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**FILED**

JUL 31 2012

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**DEAN DINH NGUYEN,**  
Lawyer (Bar No. 30148).

Proceeding No. 12#00028

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on July 30, 2012.

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

1. The Formal Complaint charged Dean D. Nguyen 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 each of the violations charged in the Formal Complaint is admitted and established as follows:

Count 1: By converting V.T.'s funds from his trust account, Nguyen violated RPC

1 1.15A(a) and RPC 1.15A(b).

2 Count 2: By converting and misappropriating funds from his trust account, Nguyen  
3 violated RPC 1.15A(a), RPC 1.15A(b), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n).

4 Count 3: By failing to provide a response to Roy's grievance, failing to appear at the  
5 deposition, and failing to promptly provide V.T.'s file and his trust account records to the  
6 Association, Nguyen violated ELC 5.3(e) and RPC 8.4(l).

7 Count 4: By converting and misappropriating Perez's funds from his trust account,  
8 Nguyen violated RPC 1.15A(a), RPC 1.15A(b), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n).

9 Count 5: By failing to communicate with Perez about her case, Nguyen violated RPC  
10 1.4(a).

11 Count 6: By settling Perez's claim without consulting with her, Nguyen violated RPC  
12 1.2(a)

13 Count 7: By failing to provide an accounting to Perez, Nguyen violated RPC 1.15A(e).

14 Count 8: By failing to provide a response to Perez's grievance, failing to appear for  
15 deposition, failing to promptly provide Perez's file and his trust account records to the  
16 Association, Nguyen violated ELC 5.3(e) and RPC 8.4(l).

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

19 **Counts 1 through 3 – Eric Roy Grievance**

20 4. Nguyen violated RPC 1.15A(a), RPC 1.15A(b), RPC 8.4(c), RPC 8.4(i), RPC  
21 8.4(n), RPC 8.4(l) and ELC 5.3(e). Nguyen violated RPC 1.15A(a) and RPC 1.15A(b) by  
22 converting V.T.'s funds from his trust account. Nguyen violated RPC 8.4(c) (dishonesty), RPC  
23 8.4(i) (moral turpitude), and RPC 8.4(n) (unfitness to practice) by converting and  
24 misappropriating funds from his trust account. Nguyen violated RPC 8.4(l) by failing to

1 provide timely responses to the Association's requests for information in one or more instances,  
2 and by failing to comply with his duties to cooperate under ELC 5.3(e). Nguyen violated RPC  
3 8.4(l) through violation of ELC 5.3(e) requiring prompt responses to requests for information.

4 5. Nguyen acted intentionally.

5 6. V.T. was actually and seriously injured when Nguyen converted V.T.'s client  
6 funds from his trust account, and obtained the settlement proceeds by deceit.

7 7. In December 2011, Nguyen's trust account balance should have been at least  
8 \$31,700.20. Nguyen's actual trust account balance was \$7,847.57, a shortage of \$23,852.

9 8. V.T. and Rawlings Company were actually and seriously injured when Nguyen  
10 induced defense counsel to settle by promising to pay the Rawlings subrogation lien in order to  
11 obtain the settlement proceeds for himself.

12 Counts 4 through 8 – Lilia Perez Grievance

13 9. Nguyen violated RPC 1.2(a), RPC 1.4(a), RPC 1.15A(a), RPC 1.15A(b), RPC  
14 1.15A(e), RPC 8.4(c), RPC 8.4(i), RPC 8.4(n), RPC 8.4(l), and ELC 5.3(e). Nguyen violated  
15 RPC 1.15A(a), RPC 1.15A(b), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n) by converting and  
16 misappropriating Perez's funds from his trust account. Nguyen violated RPC 1.4(a) and RPC  
17 1.2(a) by failing to communicate with Perez about her case and settling Perez's claim without  
18 consulting with her. Nguyen violated RPC 1.15A(e) by failing to provide an accounting to  
19 Perez. Nguyen violated RPC 8.4(l) by failing to provide timely responses to the Association's  
20 requests for information in one or more instances, and by failing to comply with his duties to  
21 cooperate under ELC 5.3(e). Nguyen violated RPC 8.4(l) through violation of ELC 5.3(e)  
22 requiring prompt responses to requests for information.

23 10. Nguyen acted intentionally.

1 11. Perez was actually and seriously injured when Nguyen converted and  
2 misappropriated. Perez's client funds from his trust account, and induced Perez to settle by  
3 promising her \$10,000 and misrepresenting the status of her case in order to obtain the  
4 settlement proceeds for himself by deceit. After depositing the \$15,000 settlement checks in  
5 July 2011, Nguyen's trust account should have had a total balance of at least \$32,000 for Perez  
6 and other clients. Nguyen's trust account balance was \$21,532.03, a shortage of over \$10,000.  
7 Nguyen converted all or part of the \$10,000.

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

11 13. ABA Standards section 4.1 is most applicable to Nguyen's violations of RPC  
12 1.15A(a), RPC 1.15A(b), RPC 1.15A(e), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n) charged in  
13 Counts 1, 2, 4, and 7 of the Association's Complaint.

