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DISCIPLINARY
BOARD

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

In re

BAKARY FANSU CONTEH
Lawyer (Bar No. 35098).

Proceeding No. 13#00112

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

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was held before the undersigned Hearing Officer on January 14 and 15, 2015. Disciplinary counsel Debra Slater appeared for the Office of Disciplinary Counsel ("ODC") of the Washington State Bar Association. Respondent Bakary Fansu Conteh appeared *pro se*.

I. FORMAL COMPLAINT

Respondent was charged by formal complaint dated December 23, 2013, with 5 counts of violation of the rules of professional conduct. Counts 1 – 2 involve Respondent's representation of Ms. Saffie Badjie in an immigration matter. Counts 3 – 5 involve Respondent's representation of Mr. John Muthaka in a personal injury matter.

COUNT 1

By failing to file his appeal brief on time, and/or by failing to file a Motion to Accept Late-Filed Brief that complied with the Board of Immigration Appeals' ("BIA") rules, Respondent violated RPC 1.1 and/or RPC 1.3.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND HEARING
OFFICER'S RECOMMENDATIONS - 1

1 **COUNT 2**

2 By failing to inform Ms. Badjie that he had filed his appeal brief after it was due,
3 Respondent violated RPC 1.4.

4 **COUNT 3**

5 By failing to communicate the basis or rate of his fee to Mr. Muthaka, and/or by having
6 a contingent fee agreement that was not in writing and/or did not communicate the information
7 required under RPC 1.5(c)(2), Respondent violated RPC 1.5(b) and/or RPC 1.5(c).

8 **COUNT 4**

9 By failing to make reasonably diligent efforts to settle Mr. Muthaka's claim, by failing
10 to protect Mr. Muthaka's interests by filing suit before the statute of limitations expired, and/or
11 by failing to understand the significance of allowing the statute of limitations to expire,
12 Respondent violated RPC 1.1 and RPC 1.3.

13 **COUNT 5**

14 By failing to keep Mr. Muthaka reasonably informed about the status of his claim,
15 by failing to inform him when the statute of limitations would expire, and/or by failing to
16 inform him that the statute of limitations had expired, Respondent violated RPC 1.4.

17 **II. HEARING**

18 At the hearing on January 14 and 15, 2015, six witnesses were sworn and presented
19 testimony, and various exhibits were admitted into evidence. The transcript in this matter was
20 received in late January, and post-hearing briefs and proposed finding of fact and conclusions
21 of law were successfully received by mid-March.

22 **III. FINDINGS OF FACT**

23 After having considered the testimony of the witnesses and other exhibits, and having
24 reviewed the post hearing written arguments of counsel and proposed findings of fact and
25 conclusions of law, the Hearing Officer finds the following facts were established by a clear

1 preponderance of the evidence. ELC 10.14(b). The following findings regarding Counts 1
2 through 5 are based on the evidence presented at the hearing, specific exhibits or testimony
3 reflected in the hearing record.

4 A. **Jurisdictional Facts.**

- 5 1. Respondent was admitted to practice law in Washington on June 21, 2004.
- 6 2. Respondent is a sole practitioner. More than 50% of his practice is in the area
7 of immigration law. (TR 49). He also has a limited practice in family law and
has done some very limited personal injury work (TR 49).

8 B. **Findings of Fact Regarding Counts 1-2 of the Bar Complaint.**

- 9 1. Saffie Badjie entered the United States in 2002 from the Gambia on a visitor
10 visa and remained in the United States beyond the date authorized by her visa.
(EX 106).
- 11 2. Concerned about Ms. Badjie's immigration status, Ms. Badjie's husband
12 contacted Respondent in November 2008 about having him assist with her
13 immigration matter. Ms. Badjie and her husband lived in Minnesota and had
resided previously in Atlanta (TR 309), (TR 50-51).
- 14 3. In January 2008, while travelling from Minnesota to Seattle, Ms. Badjie was
15 arrested and detained by the United States Department of Homeland Security.
16 Ms. Badjie then had her 11 month old United States Citizen daughter with her.
She was placed in removal proceedings and issued a Notice to Appear at a date
17 to be determined. (EX 106).
- 18 4. Ms. Badjie had previously received a letter from her mother that placed her in
19 fear of returning to the Gambia. In the letter, her mother wanted to have Ms.
20 Badjie's daughter subjected to female genital mutilation ("FGM"). (EX 107).
- 21 5. Respondent met with Ms. Badjie in January 2008. (TR 52).
- 22 6. Ms. Badjie had been subjected to FGM herself and did not want this for her
23 daughter. Respondent advised her that this fear for her daughter, along with her
24 own past persecution, gave Ms. Badjie a basis for seeking asylum. (TR 59-62,
311).
- 25 7. Respondent filed his Notice of Appearance in Ms. Badjie's case on April 20,
2009. (EX 109).
8. On November 12, 2009, Respondent filed an Application for Asylum on behalf
of Ms. Badjie. (TR 68; EX 110).

