

Supreme Court No. 200,477-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE DISCIPLINARY PROCEEDING AGAINST

GEORGE PAUL TREJO, JR.

Lawyer (Bar No. 19758).

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**ANSWERING BRIEF OF THE  
WASHINGTON STATE BAR ASSOCIATION**

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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Respondent George Paul Trejo, Jr. (Trejo) admitted that he violated the trust account rules, to the point of abdicating all responsibility for his trust account to his non-lawyer assistant, who then took client funds from the trust account for her personal use. He had been disciplined twice before for failing to properly handle his trust account. In this case, the hearing officer found that Trejo's prior discipline put him on notice of his duties and responsibilities regarding his trust account and determined that Trejo knowingly violated the Rules of Professional Conduct (RPC) by failing to maintain complete trust account records, by commingling earned fees with client funds, and by failing to supervise his non-lawyer assistant, and recommended that he be suspended. The Disciplinary Board unanimously recommended a suspension. Trejo asks this Court to reduce the sanction to a reprimand. Should Trejo be suspended for knowingly disregarding his responsibilities concerning his trust account?

2. The length of the suspension is dependent on the aggravating and mitigating factors, with six months being the presumptive minimum unless the mitigating factors outweigh the aggravating factors. The hearing officer found five aggravating factors and one mitigating factor and recommended a six month suspension. The Disciplinary Board found the additional mitigating factor of character and reputation and, in an 8-3

decision, reduced the suspension to three months. Should the Court impose a six month suspension where, as here, the aggravating factors clearly outweigh the mitigating factors?

## **II. COUNTERSTATEMENT OF THE CASE**

### **A. PROCEDURAL FACTS**

The Washington State Bar Association (Association) charged Trejo with violating RPC 1.14(b)(3) for failing to maintain adequate records of funds in his trust account sufficient to identify all client balances and failing to reconcile the check register and bank statements. Trejo was also charged with violating RPC 1.14(a) for commingling earned fees with client funds and having insufficient funds in his trust account. The third charge, for violating RPC 5.3(a) and/or RPC 5.3(b), was based on Trejo's failure to exercise adequate supervision over Maria Alvarez (Alvarez), his non-lawyer assistant, who took client funds from the trust account for her personal use.<sup>1</sup> Clerk's Papers (CP) 2.

On October 18, 2005 a disciplinary hearing was held before Hearing Officer Richard Price. Trejo admitted in his testimony and in a

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<sup>1</sup> A fourth count alleged that Trejo failed to file South Dakota tax returns and failed to pay South Dakota taxes when due, and/or continued to do business in South Dakota without a valid sales tax license, in violation of RPC 8.4(b) and/or RPC 8.4(i). The hearing officer dismissed that count and the Association has not sought review of the ruling.

filed Declaration that he had violated RPC 1.14(b)(3), RPC 1.14(a), and RPC 5.3(a). CP 40.

On February 21, 2006, the hearing officer filed his Amended Findings of Fact, Conclusions of Law and Recommendation (FFCL). The hearing officer found, by a clear preponderance of the evidence, that Trejo had violated RPC 1.14(b)(3), RPC 1.14(a), and RPC 5.3(a) as alleged in Counts 1, 2 and 3. The hearing officer recommended that Trejo be suspended from the practice of law for six months. CP 63. A copy of the FFCL is attached as Appendix A.

On March 15, 2007, the Disciplinary Board modified the hearing officer's decision by striking FFCL 24, 25 and 33. The Board also applied the mitigating factor of character and reputation, and recommended, in an 8-3 decision, that Trejo be suspended for three months followed by two years of probation. Two members would have approved the six month suspension recommended by the hearing officer, and the third member would have approved a two year suspension. Bar File (BF) 72. The Board's Order is attached as Appendix B.

## **B. SUBSTANTIVE FACTS<sup>2</sup>**

### **1. Trejo's Failure to Supervise His Non-lawyer Assistant**

Trejo is a sole practitioner whose practice is limited to the representation of criminal defendants. At all pertinent times, he had one employee, Alvarez, to whom he delegated complete responsibility for his IOLTA account. Trejo did not deal with the IOLTA account in any way, nor did he exercise any supervision over the handling of the account. CP 40.

On May 1, 2003, the Association received notification from Trejo's bank that Trejo's IOLTA account was overdrawn. FFCL 3. In response to a request for an explanation of the overdraft by Trina Doty (Doty), the Association's auditor and a CPA, Trejo explained that Alvarez had written checks from the trust account to herself and deposited them in her personal account. She then wrote personal checks to the trust account and deposited them. She knew there was insufficient money in her personal account to fund the checks that she wrote to the trust account. As a result, an overdraft occurred in Trejo's IOLTA account. FFCL 5. When confronted with the Association's request for an explanation of the overdraft, Alvarez admitted she had written checks from the IOLTA

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<sup>2</sup> Trejo only challenges Findings of Fact 20 and 22. The remaining factual findings are treated as verities on appeal. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 157 P.3d 859 (2007).

account for her personal use. She also admitted taking additional payments from two clients for her own use. FFCL 6. On May 18, 2003, Alvarez signed what amounted to a confession in which she agreed not to steal money, write or cash checks without Trejo's authorization, or hide correspondence. FFCL 10.

Trejo has admitted that he failed to adequately supervise Alvarez, his non-lawyer assistant, in violation of RPC 5.3(a) and RPC 5.3(b). CP 40. Trejo's lack of supervision of Alvarez allowed her to misappropriate funds from the trust account and mishandle the account.

## **2. Trejo's Mismanagement of His Trust Account**

Doty conducted an audit of Trejo's IOLTA account on June 26, 2003 for the period January 2002 to May 2003. FFCL 11. Trejo was present during the audit and Doty conferred with Trejo during the course of the audit. TR 247. In addition to the 12 incidents wherein Alvarez misappropriated funds, the audit also disclosed other problems with Trejo's handling of his trust account.

### **a. Inadequate Records of Funds in the Trust Account**

The audit revealed and Trejo admitted that he failed to maintain adequate records of the funds in his trust account, thereby violating RPC 1.14(b)(3). CP 40. The only record kept of the funds in the trust account consisted of a handwritten disbursement journal that listed the checks

written out of the trust account. The journal entries consisted of the check number, the date on which a check was issued, the payee, the amount of the check and, in some cases, the name of the client associated with the check. FFCL 12. The journal did not have a running balance or show deposits. FFCL 13. No individual client ledgers were maintained. FFCL 16. Three paid checks issued from the trust account were not included in this ledger. These were unauthorized checks written by Alvarez to herself. Ass'n Ex. 4.

b. **Bank Statements Were Not Reviewed or Reconciled to the Trust Account**

Trejo admitted that he did not review monthly bank statements or reconcile them to the trust account in violation of RPC 1.14(b)(3). CP 40. Because of this, Alvarez's activities were not detected until the May 2003 overdraft. FFCL 9.

Furthermore, the audit found that there was a small amount of money in the trust account that could not be identified to a client. Ass'n Ex. 4.

c. **Shortage of Funds in the Trust Account**

Trejo admitted that there were insufficient funds in his trust account in violation of RPC 1.14(a). CP 40. On five occasions, there were insufficient funds in the trust account to pay clients. The shortages lasted from a few days to a few weeks and resulted in delayed payment to

a client who received a Labor & Industries (L&I) check every two weeks.  
FFCL 18.

d. **Deposits Into the Trust Account Were Not Properly Accounted For**

Deposits into the trust account were not always associated with a client. Disbursements were not associated with a client nor were they accounted for so that a computation of a client's balance could be determined. FFCL 16.

e. **Earned Fees Were Commingled with Client Funds**

Trejo admitted he commingled earned fees and client funds, violating RPC 1.14(a). CP 40. He admitted to Doty that the only Washington bank account he maintained was his trust account because he did not want his creditors, including his ex-wife, to be able to attach his funds. FFCL 19, TR 249. Consequently, all checks and wire transfers received from clients were deposited into the trust account, regardless of whether the funds were client funds, fully earned fees, or non-refundable retainers. FFCL 21. During the audit period, \$150,599.66 in fees were deposited into Trejo's trust account. Of that total, \$117,782.84, or approximately 78% of the total deposits, were earned fees that were deposited in 66 separate transactions. TR 254.

### III. ARGUMENT

#### A. STANDARD OF REVIEW

The Supreme Court has plenary authority in lawyer discipline matters. In re Disciplinary Proceeding against Poole, 156 Wn.2d 196, 125 P.3d 954 (2006).

Unchallenged factual findings are verities on appeal. See, e.g., In re Disciplinary Proceeding Against Whitney, 155 Wn.2d 451, 461, 120 P.3d 550 (2005). The Court will not disturb challenged findings of fact if they are supported by substantial evidence. The Court reviews conclusions of law de novo, upholding them if supported by the findings of fact. The Court also reviews sanction recommendations de novo. In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 59, 93 P.3d 166 (2004). Although the Court gives the Board's sanction recommendation "serious consideration," it is not bound by it and is free to modify it. In re Disciplinary Proceeding Against Christopher, 153 Wn.2d 669, 105 P.3d 976 (2005). A recommendation from a divided Board is accorded less weight than a recommendation of a unanimous Board. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 343, 157 P.3d 859 (2007).

**B. SUBSTANTIAL EVIDENCE SUPPORTS THE FINDING THAT TREJO ONLY MAINTAINED AN IOLTA ACCOUNT IN WASHINGTON BECAUSE HE WAS SHIELDING HIS PERSONAL ASSETS**

FFCL 20 states:

Respondent told Ms. Doty that he did not maintain a bank account in Washington other than his trust account because he did not want his creditors, including his former wife, to be able to attach his personal assets, i.e. bank account.

Respondent challenges FFCL 20 on the basis that it is not supported by substantial evidence because it is based solely on the testimony of Doty, the Association's auditor. Trejo claims Doty was confused about the statements he made to her. Trejo offered no evidence at the hearing to refute Doty's testimony, nor is there any evidence in the record that contradicts Doty's testimony.

Doty's testimony, which was the basis for FFCL 20, was that "she spent quite a bit of time talking with Mr. Trejo" about the fact that he maintained only an IOLTA account. TR 256. There is nothing in the record that indicates that Doty was confused about Trejo's use of only an IOLTA account and his reason for doing so. To the contrary, it appears that Doty understood that Trejo wanted to maintain only an IOLTA account and she was working with him to effectuate his wishes in a way that was consistent with his trust account duties. If Doty had been confused, Trejo had ample opportunity during the audit to correct the

confusion. He did not do so.

