

FILED

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Disciplinary
Board

Docket # 018

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

SOUPHAVADY BOUNLUTAY,
Lawyer (Bar No. 30552).

Proceeding No. 17#00085

STIPULATION TO A 30-MONTH
SUSPENSION

Following settlement conference conducted
under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court’s Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to a 30-month Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Senior Disciplinary Counsel Francesca D’Angelo, Respondent’s Counsel Mark Choate and Respondent lawyer Souphavady Bounlutay.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an

1 outcome more favorable or less favorable to her. Respondent chooses to resolve this proceeding
2 now by entering into the following stipulation to facts, misconduct, and sanction to avoid the
3 risk, time, and expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on November
6 17, 2000.

7 **II. STIPULATED FACTS**

8 ***Roldan Grievance***

9 2. Enma Roldan and her husband Marvin Lopez, Sr., are citizens of Guatemala who
10 entered the United States unlawfully. Ms. Roldan and Mr. Lopez spoke limited English.

11 3. Ms. Roldan and Mr. Lopez have three children. Two of their children are United
12 States citizens.

13 4. In October 2014, Ms. Roldan and Mr. Lopez consulted Respondent about helping
14 her and Mr. Lopez legalize their status in the United States. Ms. Roldan brought her daughter-
15 in-law, Aymee Casteneda to the consultation meeting. Ms. Casteneda acted as an interpreter for
16 Ms. Roldan and Mr. Lopez. Ms. Casteneda translated from English to Spanish. Ms. Roldan
17 and Mr. Lopez's inquiries were directed to Ms. Casteneda, who then translated what they said
18 into English and relayed the communication to Respondent. Ms. Roldan subsequently hired
19 Respondent to represent Marvin Lopez, Jr. in his deportation case.

20 5. Ms. Roldan and Mr. Lopez contend that Respondent told Ms. Roldan that her
21 United States citizen daughter, Evelyn Lopez, could file a Petition for Alien Relative (I-130
22 petition) for Ms. Roldan and her husband.

23 6. Ms. Roldan and Mr. Lopez contend that Respondent also advised Ms. Roldan that
24

1 she and Mr. Lopez could qualify for a provisional waiver of inadmissibility (Form I-601A).

2 7. Ms. Roldan and Mr. Lopez contend that Respondent told Ms. Roldan that, if the
3 waiver was granted, it would waive Ms. Roldan's and Mr. Lopez's inadmissibility due to their
4 unlawful presence in the United States, and allow them to travel to Guatemala, attend a visa
5 interview at their consulate's office, return to the United States, and obtain their green cards.

6 8. In order to qualify for a provisional waiver of inadmissibility, the applicant must
7 have a qualifying relative, such as a legal permanent resident or United States citizen parent or
8 spouse.

9 9. Ms. Roldan and Mr. Lopez did not have a qualifying relative and thus were not
10 eligible for provisional waivers.

11 10. Because Ms. Roldan and Mr. Lopez entered the United States unlawfully and
12 stayed for more than one year, they were subject to a 10-year bar to re-entry if they were to
13 leave the United States to process their visas.

14 11. Ms. Roldan and Mr. Lopez contend that Respondent did not inform Ms. Roldan or
15 Mr. Lopez that they could not qualify for a provisional waiver.

16 12. Ms. Roldan and Mr. Lopez contend that Respondent did not inform Ms. Roldan or
17 Mr. Lopez that they would be subject to the 10-year bar if they left the country to process their
18 visas.

19 13. In February 2015, Respondent filed I-130 petitions for Ms. Roldan and Mr. Lopez
20 which were approved on August 6, 2015.

21 14. In July 2015, Ms. Roldan and Mr. Lopez each signed separate fee agreements with
22 Respondent.

23 15. Both agreements stated that Respondent would provide legal services including "I-
24

1 485,¹ Waiver, Work Permit.”

2 16. According to her fee agreement, Ms. Roldan was required to pay Respondent a
3 “total legal fee” of \$3,500 (minus INS filing fee).