- 1 9. On March 8, 2011, a Merits or Individual Hearing on Ms. Badjie's asylum case
2 took place in the Immigration Court in Bloomington, Minnesota. Respondent
3 represented Ms. Badjie at the hearing. Evidence was presented and testimony
4 was taken. (TR 69).
- 5 10. On the same day, Immigration Judge Susan Castro delivered her oral decision
6 denying Ms. Badjie's request for asylum and denying her request for voluntary
7 departure. (TR 70; EX 115).
- 8 11. Respondent was present when the judge delivered her decision from the bench,
9 including her reasoning, at the March 8, 2011 hearing and therefore knew the
10 result of her decision and the reasons therefor. (TR 58).
- 11 12. Respondent received a copy of the Order of the Immigration Judge on the day of
12 the hearing. The proof of service reflects that a copy was served on Respondent
13 on March 8, 2011. (EX 116).
- 14 13. Following the hearing, Respondent and Ms. Badjie discussed the options
15 available to her. Ms. Badjie decided to appeal the judge's decision. She hired
16 Respondent to handle the appeal and agreed to pay him an additional \$1,500.
17 (TR 71, 319).
- 18 14. On March 25, 2011, Respondent filed a Notice of Appeal, EOIR Form 26 and
19 Notice of Appearance with the BIA. (EX 116).
- 20 15. In item #8 of the Notice of Appeal, Respondent indicated that he intended to file
21 a separate brief. Immediately below that statement, the following admonition
22 appeared on the form:
- 23 WARNING: If you mark "Yes" in item #8, you will be expected to file
24 a written brief or statement after you receive a briefing schedule from
25 the Board. The Board may summarily dismiss your appeal if you do not
file a brief or statement within the time set in the briefing schedule. (EX
116).
- 26 16. Respondent was aware of the warning when he signed the Notice of Appeal.
(TR 73).
- 27 17. On April 6, 2011, the BIA sent Respondent an acknowledgement that it had
received the appeal. The receipt contained the following language:
- If you have any questions about how to file something at the Board, you
should review the Board's Practice Manual at www.justice.gov/eoir.
(EX 117).

- 1 18. Respondent had access to the Practice Manual and was familiar with it. (TR
2 75).
- 3 19. The Practice Manual describes procedures, requirements, and recommendations
4 for practice before the BIA. (EX 105, pg. 1).
- 5 20. The Practice Manual provides that the BIA date stamps all filings and strongly
6 recommends that parties file as far in advance of the deadline as possible. (EX
7 105, pg. 31; TR 75).
- 8 21. The Practice Manual also states:
9 If a brief is untimely, it is rejected and returned to the party with an
10 explanation for the rejection. Parties wishing to refile an untimely brief
11 must file a motion asking the Board to accept the untimely brief and
12 include documentary evidence to support their motion, including such
13 evidence as affidavits and declarations under penalty of perjury. (EX
14 105, Ch. 3.1(c)(iii), pg. 32).
- 15 22. The BIA Practice Manual emphasizes the importance of timely filing of briefs.
16 For example, "Briefs must arrive at the Board by the dates set in the briefing
17 schedule," (EX 105, pg. 46, Sec. 4.2(e)). "Briefs must be timely." (EX 105, pg.
18 53, Sec. 4.6(a)). In non-detained cases, the appealing party has 21 calendar days
19 to file their brief. If a brief is untimely, it is rejected. The Board may reject a
20 brief as untimely at any time prior to the final adjudication of the appeal. (EX
21 105, pg. 60, Sec 4.7(a)(i) and (b)).
- 22 23. On May 26, 2011, the BIA sent Respondent a "Notice-Briefing Schedule." The
23 brief in Ms. Badjie's case was due on June 16, 2011. The briefing schedule
24 contained a warning that the brief must be **RECEIVED** at the Board on or
25 before that date. [emphasis in original]. There was also a warning that if the
brief is not filed within the time set for filing in the briefing schedule, the appeal
may be summarily dismissed. The Notice also stated that extensions of briefing
time will only be granted for good cause, that it is the policy of the Board that
no additional extensions will be granted. (EX 118).
- 24 24. The briefing schedule also refers to 8 CFR § 1003.1(d)(2)(i)(E), which provides
25 that an appeal may be summarily dismissed if a brief is not filed within the time
set for filing. (EX 103).
- 25 25. Respondent knew of the BIA's requirements that briefs be timely filed. (TR 76-
82).

- 1 26. The May 26, 2011, Notice also stated that a copy of the decision of the
2 Immigration Judge was enclosed, as well as a copy of the transcript of the
3 testimony of record. (EX 118).
- 4 27. Respondent testified that a copy of the decision of the Immigration Judge was
5 not enclosed and that the signed oral decision was sent to him on June 9, 2011.
6 (TR 85; EX 119).
- 7 28. Elizabeth Holmes, an expert in the area of immigration law and Ms. Badjie's
8 current lawyer, testified that although it could happen, she never had an
9 experience where the decision of the judge was not enclosed with the Notice –
10 Briefing Schedule. (TR 274-275).
- 11 29. Respondent's testimony on this issue appeared to reflect his belief that this
12 delay was a justification for filing his brief late. Respondent's position on this
13 issue is unwavering.
- 14 30. Respondent filed a Motion for Extension of Time to File Appeal Brief one day
15 before the brief was due. The Motion was received by the BIA on June 15,
16 2011. (EX 120).
- 17 31. Respondent did not attach any affidavits, declarations, or other evidence to the
18 motion, as required by the BIA. (TR 350).
- 19 32. Ms. Holmes, the expert in immigration law, testified that filing a request one
20 day before the original deadline was risky. (TR 286).
- 21 33. Nonetheless, on June 15, 2011, the BIA granted the extension and set July 7,
22 2011, as the date the brief must be received at the BIA. (EX 121).
- 23 34. The appellant's brief was finally received by the BIA on July 8, 2011. The brief
24 was not timely filed and Respondent knew that it had been filed late. (TR 351;
25 EX 122).
35. Respondent testified that by June 10, 2011, about 29 days before the brief was
due, he had everything he needed to prepare and file the brief. (TR 360).
36. Respondent's explanation at the hearing for filing the brief late was that he did
not have enough time. Respondent's explanation was confusing and not
credible. (TR 361).
37. Respondent filed a Motion for Permission to Accept Late Appeal Brief. (EX
123).