Trejo's conduct also supports FFCL 20. The fact that Trejo had not opened a personal or business bank account after he received an admonition in 2001 is consistent with the fact that he still was concerned about his creditors attaching his personal assets. The admonition Trejo received in 2001 states: "You are concerned that your trust account might be garnished to satisfy an outstanding domestic relations judgment against you." Ass'n EX 7, attached as Appendix C. Although Trejo claims these concerns no longer existed, his prior conduct corroborates Doty's testimony. This is an inference that the hearing officer reasonably could have drawn from the evidence. In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d 64, 101 P.3d 88 (2004).

The hearing officer believed Doty's testimony. The Disciplinary Board did not disturb this finding. The Court should not disturb it either.

**C. SUBSTANTIAL EVIDENCE SUPPORTS THE FINDING THAT TREJO DEPOSITED EARNED FEES IN HIS TRUST ACCOUNT**

Trejo takes issue with FFCL 22, which states:

Between January 2002 and May 2003, there were sixty-six instances where funds deposited into Respondent's trust account were non-refundable retainers that Respondent considered fully earned fees.

Trejo claims FFCL 22 is in error because he now argues that the

fees he deposited into his trust account were not fully earned and were therefore properly deposited into his IOLTA account. This is contrary to his statements made to Doty during the audit about these fees.

Trejo received payments in the form of wire transfers, cash, or check. CP 40. Trejo has admitted that wire transfers went directly to his IOLTA account and checks were deposited into his IOLTA account, “regardless of whether the funds were client funds, fully earned fees or non-refundable retainers.” CP 40. He now argues that the funds that were wire transferred into his IOLTA account were “potential non-refundable retainers” that were paid by third parties on behalf of incarcerated individuals who had not yet consented to the representation and the fees were not fully earned.

This position is contradicted by Trejo’s own statements to Doty during the course of the audit. As to funds that were wire transferred, Doty testified that Trejo himself told her these were fully earned fees: “Mr. Trejo actually told me that all of the wires coming into his account were earned fees.” TR 252. He did not tell her that they were subject to approval of the representation. He did not call them “potential earned fees.” He told her they were fully earned.

In addition, Trejo admitted that when he received a check from a client, he “deposited the check into his trust account regardless of whether

the funds were client funds, fully earned fees or non-refundable retainers,” and that he deposited funds into his trust account that were non-refundable retainers. CP 40 at 7. Doty testified that she reviewed these deposits and the backup documentation of the activity in the trust account. She read each written fee agreement to determine the nature of the fees and determined whether the fees were fully earned based upon the terms of the fee agreements between Trejo and his clients. There was no evidence that any of the fee agreements characterized the fees as anything other than fully earned. TR 238, 252.

Doty further testified that, when discussing the nature of the fees with Trejo, he was “very up front that they were earned fees. I can’t think of any instance, actually, where he said something was client money that I didn’t agree with.” TR 251-253.

Trejo also argues that Doty’s testimony was conclusory; that no deposit attributable to a single client was admitted as evidence, and it would have been impossible for him to analyze or cross examine Doty on this point. RB 18. But Trejo had ample opportunity at hearing to present evidence on this point. All of the books and records that supported Doty’s testimony were provided to her by Trejo. TR 234. He could have cross-examined Doty on these points but chose not to do so. The hearing officer was entitled to credit Doty’s testimony on this point.

Based on Doty's testimony, the audit findings, Trejo's own admissions, and the lack of any contradictory testimony, Trejo's assertion that there was insufficient evidence to support FFCL 22 is without merit.

#### IV. SANCTION ANALYSIS

##### A. THE ABA STANDARDS SUPPORT A SIX MONTH SUSPENSION

The Court employs the American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) "as a basic, but not conclusive, guide" to imposing sanctions. Whitney, 155 Wn.2d at 461. Under the ABA Standards, the Court first determines the presumptive sanction by examining the ethical duty violated, the lawyer's mental state and the injury caused. In re Disciplinary Proceeding Against Blanchard, 158 Wn.2d 317, 331, 144 P.3d 286 (2006). The Court then determines whether the presumptive sanction should be increased or reduced due to the application of the aggravating or mitigating factors. Id.

##### B. THE HEARING OFFICER AND DISCIPLINARY BOARD PROPERLY FOUND SUSPENSION TO BE THE PRESUMPTIVE SANCTION

The hearing officer concluded that the presumptive sanction for Counts 1 through 3 was suspension under ABA Standards 4.12 and ABA Standards 7.2. Copies of these ABA Standards are attached as Appendix D. The Board did not change that recommendation.

The hearing officer found that, as to all three violations, Trejo's state of mind was knowing. Under the ABA Standards, knowledge means "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." ABA Standards at 7. The hearing officer's determination of state of mind is a factual determination to be given great weight on review. In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 122 P.3d 710 (2005).

Trejo argues that, as to all three violations, his state of mind was negligent, not knowing. He appears to be asking the Court to apply in lawyer discipline cases the mens rea standards used in the criminal law context. RB at 25-26. But those definitions are different from what is found in the ABA Standards and there is no authority for the proposition that they apply in a lawyer discipline proceeding.

**1. Violation of RPC 1.14(b)(3) (Count 1)**

The hearing officer properly applied ABA Standards 4.12 to Trejo's violation of RPC 1.14(b)(3) and determined suspension to be the presumptive sanction. He found that Trejo knew he was required to keep complete records of his trust account because he previously had been disciplined for violating RPC 1.14(b). He further found that Trejo knew that he could not delegate his duties regarding his trust account to his

assistant. FFCL at 15. Trejo's conduct satisfies the "knowledge" state of mind articulated in ABA Standards 4.12.

Trejo admits that he "delegated the accounting and reconciling of his trust account to Ms. Alvarez." TR 428, RB 28. He argues that, because he is a sole practitioner, he must trust his employee and, because Alvarez had not stolen from him before, he had no reason to distrust her. On this basis, he contends that his state of mind was negligent, not knowing.

Trejo's argument is without merit. Trejo's prior discipline for violating RPC 1.14(b) put him on notice of his duties under the RPC. Even without the prior discipline, the hearing officer correctly found that Respondent knew he was not maintaining complete records and that he did not keep a running balance of the funds in his trust account, did not keep client ledgers, and did not reconcile his bank statement. Trejo's conduct satisfies the "knowledge" state of mind prescribed in ABA Standards 4.12.

The hearing officer also found that there was serious injury to one of Trejo's clients. There were insufficient funds in the IOLTA account, and payments to the client were delayed. FFCL at 15, 17.

Suspension is the proper presumptive sanction for Trejo's violations of RPC 1.14(b)(3).

## 2. Violation of RPC 1.14(a) (Count 2)

ABA Standards 4.12 was correctly applied by the hearing officer to Trejo's violation of RPC 1.14(a). The hearing officer also correctly decided that the presumptive sanction was suspension.

Here, Trejo knew he maintained only an IOLTA account, which meant that earned fees that were wire transferred or paid by check would be deposited into that account. Trejo's reason for maintaining only an IOLTA account was to insulate his personal funds from his creditors. FFCL 19, TR 249. This implicates a mental state of at least knowledge. See In re Disciplinary Proceeding Against Tasker, 141 Wn.2d 557, 9 P.3d 822 (2000) (finding knowledge when lawyer commingled funds to avoid garnishment of his personal and business accounts for past due child support payments). The hearing officer also determined that Trejo's prior discipline was fair warning of his obligations concerning the handling of his trust account. FFCL at 14-15. The hearing officer properly found that Trejo's mental state was knowledge.

There is potential serious injury when a lawyer commingles funds. "The prohibition against commingling ensures that a lawyer's creditors will not be able to attach clients' property." See Legal Background to Rule 1.15, Annotated Model Rules of Prof'l Conduct 249 (ABA 1996). A lawyer cannot use a trust account as a personal bank, which endangers all

of the client funds entrusted to the lawyer. As the Court noted in In re Disciplinary Proceeding Against McKean, 148 Wn.2d 849, 64 P.3d 1226 (2003): “Lawyers sometimes forget that the dangers of commingling are not merely that the lawyer will squander the money ‘borrowed’ from a trust account and not be able to restore it, but that the commingled funds might be subject to attachment by a lawyer’s creditors, thus preempting the lawyer’s ability to do so.” Id. at 864.

Although Trejo argues that there was only “minor injury” suffered by his client, this client was, in fact, injured when his disability payments were delayed. FFCL 15, 17. Suspension is the proper presumptive sanction.

### **3. Violation of RPC 5.3(b) (Count 3)**

The hearing officer properly applied ABA Standards 7.0 to Trejo’s failure to supervise Alvarez, his non-lawyer assistant, and determined that the presumptive sanction for Trejo’s violation of RPC 5.3(b) was suspension under ABA Standards 7.2.

The hearing officer found that Trejo’s state of mind was knowing, based on his failure to exercise even a minimal level of supervision over his non-lawyer assistant’s handling of client funds and the trust account. The hearing officer also found that allowing Alvarez to sign his name on trust account checks, coupled with his failure to review or reconcile the

bank statement, was an open invitation for Alvarez to manipulate the account to Trejo's clients' detriment. FFCL at 18-19. Furthermore, Trejo's most recent prior discipline, the reprimand he received in 2003, involved the actions of a non-lawyer assistant. There was substantial evidence from which the hearing officer concluded that Trejo knew that he needed to supervise his non-lawyer assistant but failed to do so. A copy of the 2003 reprimand is attached as Appendix E.

There was injury to Trejo's client as a result of his conduct. A disability payment to a client was delayed as a result of the insufficiency of funds in the IOLTA account. FFCL 15, 17. In addition, there was the potential for serious injury to Trejo's clients if the trust account was depleted even further by Alvarez's actions.

Although Trejo admits that he failed to supervise his non-lawyer assistant, he argues that ABA Standards 5.1 is most applicable to his conduct. However, ABA Standards 5.1 applies in situations where a lawyer engages in conduct involving criminal conduct or where a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit or misrepresentation. In this case, there was no evidence nor is there any assertion that Trejo engaged in conduct involving dishonesty with respect to his assistant. Therefore, ABA Standards 5.1 does not apply.

### **C. THE APPLICATION OF THE AGGRAVATING AND MITIGATING FACTORS SUPPORTS A SIX MONTH SUSPENSION**

After determining the presumptive sanction, the aggravating and mitigating factors are weighed to determine if they support deviation from the presumptive sanction. VanDerbeek 153 Wn.2d at 89.