4 17. According to his fee agreement, Mr. Lopez was required to pay Respondent a
5 “total legal fee” of \$2,500 (minus INS filing fee).

6 18. Both agreements stated that “all attorney’s fees are earned when received and are
7 the property of the Bounlutay law firm.”

8 19. The fee agreements did not state that the funds would not be placed in a trust
9 account, that the agreement did not alter the client’s right to terminate the lawyer/client
10 relationship or that the client may be entitled to a refund of a portion of the fee if the agreed
11 upon legal services have not been completed.

12 20. In July 2015, Ms. Roldan paid Respondent \$6,000 in legal fees, in accordance with
13 Ms. Roldan’s and Mr. Lopez’s fee agreements.

14 21. Respondent did not deposit the \$6,000 into a trust account.

15 22. On or about September 3, 2015, after receiving the I-130 approval, Ms. Roldan
16 paid Respondent an additional \$1,030. The receipt denoted that the funds were an “immigration
17 fee.”

18 23. Respondent placed these funds in her trust account.

19 24. On September 21, 2015, Ms. Roldan paid Respondent an additional \$1,000. The
20 receipt denoted that this was a “consulate processing attorney’s fee.”

21 25. Respondent did not deposit the \$1,000 paid by Ms. Roldan into a trust account.

22 26. In September 2015, Mr. Lopez also paid Respondent an additional \$2,030. The

23 _____
24 ¹ Application to Register Permanent Residence or Adjust Status.

1 receipt denoted that the payment was for “NVC fees.” NVC referred to the National Visa
2 Center.

3 27. Respondent did not deposit the \$2,030 paid by Mr. Lopez into a trust account.

4 28. Of the \$4,060 that Ms. Roldan and Mr. Lopez paid to Respondent in September
5 2015, Respondent paid \$840 to US Custom and Immigration Services and \$890 to the National
6 Visa Center for processing fees on behalf of Ms. Roldan and Mr. Lopez.

7 29. Respondent did not pay any other costs on behalf of Ms. Roldan or Mr. Lopez.

8 30. On August 30, 2016, Respondent sent an email to Ms. Roldan. Ms. Roldan
9 contends that this was the first time that Respondent informed her she and Mr. Lopez were
10 ineligible for provisional waivers.

11 31. On September 15, 2016 Ms. Roldan informed Respondent she had hired an
12 attorney, Mari Matsumoto, of Washington Immigration Defense Group. Through the assistance
13 of Ms. Matsumoto, Ms. Roldan and Mr. Lopez sent Respondent a letter requesting Respondent
14 return the fees that they had paid her.

15 32. Respondent did not refund Ms. Roldan’s or Mr. Lopez’s funds.

16 33. Respondent did not provide Ms. Roldan or Mr. Lopez with an accounting of the
17 money they paid Respondent.

18 34. Respondent disagrees with Ms. Roldan and Mr. Lopez’s description of her
19 communications in ¶¶ 6, 7, 11 and 12 with Ms. Roldan and Mr. Lopez in regard to the specific
20 advice and counsel she gave to them regarding their immigration issues. However, she
21 acknowledges that she did not memorialize her communications with them in writing prior to
22 August 30, 2016.

1 ***ODC Investigation***

2 35. Ms. Roldan filed a grievance against Respondent on October 20, 2016.

3 36. After receiving notice of the grievance, Respondent altered the fee agreements
4 signed by Ms. Roldan and Mr. Lopez to omit the word “waiver” from the description of legal
5 services to be provided.

6 37. Respondent submitted the altered fee agreements to ODC with her response to the
7 grievance in support of her statements to ODC that she had advised Ms. Roldan and Mr. Lopez
8 that they did not qualify for a hardship waiver before they signed the fee agreements.

9 ***Gardner Grievance***

10 38. In 2016, Ashley Gardner was involved in a marital dissolution action in King County
11 (“The Dissolution Matter”).

12 39. On January 5, 2017, Ms. Gardner hired Respondent to file a separate tort claim
13 against her husband (“The Tort Matter”).

