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BY DONALD R. BARRETT

SUPREME COURT OF THE STATE OF WASHINGTON

In re)	NO. 200,577-2
)	
BRADLEY R. MARSHALL,)	
)	
Lawyer,	)	APPELLANT'S SUPPLEMENT TO
	)	MOTION FOR DISMISSAL, OR IN
	)	THE ALTERNATIVE FOR A
WSBA No. 15830	)	NEW HEARING WITH
	)	ILLUSTRATIVE EXHIBITS TO BE
	)	USED AT ORAL ARGUMENT
	)	PURSUANT TO RAP 11.4

I. RELIEF REQUESTED

Bradley R. Marshall makes this supplemental motion for dismissal, or in the alternative a new hearing ordered, based upon information that has now come to light which was not available, or not previously known, at the time of his original motion to dismiss herein.

II. FACTS RELEVANT TO MOTION

- a. On April 4, 2003, James M. Danielson, personally and on behalf of his law firm, signed a Personal Services Agreement with the WSBA to

serve as Chief Hearing Officer with an implied fiduciary duty of loyalty, Illustrative Exh. 10 (Each illustrative exhibit will hereafter be referred to as an exhibit with a corresponding number);

- b. On June 18, 2004, Mr. Danielson appointed Ms. Teena Killian as hearing officer in the *Eric Hoort* matter, Exh. 1, 14. Ms. Killian applied for a position with the Bar in January of 2005 while she served as hearing officer in the *Hoort* matter, Exh. 3, 14. Ms. Killian did not disclose to Mr. Hoort that she had applied for the position with the Bar, Exh. 1, 14. Ms. Killian was offered a job by the Bar, but did not accept because of the salary, Exh. 3;
- c. Neither Mr. Danielson, the Hearing Officer Selection Panel, the Chair of the Disciplinary Board, the Director of the Office of Disciplinary Counsel or the Board of Governors removed Ms. Killian from the hearing officer list or otherwise took corrective action after she applied and was offered a position as disciplinary counsel, Exh. 1, ELC 2.5(a)(b)(c)(d). The hearing officer list is maintained by the WSBA Board of Governors, together with the Hearing Officer Selection Panel and the Chief Hearing Officer, who together are responsible for adding and removing hearing officers, monitoring and training them, and providing supervision of hearing officers, ELC 2.5(c)(d)(e) and (f);
- d. On July 28, 2005, the Bar filed a grievance against Bradley R. Marshall naming the WSBA as grievant; on September 30, 2005 the

- WSBA Review Committee ordered the matter to hearing, Exh. 8;
- e. On December 7, 2005 Teena Killian notified the parties that she had been appointed to serve as hearing officer in the *Marshall* matter but did not disclose that she had previously applied for employment with the Bar, App. A(1).
 - f. On January 10, 2006 Ms. Killian signed an order setting the hearing for May 22, 2006. On May 2, 2006, Ms. Christine Gray mailed Mr. Kurt Bulmer an amended complaint containing three new charges - Counts 10 through 12, Exh. 13;
 - g. On May 26, 2006, Ms. Killian again applied for a job as disciplinary counsel with the Bar. At the time of her application, she wrote in her cover letter that she was a hearing officer in the case of *Bradley R. Marshall* and stated, "I would plan to recuse myself from the case if discussions concerning the above referenced disciplinary counsel position go forward", App. A(4), but she did not disclose to Marshall or his attorney that she had applied again for a position with the Bar, Exh. 4;
 - h. On June 2, 2006, the WSBA Director of the Office of Disciplinary Counsel, Ms. Anne Siedel, wrote to Ms. Killian and noted her role as hearing officer in the *Marshall* matter, stating that she would consider her application right away and arrange for an interview, Exh. 5;
 - i. Ms. Seidel did not disclose to Marshall or his counsel that Ms. Killian

had applied for a position with the Bar and did not request Killian to disqualify herself in any further proceedings, or otherwise take corrective action, Exh. 1;

- j. Bar counsel Gray and Busby were constructively placed on notice of Ms. Killian's first application for employment when Killian filed her application with the Bar on January 24, 2005 by virtue of their employment as Bar counsel, Exh. 5, 15, and Exh. 19, Declaration of Christine Gray;
- k. On June 1, 2006 Bar counsel Gray and Busby learned that Ms. Killian had applied for employment with the Bar for a second time but did not disclose it to Bulmer and Marshall for 21 days, until they had obtained approval of the Amended Complaint and the scheduling order. They then, finally, disclosed to Bulmer and Marshall that Killian had applied for the Bar counsel position on June 22, 2006, Exh. 19, Declaration of Christine Gray;
- l. On June 26, 2006 Marshall's counsel requested Killian to disqualify herself as hearing officer; she complied shortly thereafter, Exh. 1;
- m. Bulmer then requested that Danielson, on a pre-hearing basis, decide several procedural matters: a motion to vacate all prior orders, including the order allowing the amended complaint, a motion for stay and a motion to conduct discovery; Bar counsel opposed all motions, Exh. 13, 16, 19;

- n. On June 29, 2006, Bulmer filed a letter of disqualification of any hearing officer with knowledge of the Killian matter, for fear that Marshall would be prejudiced, Exh. 16;
- o. Danielson was required under ELC 10.2(b)(3) and ELC 1.3(d) to forward Bulmer's June 29, 2006 letter of disqualification to the Chair of the Disciplinary Board, but he did not;
- p. On August 9, 2006, Danielson appointed himself as hearing officer after each party had used their single preemptory challenge to remove two other hearing officers;
- q. Danielson never addressed Bulmer's letter of disqualification and failed to heed Becky Crowley's letter of August 10, 2006, cautioning him to consider any possibility of "a conflict of interest with the respondent, disciplinary counsel, or any of the witnesses in this matter," requesting that he "file a written request for recusal" if a conflict existed. One glaring omission is noted in her conflicts list, i.e., the conflict of interest with grievant WSBA, Mr. Danielson's contract employer, Exh. 9, 17;
- r. Danielson denied Bulmer's request for discovery and vacates Killian's order allowing the complaint to be amended (but later reinstates Killian's order allowing the complaint to be amended); Danielson also issued an order restraining the parties from discussing or pursuing any information concerning the Killian matter, Exh. 17;

- s. While Mr. Danielson served as hearing officer, he was a contract employee for the Bar with an annual salary of \$33,000, participated in Bar committee meetings with Bar counsel and Bar officials where he discussed issues related to the lack of adequate training of hearing officers and other systemic problems within the disciplinary system as referred to by the American Bar Association in its report of August, 2006, Exh. 10, 18, 20;
- t. Bar counsel Busby and Gray were aware of Mr. Danielson's employment status with the Bar and his participation in BOG Disciplinary and Task Force 2 committees when he appointed himself as hearing officer, but they did not report this information to Marshall, Exh. 20;
- u. Danielson did not disclose any potential conflicts, offer his disqualification on the record, or otherwise obtain from Marshall a remittal, waiver, or his consent to serve as a hearing officer in compliance with ELC 2.6(e)(5).

III. STATEMENT OF ISSUES

Has a respondent's right to fair and impartial hearing been violated when a chief hearing officer fails to disqualify himself when his impartiality might reasonably be questioned?

Has a respondent's right to a fair and impartial hearing been violated when a chief hearing officer fails to disclose all potential conflicts of interest that might cause a person to reasonably question his impartiality?

Has a respondent's right to a fair and impartial hearing been violated

when a chief hearing officer fails to request a remittal of disqualification when circumstances exist that might cause a person to reasonably question his impartiality?

Has a respondent's right to a fair and impartial hearing been violated when the chief hearing officer, upon receipt of a letter of disqualification, fails to disqualify himself or to forward a letter of disqualification to the Chair of the Disciplinary Board for resolution in compliance with ELC 10.2(b)(3)?

Should the Court order a dismissal of all charges or order a new hearing when a respondent's right to a fair and impartial hearing was violated by the conduct of a chief hearing officer?

IV. EVIDENCE RELIED UPON

The following documents have recently come to the attention of Marshall and will be used at the time of oral argument for illustrative purposes. Each document further reinforces the need for the Court to dismiss this matter or order a new hearing:

<u>Exhibits</u>	<u>Description</u>
1	KILLIAN: November 24, 2008 letter of Special Disciplinary Counsel Robin H. Balsam finding canon violations by Teena Killian, WSBA file No. 07-01304, Marshall grievance against Killian.
2	WSBA Disciplinary Board's <i>Notice with attached Finding and Order of Review Committee II</i> , dismissing grievance, but issuing advisory letter on issues of appearance of fairness, Bradley R. Marshall Grievant, Teena Killian Respondent, No. 07-01304, dated 03/6/09.
3	January 14, 2005 letter of Teena Killian to WSBA seeking disciplinary counsel position. Notation of 1/24/05 indicates withdrawal of application via telephone conversation for

salary reasons.

4 May 26, 2006 letter of Teena Killian to WSBA seeking disciplinary counsel position, advising of hearing officer status in *Marshall* matter and intent to recuse if discussions “go forward.”

5 June 2, 2006 letter of Anne Seidel to Ms. Killian noting concern regarding *Marshall* and advising they will be considering her application.

6 July 7, 2006 letter of Anne Seidel to Ms. Killian advising position not offered to her.

DANIELSON:

7 WSBA Disciplinary Board’s *Notice with attached Finding and Order of Review Committee IV*, ordering a hearing, Linda Richard Grievant, Bradley R. Marshall Respondent, No. 03-00826, dated 10/3/05*

8 WSBA Disciplinary Board’s *Notice With attached Finding and Order of Review Committee IV*, ordering a hearing, WSBA Grievant, Bradley R. Marshall Respondent, No. 03-02047, dated 10/3/05*

*These companion grievances combined under Public File No. 05#00103, *In re Bradley Rowland Marshall*.

9 August 10, 2006 letter of Becky Crowley, Clerk to the Disciplinary Board, to James Danielson forwarding Order Appointing Hearing Officer, Public File No. 05#00103, where James M. Danielson as Chief Hearing Officer appoints himself as hearing officer on August 9, 2006. The third sentence of her letter asks for his recusal if he has a conflict of interest with “respondent, disciplinary counsel, or any of the witnesses” – glaringly omitting

- from the conflict list the primary grievant, WSBA, with whom he had a contract of employment, establishing an obvious conflict of interest.
- 10 Personal Services Agreement dated April 4, 2003 between James Danielson and the WSBA, under which Danielson worked during the *Marshall* proceedings.
- 11 February 18, 2009 letter of James Danielson, purporting to respond to the Marshall grievance, WSBA No. 09-00229, but offering no response to the allegations of conflict of interest, perception of fairness and impartiality, appearance of bias or prejudice, or other ethical improprieties.
- 12 March 16, 2009 letter of Conflicts Review Officer Pro Tem Ronald T. Schaps finding no wrongdoing by James Danielson, WSBA No. 09-00229, Marshall grievance against Danielson.
- 13 July 6, 2006 Motion to Compel Documents by Kurt Bulmer.
- 14 Declaration of Kurt Bulmer to Permit Limited Release of Information.
- 15 Chronology of Killian/Bar application process.
- 16 June 29, 2006 Bulmer letter to Danielson.
- 17 August 10, 2006 Order of James Danielson.
- 18 2006-2007 WSBA budget.
- 19 December 15, 2006 Declaration of Christine Gray.
- 20 November 24, 2006 BOG and Task Force committee minutes

V. AUTHORITY

- a. Respondent Danielson's conduct violated the Code of Judicial Conduct. According to ELC 2.6(b):

The integrity and fairness of the disciplinary system requires that hearing officers observe high standards of conduct. To the extent applicable, the Code of Judicial Conduct should guide hearing officers. The following rules have been adapted from Canon 2 and Canon 3 of the Code of Judicial Conduct as particularly applicable to hearing officers and the words “should” and “shall” have the meanings ascribed to them in those rules.

- b. Canon 3 states that judges shall perform the duties of their office impartially and diligently. Specifically, (d)(1) states:
“Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned...”.

- c. According to ELC 2.6(E)(3)(A):

Hearing officers having actual knowledge that another hearing officer has committed a violation of these rules that raises a substantial question as to the other hearing officer’s fitness for office should take or initiate appropriate corrective action which may include informing the appropriate authority.

Mr. Danielson was aware that Ms. Killian had secretly applied for a job with the Bar on two occasions, but failed to notify Marshall and failed to take any action whatsoever;

- d. Mr. Danielson violated ELC 2.6 (E)(4)(iii) because he was serving as an officer, director and and/or trustee of the Bar by virtue of his paid position as Chief Hearing Officer and his participation in the BOG Disciplinary and Task Force II committees where he extensively discussed issues related to

the claims at work in the Marshall proceedings, including

1. the role of the hearing officer,
2. how a hearing officer should be removed,
3. the lack of training and educational responsibilities of the hearing officer, and
4. criticisms made about him concerning his failure to properly train hearing officers as referenced in the ABA report dated August, 2006

Although ELC 2.6(f) contemplates that the Chief Hearing Officer may hear matters, clearly the rule is not intended to allow the Chief Hearing Officer to violate the Canons of Judicial Conduct or the ELCs when his role as hearing officer will create a clear question of his impartiality and a violation of due process.

ELC 2.6(e)(4) requires:

(A) Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which: (i) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (ii) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law served during such association as a lawyer concerning the matter or such lawyer has been a material witness concerning it; (iii) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

Danielson could have offered the alternative "remittal of disqualification" found at ELC 2.6(e)(5) to obviate the need for withdrawal but he did not:

Remittal of Disqualification:

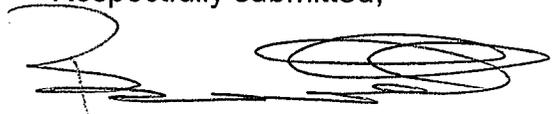
A hearing officer disqualified by the terms of subsections (e)(4)(A)(iii) or (iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is *de minimis*, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

VI. CONCLUSION

The Court has made it clear through the ELCs what it expects of hearing officers. Adherence to the ELCs and CJs has been completely disregarded in this matter. For the forgoing reasons, the Court should dismiss this matter and reinstate Marshall to resume his practice forthwith.

DATED: March 25, 2009

Respectfully submitted,



BRADLEY R. MARSHALL
Appellant Pro Se

121 Lakeside Ave., Suite 100B
Seattle WA 98122-7598
Tele.: 206 324-4842
Fax : 206 325-3305

DECLARATION OF BRADLEY R. MARSHALL
AUTHENTICATING DOCUMENTS

I, Bradley R. Marshall, declare and state as follows:

1. I am over the age of 18, competent to testify herein.
2. I certify that, to the best of my knowledge and belief, the attached documents listed as Exhibits 1 through 20 are true and correct copies of the originals thereof.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington this 25th day of March, 2009.



Bradley R. Marshall

DECLARATION OF SERVICE AND FILING

On this date I provided a copy of the foregoing Appellant's Supplement to Motion for Dismissal, or in the Alternative for a New Hearing via email, with a copy mailed on 3/25/09 via the U.S. Postal Service with first class postage affixed, to:

Scott Busby, Disciplinary Counsel
Washington State Bar Association
1325 4th Ave., Suite 600
Seattle WA 98101
Email address: scottb@wsba.org

On this date the said document was sent via email for filing with the Clerk of Court as follows:

Mr. Ronald Carpenter, Clerk
Washington State Supreme Court
Email address: supreme@courts.wa.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington on March 25, 2009.


Kay Gordon, Admin. Assistant to
Bradley R. Marshall, Appellant

EXHIBIT 1

ROBIN H. BALSAM P.S.

ATTORNEYS AT LAW
A PROFESSIONAL SERVICES CORPORATION

Robin H. Balsam
Steven E. Lust
Heather L. Crawford

CONFIDENTIAL

November 24, 2008

Bradley R. Marshall
Marshall Firm
121 Lakeside Avenue, Suite 100B
Seattle, WA 98122-6587

Teena M. Killian
Williams Kastner & Gibbs
601 Union Street, Suite 4100
Seattle, WA 98101-1368

Re: Bradley Marshall v. Teena M. Killian
WSBA File No. 07-01304

Dear Mr. Marshall and Ms. Killian:

This matter was assigned to me as Special Disciplinary Counsel to conduct the investigation and analyze the grievance independently of the Bar Association.

