
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

BRADLEY R. MARSHALL,

Lawyer (Bar No. 15830).

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

Scott G. Busby
Bar No. 17522
Disciplinary Counsel

WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, Washington 98101-2539
(206) 733-5998

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I. COUNTERSTATEMENT OF THE ISSUES

1. In accordance with this Court's decision in In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 339-41, 157 P.3d 859 (2007), the First Amended Formal Complaint set forth "what the charges were, which of [Respondent's] cases was involved, and the factual basis for the charges." Is Respondent entitled to a new disciplinary hearing because the First Amended Formal Complaint did not allege every fact found by the hearing officer in support of his conclusions?

2. Respondent asserts that hearing officer James M. Danielson was biased due to his role as chief hearing officer. Respondent never raised any challenge to Mr. Danielson's qualifications until after Mr. Danielson recommended that Respondent be disbarred. Respondent's claim of bias is not supported by any facts in the record, and the Disciplinary Board unanimously rejected it. Should the Court find that Respondent's challenge to Mr. Danielson's qualifications has been waived or, alternatively, that it is without merit?

3. Respondent challenges no fewer than 65 findings of fact based on varying and inconsistent alternative explanations that were rejected by the hearing officer and the Disciplinary Board. Should the Court retry the facts, or should it review the facts in accordance with the well-established standard of review set forth in Marshall, 160 Wn.2d at 329-31?

4. The presumptive sanction for Respondent's multiple violations of the Rules of Professional Conduct (RPC) is disbarment. In light of the presumptive sanction and the multiple aggravating factors, including three prior disciplinary actions for similar misconduct, should the Court adopt the Disciplinary Board's unanimous recommendation that Respondent be disbarred?

II. COUNTERSTATEMENT OF THE CASE

A. SUBSTANTIVE FACTS

This proceeding relates to three lawsuits concerning the Prince Hall Grand Chapter Order of the Eastern Star (the "Grand Chapter"), a Masonic organization. The three lawsuits will be referred to as the "Grand Chapter litigation," the "Rheubottom litigation," and the "Richard litigation." They involved allegations that Callie Rheubottom, Essie Wormack, Lorraine Harris and Lindia Richard were improperly suspended from the Grand Chapter, as well as counter-allegations that these four women, along with other former members of the Grand Chapter and the associated Grand Lodge, were interfering with the operations of the Grand Chapter. Amended Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (AFFCL) ¶¶ 3-4.¹ By December 2001, all three lawsuits were consolidated. AFFCL ¶ 23; EX 2.

¹ BF 105. The AFFCL are attached as Appendix A.

In October 2000, Respondent Bradley R. Marshall agreed to represent Callie Rheubottom and Essie Wormack in their dispute with the Grand Chapter. AFFCL ¶ 2. Respondent agreed to undertake the joint representation of Mrs. Rheubottom and Mrs. Wormack for a flat, “non-refundable” fee of \$15,000 to “pursue a claim for breach of contract, tortuous [sic] conduct and related claims” against the Grand Chapter. AFFCL ¶ 5; EX 3. Respondent further agreed to “make no further charge for [his firm’s] services other than as set forth in this agreement or unless otherwise agreed.” EX 3. The agreement does not state how the \$15,000 fee was to be allocated between Mrs. Rheubottom and Mrs. Wormack. The fee was paid in full, however: Mrs. Rheubottom paid \$11,500, and Mrs. Wormack paid the remaining \$3,500. EX 4. Respondent never explained to Mrs. Wormack the implications of or the risks involved in the common representation,² and Respondent never sought or obtained the written consent of either of his clients. TR 142-144, 778, 790, 797, 800.

On January 9, 2001, Respondent filed a lawsuit against the Grand Chapter on behalf of Mrs. Rheubottom and Mrs. Wormack (the “Rheubottom litigation”). AFFCL ¶ 6; EX 6-7. At about the same time, Mrs. Wormack informed Respondent in writing that she was vehemently

² Mrs. Rheubottom did not testify at the disciplinary hearing, although she was identified as a witness by Respondent. BF 124.

opposed to allowing Lorraine Harris to join the lawsuit. AFFCL ¶ 9; EX 5. Mrs. Harris was willing to pay, however, and Respondent was willing to take her money in spite of Mrs. Wormack's objections and the actual conflict of interest her objections created. AFFCL ¶ 10; EX 12. In February 2001, without informing Mrs. Wormack and against her express wishes, Respondent agreed to represent Lorraine Harris and join her as a plaintiff in the Rheubottom litigation. AFFCL ¶ 8; EX 9, 13. Mrs. Harris paid Respondent a flat, "non-refundable" fee of \$7,500. AFFCL ¶ 8; EX 20.

Mrs. Wormack was not informed that Respondent had agreed to represent Mrs. Harris until about a month later in March 2001, when Mrs. Harris's husband so informed her. EX 10. Mrs. Wormack again expressed her opposition to Respondent, both in writing and by telephone. EX 10-11. Nevertheless, in April 2001, Respondent filed an amended complaint in the Rheubottom litigation adding Mrs. Harris as a plaintiff. AFFCL 11; EX 13. Respondent never explained to Mrs. Wormack the implications of or the risks involved in the common representation,³ and Respondent never sought or obtained the written consent of any of his clients. TR 142-152; AFFCL ¶ 12.

³ Mrs. Harris did not testify at the disciplinary hearing, although she was identified as a witness by both Respondent and the Washington State Bar Association (Association). BF 86, 124.

In May 2001, the Grand Chapter filed an answer in the Rheubottom litigation that included counterclaims against all three plaintiffs and a third-party complaint against Mrs. Rheubottom's husband, William Rheubottom, and Mrs. Harris's husband, Bert Harris. AFFCL ¶ 13; EX 15. Also named as a third-party defendant was Lindia Richard, another former member of the Grand Chapter who had filed a separate lawsuit against the Grand Chapter (the "Richard litigation"). AFFCL 14; EX 8, 15. Mr. and Mrs. Rheubottom and Mr. and Mrs. Harris were also defendants in a separate lawsuit filed in April 2001 by the Grand Chapter (the "Grand Chapter litigation"). AFFCL ¶ 15-16; EX 1-2. In May 2001, Essie Wormack and Lindia Richard were added as defendants in the Grand Chapter litigation. EX 2.

In May 2001, after the Grand Chapter filed its answer and third-party complaint in the Rheubottom litigation, Respondent agreed to represent Mr. Rheubottom and Mr. Harris in the Rheubottom litigation and the Grand Chapter litigation. AFFCL ¶ 17; EX 16, 18-19. Mr. Rheubottom paid Respondent a flat, "non-refundable" fee of \$10,000, and Mr. Harris paid Respondent a flat, "non-refundable" fee of \$9,000. AFFCL ¶¶ 18-19; EX 18-19. On May 29, 2001, Respondent filed an answer to the counterclaims and third-party complaint in the Rheubottom litigation on behalf of Mr. and Mrs. Rheubottom, Mrs. Wormack, and Mr.

and Mrs. Harris. AFFCL ¶¶ 20. Respondent never explained to Mrs. Wormack the implications of or the risks involved in the common representation,⁴ and Respondent never sought or obtained the written consent of any of his clients. TR 152-53; AFFCL ¶ 21(d).