14 40. Respondent’s tort fee agreement with Ms. Gardner required Ms. Gardner to pay an
15 advanced fee of \$8,550. The fee agreement required Ms. Gardner to maintain a minimum of
16 \$1,500 in her trust account at all times to secure payment for costs and expenses as well as fees.

17 41. Ms. Gardner paid Respondent \$10,000 on January 4, 2017 for the Tort Matter.
18 Respondent deposited the funds into her trust account on January 5, 2017.

19 42. On March 9, 2017, Ms. Gardner hired Respondent to take over from prior counsel in
20 her dissolution matter.

21 43. On March 13, 2017, Respondent sent Ms. Gardner invoices for January and February
22 via email for the Tort Matter. The invoices totaled \$3,765.75.

23 44. On March 21, 2017, Ms. Gardner paid Respondent an additional \$10,000, which
24

1 Respondent placed in her trust account for the Dissolution Matter.

2 45. A hearing to confirm the issues for the dissolution trial was set for March 31, 2017.

3 46. On March 29, 2017, Respondent moved for a continuance, but the court denied the
4 motion.

5 47. Respondent failed to appear at the March 31, 2017 hearing because she had another
6 court hearing at the same time and was unable to secure counsel for Ms. Gardner's hearing.

7 48. On May 24, 2017, Respondent withdrew \$7,500 of Ms. Gardner's funds from her
8 trust account.

9 49. Respondent did not provide a billing statement or other notice to Ms. Gardner prior
10 to withdrawing the funds.

11 50. Respondent did not provide Ms. Gardner with an accounting after disbursing the
12 funds from trust.

13 51. On June 7, 2017, Respondent withdrew an additional \$4,795.50 of Ms. Gardner's
14 funds from her trust account.

15 52. Respondent did not provide Ms. Gardner with a billing statement or other notice
16 prior to removing the \$4,795.50 from trust.

17 53. Respondent did not provide Ms. Gardner with an accounting prior to disbursing the
18 \$4,795.50 funds from trust.

19 54. On June 7, 2017, the court issued an order in the dissolution case for Ms. Gardner to
20 appear for a mandatory pre-trial conference to be held on June 13, 2017.

21 55. Respondent did not appear at the pre-trial conference.

22 56. On June 22, 2017, Ms. Gardner terminated the relationship with Respondent and
23 demanded her file, an accounting and a refund of unearned fees.

1 57. On June 30, 2017, Respondent provided Ms. Gardner her client file, some invoices,
2 and a refund check for \$4,533.25.

3 58. Ms. Gardner refused the check.

4 59. Among the invoices that Respondent provided Ms. Gardner on June 30, 2017 were
5 invoices numbered 10, 11, 16, 17, 24 and 25 for both the tort and dissolution cases.

6 60. One or more of these invoices had not been provided to Ms. Gardner prior to the
7 termination of the representation.

8 61. One or more of the charges on invoice numbers 10, 11, 16, 17, 24 and 25 were in
9 error and for that reason, unreasonable.

10 62. On July 10, 2017, Respondent refunded a total of \$12,151 to Ms. Gardner. Ms.
11 Gardner has been fully reimbursed by Respondent.

12 **III. STIPULATION TO MISCONDUCT**

13 63. By charging Ms. Roldan and Mr. Lopez an unreasonable fee, Respondent violated
14 RPC 1.5(a).

15 64. By failing to explain matters to the extent reasonably necessary to permit Ms.
16 Roldan and Mr. Lopez to make informed decisions regarding the representation, Respondent
17 violated RPC 1.4(b).

18 65. By failing to deposit Ms. Roldan's and Mr. Lopez's advanced fees and costs into her
19 trust account, Respondent violated RPC 1.5(f) and RPC 1.15A(c).

20 66. By altering Ms. Roldan's and Mr. Lopez's fee agreements and by submitting altered
21 fee agreements to ODC during a grievance investigation, Respondent violated RPC 8.4(c), RPC
22 8.1(a), RPC 8.4(d) and RPC 8.4(l) (by violating ELC 1.5 and ELC 5.3).