I have completed my investigation and write to advise you of my conclusion before I report this matter to a Review Committee of the Disciplinary Board. My analysis is based on telephone calls with Teena Killian, Eric Hoort, and Kurt Bulmer; a review of the discipline file of the WSBA; review of documents requested from Teena Killian, which were her May 26, 2006 letter to WSBA Human Resources, and an application for employment with the WSBA; and review of the docket of Eric C. Hoort, proceeding no. 04-00037. I also reviewed materials from the Bar Association, which are the January 14, 2005 letter from Teena Killian to the Human Resources Director of the WSBA, including her resume and a writing sample; the May 26, 2006 letter to Human Resources from Teena Killian, which attached her writing sample and resume; a June 2, 2006 letter to Teena Killian from WSBA; and the July 7, 2006 letter from WSBA to Ms. Killian, which has her employment application attached.

609 TACOMA AVE. SOUTH TACOMA, WASHINGTON 98402
TELEPHONE (253) 627-7800 FACSIMILE (253) 572-0912
Email: cmb@balsamlaw.com

item 1

Based on my investigation, I am recommending that the Review Committee issue an admonition. If you wish to provide additional information or address my analysis, you should send it to me before December 10, 2008. The Review Committee will be provided with the documentation listed at the end of this letter and anything further that you send to me. All materials will become public when and if the Review Committee orders the matter to hearing or orders an admonition be issued, unless the materials are covered by a protective order.

This grievance arises from Ms. Killian acting as a hearing officer in a grievance against Bradley Marshall, file no. 05-00103, while applying for a job to become disciplinary bar counsel.

FACTS AS DISCLOSED BY INVESTIGATION

The grievance discusses Teena Killian's service as a hearing officer in two separate Bar proceedings that are unrelated. One of those proceedings was a grievance against Eric B. Hoort. The hearing officer was Teena Killian, who was appointed on June 18, 2004. The findings of fact, conclusions of law, and hearing officer recommendations were filed July 15, 2005. A reprimand was filed against Mr. Hoort on December 15, 2005. According to documents received from WSBA and Kurt Bulmer, on January 14, 2005, Ms. Killian applied for a job with WSBA. According to her letter, on May 26, 2006, she was offered a job but did not accept because of the salary. That is indicated as a note on the January 15, 2005 letter from Ms. Killian to the Bar Association. "On January 24, 2005, she withdraws her application because she needs at least \$90,000 per year." In discussing the matter with Ms. Killian, she admitted that she had applied for a job at the Bar during that time, and did not advise Mr. Hoort or his lawyer. Mr. Hoort verified that he was unaware Ms. Killian had applied for a job at the Bar.

The Bar has no other records of the employment process in 2005, since they destroy their files after two years. Ms. Killian does not have any documentation in regard to that request for employment, other than what was provided.

As to the current matter, it is clear that Ms. Killian inquired about and formally applied for a job with the Bar Association during the course of her involvement as a hearing officer. This was discovered by Mr. Marshall and his counsel, and a recusal was requested.

Ms. Killian applied for a job with the Bar on May 26, 2006, and noted in her cover letter that she was a hearings examiner in the case of Bradley Marshall that was set for hearing on July 24, 2006. She said additionally, "I would plan to recuse myself from the case if discussions concerning the above referenced disciplinary counsel position go forward." On June 2, 2006, WSBA notes her role as a hearing officer in the Marshall matter, and that they (the Bar)

would consider her application right away and arrange for an interview. On July 7, 2006, the WSBA advises her they would not offer her a job.

Bar counsel advises Mr. Marshall on June 22, 2006 that Ms. Killian had applied for a job as Bar Counsel. The hearing officer recuses herself on June 26, 2006. Ms. Killian had signed an order in the Marshall proceeding on June 8, 2006.

VIOLATION ANALYSIS

DISCUSSION. The Code of Judicial Conduct applies in this matter to the activities of Ms. Killian as a hearing officer in Mr. Marshall's discipline. In the preamble, it discusses that the legal system is based on the principle that there is an "independent, fair, and competent judiciary", that it is part of the public trust, and that judicial officers should strive to "enhance and maintain confidence in our legal system....The Code of Judicial conduct is intended to establish standards for ethical conduct of judges....The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them."

Canon 2 states that judges should avoid impropriety and appearance of impropriety in all their activities, and the purpose of that is to promote public confidence in the integrity and impartiality of the judiciary.

Canon 3 states that judges shall perform the duties of their office impartially and diligently. Specifically, (D)(1) states: "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned..."

Additionally, a hearing officer is to avoid the appearance of impropriety (ELC 2.6(c)), and disqualify him- or herself when his or her impartiality "might reasonably in question." ELC 2.6(e)4A.

Ms. Killian either should not have applied for the position with the Bar at the time she was acting as a hearing officer, or she should have immediately recused herself when she intended to apply. Continuing in the role of a hearing officer is an appearance of impropriety when one is trying to get a job with the association for which one is supposed to be acting in an impartial manner regarding attorney discipline.

Both Mr. Marshall and Mr. Hoort were upset. Mr. Hoort learned for the first time during my discussion with him that the hearing officer was involved in applying for work with the Bar Association while acting as hearing officer in his matter.

Because it appears that Ms. Killian violated the judicial canons, ELC 2.6C and 2.6E(4)(a), I will be forwarding this matter to a Review Committee for its consideration. The Review Committee has wide discretion and may dismiss the grievance, dismiss with an advisory letter, issue an admonition or order the matter to hearing for a public determination of the violations and the appropriate disciplinary sanction.

SANCTION ANALYSIS

The Washington Supreme Court has held that the American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) ("ABA Standards") provide the appropriate framework to impose disciplinary sanctions. In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 492, 998 P.2d 833 (2000); In re Disciplinary Proceeding Against Johnson, 114 Wn.2d 737, 745, 790 P.2d 1227 (1990). The ABA Standards require examination of (1) the duty violated, (2) the lawyer's mental state, (3) the extent of actual or potential for injury caused by the lawyer's conduct, and (4) aggravating and mitigating factors.

The nature of the duty violated together with the lawyer's mental state and any potential injury generally determine the presumptive sanction to be applied. ABA Standards section 7.0 is most applicable to the duty to avoid the appearance of impropriety.

It appears Respondent acted knowingly. The actual injury appears to be the appearance of impropriety, and the presumptive sanction thus appears to be admonition. See the attached case, In re the Matter of the Disciplinary Proceeding Against Richard B. Sanders, Justice of the Supreme Court of Washington, 159 Wn.2d 517, 145 P.3d 1208 (2006).

Aggravating or mitigating factors may cause the sanction to vary from the presumptive sanction. Under ABA Standards Section 9.22, I believe the following aggravating factors are present in this case: a pattern of misconduct and multiple offenses.

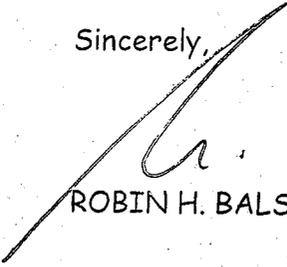
Under ABA Standards Section 9.32, I believe the following mitigating factors are present: absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board, and cooperative attitude toward proceedings.

The aggravating factors and mitigating factors do not appear to cause the sanction to vary from the presumptive sanction.

CONCLUSION

Based on my investigation and the ABA Standards as discussed above, Special Disciplinary Counsel is recommending that the Review Committee issue an admonition (a finding of a rule violation under ELC 13.5(a)). The Review Committee will advise you of its decision.

Sincerely,



ROBIN H. BALSAM

CC: Elizabeth Turner

Enclosures:

- docket of Eric C. Hoort, proceeding no. 04-00037
- January 14, 2005 letter from Teena Killian to the Human Resources Director of the WSBA, resume and a writing sample
- May 26, 2006 letter to Human Resources from Teena Killian, which attached her writing sample and resume
- June 2, 2006 letter to Teena Killian from WSBA
- July 7, 2006 letter from WSBA to Ms. Killian with employment application attached
- In re the Matter of the Disciplinary Proceeding Against Richard B. Sanders, 159 Wn.2d 517, 145 P.3d 1208 (2006)

RHB/cb

V:\Marshall\L-MarshKilln111808cb

EXHIBIT 2

RECEIVED
MAR 10 2009
The Marshall Firm



**WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD**

1325 Fourth Avenue, Suite 600 · Seattle, Washington 98101-2539
Telephone: (206) 727-8280 · Fax: (206) 727-8314

WILLIAM J. CARLSON
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

Dismissal

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed. The decision of the Review Committee is not appealable.

Advisory Letter

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

Admonition

If the Review Committee determined that there was sufficient misconduct under the Rules for Enforcement of Lawyer Conduct (ELC) to warrant the issuance of an Admonition under Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is public information. ELC 3.1(b).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

Order to Hearing or for Further Investigation

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

Other: _____

If you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of the Disciplinary Counsel at (206) 727-8207. The decision of the Review Committee is not appealable.

Date: 3/9/09

File Number: 07-01304

Mailed To: TEENA M. KILLIAN, BRADLEY R. MARSHALL

RECEIVED

MAR 10 2009

The Marshall Firm

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION
Thomas Cena (Chair), Michael Bahn, Melinda Anderson
FINDING AND ORDER OF REVIEW COMMITTEE II

Respondent Lawyer: TEENA M. KILLIAN

WSBA FILE NO. 07-01304

Respondent's Counsel:

Grievant: BRADLEY R. MARSHALL

Having reviewed the materials regarding the above captioned grievance, Review Committee II of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

- () There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED that a hearing should be held on the allegations of the grievance.
() and consolidated with other grievances against this lawyer.
- () There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.
- () The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED that the grievance should be dismissed with no further action.
- () The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED that an admonition should be issued to the lawyer. (ELC 13.5)
- (X) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding
ISSUES OF APPEARANCE OF FAIRNESS
- () There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____
- () There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.
- () IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay \$_____ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.
- () and IT IS ORDERED _____

Dated this 6 day of March 2009.

The vote was 30

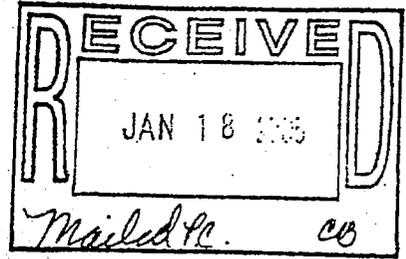
Thomas Cena
Thomas Cena, Chairperson of Review Committee II

EXHIBIT 3

January 14, 2005

Human Resources Director
Washington State Bar Association
2101 Fourth Avenue, Suite 400
Seattle, Washington 98121-2330

no joy



Re: Disciplinary Counsel Position

*T/C 1/24/05. Withdraws App.
Needs at least \$90K/yr.*

Dear Human Resources Director:

I am writing in response to your advertisement in the January, 2005 issue of the Washington State Bar News. I am interested in the possibility of becoming Disciplinary Counsel for the Bar Association. I ask that you treat this inquiry confidentially.

I have been practicing law since 1986. I am currently Of Counsel at Williams Kastner & Gibbs PLLC, where I have been practicing primarily commercial litigation and professional liability defense since 1998. Previously, I practiced at Lane Powell Spears Lubersky for nine years, primarily in the area of professional liability defense with an emphasis on attorney malpractice defense. I began my legal career at what is now Stafford Frey Cooper, practicing general civil defense litigation with an emphasis on police misconduct defense. I have had extensive litigation and trial experience.

I am also a Hearings Examiner for the Washington State Bar Association. It is the latter experience that piqued my interest in the position being advertised, although practicing in the area of attorney malpractice defense also contributed to my interest.

I have enclosed my resume as well as a writing sample. My salary requirements are negotiable. References include Linda B. Clapham, a partner with Lane Powell Spears Lubersky (206-223-7962) and Rashelle C. Tanner, General Counsel at Christa Ministries, (206-546-7570). I can be contacted on my direct line listed on my resume or at tkillian@wkg.com.

Thank you for your consideration.

Sincerely,

Teena M. Killian

Encs.

*525-30TH AV
SEATTLE, WA 98122*

EXHIBIT 4

May 26, 2006

Human Resources, WSBA
2101 Fourth Avenue, Suite 400
Seattle, Washington 98121-2330

Re: Disciplinary Counsel Position

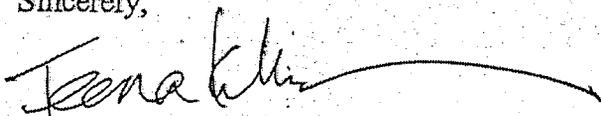
Dear Sir or Madam:

Please consider this my letter of interest in the above-referenced position posted on the Bar Association's website on May 25, 2006. Enclosed is my resume and a writing sample. I interviewed for a similar position last year, and was made an offer, but was not yet ready to make the salary adjustment it would have entailed. Now I am. I have long been interested in working in this capacity and am now in a position to do so.

Please note that I am currently the Hearings Examiner in the case of In Re Bradley R. Marshall, Public File No. 05#00103. The hearing is set to begin July 24, 2006. I would plan to recuse myself from the case if discussions concerning the above-referenced Disciplinary Counsel position go forward.

Thank you for your consideration.

Sincerely,



Teena M. Killian

:tmk
Enclosures

RECEIVED

MAY 30 2006

WSBA OFFICE OF
DISCIPLINARY COUNSEL

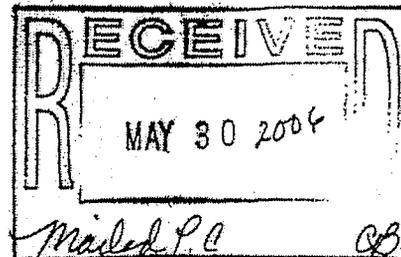


EXHIBIT 5



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Anne I. Seidel
Chief Disciplinary Counsel

Direct line: (206) 239-2109
Fax: (206) 727-8325

June 2, 2006

Teena Killian
525 30th Ave
Seattle, WA 98122

Re: Your application for Disciplinary Counsel I position

Dear Ms. Killian:

Thank you for applying for the Disciplinary Counsel position. In light of your concerns regarding your role as the Hearing Officer for the Bradley Marshall formal proceeding, I wanted to let you know right away that we will be considering your application. We will be contacting you in the next week or two to arrange for an interview.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne I. Seidel".

Anne I. Seidel
Chief Disciplinary Counsel

ITEM 5

EXHIBIT 6



WSBA
OFFICE OF DISCIPLINARY COUNSEL

Anne I. Seidel
Director of Lawyer Discipline

direct line: 206-239-2109
fax: 206-727-8325

July 7, 2006

Teena M. Killian
525 30th Ave
Seattle WA 98122

Re: Application for Disciplinary Counsel

Dear Ms. Killian:

Thank you for applying for the disciplinary counsel position and for interviewing with us. We appreciated being able to consider someone with your very impressive credentials, talents, and experience. We received resumes from a number of well-qualified applicants, making our selection difficult. Although we are not able to offer you a position at this time, we will keep your resume on file for one year.

Sincerely,

Anne I. Seidel

Zremko

EXHIBIT 7



FILED

OCT 03 2005

**WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD**

2101 Fourth Avenue - Suite 400 • Seattle, Washington 98121-2330
Telephone: (206) 727-8280 • Fax: (206) 727-8320

DISCIPLINARY BOARD

MARCELLA F. REED
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

Dismissal

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed. The decision of the Review Committee is not appealable.

Advisory Letter

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

Admonition

If the Review Committee determined that there was sufficient misconduct under the Rules for Enforcement of Lawyer Conduct (ELC) to warrant the issuance of an Admonition under Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is public information. ELC 3.1(b).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

Order to Hearing or for Further Investigation

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

Other: _____

If you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of the Disciplinary Counsel at (206) 727-8207. The decision of the Review Committee is not appealable.

Date: 10/3/05

File Number: 03-00826

Mailed To: **Lindia Richard, Kurt M. Bulmer**

004
ITEM 1

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION
Zachary Mosner (Chair), David Allen Kurtz, Susan B. Madden
FINDING AND ORDER OF REVIEW COMMITTEE IV

FILED

OCT 03 2005

Respondent Lawyer: Bradley R. Marshall

W.S.B.A FILE NO. 03-00826

Respondent's Counsel: Kurt M. Bulmer

Grievant: Lindia Richard

DISCIPLINARY BOARD

Having reviewed the materials regarding the above captioned grievance, Review Committee IV of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

- There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
 and consolidated with other grievances against this lawyer.
- There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.
- The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.
- The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (ELC 13.5)
- There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding

- There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of:

- There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.
- IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay \$ _____ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.
- and IT IS ORDERED

Dated this 30th day of September 2005

The vote was 3-0

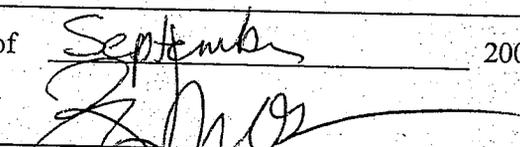

Zachary Mosner, Chairperson of Review Committee IV

EXHIBIT 8



FILED

OCT 03 2005

**WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD**

DISCIPLINARY BOARD

2101 Fourth Avenue - Suite 400 • Seattle, Washington 98121-2330
Telephone: (206) 727-8280 • Fax: (206) 727-8320

MARCELLA F. REED
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

Dismissal

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed. The decision of the Review Committee is not appealable.

