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**FILED**

OCT 02 2012

**DISCIPLINARY BOARD**

**BEFORE THE DISCIPLINARY BOARD OF THE  
WASHINGTON STATE BAR ASSOCIATION**

In Re: ) PUBLIC NO. 12 #00026  
)  
FIONA ALLISON CRINKS KENNEDY, ) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND HEARING OFFICER'S  
Lawyer WSBA No. 32385 ) 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 September 27, 2012.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

1. The Formal Complaint (Proceeding No. 12#00026) filed on June 20, 2012 charged Respondent Fiona Allison Crinks Kennedy (Respondent) with five counts of misconduct as set forth therein.

2. An Order of Default was entered and filed on August 21, 2012.

3. The Washington State Bar Association received no communications and/ or contacts from Respondent Kennedy after entry of the default order and Respondent Kennedy did not appear at the default hearing.

4. Disciplinary Counsel, Marsha Matsumoto, appeared at the default hearing and offered and admitted into evidence both the Formal Complaint filed on June 20, 2012 and the Declaration of WSBA Records Custodian dated September 18, 2012.

1 5. Pursuant to ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in  
2 the Formal Complaint is admitted and established.

3 6. Pursuant to ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations  
4 charged in the Formal Complaint is admitted and established as follows:

5  
6 **COUNT 1**  
7

8 **I.A. Violation of RPC 1.1 and RPC 1.3:** RPC 1.1 requires a lawyer to provide competent  
9 representation. Competent representation includes adequate preparation and an inquiry into the  
10 factual and legal elements of the problem. RPC 1.3 requires a lawyer to act with reasonable  
11 diligence and promptness in representing a client.

12 Respondent negligently violated RPC 1.1 and knowingly violated RPC 1.3 by a clear  
13 preponderance of the evidence by striking Dhatt's hearing set for March 8, 2010 after receiving a  
14 continuance in January 2010, and by instead having the case determined by submittal of the  
15 deposition of a doctor that did not diagnose or treat Dhatt for the medical condition which was  
16 the subject of the hearing. This was particularly so as Dhatt's doctor who had diagnosed the  
17 condition at issue was previously listed as a witness but, without notice or explanation to Dhatt,  
18 was stricken as a witness by Respondent.

19 **I.B 1. Presumptive sanction: Violation of RPC 1.1 violates ABA Standard 4.53.**

20 Pursuant to 4.53(b):

21 A reprimand is generally appropriate when a lawyer is negligent in determining  
22 whether he or she is competent to handle a legal matter and causes injury or  
potential injury to a client.

23 **2. Presumptive sanction: Violation of RPC 1.3 violates ABA Standard 4.42.**

24 Pursuant to 4.42(a):

25 Suspension is generally appropriate when a lawyer knowingly fails to perform  
services for a client and causes injury or potential injury to a client.

1 **I.C. Potential or Actual Injury due to Violation of RPC 1.1 and 1.3:**

2 Respondent's conduct caused actual injury in that Dhatt lost the opportunity to have a  
3 hearing on her workers' compensation claim, to present relevant medical evidence, and to  
4 testify. Dhatt's appeal was dismissed and she was denied medical treatment for her thoracic  
5 outlet syndrome and lymph edema.  
6

7 **COUNT 2**

8  
9 **II. A. 1. Violation of RPC 1.4(a)(1) and (a)(2), and 1.4(b) :**

10 RPC 1.4(a)(1) requires a lawyer to promptly inform the client of a decision of  
11 circumstance. RPC 1.4(a)(2) requires a lawyer to reasonably consult with the client about the  
12 means by which the client's objectives are to be accomplished, and RPC 1.4 (b) requires a  
13 lawyer to explain a matter to the extent reasonably necessary to permit the client to make an  
14 informed decision regarding the representation.

15 Respondent knowingly violated RPC 1.4(a)(1) and (a)(2), and RPC 1.4(b) by a clear  
16 preponderance of the evidence by failing to consult with Dhatt regarding her decision and/ or  
17 intent to strike Dr. Thomas from the witness list, and regarding her decision and/ or intent to  
18 strike Dhatt's hearing thereby depriving Dhatt of the opportunity to testify on own behalf, and to  
19 instead have the matter determined based on the deposition of Dr. Kinahan.

20 **2. Violation of RPC 1.4(a)(3)**

21 RPC 1.4(a)(3) requires a lawyer to keep the client reasonably informed of the status of  
22 her matter. Respondent knowingly violated RPC 1.4(a)(3) by a clear preponderance of the  
23 evidence by failing to advise Dhatt of the hearings in her case set for January 27, 2010 and  
24 March 8, 2010, and by securing a continuance and striking a hearing without notice to her client  
25 either before she took the action or after.

