

FILED

Nov 14, 2019

Disciplinary  
Board

Docket # 024

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**MATTHEW B. WEBER,**

Lawyer (Bar No. 31308).

Proceeding No. 19#00010

ODC File No. 17-00168

STIPULATION TO REPRIMAND

Following settlement conference conducted  
under ELC 10.12(h)

15 Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer  
16 Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the  
17 following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC)  
18 of the Washington State Bar Association (Association) through disciplinary counsel Francesca  
19 D'Angelo and Respondent lawyer Matthew B. Weber.

20 Respondent understands that he is entitled under the ELC to a hearing, to present  
21 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,  
22 misconduct and sanction in this case. Respondent further understands that he is entitled under  
23 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the

1 Supreme Court. Respondent further understands that a hearing and appeal could result in an  
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this  
3 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
4 avoid the risk, time, and expense attendant to further proceedings.

### 5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on June 21,  
7 2001.

### 8 II. STIPULATED FACTS

9 2. At all times relevant to this matter, Respondent practiced immigration law in the  
10 Miami, Florida area.

11 3. Eduardo Gomez is a native and citizen of Argentina who was admitted to the  
12 United States (U.S.) as a visitor in January 2002. On or about April 15, 2009, Mr. Gomez  
13 applied to the U.S. Citizenship and Immigration Services (USCIS) to adjust his status under  
14 Section 1 of the Cuban Adjustment Act of 1966. In support of his application, Mr. Gomez  
15 submitted a Cuban birth certificate.

16 4. On July 1, 2009, USCIS approved Mr. Gomez's application and admitted him as a  
17 permanent resident.

18 5. On April 12, 2013, the Department of Homeland Security (DHS) notified Mr.  
19 Gomez that he was subject to removal because he had obtained his adjustment by fraud;  
20 namely, by submitting a Cuban birth certificate when he was actually born in Argentina.

21 6. On or about April 29, 2013, Mr. Gomez hired Respondent to represent him in  
22 removal and bond proceedings. Respondent charged Mr. Gomez a flat fee of \$12,000 to defend  
23 against the immigration fraud allegation and to represent him in bond proceedings before the

1 immigration court, if necessary. Mr. Gomez agreed to make payments to Respondent.

2 7. On May 21, 2013, Respondent and Mr. Gomez appeared before an Immigration  
3 Judge for a combined master hearing and bond hearing. During the hearing, Mr. Gomez  
4 admitted the allegations, conceded the charge of removal, and indicated he would seek relief in  
5 the form of a waiver under the Immigration and Nationality Act (INA) §237(a)(1)(H) on the  
6 ground that he had two children born in the U.S.

7 8. Mr. Gomez's case was reset for March 20, 2014. Meanwhile, on January 22,  
8 2014, DHS filed a Motion to Preterm Relief (DHS Motion) under INA §237(a)(1)(H), alleging  
9 that Mr. Gomez was not eligible to pursue relief because he had not been "admitted" to the U.S.  
10 while in possession of an immigrant visa or equivalent.

11 9. Respondent did not attend the March 20, 2014 hearing, but sent an associate to  
12 inform the court that he had received the DHS Motion and wished to respond to it. The case  
13 was continued to July 8, 2014.

14 10. Respondent attended the July 8, 2014 hearing and told the court that recent case  
15 law relevant to Mr. Gomez's situation appeared to be evolving and he wanted to respond to the  
16 DHS Motion and brief the issue. The Immigration Judge allowed Respondent until September  
17 25, 2014 to file a brief.

18 11. Respondent did not file a response to the DHS Motion or a brief.

19 12. On September 25, 2014, the Immigration Judge issued a written decision finding  
20 Mr. Gomez ineligible for an adjustment in status and, on November 20, 2014, she issued an  
21 order finding him removable as charged.

22 13. On December 22, 2014, Respondent filed a Notice of Appeal with the Bureau of  
23 Immigration Appeals (BIA) and indicated he would file a brief.

