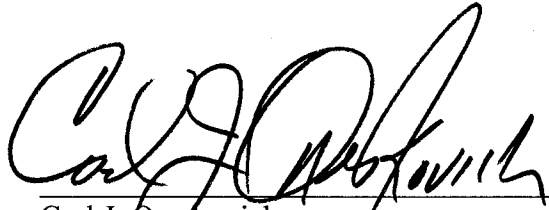
14 **RESTITUTION**

15 16. An order of restitution under ELC 13.7 is appropriate in this matter. Respondent
16 stole \$154,178.78 of the \$154,469.03 that his client entrusted to him. Although he recently re-
17 turned \$109,391.23 to the SK Sole Benefit Trust, \$44,787.55 remains unreimbursed. Further-
18 more, the SK Sole Benefit Trust lost a significant amount of interest while the funds were sto-
19 len.

20 17. Restitution to the SK Sole Benefit Trust, or successor in interest, is recommended in
21 an amount to be calculated as follows: the principal amount of \$154,178.78, together with in-
22 terest on the amount of each of the individual theft of funds, up to the maximum of
23 \$154,178.78, interest to be calculated from the date of each theft until the principal is repaid,
24 such restitution obligation to be offset by the February 28, 2014 reimbursement of \$109.391.23,

1 and any other reimbursements made, provided that all sums paid in reimbursement are to be
2 first applied to any outstanding interest owed. The restitution shall bear interest at the maxi-
3 mum rate of interest permitted under RCW 19.52.020.

4 DATED this 6 day of May, 2014.

5 
6 Carl J. Oreskovich,
7 Hearing Officer

18 CERTIFICATE OF SERVICE

19 I certify that I caused a copy of the FOF COL & HO's Recommendation
20 to be delivered to the Office of Disciplinary Counsel and to be mailed
to Renee Vargas Respondent's Counsel
at 917 10th Avenue NW #1000 Seattle WA 98107 by Certified first class mail
21 postage prepaid on the 6th day of May, 2014

22 
Clerk/Counsel to the Disciplinary Board