#### **1. The Hearing Officer and the Disciplinary Board Properly Applied the Aggravating Factors**

##### (a) Prior Disciplinary Offenses

The hearing officer and the Disciplinary Board agreed that the aggravating factor of prior offenses applied. Trejo had the following prior disciplinary offenses:

- An admonition on September 10, 2001 for failing to promptly pay client funds held in his trust account to his client in violation of RPC 1.14(b).
- A reprimand on June 6, 2003 for failing to deposit an advance fee into his trust account in violation of RPC 1.14(a), RPC 1.14(b), and also violating RPC 1.1, RPC 1.3, RPC 1.5(a), RPC 1.5(b), and RPC 1.15(d).

Prior offenses are a serious aggravating factor if they are similar to the violations in the matter at hand. VanDerbeek, 153 Wn.2d at 92. Both prior disciplinary offenses related, in part, to violations of RPC 1.14, the same RPC that was violated in this case.

(b) Dishonest or Selfish Motive

The hearing officer and the Disciplinary Board found that Trejo had a selfish motive because he commingled his funds and those of his clients in his IOLTA account to protect the funds from his creditors.

Trejo disputes this conclusion by asserting that he was not protecting his assets from his creditors. The hearing officer found to the contrary. Trejo also argues that he did, in fact, have a checking account in California. However, the existence of a California bank account is irrelevant to the fact that Trejo deposited both his funds and client funds into his Washington IOLTA account.

(c) Pattern of Misconduct

The aggravating factor of pattern of misconduct was applied by the hearing officer and the Disciplinary Board. This aggravator applies when “multiple violations occurred, involving multiple clients, over an extended period of time.” In re Disciplinary Proceeding Against Brothers, 149 Wn.2d 575, 586, 70 P.3d 940 (2003). Here, there were 66 instances over a period of 16 months where earned fees were deposited into Trejo’s IOLTA account.

(d) Multiple Offenses

Trejo’s conduct involved violations of three RPC. The aggravating factor of multiple offenses was properly applied by the hearing officer and

the Disciplinary Board. In re Disciplinary Proceeding Against Cohen, 150 Wn.2d 744, 82 P.3d 224 (2004).

(i) Substantial Experience in the Practice of Law

Trejo was admitted to practice in the State of Washington on October 1, 1990. He had been in practice for 12 years when the conduct took place.

**2. The Hearing Officer and the Disciplinary Board Properly Applied the Mitigating Factors**

The hearing officer and the Disciplinary Board applied the mitigating factor of remorse. In addition, the Disciplinary Board applied the mitigating factor of character and reputation.<sup>3</sup>

Trejo seeks the application of the following additional mitigators, none of which is applicable here.

(c) Personal or Emotional Problems

Trejo argues that the mitigator of personal or emotional problems should have been applied by the hearing officer, and that In re Disciplinary Proceeding Against Burtch, 112 Wn.2d 19, 770 P.2d 174 (1989) applies to this case. However, Burtch involved a situation where the lawyer was experiencing dire personal problems that led to depression. There is no evidence that Trejo was experiencing such personal or

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<sup>3</sup> The Association does not challenge the application of the additional mitigating factor of character and reputation applied by the Disciplinary Board.

emotional problems. Furthermore, although Trejo claims he was having financial problems, personal financial problems are not a mitigating factor. In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 801 P.2d 962 (1990).

(d) Timely Good Faith Effort to Make Restitution or Rectify the Consequences of Misconduct

Trejo argues that this mitigating factor should apply because he decided to forego fees in the Labor & Industries client matter. The hearing officer correctly concluded that this mitigator only applies if the actions to rectify the consequences of the mistake are both timely and in good faith. In this case, Trejo determined to waive additional fees almost two years after the injury to the client had occurred and after the Association notified Trejo of its investigation in this matter. FFCL at 21. The hearing officer and the Disciplinary Board properly rejected the application of this mitigator.

(e) Full and Free Disclosure or Cooperative Attitude

The hearing officer and the Board rejected Trejo's argument that this mitigating factor applied. "Cooperating with the disciplinary proceedings is not a mitigating factor, even though lack of cooperation may be an aggravating factor." In re Disciplinary Proceeding Against Whitt, 152 Wn.2d 601, 98 P.3d 444 (2004), quoting In re Disciplinary Proceeding Against Huddleston, 137 Wn.2d 560, 579, 974 P.2d 325

(1999).

This case is different from recently decided cases in which this mitigator was applied. In In re Disciplinary Proceeding Against Dornay, 160 Wn.2d 671, 161 P.3d 333 (2007), the Court deferred to the Disciplinary Board's application of the mitigating factor of full cooperation with the disciplinary proceedings. And in another recent case, the Court deferred to the hearing officer's application of the mitigator because the application of mitigating factors is a factual finding. In re Disciplinary Proceeding Against Perez-Pena, \_\_\_\_\_ Wn.2d \_\_\_\_\_, 168 P.3d 408 (2007). Neither the hearing officer nor the Board found this mitigating factor to be present. Neither should the Court.

(k) Imposition of Other Penalties or Sanctions

The hearing officer and the Board found that Trejo's "self-imposed" penalty of foregoing fees in the case of the Labor & Industries client did not warrant application of this mitigator. FFCL at 21.

Trejo admits that there were no penalties or sanctions imposed as a result of his misconduct except his voluntary waiver of future fees in the case of the L & I client whose checks were delayed because of insufficient funds in the IOLTA account. RB at 43. The Court should defer to the hearing officer's factual finding and not apply this mitigating factor. Id.

**D. THE BOARD INCORRECTLY REDUCED THE  
SUSPENSION TO THREE MONTHS GIVEN THE WEIGHT  
OF THE AGGRAVATING FACTORS**

The length of a suspension is based on the aggravating and mitigating factors. In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 493, 998 P.2d 833 (2000). Generally, the minimum term of suspension is six months. Id. at 495; In re Disciplinary Proceeding Against Cohen, 149 Wn.2d 323, 339, 67 P.3d 1086 (2003). “The minimum suspension is appropriate in cases where there are both no aggravating factors and at least some mitigating factors, or when the mitigating factors clearly outweigh the aggravating factors.” Id.

The Board, “based on the record viewed as a whole,” reduced the hearing officer’s recommended suspension from six months to three months. DP 72. In this case, the Board erred. Reduction of a suspension from the minimum six month suspension is warranted “where there are either no aggravating factors and at least some mitigating factors, or where the mitigators clearly outweigh any aggravating factors.” Halverson, 140 Wn.2d at 486. Here, the aggravating factors outweigh the mitigating factors and justify at least the minimum six month presumptive sanction.

Trejo has been disciplined twice in the past five years for violations of RPC 1.14, receiving an admonition in 2001 and a reprimand in 2003. Although the circumstances in the prior cases were not identical

to those in this case, they were sufficiently similar to put Trejo on notice of his duties and obligations in handling his trust account. Yet Trejo has failed to heed their warning. Sanctions short of suspension seem to make little impression on Trejo. The Board's reduction of the suspension in this case to three months is not warranted by the facts and is insufficient to protect the public.

V. CONCLUSION

The Association asks the Court order that Trejo be suspended from the practice of law for six months.

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of November, 2007.

WASHINGTON STATE BAR ASSOCIATION



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Debra Slater, Bar No. 18346  
Disciplinary Counsel

# **Appendix A**

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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

GEORGE P. TREJO  
Lawyer (Bar No. 19758).

Public No. 05#00008

AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND HEARING  
OFFICER'S RECOMMENDATION

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was conducted before the undersigned Hearing Officer on October 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup>, 2005, in which Respondent George P. Trejo appeared pro se and Disciplinary Counsel Debra Slater and Craig Bray appeared for the Washington State Bar Association ("the Association").

I.

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Amended Formal Complaint filed by the Association on May 15<sup>th</sup>, 2005 charged George P. Trejo with the following counts of misconduct:



1           5. On May 20, 2003, Respondent explained that his sole employee, Maria Alvarez, nee  
2 Garza, had admitted, when confronted by Mr. Trejo about the overdraft, that she had written  
3 checks from Respondent's trust account and had signed Respondent's name without his  
4 authorization. Ms. Alvarez deposited these checks into her personal checking account to cover  
5 personal indebtedness. Ms. Alvarez then wrote checks from her personal account, not  
6 necessarily in the same amounts withdrawn, and deposited them into Respondent's trust account  
7 to try to cover her withdrawals. Ms. Alvarez did this approximately 12 times in amounts  
8 ranging from \$20 to \$2,050. One of these instances caused the overdraft.

9           6. Ms. Alvarez also admitted to Respondent that she had taken payments from two  
10 clients for her personal use.

11           7. In the first instance, Respondent's office received a payment in the amount of \$860  
12 from the State Office of Public Defense for an appeal in the matter of State of Washington v.  
13 A.S. Ms. Alvarez took this check, endorsed it by signing Respondent's name without consent  
14 or authorization to do so, cashed the check, and misappropriated the funds.

15           8. In the second instance, \$2,000 was wire transferred to Respondent's IOLTA account  
16 by the family of M. O. for an appeal in the Ninth Circuit. Ms. Alvarez misappropriated the  
17 funds.

18           9. Respondent did not review or reconcile bank statements and therefore Ms. Alvarez's  
19 activities went undetected by Respondent until the May 2003 overdraft.

20           10. On May 18, 2003, Ms. Alvarez signed a document attesting to the facts  
21 surrounding the overdraft. She also agreed that she would not steal money, write or cash checks  
22 without Respondent's authorization, and would not hide correspondence from Respondent.

23           11. WSBA Auditor Doty conducted an audit of Respondent's books and records for  
24 the period January 2002 to May 2003.

25           12. During this time period, Respondent's records of funds in his IOLTA account  
26 consisted solely of a hand written journal that listed the number of the checks written out of the  
27

1 trust account, the date on which the check was issued, the payee, and the amount of the check.  
2 In some, but not all cases, the hand written journal listed the name of the client associated with  
3 the check.

4 13. The journal did not have a running balance, nor did it show deposits.

5 14. Three checks issued from the trust account were not included in the ledger.

6 15. Respondent did not review the bank statements, nor did he reconcile the journal  
7 to bank statements.

8 16. Respondent did not maintain individual client ledgers for his IOLTA account nor  
9 did he track deposits and disbursements by client so that a computation of client balances could  
10 be accurately determined.

11 17. Because he did not keep complete records, Respondent was not able to determine  
12 the amount of money in his trust account that belonged to each of his clients.