Advisory Letter

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

Admonition

If the Review Committee determined that there was sufficient misconduct under the Rules for Enforcement of Lawyer Conduct (ELC) to warrant the issuance of an Admonition under Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is public information. ELC 3.1(b).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

Order to Hearing or for Further Investigation

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

Other: _____

If you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of the Disciplinary Counsel at (206) 727-8207. The decision of the Review Committee is not appealable.

Date: 10/3/05

File Number: 03-02047

Mailed To: WSBA, Kurt M. Bulmer

ITEM 2

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION
Zachary Mosner (Chair), David Allen Kurtz, Susan B. Madden
FINDING AND ORDER OF REVIEW COMMITTEE IV

FILED

OCT 03 2005

Respondent Lawyer: Bradley R. Marshall

W.S.B.A FILE NO.: 03-02047

Respondent's Counsel: Kurt M. Bulmer

Grievant: WSBA

Having reviewed the materials regarding the above captioned grievance, Review Committee IV of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

- (✓) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
(✓) and consolidated with other grievances against this lawyer.
- () There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.
- () The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.
- () The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (ELC 13.5)
- () There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding
-
- () There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____
-
- () There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.
- () IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay \$ _____ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.
- () and IT IS ORDERED _____

Dated this 30th day of September 2005

The vote was 3-0

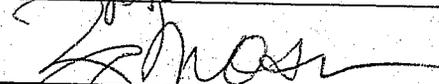

Zachary Mosner, Chairperson of Review Committee IV

EXHIBIT 9



WSBA

OFFICE OF GENERAL COUNSEL

10

Becky Crowley
Clerk to the Disciplinary Board

direct line: 206-733-5926
fax: 206-727-8319
e-mail: beckyc@wsba.org

August 10, 2006

Mr. James M. Danielson
Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
Wenatchee, WA 98807

Re: In re Bradley Marshall, WSBA # 15830, Proceeding Number 05#00103

Dear Mr. Danielson:

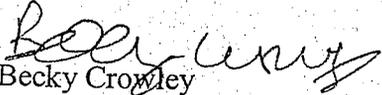
The Chief Hearing Officer has appointed you hearing officer in this matter. I have enclosed a copy of the order appointing you and the pleadings currently in the public file. If you believe that you have a conflict of interest with the respondent, disciplinary counsel, or any of the witnesses in this matter, please file a written request for recusal. After you have reviewed the pleadings, you should set a scheduling conference with the parties to determine the initial case schedule, discovery issues and timing, and other pre-hearing issues the parties bring to your attention. This initial conference is often conducted by telephone and should result in a written order. Although you should not discuss substantive issues in the case with the parties *ex parte*, you may contact them to schedule conferences, motions, etc.

All original orders should be mailed to the Disciplinary Board Clerk for filing with the Disciplinary Board. Although you may send the parties copies of orders, Rules for Enforcement of Lawyer Conduct (ELC) 4.2(b) requires the Clerk to the Board to serve orders on the Respondent. If you need a copy of the hearing officer manual, please contact me.

Disciplinary Counsel:
Respondent's Counsel:

Chris Gray (206) 733-5908
Kurt Bulmer (206) 325-9949

Sincerely,


Becky Crowley
Clerk to the Disciplinary Board

Enclosures (order, pleadings)
cc: Chris Gray, Kurt Bulmer

ITEM 3

FILED

AUG 10 2006

BEFORE THE DISCIPLINARY BOARD
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

BRADLEY ROWLAND MARSHALL,

Lawyer

WSBA No. 15830

)
) Public File No. 05#00103
)
) ORDER APPOINTING HEARING
) OFFICER
)
)

Pursuant to ELC 10.2, JAMES M. DANIELSON is appointed Hearing Officer in this matter. The Hearing Officer's address and telephone number are:

James M. Danielson
Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
Wenatchee, WA 98807

Phone: (509) 662-3685
Fax: (509) 662-2452

DATED this 9th day of August, 2006.



JAMES M. DANIELSON
Chief Hearing Officer

075
item 4

EXHIBIT 10

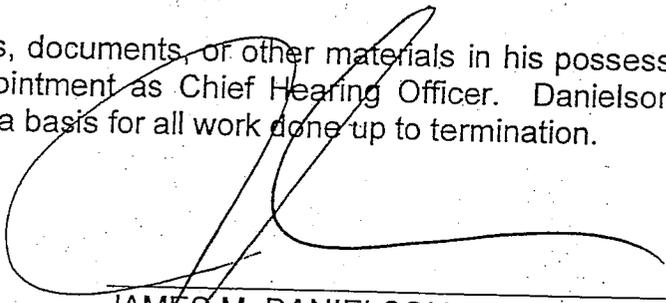
PERSONAL SERVICES AGREEMENT

This Agreement is entered into on the 4th day of April, 2003, between JAMES M. DANIELSON ("Danielson") and the WASHINGTON STATE BAR ASSOCIATION ("WSBA").

For the mutual covenants and consideration contained herein, the parties agree as follows:

1. James M. Danielson is appointed Chief Hearing Officer pursuant to Rules for Enforcement of Layer Conduct (ELC) 2.5(f) to carryout the responsibilities of the Chief hearing Officer established by the ELCs.
2. The period of appointment is April 4, 2003 through September 30, 2003, for which the WSBA shall pay to Danielson the total sum of \$20,000, in monthly payments on the last day of each month for the duration of this contract. This agreement may be renewed annually on October 1 of each year by mutual agreement of the parties, at the rate of \$30,000 per year.
3. James M. Danielson is an independent contractor, not an employee of the WSBA. Danielson is not eligible for any benefits provided for employees of the WSBA, including Workman's Compensation, sick time, or other benefits.
4. WSBA recognizes that James M. Danielson is a shareholder in Jeffers, Danielson, Sonn & Aylward, P.S., and bound by the Shareholder's Agreement of that corporation, which provides that all payments for services provided by James M. Danielson's pertaining to the legal profession shall be property of Jeffers, Danielson, Sonn & Aylward, P.S. Therefore, for tax reporting purposes, WSBA shall treat Jeffers, Danielson, Sonn & Aylward, P.S. as its independent contractor, and any and all tax statements and tax reporting forms, both federal and state, shall be issued in the name of Jeffers, Danielson, Sonn & Aylward, P.S., not James M. Danielson. Furthermore, WSBA shall reimburse Jeffers, Danielson, Sonn & Aylward, P.S. for all reasonable expenses necessary for James M. Danielson to complete the duties as the Chief Hearing Officer.
5. WSBA recognizes that James M. Danielson's malpractice insurance may not cover issues relating to his duties as the Chief Hearing Officer. Therefore, WSBA agrees to hold James M. Danielson and Jeffers, Danielson, Sonn & Aylward, P.S. harmless from any and all claims, causes of action, obligations, liabilities, expenses, damage, and loss relating to or in connection with James M. Danielson's duties as the Chief Hearing Officer.
6. This agreement may be terminated at any time by either party with or without cause. On termination, Danielson will turn over to the

WSBA all records, papers, documents, or other materials in his possession as a consequence of his appointment as Chief Hearing Officer. Danielson will be compensated on a pro rata basis for all work done up to termination.



JAMES M. DANIELSON

WASHINGTON STATE BAR ASSOCIATION

By TH Geneva Nichols

EXHIBIT 11



JEFFERS, DANIELSON,
SONN & AYLWARD, P.S.

Established 1946

Garfield R. Jeffers
James M. Danielson
David E. Sonn
J. Patrick Aylward
J. Kirk Bromiley
Peter A. Spadoni
Robert C. Nelson
Donald L. Dimmitt
Robert R. Siderius, Jr.
Stanley A. Bastian
Mitchell P. Delabarre
Theodore A. Finegold

Todd M. Kiesz
Kari D. Kube
Brian C. Huber
Michael E. Vannier

J. Kevin Bromiley
Colleen M. Diener
Jonathan R. Peirce
Michelle A. Green
Elizabeth A. McCown
Megan M. Curry

February 18, 2009

2003-0052-0002

Mr. Ronald T. Schaps
7343 East Marginal Way So.
Seattle, WA 98108

Re: Grievance against James M. Danielson, filed by Bradley Marshall
WSBA File No. 09-00229

Dear Mr. Schaps:

This will serve as my written response to the grievance of Bradley R. Marshall, dated February 5, 2009. I have no objection to your forwarding a copy of this response to the grievant.

I have served as the Chief Hearing Officer pursuant to the Rules for Enforcement of Lawyer Conduct, ELC 2.5(f), under a Personal Service Agreement with the Washington State Bar Association, dated April 4, 2003. A copy of that agreement is attached as Exhibit 1. I was appointed pursuant to the newly adopted ELCs, and have functioned since then as an independent contractor, not an employee of the WSBA. The stipend was established at \$20,000 per year and was later increased to \$30,000. My timekeeping records indicate that this stipend covers about one-half of the time I spend on this task, and I donate the other half of my time because I think lawyer discipline is one of the most important services a lawyer can provide to his profession.

In responding to this grievance, I intend to respond to my understanding of the criticisms raised in a pleading captioned before the Supreme Court of the State of Washington No. 200,577-2 Respondent's Motion for Dismissal, or in the Alternative for a New Hearing, and I have now received the Reply Brief to the Supreme Court. While I intend to respond as fully as possible, it is difficult to respond to an appellant's brief.

My role as Chief Hearing Officer requires that I interface with the Bar Association by receiving electronic notice of cases referred to public hearing. I then email a prospective hearing officer selected from a panel list inquiring as to any potential for conflicts. If the hearing officer contacted tells he or she has no conflict, that individual is then appointed to serve as

hearing officer in that particular matter. In the Bradley Marshall matter (05#00103), I followed that procedure and on December 5, 2005, appointed Hearing Officer Teena Killian.

Approximately six months after the initial appointment, I received a copy of a letter addressed to Ms. Gray and Mr. Bulmer from Ms. Killian, recusing herself from the case at the joint request of Bar counsel and Mr. Marshall's then-counsel Kurt Bulmer. As Chief Hearing Officer, when I receive a recusal, it is my practice to remove that hearing officer and attempt to find a new hearing officer to appoint. The conflict check process was repeated, and I removed Ms. Killian and appointed Anthony Russo on July 6, 2005. Respondent Marshall then requested that Mr. Russo be removed without cause (ELC 10.2(b)(1)). The process was repeated and on August 1, 2006, Geoffrey Revelle was appointed. Mr. Revelle was then removed as hearing officer, without cause, at the request of Bar counsel. At that point, no hearing officer was appointed.

A hearing date had previously been set by the first hearing officer, and there was pending a Motion to Compel Documents and Information and to stay proceedings. When no hearing officer is appointed, the ELCs require the Chief Hearing Officer to handle the motions. On July 31 I emailed both Mr. Bulmer and Ms. Gray, pointing out that I was in the process of appointing another hearing officer. I told them I would consider the motion if either of them wished, but would prefer that it be addressed by a hearing officer. See email string attached as Exhibit 2. Both Ms. Gray and Mr. Bulmer asked that I rule on the pending motion and not appoint another hearing officer so that I could retain jurisdiction to hear the matter. Mr. Bulmer did not raise any conflict of interest or request that I recuse myself in the matter. I thereafter considered the order compelling documents and issued my order on August 10, 2006. Because I had already spent the time and attention considering the motion, because of the pending hearing date, and because each of the previously appointed hearing officers had been removed, I appointed myself as hearing officer. I do this three or four times every year. On August 29, 2006, I conducted a telephone hearing. The Motion to Stay was denied and prehearing deadlines were established. Mr. Bulmer, respondent's then-attorney participated in those arguments and did not raise any issue as to my service as hearing officer.

The matter proceeded to hearing on February 20-27, and I entered Findings of Fact, Conclusions of Law and Recommendation, which were amended after post-hearing motions, with a recommendation that Mr. Marshall be disbarred. At no time has there been a motion made that I recuse myself or even a suggestion that I remove myself. Even after I had issued my Findings, Conclusions and Recommendation, Mr. Marshall through his attorney brought a motion for new hearing or alternative to reopen the hearing, which again raised no issue as to my capacity to serve as hearing officer. The motion was denied. After the Disciplinary Board's decision on my recommendation, the case was appealed to the Washington State Supreme Court.

While I disagree with the arguments made in the brief before the Supreme Court as to my conduct of the hearing, I do not have a copy of the transcript, so I cannot comment specifically. It is my

habit to thank any witness who appears in the hearing for appearing. Without commenting further, I would point out that alleged misconduct at the hearing should be raised by objection to preserve a record and appeal. It is not raised by filing a grievance against the hearing officer.

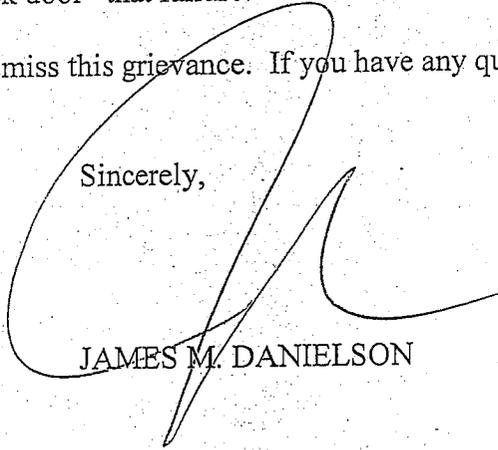
I do use letterhead identifying me as the Chief Hearing Officer. All the pleadings generated by me in my role of Chief Hearing Officer are captioned "Before the Disciplinary Board of the Washington State Bar Association" with the public file number and indicate the Washington State Bar Association on the bottom righthand corner as on pleading paper. See attached Exhibit 3.

As to the most recent information provided, the Reply Brief to the Supreme Court, I respond as follows: I was appointed to serve on a task force considering the overall operation of the attorney discipline system in the state of Washington that involved an extensive review of the ELCs adopted by the Supreme Court in 2002. It was my understanding that because I have dealt with the ELCs probably more than any other lawyer in the state since their adoption by the Supreme Court, I was in a position to make constructive suggestions about amendments, and I have done so. There is nothing in my appointment as Chief Hearing Officer that requires me to abandon my professional interests and service to my profession.

My understanding of the grievance process in which you are involved is to determine if I violated some ethical obligation as an attorney. I acknowledge that the ELCs provide that a violation of the ELCs can be considered an ethical violation. The trouble I have with this is that Mr. Marshall is making shotgun allegations in briefs to the Supreme Court, and I do not see any specific ethical obligation he claims I breached. He is challenging my service as Chief Hearing Officer and as a hearing officer in this fashion because it was not raised during the hearing and he is trying to "back door" that failure.

I urge you to dismiss this grievance. If you have any questions, I would be happy to further respond.

Sincerely,



JAMES M. DANIELSON

JMD:jod
Attachments

EXHIBIT 12

RONALD T. SCHAPS
Attorney at Law
WSBA # 2203

7343 E. Marginal Way S.
Seattle, Washington 98108

(206) 832-3017
rons@emeraldncw.com

March 16, 2009

Bradley R. Marshall
121 Lakeside Ave., Suite 100B
Seattle, WA 98122-6587

Re: WSBA File No. 009-00229
Grievance filed by Bradley R Marshall against lawyer James M. Danielson

Dear Mr. Marshall:

As you know, I have been appointed by the Washington Supreme Court to serve as Conflicts Review Officer concerning your grievance. In that capacity, I act independently of the Washington State Bar Association's Office of Disciplinary Counsel in initially reviewing the matter to determine whether there is sufficient basis to refer the matter for further investigation. I have now analyzed all of the information you provided in support of your grievance dated February 5, 2009 against lawyer James M. Danielson, and the information provided by Mr. Danielson in response (copies of which were previously forwarded to you).

Your documents also contain allegations as to attorneys other than Mr. Danielson and it is not the intent of this letter to address those allegations. To the extent I may make references to them in the context of discussing your allegations against Mr. Danielson, those references should not be taken as any indication of the merits of those other allegations.

Your documents also contain arguments addressed to the structure of the disciplinary system as established by the Washington Supreme Court. Those arguments, of course, can only be addressed to the Washington Supreme Court,

You assert that Mr. Danielson violated RPC 8.3 and ELC 2.6 (3)(B) by failing to take action against Ms. Killian because she had applied for a position as disciplinary counsel while she was the hearing officer appointed to hear the disciplinary proceedings against you.