23 67. By failing to appear at Ms. Gardner's March 31, 2017 and June 13, 2017 hearings,
24

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

2 68. By failing to provide notice before withdrawing fees from her trust account and by
3 failing to provide Ms. Gardner with a written accounting after disbursing funds from her trust
4 account, Respondent violated RPC 1.15A(e), RPC 1.15A(h)(3), and RPC 1.4.

5 69. By charging Ms. Gardner an unreasonable fee, Respondent violated RPC 1.5(a).

6 IV. PRIOR DISCIPLINE

7 70. Respondent has no prior discipline.

8 V. APPLICATION OF ABA STANDARDS

9 71. The following American Bar Association Standards for Imposing Lawyer Sanctions
10 (1991 ed. & Feb. 1992 Supp.) apply to this case:

11 ***4.1 Failure to Preserve the Client's Property***

12 Absent aggravating or mitigating circumstances, upon application of the
13 factors set out in 3.0, the following sanctions are generally appropriate in cases
14 involving the failure to preserve client property:

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

17 4.12 Suspension is generally appropriate when a lawyer knows or should
18 know that he is dealing improperly with client property and causes injury
19 or potential injury to a client.

20 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
21 with client property and causes injury or potential injury to a client.

22 4.14 Admonition is generally appropriate when a lawyer is negligent in
23 dealing with client property and causes little or no actual or potential
24 injury to a client.

19 ***4.4 Lack of Diligence***

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

24 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 and
causes serious or potentially serious injury to a client.
- 2 4.42 Suspension is generally appropriate when:
- 3 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or
- 4 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.
- 5 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
not act with reasonable diligence in representing a client, and causes
injury or potential injury to a client.
- 6 4.44 Admonition is generally appropriate when a lawyer is negligent and does
not act with reasonable diligence in representing a client, and causes little
7 or no actual or potential injury to a client.

8 ***4.6 Lack of Candor***

9 Absent aggravating or mitigating circumstances, upon application of the
factors set out in Standard 3.0, the following sanctions are generally appropriate
10 in cases where the lawyer engages in fraud, deceit, or misrepresentation directed
toward a client:

- 11 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a
client with the intent to benefit the lawyer or another, and causes serious
injury or potential serious injury to a client.
- 12 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a
client, and causes injury or potential injury to the client.
- 13 4.63 Reprimand is generally appropriate when a lawyer negligently fails to
provide a client with accurate or complete information, and causes injury
14 or potential injury to the client.
- 15 4.64 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in failing to provide a client with accurate
16 or complete information, and causes little or no actual or potential injury
to the client.

17 ***7.0 Violations of Duties Owed as a Professional***

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

- 21 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
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
potentially serious injury to a client, the public, or the legal system.
- 23
- 24

- 1 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
2 conduct that is a violation of a duty owed as a professional and causes
3 injury or potential injury to a client, the public, or the legal system.
4 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
5 conduct that is a violation of a duty owed as a professional and causes
6 injury or potential injury to a client, the public, or the legal system.
7 7.4 Admonition is generally appropriate when a lawyer engages in an
8 isolated instance of negligence that is a violation of a duty owed as a
9 professional, and causes little or no actual or potential injury to a client,
10 the public, or the legal system.

11 72. Respondent acted knowingly in failing to reasonably explain matters to Ms. Roldan
12 and Mr. Lopez so as to permit them to make informed decisions regarding the representation.
13 The presumptive sanction under ABA Standards 4.62 is suspension.

14 73. Respondent should have known that she was dealing improperly with Ms. Roldan's
15 and Mr. Lopez, Sr.'s funds by not placing them into a trust account. The actual injury appears
16 to be that Ms. Roldan and Mr. Lopez, Sr.'s funds were not protected and not available for a
17 refund. The presumptive sanction under ABA Standards 4.12 and 7.2 is suspension.

18 74. Respondent acted negligently in charging an unreasonable fee. Ms. Roldan and Mr.
19 Lopez were injured by her conduct. The presumptive sanction under ABA Standard 7.3 is
20 reprimand.