13 18. During the audit period, Respondent was receiving a check on behalf of a Labor  
14 and Industries' client every two weeks. Respondent's client was to receive 90% of the amount  
15 of the check and Respondent was to receive 10%. The checks were deposited into Respondent's  
16 IOLTA account. On five occasions during the audit period, there was insufficient money in the  
17 trust account to pay the client and the payments to the client were delayed. These shortages  
18 lasted from a few days to a few weeks.

19 19. During the audit period, Respondent maintained only an IOLTA account and  
20 maintained no Washington bank account for his personal funds.

21 20. Respondent told Ms. Doty that he did not maintain a bank account in  
22 Washington other than his trust account because he did not want his creditors, including his  
23 former wife, to be able to attach his personal assets, i.e. bank account.

24 21. During the audit period, when Respondent received a check from a client,  
25 Respondent deposited the check into his IOLTA account regardless of whether the funds were  
26 client funds, fully earned fees or non-refundable retainers.

1           22.     Between January 2002 and May 2003, there were sixty-six (66) instances where  
2 the funds deposited into Respondent's trust account were non-refundable retainers that  
3 Respondent considered fully earned fees.

4           23.     In each instance, after the funds are deposited, a trust account check representing  
5 the fully earned fees was issued to Respondent or to Ms. Alvarez. The trust account check was  
6 cashed and the cash kept in Respondent's office to be used by Respondent.

7           24.     During the pertinent period of time, in at least nine instances when client funds  
8 were deposited into Respondent's trust account, a corresponding check was written from the  
9 trust account either on the same day or shortly after the deposit was made and before the  
10 deposited check had cleared.

11          25.     During the pertinent period of time, Respondent refunded part of an earned fee to  
12 a client using a cashier's check. The client was not able to cash the check and returned it to  
13 Respondent. Respondent deposited the cashier's check into his trust account and issued the  
14 client a check from Respondent's trust account.

15          26.     During the pertinent period of time, Respondent deposited cash into his trust  
16 account and issued a trust account check to an attorney in Indiana to whom he owed money.

17          27.     At the conclusion of the audit, Ms. Doty reviewed the audit findings with  
18 Respondent. She explained to him the problems with his handling of the trust account. She also  
19 explained to him the proper procedures for handling the trust account and how he could keep  
20 complete records.

21          28.     At the conclusion of the audit, Ms. Doty gave Respondent a copy of her audit  
22 notes, which included her findings and recommendations. She also gave Respondent a copy of  
23 the Washington State Bar Association publication entitled "Managing Client Trust Accounts—  
24 Rules, Regulations, and Common Sense."

25          29.     On March 15, 2004, Ms. Doty conducted a follow up audit of Respondent's trust  
26 account at the request of Association counsel Debra Slater. Respondent was not notified that  
27

1 the follow-up audit was a precursor to the filing of a formal complaint against him.

2 30. The follow-up audit disclosed that Respondent implemented a number of  
3 changes in his office procedures.

4 31. The follow-up audit also revealed that Respondent did not consistently use client  
5 ledgers, did not identify deposits by client, and did not reconcile the client ledgers to  
6 Respondent's check register.

7 32. The follow-up audit disclosed that Respondent continued to deposit earned fees  
8 into Respondent's trust account. From June, 2003 to February 2004, a total of \$37,500 in  
9 earned fees were improperly deposited into Respondent's trust account.

10 33. Respondent had not, as of the dates of the hearing, terminated Ms. Alvarez.

11 34. Respondent admits violations of the RPC's, as charged in Counts I-III in his  
12 answers to the formal complaint, both in writing by way of his Declaration filed immediately  
13 prior to the hearing and verbally during his testimony.

14 35. In mitigation of these violations Mr. Trejo testified without objection to the  
15 following:

- 16 a. The Respondent, George Paul Trejo, Jr. was admitted to the practice of law  
17 in the State of Washington on October 1, 1990. He is not and has never been  
18 issued a license to practice law in the State of South Dakota.
- 19 b. The Respondent has practiced law in Yakima, Washington since October 1,  
20 1990. He has been a sole practitioner since June 1995. Between October 1,  
21 1990 and June 1995, the Respondent practiced law with his, now ex-wife, in  
22 Yakima, Washington. He is bi-lingual in Spanish and English.
- 23 c. The only business the Respondent has ever personally owned and operated is  
24 his law practice. The Respondent has had only 1 employee, Maria Alvarez,  
25 who has worked for him for the past 9 years.
- 26 d. For approximately the past 5 years, Respondent has limited his law practice  
27

1 to criminal defense. He has represented individuals in approximately 14  
2 different counties in the State of Washington and in at least 19 different  
3 States and at least 25 different districts of the United States District Courts.  
4 He has appeared before at least 50 different United States District Court  
5 Magistrate Judges and United States District Court Judges.

- 6 e. The Respondent devotes a substantial amount of time each year on a pro  
7 bono basis to a variety of different criminal matters. In the past, the  
8 Respondent has represented defendants accused of Aggravated First Degree  
9 Murder and other homicides for free: State v. Julio Delgado; State v. Charles  
10 Coachman. The Respondent has also represented numerous other individuals  
11 for free in State and Federal Courts who have been accused of substantially  
12 lesser charges.
- 13 f. The Respondent has never been sanctioned, disbarred, or otherwise  
14 disciplined by any Judge in any State or Federal Court with regard to his  
15 conduct with the exception of United States v. Jorge Ibarra. In the Ibarra  
16 case, he was sanctioned \$150.00 by the Honorable Judge Thomas Zilly,  
17 U.S.D.C., W.D., WA (Seattle) for appearing 15 minutes late in a telephonic  
18 hearing. The reason he was late was because he was involved in another  
19 hearing before the Honorable Edward Shea in the U.S.D.C., E.D. WA  
20 (Spokane).
- 21 g. In 1995, the Respondent received the Outstanding Young Lawyer of the Year  
22 award from the Washington State Bar Association, Young Lawyers Division.
- 23 h. The Respondent is currently a member of the National Association of  
24 Criminal Defense Lawyers.
- 25 i. The Respondent has achieved "advocate" status with the American Trial  
26 Lawyers Association.
- 27

- 1 j. The Respondent has also spoken at Continuing Legal Education Seminars,  
2 before the Washington State Trial Lawyers Association and the Criminal  
3 Law Institute sanctioned by the Washington State Bar Association.
- 4 k. The Respondent has been the lead counsel in over 70 jury trials in felony  
5 cases as well as complex civil cases. These cases ranged from Aggravated  
6 Murder Death Penalty to complex Medical Negligence matters.
- 7 l. The Respondent served as co-Liaison Counsel for approximately 5 years in  
8 the Hanford Litigation, CY-91-3015-AAM.
- 9 m. The Respondent has achieved over 20 Not Guilty Verdicts in a variety of  
10 different federal criminal charges in State and Federal Courts.

11 **III.**

12 **FINDINGS OF FACT AS TO COUNT IV**

13 36. In 2003, Respondent was retained in the State of Washington to represent  
14 Johnnie Cervantes, the defendant in a criminal case in the United States District Court for the  
15 South Dakota Central Division.

16 37. Respondent was retained in and his fee was paid in the State of Washington.

17 38. The Honorable Judge Charles B. Kornmann was assigned to preside over the  
18 Cervantes trial.

19 39. United States Magistrate Mark Moreno was assigned to preside over preliminary  
20 matters and various motions in the case.

21 40. Patricia Carlson, South Dakota counsel, filed a motion on behalf of Respondent  
22 for his admission to the District Court *pro hac vice*.

23 41. On April 10, 2003, prior to a scheduled hearing, Respondent met with Judge  
24 Moreno and Ms. Carlson.

1 42. Respondent was advised by Judge Moreno to obtain a copy of Judge  
2 Kornmann's "Standard Operating Procedures" ("SOP"), which contained guidance for attorneys  
3 who practice in his court.

4 43. The SOP set forth the Honorable Judge Kornmann's requirement "to have a sales  
5 tax license and to collect and pay such taxes on all services performed in S.D" in order to  
6 practice in his Court.

7 44. Respondent received a copy of the SOP from Ms. Carlson and was advised that  
8 the Clerk of the Court was advised by Sr. Judge Kornmann not to file the order admitting him  
9 *pro hac vice* until Respondent obtained a South Dakota sales tax license.

10 45. Respondent filed an application for a South Dakota Department of Revenue  
11 ("Department of Revenue") sales tax license.

12 46. Although Respondent qualified for issuance of a permanent license a temporary  
13 sales tax license was issued to Respondent on May 7, 2003. The license expired on October 31,  
14 2003 without explanation as to its limited term. The decision to issue a six-month license  
15 instead of a permanent license is strictly arbitrary and within the sole discretion of the  
16 Department of Revenue and the reasons for why one or the other is issued is unknown.

17 47. On May 13, 2003, Judge Moreno signed the order admitting Respondent *pro hac*  
18 *vice* without any qualifications or requirement to file for or pay South Dakota sales tax.

19 48. Respondent then represented Cervantes through all phases of the case, including  
20 trial and sentencing.

21 49. Respondent's appearances in federal court in South Dakota on behalf of his  
22 client Cervantes, at trial in January 2004 and sentencing in May 2004, occurred after  
23 Respondent's temporary sales tax license had expired.

24 50. Respondent never obtained a new sales tax license.

25 51. The South Dakota Department of Revenue issued only a six-month license  
26 instead of a "fully issued" license but could not explain why it only issued a six-month license.

27

1           52.    The fees paid to Respondent to represent Mr. Cervantes were paid and receipted  
2 in the State of Washington. The fees were paid in installments based on the times when  
3 Respondent appeared in court.

4           53.    Respondent did not file monthly South Dakota tax returns until August 2005.

5           54.    Respondent did not make any tax payments to the Department of Revenue prior  
6 to June 15, 2004.

7           55.    On March 1, 2004, Respondent received a Jeopardy Assessment in the amount of  
8 \$5,108.40 issued by the Department of Revenue on February 24, 2004 for Respondent's failure  
9 to file returns and pay sales tax for May, June, July, August, September, and October 2003.

10          56.    A Jeopardy Assessment is a demand for payment.

11          57.    No evidence was presented of Respondent being provided any notice about  
12 when, where or how to file an appeal of the jeopardy assessment.

13          58.    On March 26, 2004, a tax lien in favor of the state of South Dakota was issued  
14 allegedly attaching to Respondent's property even though Respondent maintained no property  
15 in South Dakota.