RPC 8.3 provided that a lawyer who "knows" another lawyer has committed a serious violation of the RPCs that "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects", "should" inform the appropriate professional authority. As the official comments to this RPC clearly indicate, RPC 8.3 does not impose a mandatory duty but an aspiration that lawyers will report known serious violations.

In your case, Ms. Killian (first appointed on December 5, 2005 and who entered only three scheduling orders in your case), applied for a job as disciplinary counsel by letter received by the Human Resources department of the WSBA on May 30, 2006.¹ In that letter she acknowledged that she was currently appointed as the hearing officer in your case and would recuse herself if discussions regarding such employment went forward.

She did not advise you, your counsel, disciplinary counsel in your case, or Mr. Danielson of her application.

You advise that your counsel, Kurt Bulmer, first learned of Ms. Killian application on June 20, 2006 from disciplinary counsel in your case² and they agreed to jointly request that she recuse herself. Your counsel drafted and sent that joint request on June 22, 2006, in which he declined to discuss the reasons for the joint request as a matter of public record, and stating:

However, to avoid any misunderstanding in the record we want to make clear that the request is not in any way based on integrity issues.”

Ms. Killian promptly entered an order recusing herself. When Mr. Danielson received that order he promptly removed Ms. Killian as the hearing officer in your case.

Disciplinary counsel asked Mr. Danielson to prescreen any new hearing officer for availability on the dates previously set by Ms. Killian for your hearing to commence (July 24- August 8, 2006). That was the subject matter of your counsel's letter of June 29, 2006 to Mr. Danielson, because your counsel was concerned about what would be said to justify screening for those dates and the possible prejudice to his right to move for continuances on your behalf. In that letter your counsel also advised Mr. Danielson of the reason for the joint request to Ms. Killian that she recuse herself. There is no indication that Mr. Danielson after receiving your counsel's letter pre-screened for those dates as disciplinary counsel had requested.

A new hearing officer was appointed July 6, and subsequently excused by you on a preemptory basis. A third hearing officer was appointed August 1 and subsequently excused by disciplinary counsel on a preemptory basis.

There were pending motions made by your counsel, and your counsel affirmatively requested that Mr. Danielson retain jurisdiction and rule on the motions instead of having it heard by a yet to be appointed fourth hearing officer. Mr. Danielson then appointed himself as hearing officer and in ruling on the motions granted your counsel's requests to vacate all of Ms. Killian's orders and granted you significant additional time for discovery and a major continuance of the hearing dates. At no time thereafter in any proceeding before Mr. Danielson did either you or your counsel raise any objection to Mr. Danielson or suggest there was any reason for him to recuse himself.

¹ Any argument that Mr. Danielson, with his offices in Wenatchee and the nature of his communications with the WSBA office in Seattle adequately described in his response, should be charged with actual knowledge of everything that occurs in the various departments of the WSBA located in Seattle, is specious.

² Your counsel in his June 29th letter (which you attached) stated it was on the 22nd.

You then make vague allegations that it was improper for Mr. Danielson to appoint himself as hearing officer because he was being compensated for his services as Chief Hearing Officer and particularly since he failed to advise you and your counsel that he was being compensated.

ELC 2,5 (f) provides, in part:

“The Board of Governors appoints a chief hearing officer who, **in addition to hearing matters**, assigns cases ... administers hearing officer compensation ..” (bolding supplied)

ELC 2.11 (a) provides:

“The Association compensates the chief hearing officer to the extent authorized by the Board of Governors. The association may compensate hearing officers and panel members to the extent authorized by the Board of Governors. Board members and adjunct investigative counsel receive no compensation for their services.”

Thus, the fact that Mr. Danielson was being compensated should be a fact known to all Washington lawyers and if, in fact, you were somehow unaware of the provisions of the Rules for Enforcement of Lawyer Conduct your counsel, highly experienced in representing respondent lawyers in disciplinary proceedings, would clearly have known. Neither you nor your counsel ever asserted your current allegations before Mr. Danielson at anytime during the proceedings before him and never requested his recusal on any grounds

There is nothing unethical about a judge or hearing officer being compensated for those services. Federal judges at all levels, municipal judges, Superior Court judges, Court of Appeals judges, Supreme Court justices and administrative law judges are all historically compensated for their judicial services. Nor does it make a difference that the same source of funding for their compensation (federal, state, county, municipal governments, administrative agencies) is also the source of funding for others that might appear before them (US. Attorneys, prosecuting attorneys, agency staff attorneys etc.).³ This is **clearly** not the “pecuniary interest” in the outcome of proceedings that the cases you cite refer to.

To the extent that you can reasonably and in good faith assert that this is a structural flaw in the disciplinary system, your only recourse is to address that to the Washington Supreme Court.⁴ It is not an ethical violation to participate in the disciplinary system in a manner specifically authorized and established by the Washington Supreme Court.

In your Reply, you raise vague allegations that it was somehow unethical for Mr. Danielson to participate on a WSBA Committee (ordered by the Washington Supreme Court and including members from all aspects of the bar and the judiciary, including the Washington Supreme Court) and its Task Force #2 – and that he failed to advise you and your counsel that he was doing so. First, it should be noted that your own documents show that **your counsel**, Kurt Bulmer, actively

³ Nor does the indemnity provision in Mr. Danielson’s contract with the Association raise any ethical concerns. See the notation re the 2008 Amendment to ELC 2.12.

⁴ You may wish to review the unanimous Washington Supreme Court statement regarding such structural arguments in Residents v Site Evaluation Council, 165 Wn.2d 275 at 314.

served on that same committee and that same Task Force #2 and therefore would have been fully aware of everything relating to Mr. Danielson's participation. No issue of that participation was ever raised in any proceeding before Mr. Danielson. You offer no explanation or argument as to how participation on such a committee to examine possible improvements in the disciplinary system could constitute a violation of an RPC or ELC or impact any issue you raised in your proceedings before Mr. Danielson.

Also in reply, you assert that it was somehow unethical for Mr. Danielson to continue as a hearing officer because of one paragraph in a three page letter by Mr. Bastian, as WSBA President, that apparently appeared in the October 2007 WSBA Bar News and on his website. Mr. Bastian was, and apparently is, a partner in the same law firm as Mr. Danielson. That paragraph stated:

"Professionalism and Civility. General Rule 12 specifically directs the bar association to "foster and maintain high standards of competence, professionalism and ethics among its members." In fact, this could be the most important duty of the bar association because we are the only self regulated profession in the state of Washington. Every other profession which requires a license is regulated by a state agency, such as the department of Health or the Department of Labor and Industries. The WSBA has always prided itself on being the only self regulated profession in the state of Washington, but we will remain that way only if we maintain tough, firm and transparent standards of professionalism."

This is a far cry from your exaggerated mischaracterizations of that paragraph:

"... published inflammatory statements on the firm's letterhead and website about the need to more aggressively prosecute lawyers.."

"... his policy for tougher disciplinary prosecutions .."

There is nothing improper about Mr. Bastain's general statements. There would be nothing unethical about Mr. Danielson continuing as a hearing officer. The statements had no bearing on your specific disciplinary proceedings, which had already been formally underway for approximately two years and **went to hearing before Mr. Danielson in February, 2007, some seven or eight months before the statements were made.** As with all your allegations, you make no effort to assert that there was any actual bias by Mr. Danielson as a result of those general statements by Mr. Bastain

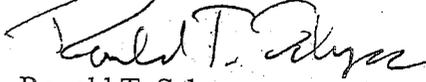
Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only upon a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct. This standard is more stringent than the standard applied in civil cases.

Based on the information I have reviewed, there is insufficient evidence to warrant further action; therefore, I am dismissing your grievance under ELC 2.7(a)

You have a right to "appeal," or seek review of my decision to dismiss your grievance. If you deliver a request for review of my decision to the Washington State Bar Association, Office of General Counsel, 1325 4th Avenue, Suite 600, Seattle, WA 98101-2539 within **forty-five (45)**

days of the date of this letter, my decision to dismiss will be referred to a Review Committee of the Disciplinary Board under ELC 5.3 (c), with a recommendation that the dismissal is appropriate. If you do not do so within that forty five day period, this decision to dismiss your grievance will be final.

Sincerely,



Ronald T. Schaps

Cc: James E. Danielson

EXHIBIT 13

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re) Public File: 05#00103
BRADLEY R. MARSHALL,)
Lawyer (Bar No. 15830).) MOTION TO COMPEL DOCUMENTS AND
INFORMATION AND IN ALTERNATIVE
TO VACATE ORDERS OF PRIOR
HEARING OFFICER

Bradley R. Marshall, Respondent herein, by and through his counsel asks that the WSBA be compelled to provide the date of any applications of the prior hearing officer for positions at the WSBA and to also provide copies of all applications and communications from the prior hearing officer regarding any such applications. In the alternative we ask that all orders of the prior hearing officer in this matter be vacated.

Respondent asks the Chief Hearing Officer prepare a schedule which sets a date for disclosure of relevant information to Respondent and then sets a date for the Respondent to submit his motion to vacate. This allows for an orderly and fair process since the WSBA has the relevant information and Respondent does not. In the alternative, if the Association is not

MOTION TO COMPEL DOCUMENTS AND
INFORMATION AND IN ALTERNATIVE
TO VACATE ORDERS OF PRIOR
HEARING OFFICER - 1

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1 required to provide the information, Respondent asks that the Chief Hearing Officer enter an
2 order vacating all prior orders of the prior hearing officer.

3 This motion is based upon the factual recitations and arguments contained in this
4 motion, and Exhibit 1 - June 22, 2006, letter of Kurt M. Bulmer to Ms. Killian; Exhibit 2 - June
5 26, 2006. letter of Ms. Killian to counsel; Exhibit 3 - June 29, 2006, letter of Kurt M. Bulmer
6 to the Chief Hearing Officer; and Exhibit 4 - Job Posting Notice. The exhibits are attached.
7

8 AUTHORITY OF CHIEF HEARING OFFICER

9 The Chief Hearing Officer has the authority to order the discovery and to vacate the
10 orders of the prior hearing officer. The prior hearing officer, after a joint request of Respondent
11 and Bar Counsel, has recused herself from this case. Accordingly, at the present time there is
12 no hearing officer. In the absence of an appointed hearing officer the Chief Hearing Officer
13 hears prehearing motions. ELC 2.5 (f). This is particularly relevant in this situation where the
14 motion asks that orders of the prior hearing officer be vacated on grounds of the unfairness or
15 the appearance of unfairness of that prior hearing officer.

16 The Chief Hearing Officer has the authority to rule on this matter and should not leave
17 the motion to be resolved by a new hearing officer. Without being able to put a specific finger
18 on why, it seems "unfair" to ask a new hearing officer to rule on whether another hearing
19 officer acted improperly. It would seem that the Chief Hearing Officer who is charged with the
20 responsibility of "monitor[ing] and evaluat[ing] the performance of hearing officers," and who
21 has the authority to rule in the absence of an appointed hearing officer, ELC 2.5(f), is better
22 situated to do so. He can rule on these discrete issues and then appoint a new hearing officer.
23 That new hearing officer can then proceed without having to get into the details of whether
24 another hearing officer acted or appeared to have acted improperly.
25

HISTORY

In brief form here are the dates and events relevant in this matter:

1		
2		
3	November 12, 2005	Formal Complaint filed
4	December 5, 2005	Hearing Officer Killian appointed
5	January 4, 2006	Answer filed
6	January 11, 2006	Original Hearing Order filed setting May 22, 2006, as
7		starting date of hearing
8	May 2, 2006	First Amended Formal Complaint filed
9	May 4, 2006	Respondent files Motion for Continuance arguing that
10		under the ELCs the timing of the filing of First Amended
11		Formal Complaint in relationship to the hearing date
12		mandated continuance and arguing for a stay of the
13		proceeding since another pending disciplinary proceeding
14		could render the present proceeding unnecessary
15	May 4, 2006	Association's response to Motion for Continuance
16		agreeing that rules required continuance based on filing of
17		First Amended Formal Complaint and opposing stay
18		based on other proceedings
19	May 5, 2006	Oral argument on Motion for Continuance
20	May 5, 2006	Answer to First Amended Formal Complaint sent to Bar
21		Counsel
22	May 16, 2006	Order signed by Hearing Officer Killian denying stay,
23		granting continuance based on timing of filing of First
24		Amended Formal Complaint and setting new hearing
25		dates of July 24 - 28, 2006, August 2 - 4, 2006 and
		August 7 - 8, 2006
	May 22, 2006	Original Hearing Date
	May 25, 2006	Bar Counsel job posted on WSBA's website
	May 25, 2006 to June 15, 2006	Hearing Officer Killian applies for job as Bar Counsel. (Although Bar Counsel is aware of exactly when Ms.

1 Killian applied for the job it has advised that it feels the
2 exact date is confidential. Although I have not had a
3 chance to ask, I assume her application and
4 communications connected with the application would
5 also be treated as confidential if even the date of
6 application is considered such. We do know that she had
7 at least applied by June 15, 2006, since it was on that date
8 her application was referenced anonymously at a hearing
9 officer review meeting with the Chief Hearing Officer.)

10 June 8, 2006

11 Hearing Officer Killian signs "Order Revising Certain
12 Prehearing Deadlines" - This was a stipulated order
13 largely dealing with discovery issues. Since the WSBA
14 refuses to advise the actual date of the application it is not
15 known if the WSBA already had actual knowledge of the
16 job application of Hearing Officer Killian and of the fact
17 that she most certainly would have to recuse at the time
18 the WSBA negotiated the order and presented it to be
19 signed by a clearly disqualified hearing officer.

20 June 15, 2006

21 Meeting with Chief Hearing Officer regarding hearing
22 officer appointments - In course of general discussion
23 about "problem issues" WSBA advises regarding fact that
24 a hearing officer on a sitting case has applied for job but
25 does not disclose that it is Ms. Killian. I had no reason to
believe it was one of my cases.

June 22, 2006

Bar Counsel informs Respondent for first time that
Hearing Officer Killian has applied for Bar Counsel job
and advises that if Respondent asks for recusal, that
WSBA will join in letter to hearing officer making such
request. Joint letter sent to hearing officer asking for
recusal.

June 26, 2006

Hearing Officer recuses herself by letter to counsel and
Chief Hearing Officer

July 24, 2006

Date continued hearing is set to start

DISCUSSION

This situation is, frankly, outrageous. A sitting hearing officer secretly applied for a job
as a Bar Counsel and did not recuse herself. While the Bar would necessarily know of the
application, the hearing officer did not advise Respondent that she had applied for the job.

MOTION TO COMPEL DOCUMENTS AND
INFORMATION AND IN ALTERNATIVE
TO VACATE ORDERS OF PRIOR
HEARING OFFICER - 4

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1 Everyone who knows of this matter, except the hearing officer, knows that the moment she
2 applied for the job the hearing officer had to recuse herself yet she did not do so. The matter
3 was allowed to proceed while the WSBA had knowledge and the Respondent did not.
4 Eventually, Bar Counsel took the initiative and advised of the application. It was only when
5 confronted with the need to recuse by a joint letter from Respondent and Bar Counsel that the
6 hearing officer finally did the correct thing and recused herself.

7
8 Need for Date and Application Information: We believe that the Bar Association should
9 provide the exact date of application and all documents and applications submitted by the
10 Hearing Officer. We also believe that the WSBA should be required to advise if Ms. Killian
11 has previously applied for positions at the Bar, such as for the recent Chief Disciplinary
12 Counsel job, and if so to provide that information as well. This will allow Respondent to know
13 when the application or applications were made in relationship to the continuance motion and
14 order as well as in relationship to the discovery order negotiated by the parties and submitted
15 for signature to the hearing officer.

16 As it currently stands Respondent is required to proceed without full information, yet
17 such information is readily available. The application[s] and any cover letters or other
18 documents probably would provide relevant and necessary information so that Respondent in
19 making his arguments that the prior hearing officer's order be vacated can do so with the same
20 body of knowledge about the history of this matter as Bar Counsel.¹ For example, suppose she
21 said in a letter or a "Why do you want this job?" section of an application something like "I
22

23
24 ¹ If there are concerns about the confidentiality of the applications and cover materials, they can be submitted
25 under seal with an order that they not be disclosed or used for any purpose except to argue the issues raised in this
motion. We also note that Respondent did not create this situation, the hearing officer did by her own conduct.
When balancing her confidentiality concerns against Mr. Marshall's right to a fair hearing, conducted in a fair
manner the balance should be found in Mr. Marshall's favor.