Based on their fee agreements, Respondent's clients reasonably believed that the flat fees they paid Respondent for legal services would cover all the legal work to be performed on their behalf. AFFCL ¶ 82. They never agreed to make additional payments to Respondent for work that he hired other people to do for him. AFFCL ¶ 83. Nevertheless, that is precisely what Respondent had them do. On a regular basis, Respondent hired other people to do legal research, to draft legal documents, and in general to do the work that his clients reasonably believed they had already paid for, and then passed on the bills to his clients. AFFCL ¶¶ 84-95; EX 21-23, 25-29, 31-33, 35, 44, 46, 48, 60, 62, 78-80. Respondent persisted in this practice over the protests of his clients and even after he knew that he was under investigation for similar misconduct in a different matter. EX 43; AFFCL ¶¶ 88, 90; Disciplinary Board Order Modifying Hearing Officer's Decision (DBO)⁵ at 3 n.3;

⁴ Neither Mr. Rheubottom nor Mr. Harris testified at the disciplinary hearing, although Mr. Rheubottom was identified as a witness by Respondent. BF 124.

⁵ BF 151. The Disciplinary Board Order is attached as Appendix B.

Marshall, 160 Wn.2d at 328.⁶

In July 2001, the Rheubottom litigation and the Grand Chapter litigation were consolidated, and by December 2001 all three lawsuits – the Grand Chapter litigation, the Rheubottom litigation and the Richard litigation – had been consolidated in the King County Superior Court under the cause number of the Grand Chapter litigation. AFFCL ¶¶ 22-23; EX 2.

In April 2002, on behalf of Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris, Respondent negotiated a settlement with the insurers of the two individual defendants in the consolidated litigation. AFFCL ¶ 24; EX 30. The Grand Chapter was not a party to the settlement agreement. AFFCL ¶ 24. Under the terms of the settlement agreement, Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris were paid \$12,500 each by the settling defendants' insurers. AFFCL ¶ 25. Lindia Richard's lawyer negotiated a similar settlement on behalf of Mrs. Richard. AFFCL 26. In May 2002, Respondent received the settlement checks for Mrs. Rheubottom, Mrs. Wormack, and Mrs. Harris. AFFCL ¶ 27.

In June 2002, the remaining parties and their lawyers participated in a settlement conference with King County Superior Court Judge

⁶ In Marshall, 160 Wn.2d at 335, this Court concluded that Respondent violated RPC 1.5(a) by improperly charging contract attorney fees as costs.

Michael Heavey. AFFCL ¶ 131. No agreement was reduced to writing or made in open court on the record or entered in the minutes, and shortly after the mediation Respondent's clients told him that they would not agree to the proposed settlement. AFFCL ¶ 132.

Even though his clients had already paid Respondent flat, "non-refundable" fees to litigate their claims against the Grand Chapter, Respondent told them after the settlement conference that they would have to pay him additional fees if they wanted him to continue. AFFCL ¶¶ 31(a)-31(b). At that time, Respondent was holding the \$37,500 he had received on behalf of his clients from the two individual defendants who had agreed to settle in April 2002. AFFCL ¶¶ 27, 31(a). Mrs. Wormack and Mrs. Harris refused to pay additional fees, electing to hold Respondent to their prior agreements. AFFCL ¶ 32. Thereafter, Respondent effectively abandoned Mrs. Wormack and Mrs. Harris and, as described below, actively worked against their clearly expressed wishes by attempting to force them to accept a settlement they did not wish to accept. AFFCL ¶¶ 33. Mr. and Mrs. Rheubottom, on the other hand, agreed to pay Respondent an additional \$15,000 "non-refundable" fee for Respondent's continued representation. AFFCL ¶ 34; EX 36-37, 52.

At about the same time, Respondent began representing Lindia Richard in the consolidated litigation as well. AFFCL ¶ 28; EX 34.

Initially, Respondent agreed to accept payment from Mrs. Richard at an hourly rate of \$175 with an advance deposit of \$1,000, which Mrs. Richard paid in full on June 13, 2002. AFFCL ¶ 29; EX 34, 40. Respondent never explained to Mrs. Richard or Mrs. Wormack the implications of or the risks involved in the common representation, and Respondent never sought or obtained the written consent of any of his clients. TR 153, 283-84; AFFCL ¶ 30(a). By this time, moreover, Respondent knew he was under investigation for similar misconduct in a different matter. DBO at 3 n.3; Marshall, 160 Wn.2d at 328.⁷

Meanwhile, on June 10, 2002, the Grand Chapter's lawyer, Terry Thomson, wrote to Judge Catherine Shaffer stating that "all parties [had] entered into a binding settlement agreement." EX 38. On behalf of Mrs. Rheubottom and Mrs. Richard, the two clients who had agreed to pay Respondent additional fees for the continuation of the case, Respondent submitted an immediate response. EX 39. Respondent argued that Mrs. Rheubottom and Mrs. Richard had not agreed to settle their claims, and he cited pertinent legal authority for the proposition that there was no binding settlement agreement as to Mrs. Rheubottom or Mrs. Richard because

⁷ In Marshall, 160 Wn.2d at 336-38, this Court concluded that Respondent violated former RPC 1.7(b) by representing multiple clients in a single matter without explaining the implications of or the risks involved in the common representation, and without obtaining his clients' written consent.

“none of the attorneys appeared in open court and dictated any purported terms of any settlement agreement on the record or in the presence of the Clerk.” EX 39; see also RCW 2.44.010(1); Rule 2A of the Superior Court Rules of Civil Procedure (CR).

A week later, on June 17, 2002, Respondent wrote to Mrs. Wormack and Mrs. Harris, the two clients who refused to pay Respondent additional fees for the continuation of the case. Respondent stated:

Ms. Harris and Ms. Wormack have now resolved their case against the Chapter and the Chapter has now resolved its case against the two of you. . . . [E]ach side will dismiss their case with prejudice and without attorney’s fees and costs. This will mean that Ms. Wormack and Ms. Harris will not be reinstated into the Chapter and the pending expulsions will stand.

EX 42. Respondent gave the following directive to his clients:

Enclosed with Ms. Wormack’s letter are the release documents. After signing, she will forward them in the enclosed envelope to Mr. and Mrs. Harris who will then forward them back to our office

EX 42. To provide his clients with a strong incentive to follow that directive, Respondent stated:

The court has directed Ms. Wormack and Ms. Harris [to] sign the release and settlement agreement and the Chapter to do the same

EX 42. That statement was a lie: the court had not directed anyone to sign a release or a settlement agreement, and Respondent knew it. AFFCL ¶¶ 134-135. Finally, even though he had successfully argued *against* the

existence of a binding agreement on behalf of those of his clients who agreed to pay him additional fees, Respondent told the two clients who refused to pay additional fees:

If the parties do not sign then the Chapter will have the right to bring a motion to enforce these documents and ask for attorney's fees and costs. Given that Judge Heavey has confirmed that the settlement was consummated, Judge Katherine [sic] Shaffer may well impose attorney's fees against Ms. Wormack and Ms. Harris if the aforementioned documents are not executed.

EX 42.

Mrs. Wormack saw Respondent's letter for what it was: a threat calculated to induce her to abandon the claims that Respondent had agreed to pursue on her behalf for a fee that had already been paid. She responded by a letter dated June 25, 2002 in which she made it clear to Respondent that (1) she did not intend to abandon her claims against the Grand Chapter and (2) she would not pay Respondent additional fees for work that he had agreed to do for a fee that had already been paid. AFFCL ¶¶ 137-138; EX 43. In the same letter, Mrs. Wormack also objected to Respondent's charging her for work performed at Respondent's direction by other people. AFFCL 88; EX 43. In his July 12, 2002 reply, Respondent dismissed this objection on the grounds that the work was "necessary for [her] case." EX 48. Respondent did not even

address Mrs. Wormack's objection to his demand for an additional fee to continue working on her case.

