

FILED

Dec 2, 2021

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

FLORIAN DAMASO PERGANAN,

Lawyer (Bar No. 36291).

Proceeding No. 20#00041

ODC File No. 20-01244

STIPULATION TO DISBARMENT

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to disbarment is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Kathy Jo Blake, Respondent's Counsel Kenneth Scott Kagan and Respondent lawyer Florian Damaso Purganan.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to them. Respondent chooses to resolve this proceeding

1 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
2 time, and expense attendant to further proceedings.

3 I. ADMISSION TO PRACTICE

4 1. Respondent was admitted to practice law in the State of Washington on June 13, 2005.

5 II. STIPULATED FACTS

6 2. Respondent began working as a law clerk at the law firm of Hanis Irvine Prothero
7 PLLC (HIP), in 2004 and accepted a position there as an associate attorney in 2005. Respondent's
8 practice was limited to immigration law.

9 3. Respondent became a partner with HIP in 2015.

10 4. In 2017, while still a partner with HIP, Respondent created a Facebook page for a firm
11 identified as "Sanidad & Perganan," based in the Philippines (S&P) without informing his
12 partners at HIP.

13 5. The Facebook profile for S&P showed the firm as being associated with an
14 "American-based law firm situated in Seattle, Washington," which appears to refer to
15 Respondent's employment with HIP. The profile refers those who wish to contact Respondent to
16 his personal email account and also to his Avvo profile, but not to the HIP website.

17 6. In spring 2019, HIP Partners began an investigation into apparent misconduct of
18 Respondent after discovering the Facebook profile and receiving an increasing volume of phone
19 calls and contacts by persons who alleged to be clients of Respondent and HIP but who were not
20 located in any HIP accounting or case management system.

21 7. Their investigation revealed that Between 2010 and 2019, Respondent used HIP
22 resources (computers, legal assistants, telephones, office space, HIP's paid account for
23 Washington Courts Judicial Information Systems) in the course of representing at least 150 clients

1 | whom Respondent accepted fees from personally but kept off the case management and
2 | accounting systems of HIP (ghost clients).

3 | 8. Further investigation discovered approximately seven file boxes in Respondent's
4 | office with physical files of "ghost clients" labeled with names of clients not in any HIP case
5 | management or accounting system.

6 | 9. The files contained:

- 7 | • copies of immigration application packages and supporting documents, many filed
8 | with government agencies using HIP company letterhead and signed by
9 | Respondent;
- 9 | • official government notices, including "G-28" notice of appearance forms, with
10 | Respondent's home address as the attorney address, but that also listed HIP as the
11 | law firm of the attorney;
- 11 | • government notices containing the home address of Respondent dating back to
12 | 2010, indicating Respondent had a long history of such misconduct;
- 12 | • applications containing government filing fees paid by what appears to be a
13 | personal checking account of Respondent; and
- 14 | • release forms identifying Respondent and HIP, with HIP contact information as
15 | the attorney of record for the client.

15 | 10. Respondent used a variety of HIP firm resources in support of the "ghost client"
16 | cases, including

- 17 | • meeting with "ghost clients" at HIP's office;
- 18 | • firm templates, cover letters, general intake questionnaires and document
19 | checklists on HIP letterhead appear to have been used with ghost clients.
- 20 | • client checklists, which often listed a legal fee quote for funds never received by
21 | HIP;
- 21 | • immigration legal assistants, who provided a variety of administrative assistance
22 | for Respondent's ghost client matters, often at the explicit instruction of
23 | Respondent;

- 1 • client forms that were generated on the Law Logix Immigration Case Management
2 system ("LLX") paid for by HIP and used by the immigration department for all
3 firm clients;
- 4 • the HIP-issued email account to regularly conduct outside ghost client legal
5 matters; many emails specifically instructed ghost clients to send documents and
6 payment for legal fees to Respondent at his home address;
- 7 • the firm-paid account for Washington Courts Judicial Information Systems (JIS)
8 to research ghost client criminal history and requested client criminal records using
9 the immigration department template, firm letterhead and firm fax machine;
- the local drive of HIP firm computer for most of the ghost client matters; and
- the HIP Server drive for the immigration department for many "mixed" ghost
matters where a previous computer file was set up within HIP and maintained
additional ghost matter documents within those HIP server files.

10 11. Respondent maintained on the local drive of his HIP computer a folder for clients
11 containing information and documents for his "ghost client" matters.

12 12. More than 160 "ghost client" folders were found, apparently divided between active
13 and closed clients in separate subfolders.

14 13. HIP found additional documents on the local drive of Respondent's computer for
15 names not listed in the computer folders, nor matching the physical files found but containing
16 what appeared to be documents prepared by Respondent in support of immigration applications.

17 14. On May 29, 2019, HIP partners confronted Respondent to present the findings of the
18 investigation.

19 15. Respondent initially denied the allegations and attempted to minimize the extent of
20 Respondent's actions by stating Respondent only ran clients outside the firm for close family or
21 friends, but when confronted with further information of the investigation, Respondent admitted
22 to his misconduct.

23 16. Respondent specifically admitted to accepting fees for "ghost client" matters handled

1 outside of the firm.

2 17. Respondent further admitted to treating returning HIP clients as “ghost clients”.

3 18. Fees paid by “ghost clients” belonged to HIP, not the Respondent.

4 19. HIP terminated Respondent the same day.

5 20. The firm presented Respondent a list of demands, which included helping identify HIP
6 and “ghost clients” with urgent matters, providing a full list of all “ghost clients” and matters with
7 a full accounting of legal fees paid, and a copy of representation agreements signed by all “ghost
8 clients.”