1 have always admired Bar Counsel and have long wanted to be one” or something like “In my
2 work as a hearing officer I have developed an understanding of the Bar Counsel’s role and
3 believe that my talents and interests are in that role” or something like “I have been waiting for
4 a job opening at the WSBA and am pleased that one has finally opened up.” Furthermore,
5 without the requested information we do not know if she acknowledged her current role as a
6 hearing officer in a pending case and what she might have said in ex parte contact with one of
7 the parties about that role. We know she had the ex parte contact with the Association since she
8 submitted her application to it and Bar Counsel was made aware of it, what we do not know is
9 what was said in that ex parte contact.
10

11 We ask that WSBA be required to provide the requested information and that a
12 schedule be established to permit us to receive it and then submit a motion to vacate the
13 hearing officer’s prior orders.

14 Concerns Regarding Stipulated Order Signed on June 8, 2006: The job was posted on
15 May 25, 2006. An agreed order dealing with discovery and other issues was submitted to the
16 hearing officer and signed by her on June 8, 2006. The Bar was aware of the application no
17 later than June 15, 2006, when it referenced it at the hearing officer review meeting. This
18 means that either Bar Counsel knew of the application at the time the order was signed or the
19 application came in neatly between June 8, 2006, and June 15, 2006. Because the Bar will not
20 tell us the date of the application we do not know which it is.
21

22 It is of grave concern to Respondent that at the same time he was negotiating a
23 stipulated order dealing with discovery dates and other details of the new hearing date that Bar
24 Counsel may have know that the Hearing Officer had applied for a job. If so then Bar Counsel
25 would have known that the hearing officer would have to voluntarily recuse in the future and, if

1 she did not, most certainly would be removed. If Respondent had been aware that the hearing
2 officer was going to be removed he would never had agreed to the order since he disagreed
3 with the timing it proposed and only agreed in light of the fact that if Respondent did not enter
4 into an agreement, the Bar Association could submit a proposed order to the hearing officer
5 who had already not shown much understanding of the time constraints the Amended Formal
6 Complaint had placed on Respondent. In short, given the attitude shown by the hearing officer
7 in the motion to continue and/or stay the proceeding, Respondent knew that it was better to
8 work out the dates with Bar Counsel than to have a contested proceeding before the hearing
9 officer.
10

11 It has not been below counsel's experience that Bar Counsel are "sneaky" and I do not
12 here make any assertion of bad faith conduct by Bar Counsel but in the absence of information
13 we are forced to consider all alternatives. It is possible that the negotiations were conducted
14 and the order signed before the application was submitted and that Bar Counsel was proceeding
15 with the same information as the Respondent. However, it is also possible that the WSBA
16 knew of the application. If so it may have assumed that the hearing officer would eventually
17 recuse and in the meantime considered the order to simply be an unimportant "housekeeping"
18 matter. If Bar Counsel knew of the imminent recusal of the hearing officer because of ex parte
19 information it had about the hearing officer and negotiated the order and/or presented it for
20 signature with such ex parte knowledge then the negotiation and order are not valid.
21

22 Respondent only negotiated the dates in good faith based on the hearing dates set by the
23 hearing officer and in light of the fact that she had not been receptive to arguments about time
24 constraints. If Respondent had known that the hearing officer was going to have to recuse, he
25 never would have agreed to the entry of any additional orders by that hearing officer and would

1 have objected strenuously if the hearing officer heard any arguments about dates or entered any
2 orders.

3 In the absence of any information to the contrary, both Respondent and the hearing
4 officer must assume that the order was signed after the application was submitted. It is simply
5 not possible for there to be a valid order signed by a hearing officer who at the same time had
6 secretly submitted an application for employment to one of the parties. It makes no difference
7 whether the order was contest or not – if the Respondent knew that Hearing Officer was
8 seeking a job as Bar Counsel, the order would never have been submitted in the first place. As
9 discussed below at the time she submitted her application the hearing officer was mandated to
10 recuse, she did not do so and any orders she signed after the application date cannot be valid
11 and must be vacated.
12

13 All Orders Entered by Hearing Officer Must be Vacated: Respondent believes that he is
14 at an unfair advantage in this matter because he does not have all the information available and
15 known to the WSBA regarding the history of the hearing officer's job application[s] with the
16 WSBA. To provide a "level playing field" Respondent has requested that the information be
17 provided and then he be given time to submit his motion to vacate. However, if such request is
18 not granted then Respondent requests that all orders of the prior hearing officer be vacated at
19 this time.
20

21 Hearing officers are subject to the "Hearing Officer Conduct" rules found at ELC 2.6.
22 Those rules are based on the Code of Judicial Conduct (CJC). ELC 2.6(e)(4)(A) provides that a
23 hearing officer should disqualify himself or herself when his or her "impartiality might
24 reasonably be questioned." We would hope that there is no argument that when a hearing
25 officer has submitted a job application to be a Bar Counsel while sitting on a case that the

1 impartiality of the hearing officer can reasonably be questioned and that the hearing officer
2 must recuse from that case. I would be astounded if Bar Counsel would argue otherwise.
3 Assuming that the application occurred before June 8, 2006, it is this requirement of recusal
4 that invalidates the agreed order discussed above.

5 The issue here would not seem to be whether she had an obligation to recuse when she
6 made the application for employment since I assume everyone is in agreement about this but
7 rather the issue is the impact of such job application on orders entered prior to the application
8 being submitted. Again because we do not have the information, we do not know if Ms. Killian
9 has previously applied for positions with the Bar or if the recent application is her first one. If
10 she has previously applied, the timing and relationship of such application would be important
11 information in determining any apparent bias or prejudice.

12 But even if the first time she applied was after May 25, 2006, when the job was posted
13 her prior orders should be vacated. ELC 2.6(b) states that "The integrity and fairness of the
14 disciplinary system requires that hearing officers observe high standards of conduct." Not only
15 must a proceeding be fair it must appear fair.² Litigants in a disciplinary proceeding are
16 "entitled to a hearing before a hearing officer who is not only fair, but appeared to be fair." *In*
17 *re Disciplinary Proceedings Against Haskell*, 136 Wn.2d 300, 313-14, 962 P.2d 813 (1998).
18 Hearing officers are required to perform their duties without bias. ELC 2.6(e)(1)(E). "In
19 determining if a disciplinary proceeding appears fair, the critical concern is how it would
20 appear to a reasonably prudent and disinterested person. *Id.* "Our system of jurisprudence also
21 demands that in addition to impartiality, disinterestedness, and fairness on the part of the judge,
22
23
24

25 ² In the interest of disclosure and to avoid allegations of plagiarism, most of the following quotes and citations in
the rest of this paragraph are taken from a Bar Association pleading in another case in which the WSBA asserted
that it had not had a fair hearing before that hearing officer. The citation to that case will be provided if necessary.

1 there must be no question or suspicion as to the integrity and fairness of the system.” *Chicago,*
2 *Milwaukee, St. Paul & Pa. R. R. co. v. Wash. State Human Resource Comm’n*, 87 Wn.2d 802,
3 808, 557 P.2d 307 (1976). “The appearance of bias or prejudice can be as damaging to public
4 confidence in the administration of justice as would be the actual presence of bias and
5 prejudice.” *Id.* at 809. See also *Diimmel v. Campbell*, 68 Wn.2d 697, 414 P.2d 1022 (1966)
6 (new trial warranted due to appearance of unfairness, notwithstanding that the “record does not
7 give the slightest hint” of impartiality).

8
9 Even if the only time Ms. Killian applied for a job was after it was posted, the
10 appearance of unfairness mandates the vacating of her prior orders. Of particular concern is the
11 order she signed just before the job posting date denying the request for stay and imposing an
12 unreasonably short time frame to respond to new set of allegations. As discussed in the June
13 26, 2006, letter to the hearing officer:

14
15 The new charges alleged that Mr. Marshall lied to his clients, attempted
16 to coerce his clients into accepting a settlement and, essentially, conspired with
17 opposing counsel to force a settlement on the clients through a settlement
18 enforcement motion. These were new allegations which had not previously been
19 addressed at any stage of the investigation of the proceeding, including prior to
20 the recommendation to the Review Committee. We moved for a continuance on
21 the basis that we were entitled under the rules to at least 20 days to answer and
22 to prepare to defend the new allegations. We asked for more than 20 days since
23 the Amended Formal Complaint was not just a modification or adjustment of
24 prior allegations but rather contained entirely new assertions not ever
25 investigated or asserted in the past. We asked that we be given at least as much
time as we would have received if a new formal complaint were filed against
Mr. Marshall since that was the reality of what had happened in the Amended
Formal Complaint.

26
27 In addition, Mr. Marshall is the subject of a pending Supreme Court case
28 in which the Disciplinary Board has recommended his disbarment. When we
29 asked for the continuance based on the filing of the Amended Formal
30 Complaint, we asked that the entire case be stayed until after the Supreme Court
31 case is resolved given the enormous costs both financially (the Bar is already
32 seeking \$24,000 in costs from him) and emotionally, and, in the event of his
33 disbarment, the lack of necessity for the hearing.

34
35 MOTION TO COMPEL DOCUMENTS AND
INFORMATION AND IN ALTERNATIVE
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HEARING OFFICER - 10

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1
2 On both these issues, we pointed out, as the Bar acknowledges in its
3 letter to you, that any concerns about elderly witnesses could be dealt with by
4 the use of preservation depositions.

5 The Bar Association objected to the continuance based on the pending
6 Supreme Court case while conceding that some continuance was required by its
7 filing of the Amended Formal Complaint within 20 days of the hearing. The
8 Bar, however, asserted that the new allegations were "easy" to prepare for and
9 asked that the continuance be for the least possible time after the 20 days had
10 run.

11 The hearing officer denied our motion for the stay based on the pending
12 Supreme Court case. Without elaboration she asserted that it was "just too vague
13 as to when the hearing could be held." She ignored the costs issues and the fact
14 that a less restrictive remedy, preservation of the witnesses' testimony, was
15 available. She granted, as she had to based on the rules, a continuance because
16 the Amended Formal Complaint had been filed within 20 days. However, she
17 demanded that the reset hearing be held as soon as mutual dates could be
18 established. She appeared to give little concern to Mr. Marshall's preparation
19 issues. Bar Counsel and I looked for dates and when we came up with them, she
20 accepted them while stating that she thought the dates we had agreed upon were
21 not soon enough.

22 Mr. Marshall is now left to wonder why his reasonable request for sufficient time to
23 prepare to answer the new charges was denied in a ruling which favored the WSBA. He must
24 further wonder why his request for a stay was denied, again in a decision most favorable to the
25 WSBA. These were not procedural or housekeeping motions. Having a reasonable opportunity
to prepare a defense is a fundamental right and not having to go through a potentially
unnecessary and expensive proceeding would have been a significant matter to Mr. Marshall.
Yet the relief he asked was denied and then within a very short time it turns out that the hearing
officer who made those ruling applied for a job with the very persons she ruled in favor of.

Mr. Marshall and anyone looking at this matter must wonder whether the denials
occurred because of either a conscious or unconscious desire of the hearing officer to appear to
be favorable to the WSBA. It seems unlikely that this 20 year plus lawyer from the Williams,

1 Kastner & Gibbs firm simply made a spontaneous decision to seek a new career as a Bar
2 Counsel with a high end pay scale of \$69,000. The most likely scenario is that she had been
3 looking for a new career and that one of the options she was considering was that of Bar
4 Counsel. However, it is also possible that she has had a long-term goal of being a Bar Counsel
5 and sought the position of Hearing Officer because she thought it would give her an
6 "experience leg up" over other applicants. There are a thousand variations and themes which
7 could be constructed but the point is not which one is correct but rather, because they are
8 reasonably possible, can it honestly be said that given the facts of this case that there is "no
9 question or suspicion as to the integrity and fairness of the system?" *Chicago, supra*. Can it
10 honestly be said that Mr. Marshall's motions were heard before a "hearing officer who [was]
11 not only fair, but appeared to be fair?" *Haskell, supra*.

13 The answer to this question is patently obvious when the simple, undisputed facts are
14 set forth. Mr. Marshall and others are asked to accept that not only has he been treated fairly
15 but that he appears to have been treated fairly where he lost important motions to Bar Counsel
16 before a hearing officer who no more than six-weeks later (and maybe much sooner) secretly
17 submitted a job application to be a Bar Counsel and only removed herself after she was
18 confronted with her action in a joint letter from Respondent and Bar Counsel.

20 Mr. Marshall and others looking at this situation have every reason to question the
21 impartiality and integrity of the system and of the hearing officer in this matter. The only way
22 to clean up any possible damage from the actions of the prior hearing officer is to vacate her
23 orders. This will essentially allow the case to return to the starting point and with the
24 appointment of a new hearing officer will allow the entry of a new scheduling order based on
25 the First Amended Formal Complaint. It will allow Mr. Marshall to renew his motion to stay

1 the proceedings before a hearing officer who is not or will not soon be looking for a job with
2 the Bar Association. Vacating the order will also remove any taint of unfairness from the case
3 and will remove the issue from being asserted on appeal. It also corrects an obvious defect in
4 the system in which a hearing officer somehow believed that she could simultaneously secretly
5 apply for a job as a Bar Counsel while remaining as a hearing officer on a pending case.

6
7 The Bar will complain about delay, but Mr. Marshall did not file the First Amended
8 Formal Complaint which mandated the delay from the first hearing date and Mr. Marshall had
9 nothing to do with the fact that the hearing officer applied for a job. All he wants is a fair
10 opportunity to make his arguments and if necessary present his case. The Bar can completely
11 protect itself if it feels it must by the use of preservation depositions.

12 We ask first that the document request be granted and that a schedule be set to permit
13 renewal of the motion to vacate in view of any information provided in response to that
14 request. If that request is not granted, then we request that the orders of the prior hearing officer
15 be vacated and that a new hearing officer be appointed so that we can proceed with a "clean
16 slate." In addition, we ask that any new hearing officer, for the reasons set forth in the June 29,
17 2006, letter not be pre-screened or vetted on possible hearing dates.

18
19 Dated this 6th day of July, 2006.

20
21
22 _____
23 Kurt M. Bulmer, WSBA # 5559
24 Attorney for Respondent Marshall
25

EXHIBIT 14

NON-PUBLIC FILE
FILED PURSUANT TO PROTECTIVE ORDER

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	)	Public File: 05#00103
)	
BRADLEY R. MARSHALL,	)	DECLARATION OF KURT M. BULMER IN
	)	SUPPORT OF MOTION TO PERMIT
Lawyer (Bar No. 15830).	)	LIMITED RELEASE OF INFORMATION

Kurt M. Bulmer, declares as follows:

1. I am the attorney representing Mr. Bradley Marshall, the Respondent in this matter.

2. I have discussed this motion with my client and have his permission to bring it in my own name and pursuant to what I believe are my duties to another client.

3. I previously represented attorney Eric C. Hoort in Public File No. 04-00037. That proceeding began June 17, 2004, with the filing of a Formal Complaint. Ms. Teena Killian was appointed hearing officer on June 18, 2004. The hearing was held May 5 and 6, 2005, and Findings of Fact, Conclusions of Law and Recommendation were filed July 15, 2005. Ms. Killian found against Mr. Hoort and recommended imposition of a reprimand and payment of restitution. Although Mr. Hoort initially filed a notice of appeal, that was withdrawn and the Findings became final. The reprimand was filed December 16, 2005.

DECLARATION OF KURT M. BULMER IN
SUPPORT OF MOTION TO PERMIT
LIMITED RELEASE OF INFORMATION -
PAGE 1

KURT M. BULMER
Attorney at Law
740 Belmont Place E., # 3
Seattle, WA 98102-4442
(206) 325-9949

DRAFT

Apr 1

1 4. Ms. Killian was also the initial hearing officer in this Marshall proceeding but
2 recused when jointly asked to do so by the Bar and Respondent after Respondent was advised
3 that Ms. Killian had applied for a job as a bar counsel. My concern arises from the disclosure
4 during discovery in the present proceeding that Ms. Killian previously applied for a job as
5 disciplinary counsel on January 14, 2005 – this was while serving as a hearing officer in the
6 Hoort matter and was before the hearing was held in that case. This job application was not
7 disclosed by Ms. Killian at anytime and was unknown to Mr. Hoort or me.
8

9 5. I have not researched whether this situation might justify reopening the proceedings
10 and, of course, I have not discussed the situation with Mr. Hoort. It does seem very likely to me
11 that if Mr. Hoort is advised of the situation he will choose to maintain the status quo rather than
12 seek to reopen.