- 1 38. The motion did not include affidavits or declarations as required by the BIA.
2 Respondent testified that he knew that the Practice Manual stated that
3 statements made in motions are not evidence. (TR 372).
- 4 39. In that motion, Respondent alleged that on July 6, 2011, the day before the brief
5 was due, he had been "held up" in a bond hearing at the Immigration Court at
6 the Detention Center in Tacoma, and he had been further delayed because of
7 heavy traffic in Tacoma. He stated that he had attempted to send the brief by
8 courier, but the "mails to the East Coast leave early in the afternoon." (EX
9 123).
- 10 40. The Immigration Judge Detainee Calendar shows that the hearing for
11 Respondent's client, David Njenga, was scheduled to begin at 1:00 PM on July
12 6, 2011. (EX 132).
- 13 41. The Detention Center security procedures require visitors to the Detention
14 Center, including attorneys, to sign in and be issued a pass and to sign out when
15 finished. (TR 366).
- 16 42. The Attorney Visitation Log for July 6, 2011, shows that Respondent, who was
17 assigned Pass #21, signed in on July 6, 2011, at 12:46 PM and signed out at
18 1:29 PM. Respondent spent a total of 43 minutes at the Detention Center. (EX
19 132).
- 20 43. Respondent had sufficient time to file the brief on or before July 6, 2011. His
21 statement that he was delayed at the Detention Center is not credible and does
22 not justify filing the brief late.
- 23 44. Respondent testified that he sent a copy of the brief and the motion to Ms.
24 Badjie without any explanation. He testified that this was his ordinary practice
25 and if Ms. Badjie had any questions, she would call him. (TR 373-374).
45. On August 23, 2012, Respondent was suspended from the practice of law for six
months by the Washington State Supreme Court. Respondent sent a letter to
Ms. Badjie notifying her of his suspension and advising her to seek new
counsel. (EX 303; TR 320).
46. Ms. Badjie consulted with lawyer Elizabeth Holmes in August 2012. Ms.
Badjie brought with her all of the documents she had received from Respondent,
which she believed was her complete file. (TR 322).
47. Ms. Holmes telephoned the BIA's automated information system to obtain
information about Ms. Badjie's case. Based on the information she obtained
from the information system and the documents Ms. Badjie brought to her, Ms.
Holmes concluded that the documents Ms. Badjie had provided her were not

1 complete. She also concluded that it appeared the brief had been filed late. (TR
2 263-266).

3 48. The Motion for Permission to Accept Late Filed Brief was not among the
4 documents Ms. Badjie brought to Ms. Holmes. (TR 263-266).

5 49. Ms. Holmes advised Ms. Badjie to contact Respondent and request her complete
6 file, which she did. Respondent then provided the complete file to Ms. Badjie.
7 The complete file contained the Motion for Permission to Accept Late Filed
8 Brief. (TR 263-266; EX 127; TR 277).

9 50. Ms. Holmes informed Ms. Badjie that the brief had been filed late. This was the
10 first time Ms. Badjie knew that the brief had been filed late. (TR 277, 323).

11 51. Ms. Badjie was concerned and worried that because the brief had been filed late,
12 she would be deported to the Gambia. (TR 324).

13 52. Ms. Holmes filed a motion to remand the case back to the Immigration Court.
14 One of the bases for the motion was the ineffective assistance of counsel based
15 on the late filing of the brief and the fact that Respondent did not tell Ms. Badjie
16 that the brief had been filed late. (EX 129).

17 53. As part of the motion to remand, Ms. Badjie filed an Affidavit of Ineffective
18 Assistance of Counsel, stating that Mr. Conteh did not tell her that the brief had
19 been filed late. (EX 128).

20 54. The BIA thereafter remanded the case. The case is now pending before the
21 Immigration Court. (TR 278; EX 130).

22 55. Had the Motion to Remand not been filed, the BIA could have rejected
23 the late filed brief and dismissed s. Badjie's appeal. (TR 278).

24 C. **Findings of Fact Regarding Counts 3-5 of the Bar Complaint.**

25 1. On August 14, 2009, Mr. John Muthaka was injured in an automobile accident.
His vehicle was totaled. His vehicle was rear-ended while stopped, so he had no
fault in the accident. (TR 96, 98, 186).

2. Mr. Muthaka only carried liability insurance which did not cover his bodily
injury or property damage. He did not have medical insurance. (TR 99).

3. After the accident, Mr. Muthaka consulted with Respondent about the accident
because Respondent was already representing him on an immigration matter.
(TR 205). Mr. Muthaka did not know how to proceed because he had never
been involved in an accident before. (TR 100).