1 **II. B. Presumptive sanction: Violation of RPC 1.4(a)(1),(a)(2), and(a)(3), and RPC 1.4(b)**  
2 **violates ABA Standard 4.42.**

3 Pursuant to 4.42(a):

4 Suspension is generally appropriate when a lawyer knowingly fails to perform  
5 services for a client and causes injury or potential injury to a client.

6 **II. C. Potential or Actual Injury due to Violation of RPC 1.4 a)(1),(2), and(3) and RPC 1.4(b)**

7 Respondent's conduct caused actual injury in that Dhatt lost the opportunity to make  
8 informed decisions regarding her representation and to have her case resolved in a more timely  
9 fashion.

10 **COUNT 3**

11 **III. A. Violation of RPC 3.3(a)(1) and RPC 8.4(c):**

12 RPC 3.3(a)(1) prohibits a lawyer from making a false statement of fact to a tribunal and  
13 RPC 8.4(c) prohibits conduct involving dishonesty, deceit, or misrepresentation.

14 Respondent knowingly violated RPC 3.3(a)(1) and RPC 8.4(c) by a clear preponderance  
15 of the evidence by representing to the BIIA Judge that she could have her client at the hearing  
16 within an hour when she had had no communications with her client and her client was unaware  
17 that a hearing was in progress.

18  
19 **III. B. Presumptive sanction: Violation of RPC 3.3(a)(1) and RPC 8.4(c) violate ABA**  
20 **Standard 6.12.**

21 Pursuant to 6.12, suspension is generally appropriate when:

22 a lawyer knows that false statements or documents are being submitted to the  
23 court or that material information is improperly being withheld, and takes no  
24 remedial action, and causes injury or potential injury to a party to the legal  
25 proceeding, or causes an adverse or potentially adverse effect on the legal  
proceeding.

1  
2 **III. C. Potential or Actual Injury due to Violation of RPC 3.3(a)(1) and 8.4(c):**

3 Respondent's conduct caused potential injury to Dhatt's case, and assuming Dhatt and/  
4 or other members of the public might learn of the false statement, it potentially caused injury to  
5 the public's trust of the legal profession.

6  
7 **COUNT 4**

8  
9 **IV. A. Violation of RPC 1.16(d).**

10 RPC 1.16 (d) requires a lawyer who has been terminated to surrender papers and  
11 property to which the client is entitled, except to the extent that other law permits the lawyer to  
12 retain papers. Respondent knowingly violated RPC 1.16(d) by a clear preponderance of the  
13 evidence by failing to deliver Dhatt's client file after being terminated, despite two requests for  
14 the file by new counsel for Dhatt, and despite providing telephonic assurance to Dhatt's new  
15 counsel that she would do so.

16 **IV. B. Presumptive sanction: Violation of RPC 1.16(d) violates Standard 7.2.**

17 Pursuant to 7.2:

18 Suspension is generally appropriate when a lawyer knowingly engages in  
19 conduct that is a violation of a duty owed as a professional and causes injury or  
20 potential injury to a client, the public, or the legal system.

21 **IV. C. Potential or Actual Injury due to Violation of RPC 3.3(a)(1) and 8.4(c):**

22 Respondent conduct caused potential injury to Dhatt by jeopardizing Dhatt's ability to  
23 pursue her case including her ability to file a timely Petition for Review, or to file a timely motion  
24 to vacate the August 20, 2010 BIIA order denying her appeal ( of the L & I order denying her  
25 workers Compensation claim).

COUNT 5

**V.A. Violation of RPC 8.4(l).**

RPC 8.4(l) requires attorneys to comply with all duties or sanctions imposed by the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including but not limited to the duties catalogued at ELC 1.5. Amongst the duties catalogued at ELC 1.5 and also set out at ELC 5.3 is the lawyer's duty to respond to inquiries or requests about matters under investigation. A lawyer in a grievance investigation or disciplinary proceeding is required to respond to the Association's requests for information and records, to appear for depositions, and to produce records in response to a subpoena.

Respondent knowingly and intentionally violated RPC 8.4(l) by a clear preponderance of the evidence by failing to comply with requests made pursuant to ELC 1.5 and ELC 5.3. Respondent failed to respond to the Association's letters on February 28, 2011 and April 7, 2011 requesting information and records. She also failed to comply with a subpoena duces tecum served on her on May 26, 2011 which set her deposition for June 28, 2011, and which at her request, was rescheduled to July 12, 2011. Respondent did not appear at her deposition nor did she deliver any of the requested papers or electronic records.