On July 8, 2002, after Mrs. Wormack had refused to sign the settlement agreement, Respondent sent it directly to Mrs. Harris. AFFCL ¶¶ 139; EX 49. Mrs. Harris did not sign the agreement either, so Respondent asked her again on July 15, 2002. AFFCL ¶¶ 140-41; EX 50. By the end of July 2002, Respondent himself conceded, in writing, that both Mrs. Wormack and Mrs. Harris were "reluctant" to sign the settlement agreement. EX 53.

Nevertheless, Respondent wrote to Mrs. Wormack and Mr. and Mrs. Harris on July 31, 2002, stating: "It is my understanding that you each have settled your case." AFFCL ¶ 143; EX 53. Respondent then added:

Despite your reluctance to sign the Settlement Agreement, your claims have been dismissed and will not be heard at trial.

EX 53. That statement, too, was a lie: as Respondent well knew, Mrs. Wormack's and Mrs. Harris's claims had not been dismissed. AFFCL ¶¶ 146-147.

Without obtaining their consent, Respondent sent his opposing counsel, Terry Thomson, a copy of his July 31, 2002 letter to his clients. AFFCL ¶ 144; TR 166. Then, in August 2002, Respondent and Mr.

Thomson talked about filing a motion to compel Mrs. Wormack and Mrs. Harris to consummate the proposed settlement they had clearly rejected. TR 84-85, 122-26. On August 15, 2002, Mr. Thomson filed such a motion, in which he quoted from Respondent's July 31, 2002 letter to his clients. AFFCL ¶ 149; EX 55. Two months earlier, as described above, Respondent had opposed Mr. Thomson's attempt to bind Mrs. Rheubottom and Mrs. Richard to a proposed settlement agreement. EX 39. Respondent could have made the same arguments and cited the same legal authority on behalf of Mrs. Wormack and Mrs. Harris, but he did not.

But Mrs. Wormack and Mrs. Harris, unlike Mrs. Rheubottom and Mrs. Richard, had refused Respondent's demand for additional fees. AFFCL ¶¶ 151, 153. Consequently, Respondent chose not to oppose the motion at all. AFFCL ¶ 150, 177-179. On the same day the motion was filed, Respondent informed his clients by letter that he would not oppose it. EX 56. Effectively abandoned by her lawyer, Mrs. Wormack had to oppose the motion herself. EX 57, 59. In attempting to rid himself of the two clients who had refused his demand for additional fees, Respondent acted purely in his own self-interest and contrary to the clearly expressed interests of his clients. AFFCL ¶ 177. Moreover, Respondent never disclosed to Mrs. Wormack or Mrs. Harris that his continued

representation of them might be, and in fact was, materially limited by his interest in retaining the \$25,000 in settlement funds he had received on their behalves in May 2002. AFFCL ¶¶ 152, 154, 177.

In January 2003, Respondent made another demand for additional fees from Mrs. Wormack and Mrs. Harris. AFFCL ¶ 40(a). Even though he had told them in July 2002 that their claims had been dismissed and would not be heard at trial, EX 53, Respondent wrote to each of them on January 17, 2003, stating:

Please advise me as soon as possible whether or not you are interested in pursuing your claims at trial on January 27 or if you wish to have your claims dismissed. If you wish to proceed I will need to meet with you as soon as possible in order to prepare for trial and to set up financial arrangements.

EX 67, 274. By letters dated January 21, 2003, Respondent told Mrs. Wormack and Mrs. Harris that each of them would have to pay him \$15,000 in fees by January 23, 2003 in order for him to represent them at the trial scheduled to begin on February 3, 2003. EX 69, 82. Neither Mrs. Wormack nor Mrs. Harris acceded to Respondent's demand, so he abandoned them. Although he had never formally withdrawn from the representation of Mrs. Wormack or Mrs. Harris, Respondent appeared for trial only as counsel for Mrs. Rheubottom and Mrs. Richard. AFFCL ¶ 44; EX 277; TR 90-91.

Meanwhile, on January 16, 2003, Mrs. Richard and her husband, James Richard, met with Respondent to discuss his legal fees. AFFCL ¶ 65. As of that date, all of Mrs. Richard's legal bills had been paid in full. AFFCL ¶ 68; EX 64, 66. At the January 16, 2003 meeting, Respondent agreed to complete the representation of Mrs. Richard for a flat fee of \$5,000. AFFCL ¶ 66; EX 65. Respondent also agreed to prepare an amended fee agreement, but he failed to do so. AFFCL ¶¶ 66-67. On January 27, 2003, Mrs. Richard sent Respondent a \$5,000 cashier's check with a handwritten note that states:

Cashier's check of \$5,000.00 for Retainer completing the PHGC case. Per your agreement on 1/16/03. Thank you for your attention.

AFFCL ¶ 69; EX 70. Respondent issued a receipt to Mrs. Richard for a "non-refundable retainer." EX 71.

After the March 2003 trial, at which a jury awarded \$3,500 to Mrs. Rheubottom and \$3,500 to Mrs. Richard, Respondent billed Mrs. Richard an additional \$21,787.50 for legal services between March 10, 2003 and March 29, 2003, contrary to their January 16, 2003 agreement. AFFCL ¶ 71; EX 74. When Mrs. Richard objected, Respondent filed an attorney's lien, sent the bill to a collection agency and then sued Mrs. Richard, forcing her to hire a lawyer to defend her. AFFCL ¶¶ 74-75; EX 75-77;

TR 296-97. Respondent eventually abandoned his suit against Mrs. Richard in August 2004, more than a year later. AFFCL ¶ 77.

On May 20, 2004, the Association took Respondent's deposition. AFFCL ¶ 47. In his testimony, Respondent deliberately attempted to mislead the Association about the additional fees that he demanded from his clients for his continued representation of them. AFFCL ¶¶ 53, 163, 174. Respondent testified, falsely, that the additional funds he demanded from Mrs. Wormack and Mrs. Harris were not for fees at all, but for costs:

Q. And what did you tell them [Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris] it would cost them in terms of your fees if they continued to pursue those claims against the Prince Hall Chapter?

A. There would be no additional fees. There would be additional costs, and the costs were going to be significant and substantial. Depositions had to be transcribed. Trial preparation had to go forward in terms of exhibits and getting witnesses to testify, and those costs were going to probably exceed the cost of the settlement amounts that they received. And so we ended up going into mediation with Judge Heavey to try [to settle the] case.

AFFCL ¶¶ 51-52. Those assertions were false and misleading, as Respondent knew. AFFCL ¶ 53, 163, 174. Respondent had demanded an additional \$15,000 each in fees from Mrs. Wormack and Mrs. Harris, and his testimony to the contrary was found not to be credible. AFFCL ¶¶ 40(a)-42.

B. PROCEDURAL FACTS

The Formal Complaint was filed on November 15, 2005. BF 5. On December 5, 2005, Teena Killian was appointed hearing officer. BF 8. During the time that she served as hearing officer, Ms. Killian entered exactly three orders, all of them pertaining to scheduling: (1) a scheduling order filed January 11, 2006, (2) an Order on Motion for Continuance filed May 18, 2006, and (3) a new scheduling order filed June 5, 2006.⁸ BF 14, 46, 51. The June 5, 2006 scheduling order, which was signed on June 2, 2006, was an agreed order negotiated by the parties between May 16, 2006 and June 1, 2006 based on the hearing date established by the May 18, 2006 order. BF 85 (Declaration ¶ 4). Respondent never complied with any of the prehearing deadlines established by the June 5, 2006 scheduling order. BF 56, 63, 79, 85 (Declaration ¶ 8).