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4. Respondent told Mr. Muthaka to get a copy of the police report, which he did. (TR 100).
5. The police report, which is dated October 30, 2009, clearly shows that the date of the collision was August 14, 2009. (EX 200).
6. Respondent admitted that Mr. Muthaka gave a copy of the police report to him. (TR 101, 127).
7. Respondent acknowledged that the police report reflects that the date of the collision was August 14, 2009. (TR 208).
8. Mr. Muthaka received a letter dated February 17, 2010, from Allstate Insurance, the insurer of the at-fault driver. The letter clearly also shows that the date of the loss was August 14, 2009. (EX 202).
9. Respondent admitted that Mr. Muthaka gave the letter to him. Respondent told Mr. Muthaka to continue with his medical treatment and he would handle the case for him. Mr. Muthaka thereby understood that Respondent was representing him in the matter. (TR 102, 209).
10. Respondent failed to enter into a written fee agreement with Mr. Muthaka, nor did he explain the basis or rate of his fee to him. Respondent told Mr. Muthaka that he would work with the insurance company and then he would tell him what his fee was when they received the insurance money. Respondent never sent Mr. Muthaka a billing statement for his services. (TR 102-103, 135-137).
11. Respondent initially testified at hearing that he told Mr. Muthaka that he would charge him on an hourly basis and when the case settled, they would work out "what payments will be done." (TR 214, 216).
12. Respondent later testified that his fee arrangement with Mr. Muthaka was a flat fee of \$3,000 plus an hourly component. (TR 223-224).
13. Respondent was deposed on August 16, 2013, as part of these disciplinary proceedings. At his deposition, Respondent testified that he and Mr. Muthaka did not have an exact fee agreement. He also testified that he told Mr. Muthaka that attorneys may charge up to 33 percent of the recovery and that 33 percent was the normal charge. Respondent also testified that it was his intention to charge some percentage of the recovery, but he and Mr. Muthaka had not agreed on the exact amount. Respondent further stated that if Mr. Muthaka did not recover anything, he would not have to pay Respondent anything. (TR 218-220; EX 406, pg. 19-22).

- 1 14. After the transcript of the deposition, Respondent made numerous corrections to
2 his deposition testimony. However, he did not correct his deposition testimony
3 on this point. (TR 220-221; EX 407).
- 4 15. In his response to ODC's analysis letter, Respondent stated that he did not have
5 a contingent fee agreement with Mr. Muthaka. Respondent admitted that this
6 statement contradicted his deposition testimony. (TR 2212; EX 403).
- 7 16. Respondent also testified that the fee arrangement was a flat fee of \$3,000 plus
8 an hourly component. (TR 223).
- 9 17. Respondent's testimony about the fee arrangement is contradictory and
10 inconsistent. Respondent's testimony about the fee arrangement is ultimately
11 not credible.
- 12 18. Mr. Muthaka testified at hearing that Respondent did not discuss his fee
13 arrangement with him except to tell him to wait until the case settled and then
14 Respondent would let him know what the fees were. (TR 125).
- 15 19. Mr. Muthaka consulted with Respondent several times concerning his case.
16 Respondent told him to continue seeing his chiropractor. (TR 104).
- 17 20. Mr. Muthaka testified that Respondent did not discuss settling the case with
18 him, did not advise him that a lawsuit might have to be filed, and did not advise
19 him that the statute of limitations was three years. (TR 104).
- 20 21. Respondent testified that he told Mr. Muthaka that generally they have a three-
21 year period to come up with the claim and it is important he get well before the
22 case was settled. Respondent's testimony on this point is not credible. (TR
23 211).
- 24 22. Mr. Muthaka provided his medical bills to Respondent. (TR 109).
- 25 23. Victoria Schubert, Allstate Insurance claims adjuster, testified that Allstate
maintains a log, the Allstate Claim History Report, that chronicles the actions
taken on a case. (TR 145; EX 206).
- 24 24. The Report shows that on February 17, 2010, Allstate sent a letter to Mr.
Muthaka enclosing forms for him to sign and return to Allstate. (EX 202).
- 25 25. On April 20, 2010, Respondent returned the forms by fax to Heather Blau, one
of the Allstate employees handling Mr. Muthaka's case. He also faxed Ms.
Blau his letter of representation. One of the forms Respondent faxed to Ms.
Blau was an "Authorization to Disclose Wage/Employer Information" that Mr.

1 Muthaka had filled out. The second page of the Authorization showed the date
2 of loss was August 14, 2009. (EX 204).

3 26. On July 13, 2010, Cindy Kinser sent Respondent an affidavit of theft to be filled
4 out and returned. The affidavit would enable Allstate to establish the value of
5 Mr. Muthaka's vehicle so they could make a settlement offer on the property
6 damage aspect of the case. (TR 181).

7 27. Respondent did not return the affidavit to Allstate. On June 1, 2012, almost two
8 years later, Ms. Kinser sent another affidavit to Respondent for Mr. Muthaka to
9 complete. (EX 211).

10 28. On July 10, 2012, Allstate telephoned Respondent to ask questions about the
11 vehicle to assist them in valuing Mr. Muthaka's car. Respondent did not return
12 the call or provide the requested information. (TR 182; EX 206).

13 29. Allstate employees repeatedly telephoned Respondent and left messages with
14 Respondent's staff or voice mail messages for Respondent to call them.
15 Respondent did not return the calls. (EX 206).

16 30. On December 10, 2010, Respondent told Allstate employee Cindy Kinser that
17 Mr. Muthaka was done treating and he would have a demand to them in 30
18 days. Ms. Kinser did not receive a demand and followed up on March 1, 2011,
19 with a telephone message asking for a status update. Respondent did not get
20 back to Ms. Kinser. (EX 206).

21 31. On April 22, 2011, Ms. Kinser followed up with a letter requesting an update.
22 Ms. Kinser noted in the log that she had received no response to her prior
23 attempts to reach Respondent. (EX 206, 207).

24 32. Ms. Kinser's December 8, 2011, entry in the Allstate log reflects her frustration
25 in dealing with Respondent. She stated that she had been told for a year a
demand is coming and that she either gets voicemail or if she sends a letter she
gets no response. Ms. Kinser telephoned Respondent again and left a voice mail
message. (EX 206).

33. On May 31, 2012, Ms. Kinser telephoned Respondent's office and spoke to
Kingston. She told Kingston that a lawsuit had been filed by the second vehicle
involved in the accident. (EX 206).