1           14. In 2015, Respondent was in the process of merging his law practice with that of his  
2 close friend, Kurt Hermanni. On February 3, 2015, Kurt Hermanni died unexpectedly. Mr.  
3 Hermanni's death threw Respondent's practice into disarray. In March 2015, Respondent  
4 moved his practice from Coral Gables to Miami. In doing so, Respondent lost access to the  
5 Hermanni firm's electronic records, including records maintained for the cases Respondent  
6 transferred to the firm.

7           15. Respondent did not provide Mr. Gomez his new address. Mr. Gomez had increasing  
8 difficulty in obtaining information about his case because Respondent was only reachable by  
9 telephone and Respondent often failed to answer his calls. Mr. Gomez stopped making fee  
10 payments to Respondent.

11           16. On April 17, 2015, the BIA set May 8, 2015 as the deadline for Respondent to file  
12 a brief.

13           17. Respondent states that he attempted to contact Mr. Gomez on numerous occasions,  
14 and sent Mr. Gomez a letter stating that he would not do further work on the case unless he  
15 heard from him. Respondent states that he received no response and so did no further work on  
16 the matter and did not file a brief. However, Respondent did not withdraw from the case.

17           18. On May 18, 2015, the BIA issued a decision in another case, *Matter of Agour*, 26  
18 I&N Dec 566 (BIA 2015) (hereinafter *Agour*), holding that an alien in Mr. Gomez's position  
19 could apply for a waiver of inadmissibility pursuant to INA §237(a)(1)(H).

20           19. On February 18, 2016, Mr. Gomez and his wife met with Respondent.  
21 Respondent told them of the *Agour* decision and said they could file a motion requesting that  
22 the BIA remand his case to the Immigration Judge for reconsideration of his application for a  
23 waiver of removal.

1           20. Mr. Gomez immediately paid Respondent the balance due on his \$12,000 flat fee  
2 and entered into a new agreement to pay Respondent \$2,000, in installments, to file a motion  
3 requesting that the BIA remand the case to the Immigration Judge. Mr. Gomez ultimately paid  
4 Respondent a total of \$14,000 for the representation.

5           21. Respondent did not file a motion to remand with the BIA. Respondent did not  
6 inform Mr. Gomez that he had not filed the motion to remand.

7           22. On April 28, 2016, the BIA dismissed Mr. Gomez's appeal. Respondent did not  
8 file a motion for reconsideration.

9           23. On July 27, 2016, Respondent filed a Motion to Reopen based on the *Agour*  
10 decision. The BIA denied the Motion to Reopen, finding that *Agour* had been decided in the  
11 year prior to the BIA's decision and was therefore not intervening authority, and thus the  
12 motion presented no material new facts to justify a reopened hearing. The BIA also noted that  
13 the motion did not show how the *Agour* decision affected the outcome in Mr. Gomez's case.  
14 The BIA found that to the extent the motion was construed as a motion to reconsider, it was  
15 denied as untimely as the motion had not been filed within 30 days of the decision.

### 16   III. STIPULATION TO MISCONDUCT

17           24. By failing to act with reasonable diligence and promptness in representing Mr.  
18 Gomez, Respondent violated Rule 4-1.3 of the Florida Rules of Professional Conduct (FRPC),  
19 FRPC 4-3.2, and 8 CFR §1003.102(q).

20           25. By failing to keep Mr. Gomez reasonably informed about the status of his matter,  
21 failing to promptly comply with his reasonable requests for information, and failing to explain  
22 the matter to the extent reasonably necessary to permit Mr. Gomez to make informed decisions  
23 regarding the representation, Respondent violated FRPC 4-1.4 and 8 CFR §1003-102(r).

1 **IV. OTHER DISCIPLINE**

2 26. On April 17, 2018, Respondent was suspended for 30-days for failing to perform the  
3 work needed to obtain two clients' visas in a timely manner, failing to keep his clients apprised  
4 of the status of their matters, failing to take reasonable steps upon termination to refund any  
5 unearned advance fee or expense, failing to make reasonable efforts to ensure that non-lawyer  
6 staff under his supervision conformed to the FRPC, in violation of FRPC 4-1.3, 4-1.4, 4-1.5(b),  
7 4-1.5(2)(B), 4-1.16(d), and 4-5.3(c).