On May 25, 2006, the Association announced that it was accepting applications for the position of disciplinary counsel. BF 65 at EX 4. On June 1, 2006, after the new scheduling order was agreed upon, Disciplinary Counsel Christine Gray learned that Ms. Killian had applied for the disciplinary counsel position. BF 85 (Declaration ¶ 6). On June

⁸ Contrary to Respondent's repeated representations (always made without citation to the record), Ms. Killian never entered an "order allowing the Bar's First Amended Complaint." See Respondent's Opening Brief (OB) at 42; see also BF 148 at 4; TR (11/30/07) 7, 22-23, 29-31. Under Rule 10.7 of the Rules for Enforcement of Lawyer Conduct (ELC), no such order is necessary.

20, 2006, immediately after her return from vacation, Ms. Gray telephoned Respondent's counsel, Kurt Bulmer, and informed him that Ms. Killian had applied for the disciplinary counsel position. BF 74 at EX 4 ¶ 2, BF 85 (Declaration at ¶ 9-10). At the same time, Ms. Gray informed Mr. Bulmer that she would join in a request that Ms. Killian recuse herself. Id. On June 22, 2006, the parties moved jointly for Ms. Killian's recusal. BF 53. On June 26, 2006, Ms. Killian recused herself. BF 55.

Respondent then sought to have all the orders entered by Ms. Killian vacated, and the Association agreed that they should be. BF 63. The Association's proposed order vacating the June 5, 2006 scheduling order was entered on July 12, 2006. BF 64. On August 10, 2006, James M. Danielson was appointed hearing officer, BF 75, and all subsequent rulings in this matter were made by Mr. Danielson.

On March 9, 2007, after a disciplinary hearing on February 20-27, 2007, Mr. Danielson entered findings of fact, conclusions of law and a recommendation that Respondent be disbarred. BF 97. Amended findings and conclusions, with the same recommendation, were entered on March 29, 2007. BF 105. The hearing officer concluded that:

- Respondent violated RPC 1.7(b) by agreeing to represent Mr. and Mrs. Harris over the objection of Mrs. Wormack and without her written consent (Count 2);

- Respondent violated RPC 1.5(a) by charging his flat-fee clients for legal work that he hired other people to do for him (Count 8);
- Respondent violated RPC 1.5(a), 8.4(a) and 8.4(c) by demanding additional fees from Mrs. Wormack and Mrs. Harris for representation they had already paid for under flat-fee agreements (Count 1);
- Respondent violated RPC 8.4(c) by making misrepresentations in his letters of June 17, 2002 and July 31, 2002 to his clients (Count 10);
- Respondent violated RPC 1.2(a) by failing to abide by his clients' decisions not to settle their claims and by attempting to force a settlement contrary to his clients' wishes (Count 11);
- Respondent violated RPC 1.14(a) by failing to deposit client funds in his trust account (Count 5);
- Respondent violated RPC 1.14(b)(3) by failing to properly account for client funds (Count 6);
- Respondent violated RPC 1.5(a) by billing Mrs. Richard for \$21,787.50 in fees after agreeing to complete her case for a flat fee of \$5,000, and then filing a lien and a lawsuit against her in his attempt to collect the fee (Count 4);
- Respondent violated RPC 8.4(l) by failing to respond in a timely fashion to the Association's requests for information (Count 9); and
- Respondent violated RPC 8.4(c), 8.4(d) and 8.4(l) by making misleading statements at his deposition concerning the additional fees he demanded from Mrs. Wormack and Mrs. Harris (Count 3).

AFFCL at 28-34. Respondent never sought to disqualify Mr. Danielson under ELC 10.2(b)(2), and he never raised any challenge whatsoever to

Mr. Danielson's qualifications as hearing officer until after Mr. Danielson recommended that he be disbarred.

On May 10, 2007, this Court issued its decision in Marshall, 160 Wn.2d 317. On January 25, 2008, the Disciplinary Board entered an order modifying ¶¶ 21(a), 158 and 159 of the AFFCL in light of this Court's decision. DBO at 2-3. In all other respects, the hearing officer's findings of fact and conclusions of law were affirmed. DBO at 1. The Board unanimously recommended that Respondent be disbarred. DBO at 1 n.1, 3.

III. ARGUMENT

A. STANDARD OF REVIEW

This Court gives great weight to the hearing officer's findings of fact and his evaluation of the credibility and veracity of witnesses. Marshall, 160 Wn.2d at 329-30. Findings of fact will be upheld if they are supported by substantial evidence. Id. at 330. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of a declared premise. Id. A lawyer who challenges the findings of fact must do more than argue his version of the facts while ignoring adverse evidence. Id. at 331. He must present argument as to why the specific findings are unsupported, and he must cite to the record to support his argument. Id. Findings of Fact will not be overturned based simply on an

alternative explanation of the facts or on a version of the facts previously rejected by the hearing officer and the Disciplinary Board. Id.

Conclusions of law are reviewed de novo, and will be upheld if they are supported by the findings of fact. Id. The Board's unanimous sanction recommendation should be affirmed unless this Court can articulate clear and specific reasons for rejecting it. In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 59, 93 P.3d 166 (2004).

B. THE FIRST AMENDED FORMAL COMPLAINT WAS SUFFICIENT TO INFORM RESPONDENT OF THE NATURE OF THE MISCONDUCT CHARGED AND TO ALLOW HIM TO PREPARE A DEFENSE

The hearing officer and the Board concluded that Respondent violated RPC 1.7(b)⁹ by agreeing to represent Mr. and Mrs. Harris over the objection of Mrs. Wormack and without her written consent. AFFCL at 29-30; DBO at 1. Respondent claims that he was “deprived of his right to due process of law” because the Association “failed to allege any specific conflicts” in the First Amended Formal Complaint. Respondent’s Opening Brief (OB) at 26-27. Respondent never objected to the Formal Complaint or the First Amended Formal Complaint on these or any other grounds until after the hearing officer issued his decision. Respondent’s

⁹ Unless otherwise indicated, all references to the RPC are to the Rules in effect before the September 1, 2006 amendments. The relevant Rules in effect at the time of Respondent’s misconduct are set forth in Appendix C.

claim both misrepresents the record and ignores this Court's recent decision in Marshall.

First, contrary to Respondent's claim, the Association specifically alleged in the First Amended Formal Complaint that "Mrs. Wormack objected to having Mrs. Harris join the Rheubottom litigation" (§ 9) and that "Respondent knew that Mrs. Wormack objected to having Mrs. Harris join the Rheubottom litigation" (§ 10). BF 18. The Association also alleged that Respondent failed to explain the implications of the common representation or the risks involved therein (§ 12), that he failed to obtain consent in writing from his clients, (§ 12), and that by failing to do so he violated RPC 1.7(b) (§ 46). Id. Respondent's assertion that he "did not have adequate notice of the charges against him in order to prepare a defense," OB at 27, is absurd. He simply prepared and presented a defense that was rejected.¹⁰

Second, this Court rejected the very same argument in Marshall, 160 Wn.2d at 339-41. In that case, as in this one, Respondent was charged with violating RPC 1.7(b) by "by engaging in multiple representation . . . without discussing the benefits and risks with his clients or getting their consent in writing." Id. at 340. Respondent claimed, as he does here, that

¹⁰ In this case, Respondent presented the same defense that was rejected in Marshall, 160 Wn.2d at 337, the defense "that there could be no conflict of interest here because the [clients'] interests were aligned."

he was deprived of his right to due process because the formal complaint “did not allege several specific facts found by the hearing officer to support the former RPC 1.7 conflicts violation.” *Id.* at 339 & n.9. This Court rejected Respondent’s claim, holding: “From the complaint, Marshall could discern what the charges were, which of his cases was involved, and the factual basis for the charges.” *Id.* at 340. Respondent’s current due process claim is no better grounded in law or fact than his previous one, and it should be rejected for the same reasons.