16          59.    At Mr. Cervantes sentencing hearing, Mr. Trejo learned, for the first time during  
17 an ad hoc hearing on his failure to pay the sales tax, that violation of the law carried criminal  
18 penalties.

19          60.    Because of this information Respondent attempted to work with the Department  
20 of Revenue to satisfy its claim so as not to put himself in jeopardy of criminal penalties.

21          61.    On June 15, 2004, Respondent sent a memo to the Department of Revenue  
22 requesting additional time to file the tax returns.

23          62.    In the memo, Respondent made his own calculation of the amount of tax owing,  
24 based upon fees in the amount of \$23,500, less \$4,210 that he paid to local counsel and  
25 expenses of \$5,000, leaving what Respondent claimed was a taxable amount of \$14,290.  
26  
27

1           63.     Respondent remitted two U.S. Postal Service money orders in the amount of  
2 \$625 each to the Department of Revenue as an "estimated payment."

3           64.     Respondent received a letter from the Department of Revenue dated June 17,  
4 2004, granting his request for extension of time and giving him until June 30, 2004 to file the  
5 outstanding sales tax return forms.

6           65.     Respondent believed, in good faith, that the correspondence with the State  
7 Department of Revenue contained in exhibits A-34 through A-36 constituted a settlement of the  
8 sales tax and assessments claimed owing.

9           66.     Respondent did not file the requested tax return forms by June 30, 2004.

10          67.     The Department of Revenue sent Respondent Delinquent Notices every month  
11 from July 2003 through August 2005, except for June 2004.

12          68.     The Department of Revenue sent Respondent Amount Due Notices every month  
13 from March 2004 through July 2005, except for the month of June 2004.

14          69.     Respondent did not respond to any of the Delinquent or Amount Due Notices.

15          70.     On August 19, 2005, Respondent received another Jeopardy Assessment from  
16 the Department of Revenue for Respondent's failure to cooperate in filing returns and paying  
17 sales tax for the period from November 2003 to May 2004.

18          71.     Respondent did file some tax returns in August 2005, but only filed tax returns  
19 for the months of May 2003 through February 2004. Respondent did not file tax returns for the  
20 months of March, April or May 2004.

21          72.     The State Department of Revenue does not know how much tax, if any, is  
22 presently due and owing.

23          73.     South Dakota Codified Laws ("SDCL") 10-45-24 provides that a person  
24 engaging in a business in South Dakota have a retail sales permit or license.

25          74.     SDCL 10-45-27 requires that tax returns shall be filed and payment of the tax  
26 made on a monthly basis.

1 75. SDCL 10-45-48.1 provides that a person who fails to pay the tax within sixty  
2 days from the date it becomes due is guilty of a Class 1 misdemeanor.

3 76. SDCL 10-45-34 provides that anyone who fails to file a tax return or pay tax  
4 when due shall have their sales tax licensed cancelled and that any person who continues in  
5 business after his license has been revoked or cancelled is guilty of a Class 1 misdemeanor.

6 77. SDCL 10-45-48.1(8) provides that anyone who fails to file tax returns or remit  
7 payment when required on more than one occasion is guilty of a felony.

8 78. Respondent has engaged Department of Revenue officials in person and by  
9 written memo challenging application of the South Dakota tax laws to his representation of Mr.  
10 Cervantes.

11 79. The Department is handling the case as a civil matter and believes Mr. Trejo has  
12 resisted the applicability of the tax assessment in good faith. Chief legal counsel for the South  
13 Dakota Department of Revenue cannot say whether the South Dakota sales tax license law  
14 applies to Mr. Trejo.

15 80. South Dakota Department of Revenue legal counsel and representatives believe  
16 Mr. Trejo's challenge to application of the law was made in good faith on the basis of credible  
17 legal challenges.

#### 18 IV.

#### 19 CONCLUSIONS OF LAW

20  
21 1. In these proceedings, the WSBA has the burden of proving each count by a clear  
22 preponderance of the evidence.

23 2. Count 1 has been proven by a clear preponderance of the evidence. By failing to  
24 maintain adequate records of funds in his trust account sufficient to identify all client balances,  
25 and failing to reconcile the check register and bank statements, Respondent violated RPC  
26 1.14(b)(3).

1 3. Count 2 has been proven by a clear preponderance of the evidence. By commingling  
2 earned fees with client funds and having insufficient funds in his trust account, Respondent  
3 violated RPC 1.14(a).

4 4. Count 3 has been proven by a clear preponderance of the evidence. By failing to  
5 exercise adequate supervision over Ms. Alvarez (a non-lawyer assistant), Respondent violated  
6 RPC 5.3 (a) and/or (b).

7 5. Count 4 has not been proven by a clear preponderance of the evidence and is  
8 dismissed.

9 6. Respondent's mental state in violating RPC 1.14(a) was knowing.

10 7. Respondent's mental state in violating RPC 5.3 (a) and (b) was knowing.

11  
12 **V.**

13 **PRESUMPTIVE SANCTIONS**

14 1. The framework for imposing sanctions in matters of lawyer discipline is set forth in  
15 the ABA Standards for Imposing Lawyer Sanctions. ABA Standard 3.0 sets out four factors to  
16 be considered in imposing sanctions to wit: (1) the ethical duty owed, (2) the lawyer's mental  
17 state, (3) the extent of actual or potential injury, and (4) the existence of any aggravating and  
18 mitigating circumstances.

19 2. A presumptive sanction must be determined for each ethical violation. In re  
20 Anschell, 149 Wn.2d 484, 501, 69 P.2d 844 (2003).

21 **A. COUNT 1: RESPONDENT VIOLATED RPC 1.14(b)(3)**

22 Respondent violated RPC 1.14(b)(3), which requires that a lawyer "maintain complete  
23 records of all funds, securities, and other properties of a client coming into the possession of the  
24 lawyer and render appropriate accounts to his or her client regarding them."

25 ABA Standards section 4.1 is most applicable to violations of RPC 1.14(b)(3) and the  
26 duty to preserve client's property:  
27

1           **4.1 Failure to Preserve the Client's Property**

2           Absent aggravating or mitigating circumstances, upon application of the factors  
3           set out in 3.0, the following sanctions are generally appropriate in cases involving the  
4           failure to preserve client property:

- 5           4.11    Disbarment is generally appropriate when a lawyer knowingly converts client  
6           property and causes injury or potential injury to a client;  
7           4.12    Suspension is generally appropriate when a lawyer knows or should know that he  
8           is dealing improperly with client property and causes injury or potential injury to  
9           a client;  
10          4.13    Reprimand is generally appropriate when a lawyer is negligent in dealing with  
11          client property and causes injury or potential injury to a client;  
12          4.14    Admonition is generally appropriate when a lawyer is negligent in dealing with  
13          client property and causes little or no actual or potential injury to a client.

14           The conduct described in ABA Standards 4.1 encompasses two states of mind: knowing  
15           conduct and negligent conduct. "Knowledge" is defined in the ABA Standards as "the  
16           conscious awareness of the nature or attendant circumstances of the conduct but without the  
17           conscious objective or purpose to accomplish a particular result." Knowledge does not require  
18           that the lawyer be aware of or intend that a particular result will follow, it only requires that the  
19           lawyer be aware of the conduct, not the results.

20           **1. Respondent's State of Mind was Knowing**

21           Respondent's conduct was knowing. He knew that he was not maintaining complete  
22           records. He knew that he maintained incomplete client ledgers. He knew that he did not keep a  
23           running balance of the funds on deposit in his trust account. He knew that he did not reconcile  
24           his bank statement to his check register.

25           Respondent knew what was required of him because he had been previously disciplined  
26           on two separate occasions for violating RPC 1.14(b). He received an Admonition in 2001 for  
27           violating RPC 1.14(b) and a Reprimand in 2003 for, among other things, violating RPC 1.14(b).  
(Ex A-11) Although the specifics of the previous misconduct are not identical to the  
            misconduct in this case, after two prior disciplinary actions, Respondent not only should have

1 know, but he actually knew that RPC 1.14(b) imposed upon him a duty to keep complete  
2 records.

3 Respondent also knew that the duties imposed by RPC 1.14(b) could not be delegated to  
4 his assistant. Respondent argues that his state of mind was negligent because this was the first  
5 time that Ms. Alvarez had stolen from him and he had no reason to distrust her. However, he  
6 knew that he was responsible for maintaining complete records and that responsibility could not  
7 be delegated to his assistant. The reprimand he previously received occurred because "his  
8 office assistant failed to properly account for the wire transfers received for the Candelario  
9 representation." (Ex. A-8). Respondent was well aware that maintaining complete client  
10 records was his responsibility, not that of his assistant.

## 11 **2. Respondent's Violation of RPC 1.14(b)(3) Resulted in Injury to His Clients**

12 "Injury" is defined in the ABA Standards as "harm to a client, the public, the legal  
13 system, or the profession, which results from a lawyer's misconduct. The level of injury can  
14 range from 'serious' injury to 'little or no' injury." Potential injury is harm that is "reasonably  
15 foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor  
16 or event, would probably have resulted from the lawyer's misconduct."

17 Respondent's misconduct resulted in serious injury to one of his clients, Mr. Negrete.  
18 Because he did not keep complete records or reconcile his records to the bank statements,  
19 Respondent did not discover Ms. Alvarez's theft. As a result, there were insufficient funds in  
20 the IOLTA account to pay a check that Respondent had issued to Mr. Negrete and the check  
21 bounced. On five separate occasions, payments to Mr. Negrete were delayed. Assoc Ex 4.  
22 Three of those delays lasted at least two weeks. TR at 266. Ms. Doty also testified that there  
23 were other instances when there were shortages in the trust account. TR at 269-271. Not  
24 having sufficient funds in the trust account to pay his clients their money constitutes serious  
25 injury. Furthermore, there was the potential for serious injury to other clients if Ms. Alvarez's  
26 theft continued unabated because of Mr. Trejo's lack of oversight.

1           **3. The Presumptive Sanction for Respondent's Misconduct in Suspension**

2           Respondent's state of mind was knowing and his misconduct resulted in injury to a  
3 client. Therefore, ABA Standards 4.12 is most applicable to Respondent's conduct and the  
4 presumptive sanction is suspension.

5           **B. COUNT 2: RESPONDENT VIOLATED RPC 1.14(a)**

6           Respondent consistently and repeatedly commingled client funds and personal funds in  
7 his IOLTA Trust Account and failed to maintain client funds in his trust account in violation of  
8 RPC 1.14(a).

