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Jan 11, 2021

Disciplinary
Board

Docket # 092

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

ROBERTO DIAZ-LUONG,

Lawyer (Bar No. 38477).

Proceeding No. 18#00007

STIPULATION TO SUSPENSION AND
PROBATION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension and Probation is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association), through Disciplinary Counsel M Craig Bray and Senior Disciplinary Counsel Scott G. Busby, and by Respondent Roberto Diaz-Luong and Respondent's Counsel, Todd Maybrown.

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

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

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on December
6 12, 2006 and admitted to the practice of law in the State of Florida on March 28, 2003.

7 **II. STIPULATED FACTS**

8 2. The law firm of Le and Associates (the Le firm) was owned by lawyers Vienna
9 and Edward Le.

10 3. The Le firm hired Respondent as an associate in August 2007.

11 4. Respondent's spouse Lan Thi Nguyen was an associate at the Le firm.

12 5. Clients of the Le firm were clients of the firm, not clients of specific lawyers who
13 worked there.

14 6. The lawyers who worked there were compensated with percentage shares of fees
15 earned on cases on which they worked.

16 7. In the fall of 2007, the Les, Respondent, and Nguyen agreed to a process by which
17 Respondent and Nguyen would separate from the Le firm but continue to work as remote
18 associates under supervision of a Le firm lawyer on cases of certain specified Le firm clients.

19 8. Under the terms of a written Separation Agreement, Respondent and Nguyen
20 would separate from the Le firm, but would continue to work on the cases of 38 Le firm clients
21 for 4.5 months and would divide fees earned from those clients' cases with the Le firm. At the
22 end of the 4.5-month period, Respondent and Nguyen were to either enter into new fee
23 agreements with the 38 clients or return the clients' cases to the Le firm.

1 9. The Separation Agreement also specified several other cases, called the “100
2 percent cases,” on which Respondent and Nguyen were to complete all remaining work and,
3 once done, would retain all of the fees earned on those cases.

4 10. On October 23, 2007, the Le firm, Respondent, and Nguyen executed the
5 Separation Agreement.

6 11. Also on October 23, 2007, Respondent accessed records in various locations on the
7 Le firm computer network from Nguyen’s workstation at the firm and downloaded a large
8 number of electronic client file documents onto a USB hard drive that was owned by Nguyen.
9 The downloaded documents included files of clients listed in the Separation Agreement, clients
10 not listed therein, and documents from both active and closed client matters.

11 12. Despite Respondent’s downloading of the electronic documents, the Le firm
12 retained the original electronic client file documents and was not deprived of them.

13 13. At or about the same time as they were separating from the Le firm, Respondent
14 and Nguyen created a new law firm, the Law Office of Diaz and Nguyen, PLLC.

15 14. Respondent took the USB hard drive onto which he had downloaded the copies of
16 the Le firm’s clients’ electronic file documents away from the Le firm and transported it to his
17 home.

18 15. After October 23, 2007, the Law Office of Diaz and Nguyen began contacting Le
19 firm clients they had previously worked with and asking them whether they wanted to switch
20 their representation from the Le firm to that of Diaz and Nguyen.

21 16. Some clients switched representation from the Le firm to the Law Office of Diaz
22 and Nguyen. Some did not.

23 17. On November 3, 2007, after becoming aware of the Diaz firm’s contacts with Le

1 firm clients, Edward Le sent Respondent and Nguyen a “Notice of Disassociation Effectively
2 [sic] Immediately,” which terminated the Separation Agreement and any professional
3 relationship between the Le firm and Respondent and Nguyen that had continued after the
4 Separation Agreement was executed.

5 18. In the Notice, Edward Le demanded that Respondent and Nguyen return all
6 electronic documents and any hard copy files of Le firm clients to the Le firm.

7 19. Edward Le sent the Notice to Respondent by email and regular mail.

8 20. Respondent received the Notice of Disassociation.

9 21. Neither Respondent nor Nguyen returned the downloaded Le firm client file
10 documents they had.

11 22. After November 3, 2007, Edward Le drafted letters, which numerous clients
12 signed, asking that the Law Office of Diaz and Nguyen return the clients’ file documents to the
13 Le firm. The letters were sent to the Law Office of Diaz and Nguyen.

14 23. Respondent received letters from clients requesting return of their file documents.

15 24. Neither Respondent nor Nguyen returned any Le firm client file documents.

16 25. On or about November 9, 2007, Respondent and Nguyen hired lawyer Paul
17 Beattie, who advised them not to relinquish any Le firm client file documents they had in
18 anticipation of litigation. Respondent and Nguyen followed Beattie’s advice.