21 75. Respondent acted knowingly in submitting altered fee agreements to ODC. She
22 acted with the intent to benefit herself by changing documents to buttress her statements to
23 ODC. There was injury to the lawyer discipline system as a whole, which depends on lawyer
24 cooperation and honesty to function. The presumptive sanction under ABA Standard 7.1 is
disbarment.

76. Respondent acted negligently in failing to appear at Ms. Gardner's dissolution
hearings. There was injury to the judicial system and potential injury to Ms. Gardner. The
presumptive sanction under ABA Standard 4.4 is reprimand.

1 77. Respondent should have known that she was dealing improperly with Ms. Gardner's
2 funds by failing to provide notice before withdrawing funds from her trust account and by
3 failing to provide Ms. Gardner with a written accounting after disbursing funds. The
4 presumptive sanction under ABA Standard 4.12 is suspension.

5 78. Respondent acted negligently in charging an unreasonable fee to Ms. Gardner.
6 Respondent's conduct caused potential injury to Ms. Gardner. The presumptive sanction under
7 ABA Standard 7.3 is reprimand.

8 79. The following aggravating factors apply under ABA Standard 9.22:

9 (d) multiple offenses;

10 80. The following mitigating factors apply under ABA Standard 9.32:

11 (a) absence of a prior disciplinary record;

12 (c) personal or emotional problems [see confidential attachment];

13 (l) remorse.

14 81. Based on the factors set forth above, the presumptive sanction should be mitigated
15 to a 30-month suspension.

16 VI. STIPULATED DISCIPLINE

17 A. Sanction

18 82. The parties stipulate that Respondent shall receive a 30-month suspension for her
19 conduct.

20 B. Conditions On Reinstatement

21 83. As a condition of reinstatement from suspension, Respondent must complete the
22 following steps to disburse any funds that are owed to clients or third parties and to receive
23 additional education on how to handle client funds in compliance with the Washington Supreme
24

1 Court's RPC 1.15A and RPC 1.15B:

- 2 a) Respondent shall submit compliant trust account records for the time period of
3 January 1, 2018 to 60 days prior to reinstatement in compliance with the
4 requirements of RPC 1.15A and RPC 1.15B. If Respondent does not have
5 compliant records, Respondent must reconstruct these records using all available
6 client records and financial records to assist in the identification of funds received
7 and disbursed. Respondent shall do so at her own expense. Respondent shall not be
8 eligible for a certification of completion of specific conditions of suspension under
9 ELC 13.3(b)(1)(B) unless Respondent provides the complete trust-account records
10 to ODC at least 60 days prior to seeking certification of completion. Respondent
11 shall promptly provide additional records and information to ODC if requested to
12 facilitate ODC's assessment of the completeness and accuracy of her records.²
- 13 b) Respondent's records may, or may not, reveal that one or more clients have not
14 received all funds to which they are entitled. If the trust-account records indicate
15 that any client is owed funds, then Respondent shall provide each client, in writing,
16 with a complete updated accounting of her receipt and disbursement of all funds.
17 The accounting shall identify the source, date and amount of all funds received, and
18 the recipient, purpose, date and amount of all funds disbursed. Respondent shall not
19 be eligible for a certification of completion of specific conditions of suspension
20 under ELC 13.3(b)(1)(B) unless Respondent provides ODC with proof that he/she
21 has done so, and with copies of the accountings, at least 60 days prior to seeking
22 certification of completion.
- 23 c) For the time frame of January 2018 up through the date of submission to ODC for
24 consideration of reinstatement, Respondent must provide to ODC, for each trust
account open during any portion of that time frame, copies of the following:
- any and all bank statements,
 - copies of any and all deposited items,
 - copies of any and all records of disbursements,
 - a complete and accurate check register identifying every transaction,
 - complete and accurate client ledgers identifying every transaction attributable to a client,
 - monthly reconciliations between the check register and the bank statement,
 - monthly reconciliations between the check register and the client ledgers, and
 - if the Respondent maintains trust-account records in QuickBooks, provide an electronic copy of the file with the trust-account records.