13 6. I believe that absent the protective order, I would have a duty to advise Mr. Hoort of
14 the situation so he can make an independent determination of whether there is any action he
15 can take and, if there is, if he wishes to take it.

16 7. I propose that in the general interests of justice, that I be allowed to advise Mr.
17 Hoort that in the course of another case the question has come up regarding Ms. Killian serving
18 as a hearing officer while also applying for a job as a bar counsel and that as the result of
19 discovery I have learned that Ms. Killian applied for a job as bar counsel during the time of Mr.
20 Hoort's hearing after she was appointed and before the hearing and ruling by her. I do not
21 propose to provide any documents. I also propose that Mr. Hoort be advised that he is
22 prohibited from dissemination of the information to anyone other than his own counsel or in a
23 situation in which the information is protected by an appropriate order.
24
25

1 8. I asked the ODC their position on the disclosure and they have advised that they do
2 not object to the limited disclosure proposed but that they felt the protective order required this
3 motion since they felt the information was covered by that protective order.
4

5 I swear under the penalty of perjury under the laws of the State of Washington that the
6 foregoing is true and correct.

7 Dated this _____ day of _____, 2006 at Seattle,
8 Washington.

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11 _____
12 Kurt M. Bulmer, WSBA # 5559
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EXHIBIT 15

KILLIAN JOB APPLICATION DOCUMENTS

DATE	APPLICATION DOCUMENTS	REFERENCE/ITEM
January 14, 2005	Letter - Killian to HRD	Re: Disciplinary Position
May 25, 2006	Job posted on WSBA website	
May 26, 2006	Letter - Killian to HRD	Re: Disciplinary Position
June 1, 2006	E-mail - 4:27 PM - Seidel to Eide, Beitel, Abelson	Re: Recruitment Process for Disciplinary Counsel Position
June 2, 2006	Letter - Seidel to Killian	Re: Your application for Disciplinary I position
June 6, 2006	E-mail - 7:51 AM - Eide to Seidel, Beitel, Abelson	Re: Recruitment Process for Disciplinary Counsel Position
June 6, 2006	E-mail - 9:25 AM - Abelson to Eide, Seidel, Beitel	Re: Recruitment Process for Disciplinary Counsel Position
June 8, 2006	E-mail - 4:45 PM - Beitel to Jacques	Re: Accepted DC Interview w/ Teena Killian
June 8, 2006	E-mail - 4:57 PM - Jacques to Wells, Dujon-Reynolds, Seidel	Re: DC Position
June 8, 2006	E-mail - 5:33 PM - Wells to Killian	Re: WSBA Job Application w/ attachment of Application form 0306.doc
June 8, 2006	E-mail - 5:42 PM - Eide to Jacques	Re: Accepted: DC Interview w/Teena Killian
June 9, 2006	E-mail - 10:27 AM - Dujon-Reynolds to Killian with cc to Wells	Re: WSBA Job Application w/attachment ODC Disciplinary Counsel I-III 070103.doc
June 9, 2006	E-mail - 1:40 PM - Seidel to Jacques	Re: Francesca D'Angelo
June 12, 2006	E-mail - 7:33 AM - Jacques to Seidel	Re: Francesca D'Angelo
June 13, 2006	E-mail - 6:10 PM - Seidel to Dujon-Reynolds	Re: Teena Killean (DC candidate)
June 13, 2006	E-mail - 6:14 PM - Seidel to Jacques	Re: Teena Killean

E+ht

June 14, 2006	E-mail – 7:28 AM – Dujon-Reynolds to Seidel	RE: Teena Killean (DC candidate)
June 14, 2006	E-mail – 7:45 AM – Jacques to Seidel	Re: Teena Killean
June 14, 2006	E-mail – 1:51 PM – Busby to Seidel	Re: Teena Killian
June 14, 2006	E-mail – 3:10 PM – Matsumoto to Jacques	Re: Accepted: Interview w/Teena Killian – DC Applicant
June 16, 2006	E-mail – 4:20 PM – Busby to Gray	Re: Teena Killian
June 19, 2006	E-mail – 8:09 AM – Eide to Abelson, Beitel, Seidel	Re: feedback on DC interviews
June 19, 2006	E-mail – 8:20 AM – Bank to Jacques	Re: Declined: Interview w/Teena Killian – DC Applicant
June 20, 2006	E-mail – 8:07 AM – Gray to Jacques	Re: Declined: Interview w/Teena Killian DC Applicant
June 20, 2006	E-mail – 3:35 PM – Eide to ODC Lawyers	Re: DC Candidates – debriefing
June 20, 2006	E-mail – 3:40 – Busby to Eide, Matsumoto, Dassel	Re: DC Candidates – debriefing
June 21, 2006	E-mail – 10:44 AM – Busby to ODC Lawyers	Re: Teena Killian
June 28, 2006	E-mail – 11:08 AM – Gray to Ehrlich, Fuji	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:24 PM – Seidel to ODC Lawyers	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:25 PM – Dassel to Seidel	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:28 PM – Congalton to Seidel	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:32 PM – Matsumoto to Seidel	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:33 PM – Eide to Seidel	Re: Teena Killian – FYI
June 28, 2006	E-mail – 1:36 PM – Slater to Seidel, ODC Lawyers	Re: Teena Killian – FYI

June 29, 2006	E-mail - 4:53 PM - Dujon-Reynolds to Seidel, Jacques	Re: DC Candidates
June 29, 2006	E-mail - 5:48 PM - Seidel to Jacques	Re: FW: DC Candidates
July 7, 2006	Letter - Seidel to Killian	Re: Application for Disciplinary Counsel

EXHIBIT 16

16

KURT M. BULMER
ATTORNEY AT LAW
740 Belmont Place E., # 3
Seattle, WA 98102-4442

(206) 325-9949
(206) 325-9953- Fax

June 29, 2006

VIA E-MAIL AND US MAIL

James M. Danielson
Chief Hearing Officer
2600 Chester Kimm Rd.
Wenatchee, WA 98801-8116

RE: *Disciplinary Proceedings Against Bradley R. Marshall*
Public No. 05#00103

Dear Danielson:

I was out of my office yesterday and when I returned today I found in my e-mails a letter to you from Bar Counsel regarding appointment of a new hearing officer in the above case. I also found in my mail a letter from the hearing officer recusing herself. As far as I know, you have not entered an order removing the hearing officer. The letter from the Bar to you is premature as it was submitted to you in anticipation of an occurrence which had not yet happened and still has not happened – namely the removal of the current hearing officer. Despite this the Bar's letter, in essence, asks that when a new hearing officer is appointed in this case that you pre-screen for his/her availability on hearing dates established by the prior hearing officer. We object to this for several reasons.

First, there is no way to judge the impact on a hearing officer who is asked to take on a matter to be heard on short notice on specific dates. The process of screening will itself necessarily require either ex parte details of the case be provided by you or will leave some mystery as to what has happened to create the situation. If details are provided the parties will have no control over those details and they could have significant influence on the hearing officer because of the source of information – namely, the Chief Hearing Officer. The alternative would seem to be to leave it all sort of mysterious as to why the hearing is happening on an expedited basis based on a prior hearing officer's schedule. It is impossible to judge whether the ex parte details or mystery will be viewed by a new hearing officer as prejudicial to Mr. Marshall, in favor of Mr. Marshall or have no impact at all. But it is exactly because we do not know that you should not go through a pre-screening process for specific dates.

Second, I realize that you have advised me that there is pre-screening of hearing officers in that as part of your appointment process you look at a hearing officer's case

load, the apparent length of time of a hearing and check with possible appointees for conflicts based on the respondent and the lawyers involved. However, the screening process proposed by the Bar in this instance is a different situation. Here the Bar asks that you pre-screen the hearing officer for specific dates with the implicit implication that the hearing is to be held on that date since the Chief Hearing Officer is making a selection specifically based on those dates being available. We have objections to the hearing being held before the new hearing officer on dates selected by the prior hearing officer. We think that it is a possible denial of due process to force a hearing too soon on a hearing officer who will be essentially taking the case in a rush, rush situation. We also think that we are entitled to move for different hearing dates based on the fact that Mr. Marshall has learned that he misread his calendar regarding some of the dates at issue – we have alerted the Bar of this. If the Bar does not agree to a change in the schedule based on this mistake it would be our intention to seek a change in the hearing schedule.

Because this has all come on us so quickly, there may be other reasons why we might ask for new hearing dates. If you have pre-screened on the basis of specific dates, it seems likely that the hearing officer may feel duty bound to proceed on those dates no matter what motion we file.

Third, both the WSBA and Mr. Marshall are entitled to seek removal of the hearing officer as a matter of right up to ten-days after service of the new appointment. ELC 10.2(b). For a number of reasons which I will not go into here, Mr. Marshall has had and continues to have concerns about who the hearing officers are in his cases. The Bar is well aware of his concerns. The fact, as discussed below, that a sitting hearing officer would apply for a job as Bar Counsel, something which would be known to Bar Counsel, without notice to the respondent and without voluntarily recusing herself has done nothing to give Mr. Marshall confidence in those who sit in judgment upon him. Mr. Marshall will want to and will need to take full advantage of the right granted to him to investigate and review any new hearing officer.

Even if you appointed a new hearing officer today, his or her appointment would not be final until sometime in the middle of July, less than two weeks before the current hearing dates. If such hearing officer has been pre-screened for dates, Mr. Marshall will be put in the unfair position of having to make his decision regarding possible removal in the face of the likely perception that any removal by him was not based on legitimate concerns about the hearing officer but instead on the basis that Mr. Marshall is simply attempting to “game the system” to get a continuance by use of the rules. While you have told me in informal discussions about the removal process that such perceptions do not influence who the next hearing officer is that is appointed, I think you can see that from Mr. Marshall’s perspective he will have doubts that if you think he is playing games that even unconsciously it would influence your next hearing officer selection. Such concerns by him will chill his right to make an unfettered decision about whether to exercise his preemptive removal of a hearing officer.

Fourth are significant concerns about the validity of the prior hearing officer's orders. The reason the prior hearing officer has recused is a joint letter was sent to her by Disciplinary Counsel and I asking her to do so. This was because she has applied for a job as Disciplinary Counsel. She did not recuse when she applied for the job and it appears that but for the joint letter she did not intend to do so. Her willingness to continue to serve as a hearing officer while simultaneously applying for a job with the Bar without notice to respondent (the Bar, of course would have notice since she was applying to work for the Office of Disciplinary Counsel) raises serious questions, at a minimum, of the appearance of impropriety and as to where her loyalties lay when she has made rulings in this case.

The case was previously set for hearing. Within twenty days of that hearing date, the Bar filed an Amended Formal Complaint. The new charges alleged that Mr. Marshall lied to his clients, attempted to coerce his clients into accepting a settlement and, essentially, conspired with opposing counsel to force a settlement on the clients through a settlement enforcement motion. These were new allegations which had not previously been addressed at any stage of the investigation of the proceeding, including prior to the recommendation to the Review Committee. We moved for a continuance on the basis that we were entitled under the rules to at least 20 days to answer and to prepare to defend the new allegations. We asked for more than 20 days since the Amended Formal Complaint was not just a modification or adjustment of prior allegations but rather contained entirely new assertions not ever investigated or asserted in the past. We asked that we be given at least as much time as we would have received if a new formal complaint were filed against Mr. Marshall since that was the reality of what had happened in the Amended Formal Complaint.

In addition, Mr. Marshall is the subject of a pending Supreme Court case in which the Disciplinary Board has recommended his disbarment. When we asked for the continuance based on the filing of the Amended Formal Complaint, we asked that the entire case be stayed until after the Supreme Court case is resolved given the enormous costs both financially (the Bar is already seeking \$24,000 in costs from him) and emotionally, and, in the event of his disbarment, the lack of necessity for the hearing.

On both these issues, we pointed out, as the Bar acknowledges in its letter to you, that any concerns about elderly witnesses could be dealt with by the use of preservation depositions.

The Bar Association objected to the continuance based on the pending Supreme Court case while conceding that some continuance was required by its filing of the Amended Formal Complaint within 20 days of the hearing. The Bar, however, asserted that the new allegations were "easy" to prepare for and asked that the continuance be for the least possible time after the 20 days had run.

James M. Danielson

June 29, 2006

Page 4

The hearing officer denied our motion for the stay based on the pending Supreme Court case. Without elaboration she asserted that it was "just too vague as to when the hearing could be held." She ignored the costs issues and the fact that a less restrictive remedy, preservation of the witnesses' testimony, was available. She granted, as she had to based on the rules, a continuance because the Amended Formal Complaint had been filed within 20 days. However, she demanded that the reset hearing be held as soon as mutual dates could be established. She appeared to give little concern to Mr. Marshall's preparation issues. Bar Counsel and I looked for dates and when we came up with them, she accepted them while stating that she thought the dates we had agreed upon were not soon enough.

I was then advised by Bar Counsel on June 22, 2006, that they had learned the hearing officer had applied for a position in its office. In 30 years of practice this issue has never come up for me and then within two or three months it has come up twice. You may recall that you, the Chief Disciplinary Counsel and I had a discussion about the first instance at the hearing officer application meeting held at the Bar office. This second instance came to my attention after that discussion. I am not aware if that discussion had anything to do with the disclosure of the second instance. In both instances Bar Counsel has acted professionally and advised me of the employment application. In the first instance, Bar Counsel and I were discussing how to proceed when we learned through the personnel office at the WSBA that the hearing officer in that case had already notified you and had recused. That does not appear to be the situation in this pending matter since she did not recuse until after we sent the joint letter.

Because of confidentiality we have not been advised when the hearing officer initially applied for the job and what she stated in her job application or in any interviews as to why she was suited for job. I also do not know when it was first posted as being available. But even if the job was posted and she applied after she made the continuance rulings on the case I would hope you could see that Mr. Marshall and I have concerns about her prior rulings. At a minimum it appears that the hearing officer was inclined to approach the case from a Bar Counsel perspective. It is our intent to file a motion with you asking that all prior orders of the hearing officer be voided on the basis of the appearance of impropriety and perhaps other grounds. We intend to ask that Mr. Marshall be given a clean slate not tainted by prior rulings on substantive issues by this particular hearing officer.

I am sending this letter because of the pre-emptive nature of the Bar's letter to you which seems to ask for an accelerated appointment of a pre-screened hearing officer. Our motion is not something that can be done on the fly. We can file by next Thursday. (I have a significant motion on another case in which the WSBA has asked on short notice that a disability hearing be held for my client which I am required to respond to on July 5, 2006.) I am asking that you do not appoint a new hearing officer at this time, that you not pre-screen for any dates and that you set a schedule for us to file our motion

and the Bar to respond regarding invalidating the prior orders of the prior hearing officer with the date for us to file the initial motion of July 6, 2006.

I note that the Bar has filed its letter in the public file. When this issue came up the Bar asked me to preserve the hearing officer's privacy and to not indicate in the public file why the hearing officer was being asked to recuse herself. We drafted the joint letter in a manner which did that. I do not know how the Bar wishes this letter and our planned motion to be treated so for the moment I am not filing it in the public file but rather will wait for guidance and discussion with Bar Counsel.

Thank you.

Sincerely,

Kurt M. Bulmer
Attorney at Law
WSBA # 5559

cc: Bradley Marshall
By e-mail and mail to Scott Busby

EXHIBIT 17

FILED

AUG 10 2006

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

8 In re 9 10 BRADLEY ROWLAND MARSHALL, 11 Lawyer 12 <u>WSBA No. 15830</u>) Public File No. 05#00103)) ORDER COMPELLING DOCUMENTS) AND INFORMATION AND DENYING) STAY OF PROCEEDINGS))
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The above entitled matter came on before the Chief Hearing Officer on August 9, 2006 on the Respondent's Motion to Compel Documents and Information and to Stay Proceedings. The Chief Hearing Officer considered the Motion of the Respondent, the Response of the Association, and the Reply of Respondent, as well as oral argument by Mr. Kurt M. Bulmer, on behalf of Respondent, and Ms. Christine Gray, on behalf of the Association.