34. The claim report also shows that Allstate valued Mr. Muthaka's vehicle at
\$2,427.81. (EX 206).

- 1 35. Respondent testified that the entries in the Allstate log were accurate with the
2 exception of the May 31, 2012, entry concerning the lawsuit having been filed.
(TR 227-228).
- 3 36. Allstate repeatedly attempted to get information from Respondent that would
4 enable them to make a settlement offer. Respondent ignored their requests.
5 Although Respondent told Allstate that he would assemble a demand, he never
did. (TR 230).
- 6 37. Although Allstate sent Respondent a number of letters regarding Mr. Muthaka's
7 case, Respondent did not recall seeing them, even though they were mailed to
his post office address. (TR 234).
- 8 38. Respondent admitted that he had not obtained Mr. Muthaka's medical records.
9 (TR 231-233).
- 10 39. Respondent never provided Allstate with medical records or chart notes that
11 would substantiate Mr. Muthaka's' bodily injuries. (TR 153, 166).
- 12 40. Ms. Schubert testified that Respondent did not provide them with anything
relating to the amount of Mr. Muthaka's property loss. (TR 153).
- 13 41. Ms. Schubert also testified that there was no question that Allstate's insured was
14 solely liable for the accident. She also testified that if Respondent had provided
15 medical bills and information about Mr. Muthaka's property damage prior to the
16 statute of limitations running, Allstate would have evaluated the case and paid
Mr. Muthaka's reasonable and necessary accident related medical bills and his
property loss. (TR 166).
- 17 42. Ms. Schubert also testified that they would not pay Mr. Muthaka's' medical
18 bills or property damage claim after the statute had run. (TR 167).
- 19 43. Respondent did not inform Mr. Muthaka that Allstate had contacted him and he
20 told Allstate he would assemble a demand. Respondent did not tell Mr.
Muthaka that he had not submitted a demand to Allstate. (TR 109).
- 21 44. Respondent did not consult with Mr. Muthaka about the value of his case, the
22 value of his vehicle, or a possible settlement amount. (TR 111).
- 23 45. Respondent took no action to preserve Mr. Muthaka's claims. (TR 238).
- 24 46. In late 2012 or early 2013, Mr. Muthaka's chiropractor, Dr. Winger, told him
25 that his case was about "to expire because he has been with me a long time."
Mr. Muthaka relayed this information to Respondent. Respondent told him not

1 to worry, that he was taking care of it, and he has a similar case and knows how
2 it works. (TR 105-106).

3 47. Respondent testified that he knew the statute of limitation was three years.
4 However, he did not advise Mr. Muthaka that the statute of limitation on his
5 case would run on August 14, 2012. (TR 240-242).

6 48. Respondent testified that he mistook the date of his Notice of Appearance as the
7 date of the accident and that he thought the statute would run in April 2013.
8 (TR 27).

9 49. Even giving credence to this explanation, Respondent admitted he did not
10 advise Mr. Muthaka that, by his own calculation, the statute of limitations
11 would run in April 2013. (TR 238).

12 50. In his May 10, 2013, response to the grievance filed by Mr. Muthaka,
13 Respondent explained that he was not certain that Mr. Muthaka's claim was
14 barred even though he knew it was outside the August 2012 date, because there
15 were other actions and that joinder was possible. He testified that he did legal
16 research on this issue by searching Yahoo. (TR 247-248).

17 51. Respondent sent Mr. Muthaka a letter informing Mr. Muthaka that he had been
18 suspended from the practice of law on August 23, 2012, for six months and that
19 Mr. Muthaka needed to find a another lawyer. (TR 111).

20 52. The letter did not advise Mr. Muthaka that the statute of limitations had run on
21 his claim. (TR 237).

22 53. Mr. Muthaka hired lawyer Cheryl Farrish to represent him. Ms. Farrish advised
23 Mr. Muthaka to get a copy of his client file. (EX 212).

24 54. Ms. Farrish spoke with Respondent on September 7, 2012. Respondent told her
25 that there was still time under the statute and it did not run in the next 30 days.
Ms. Farrish confirmed this information in a letter dated September 13, 2012.
(TR 188; EX 213).

Ms. Farrish received client files from both Mr. Muthaka and Respondent. Ms.
Farrish observed that although Mr. Muthaka had been done treating for ten
months, there were no medical records from the chiropractor, only incomplete
records from Mr. Muthaka's physician and incomplete records from
Harborview. The files did not contain any documentation of the property
damage and no witness statements. There was no demand in the file. There
were only three or four pieces of paper in the file. Ms. Farrish reviewed the
accident report and discovered that the statute of limitations had run on August
14, 2012. (TR 190).

- 1 56. Ms. Farrish conducted research on the case and discovered that a subrogation
2 lawsuit had been filed by USAA, the insurer of the other vehicle involved in the
3 accident and that the at-fault driver, in his answer, admitted that his negligence
4 was the sole and proximate cause of the accident. (EX 217 - 219).
- 5 57. The effect of this admission meant that if Respondent had filed a lawsuit on
6 time, Allstate would have paid Mr. Muthaka some sum of money. (TR 192).
- 7 58. The subrogation lawsuit was settled, and Allstate paid the entire \$10,000
8 property damage policy limit to the other driver. (TR 193).
- 9 59. Ms. Farrish concluded that Mr. Muthaka's claim was time barred. (TR 194).
- 10 60. Mr. Muthaka's unpaid medical bills total \$11,324.41. Many of the bills have
11 been turned over to collection agencies. Respondent did not incur or advance
12 any costs on the case. (TR 196, 245; EX 216).
- 13 61. Ms. Farrish, who was qualified as an expert witness in the area of personal
14 injury, opined that Respondent's statements in his response to the grievance
15 filed with ODC constituted a "blatant misunderstanding of the law as it pertains
16 to personal injury cases." (TR 198; EX 400).
- 17 62. Ms. Farrish also reviewed Respondent's deposition testimony taken in these
18 proceedings on August 16, 2013. Respondent's testimony that an insurance
19 policy enlarges the time to file a lawsuit is something she had never seen and is
20 not something an insurance company would do for an adverse party. (TR 199;
21 EX 406, pg. 33-34).
- 22 63. Ms. Farrish testified that Respondent's opinion stated in his deposition
23 testimony that other lawsuits would extend the statute of limitations for Mr.
24 Muthaka was also not a correct statement of the law. (TR 200; EX 406).
- 25 64. Ms. Farrish contacted Allstate and was told they would not pay a claim that was
time barred. (TR 200).
65. Respondent received a reprimand on October 14, 2009, for violating RPC 8.4(c)
by misrepresenting his client's residential address.
66. On August 23, 2012, Respondent was suspended from the practice of law for six
months by the Washington Supreme Court for violating RPC 3.3, RPC 8.4(c),
and RPC 8.1(d). (EX 300).
67. Respondent was suspended from the practice before the Board of Immigration
Appeals on September 24, 2012. (EX 308).