C. RESPONDENT HAS WAIVED ANY CHALLENGE TO THE HEARING OFFICER’S QUALIFICATIONS, AND HE HAS NOT SHOWN THAT THE HEARING OFFICER WAS BIASED OR PREJUDICED IN ANY WAY

Due process of law, the appearance of fairness doctrine, and ELC 2.6(e)(4)¹¹ require a hearing officer to disqualify himself only if he is biased or if his impartiality may reasonably be questioned. See Wolfkill Feed & Fertilizer v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000); State v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996); see also Hill v. Department of Labor & Industries, 90 Wn.2d 276, 279, 580 P.2d 636 (1978) (common-law rules governing disqualification for conflict of interest apply to administrative tribunals); Nationscapital Mortgage Corp. v. State Dep’t. of Fin. Inst., 133 Wn. App. 723, 765, 137 P.3d 78 (2006)

¹¹ ELC 2.6(e)(4) has been adapted from Canon 3(D)(1) of the Code of Judicial Conduct (CJC). See ELC 2.6(b).

(principles governing disqualification of judges apply to administrative proceedings). But a hearing officer is presumed to be impartial, and a party who alleges actual or potential bias must affirmatively establish his claim based on facts in the record, not mere speculation or innuendo. See Nationscapital, 133 Wn. App. at 766; Wolfkill, 103 Wn. App. at 841; Dominguez, 81 Wn. App. at 328-29.

An objection to the hearing officer's qualifications must be raised in a timely fashion, or else it is waived. See Hill, 90 Wn.2d at 280; In re Marriage of Wallace, 111 Wn. App. 697, 705, 45 P.3d 1131 (2002); Henriksen v. Lyons, 33 Wn. App. 123, 128, 652 P.2d 18 (1982); see also RAP 2.5(a) (appellate court may refuse to review claim of error not raised in trial court). A litigant who proceeds to trial knowing of a potential basis for disqualification waives the objection and cannot challenge the adjudicator's qualifications on appeal. State v. Perala, 132 Wn. App. 98, 113, 130 P.3d 852 (2006). The reason for the rule is obvious: "one cannot gamble on a favorable decision and complain when it is adverse." Hill, 90 Wn.2d at 280 (quoting Choate v. Swanson, 54 Wn.2d 710, 716-17, 344 P.2d 502 (1959)).

Respondent makes much of the potential basis for disqualification of the former hearing officer, Teena Killian. But the essential, undisputed facts are (1) that the Association disclosed the potential basis for her

disqualification, (2) that she recused herself at the joint request of Respondent and the Association, and (3) that all of her orders were vacated. BF 53, 55, 63-64, 74 (EX 4 ¶ 2), 85 (Declaration ¶¶ 6, 9-10). Nothing that the former hearing officer did or failed to do could possibly have any effect on the outcome of this proceeding. Respondent cannot show that he was prejudiced by her participation in this proceeding,¹² and he cannot show that he is entitled to any relief. Respondent has already received the only appropriate remedy to which he may have been entitled: a disciplinary hearing before a different hearing officer. See, e.g., State v. Madry, 8 Wn. App. 61, 69, 504 P.2d 1156 (1972) (appropriate remedy for trial before biased or apparently biased judge is a trial before a different judge).

At some point, this must have become apparent even to Respondent. See, e.g., BF 125 at 16-17; TR (11/30/07) at 5-6, 10, 21-22, 29. Respondent then belatedly attempted to manufacture a claim of bias against James M. Danielson, the hearing officer who entered the decision of which Respondent complains, based on Mr. Danielson's administrative duties as chief hearing officer. See OB at 40-43; ELC 2.5(f). But even though Mr. Danielson's role as chief hearing officer was well known to

¹² In particular, Respondent cannot complain of delay, inasmuch he himself repeatedly sought delay, both before and after Ms. Killian recused herself. BF 46, 80.

Respondent and his experienced counsel, Respondent never sought to disqualify Mr. Danielson under ELC 10.2(b)(2), and he never raised any challenge whatsoever to Mr. Danielson's qualifications until he submitted his reply brief to the Disciplinary Board. BF 148. Having chosen to "gamble on a favorable decision" by Mr. Danielson, Choate, 54 Wn.2d at 716-17, Respondent has waived any challenge to his qualifications on appeal. Hill, 90 Wn.2d at 280; Perala, 132 Wn. App. at 113; Henriksen, 33 Wn. App. at 128; Wallace, 111 Wn. App. at 705; RAP 2.5(a).

Even if his objection to the hearing officer's qualifications were timely, Respondent has failed to show that the hearing officer was biased or prejudiced in any way. Respondent's claim of bias is based on rulings that are "fairly supported by the record and the law," Nationscapital, 133 Wn. App. at 761, and, in some cases, on rulings that were never made.

For example:

- Respondent asserts, without citation to the record, that the hearing officer refused to allow him to "discover facts surrounding the Killian matter," but he fails to mention that his subpoenas duces tecum failed to comply with CR 30, CR 34 and ELC 10.11(c). BF 85, 87. Moreover, further discovery into "the Killian matter" was not reasonably calculated to lead to the discovery of admissible evidence, since nothing Ms. Killian did or failed to do could possibly have any effect on the outcome of the proceeding.
- Respondent asserts, without citation to the record, that the hearing officer "refused to set aside the order

allowing the Bar's First Amended Complaint." OB at 42; BF 148 at 4. In fact, the hearing officer was never asked to set aside such an order, and no such order exists.¹³

- Respondent asserts, without citation to the record, that the hearing officer "did not allow [him] to present his case in full" because neither Lorraine Harris nor Callie Rheubottom testified at the disciplinary hearing. OB at 42. In fact, although Respondent listed both Mrs. Harris and Mrs. Rheubottom as witnesses, BF 124, he never sought to have either of them testify at the disciplinary hearing, and he never offered any evidence that their testimony would have been favorable to him. BF 113 ¶¶ 2-9.
- Respondent asserts, without citation to the record, that he agreed to the admissibility of certain exhibits on the mistaken assumption that the Association would call Mrs. Harris to testify at the disciplinary hearing, and that the hearing officer "refused to allow [him] to reopen his case in chief" to call Mrs. Harris as a witness. OB at 43. In fact, Respondent was informed early on the second day of the hearing that the Association might not call Mrs. Harris as a witness. TR 346; BF 113 ¶¶ 2-9. Respondent was free to object to any exhibits on the grounds that they must be authenticated by Mrs. Harris, and he did so. TR 349-50.¹⁴ Respondent never moved to "reopen" the hearing until after the hearing officer recommended that he be disbarred. BF 97, 105, 111-114.

¹³ It is surprising that Respondent would repeat this particular misrepresentation yet again, given that he was specifically questioned about it during his argument before the Disciplinary Board. TR (11/30/07) 7, 22-23, 29-31.