Pursuant to ELC 3.2(e), the Chief Hearing Officer hereby orders disclosure by the Bar Association of the following information, subject to this protective order: **Public disclosure of the information identified is prohibited except to the extent to allow any hearing officer, the Disciplinary Board, or the Supreme Court to perform their duties in this or any future disciplinary proceeding against the Respondent.**

ORDER COMPELLING DOCUMENTS AND
INFORMATION AND DENYING STAY OF
PROCEEDINGS

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue - Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

OTK

1 The documents to be disclosed are:

2 1. Any and all communication between Teena Killian and the Washington State
3 Bar Association concerning employment by Ms. Killian at the Washington State Bar
4 Association. The documents shall be redacted so they show only the letterhead, if any, the
5 date of the document, the sender, the recipient, and the Re line, if any.
6

7 2. Any correspondence between any employee of the Washington State Bar
8 Association and any other employee of the Washington State Bar Association relating to
9 employment at the Washington State Bar Association by Teena Killian. The documents, if
10 any, shall be redacted so they show only the letterhead, if any, the date of the document, the
11 sender, the recipient, and the Re line, if any.
12

13
14 IT IS FURTHER ORDERED that the orders of Hearing Officer Killian in this file are
15 vacated. Contemporaneous with the entry of this Order; the Chief Hearing Officer has
16 appointed himself as hearing officer in this matter; a scheduling conference will take place
17 telephonically on Tuesday, August 29, 2006 at 9:00 a.m.; and the motion to stay the
18 proceedings is DENIED.
19

20 DATED this 10th day of August, 2006.

21
22 

23
24 _____
25 JAMES M. DANIELSON
26 Chief Hearing Officer

EXHIBIT 18.

Washington State Bar Association
Budget Comparison

For the Period from October 1, 2006 to September 30, 2007

(Amounts are in USD)

(Includes Dept : OGCDB)

(Includes G/L Budget Name: FY2007)

	FISCAL 2006 BUDGET	FISCAL 2007 BUDGET	% CHANGE IN BUDGET
REVENUE:			
TOTAL REVENUE:			
EXPENSES:			
DISCIPLINARY BOARD EXPENSES	15,000.00	10,000.00	33.33
CHIEF HEARING OFFICER	31,000.00	33,000.00	-6.45
HEARING OFFICER EXPENSES	3,000.00	3,000.00	
HEARING OFFICER TRAINING	1,500.00	1,500.00	
COURT REPORTER	1,100.00	1,000.00	9.09
OUTSIDE COUNSEL	6,000.00	5,000.00	16.67
STAFF TRAINING	1,200.00	1,200.00	
STAFF MEMBERSHIP DUES	868.50	1,013.00	-16.64
SALARY EXPENSE		75,069.00	
BENEFIT EXPENSE		23,200.00	
OVERHEAD		27,890.00	
TOTAL EXPENSES:	59,668.50	181,872.00	-204.80
NET INCOME	-59,668.50	-181,872.00	204.80

Office of General Counsel - Disciplinary Board

(Department: Office of General Counsel)

APP 2

EXHIBIT 19

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

BRADLEY R. MARSHALL,
Lawyer (Bar No. 15830).

Public No. 05#00103

DECLARATION OF DISCIPLINARY
COUNSEL CHRISTINE GRAY

1. I am over the age of eighteen years and competent to testify. I make the statements in this declaration from personal knowledge unless otherwise indicated. I am a Senior Disciplinary Counsel with the Washington State Bar Association. Since the formal proceedings were filed, Disciplinary Counsel Scott G. Busby and I have been the disciplinary counsel assigned to handle this disciplinary proceeding.

2. By written order dated May 15, 2006, Teena Killian, who was the Hearing Officer assigned to this matter at that time, granted a continuance requested by Respondent Bradley R. Marshall and set the hearing for July 24, 2006.

3. I have been informed by other lawyers within the Office of Disciplinary Counsel (ODC) that on May 25, 2006 a disciplinary counsel opening was posted.

4. Between May 16, 2006 and June 1, 2006, Mr. Bulmer and I discussed the setting of

1 revised pre-hearing deadlines in this matter. On June 1, 2006 at 3:07 p.m., Mr. Bulmer sent me
2 an e-mail giving final approval to an agreed scheduling order containing revised pre-hearing
3 deadlines.

4 5. On June 1, 2006, immediately after receiving Mr. Bulmer's e-mail, I prepared the
5 cover letter transmitting the agreed upon scheduling order to Ms. Killian.

6 6. Later that afternoon on June 1, 2006, I was informed that Ms. Killian had applied
7 for the disciplinary counsel position that was being filled. I immediately informed Scott Busby
8 of Ms. Killian's application.

9 7. On June 2, 2006, Ms. Killian signed and dated the agreed scheduling order,
10 subsequently filed on June 5, 2006. That is the only action she took on the Marshall case after
11 applying for the Disciplinary Counsel position, prior to her recusal.

12 8. Respondent did not meet any of the deadlines set forth in the June 5, 2006
13 scheduling order.

14 9. I was out of the office on vacation from June 7, 2006 through June 19, 2006,
15 returning on June 20, 2006. Prior to leaving for vacation, I drafted a letter requesting the
16 prompt appointment of a new hearing officer, intending it to be finalized and mailed if Ms.
17 Killian recused from this proceeding.

18 10. On June 20, 2006, I telephoned Kurt M. Bulmer, counsel for Bradley R. Marshall
19 in this matter. At that time, I informed Mr. Bulmer that Ms. Killian had applied for an open
20 disciplinary counsel position. I also informed Mr. Bulmer that if he and his client wanted to
21 request Ms. Killian's recusal, then the Association would join in that request. Mr. Bulmer
22 indicated that he would consult with his client and get back to me on what they wanted to do.

23 11. On June 22, 2006, during a telephone conversation, Mr. Bulmer informed me that
24

1 Mr. Marshall would be requesting recusal of Ms. Killian. He indicated that it had been a
2 difficult decision. Later that day, Mr. Bulmer and I agreed on the language of the letter
3 requesting recusal.

4 12. By letter to the parties dated June 26, 2006, Ms. Killian recused from the Marshall
5 case.

6 13. Between May 25, 2006, when the disciplinary counsel opening was announced,
7 and June 26, 2006, when Ms. Killian recused from the Marshall case, I did not communicate
8 with Ms. Killian, except by the letters described above which were also sent to Mr. Bulmer.
9 Based upon my discussions with Scott Busby throughout May and June 2006, I understand that
10 he had no communication with Ms. Killian during this time period. While Mr. Busby is on
11 vacation this week, the Association will provide a declaration from Mr. Busby if needed.

12 14. I did not participate in any of the interviews of applicants for the disciplinary
13 counsel opening that was posted on May 25, 2006. Based upon my discussions with Scott
14 Busby at the time of the interviews, I understand that he did not participate in any of the
15 interviews of applicants for the disciplinary counsel opening that was posted on May 25, 2006.
16 The Association will provide a declaration from Mr. Busby if needed.

17 15. Pursuant to an order dated August 10, 2006 issued by Chief Hearing Officer James
18 M. Danielson, ODC provided Mr. Bulmer with redacted copies of responsive documents on
19 August 16, 2006. ODC is amenable to providing the unredacted copies of these documents to
20 Mr. Danielson for an in camera review if so ordered.

21 16. On August 29, 2006, Mr. Danielson held another telephone conference for the
22 purpose of setting a hearing date. At that time, Mr. Bulmer raised the issue of obtaining
23 additional information on the Killian issue, beyond that ordered by Mr. Danielson on August 10,
24

1 2006. At that time, Mr. Danielson indicated that he would not rule on the issue of Killian
2 information at that time, and that the parties should attempt to resolve those issues during the
3 discovery process.

4 17. Between August 29, 2006 and December 3, 2006, Respondent made no attempt to
5 obtain additional information regarding the Killian issue. He filed no motions, made no
6 requests for production, and issued no subpoenas. On December 4, 2006, Mr. Bulmer sent me
7 an e-mail indicating his intent to take depositions, and asking about available dates. On
8 December 5, 2006, I responded, providing available dates.

9 18. On December 18, 2006, I received a subpoena duces tecum (attached hereto as
10 Exhibit 1) directed to the Association's Custodian of Records, seeking documents related to Ms.
11 Killian's employment applications. The return date for that subpoena is Friday, December 22,
12 2006. The received stamp indicates that the subpoena duces tecum was delivered to the
13 Association on December 15, 2006.

14 19. On December 18, 2006, I also received notice of deposition regarding a subpoena
15 duces tecum directed to Ms. Killian (attached hereto as Exhibit 2). The return date for that
16 subpoena is also Friday, December 22, 2006. The received stamp indicates that the notice was
17 delivered to the Association on December 15, 2006.

18 I certify under penalty of perjury under the laws of the State of Washington that
19 the foregoing is true and correct.

20 Seattle, WA 12/20/06
21 Date and Place

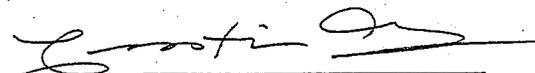
22 
23 Christine Gray, Bar No. 26684
24 Senior Disciplinary Counsel

EXHIBIT 20



WSBA

Board of Governors

Douglas C. Lawrence
Governor, 8th District

phone: 206-626-6000
fax: 206-464-4196
e-mail: doug.lawrence@stokeslaw.com

November 24, 2006

To: Board of Governors
Re: WSBA Discipline Committee - Summary Of Initial Recommendations from November 15, 2006 Meeting

The WSBA Discipline Committee met at the WSBA offices on November 15 to discuss the Report on the Lawyer Regulation System that was issued by the ABA in August of this year. The purpose of the meeting was to consider the recommendations that were made and determine those recommendations that the Committee felt warranted further study. The Committee also took this opportunity to identify other possible revisions to the lawyer regulatory system that warranted further discussion. This memo summarizes the Committee's preliminary recommendations

SUMMARY OF RECOMMENDATIONS

STRUCTURE

ABA Recommendation 1: The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

A. The Court Should Appoint An Independent Administrative Oversight Committee For The Discipline System

B. Appointment of Disciplinary Counsel and Oversight Of That Office

COMMITTEE RECOMMENDATION - The Committee does not recommend that an independent oversight committee be established; however, the Committee does believe this issue should be studied to determine what checks and balances might be implemented to ensure that the Board of Governors and the Executive Director are not able to improperly influence the discipline system.

ABA Recommendation 2: The Number Of Review Committee Members Should Be Increased

COMMITTEE RECOMMENDATION - The Committee does not believe the number of Review Committee members needs to be increased, but the Committee does believe standards should be developed. The Committee wants the inclusion of possible recusal rules to be considered, and wants clear guidelines to be established for when the pro tem committee should be activated to help alleviate backlogs.

ABA Recommendation 3: Quality Issues At The Hearing Officer Level Of The System Should Be Addressed

COMMITTEE RECOMMENDATION - The Committee does want this issue reviewed, with particular attention to be given to issues of timeliness, scheduling, judicial demeanor and experience. The Committee recommends consideration of extending the initial terms of new Hearing Officers to give an adequate evaluation period, and believes that procedures for the removal of Hearing Officers should be established.

ABA Recommendation 4: The Appellate Process Before The Disciplinary Board Should Be Streamlined

COMMITTEE RECOMMENDATION - The Committee wants to study this issue with a focus on mandatory appeal issues.

ABA Recommendation 5: Volunteers In The Disciplinary System Should Receive More Intensive And Mandatory Formal Training

COMMITTEE RECOMMENDATION - The Committee believes that more formal training should be provided and that the issue should be studied. Consideration should be given to adding materials from the judicial college

ABA Recommendation 6: The Discipline System Should Have Adequate Technology Resources

COMMITTEE RECOMMENDATION - This Committee believes that there is a clear need for additional technological assistance. Consideration needs to be given to the integration of the technology needs of the Disciplinary Board, ODC, the Hearing Officers and WSBA while maintaining the necessary confidentiality and independence among the parties.

ABA Recommendation 7: Improved Scheduling Practices Will Lessen Delay At The Hearing Level

COMMITTEE RECOMMENDATION - This issue is to be studied in conjunction with Recommendation 3 above.

ABA Recommendation 8: The Administrative Oversight Committee and Director Of Lawyer Discipline Should Consider Staffing Needs

COMMITTEE RECOMMENDATION - The Committee believes that this is a continuing focus and does not have to be separately studied.

PROCEDURAL RULES

ABA Recommendation 9: The Court Should Repeal Rule 5.1(d) Of The Rules For Enforcement Of Lawyer Conduct, Entitled "Grievant Duties"

COMMITTEE RECOMMENDATION - The Committee believes that both Rule 5.1(c) (Grievant's Rights) and 5.1(d) contain provisions that should be modified or deleted. These Rules need to be studied to determine what changes should be made.

ABA Recommendation 10: The Court Should Amend Rule 5.3(a) Of The Rules For Enforcement Of Lawyer Conduct To Eliminate The Washington State Bar Association's Role in Opening Grievances

COMMITTEE RECOMMENDATION - This issue should be studied in conjunction with Recommendation 1.

ABA Recommendation 11: Diversion Contracts Should Be Limited To Terms Agreed To By Disciplinary Counsel And The Respondent

COMMITTEE RECOMMENDATION - The Committee does not believe this issue needs to be reviewed as diversion contracts are agreed to by both disciplinary counsel and the respondent.

ABA Recommendation 12: The Court Should Amend Rule 7.1 Of The Rules For Enforcement Of Lawyer Conduct To Eliminate Disciplinary Board Involvement In Terminations Of Interim Suspensions Based On Criminal Convictions

COMMITTEE RECOMMENDATION - The Committee believes that Rule 7.1 should be reviewed. This should include consideration if disciplinary counsel should be required to file a petition for interim suspension in all cases.

ABA Recommendation 13: The Court Should Amend Rule 7.2 Of The Rules For Enforcement Of Lawyer Conduct To Streamline Other Interim Suspension Procedures

COMMITTEE RECOMMENDATION - The Committee believes this Rule should be considered for possible amendment. The review process should include participation by respondents' counsel.

ABA Recommendation 14: The Court Should Amend The Rules For Enforcement Of Lawyer Conduct Relating To Disability Inactive Status

COMMITTEE RECOMMENDATION - The Committee does not believe that the Rules relating to oversight need amendment, but does believe that these rules should be better coordinated with the interim suspension rules and for that reason warrant review.

ABA Recommendation 15: The administrative oversight committee and disciplinary counsel's office should develop for court approval, standards for the appointment of counsel for respondents in disability proceedings and a roster of volunteer counsel to serve in that capacity

COMMITTEE RECOMMENDATION - The Committee feels that this is an important issue which warrants review. The primary need is for more qualified counsel to participate in the program. The study should consider if the current compensation system is adequate, or if other modifications need to be made to ensure the availability of qualified counsel for respondents.

ABA Recommendation 16: Discipline On Consent Should Be Encouraged At All Stages Of Proceedings

COMMITTEE RECOMMENDATION - A very large percentage of cases are already resolved by stipulation, however the process itself is very cumbersome and often stipulated resolutions are rejected. There are several factors leading to these results, and the Committee believes the issue needs study to determine alternative approaches.

ABA Recommendation 17: The Court Should Repeal Rule 9.3 Of The Rules For Enforcement Of Lawyer Conduct Relating To Resignations In Lieu Of Disbarment

COMMITTEE RECOMMENDATION - The Committee believes this issue does not warrant review as it has recently been considered.

ABA Recommendation 18: Prior Discipline Should Be Considered Only After A Finding Of Misconduct

COMMITTEE RECOMMENDATION - The Committee believes this issue should be reviewed with the participation of respondents' counsel.

ABA Recommendation 19: Respondents Held In Default Should Continue To Receive Notices

COMMITTEE RECOMMENDATION - The Committee does not believe this issue requires any further review.

ABA Recommendation 20: Review of Disciplinary Board Reports And Recommendations By The Court Should Be Discretionary In All Disciplinary Cases

COMMITTEE RECOMMENDATION - The Committee believes that there is merit to having all matters subject to discretionary review. This issue should be reviewed.

I. SANCTIONS

ABA Recommendation 21: The Court's Role In Enhancing Consistency in Sanction Recommendations

COMMITTEE RECOMMENDATION - The Committee believes this issue should be reviewed. The Committee believes particular consideration should be given to the sanctions that should be available, and the standards by which sanctions are determined. Consideration should also be given to the possible elimination of admonitions.

ABA Recommendation 22: The Disciplinary Board and the Court Should Administer Reprimands

COMMITTEE RECOMMENDATION - This issue should be addressed in conjunction with the consideration of Recommendation 1.

ABA Recommendation 23: The Court Should Eliminate The Imposition of Admonition After Hearings on Formal Charges

COMMITTEE RECOMMENDATION - This issue should be addressed in conjunction with Recommendation 21.

ABA Recommendation 24: The Court Should Consider Amending Rule 14.2 Of The Rules For Enforcement Of Lawyer Conduct To Clarify That A Lawyer Disbarred, Suspended Or On Disability Inactive Status Cannot Work In A Law Office Or As A Paralegal

COMMITTEE RECOMMENDATION - The Committee feels this issue does warrant review. This should include consideration of possible notification requirements to law firms that are associated with a lawyer who is disbarred, suspended (including administrative suspensions) or on disability inactive status.

