

FILED

Jul 03 2019

Disciplinary
Board

Docket # 017

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

CORNELL KIRBY,

Lawyer (Bar No. 36829).

Proceeding No. 19#00018

ODC File No. 18-00469

STIPULATION TO REPRIMAND AND
ONE-YEAR PROBATION

Under Rule 9.1 of the Washington Supreme Court’s Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Emily Krueger and Respondent lawyer Cornell Kirby.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he 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 outcome more favorable or less favorable to him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to

1 avoid the risk, time, expense, and publicity attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November
4 10, 2005.

5 **II. STIPULATED FACTS**

6 2. In August 1999, Carlos Portugal Contreras, a native and citizen of Mexico, entered
7 the United States (U.S.).

8 3. In February 2011, the Department of Homeland Security (DHS) detained Mr.
9 Portugal Contreras and charged him with removability.

10 4. Mr. Portugal Contreras hired lawyer Rosaura Rodriguez to represent him at his
11 bond hearing.

12 5. Mr. Portugal Contreras posted a \$15,000 bond and was released from detention.

13 6. Upon his release, Mr. Portugal Contreras hired Ms. Rodriguez to file an
14 Application for Cancellation of Removal based on hardship to his two minor U.S. Citizen
15 children.

16 7. Mr. Portugal Contreras's Application for Cancellation of Removal was filed.

17 8. A Master Calendar Hearing was scheduled for April 2012.

18 9. Prior to Mr. Portugal Contreras's Master Calendar Hearing, Ms. Rodriguez was
19 suspended from the practice of law.

20 10. Respondent substituted as counsel in Mr. Portugal Contreras's immigration case.

21 11. On April 3, 2012, Respondent appeared with Mr. Portugal Contreras at the Master
22 Calendar Hearing and filed form EOIR-28 to substitute as his counsel of record.

23 12. The court transferred Mr. Portugal Contreras's case to Portland, Oregon and a

1 Merits Hearing was scheduled for July 14, 2015.

2 13. On July 14, 2015, Respondent appeared with Mr. Portugal Contreras at the Merits
3 Hearing.

4 14. The Immigration Judge did not issue a ruling at the Merits Hearing because the
5 numerical cap for cancellation of removal cases had been reached.

6 15. The Immigration Judge informed the parties that once she was able to issue a
7 decision, it would be mailed to Respondent.

8 16. After the Merits Hearing, Mr. Portugal Contreras called Respondent's office to
9 inquire about the status of the court's decision.

10 17. Mr. Portugal Contreras did not speak with Respondent, but instead spoke to
11 Respondent's staff, who told him that there was no change in the status of his case and that they
12 would contact him when the decision was issued.

13 18. Mr. Portugal Contreras continued to call Respondent's office to obtain an update
14 on the status of his matter.

15 19. In November 2015, Respondent moved his office from Shoreline, Washington to
16 Seattle.

17 20. Respondent filed a request with the U.S. Postal Service (USPS) to forward mail
18 from his Shoreline address to his new address in Seattle for a period of one year.

19 21. Respondent updated his address on the Executive Office for Immigration Review
20 (EOIR) eRegistry website.

21 22. Respondent delegated to his nonlawyer staff the filing of updated notices of
22 appearance with his new address in his immigration cases.

23 23. Respondent's staff filed updated notices of appearances for some of Respondent's

1 cases pending before the immigration courts in Tacoma, Portland, and San Francisco, but failed
2 to do so in Mr. Portugal Contreras's case.

3 24. Respondent provided little, if any, supervision over his staff's filing of the updated
4 notices of appearances.

5 25. On December 13, 2016, the immigration court issued its decision on Mr. Portugal
6 Contreras's Application for Cancellation of Removal.

7 26. The one-year forwarding timeframe with USPS had expired.

8 27. Respondent did not receive a copy of the immigration court's decision.

9 28. Because Respondent was listed as counsel for Mr. Portugal Contreras, the
10 immigration court did not mail a copy of the decision to Mr. Portugal Contreras.

11 29. The Immigration Judge denied Mr. Portugal Contreras's Application for
12 Cancellation of Removal and granted him voluntary departure on or before February 11, 2017.

13 30. The decision required Mr. Portugal Contreras to post a \$500 voluntary bond within
14 five days of the decision and leave the U.S. by February 11, 2017. Mr. Portugal Contreras had
15 30 days to file an appeal from the date of the decision.

16 31. Respondent never informed Mr. Portugal Contreras of the court's decision.

17 32. Respondent never checked with the immigration court to determine the status of
18 Mr. Portugal Contreras's case or to determine whether a decision had been issued.

19 33. Mr. Portugal Contreras eventually hired immigration lawyer John Marandas, who
20 learned of the December 13, 2016 order.

21 34. In June 2018, Mr. Marandas filed a motion to reopen Mr. Portugal Contreras's
22 matter based on ineffective assistance of counsel.

23 35. The Department of Homeland Security did not oppose the motion, and the motion

1 to reopen was granted.

2 36. Mr. Marandas also filed an appeal with the Board of Immigration Appeals.

3 37. The appeal is pending.

