

SUPREME COURT OF WASHINGTON

In the Matter of the Disciplinary Proceeding Against Alfredo Lopez,
an Attorney at Law

153 Wash. 2d 570, 106 P.3d 221 (2005) · No. No. 17502-1 · Decided February 10, 2005

SUMMARY

The Washington Supreme Court upheld a 60-day suspension imposed on attorney Alfredo Lopez for misconduct arising from his failure to file an opening brief in a criminal appeal, failure to take reasonably practicable steps to protect the client's interests after termination of representation, and failure to comply with a Ninth Circuit order to show cause. The court concluded that the Washington State Bar Association proved all three violations by a clear preponderance of the evidence and upheld the analysis of the applicable aggravating and mitigating factors.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Fairhurst, J.; Alexander, C.J.; Bridge, J.; Chambers, J.; Ireland, J. Pro Tem.
JURISDICTION	Washington
DECIDED	February 10, 2005
DOCKET	No. 17502-1
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline appeal from the Washington State Bar Association hearing officer's findings and recommended sanctions, as adopted and modified by the Disciplinary Board.
STANDARD OF REVIEW	The Washington Supreme Court has plenary authority over lawyer discipline. It gives considerable weight to hearing-officer findings, particularly credibility findings, and upholds findings supported by a clear preponderance of the evidence. Conclusions of law are upheld when supported by the findings. The court gives greater weight to the Board's recommended sanction and generally adopts it unless proportionality or the extent of agreement among Board members warrants departure.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Washington, decided en banc.

PARTIES

Alfredo Lopez v. Washington State Bar Association

TOPICS

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate practice

QUESTIONS PRESENTED

1. Whether the hearing officer properly determined the presumptive sanction for Lopez's misconduct.
2. Whether the hearing officer properly analyzed the aggravating and mitigating factors.
3. Whether the Disciplinary Board properly merged the two recommended censures into the 60-day suspension.
4. Whether the WSBA proved Lopez's three charged violations by a clear preponderance of the evidence.

HOLDINGS

1. Lopez violated RPC 1.3 and RPC 3.2 because he remained attorney of record when the brief was due, was repeatedly directed to file it, and failed to do so by three deadlines.
2. Lopez violated RPC 1.15(d) because, under the circumstances, he failed to take reasonably practicable steps to protect Guzman's interests after transferring the file to successor counsel.
3. Lopez violated former RLD 1.1(b) by failing to timely and adequately respond in writing to the Ninth Circuit's order to show cause.
4. The Board's recommended 60-day suspension, into which it merged the two censures, was proportionate and should be adopted.

KEY QUOTATIONS

"The Washington State Supreme Court has plenary authority for lawyer discipline." (153 Wash. 2d at 577)

"Lopez had a duty to file the opening brief." (153 Wash. 2d at 578)

"There were steps he could have taken, he failed to take those steps, and his failure to do so under the circumstances of this case constitutes a violation of RPC 1.15(d)." (153 Wash. 2d at 580)

"We hold that Lopez violated his ethical duties by failing to file an opening brief before three deadlines, by failing to take reasonably practicable steps to protect his client's interests upon termination of his representation, and by failing to timely and adequately respond to the Ninth Circuit's order to show cause." (153 Wash. 2d at 590)

FACTUAL BACKGROUND

Lopez represented Hugo Guzman in a criminal appeal to the Ninth Circuit and failed to file the opening brief by three successive deadlines over approximately 14 months. After Guzman retained new counsel, Lopez transferred the file but did not ensure that the Ninth Circuit recognized the substitution or that the court no longer regarded him as counsel of record. Lopez also failed to provide a timely written response to a Ninth Circuit order to show cause, resulting in a \$500 sanction and a disciplinary referral to the WSBA.

PROCEDURAL HISTORY

The WSBA filed a formal disciplinary complaint alleging that Lopez violated RPC 1.3 and/or 3.2 by failing to file an appellate opening brief, RPC 1.15(d) by failing to protect his client's interests after termination of representation, and former RLD 1.1(b) by violating a Ninth Circuit show-cause order. The hearing officer found all three counts proved by a clear preponderance of the evidence and recommended a 60-day suspension on count I and censures on counts II and III. The Disciplinary Board adopted the findings and merged the censures into the 60-day suspension. The Washington Supreme Court affirmed the findings and imposed the 60-day suspension.

DISPOSITION

other

CASES CITED

- In re Disciplinary Proceeding Against Whitt, 149 Wash. 2d 707, 716-17, 72 P.3d 173 (2003)
- In re Disciplinary Proceeding Against Kagele, 149 Wash. 2d 793, 813, 72 P.3d 1067 (2003)
- In re Disciplinary Proceeding Against Huddleston, 137 Wash. 2d 560, 568-69, 974 P.2d 325 (1999)
- In re Disciplinary Proceeding Against Carmick, 146 Wash. 2d 582, 594, 48 P.3d 311 (2002)
- In re Disciplinary Proceeding Against Cohen, 150 Wash. 2d 744, 754, 763, 82 P.3d 224 (2004)
- In re Disciplinary Proceeding Against Noble, 100 Wash. 2d 88, 94, 667 P.2d 608 (1983)
- In re Disciplinary Proceeding Against Kuvvara, 149 Wash. 2d 237, 256, 259, 66 P.3d 1057 (2003)
- In re Disciplinary Proceeding Against Anschell, 149 Wash. 2d 484, 501, 506-07, 517-18, 69 P.3d 844 (2003)
- In re Disciplinary Proceeding Against McMullen, 127 Wash. 2d 150, 163, 896 P.2d 1281 (1995)
- In re Disciplinary Proceeding Against Curran, 115 Wash. 2d 747, 772, 801 P.2d 962 (1990)
- In re Disciplinary Proceeding Against Juarez, 143 Wash. 2d 840, 885-86, 24 P.3d 1040 (2001)
- In re Disciplinary Proceeding Against Jamieson, 98 Wash. 2d 865, 868, 658 P.2d 1244 (1983)
- In re Disciplinary Proceeding Against Fraser, 83 Wash. 2d 884, 889, 523 P.2d 921 (1974)
- In re Disciplinary Proceeding Against Boelter, 139 Wash. 2d 81, 985 P.2d 328 (1999)
- In re Disciplinary Proceeding Against Brothers, 149 Wash. 2d 575, 587, 70 P.3d 940 (2003)
- In re Disciplinary Proceeding Against Petersen, 120 Wash. 2d 833, 854, 846 P.2d 1330 (1993)
- United States v. Guzman, 5 Fed. Appx. 631-2 (9th Cir. 2001)
- Barry v. Ashley Anderson, P.C., 718 F. Supp. 1492 (D. Colo. 1989)
- Lockhart v. Greive, 66 Wash. App. 735, 741-42, 834 P.2d 64 (1992)

- In re Disciplinary Proceeding Against Allotta, 109 Wash. 2d 787, 792, 748 P.2d 628 (1988)

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