19 26. In December 2007, the Le firm sued Respondent and Nguyen for improperly
20 taking Le firm client file documents, wrongful interference with the Le firm's business, and
21 other wrongful activity.

22 27. Respondent and Nguyen answered the Les’ complaint and pleaded counterclaims
23 and third-party claims.

1 28. In January 2008, the Le firm moved for a preliminary injunction, asking the court
2 to enjoin Respondent and Nguyen's continued possession of Le firm electronic and hard copy
3 client file documents.

4 29. The trial court granted that motion and entered a preliminary injunction on
5 February 9, 2008. The court's injunction order was served on Respondent's lawyer in
6 Respondent's presence, and Respondent had notice of it.

7 30. In its order, the court:

- 8 • enjoined Respondent and Nguyen from further possession of any of the Le firm
9 electronic files;
- 10 • enjoined Respondent and Nguyen from in any way using, copying, modifying,
11 adding, or deleting any of the Le firm electronic files;
- 12 • ordered Respondent and Nguyen to identify all computers and electronic devices
13 that contained or once contained the downloaded Le firm files or any portion
14 thereof and provide those computers and/or devices to the Le firm's IT professional
15 so that the electronic copies of the Le firm files could be found and destroyed; and
- 16 • ordered Respondent and Nguyen to provide to the court declarations made under
17 penalty of perjury wherein they stated that they had fully complied with the order
18 of the court.

19 31. In response to the portion of the injunction that ordered Respondent and Nguyen to
20 identify and provide all computers and electronic devices that contained or once contained the
21 downloaded Le firm client file documents to the Le firm's IT professional, Respondent turned
22 over only one USB hard drive (the "identified USB drive") to his lawyer, who then provided it
23 to the Le firm's IT professional.

24 32. Respondent filed a declaration with the court on February 28, 2008, certifying that
he was in compliance with the court's injunction and that the identified USB drive was the hard
drive on which he had originally downloaded Le firm files.

33. Respondent testified consistently with his declaration in a subsequent sworn

1 deposition.

2 34. Statements Respondent made in his declaration and deposition were false.

3 35. The identified USB drive that Respondent turned over was not the original USB
4 drive on which he had downloaded Le firm client files in October 2007. It was a different USB
5 drive.

6 36. After having notice of the court's injunction, Respondent had copied Le firm client
7 file data from the original USB drive to the identified USB drive using an unidentified
8 computer. Respondent modified Le firm client file data when he copied it to alter the apparent
9 date of copying. Respondent removed Le firm client file data from the identified USB hard
10 drive and then put some, but not all, of it back on the drive.

11 37. By engaging in these actions, Respondent violated the court's February 9, 2008
12 injunction order.

13 38. In Spring 2008, after the Le firm's IT professional examined the identified USB
14 drive and discovered what Respondent had done, the Le firm moved the court to hold
15 Respondent and Nguyen in contempt for violating the court's injunction order.

16 39. In a second declaration filed with the court on June 12, 2008, and in a subsequent
17 deposition, Respondent admitted engaging in the above actions because he wanted to keep a
18 copy of the Le firm data as he believed it contained evidence of Le firm wrongdoing.

19 40. In the June 12, 2008 declaration and subsequent deposition, Respondent also
20 admitted that he destroyed the original USB drive, but explained that the original USB drive and
21 the identified USB drive looked identical and that, feeling remorse for having violated the
22 court's injunction, he decided to destroy the copy (i.e., the identified USB drive), but
23 inadvertently destroyed the original USB drive.

1 41. Respondent also admitted that he destroyed the hard drives in computers belonging
2 to him and Nguyen in order to prevent the Le firm's IT professional from examining them and
3 running up expenses that Respondent and Nguyen would have to pay.

4 42. On June 13, 2008, the trial court granted the Le firm's motion and held Respondent
5 and Nguyen in contempt.

6 43. The court imposed remedial sanctions, which gave Respondent a chance to purge
7 his contempt.

8 44. The trial court denied Respondent's and Nguyen's motion for reconsideration and
9 stay of the contempt order.

10 45. Respondent and Nguyen appealed the trial court's June 2008 orders and
11 subsequent January 27, 2009 orders, in which the court found that the second declaration
12 Respondent filed in June 2008 also failed to comply with the court's injunction.

13 46. In August 2010, the Court of Appeals affirmed the trial court's orders in all
14 respects, finding that the trial court did not err in holding Respondent and Nguyen in contempt.
15 The Washington Supreme Court denied Respondent and Nguyen's petition for review.

16 47. In March 2015, after additional litigation, the Le firm moved to dismiss Respondent
17 and Nguyen's counterclaims and third-party claims because they had never fully complied with
18 the trial court's injunction and contempt orders. The trial court granted the motion on March 30,
19 2015.