22 ² Respondent acknowledges and agrees that if information in reconstructed trust account records or in
23 other information or records provided to ODC under paragraph 8.2(a) reveals any acts of misconduct not
24 specifically identified in this Stipulation, ODC may investigate and/or prosecute such additional
misconduct to the extent otherwise authorized by the ELC.

- 1
- 2 d) Respondent must carefully review the WSBA publication Managing Client Trust
- 3 Accounts: Rules, Regulations, and Common Sense, and provide disciplinary
- 4 counsel with a signed certification that she has done so.
- 5 e) Respondent must complete the WSBA continuing legal education course entitled,
- 6 "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on
- 7 managing trust accounts in Washington State, and provide disciplinary counsel with
- 8 documentation showing that he/she has done so.
- 9 f) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide
- 10 the required documentation to disciplinary counsel at least 30 days prior to seeking
- 11 certification of compliance with reinstatement provisions.

12 84. As a further condition of reinstatement, Respondent agrees to participate in

13 psychological counseling with Masaki Y. Yamada, Ph.D, or other licensed psychologist

14 approved by ODC during the suspension period. Respondent will adhere to the terms of the

15 treatment plan developed by Dr. Yamada. Respondent shall provide proof of the counseling in

16 the form of a letter from the psychologist with the dates of the counseling provided and whether

17 Respondent has adhered to the terms of the treatment plan.

18 85. As a further condition of reinstatement, Respondent shall, at least 30 days prior to a

19 request for reinstatement, undergo an independent evaluation by a licensed psychologist to be

20 approved by disciplinary counsel. Respondent shall execute all the necessary releases to permit

21 this evaluator to obtain all necessary health and treatment records and make a report to

22 disciplinary counsel addressing whether Respondent has the current fitness to practice law.

23 Respondent shall be responsible for the costs of the evaluation.

24 86. If the evaluator concludes the Respondent is not currently fit to practice law, the

report shall recommend a course of treatment necessary to enable Respondent to return to the

practice of law.

87. If the evaluator concludes that Respondent is not fit to practice law, Respondent (or

Respondent's counsel, if Respondent is then represented) and disciplinary counsel shall meet to

1 discuss the evaluator's report and what steps can be taken to address the evaluator's concerns.
2 If Respondent and disciplinary counsel cannot reach an agreement, both parties shall represent
3 written materials and arguments to the Disciplinary Board. The Disciplinary Board shall decide
4 whether and the conditions under which Respondent shall return to the active practice of law.

5 88. If the evaluator concludes that Respondent is fit to practice law but recommends that
6 she undergo further treatment, Respondent shall undergo treatment with a treatment provider
7 during the probation period set forth below.

8 **C. Probation**

9 89. Respondent will be subject to probation for a period of two years commencing upon
10 Respondent's reinstatement to the practice of law, and must comply with the specific probation
11 terms set forth below. Respondent's compliance with these conditions shall be monitored by
12 the Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator").
13 Failure to comply with a condition of probation listed herein may be grounds for further
14 disciplinary action under ELC 13.8(b).

15 Trust Account

- 16 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
17 1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.
- 18 b) For all client matters, Respondent shall have a written fee agreement signed by the
19 client, which agreements are to be maintained for least seven years (see RPC
20 1.15B(a)(3)).
- 21 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
22 Review Report," Respondent shall review the trust-account records detailed on the
23 form report, review the completed report, and sign and date the completed report.
- 24 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

- 1 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the date of commencement of probation to the end of the third
4 full month.
- 5 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
6 commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month six.
- 9 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
10 commencement of probation, Respondent shall provide the trust account
11 records from the end of the previously provided quarter through the end of
12 month nine.
- 13 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month twelve.
- 17 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
18 the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
20 the end of month fifteen.
- 21 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
22 the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
24 the end of month eighteen.
- vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
 after the commencement of probation, Respondent shall provide the trust
 account records from the end of the previously provided quarter through
 the end of month twenty-one.