9           ABA Standards Section 4.1 is most applicable to Respondent's duty to preserve his  
10 client's property and provides as follows:

11           ***4.1 Failure to Preserve the Client's Property***

12                     Absent aggravating or mitigating circumstances, upon application of the factors  
13 set out in 3.0, the following sanctions are generally appropriate in cases involving the  
14 failure to preserve client property:

15           4.11   Disbarment is generally appropriate when a lawyer knowingly converts client  
16 property and causes injury or potential injury to a client;

17           4.12   Suspension is generally appropriate when a lawyer knows or should know that he  
18 is dealing improperly with client property and causes injury or potential injury to  
19 a client;

20           4.13   Reprimand is generally appropriate when a lawyer is negligent in dealing with  
21 client property and causes injury or potential injury to a client;

22           4.14   Admonition is generally appropriate when a lawyer is negligent in dealing with  
23 client property and causes little or no actual or potential injury to a client.

24           **1. Respondent's State of Mind was Knowing**

25           Respondent's state of mind was knowing. He knew that all the fees he received were  
26 deposited in his IOLTA account, regardless of character and whether they were his funds or  
27 client funds. He knew that wire transfers of earned fees were being deposited directly into the  
IOLTA account. He knew that he did not maintain a business or personal checking account in

1 Washington into which he could deposit his personal funds. The admonition Respondent  
2 received in 2001 indicates that he knew he should not commingle client and personal funds (Ex.  
3 A-7) and that Ms. Doty testified that Respondent told her that he had issues with his creditors  
4 and that was his reason for using his IOLTA Trust Account for his personal funds. TR at 255.

5 **2. Respondent's Misconduct Caused Potential Injury to his Client**

6 The injury to Respondent's client was serious. Mr. Negrete's checks were delayed and  
7 one bounced because Respondent failed to keep Mr. Negrete's funds on deposit in his IOLTA  
8 account. Respondent's clients also suffered serious potential injury. Ms. Doty testified that  
9 there was a danger that by commingling funds, Respondent's creditors could argue that the  
10 character of the trust account had been changed, making the funds in the IOLTA account  
11 accessible to Respondent's creditors. The prohibition against commingling exists to protect  
12 clients by ensuring that their funds are used on their behalf and not their lawyer's behalf, and to  
13 protect client's property from the lawyer's creditors. See Annotated Rules of Professional  
14 Conduct (ABA 1996), Legal Background to Rule 1.15 at 237. The potential injury to  
15 Respondent's clients, as a result of Respondent's conduct, was extremely serious.

16 **3. The Presumptive Sanction is Suspension**

17 Respondent's conduct was knowing and caused injury to a client. Therefore, ABA  
18 Standards 4.12 is applicable and the presumptive sanction is suspension.

19 **C. COUNT 3: RESPONDENT VIOLATED RPC 5.3(b)**

20 Respondent violated RPC 5.3(b), which requires a lawyer who has direct supervisory  
21 authority over a nonlawyer to make reasonable efforts to ensure that the nonlawyer's conduct is  
22 compatible with the professional obligations of the lawyer. Respondent failed to exercise even  
23 a minimal level of supervision over his nonlawyer assistant's handling of client funds and the  
24 trust account. Respondent's admitted lack of supervision enabled his assistant, Ms. Alvarez to  
25 misappropriate funds from the trust account on twelve separate occasions and directly intercept  
26 and misappropriate client funds on two occasions. Respondent's responsibility for Ms.  
27

1 Alvarez's conduct in mis-handling the trust account, misappropriating funds, and failing to  
2 maintain complete records was not compatible with Respondent's obligations under RPC  
3 1.14(b)(3) and RPC 1.14(a).

4 ABA Standards Section 7.2 is Most Applicable to the Duty to Supervise Nonlawyer  
5 Assistants.

### 6 *7.0 Violations of Duties Owed as a Professional*

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

13 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
14 conduct that is a violation of a duty owed as a professional with the intent to  
15 obtain a benefit for the lawyer or another, and causes serious or potentially  
16 serious injury to a client, the public, or the legal system.

16 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
17 conduct that is a violation of a duty owed as a professional and causes injury or  
18 potential injury to a client, the public, or the legal system.

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

20 7.4 Admonition is generally appropriate when a lawyer engages in an isolated  
21 instance of negligence that is a violation of a duty owed as a professional, and  
22 causes little or no actual or potential injury to a client, the public, or the legal  
23 system.

### 23 **1. Respondent's State of Mind was Knowing**

24 Respondent knew that he was not overseeing Ms. Alvarez's handling of client funds in  
25 his IOLTA Trust Account. This lack of supervision allowed Ms. Alvarez to misappropriate  
26 client funds, which was only discovered when an overdraft occurred. Respondent's  
27

1 mismanagement by allowing a non-lawyer to sign his name as well as her own on trust account  
2 checks, knowing neither she nor he reconciled the account was an open invitation for Ms.  
3 Alvarez to manipulate the account to Respondent's client's detriment. Respondent knew that he  
4 was responsible for overseeing the handling of the IOLTA account. The Association's  
5 pamphlet, "Managing Client Trust Accounts" makes it clear that the responsibility for  
6 compliance cannot be delegated to others. (Ex A-14) Furthermore, Respondent's most recent  
7 previous discipline, the reprimand he received in 2003, resulted from actions of his assistant.  
8 He certainly knew by that time that he needed to supervise his nonlawyer assistants.

9 **2. There was Actual Injury to Respondent's Client as a Result of his Misconduct**

10 Because Respondent did not exercise proper oversight of his assistant, or his IOLTA  
11 Trust Account Ms. Alvarez was able to steal from Respondent and his clients. As discussed  
12 above, there was actual serious injury to Mr. Negrete, Respondent's L & I client. If the  
13 overdraft had not occurred, alerting the Association and ultimately Respondent to his assistant's  
14 theft, there was serious potential injury to Respondent's clients. The trust account could have  
15 been depleted even further resulting in loss to other clients.

16 **3. The Presumptive Sanction is Suspension**

17 Respondent's conduct and potential injury was knowing and resulted in injury to  
18 clients. The presumptive sanction is suspension.

19 **VI.**

20 **AGGRAVATING AND MITIGATING FACTORS AS TO COUNTS I-III**

21 Aggravating and mitigating factors may support deviation from the presumptive  
22 sanction. ABA Standards § 9.22 sets forth a list of aggravating factors.

23 **A. The following aggravating factors apply in this matter:**

24 1. Prior Disciplinary Offenses

- 25 - On September 10, 2001, Respondent received an admonition for failing to  
26 promptly pay client funds held in an associate's trust account. (Ex A-7)

1 - On June 6, 2003, Respondent was reprimanded for failing to deposit client  
2 funds into a trust account, failing to return unearned fees on demand,  
3 failing to provide competent representation, failing to act with reasonable  
4 diligence, charging an unreasonable fee, and failing to cooperate with the  
5 Association's investigation. (Ex A-11)

6 2. Dishonest or Selfish Motive

7 - Respondent commingled his funds with his clients' to protect his assets;

8 3. Pattern of Misconduct

9 - Respondent's misconduct continued over the course of sixteen months;

10 4. Multiple Offenses

11 - Respondent violated three separate RPC's;

12 5. Substantial Experience in the Practice of Law

13 - Respondent has been in practice since 1990.

14 **B. Minimal mitigating factors apply in this matter.**

15 ABA Standards § 9.32 sets forth a list of mitigating factors. Respondent argues that the  
16 following mitigators should apply:

17 1. *Absence of dishonest or selfish motive. (b)*

18 This mitigator does not apply. Respondent commingled his personal funds with  
19 his client's funds, in the only bank account he maintained in the state of Washington because he  
20 had concerns about his personal creditors. This is arguably, a dishonest motive or at the very  
21 least a selfish motive and put Respondent's client money at risk.

22  
23 2. *Full and free disclosure to the disciplinary board or cooperative attitude*  
24 *toward proceedings. (c)*

25 This mitigator does not apply. The Supreme Court has held that this mitigator  
26 does not apply in Washington discipline cases. "Although the ABA Standards list this as a  
27

1 mitigating factor, the court has held that it is not.” In re Disciplinary Proceeding Against  
2 Dynan, 152 Wn.2d 601, 98 P.3d 444 (2004), (citing In re Disciplinary Proceeding Against  
3 Whitt, 149 Wn.2d 707, 721, 72 P.3d 173 (2003). Therefore, this mitigating factor does not  
4 apply.

5           3. *Timely good faith effort to make restitution or to rectify consequences of*  
6 *misconduct. (f)*

7           Respondent argues that he waived future fees in the Negrete matter and that was an  
8 attempt to rectify the consequences of his misconduct. For this mitigator to apply the actions to  
9 rectify the consequences of misconduct must be both timely and done in good faith. Although  
10 Mr. Trejo’s waiver of his fee was a good faith attempt to atone for the delayed payments to his  
11 client, the untimeliness of the waiver negates this mitigator. The delays in payment to Mr.  
12 Negrete for his share of his L & I checks occurred in 2002 and 2003, and the check that  
13 Respondent wrote to Mr. Negrete that bounced was written on April 29, 2003. (Ex A-4)  
14 Respondent continued to collect fees from Mr. Negrete, until at least January 26, 2005, the date  
15 of the letter he sent to Mr. Negrete offering to waive his fee. The waiver occurred almost two  
16 years after the injury to Mr. Negrete had occurred. (Ex R-30) Respondent only acted after the  
17 Association had notified Respondent of its investigation in this matter. Respondent’s actions  
18 were neither timely nor done voluntarily. This mitigator should not apply.

19           4. *Character or Reputation. (g)*

20           This mitigator should not apply. Respondent argues that his public service  
21 should be considered as a mitigating factor. Public service, however noble, is not an  
22 enumerated mitigator. Pro bono publico service is a professional responsibility of every  
23 member of the Association. See RPC 6.1. Furthermore, bare assertions of reputation are not  
24 sufficient to warrant the application of this mitigator.

25           5. *Imposition of Other Penalties or Sanctions (k)*

26           Respondent argues that the “self-imposed” penalty of foregoing fees in the Negrete  
27

1 matter should be considered and this mitigator should apply. This mitigator does apply as noted  
2 above.