¹⁴ For example, although Respondent repeatedly cites EX 51 in his brief, OB at 13, 18, 43, he successfully argued that EX 51 should not be admitted because "she [Mrs. Harris] may or may not have ever sent this letter." TR 350; BF 93 at 3.

The fact that the hearing officer found the Association's evidence and reasoning more persuasive does not support a due process claim or an appearance of fairness claim. See Nationscapital, 133 Wn. App. at 760. Respondent's claim that the hearing officer had a "conflict of interest," OB at 41, is without any basis in fact. The real conflict of interest was the conflict between the hearing officer's interest in rendering a just decision and Respondent's interest in avoiding one.

D. THE EVIDENCE AND THE FINDINGS OF FACT SUPPORT THE DISCIPLINARY BOARD'S CONCLUSIONS OF LAW

Although Respondent "denies" the Board's conclusions as to Counts 5-6 and 8-9, he presents no argument as to why those conclusions are not supported by the findings of fact or why the supporting findings are not supported by substantial evidence. OB at 6 n.2. Respondent thereby concedes that the Board's conclusions as to Counts 5-6 and 8-9 are supported by the findings and the evidence. See Marshall, 160 Wn.2d at 331 (lawyer who challenges findings of fact must present argument why specific findings are unsupported and must cite to the record to support argument). In what follows, the Association will respond to Respondent's arguments concerning Counts 1-4 and 10-11.

1. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 1.7(b) as Charged in Count 2

The hearing officer and the Board concluded that Respondent violated RPC 1.7(b) by agreeing to represent Mr. and Mrs. Harris over the objection of Mrs. Wormack and without her written consent.¹⁵ AFFCL at 29-30; DBO at 1-2. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 9-10, 12, 21(a) -21(d), 30(a)-30(b).¹⁶ Those findings are supported by the evidence, as described below:

- Mrs. Wormack testified that she told Respondent many times, both orally and in writing, that she vehemently objected to Mrs. Harris joining the lawsuit because Mrs. Harris's agenda was "totally different" from her own. TR 145-48, 152.
- Mrs. Wormack's letters to Respondent and Respondent's own internal email confirm this. EX 5, 10-11.
- Mrs. Wormack testified that Respondent *never* consulted with her about the implications of the common representation and the advantages and risks involved. TR 142-44, 147-48.
- Mrs. Wormack testified that she *never* consented, either orally or in writing, to common representation. TR

¹⁵ RPC 1.7 was amended effective September 1, 2006. The result in this case would be the same under the current version of RPC 1.7(b), which requires that "each affected client gives informed consent, confirmed in writing" whenever "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client."

¹⁶ ¶ 21(a) was modified by the Board. DBO at 2-3.

144, 148, 152. In fact, she only learned of the common representation after the fact from Mrs. Harris's husband, not from Respondent. TR 147, 150; EX 10.

According to Respondent's version of the facts, Mrs. Wormack's concerns were later "resolved," OB at 10, 27, but that claim was flatly contradicted by Mrs. Wormack herself. TR 144, 148, 152; see Marshall, 160 Wn.2d at 331 (lawyer who challenges findings of fact must do more than argue his version of the facts while ignoring adverse evidence). There is, moreover, no evidence whatsoever to support Respondent's version of the facts other than the testimony of Respondent himself, a witness whom the hearing officer found not to be credible. AFFCL ¶¶ 31(b), 40(a)-40(b). Furthermore, even if Respondent's version of the facts were accepted, he would still be obligated under former RPC 1.7(b) to obtain his clients' consent to common representation *in writing*, something Respondent concedes he never did. See Marshall, 160 Wn.2d at 336 (even if lawyer reasonably believed that representation of multiple clients would not be adversely affected, lawyer had duty to get consent *in writing* from each client; In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 486-87, 998 P.2d 833 (2000) (failure to obtain consent in writing not a mere "technical" violation). The evidence and the findings of fact support the conclusion that that Respondent violated RPC 1.7(b) as charged in Count 2.

2. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 1.5(a), 8.4(a) and 8.4(c) as Charged in Count 1

The hearing officer and the Board concluded that Respondent violated RPC 1.5(a), 8.4(a), and 8.4(c) by demanding additional fees from Mrs. Wormack and Mrs. Harris for representation they had already paid for under flat-fee agreements. AFFCL at 28-29; DBO at 1. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 5, 7-8, 31(a)-33 and 39-44. Instead of presenting argument as to “why the specific findings are unsupported,” Respondent “merely restates his version of the facts.” Marshall, 160 Wn.2d at 331, 346. Respondent claims, as he did at the disciplinary hearing, that his demand for additional fees was really just a demand for a cost advance. OB at 23. That version of the facts was rejected by the hearing officer, both implicitly and explicitly. AFFCL ¶¶ 31(b), 40(a)-42.

The evidence that supports the hearing officer’s findings of fact includes the following:

- Respondent admitted in his Answer to the Amended Formal Complaint that he told Mrs. Rheubottom, Mrs. Wormack, and Mrs. Harris they would have to pay him *additional fees* for his continued representation, that Mrs. Wormack and Mrs. Harris refused to pay him *additional fees*, and that Mrs. Rheubottom paid him \$15,000 in *additional fees* for his continued representation. EX 119 ¶¶ 31-32, 34; EX 120 ¶¶ 31-32, 34.

- Respondent treated the additional \$15,000 paid by Mrs. Rheubottom as an earned fee, not as a cost advance. In his own documents, he calls it a “nonrefundable retainer fee.” EX 37, 246. Instead of placing that money in trust, Respondent disbursed to himself the money he held in trust for Mrs. Rheubottom as soon as she agreed to pay him an additional \$15,000. TR 633-34; EX 36, 246.¹⁷ And after he received the additional \$15,000 “nonrefundable retainer fee,” Respondent continued to bill Mrs. Rheubottom for costs instead of deducting those costs from the additional funds received. EX 246.
- Nothing in Respondent’s fee agreements provides for a cost advance by the client. EX 3, 20.
- Mrs. Wormack’s letters make clear that she understood Respondent to be demanding additional fees “to continue the lawsuit.” EX 43, 57, 59. On June 25, 2002, just after Respondent first made his demand for additional fees, Mrs. Wormack wrote to him stating, “You can’t legally *recharge us again*,” a clear reference to their earlier flat-fee agreement. EX 43 (emphasis added). When Respondent replied, he did not dispute Mrs. Wormack’s understanding of his demand, implicitly conceding that it was correct. EX 48.
- Respondent could not have reasonably anticipated additional costs of \$30,000 attributable to Mrs. Wormack and Mrs. Harris. The total costs billed to *all* of his clients from beginning to end were only

¹⁷ On June 7, 2002, Respondent disbursed to himself \$9,343.40 out of the settlement funds that he held in trust for Mrs. Rheubottom. On June 8, 2002, Mrs. Rheubottom wrote him a check for \$6,657. The total comes to \$16,000.40, \$1,000.40 more than the \$15,000 “nonrefundable retainer” Respondent told Mrs. Rheubottom she would have to pay. EX 36-37.

\$18,914.51.¹⁸ EX 78-81. After June 5, 2002, when Respondent first demanded additional fees from Mrs. Rheubottom, Mrs. Wormack, and Mrs. Harris, the total costs billed to all of his clients were only \$4,391.41. EX 78-81. And after January 21, 2003, when Respondent made his final demand for \$30,000 in additional fees from Mrs. Wormack and Mrs. Harris with trial scheduled to begin in ten days, the total costs billed to all of his clients were only \$53.92. EX 78-81, 157.