 The trust account records Respondent provides to ODC for each quarterly review of
 his trust account will include: (a) copies of each completed “Monthly
 Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a
 complete checkbook register for his/her trust account covering the period being
 reviewed, (c) complete individual client ledger records for any client with funds in
 Respondent’s trust account during all or part of the period being reviewed, as well
 as for Respondent’s own funds in the account (if any), and (d) copies of all trust-
 account bank statements, deposit slips, and cancelled checks covering the period
 being reviewed. The ODC’s Audit Manager or designee will review Respondent’s
 trust account records for each period.

- 1 e) On the same quarterly time schedule set forth in the preceding paragraph,
2 Respondent will provide ODC's Audit Manager or designee with copies of any and
3 all fee agreements entered into within the time period at issue.
- 4 f) The ODC's Audit Manager or designee may request additional financial or client
5 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
6 Within twenty days of a request from ODC's Audit Manager or designee for
7 additional records needed to verify Respondent's compliance with RPC 1.15A
8 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
9 additional records requested.
- 10 g) Respondent will reimburse the Association for time spent by ODC's Audit Manager
11 or designee in reviewing and reporting on Respondent's records to determine her
12 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
13 Respondent will make payment within thirty days of each written invoice setting
14 forth the auditor's time and payment due.

15 Practice Monitor

- 16 a) During the period of probation, Respondent's practice will be supervised by a
17 practice monitor. The practice monitor must be a WSBA member with no record of
18 public discipline and who is not the subject of a pending public disciplinary
19 proceeding.
- 20 b) The role of the practice monitor is to consult with and provide guidance to
21 Respondent regarding case management, office management, and avoiding
22 violations of the Rules of Professional Conduct, and to provide reports and
23 information to the Probation Administrator regarding Respondent's compliance
24 with the terms of probation and the RPC. The practice monitor does not represent
the Respondent.
- c) At the beginning of the probation period, the Probation Administrator will select a
lawyer to serve as practice monitor for the period of Respondent's probation.

Initial Challenge: If, within 15 days of the written notice of the selection of a
practice monitor, Respondent sends a written request to the Probation
Administrator that another practice monitor be selected, the Probation
Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.

Subsequent Challenges: If, after selection of a second (or subsequent) practice
monitor, Respondent believes there is good cause why that individual
should not serve as practice monitor, Respondent may, within 15 days of
notice of the selected practice monitor, send a written request to the
Probation Administrator asking that another practice monitor be selected.
That request must articulate good cause to support the request. If the
Probation Administrator agrees, another practice monitor will be selected.

1 If the Probation Administrator disagrees, the Office of Disciplinary Counsel
2 will submit its proposed selection for practice monitor to the Chair of the
3 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will
also provide the Chair with the Respondent's written request that another
practice monitor be selected.

- 4 d) In the event the practice monitor is no longer able to perform his or her duties, the
Probation Administrator will select a new practice monitor at his or her discretion.
- 5 e) During the period of probation, Respondent must cooperate with the named practice
6 monitor. Respondent must meet with the practice monitor at least once per month.
7 Respondent must communicate with the practice monitor to schedule all required
meetings.
- 8 f) The Respondent must bring to each meeting a current, complete written list of all
9 pending client legal matters being handled by the Respondent. The list must
10 identify the current status of each client matter and any problematic issues regarding
each client matter. The list may identify clients by using the client's initials rather
than the client's name.
- 11 g) At each meeting, the practice monitor will discuss with Respondent practice issues
12 that have arisen or are anticipated. In light of the conduct giving rise to the
13 imposition of probation, ODC recommends that the practice monitor and
14 Respondent discuss whether Respondent is diligently making progress on each
15 client matter, whether Respondent is in communication with each client, whether
Respondent has promptly billed each client, whether Respondent's fee agreements
are consistent with the RPC and are understandable to the client, whether
Respondent needs to consider withdrawing from any client matters. Meetings may
be in person or by telephone at the practice monitor's discretion. The practice
monitor uses discretion in determining the length of each meeting.
- 16 h) The practice monitor will provide the Probation Administrator with quarterly
17 written reports regarding Respondent's compliance with probation terms and the
18 RPC. Each report must include the date of each meeting with Respondent, a brief
19 synopsis of the discussion topics, and a brief description of any concerns the
practice monitor has regarding the Respondent's compliance with the RPC. The
report must be signed by the practice monitor. Each report is due within 30 days of
the completion of the quarter.
- 20 i) If the practice monitor believes that Respondent is not complying with any of her
21 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
22 meeting, the practice monitor will promptly communicate that to the Probation
Administrator.
- 23 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
24 Association to defray the costs and expenses of administering the probation, as
follows:

1 \$250 due within 30 days of the start of the probation;
2 \$250 due within 6 months of the start of the probation period;
3 \$250 due within 12 months of the start of the probation period; and
4 \$250 due within 18 months of the start of the probation period.

5 All payments should be provided to the Probation Administrator for processing.

6 **VII. RESTITUTION**

7 90. Respondent has refunded funds to Ms. Gardner and no further restitution to Ms.
8 Gardner is required.

9 91. Respondent shall pay \$10,060 to Enma Roldan and Marvin Lopez, Sr. within 30
10 days of approval of this stipulation, unless Respondent enters into a periodic payment plan with
11 disciplinary counsel under ELC 13.7(b). Any payment plan for restitution will provide for
12 interest at 12 percent per annum, calculated from the date this Stipulation is signed by
13 Respondent.

14 92. If Respondent's reconstructed trust-account records for the time period of January 1,
15 2018 to 60 days prior to reinstatement indicate that any client is owed funds, then Respondent is
16 required to make full restitution to each client of all funds owed. Respondent shall pay to the
17 client interest on those funds, at a rate of 12%, calculated from the date on which the client (or
18 third party as directed by the client) was first entitled to receive the funds to the date on which
19 repayment is made. Reinstatement is conditioned on full payment of restitution, with interest.

20 **VIII. COSTS AND EXPENSES**

21 93. Respondent shall pay attorney fees and administrative costs of \$2,824.80 in
22 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(j)
23 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
24 suspension is conditioned on payment of costs.

1 **IX. VOLUNTARY AGREEMENT**

2 94. Respondent states that prior to entering into this Stipulation she has consulted
3 independent legal counsel regarding this Stipulation, that Respondent is entering into this
4 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
5 Association, nor by any representative thereof, to induce the Respondent to enter into this
6 Stipulation except as provided herein.

7 95. Once fully executed, this stipulation is a contract governed by the legal principles
8 applicable to contracts, and may not be unilaterally revoked or modified by either party.

9 **X. LIMITATIONS**

10 96. This Stipulation is a compromise agreement intended to resolve this matter in
11 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
12 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
13 and ODC acknowledge that the result after further proceedings in this matter might differ from
14 the result agreed to herein.

15 97. This Stipulation is not binding upon ODC or Respondent as a statement of all
16 existing facts relating to the professional conduct of the respondent lawyer, and any additional
17 existing facts may be proven in any subsequent disciplinary proceedings.

18 98. This Stipulation results from the consideration of various factors by both parties,
19 including the benefits to both by promptly resolving this matter without the time and expense of
20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
21 such, approval of this Stipulation will not constitute precedent in determining the appropriate
22 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
23 subsequent proceedings against Respondent to the same extent as any other approved
24


1 Stipulation.

2 99. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
3 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
4 before the Board for its review become public information on approval of the Stipulation by the
5 Board, unless disclosure is restricted by order or rule of law.


6 100. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it
7 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
8 the Rules for Enforcement of Lawyer Conduct will be made.

9 101. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
10 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
11 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
12 proceeding, or in any civil or criminal action.


13 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
14 to Discipline as set forth above.

15 
16 Souphavady Bounlutay, Bar No. 30552
17 Respondent

Dated: March 1, 2019

18 
19 Mark Clayton Choate, Bar No. 43049
20 Counsel for Respondent

Dated: 3/1/19

21 
22 Francesca D'Angelo, Bar No. 22979
23 Senior Disciplinary Counsel

Dated: 3/1/19