8 **V. APPLICATION OF ABA STANDARDS**

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

11 28. ABA Standard 4.4 is most applicable to Respondent's failure to provide diligent  
12 representation, to expedite the litigation, and to adequately communicate with Mr. Gomez. It  
13 states:

14 ***4.4 Lack of Diligence***

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

17 4.41 Disbarment is generally appropriate when:

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

21 4.42 Suspension is generally appropriate when:

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

24 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.

1 4.44 Admonition is generally appropriate when a lawyer is negligent and does  
2 not act with reasonable diligence in representing a client, and causes little  
3 or no actual or potential injury to a client.

4 29. Respondent acted negligently in failing to file a response to DHS's Motion for  
5 Preterm Relief, in failing to file briefs, and in failing to reasonably communicate with his  
6 client. Mr. Gomez was injured by Respondent's conduct.

7 30. The presumptive sanction under ABA Standard 4.43 is reprimand.

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

9 (c) pattern of misconduct: Respondent's misconduct in Mr. Gomez's case  
10 and the matters that resulted in his April 2018 suspension occurred during  
11 the same time period.

12 (i) substantial experience in the practice of law: Respondent was admitted to  
13 practice in 2001.

14 32. The following mitigating factors apply under ABA Standard 9.32.

15 (b) absence of dishonest or selfish motive;

16 (c) personal and emotional problems: During the period of time that Respondent  
17 represented Mr. Gomez, Respondent's close friend and colleague in his law  
18 practice died suddenly, adversely affecting his practice;

19 (d) remorse.

20 33. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
21 at an early stage of the proceedings.

22 34. On balance the aggravating and mitigating factors do not require a departure from  
23 the presumptive sanction of reprimand.

## 24 VI. STIPULATED DISCIPLINE

35. The parties stipulate that Respondent shall receive a reprimand for his conduct.

1 **VII. RESTITUTION**

2 36. Respondent agrees to pay restitution to Mr. Gomez in the amount of \$10,000, in  
3 accordance with ELC 13.7(b). Restitution shall bear interest at a rate of 12% per annum from  
4 the date this stipulation is final.

5 37. Respondent's failure to pay restitution or to comply with the terms of a periodic  
6 payment plan may be grounds for discipline.

7 **VIII. COSTS AND EXPENSES**

8 38. In light of Respondent's willingness to resolve this matter by stipulation at an early  
9 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in  
10 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(j)  
11 if these costs are not paid within 30 days of approval of this stipulation.

12 39. Respondent's failure to pay costs and expenses or to comply with the terms of a  
13 periodic payment plan may be grounds for discipline.

14 **IX. VOLUNTARY AGREEMENT**

15 40. Respondent states that prior to entering into this Stipulation he had an opportunity to  
16 consult independent legal counsel regarding this Stipulation, that Respondent is entering into  
17 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
18 Association, nor by any representative thereof, to induce the Respondent to enter into this  
19 Stipulation except as provided herein.

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

22 **X. LIMITATIONS**

23 42. This Stipulation is a compromise agreement intended to resolve this matter in



1 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
2 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer  
3 and ODC acknowledge that the result after further proceedings in this matter might differ from  
4 the result agreed to herein.

5 43. This Stipulation is not binding upon ODC or the respondent as a statement of all  
6 existing facts relating to the professional conduct of the respondent lawyer, and any additional  
7 existing facts may be proven in any subsequent disciplinary proceedings.

8 44. This Stipulation results from the consideration of various factors by both parties,  
9 including the benefits to both by promptly resolving this matter without the time and expense of  
10 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
11 such, approval of this Stipulation will not constitute precedent in determining the appropriate  
12 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in  
13 subsequent proceedings against Respondent to the same extent as any other approved  
14 Stipulation.


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

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

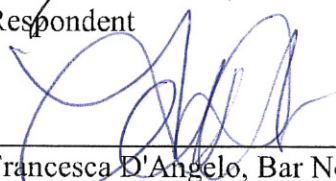
22 47. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this  
23 Stipulation will have no force or effect, and neither it nor the fact of its execution will be

1 | admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
2 | proceeding, or in any civil or criminal action.