20 48. In August 2015, the court granted the Le firm's motion to voluntarily dismiss its
21 unadjudicated claims against Respondent and Nguyen.

22 49. Respondent appealed the dismissal of his and Nguyen's counterclaims and third-
23 party claims. Respondent represented Nguyen in the appeal. On September 26, 2016, the Court

1 of Appeals affirmed the trial court's dismissal of Respondent and Nguyen's counterclaims and
2 third-party claims.

3 50. The Court of Appeals' action ended the litigation between the Le firm, Respondent,
4 and Nguyen.

5 III. STIPULATION TO MISCONDUCT

6 51. By failing to promptly return client files and information after being asked to do so
7 by the clients, Respondent violated RPC 1.16(d).

8 52. By making false statements to the trial court in his declaration filed on February
9 28, 2008, and in offering evidence he knew to be false, Respondent violated RPC 3.3(a)(1),
10 RPC 3.3(a)(4), RPC 8.4(c), and RPC 8.4(d).

11 53. By destroying, falsifying, and concealing material having potential evidentiary
12 value, Respondent violated RPC 3.4(b), RPC 8.4(c), and RPC 8.4(d).

13 54. By knowingly disobeying the trial court's preliminary injunction order and/or the
14 court's contempt orders, Respondent violated RPC 3.4(c) and RPC 8.4(d).

15 IV. PRIOR DISCIPLINE

16 55. Respondent has no prior discipline.

17 V. APPLICATION OF ABA STANDARDS

18 A. Mental State

19 56. Respondent acted negligently when he failed to promptly return client files and
20 information after being asked to do so.

21 57. Respondent acted knowingly when he made false statements in his declaration filed
22 with the court and in his deposition, offered evidence he knew to be false, and knew that
23 material information was improperly being withheld.

1 58. Respondent acted intentionally when he disobeyed the court's injunction order by
2 copying, deleting, and manipulating evidence with intent to benefit himself and Nguyen.

3 **B. Injury**

4 59. By failing to promptly return Le firm client file document copies, Respondent
5 injured Le firm clients to whom the copies belonged and who had the authority to control the
6 dissemination of their information.

7 60. By offering false evidence and depriving the opposing party of potentially relevant
8 evidence and the opportunity to prepare their case, Respondent caused potentially serious injury
9 to the opposing party, and caused a significant adverse effect on the legal proceeding.

10 61. By violating the trial court's orders, Respondent caused potentially serious injury to
11 the opposing party and caused serious interference with the legal proceeding.

12 **C. Applicable ABA Standards**

13 62. The following American Bar Association Standards for Imposing Lawyer Sanctions
14 (1991 ed. & Feb. 1992 Supp.) apply to this case:¹

15 63. The applicable ABA Standard for the violation of RPC 1.16(d) is:

16 7.3 Reprimand is generally appropriate when a lawyer negligently
17 engages in conduct that is a violation of a duty owed as a professional
18 and causes injury or potential injury to a client, the public, or the legal
19 system.

20 64. The applicable ABA Standard for the violations of RPC 3.3(a)(1), RPC 3.3(a)(4),
21 RPC 3.4(b), and RPC 8.4(c) is:

22 6.12 Suspension is generally appropriate when a lawyer knows that
23 false statements or documents are being submitted to the court or that
24 material information is improperly being withheld, and takes no remedial
action, and causes injury or potential injury to a party to the legal

¹ ABA Standards 6.1, 6.2, and 7.0 are attached in their entirety in Appendix A.

1 proceeding, or causes an adverse or potentially adverse effect on the legal
2 proceeding.

3 65. The applicable ABA Standard for the violations of RPC 3.4(c) and RPC 8.4(d), is:

4 6.21 Disbarment is generally appropriate when a lawyer knowingly
5 violates a court order or rule with the intent to obtain a benefit for the
6 lawyer or another, and causes serious injury or potentially serious injury
7 to a party or causes serious or potentially serious interference with a legal
8 proceeding.

9 66. The presumptive sanction is disbarment.

10 **D. Aggravating and Mitigating Factors**

11 67. The following aggravating factors apply under ABA Standard 9.22:

- 12 (b) dishonest or selfish motive; and
- 13 (d) multiple offenses.

14 68. The following mitigating factors apply under ABA Standard 9.32:

- 15 (a) absence of a prior disciplinary record;
- 16 (c) personal and emotional problems [see Appendix B, for which the parties
17 seek a protective order];
- 18 (f) inexperience in the practice of law [Respondent was admitted to the
19 practice of law in Washington in 2006. At the time of the most serious
20 misconduct, he had been practicing law for two years in Washington.
21 Respondent was licensed to practice law in Florida in 2003, but did not
22 practice until being admitted in Washington]; and
- 23 (l) remorse.