4 III. STIPULATION TO MISCONDUCT

5 38. By failing to act with reasonable diligence and promptness in representing Mr.
6 Portugal Contreras, Respondent violated RPC 1.3.

7 39. By failing to make reasonable efforts to ensure that the conduct of his nonlawyer
8 employees was compatible with his professional obligations as a lawyer, Respondent violated
9 RPC 5.3.

10 IV. PRIOR DISCIPLINE

11 40. Respondent has no prior discipline.

12 V. APPLICATION OF ABA STANDARDS

13 41. The following American Bar Association Standards for Imposing Lawyer Sanctions
14 (1991 ed. & Feb. 1992 Supp.) apply to this case:

15 4.4 Lack of Diligence

16 4.41 Disbarment is generally appropriate when:

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

20 4.42 Suspension is generally appropriate when:

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

23 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
24 with reasonable diligence in representing a client, and causes injury or potential

1 injury to a client.

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

4 **7.0 Violations of Duties Owed as a Professional**

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

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

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

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

18 42. Mr. Kirby acted negligently.

19 43. Mr. Portugal Contreras was injured because a deportation order was entered without
20 his knowledge. But for the actions of Mr. Marandas, he would have lost his right to appeal..

21 44. The presumptive sanction is reprimand under ABA Standard 4.3 and 7.3.

22 45. The following aggravating factor applies under ABA Standard 9.22:

23 (a) substantial experience in the practice of law (admitted to practice in 2005);

24 46. The following mitigating factors apply under ABA Standard 9.32:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive.

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

1 48. In light of the serious actual and potential harm, the mitigating factors are
2 insufficient to mitigate the sanction from a reprimand.

3 **VI. STIPULATED DISCIPLINE**

4 49. The parties stipulate that Respondent shall receive a Reprimand for his conduct.

5 50. Respondent will be subject to probation for a period of one year beginning when this
6 Stipulation receives final approval and shall comply with the specific probation terms set forth
7 below. Respondent's compliance with these conditions will be monitored by the Probation
8 Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to
9 comply with a condition of probation listed herein may be grounds for further disciplinary
10 action under ELC 13.8(b).

11 Law Office Management Advisor

- 12 a) Respondent shall participate in a law office management consultation with Ann
13 Guinn or, if Ms. Guinn is unable to serve in this capacity, another advisor approved
14 by the Probation Administrator.
- 15 b) Respondent must contact the advisor within one month from the date that this
16 Stipulation is approved and have his first consultation within two months of the date
17 that this Stipulation is approved.
- 18 c) The initial consultation with the advisor will focus on file organization, calendaring
19 and docketing, communication with clients and staff, and supervision of nonlawyer
20 assistants. Subsequent meetings, at the discretion of the advisor, may continue to
21 focus on these issues and any other issues the advisor determines appropriate.
- 22 d) Respondent shall meet with the advisor at least twice, but no more than five times,
23 at the advisor's discretion.
- 24 e) Within two weeks of the initial consultation and each subsequent meeting,
Respondent shall provide proof of the consultation or meeting to the Probation
Administrator in the form of a written statement that includes the date, time, and a
brief summary of the meeting.
- f) Respondent understands that the advisor may establish dates by which Respondent
must comply with recommendations made and for follow-up communication.

1 Respondent agrees to strictly comply with these dates. These subsequent contacts
2 may be in person, email, or telephone, at the sole discretion of the advisor.

- 3 g) Respondent authorizes the advisor to report immediately to the Probation
4 Administrator and/or ODC if Respondent fails to comply with any requirements or
5 terms.
- 6 h) Respondent agrees to respond promptly to all inquiries from the advisor and the
7 Probation Administrator regarding Respondent's compliance with the requirements
8 described herein.
- 9 i) Respondent is responsible for paying the costs associated with the advisor's
10 services, except travel time, subject to a cap of \$1,000.

11 **VII. RESTITUTION**

12 51. Restitution is not required by this Stipulation.

13 **VIII. COSTS AND EXPENSES**

14 52. Respondent shall pay attorney fees and administrative costs of \$1,500 in accordance
15 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
16 costs are not paid within 30 days of approval of this Stipulation.

17 **IX. VOLUNTARY AGREEMENT**

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

23 54. Once fully executed, this Stipulation is a contract governed by the legal principles
24 applicable to contracts, and may not be unilaterally revoked or modified by either party.

X. LIMITATIONS

55. 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 56. 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 57. 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.

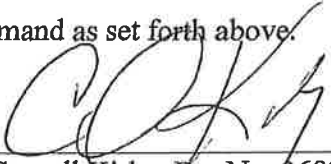
15 58. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
16 his or her review become public information on approval of the Stipulation by the Hearing
17 Officer, unless disclosure is restricted by order or rule of law.

18 59. If this Stipulation is approved by the Hearing Officer, it will be followed by the
19 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
20 Enforcement of Lawyer Conduct will be made.


21 60. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
22 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
23 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil

1 or criminal action.

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

4 
5 _____
6 Cornell Kirby, Bar No. 36829
7 Respondent

Dated: 06/26/19

8 
9 _____
10 Emily Krueger, Bar No. 53186
11 Disciplinary Counsel

Dated: 7/1/19