3 |       WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
4 | to Reprimand as set forth above.

5 |   
6 | \_\_\_\_\_  
7 | Matthew B. Weber, Bar No. 31308  
8 | Respondent

Dated: 11/8/17

9 |   
10 | \_\_\_\_\_  
11 | Francesca D'Angelo, Bar No. 22979  
12 | Senior Disciplinary Counsel

Dated: 11/8/19

1  
2 **RULES REGULATING THE FLORIDA BAR**

3 **CHAPTER 4. RULES OF PROFESSIONAL CONDUCT (excerpts)**

4 **RULE 4-1.3**  
5 **DILIGENCE**

6 A lawyer shall act with reasonable diligence and promptness in representing a client.

7 **RULE 4-1.4**  
8 **COMMUNICATION**

9 (a) Informing Client of Status of Representation. A lawyer shall:

- 10 (1) promptly inform the client of any decision or circumstance with respect to which the  
11 client's informed consent, as defined in terminology, is required by these rules;  
12 (2) reasonably consult with the client about the means by which the client's objectives  
13 are to be accomplished;  
14 (3) keep the client reasonably informed about the status of the matter;  
15 (4) promptly comply with reasonable requests for information; and  
16 (5) consult with the client about any relevant limitation on the lawyer's conduct when the  
17 lawyer knows or reasonably should know that the client expects assistance not permitted  
18 by the Rules of Professional Conduct or other law.

19 (b) Duty to Explain Matters to Client. A lawyer shall explain a matter to the extent reasonably  
20 necessary to permit the client to make informed decisions regarding the representation.

21 **RULE 4-3.2**  
22 **EXPEDITING LITIGATION**

23 A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the  
24 client.

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25 **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

26 **8 CFR §1003-102 Grounds for disciplinary sanctions**

27 . . . A practitioner who falls within one of the following categories shall be subject to  
28 disciplinary sanctions in the public interest if he or she:

29 . . .  
30 (q) Fails to act with reasonable diligence and promptness in representing a client.

31 (1) A practitioner's workload must be controlled and managed so that each matter can be  
32 handled competently.

33 (2) A practitioner has the duty to act with reasonable promptness. This duty includes, but  
34 shall not be limited to, complying with all time and filing limitations. This duty,

1 however, does not preclude the practitioner from agreeing to a reasonable request for a  
2 postponement that will not prejudice the practitioner's client.

3 (3) A practitioner should carry through to conclusion all matters undertaken for a client,  
4 consistent with the scope of representation as previously determined by the client and  
5 practitioner, unless the client terminates the relationship or the practitioner obtains  
6 permission to withdraw in compliance with applicable rules and regulations. If a  
7 practitioner has handled a proceeding that produced a result adverse to the client and the  
8 practitioner and the client have not agreed that the practitioner will handle the matter on  
9 appeal, the practitioner must consult with the client about the client's appeal rights and  
10 the terms and conditions of possible representation on appeal;

11 (r) Fails to maintain communication with the client throughout the duration of the client-  
12 practitioner relationship. It is the obligation of the practitioner to take reasonable steps to  
13 communicate with the client in a language that the client understands. A practitioner is only  
14 under the obligation to attempt to communicate with his or her client using addresses or phone  
15 numbers known to the practitioner. In order to properly maintain communication, the  
16 practitioner should:

17 (1) Promptly inform and consult with the client concerning any decision or circumstance  
18 with respect to which the client's informed consent is reasonably required;

19 (2) Reasonably consult with the client about the means by which the client's objectives  
20 are to be accomplished. Reasonable consultation with the client includes the duty to  
21 meet with the client sufficiently in advance of a hearing or other matter to ensure  
22 adequate preparation of the client's case and compliance with applicable deadlines;

23 (3) Keep the client reasonably informed about the status of the matter, such as  
24 significant developments affecting the timing or the substance of the representation; and

(4) Promptly comply with reasonable requests for information, except that when a  
prompt *response* is not feasible, the practitioner, or a member of the practitioner's staff,  
should acknowledge receipt of the request and advise the client when a *response* may be  
expected;