24 69. The mitigating factors outweigh the aggravating factors and justify a deviation from
the presumptive sanction.

VI. STIPULATED DISCIPLINE

70. The parties stipulate that Respondent shall be suspended from the practice of law for
two years and be subject to probation as described below.

VII. PROBATION

71. Respondent shall be subject to probation for a period of two years beginning on the

1 date Respondent is reinstated to the practice of law.

2 72. The conditions of probation are set forth below. Respondent's compliance with these
3 conditions shall be monitored by the Probation Administrator of the Office of Disciplinary
4 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
5 herein may be grounds for further disciplinary action under ELC 13.8(b).

- 6 a) Respondent shall be evaluated by a licensed psychologist or psychiatrist approved
7 by ODC. As of the date of this stipulation, ODC has already approved a psychiatrist
8 suggested by Respondent.
- 9 b) Respondent shall execute an authorization allowing the evaluator to release
10 information regarding the evaluation to the Probation Administrator, to include a
11 written report if any of the evaluator's findings, diagnosis, and recommended
12 treatment plan. Respondent shall provide the Probation Administrator with a copy
13 of the authorization.
- 14 c) Respondent shall undergo treatment with a treatment provider approved by ODC.
15 The treatment provider and evaluator may be the same entity.
- 16 d) If Respondent proposes changing treatment providers, the Probation Administrator
17 will either approve or reject the proposed provider and will notify Respondent of
18 that decision in writing. If the treatment provider is not approved, Respondent shall
19 provide the Probation Administrator with the name and contact information of
20 another proposed treatment provider within three weeks of the date of the Probation
21 Administrator's letter denying approval.
- 22 e) Respondent shall comply with all requirements and recommendations of the
23 treatment provider, including but not limited to the completion of any period of in-
24 or out-patient treatment and aftercare and the taking of all prescribed medications.
- f) Respondent shall execute an authorization[s] allowing and directing the treatment
provider to take the following actions:
- i) on a quarterly basis, send written reports to the Probation Administrator that
include the dates of treatment, whether Respondent has been cooperative
with treatment, and whether continued treatment is recommended;
 - ii) report immediately to the Probation Administrator if Respondent fails to
appear for treatment or stops treatment without the provider's agreement
and consent prior to either termination of the treatment plan or expiration of
the probation period set forth in this stipulation;

1 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
2 Association, nor by any representative thereof, to induce the Respondent to enter into this
3 Stipulation except as provided herein.

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

6 XI. LIMITATIONS

7 77. This Stipulation is a compromise agreement intended to resolve this matter in
8 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
9 expenditure of additional resources by the Respondent and ODC. This stipulation takes into
10 account issues related to witness availability and credibility and of interpretation of evidence
11 that have arisen during the passage of time since Respondent committed the most serious
12 misconduct denoted herein. Both the Respondent and ODC acknowledge that the result after
13 further proceedings in this matter might differ from the result agreed to herein.

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

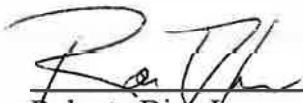
17 79. This Stipulation results from the consideration of various factors by both parties,
18 including the benefits to both by promptly resolving this matter without the time and expense of
19 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
20 such, approval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

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


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

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


12 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
13 to Suspension and Probation as set forth above.

14 
15 _____
16 Roberto Diaz-Luong, Bar No. 38477
17 Respondent

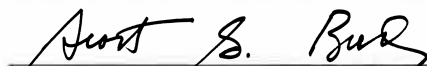
Dated: November 6, 2020

18 
19 _____
20 Todd Maybrow, Bar No. 18557
21 Respondent Counsel

Dated: 11/6/2020

22 
23 _____
24 M Craig Bray, Bar No. 20821
Disciplinary Counsel

Dated: 11/9/2020



Scott G. Busby, Bar No. 17522
Senior Disciplinary Counsel

Dated: 11/9/2020

APPENDIX A TO STIPULATION TO SUSPENSION AND PROBATION

RELEVANT ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

For reference purposes, a list of the black letter rules is set out below. *Definitions*

“Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury.

“Intent” is the conscious objective or purpose to accomplish a particular result.

“Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

“Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

“Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

6.1 *False Statements, Fraud, and Misrepresentation*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

6.2 *Abuse of the Legal Process*

Absent aggravating or mitigating circumstances, upon application of the factors set out in

Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
- 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

7.0 Violations of Duties Owed as a Professional

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

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.