1 68. Respondent was suspended from the U.S. Court of Appeals for the Ninth Circuit
2 on October 2, 2012. (EX 309).

3 69. Respondent was suspended from the U.S. District Court Western District of
4 Washington on October 16, 2012. (EX 310).

5 70. Respondent was suspended for practicing before the Board of Immigration
6 Courts and the Department of Homeland Security on October 22, 2012. (EX
7 311).

8 **IV. SUMMARY OF CONCLUSIONS OF LAW ON COUNTS OF THE COMPLAINT**

9 Based on the foregoing Findings of Fact found to have been established by a clear
10 preponderance of the evidence, the Hearing Officer makes the following Conclusions of Law:

11 **COUNT 1:** By failing to file his appeal brief on time, and by failing to file a Motion to
12 Accept Late-Filed Brief that complied with the BIA's rules, Respondent's conduct violated
13 RPC 1.1 and RPC 1.3.

14 **COUNT 2:** By failing to inform Ms. Badjie that he had filed his appeal brief after it
15 was due, Respondent's conduct violated RPC 1.4.

16 **COUNT 3:** By failing to communicate the basis or rate of his fee to Mr. Muthaka, and
17 by having a contingent fee agreement that was not in writing and did not communicate the
18 information required under RPC 1.5(c)(2), Respondent's conduct violated RPC 1.5(b) and RPC
19 1.5(c).

20 **COUNT 4:** By failing to make reasonably diligent efforts to settle Mr. Muthaka's
21 claim, by failing to protect Mr. Muthaka's interests by filing suit before the statute of
22 limitations expired, and by failing to ascertain the significance of allowing the statute of
23 limitations to expire, Respondent's conduct violated RPC 1.1 and RPC 1.3.

24 **COUNT 5:** By failing to keep Mr. Muthaka reasonably informed about the status of
25 his claim, by failing to inform him when the statute of limitations would expire, and by failing

1 to inform him that the statute of limitations had expired, Respondent's conduct violated RPC
2 1.4.

3 **V. PRESUMPTIVE SANCTIONS**

4 A presumptive sanction must be determined for each ethical violation.¹ Applying the
5 Presumptive Sanctions sections as the Hearing Officer is required to do under Washington law
6 set forth in the American Bar Association ("ABA") Standards for Imposing Lawyer Sanctions
7 ("ABA Standards") is a two-step process. The first step is to determine the presumptive
8 sanction, considering the ethical duty violated, the lawyer's mental state, and the extent of the
9 harm caused by the misconduct.² The second step is to consider whether aggravating or
10 mitigating factors should alter the presumptive sanction.³

11 **ABA Standard 4.0 Violations of Duties Owed to Clients**

12 **ABA Standard 4.4 Lack of Diligence.**

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

17 **4.41 Disbarment is generally appropriate when:**

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

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

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

25 **4.42 Suspension is generally appropriate when:**

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

¹ *In re Anshell*, 149 Wn.2d 484, 69 P.3d 844, 852 (2003).

² ABA Standard 3; *In re Whitt*, 149 Wn.2d 707, 717, 72 P.3d 173 (2003).

³ *In re Johnson*, 118 Wn.2d 693, 701, 826 P.2d 186 (1992).

1 **(b) a lawyer engages in a pattern of neglect and causes**
2 **injury or potential injury to a client.**

3 **4.43** Reprimand is generally appropriate when a lawyer is
4 negligent and does not act with reasonable diligence in
5 representing a client, and causes injury or potential injury to a
6 client.

7 **4.44** Admonition is generally appropriate when a lawyer is
8 negligent and does not act with reasonable diligence in
9 representing a client, and causes little or no actual or
10 potential injury to a client.

11 **ABA Standard 4.5** Lack of Competence.

12 Absent aggravating or mitigating circumstances, upon
13 application of the factors set out in Standard 3.0, the
14 following sanctions are generally appropriate in cases
15 involving failure to provide competent representation to a
16 client:

17 **4.51** Disbarment is generally appropriate when a lawyer's
18 course of conduct demonstrates that the lawyer does not
19 understand the most fundamental legal doctrines or
20 procedures, and the lawyer's conduct causes injury or
21 potential injury to a client.

22 **4.52** Suspension is generally appropriate when a lawyer
23 engages in an area of practice in which the lawyer knows
24 he or she is not competent, and causes injury or potential
25 injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

(a) demonstrates failure to understand relevant legal doctrines
or procedures and causes injury or potential injury to a client;
or

(b) is negligent in determining whether he or she is
competent to handle a legal matter and causes injury or
potential injury to a client.