3 6. *Remorse. (1)*

4 This mitigator does apply. Respondent cites a number of factors that he suggests  
5 reflect remorse. Mr. Trejo did accept responsibility for his conduct giving rise to the charges in  
6 this proceeding. Although he did contest certain immaterial factors it is obvious that Mr. Trejo  
7 does accept responsibility for the violations and is genuinely remorseful. The only question is  
8 whether that remorse will lead to substantive changes in his practice to address all aspects of  
9 RPC's not just those that are raised by way of continuing formal charges.

10 VII.

11 SUSPENSION CONSIDERATION

12 Generally, the minimum term of suspension is six months. Id. at 495; In re Cohen, 149  
13 Wn.2d 323, 335, 67 P.3d 1086 (2003). "The minimum suspension is appropriate in cases where  
14 there are both no aggravating factors and at least some mitigating factors, or when the  
15 mitigating factors clearly outweigh the aggravating factors." Cohen, 149 Wn.2d at 339. In this  
16 case, the aggravating factors outweigh the mitigating factors. The length of a suspension is  
17 based on the aggravating and mitigating factors. Halverson, 140 Wn.2d at 493. The presence  
18 of the aggravating factors with minimal mitigating factors is grounds for imposing a suspension  
19 of at least six months.

20 VIII.

21 RECOMMENDATION

22  
23 Based upon the ABA Standards and the applicable aggravating and mitigating factors,  
24 the Hearing Officer recommends that Respondent George P. Trejo, Jr. be suspended from the  
25 practice of law for a period of six months.  
26  
27

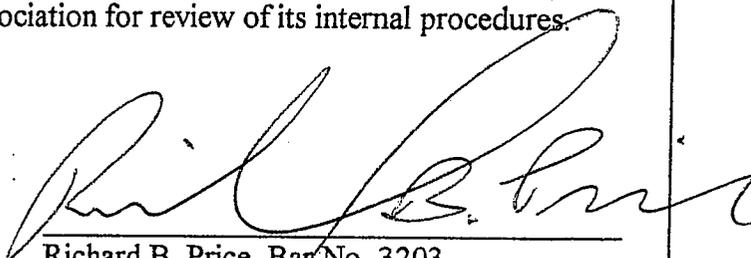
IX.

**RESPONDENT'S ALLEGATIONS OF DISCOVERY VIOLATION  
WILL STAND AS A MATTER FOR THE ASSOCIATION TO ADDRESS**

Respondent's allegations that improper discovery took place by way of a follow-up audit does raise questions in terms of the internal authorization procedures and the need, or not, for notice to an attorney being audited that a follow-up audit can and will be used against them if a formal complaint is filed. Mr. Trejo's concerns about the follow-up audit and in particular Exhibit A-5 are without merit in this particular case, however, because there were no charges filed by the Association as a result of the follow-up audit, and all charges in the Amended Formal Complaint were based on the results of the initial audit conducted by Ms. Doty.

Respondent's allegations that improper discovery was conducted in this matter will not be stricken but are being passed onto the Association for review of its internal procedures.

Dated this 21<sup>st</sup> day of February, 2006.

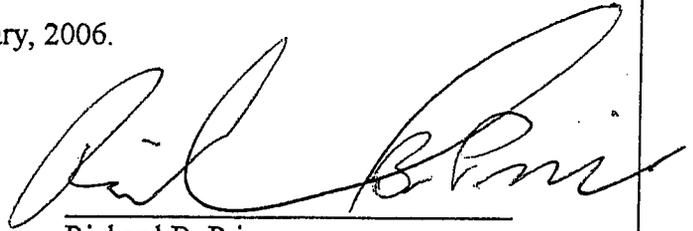


Richard B. Price, Bar No. 3203  
Hearing Officer

Certificate of Service

I certify that I caused a copy of the foregoing Order Denying in Part and Granting in Part associations Motion to Correct Findings of Fact and Conclusions of Law and Amended Findings of Fact Conclusions of Law and Recommendation dated February 21, 2006, to be mailed to The Washington State Bar Association Disciplinary Board, Attn: Becky Crowley, 2101 Fourth Avenue – Suite 400, Seattle, WA 98121-2330; Mr. James Danielson, WSBA Disciplinary Counsel, Chief Hearing Officer, Jeffers Danielson Sonn & Aylward, P.O. Box

1 1688, 2600 Chester Kimm Rd., Wenatchee, WA 98801-1688; Debra Slater and Craig Bray at  
2 the Washington State Bar Association, 2101 Fourth Avenue – Suite 400, Seattle, WA 98121-  
3 2330; and George P. Trejo at 701 N. 1<sup>st</sup> Street, Suite 103, Yakima, WA 98901 by first-class  
4 mail, postage prepaid, on the 21<sup>st</sup> day of February, 2006.

5  
6  
7 

8 Richard B. Price  
9 Hearing Officer

10 Trejo.Amended FFCL2/21/2006kbsl

11  
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13  
14  
15 CERTIFICATE OF SERVICE

16 I certify that I caused a copy of the Amended FOF/Col Recommendation  
17 to be delivered to the Office of Disciplinary Counsel and to be mailed  
18 to George Trejo Jr., Respondent/Respondent's Counsel  
19 at 701 N. 1<sup>st</sup> St. Ste. 103, by Certified/first class mail,  
20 Yakima, WA 98901, postage prepaid on the 23 day of Feb, 2006

21 Bobby Lewis  
22 Clerk/Counsel to the Disciplinary Board

# **Appendix B**

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FILED

MAR 15 2007

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

GEORGE P. TREJO,  
Lawyer (Bar No. 19758).

WSBA File No. 05#00008

DISCIPLINARY BOARD ORDER  
MODIFYING HEARING OFFICER'S  
FINDINGS OF FACT AND DECREASING  
SANCTION RECOMMENDATION

This matter came before the Disciplinary Board at its January 19, 2007 meeting on automatic review Hearing Officer Richard B. Price's decision recommending a six month suspension following a hearing.

Having reviewed the documents designated by the parties, and the parties' briefs, and considering oral argument:

IT IS HEREBY ORDERED THAT the Board deletes Findings of Fact 24, 25 and 33. The Board further recommends reducing the sanction to a three month suspension followed by two years of probation<sup>1</sup>.

<sup>1</sup> The vote on this matter was 8-3. Carlson, Cena, Darst, Heller, Hollingsworth, Kuznetz, Mosner and Romas voted in the majority.

Mr. Andrews and Mr. Fine would approve a six month suspension.

(footnote continued on next page)

1 FINDINGS OF FACT

2 The Disciplinary Board reviews the Hearing Officer's Findings of Fact for substantial  
3 evidence. ELC 11.12(b). Substantial evidence is defined as "a quantum of evidence  
4 sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside*  
5 *Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Where there  
6 is substantial evidence, we will not substitute our judgment for that of the trial court  
7 even though we might have resolved a factual dispute differently. *Sunnyside*, 149 Wn.2d  
8 at 879-80.

9 **Finding of Fact 24** is stricken<sup>2</sup>. This finding dealt with factual allegations that were not  
10 a part of the Formal Complaint in this matter. The Hearing Officer noted this  
11 discrepancy during the hearing (TR 358, l. 16-359, l. 3).

12 **Hearing Officer:** Let me stop you right there, Counsel.  
13 Counsel for the Association, is there a charge of accessing  
14 funds without sufficient clearing or availability of funds? In  
15 my notes I may have paraphrased some of the charges and I  
16 am not seeing that one in my notes.

17 **Ms. Slater:** I don't believe he was charged with that. I think  
18 it is a finding in Ms. Doty's audit, but I don't think he was  
19 charged with that.

20 **Hearing Officer:** That is my feeling as well. I don't want to  
21 short circuit your testimony, but I'm not sure that's  
22 something that's pertinent in terms of my determination.

23 This Finding could not support any conclusion of law and could not be  
24

---

21 Ms. Madden would approve a 2 year suspension. Ms. Madden believes that Mr. Trejo continues to  
22 intentionally fail to protect client funds, even after prior discipline and additional training. She believes  
23 a short suspension will not protect the public.

24 <sup>2</sup> Finding 24: During the pertinent period of time, in at least nine instances when client funds were  
deposited into Respondent's trust account, a corresponding check was written from the trust account  
either on the same day or shortly after the deposit was made and before the deposited check had cleared.

1 used in the sanction analysis. Although this finding is supported by  
2 substantial evidence, it could be misleading to allow it to remain in the  
3 decision.

4  
5 **Finding 25** is stricken<sup>3</sup>. This finding deals with facts that do not establish  
6 misconduct. Once Respondent issued a refund to the client, the funds  
7 became client funds. When the client returned the funds to Respondent,  
8 those funds remained client funds. Respondent was required to deposit the  
9 client funds into his trust account. If Respondent had deposited the client  
10 funds into his general account, he would have co-mingled his funds with  
11 the client's funds. Although this finding is supported by substantial  
12 evidence, allowing it to remain in the decision could be misleading.

13  
14 **Finding 33** is stricken<sup>4</sup>. There is no ethical requirement to fire a dishonest  
15 employee. There was no evidence in the record that the employee  
16 continued to engage in dishonest conduct after that detailed in her 2003  
17 statement. Allowing this finding to remain in the record could be  
18 misleading.

19  
20  
21 <sup>3</sup> Finding 25: During the pertinent period of time, Respondent refunded part of an earned fee to a client  
22 using a cashier's check. The client was not able to cash the check and returned it to Respondent.  
23 Respondent deposited the cashier's check into his trust account and issued the client a check from  
Respondent's trust account.

24 <sup>4</sup> Finding 33: Respondent had not, as of the date of the hearing, terminated Ms. Alvarez.

1 SANCTION ANALYSIS

2 The Hearing Officer found that the Office of Disciplinary Counsel  
3 proved three counts of misconduct. Mr. Trejo failed to maintain adequate  
4 trust account records and, consequently, failed to have the required  
5 amount in the account; commingled earned fees with client money<sup>5</sup>; and  
6 failed to properly supervise an employee, Ms. Alvarez, who stole money  
7 from his trust account. The Hearing Officer found five aggravating factors  
8 and one mitigating factor. The Board finds that the mitigating factor of  
9 character and reputation does apply. The record contains undisputed  
10 evidence that Mr. Trejo provides a large number of pro bono  
11 representation hours. Although RPC 6.1 states that pro bono activities are  
12 every lawyer's professional responsibility, it is appropriate to consider  
13 those activities here. Additionally, Mr. Trejo did make changes to his  
14 trust account record-keeping system based on recommendations from the  
15 WSBA auditor. Based on the record viewed as a whole, the Board  
16 believes that the appropriate sanction is a three month suspension.