14 ***4.1 Failure to Preserve the Client's Property***

15 ABA Standards 4.1 is most applicable to the duty to maintain client trust funds.

16 **4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
17 client property and causes injury or potential injury to a client.**

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

21 14. ABA Standards section 4.4 is most applicable to Nguyen's violations of RPC  
22 1.2(a) and RPC 1.4(a) charged in Counts 5 and 6 of the Association's Complaint.

23 ***4.4 Lack of Diligence***

24 ABA Standards 4.4 applies to the duty to communicate with a client and to consult with  
the client before settling a claim.

**4.41 Disbarment is generally appropriate when:**

(a) a lawyer abandons the practice and causes serious or potentially  
serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes  
serious or potentially serious injury to a client; or

1 (c) a lawyer engages in a pattern of neglect with respect to client matters  
2 and causes serious or potentially serious injury to a client.

3 4.42 Suspension is generally appropriate when:

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

6 (b) a lawyer engages in a pattern of neglect and causes injury or potential  
7 injury to a client.

8 15. ABA Standards section 4.6 is most applicable to Nguyen's violations of RPC  
9 1.15A(a), RPC 1.15A(b), RPC 1.15A(e), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n) charged in  
10 Counts 1, 2, 4, and 7 of the Association's Complaint.

11 **4.6 Lack of Candor**

12 ABA Standards 4.6 is most applicable to deceitful conduct.

13 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a  
14 client with the intent to benefit the lawyer or another, and causes serious  
15 injury or potential serious injury to a client.

16 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client,  
17 and causes injury or potential injury to the client.

18 16. ABA Standards section 5.1 is most applicable to Nguyen's violations of RPC  
19 1.15A(a), RPC 1.15A(b), RPC 1.15A(e), RPC 8.4(c), RPC 8.4(i), and RPC 8.4(n) charged in  
20 Counts 1, 2, 4, and 7 of the Association's Complaint.

21 **5.1 Failure to Maintain Personal Integrity**

22 ABA Standards 5.1 is most applicable to deceitful conduct.

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.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in  
criminal conduct which does not contain the elements listed in Standard 5.11 and  
that seriously adversely reflects on the lawyer's fitness to practice.

17. ABA Standards section 7.0 is most applicable to Nguyen's violation of RPC 8.4(I)

1 charged in Counts 3 and 8 of the Association's Complaint.

2 **7.0 Violations of Duties Owed as a Professional**

3 ABA Standards 7.0 is most applicable to the failure to cooperate with the Association's  
4 investigation.

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

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

12 18. When multiple ethical violations are found, the "ultimate sanction imposed should  
13 at least be consistent with the sanction for the most serious instance of misconduct among a  
14 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

15 19. Based on the Findings of Fact and Conclusions of Law and application of the ABA  
16 Standards, the appropriate presumptive sanction is disbarment for each count.

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

- 19 (a) prior disciplinary offenses [Nguyen received a Reprimand in 2005 for  
20 charging a client a higher fee for pretrial work than originally agreed and  
21 for having the client sign a second fee agreement without consulting the  
22 client about the potential conflict of interest or obtaining the client's  
23 consent in writing;
- 24 (b) dishonest or selfish motive;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to  
comply with rules or orders of the disciplinary agency [failure to file answer to  
formal complaint as required by ELC 10.5(a)]<sup>1</sup>; and
- (i) substantial experience in the practice of law [Nguyen was admitted to  
practice law in Washington on June 19, 2000].

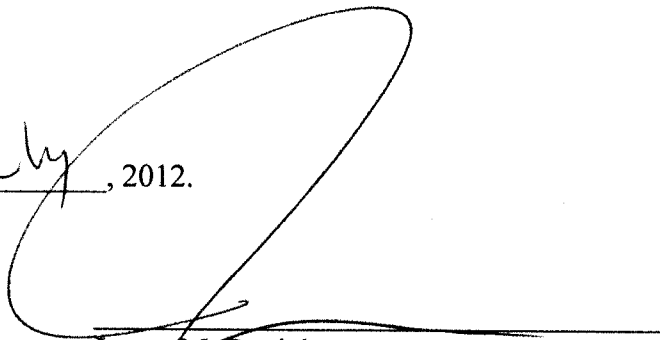
<sup>1</sup> ELC 10.5(a) provides: "Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6." See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer's "total nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process").

21. No mitigating factors identified in ABA Standard 9.32 apply.

**RECOMMENDATION**

22. Based on the ABA Standards and the serious aggravating factors and lack of any mitigating factors, the Hearing Officer recommends that Respondent Dean D. Nguyen be disbarred for each Count of the Formal Complaint which I have found established by a clear preponderance of the evidence. The Hearing Officer further recommends that Nguyen pay restitution to the following: 1) V.T. in the amount of \$945.15 (\$9,863.49 converted settlement proceeds minus \$8,918.34 due Rawlings Company; 2) Rawlings Company in the amount of \$8,918.34; and 3) Lilia Perez in the amount of \$10,000. Any reinstatement should be conditioned on payment of restitution.

DATED this 31 day of July, 2012.

  
James M. Danielson  
Hearing Officer

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the FOF, COL & HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Dean Nguyen ~~Respondent~~ Respondent's Counsel  
at 1700 7th Ave. #400 Seattle WA 98101 by Certified ~~first class mail~~  
postage prepaid on the 31st day of July, 2012.

  
Clerk/Counsel to the Disciplinary Board