4.54 Admonition is generally appropriate when a lawyer
engages in an isolated instance of negligence in determining
whether he or she is competent to handle a legal matter and
causes little or no actual or potential injury to a client

ABA Standard 7.0 **Violations of Duties Owed As a Professional**

ABA Standard 7.1 Disbarment is generally appropriate
when a lawyer knowingly engages in conduct that is a

1 violation of a duty owed as a professional with the intent to
2 obtain a benefit for the lawyer or another, and causes
3 serious or potentially serious injury to a client, the public or
4 the legal system.

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

10 **ABA Standard 7.3** Reprimand is generally appropriate
11 when a lawyer negligently engages in conduct that is a
12 violation of a duty owed as a professional and causes injury
13 or potential injury to a client, the public, or the legal
14 system.

15 **ABA Standard 7.4** Admonition is generally appropriate
16 when a lawyer engages in an isolated instance of
17 negligence that is a violation of a duty owed as a
18 professional, and causes little or no actual or potential
19 injury to a client, the public, or the legal system.

20 Having carefully weighed applicable presumptive sanctions and having considered
21 aggravating and mitigating circumstances set forth in Section 9.22, the Hearing Officer finds
22 the following aggravating factors present:

- 23 (a) prior disciplinary offenses (Respondent received a reprimand in 2009 for
24 violating RPC 8.4(c), and he was suspended for six months in 2012 for violating
25 RPC 3.3, RPC 8.4(c), and RPC 8.4(d));
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (g) refusal to acknowledge wrongful nature of conduct;

No mitigating factors are applicable.

Respondent acted knowingly in failing to diligently represent Ms. Badjie and Mr.
Muthaka, resulting in injury to both Ms. Badjie and Mr. Muthaka. Mr. Muthaka has received
no compensation for his bodily injuries or his property loss due to the running of the statute of
limitations on his claims, and he has substantial medical bills that have been turned over to
collection agencies. In Ms. Badjie's circumstance, there was injury to the legal system because

1 additional time and resources had to be expended on her case because Respondent filed her
2 brief late. Ms. Badjie was injured because she suffered the anxiety of her case not proceeding
3 as she thought it would and the emotional distress as a result of Respondent's actions. She also
4 suffered potential injury in that her case might have been dismissed and ultimately possible
5 deportation had she not obtained new counsel who filed a Motion to Remand. The
6 presumptive sanction is suspension.

7 Respondent acted knowingly in failing to keep Mr. Muthaka reasonably informed about
8 the status of his case, failing to inform him when the statute of limitations would run, and
9 failing to inform him that the statute of limitations had expired. Mr. Muthaka was injured
10 because had Respondent informed him about when the statute of limitations ran, he could have
11 taken steps to ensure that his claim was protected. Instead, he was deprived of that
12 opportunity.

13 Respondent also acted knowingly in failing to inform Ms. Badjie that he had filed the
14 brief in her case late. Similarly, Respondent knowingly did not send Ms. Badjie a copy of the
15 Motion for Permission to Accept Late Filed Brief, which would have alerted her to the fact that
16 he had filed the brief late. She suffered potential injury as a result. If Ms. Holmes had not
17 investigated her case and discovered the untimely brief, Ms. Badjie's appeal might have been
18 dismissed, and she would have been subject to being deported.

19 Respondent also acted knowingly in failing to competently represent Ms. Badjie and
20 Mr. Muthaka. Respondent lacked an understanding of and appreciation for the necessity of
21 timely filing Ms. Badjie's brief. He also clearly lacked a basic understanding of how to handle
22 a personal injury case. Further, he demonstrated that he did not understand the importance of
23 the statute of limitations. Ms. Badjie and the legal system were injured. Ms. Badjie has
24 suffered emotional distress and the legal system has been burdened because court time has
25 been expended in the remand of Ms. Badjie's case. Mr. Muthaka was injured in that he has

1 received no compensation for his injuries or property damage, even though Allstate would have
2 compensated him potentially making him whole for his losses. The presumptive sanction is
3 suspension.

4 Respondent acted knowingly in failing to communicate the basis or rate of his fee to
5 Mr. Muthaka and by having a contingent fee agreement that was not in writing and did not
6 communicate the information required by RPC 1.5(c)(2). Mr. Muthaka suffered potential
7 injury. Had there been any monetary recovery on his case, it is unclear what fees would have
8 been. This uncertainty constitutes injury. The presumptive sanction is suspension.

9 Based on this review of aggravating and mitigating factors, the Hearing Officer
10 specifically finds, pursuant to the ABA Standards for Imposing Lawyer Sanctions, the
11 following conclusions under the Presumptive Section Standards, which are again set out by
12 individual count.

13 **COUNT 1:** After finding Respondent engaged in an area of practice knowing he was
14 not competent by failing to file his appeal brief on time and failing to file a Motion to Accept
15 Late Filed Brief which complied with the BIA's rules, in violation of RPC 1.1 and RPC 1.3.
16 The Hearing Officer, after weighing appropriate aggravating and mitigating factors, finds the
17 presumptive ABA Standards of 4.4 and 4.5 apply, and in applying the mitigating and
18 aggravating factors, also finds there is no basis to depart from the presumptive standard of
19 suspension.

20 **COUNT 2:** After finding the Respondent knowingly failed to inform Ms. Badjie that
21 he had filed his appeal brief after it was due in violation of RPC 1.4, the Hearing Officer, after
22 weighing appropriate aggravating and mitigating factors, finds the presumptive ABA Standard
23 4.4 applies, and in applying the mitigating and aggravating factors, also finds there is no basis
24 to depart from the presumptive standard of suspension.