17  
18  
19  
20 <sup>5</sup> The Board is concerned about how the auditor and the Office of Disciplinary Counsel determined the  
21 date the fees were earned in this case. On some occasions, Mr. Trejo accepted payment for  
22 representation from a person other than the client. In this situation, the Board believes the fee is not  
23 earned until the client consents to the representation. The auditor testified that she believed that Mr.  
24 Trejo accepted the client at the time he accepted the fee. Third party funds placed in Mr. Trejo's trust  
account prior to an attorney client relationship are not earned fees. Based on the auditor's statement, it is  
not clear how she determined that money in Mr. Trejo's trust account was an earned fee. This record  
does not contain copies of the fee agreements the auditor reviewed during the audit. The state of this  
record makes full review impossible. Although this is a concern, there are enough proven trust account  
violations to justify the recommended sanction.

1 Dated this 15<sup>th</sup> day of March, 2007.

2  
3 Lawrence Kuznetz  
4 Lawrence Kuznetz, Vice Chair  
5 Disciplinary Board

6  
7  
8 CERTIFICATE OF SERVICE

9 I certify that I caused a copy of the Order Modifying HO's Decision  
10 to be delivered to the Office of Disciplinary Counsel and to be mailed  
11 to George Trejo, Respondent/Respondent's Counsel  
12 at 7111<sup>st</sup> St. Los Yakima, WA, by Certified/first class mail,  
13 postage prepaid on the 16 day of March, 2007

14 Reedley Lewis  
15 Clerk/Counsel to the Disciplinary Board

# **Appendix C**

FILED

2001

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

Bar No 19758

ADMONITION

In re

**GEORGE TREJO,**

Lawyer

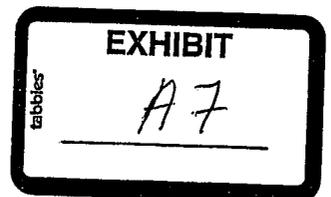
Pursuant to Rule 5.5A of the Rules of Lawyer Discipline, the following Admonition is issued by a Review Committee of the Disciplinary Board:

ADMISSION TO PRACTICE

1. You are admitted to the practice of law in the State of Washington. At all times material to this complaint, you practiced in Yakima, Washington.

FACTS

2. In May 1997, you agreed to represent Mr. Perez in a personal injury claim. His son had been killed in an automobile accident.
3. In September 1997, you negotiated a policy limits settlement of Mr. Perez's claim.
4. You were concerned that your trust account might be garnished to satisfy an outstanding domestic relations judgment against you. You associated counsel and tendered the check to him for deposit and disbursal.
5. You wrote a letter to the client explaining the disbursals and holdbacks. Your letter apparently contained an error. You included a \$3,775.64 holdback for medical expenses that were connected with another client. This amount remained in the associated counsel's trust account for approximately three years. You have now disbursed these funds, plus interest to the client.



002

1 MISCONDUCT

2 6. By failing to promptly pay client funds held in your trust account to the client, your  
3 conduct violated RPC 1.14(b).

4 7.

5 ADMONITION

6 YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is  
7 not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence  
8 in subsequent discipline or disability proceedings involving you.

9 You may protest the issuance of this Admonition by filing a written notice of protest with  
10 the Association-Attention: Clerk/Counsel to the Disciplinary Board, within 30 days of the  
11 service of this Admonition upon you. Upon receipt of a timely protest, this Admonition  
12 shall be rescinded, and the grievance by Mr. Perez shall be deemed ordered to hearing.

13  
14 Dated this 8th day of August 2001.

15 Colleen Klein by JKS  
16 Colleen Klein, Chairperson  
17 Review Committee I  
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# **Appendix D**

#### ***4.0 Violations of Duties Owed to Clients***

##### ***4.1 Failure to Preserve the Client's Property***

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

#### ***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.

# **Appendix E**

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FILED

JUN 9, 2003

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

GEORGE P. TREJO, JR.

Lawyer (WSBA No. 19758).

Public No. 01#00001

REPRIMAND

Under the Rules for Enforcement of Lawyer Conduct promulgated by the Supreme Court of the State of Washington, you have been directed to appear before the Board of Governors of the Washington State Bar Association to receive this FORMAL REPRIMAND.

1. In 1997, Fidencio Martinez was convicted of two misdemeanor offenses in Sunnyside Municipal Court and received a severe sentence. Following the conviction, you charged the Martinez family \$2,000 to represent Mr. Martinez in challenging the conviction and sentence. You did not enter into a written fee agreement with Mr. Martinez or his family, and the Martinez family did not understand the nature of the fee. You filed a notice of appearance and obtained copies of discovery. You did little or nothing more on the case. You did not file a notice of appeal on behalf of Mr. Martinez within the deadline for filing an appeal. When the Martinez family requested a refund of the fee, you refused to refund the fee, claiming that it was

1 a flat fee and was nonrefundable.

2 Your conduct in failing diligently to perform services and your conduct in charging an  
3 excessive fee for the services provided violated RPC 1.3 and RPC 1.5(a).

4 2. In 1997, Candelario Mendoza was convicted of rape and sexual abuse in Oregon.  
5 Mr. Mendoza's family sought representation for his sentencing and appeal. You are not  
6 admitted to practice in Oregon. The Mendoza family paid you a total of \$6,000, partly in cash  
7 and partly via wire transfers to your general bank account, expecting you to commence  
8 representing Mr. Mendoza. You did not enter into a written fee agreement with the Mendozas,  
9 and your office failed to properly account for the wire transfers. Based on a limited review of  
10 the case, you concluded that there might be meritorious issues on appeal. You told the Mendoza  
11 family that they would have to pay an additional \$3,000 for you to represent Mr. Mendoza at  
12 sentencing and an additional fee of \$7,000 for you to represent him on appeal. The Mendozas  
13 demanded a refund of the \$6,000 fee. You claimed they had only paid you \$3,000 and refused  
14 to refund any amount, claiming that it was a flat fee and nonrefundable. You never appeared as  
15 attorney of record on Mr. Mendoza's behalf and took no action to represent him on appeal.

16 Your conduct in charging an excessive fee for the services provided and in failing  
17 adequately to communicate the basis for the fee violated RPC 1.5(a) and RPC 1.5(b). Your  
18 conduct in failing adequately to review the trial court record or to take other steps necessary to  
19 represent the client violated RPC 1.1 and RPC 1.3. Your failure to deposit an advance fee of  
20 \$3,000 into a trust account or to refund that sum promptly upon termination of the  
21 representation violated RPC 1.14(a), RPC 1.14(b), and RPC 1.15(d).

22 3. In 1998, David Avalos Hernandez was sentenced in Oregon as a result of a remand  
23 for resentencing following an initial appeal of his conviction on multiple felonies. Mr.

1 Hernandez's mother sought representation for her son on appeal. You are not admitted to  
2 practice in Oregon. Mr. Hernandez's mother paid you \$4,000, expecting you to commence  
3 representing Mr. Hernandez. You did not enter into a written fee agreement with Mr.  
4 Hernandez or his mother. You conducted a limited review of the case, prepared a cursory, two-  
5 page memorandum, and explained that another \$6,000 would be required to represent Mr.  
6 Hernandez on appeal. You refused to refund the \$4,000 already paid, claiming that it was a flat  
7 fee and nonrefundable. You performed no further work on the case.

8 Your conduct in charging an excessive fee for the services performed and failing  
9 adequately to communicate the basis for the fee violated RPC 1.5(a) and RPC 1.5(b). Your  
10 failure adequately to review the trial record and to take steps necessary to represent the client  
11 violated RPC 1.1 and RPC 1.3.

12 4. In 1998, Jose Luis Garcia was arrested in Texas and charged with felony possession  
13 of cocaine with intent to distribute. He was released on bond, and he returned to Washington.  
14 Mr. Garcia and his family contacted you about representing Mr. Garcia. Although not admitted  
15 to practice in Texas, you agreed to represent him for \$12,000, with \$4,000 payable in advance  
16 and \$2,000 payable each time you made a trip to Texas. You did not enter into a written fee  
17 agreement with the Garcias. The Garcia family paid you \$4,000 in advance. You thereafter  
18 sent a letter to the office of the district attorney in Austin, Texas, informing that office that you  
19 had been hired to represent Mr. Garcia. You hired local counsel in Austin, Texas, but instructed  
20 him that he need do nothing except sponsor you when you were required to appear in court.  
21 You filed no notice of appearance and did nothing further until April 1999, when you instructed  
22 your legal assistant to call local counsel. At that point, the case had been transferred, a warrant  
23 had been issued for Mr. Garcia's arrest for his failure to appear, and his bond had been ordered  
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1 forfeited. You wrote to Mr. Garcia indicating that you would move for pretrial dismissal. The  
2 Garcias asked for a refund of the fee. You refused to refund the \$4,000 already paid, claiming  
3 that it was a flat fee and nonrefundable. You performed no further work on the case.

4 Your conduct in charging an excessive fee for the services performed and failing  
5 adequately to communicate the basis for the fee violated RPC 1.5(a) and RPC 1.5(b). Your  
6 failure to take reasonably prompt and appropriate steps necessary to represent the client violated  
7 RPC 1.1 and RPC 1.3.

8 5. You failed to provide timely responses to the Bar Association's investigatory  
9 requests during the disciplinary investigations of the Mendoza, Hernandez, and Garcia matters,  
10 resulting in the issuance of subpoenas by disciplinary counsel in order to obtain the information  
11 sought. Your conduct in failing to respond to requests for information relevant to grievances  
12 under investigation violated former RLD 2.8.

13 These actions merit a Formal Reprimand. Your actions discredit you and the legal  
14 profession and show a disregard for the high traditions of honor expected from a member of the  
15 Association.

16 NOW, THEREFORE, YOU ARE HEREBY REPRIMANDED by the Board of  
17 Governors of the Washington State Bar Association for this misconduct. This Reprimand will  
18 be made a part of your permanent record with the Association, and will be considered along  
19 with other evidence regarding any future grievances against you.

20 Your privilege to practice law in the State of Washington is based on the finding that  
21 you are a person of good moral character, and on your commitment to abide by the rules  
22 governing the conduct of members of the Association. The Board of Governors expects all your  
23 future conduct as a lawyer to be consistent with that finding as to your character, and with a  
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1 continuing commitment on your part to the letter and spirit of those rules.

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3 Dated this 6<sup>TH</sup> day of JUNE, 2003.

4 WASHINGTON STATE BAR ASSOCIATION

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6 J. Richard Manning, President