9 21. Immediately following the termination, HIP and Respondent worked cooperatively to
10 protect client interests and transferred files according to the clients' written selection.

11 22. The parties entered into a settlement agreement in February 2020 and Respondent paid
12 HIP the agreed settlement amount of \$60,000 in addition to other terms related to his termination
13 of partnership.

14 23. Respondent responded to this grievance by immediately accepting responsibility for
15 his misconduct. Respondent is entering into this stipulation prior to ODC requesting a Review
16 Committee order this matter to hearing.

17 **III. STIPULATION TO MISCONDUCT**

18 24. By unlawfully appropriating funds belonging to HIP, by performing legal services for
19 outside clients while Respondent was a HIP partner, retaining the fees for those services, and
20 concealing both the fact of the representations and the receipt of associated fees, Respondent
21 violated RPC 8.4(c).

22 **IV. PRIOR DISCIPLINE**

23 25. Respondent has had no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 26. The following American Bar Association Standards for Imposing Lawyer Sanctions

3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 ***5.1 Failure to Maintain Personal Integrity***

5 Absent aggravating or mitigating circumstances, upon application of the
6 factors set out in Standard 3.0, the following sanctions are generally appropriate
7 in cases involving commission of a criminal act that reflects adversely on the
lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or in
cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

8 **5.11 Disbarment is generally appropriate when:**

9 **(a) a lawyer engages in serious criminal conduct, a necessary element of**
10 **which includes intentional interference with the administration of**
11 **justice, false swearing, misrepresentation, fraud, extortion,**
12 **misappropriation, or theft; or the sale, distribution or importation of**
13 **controlled substances; or the intentional killing of another; or an**
14 **attempt or conspiracy or solicitation of another to commit any of these**
15 **offenses; or**

16 **(b) a lawyer engages in any other intentional conduct involving**
17 **dishonesty, fraud, deceit, or misrepresentation that seriously**
18 **adversely reflects on the lawyer’s fitness to practice.**

19 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
20 criminal conduct which does not contain the elements listed in Standard
21 5.11 and that seriously adversely reflects on the lawyer’s fitness to practice.

22 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in
23 any other conduct that involves dishonesty, fraud, deceit, or
24 misrepresentation and that adversely reflects on the lawyer’s fitness to
practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other
conduct that reflects adversely on the lawyer’s fitness to practice law.

27. Respondent acted intentionally.

28. Respondent’s conduct caused actual harm to HIP by depriving HIP of fees to which
they were entitled and by requiring the firm to expend attorney and staff time and resources
toward investigating the scope and nature of Respondent’s representation of outside clients, for
which HIP was potentially liable.

29. Respondent’s conduct also caused potential injury to HIP by exposing the firms to the

1 risk of representing parties with conflicted interests.

2 30. The presumptive sanction is disbarment.

3 31. The following aggravating factors apply under ABA Standard 9.22:

- 4 (b) dishonest or selfish motive
- 5 (c) a pattern of misconduct
- 6 (d) multiple offenses
- 7 (i) substantial experience in practice of law (admitted in 2005)

8 32. The following mitigating factors apply under ABA Standard 9.32:

- 9 (a) absence of a prior disciplinary record
- 10 (b) personal or emotional problems (Respondent was victim of domestic violence)
- 11 (d) timely good faith effort to make restitution or to rectify consequences of misconduct
- 12 (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings
- 13 (g) character or reputation
- 14 (l) remorse

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

17 34. On balance, the aggravating and mitigating factors do not require a departure from the
18 presumptive sanction of disbarment based on extensive length of time the misconduct occurred
19 the serious nature of Respondent's misconduct.

20 VI. STIPULATED DISCIPLINE

21 35. The parties stipulate that Respondent shall be disbarred.

22 VII. CONDITIONS OF REINSTATEMENT

23 36. Reinstatement from disbarment is conditioned on payment of costs and expenses, as
24 provided below.

VIII. RESTITUTION

37. No restitution is required. Respondent reached a settlement with HIP and has fulfilled

1 Respondent's obligation under the terms of the financial settlement.

2 **IX. COSTS AND EXPENSES**

3 38. In light of Respondent's willingness to resolve this matter by stipulation at an early
4 stage of the proceedings, Respondent shall pay attorney fees and reduced administrative costs of
5 \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
6 13.9(1) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
7 from disbarment is conditioned on payment of costs.

8 **X. VOLUNTARY AGREEMENT**

9 39. Respondent states that prior to entering into this Stipulation they have consulted
10 independent legal counsel regarding this Stipulation, that Respondent is entering into this
11 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
12 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
13 as provided herein.

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

16 **XI. LIMITATIONS**

17 41. This Stipulation is a compromise agreement intended to resolve this matter in
18 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
19 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
20 and ODC acknowledge that the result after further proceedings in this matter might differ from
21 the result agreed to herein.

22 42. This Stipulation is not binding upon ODC or the respondent as a statement of all
23 existing facts relating to the professional conduct of the respondent lawyer, and any additional

1 existing facts may be proven in any subsequent disciplinary proceedings.

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

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

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

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

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

3 

4 Florian Damaso Respondent, Bar No. 36291
5 Respondent

Dated: 8/24/2021

6 

7 Kenneth Scott Kagan, Bar No. 12983
8 Counsel for Respondent

Dated: 9/10/2021

9 

10 Kathy Jo Blake, Bar No. 29235
11 Managing Disciplinary Counsel

Dated: 9/13/2021