25
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND HEARING
OFFICER'S RECOMMENDATIONS - 20

1 **COUNT 3:** After finding the Respondent knowingly failed to communicate the basis
2 or rate of his fee to Mr. Muthaka and had a contingent fee agreement that was not in writing
3 and did not communicate the information required under RPC 1.5(c)(2) in violation of RPC
4 1.5(b) and RPC 1.5(c), the Hearing Officer, after weighing appropriate aggravating and
5 mitigating factors, finds the presumptive ABA Standard 7.0 applies, and in applying the
6 mitigating and aggravating factors, also finds there is no basis to depart from the presumptive
7 standard of suspension.

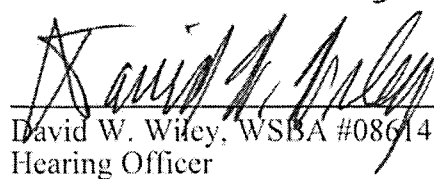
8 **COUNT 4:** After finding the Respondent knowingly failed to make reasonably diligent
9 efforts to settle Mr. Muthaka's claim, failed to protect Mr. Muthaka's interests by filing suit
10 before the statute of limitations expired, and failed to apprehend the significance of allowing
11 the statute of limitations to expire in violation of RPC 1.1 and RPC 1.3, the Hearing Officer,
12 after weighing appropriate aggravating and mitigating factors, finds the presumptive ABA
13 Standards 4.4 and 4.5 apply, and in applying the mitigating and aggravating factors, also finds
14 there is no basis to depart from the presumptive standard of suspension.

15 **COUNT 5:** Finally, after finding the Respondent knowingly failed to keep Mr.
16 Muthaka reasonably informed about the status of his claim, failed to inform him when the
17 statute of limitations would expire, and failed to inform him that the statute of limitations had
18 expired in violation of RPC 1.4, the Hearing Officer, after weighing appropriate aggravating
19 and mitigating factors, finds the presumptive ABA Standard 4.4 applies, and in applying the
20 mitigating and aggravating factors, also finds there is no basis to depart from the presumptive
21 standard of suspension.

1 **VI. RECOMMENDATION SANCTION AND CONCLUSION, AND RESTITUTION**

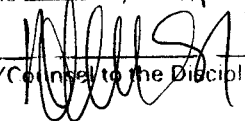
2 When multiple ethical violations are found, the ultimate sanction imposed should at
3 least be consistent with the sanction for the most serious instance of misconduct.⁴ Based on the
4 ABA Standards and the aggravating and mitigating factors evaluated at length above, the
5 Hearing Officer recommends that Respondent Bakary Fansu Conteh be suspended for two
6 years. Finally, I further recommend that restitution to grievant Mr. Muthaka be ordered in the
7 amount of \$11,324.41 (which Respondent's own Closing Argument and Response to ODC's
8 Proposed Findings, et al apparently accepts as "appropriate and fair here")⁵, reflecting Mr.
9 Muthaka's unpaid medical bills and that future reinstatement of Respondent from suspension
10 be conditioned on the payment of restitution noted here.

11 DATED this 20th day of April, 2015

12
13
14 
15 David W. Wiley, WSBA #08614
16 Hearing Officer

17 **CERTIFICATE OF SERVICE**

18 I certify that I caused a copy of the FOI, COI & HO's Recommendation
19 to be delivered to the Office of Disciplinary Counsel and to be mailed
20 to Bakary Conteh Respondent's Counsel
21 at PO BOX 4029 SCARLETT, MA 01914 by Certified first class mail
22 postage prepaid on the 20th day of April, 2015

21 
22 Clerk/Counsel to the Disciplinary Board

23
24 ⁴ *In re the Matter of the Disciplinary Proceeding Against Richard A. Peterson*, 120 Wn.2d 833, 854 (1993); *In re*
25 *the Matter of the Disciplinary Proceeding Against Alec M. Schwimmer*, 153 Wn.2d 752, 759, 108 P.3d 761
(2005); *In re Disciplinary Proceeding Against Romero*, 152 Wn.2d 124, 135, 94 P.3d 939 (2004).

⁵ Respondent's Closing Argument, and Response to ODC's Proposed Findings of Fact, Conclusions of Law and
Hearing Officer's Recommendation at p. 7.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND HEARING
OFFICER'S RECOMMENDATIONS - 22

Allison Sato

From: Gruber, Maggi <MGruber@williamskastner.com>
Sent: Tuesday, April 21, 2015 5:15 PM
To: Allison Sato
Cc: Wiley, Dave
Subject: FW: Proceeding No. 13#00112 | Bakary Fansu Conteh Lawyer Bar #35098 | Findings of Fact and Conclusions of Law and Hearing Officer's Recommendations
Attachments: WKG-#5377518-v3-Conteh_FOF_COL_Hearing_Officer_s_recommendations.pdf

Document attached.

From: Gruber, Maggi
Sent: Tuesday, April 21, 2015 5:14 PM
To: allisons@wsba.org
Cc: Wiley, Dave
Subject: Proceeding No. 13#00112 | Bakary Fansu Conteh Lawyer Bar #35098 | Findings of Fact and Conclusions of Law and Hearing Officer's Recommendations

Ms. Sato,

Please see attached Findings of Fact, conclusions of Law, and Hearing Officer's Recommendations signed by Hearing Officer David Wiley for filing today in the above-referenced proceeding. The original will be sent via US mail.

Thank you.

Maggi Gruber
Williams Kastner | Legal Assistant to David Wiley
601 Union Street, Suite 4100
Seattle, WA 98101-2380
P: 206.233.2972 | F: 206.628.6611
www.williamskastner.com

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