- A. **ABA Recommendation 25:** The Court Should Amend 13.8 To Provide Greater Detail Regarding the Imposition Of Probation And To Set Forth Specific Requirements For The Monitoring and Revocation of Probation

COMMITTEE RECOMMENDATION - A lawyer is placed on probation only in conjunction with other disciplinary proceedings, and for this reason the Committee does not believe there is a need for additional detail to be given relating to the probation; however, the Committee does feel that this issue should be considered in conjunction with Recommendation 21.

PREVENTION MECHANISMS

- B. **ABA Recommendation 26:** The Court Should Institute Mandatory Arbitration of Lawyer/Client Fee Disputes

COMMITTEE RECOMMENDATION - The Committee believes this recommendation should be studied further.

- C. **ABA Recommendation 27:** The Court Should Adopt a Rule Providing for Written Notice to Claimants of Payment in Third Party Settlements.

COMMITTEE RECOMMENDATION - The Committee believes this issue should be considered in conjunction with Recommendation 26.

OTHER ISSUES

COMMITTEE RECOMMENDATION - There are several additional changes associate with the Rules for the Enforcement of Lawyer Conduct that the Committee recommends for further consideration. They will be studied in conjunction with the Recommendations above.

PROPOSED GROUPINGS FOR STUDY

TASK FORCE 1:

Recommendations 1, 10, 22

ABA Recommendation 1: The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

ABA Recommendation 10: The Court Should Amend Rule 5.3(a) Of The Rules For Enforcement Of Lawyer Conduct To Eliminate The Washington State Bar Association's Role in Opening Grievances

ABA Recommendation 22: The Disciplinary Board and the Court Should Administer Reprimands

TASK FORCE 2:

Recommendations 2, 3, 5, 6, 7, 15

ABA Recommendation 2: The Number Of Review Committee Members Should Be Increased

ABA Recommendation 3: Quality Issues At The Hearing Officer Level Of The System Should Be Addressed

ABA Recommendation 5: Volunteers In The Disciplinary System Should Receive More Intensive And Mandatory Formal Training

ABA Recommendation 6: The Discipline System Should Have Adequate Technology Resources

ABA Recommendation 7: Improved Scheduling Practices Will Lessen Delay At The Hearing Level

ABA Recommendation 15: The Administrative Oversight Committee And Disciplinary Counsel's Office Should Develop For Court Approval, Standards For The Appointment Of Counsel For Respondents In Disability Proceedings And A Roster Of Volunteer Counsel To Serve In That Capacity

TASK FORCE 3:

Recommendations 4, 9, 12, 16, 18, 20, General Rule Changes

ABA Recommendation 4: The Appellate Process Before The Disciplinary Board Should Be Streamlined

ABA Recommendation 9: The Court Should Repeal Rule 5.1(d) Of The Rules For Enforcement Of Lawyer Conduct, Entitled "Grievant Duties"

ABA Recommendation 12: The Court Should Amend Rule 7.1 Of The Rules For Enforcement Of Lawyer Conduct To Eliminate Disciplinary Board Involvement In Terminations Of Interim Suspensions Based On Criminal Convictions

ABA Recommendation 16: Discipline On Consent Should Be Encouraged At All Stages Of Proceedings

ABA Recommendation 18: Prior Discipline Should Be Considered Only After A Finding Of Misconduct

ABA Recommendation 20: Review of Disciplinary Board Reports And Recommendations By The Court Should Be Discretionary In All Disciplinary Cases

General Rule Changes

TASK FORCE 4:

Recommendations 13, 14, 21, 23, 24, 25

ABA Recommendation 13: The Court Should Amend Rule 7.2 Of The Rules For Enforcement Of Lawyer Conduct To Streamline Other Interim Suspension Procedures

ABA Recommendation 14: The Court Should Amend The Rules For Enforcement Of Lawyer Conduct Relating To Disability Inactive Status

ABA Recommendation 21: The Court's Role In Enhancing Consistency in Sanction Recommendations

ABA Recommendation 23: The Court Should Eliminate The Imposition of Admonition After Hearings on Formal Charges

ABA Recommendation 24: The Court Should Consider Amending Rule 14.2 Of The Rules For Enforcement Of Lawyer Conduct To Clarify That A Lawyer Disbarred, Suspended Or On Disability Inactive Status Cannot Work In A Law Office Or As A Paralegal

ABA Recommendation 25: The Court Should Amend 13.8 To Provide Greater Detail Regarding the Imposition Of Probation And To Set Forth Specific Requirements For The Monitoring and Revocation of Probation

TASK FORCE 5:

Recommendations 26, 27

ABA Recommendation 26: The Court Should Institute Mandatory Arbitration of Lawyer/Client Fee Disputes

ABA Recommendation 27: The Court Should Adopt a Rule Providing for Written Notice to Claimants of Payment in Third Party Settlements.

TASK FORCE 2:

Recommendations 2, 3, 5, 6, 7, 15

ABA Recommendation 2: The Number Of Review Committee Members Should Be Increased

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ABA Recommendation 15: The Administrative Oversight Committee And Disciplinary Counsel's Office Should Develop For Court Approval, Standards For The Appointment Of Counsel For Respondents In Disability Proceedings And A Roster Of Volunteer Counsel To Serve In That Capacity

Membership:

Krystal Wiitala - BOG

Lonnie Davis - BOG

Jim Danielson - Chief Hearing Officer

Marsha Matsumoto - ODC

Kurt Bulmer - Respondent's Counsel

DISCIPLINE TASK FORCE 2

Minutes of March 28, 2007 Meeting

Members Present: Lonnie Davis, Kristal Wiitala (by telephone), Kurt Bulmer, Marsha Matsumoto

Members Absent: Jim Danielson

Task Force Chair: Kristal Wiitala volunteered to serve as the Chair of Task Force 2.

Keeper of the Minutes: Marsha Matsumoto agreed to keep minutes of the meetings, with Kurt Bulmer as back-up. The minutes will be distributed to members of the Task Force by e-mail.

Future meetings: Future meetings will be held at the WSBA office; however, members may participate by telephone. The next meeting is scheduled tentatively for Friday, April 20, 2007, at 1:30 p.m., subject to Mr. Danielson's availability. Ms. Wiitala will contact Mr. Danielson to review today's meeting and to inquire about his schedule.

Assignments: Task Force members were assigned to review specific ABA recommendations, and to begin work on the Task Force's recommendations.

Recommendation 2 (Review Committee members): Wiitala, Bulmer, Matsumoto

Recommendation 3 (Hearing Officers): Wiitala, Danielson (tentative)

Recommendation 5 (Training of Volunteers): Davis, Matsumoto

Recommendation 6 (Technology): Wiitala, Danielson (tentative), Matsumoto

Recommendation 7 (Scheduling Practices): Davis, Bulmer, Matsumoto

Recommendation 15 (Respondent's Counsel in Disability Proceedings): Bulmer, Davis

Submitted by Marsha Matsumoto

DISCIPLINE TASK FORCE 2

Minutes of April 20, 2007 Meeting

Present: Kristal Wiitala, Lonnie Davis (by telephone), Jim Danielson (by telephone),
Marsha Matsumoto
Absent: Kurt Bulmer

ABA Recommendation 3 – Quality of Hearing Officers

Selection of Hearing Officers – Current System

Mr. Danielson summarized the current selection process for hearing officers. See also ELC 2.5. Typically, the Hearing Officer Selection Panel (Selection Panel) receives approximately 20 applications for 6-8 openings on the hearing officer list. Assistant General Counsel (AGC) Doug Ende initially screens the applications to determine if the applicants meet the ELC qualifications. The Selection Panel Chair then sorts the applicants geographically, and provides the list of applicants to other Selection Panel members. The Selection Panel may contact judges or lawyers in the applicant's community to inquire about the applicant's demeanor and attitude. The Selection Panel meets once or twice as a whole to review the applications according to established selection criteria, and makes recommendations to the Board of Governors. The Chief Hearing Officer is a member of the Selection Panel, and has a relatively strong voice in the Panel's recommendations.

The selection criteria are available from AGC Doug Ende.

Training

Task Force 2 (TF 2) discussed training as one means of addressing Recommendation 3. Training options to explore: sending hearing officers to the National Judicial College in Reno; bringing an outside trainer to WSBA (as a less expensive alternative to attending the National Judicial College); determining whether hearing officers can participate in training available to ALJs or Superior Court judges; working with the WSBA CLE department to identify/provide training; combining training for hearing officers with training for other volunteers in the disciplinary system (e.g. Disciplinary Board members, Conflict Review Officers, Adjunct Investigative Counsel).

As a corollary, it was suggested that TF 2 explore whether hearing officers (and other volunteers) can receive CLE credit for training. Thus far, MCLE has declined to award CLE credit for the in-house sessions offered to hearing officers.

See also ABA Recommendation 5.

Number of Hearing Officers

One suggestion is to reduce the number of hearing officers from 66 to 50, with the reduction occurring through attrition. With a roster of 50 hearing officers, each hearing officer would conduct approximately 1-1/2 hearings per year, giving each hearing officer more experience, without increasing the workload to a point that hearing officers could no longer volunteer to serve.

Removal of Hearing Officers

ELC 2.5(e) provides, in part, "[O]n the recommendation of the hearing officer selection panel, the Board of Governors may remove a person from the list of hearing officers or from the list of nonlawyer panel members."

As a practical matter, hearing officers have not been removed from the hearing officer list. Rather, hearing officers are allowed to serve out their five-year terms, but may not be assigned to any proceedings.

TF 2 briefly discussed due process issues that may arise in attempting to remove a hearing officer from the list. As an alternative to removal, it was suggested that the ELC be amended to provide for annual appointment/reappointment of each hearing officer during his or her five-year term.

A question was raised as to whether an annual reappointment process would give a hearing officer a sufficient opportunity to improve his or her performance, particularly if each hearing officer conducts only 1-2 hearings each year. TF 2 briefly discussed ways in which hearing officers are currently provided with feedback (e.g. the Chief Hearing Officer currently reviews all findings of fact, conclusions of law and recommendations (FFCL) and discusses form/style issues with each hearing officer after the case is concluded; Respondent's Counsel and ODC provide comments to the Chief Hearing Officer regarding hearing officer demeanor/performance in connection with the Selection Panel process) and began to explore other ways in which hearing officers might be provided with anonymous, but useful feedback.

Guidelines for Sanctions

TF 2 discussed the ABA Recommendation that written guidelines be formulated for hearing officers and the Disciplinary Board to use in developing sanction recommendations. All of the hearing officers and Disciplinary Board members currently have copies of the ABA Standards for Imposing Lawyer Sanctions, and it was not clear to TF 2 what additional written guidelines the ABA Recommendation contemplated.

The issue of an electronic database of public discipline decisions will be explored under ABA Recommendation 6 (Technology).

As to the issue of proportionality analysis, Mr. Danielson commented that proportionality seems to be an analysis more appropriately conducted by the Disciplinary Board than by hearing officers.

The ODC position (in hearing and before the Disciplinary Board) is that under Washington case law, the respondent lawyer has the burden to bring forward cases to persuade the tribunal that the recommended sanction is disproportionate and, that if the respondent lawyer does so, the ODC will respond to the proportionality analysis.

ABA Recommendation 5 - Training of Volunteers

Mr. Danielson provided an overview of the training that is currently provided for hearing officers. See also ELC 2.5(f) and (i).

Organized training is provided annually by the Chief Hearing Officer and AGC Doug Ende. There are 2 formats: 1) targeted to new hearing officers; 2) targeted to more experienced hearing officers. The training targeted to more experienced hearing officers tends to focus on a specific topic with a roundtable discussion and/or guest speaker (e.g. RPC amendments, evidentiary standards under the APA, etc.). The annual training sessions last 2 hours. Hearing officers may participate in person or by telephone. 85-90% of hearing officers are in attendance every year.

Additionally, when hearing officers file FFCL, they forward a copy to the Chief Hearing Officer. The Chief Hearing Officer does not comment on the substance, but when the case is done, he provides one-on-one comments to each hearing officer regarding form (e.g. inappropriate use of narrative style, inappropriate references to personal experience outside of the hearing record, etc.). Also, when procedural questions arise during a hearing, hearing officers may consult with AGC Doug Ende (who is separate from the Office of Disciplinary Counsel) or the Chief Hearing Officer.

TF 2 started to explore the following ideas for hearing officer training: 1) requiring new hearing officers to attend training before being appointed to their first hearings; 2) providing hearing officers with copies of the Annotated Model Rules of Professional Conduct (approx. \$500 per copy); 3) increasing training opportunities for hearing officers; 4) requiring mandatory attendance and/or hearing officer accountability to attend training; 5) continuing to explore MCLE accreditation so that participants can receive general and/or ethics credits.

ABA Recommendation 6 – Technology

TF 2 members are scheduled to meet with Mark McDonald and other IT staff on May 4, 2007.

ABA Recommendation 7 – Scheduling Practices

Scheduling of Hearings

The Chief Hearing Officer maintains a table that allows him to track when a matter has been ordered to hearing, when a hearing officer has been appointed, when a hearing date has been set, and when FFCL are filed. The Chief Hearing Officer contacts the appointed hearing

officer if it appears that a hearing date has not been set in a timely manner or if it appears that a hearing will not take place within the Aspirational Timelines. The Aspirational Timelines generally provide that a hearing date should occur within 180 days after an Answer is filed or a hearing officer appointed.

Next Meeting

The next meeting of TF 2 will occur at 10:00 or 10:30 a.m. on **May 23, 2007** at the WSBA office. Further details to be announced.

Submitted by Marsha Matsumoto

Discipline Committee
Washington State Bar Association

Task Forces

TASK FORCE 1:

Recommendations 1, 10, 22

ABA Recommendation 1: The Supreme Court's Oversight Of The Washington Discipline System Should Be Emphasized

ABA Recommendation 10: The Court Should Amend Rule 5.3(a) Of The Rules For Enforcement Of Lawyer Conduct To Eliminate The Washington State Bar Association's Role in Opening Grievances

ABA Recommendation 22: The Disciplinary Board and the Court Should Administer Reprimands

Membership:

Ellen Dial - BOG

Doug Lawrence - BOG

Jan Michels/Paula Littlewood - WSBA

Randy Beitel - OCD

Tom Andrews - University of Washington School of Law

Justice Susan Owens - Supreme Court

TASK FORCE 3:

Recommendations 4, 9, 12, 16, 18, 20, General Rule Changes

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General Rule Changes

Membership:

Ed Shea - BOG

Doug Ende - WSBA Assistant General Counsel

Scott Busby - ODC

Lee Ripley - Respondents' Counsel

Charlie Wiggins - Appellate Lawyer

Justice Barbara Madsen - Supreme Court

TASK FORCE 4:

Recommendations 13, 14, 21, 23, 24, 25

ABA Recommendation 13: The Court Should Amend Rule 7.2 Of The Rules For Enforcement Of Lawyer Conduct To Streamline Other Interim Suspension Procedures

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ABA Recommendation 25: The Court Should Amend 13.8 To Provide Greater Detail Regarding the Imposition Of Probation And To Set Forth Specific Requirements For The Monitoring and Revocation of Probation

Membership:

Stan Bastian - BOG

Gail McMonagle - Disciplinary Board

Julie Shankland - WSBA Counsel

Kathleen Dassel - ODC

Erika Balazs - Special Disciplinary Counsel (Spokane)

[Brett Purtzer] - Respondents Counsel

SUPREME COURT OF THE STATE OF WASHINGTON

In re)
)
BRADLEY R. MARSHALL,)
)
)
Lawyer,)
)
)
WSBA No. 15830)

NO. 200,577-2

AMENDED
DECLARATION OF FILING

CLERK
RONALD R. CARPENTER
2009 MAR 29 AM 7:50
STATE OF WASHINGTON
SUPREME COURT

I declare and state as follows:

On this date the Appellant's Motion for Additional Time at Oral Argument; and Appellant's Supplement to Motion for Dismissal, or in the Alternative for a New Hearing with Illustrative Exhibits to be Used at Oral Argument Pursuant to RAP 11.4 were sent for filing via the U.S. Postal Service, with first class postage affixed, to the Clerk of Court as follows:

Mr. Ronald Carpenter, Clerk
Washington State Supreme Court
P.O. Box 40929
Olympia WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington on March 25, 2009.



Kay Gordon, Admin. Assistant to
Bradley R. Marshall, Appellant

AMENDED DECLARATION
OF FILING

ORIGINAL