In reciprocal disciplinary proceedings (Proceeding Nos. 10#00083 and 11#00045) arising out of Respondent's misconduct in Idaho, the Washington Supreme Court reprimanded Respondent on November 10, 2010 and suspended her from the practice of law for 18 months on June 10, 2011. The discipline was based on Respondent's conduct in failing to provide diligent representation, failing to communicate with her client, knowingly disobeying the rules of a tribunal, engaging in conduct prejudicial to the administration of justice, and knowingly failing to respond to lawful demands for information from a disciplinary authority, among other violations.

In another disciplinary proceeding (Proceeding No. 09#00054) arising out of three grievances filed with the Washington State Bar Association, the Washington Supreme Court suspended Respondent for two years on September 8, 2011. The suspension was based on

1 Respondent's failure to communicate with her client, failure to promptly withdraw, failure to  
2 promptly and fully respond to requests for information during grievance investigations, failure to  
3 appear for two depositions, failure to produce all records subpoenaed, and submission of  
4 inaccurate and misleading testimony during her deposition, among other violations. All three  
5 grievances had been ordered to hearing by January 8, 2010, and Respondent signed the  
6 Stipulation to Two-Year Suspension on April 21, 2011.

7 At the time Respondent engaged in the misconduct in the Dhatt matter and failed to  
8 cooperate with the Washington State Bar Association's investigation of the Dhatt grievance,  
9 Respondent was on notice that such conduct could result in disciplinary proceedings and  
10 disciplinary sanctions.

11 Furthermore, Respondent engaged in a continuing violation of RPC 8.4(I) (failing to  
12 cooperate with the disciplinary investigation) even after the Washington Supreme Court entered  
13 its June 10, 2011 and September 8, 2011 orders suspending Respondent, in part, for similar  
14 misconduct.

15 **V. B Presumptive sanction: Violation of RPC 8.4(I) violates ABA Standard 8.1(b).**

16 Pursuant to 8.1(b):

17 Disbarment is generally appropriate when a lawyer has been suspended for the  
18 same or similar misconduct, and intentionally or knowingly engages in further  
19 similar acts of misconduct that cause injury or potential injury to a client, the  
20 public, the legal system, or the profession.

21 **V.C. Potential or Actual Injury due to Violation of RPC 8.4(I).**

22 Respondent's conduct caused actual and potential harm to the disciplinary system.

23 Respondent's conduct obstructed the grievance investigation. Her failure to comply with  
24 requests made it difficult for the disciplinary counsel to assess the merits of the complaint or  
25 grievance filed. As a result, it required the Washington State Bar Association to expend  
additional time and resources that could have been devoted to other matters.

1 **MITIGATING AND AGGRAVATING FACTORS PERTAINING TO COUNTS 1-5**

2 7. None of the mitigating factors set forth in Section 9.3 of the ABA Standards apply to  
3 this case.

4 8. The following aggravating factors set forth at Section 9.2 of the ABA Standards apply  
5 to this case:

6 Aggravating: 9.22 (b)	Dishonest or selfish Motive;
7 Aggravating: 9.22 (d)	Multiple offenses;
8 Aggravating: 9.22(g)	Refusal to acknowledge the wrongful nature of conduct.

9 9. Although Respondent has had prior disciplinary offenses (aggravating factor 9.22(a),  
10 that aggravating factor is not considered. The presumptive sanction for violation ABA Standard  
11 8.1 (COUNT 5) is based on the fact that Respondent has been suspended for the same or  
12 similar misconduct, and that she intentionally or knowingly engaged in further similar acts of  
13 misconduct. So, the prior disciplinary offenses are already considered.

14 **RECOMMENDATION:**

15 10. Where multiple ethical violations are committed, as in this matter, the "ultimate  
16 sanction imposed should at least be consistent with the sanction for the most serious instance of  
17 misconduct among a number of violations; it might well be and generally should be greater than  
18 the sanction for the most serious misconduct." In re Disciplinary Proceeding Against Petersen,  
19 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

20 Based on the ABA Standards and the applicable aggravating factors, the Hearing Officer  
21 recommends that Respondent Fiona Allison Crinks Kennedy be disbarred.

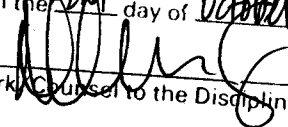
22 DATED this 28th day of September 2012.

23  
24  
25 Andreita Silva  
Andreita Silva,  
Hearing Officer



CERTIFICATE OF SERVICE

I certify that I caused a copy of the PF, COI & HD's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to FROM AC: KENNEDY Respondent's Counsel  
at 11417 124th Ave NE, Kirkland, WA 98033 by certified first class mail,  
postage prepaid on the 2nd day of October, 2010

  
Clerk, Counsel to the Disciplinary Board