The hearing officer's findings as to Count 1 are supported by ample evidence, while Respondent's testimony on this issue was found not to be credible. AFFCL ¶¶ 31(b), 40(a)-42.

In the alternative, Respondent argues that he had a contractual right to "request" additional fees because his fee agreement provides that his firm will "make no further charge for its services other than as set forth in this agreement *or unless otherwise agreed.*" OB at 22; EX 3, 20. He ignores the fact that both Mrs. Wormack and Mrs. Harris *refused* to pay him an additional \$15,000 in fees for his continued representation. TR 140-41, 154-56, 176-77; EX 43, 67-68. And Respondent did much more than just *request* additional fees; he *demand*ed additional fees and then abandoned those clients who would not accede to his demand. AFFCL ¶¶ 31(a), 33, 40(a).

¹⁸ Of that amount, over \$4,400 were fees paid for contract workers that Respondent hired to do the work that his clients reasonably believed they had already paid for under their flat-fee agreements. AFFCL ¶¶ 84-95; EX 21-23, 25-29, 31-33, 35, 44, 46, 48, 60, 62, 78-80. As such, they should not have been charged as "costs" at all. AFFCL at 32-33; Marshall, 160 Wn.2d at 334-35.

Respondent also argues he had no binding agreement with Mrs. Wormack because she “failed to pay the required \$7,500” and because she “failed to execute the written fee agreement” admitted into evidence as EX 3. OB at 23. It is undisputed, however, that Respondent agreed to undertake the joint representation of Mrs. Rheubottom and Mrs. Wormack for a flat fee of \$15,000, and it is also undisputed that this fee was paid in full. EX 3-4. The fact that Mrs. Rheubottom paid more than half of it did not excuse Respondent from his obligations to Mrs. Wormack. As for Respondent’s claim that Mrs. Wormack “failed to execute the written fee agreement,” it is directly contradicted by his own testimony at the disciplinary hearing. TR 438-39; see also EX 112 at 1; Marshall, 160 Wn.2d at 331 (“Marshall's explanation with regard to these charges has not been consistent”). Whatever Respondent’s latest version of the facts may be, the evidence, including Respondent’s own testimony, supports the conclusion that Respondent violated RPC 1.5(a), 8.4(a), and 8.4(c) by demanding additional fees from Mrs. Wormack and Mrs. Harris for representation they had already paid for under their flat-fee agreements.

3. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 8.4(c), 8.4(d) and 8.4(l) as Charged in Count 3

The hearing officer and the Board concluded that Respondent violated RPC 8.4(c), 8.4(d), and 8.4(l) by making misleading statements at

his deposition concerning the additional fees he demanded from Mrs. Wormack and Mrs. Harris. AFFCL at 30; DBO at 1. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 5, 7-8, 31(a)-33, 39-44, 47, 51-53. Instead of presenting argument as to “why the specific findings are unsupported,” Respondent “merely restates his version of the facts” once again. Marshall, 160 Wn.2d at 331, 346. Respondent asserts that his deposition testimony was not misleading because, according to his version of the facts, his demand for additional fees really was just a demand for a cost advance. OB at 23. But as described in the preceding section, the hearing officer’s contrary findings as to Count 1 are supported by ample evidence, and the same evidence supports the finding that Respondent’s deposition testimony was misleading.

4. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 8.4(c) as Charged in Count 10

The hearing officer and the Board concluded that Respondent violated RPC 8.4(c) by making misrepresentations in his letters of June 17, 2002 and July 31, 2002 to his clients. AFFCL at 33-34; DBO at 1. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 132-135, 138, 142-47, 151, 153, 177. Those findings are supported by the evidence, as described below:

- Mrs. Wormack testified that the court never directed her to sign a settlement agreement. TR 158.
- Respondent's opposing counsel, Terry Thomson, testified that the court never directed Mrs. Wormack, Mrs. Harris, the Grand Chapter, or any of the parties to sign a settlement agreement. TR 80-83.
- Immediately after the June 3, 2002 settlement conference with Judge Heavey, Mrs. Wormack told Respondent that she would not pay Respondent the additional fees he demanded to pursue her claims at trial because he had agreed to take the case for a flat fee. TR 154-56, 161-62.
- Having been told that his clients wanted to pursue their claims at trial and that two of them, Mrs. Wormack and Mrs. Harris, would not pay him the additional fees that he demanded, Respondent wrote to them on June 17, 2002 stating, "*The court has directed Mrs. Wormack and Mrs. Harris [to] sign the release and settlement agreement and the Chapter to do the same in order to consummate this matter.*" TR 157-58; EX 42 (emphasis added).
- Respondent made no such representation with respect to Mrs. Rheubottom or Mrs. Richard, both of whom had agreed to pay additional fees. EX 34, 37, 39, 42.
- On June 25, 2002, Mrs. Wormack wrote to Respondent and reiterated, in no uncertain terms, that she wanted to pursue her claims at trial and that she would not pay Respondent the additional fees he demanded. TR 161-62; EX 43.
- Despite Respondent's entreaties, Mrs. Harris, like Mrs. Wormack, declined to sign the settlement agreement. EX 49-50, 53.
- Respondent wrote to Mrs. Wormack and Mrs. Harris on July 31, 2002, stating, "*Despite your reluctance to sign the settlement agreement, your claims have been*

dismissed and will not be heard at trial.” EX 53 (emphasis added). Without his clients’ authorization, Respondent sent a copy of that letter to Mr. Thomson, his opposing counsel. TR 83, 166; EX 53.

- Mr. Thomson testified that Mrs. Wormack’s and Mrs. Harris’s claims had not been dismissed. TR 84. No order of dismissal appears on the docket. EX 2. The claims were still pending when the case finally went to trial in March 2003. TR 91-93.

To justify his false representation that the court “directed Mrs. Wormack and Mrs. Harris [to] sign the release and settlement agreement and the Chapter to do the same,” Respondent merely asserts that Mrs. Wormack and Mr. Thomson “had no way of knowing” what Judge Heavey told him. OB at 21. But Respondent himself did not testify that Judge Heavey told him his clients must sign a settlement agreement that had not yet been drafted.¹⁹ Rather, Respondent testified that Judge Heavey merely asked him to “take the responsibility for preparing the release documents” and to circulate those documents to his clients. TR 514, 546-47. And if the Grand Chapter had been directed to sign a settlement agreement, then its lawyer, Mr. Thomson, surely would have known about it.

As for his false representation that “your claims have been dismissed and will not be heard at trial,” Respondent merely states that his

¹⁹ Respondent may have anticipated that such testimony would be rebutted by Judge Heavey himself.

letter “could have been more artfully drafted,” OB at 21, as if artful drafting rather than dishonesty were the issue here. Respondent also refers cryptically to a “minute order in the form of an email.” Id. But no “minute order” or any other order of dismissal was ever entered until Mrs. Wormack’s and Mrs. Harris’s claims were nonsuited at trial, EX 2; TR 84, 91-93, and Judge Heavey’s email, EX 84, cannot conceivably be construed as such an order.

There is ample evidence that Respondent’s representations to Mrs. Wormack and Mrs. Harris in his letters of June 17, 2002 and July 31, 2002 were false and misleading, and that they were motivated by Respondent’s own self-interest in “getting the clients’ cases out of the office” after they refused to pay him the additional fees he demanded. AFFCL ¶ 177. The findings of fact as to Count 10 are supported by the evidence, and they should not be overturned based on an alternative explanation of the facts previously rejected by the hearing officer. See Marshall, 160 Wn.2d at 331.

5. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 1.2(a) as Charged in Count 11

The hearing officer and the Board concluded that Respondent violated RPC 1.2(a) by failing to abide by his clients’ decisions not to settle their claims and by attempting to force a settlement contrary to his

clients' wishes. AFFCL at 34; DBO at 1. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 132-33, 138-41, 143-45, 149-151, 153. Those findings are supported by the evidence, as described below:

- After the June 3, 2002 settlement conference with Judge Heavey, Mrs. Wormack told Respondent that she had not resolved her claims against the Grand Chapter and that she would not pay Respondent the additional fees he demanded to pursue her claims at trial because he had agreed to take the case for a flat fee. TR 154-56, 158, 161-62.²⁰
- Subsequently, on June 17, 2002, Respondent wrote to his clients stating that Mrs. Wormack and Mrs. Harris, the two clients who did not agree to pay Respondent the additional fees he demanded, had "resolved their case," while Mrs. Rheubottom and Mrs. Richard, the two clients who did agree to pay additional fees, had not. EX 42. Respondent stated, falsely, that the court had "directed" Mrs. Wormack and Mrs. Harris to sign the settlement agreement. Id. As further inducement, Respondent told his clients that the court might assess attorney fees and costs against them if they failed to do as they were "directed." Id. Mrs. Wormack interpreted that statement as a threat. TR 158-59.
- On June 25, 2002, Mrs. Wormack wrote to Respondent and reiterated that she had not agreed to settle her claims and that she did want to pursue those claims at trial. EX 43; TR 160.
- On July 8, 2002, Respondent mailed the settlement agreement to Mrs. Harris and asked her to sign and

²⁰ Because Respondent contends that the Association has "misstated the evidence" with respect to this point, the cited pages of the transcript are attached as Appendix D.

return it. EX 49. Mrs. Harris did not sign and return the settlement agreement, so Respondent asked her again on July 15, 2002. EX 50.

- On July 31, 2002, Respondent wrote to Mrs. Wormack and Mrs. Harris and, with considerable understatement, acknowledged their “reluctance” to sign the settlement agreement. EX 53. Respondent then stated, falsely, that their claims had been “dismissed.” EX 53. Without his clients’ permission, Respondent sent a copy of that letter to Mr. Thomson, his opposing counsel. EX 53; TR 123, 166, 628.
- In August 2002, Respondent discussed the status of the case with Mr. Thomson. TR 84-85, 122-126. In the course of these discussions, Respondent suggested that Mr. Thomson could sign an order of dismissal on Respondent’s behalf. TR 125. Mr. Thomson refused. Id.
- After his discussions with Respondent, Mr. Thomson filed a motion to compel Mrs. Wormack and Mrs. Harris to execute the settlement agreement. EX 55. Although Respondent had opposed an earlier attempt to compel Mrs. Rheubottom and Mrs. Richard to execute the settlement agreement, EX 38-39, Respondent declined to oppose this motion at all. EX 56. Respondent never changed his position despite further protests by Mrs. Wormack and Mrs. Harris. EX 54, 57, 59.

Instead of presenting argument as to why the specific findings are unsupported, Respondent does no more than argue his version of the facts again. See Marshall, 160 Wn.2d at 331. He argues that Mrs. Wormack and Mrs. Harris “acted as if” the case had settled, but he concedes that “both women changed their minds.” OB at 16-19. But the findings of fact and the evidence described above support the conclusion that *even after he*

knew that his clients had “changed their minds,” Respondent failed to abide by their decisions and attempted to force them to settle contrary to their wishes. AFFCL at 34.

6. The Evidence and the Findings of Fact Support the Conclusion That Respondent Violated RPC 1.5(a) as Charged in Count 4

The hearing officer and the Board concluded that Respondent violated RPC 1.5(a) by billing Mrs. Richard for \$21,787.50 in fees after agreeing to complete her case for a flat fee of \$5,000, and then filing a lien and a lawsuit against her in his attempt to collect the fee. AFFCL at 30-31; DBO at 1. That conclusion is supported by the following findings of fact, among others: AFFCL ¶¶ 65-69, 71, 74-75. Respondent claimed that the \$5,000 was an advance, not a flat fee, but the hearing officer’s findings to the contrary are supported by the evidence, as described below:²¹

- Mrs. Richard’s initial fee agreement called for a \$1,000 advance, and her account was paid in full as of January 16, 2003, so Respondent had no basis to require an additional \$5,000 advance. EX 34, 64, 66, 81; TR 284-85.
- Lindia Richard testified that Respondent told her at a meeting in his office on January 16, 2003 that he would “finish the case” for a “flat fee” of \$5,000. TR 286-

²¹ Because Respondent contends that the Association has “misstated the evidence” with respect to this count, the cited pages of the transcript are attached as Appendix D.

292. Respondent agreed to prepare an amended fee agreement upon receipt of the \$5,000, but he failed to do so. TR 292.

- At the January 16, 2003 meeting, in Respondent's presence, Mrs. Richard memorialized her new agreement with Respondent in a manner consistent with her testimony, using the term "flat fee" that Respondent himself had used. EX 65; TR 287-90.
- James Richard testified that Respondent told him that the \$5,000 would be "to finish the case." TR 337. When asked what Respondent told him he would do for that \$5,000 payment, Mr. Richard answered, "he said that would be it, that would be the end of it." TR 335.
- The note that Mrs. Richard sent to Respondent with her \$5,000 cashier's check reflects that the check was for "completing the PHGC case . . . per your agreement on 1/16/03." EX 70; TR 290-91. Respondent claims there is "no evidence" that he ever saw that note, OB at 33, but once again, his testimony at the disciplinary hearing, as well as the representation of his counsel, was to the contrary. TR 593. The receipt that Mrs. Richard received from Respondent's office states that the \$5,000 was for a "*nonrefundable* retainer" (emphasis added), the same language used on Mrs. Harris's receipt for her \$7,500 flat fee. EX 9, 71.
- Respondent's own characterizations of the \$5,000 have been varied and inconsistent. Respondent testified, for example, that the \$5,000 was both a "nonrefundable retainer" and an "advance" that would be refunded if not earned. TR 590-91, 595, 811-12. He testified that he understood the funds would be placed in his trust account and "kept there until the money was earned," but elsewhere he represented that he thought the funds had been placed in his general account because they were a "nonrefundable fee." EX 408; TR 812-14; cf. Marshall, 160 Wn.2d at 331 ("Marshall's explanation with regard to these charges has not been consistent").

- At the disciplinary hearing, in an attempt to bolster his claim that he did not agree to complete Mrs. Richard's case for a flat fee of \$5,000, Respondent produced an hourly invoice dated February 17, 2003 that was obviously fabricated.²² The first time Mrs. Richard ever saw the invoice was in October 2003 when Respondent faxed a copy to the law firm that defended her in the lawsuit Respondent brought against her. EX 154, TR 313, 711-14. In the invoice and his testimony about it, Respondent claimed that he personally worked over 20 hours in late January 2003 on a trial memorandum that he dictated himself. EX 154; TR 390, 748-51, 753-54. But in fact, the trial memorandum, EX 277, was lifted almost word-for-word from three other pleadings, EX 83, 226 and 241, that were prepared months earlier.²³ Respondent's claim to have spent over 20 hours preparing the trial memorandum in January 2003 could not possibly be true.

Respondent merely argues that Mrs. Richard was "confused" and that his version of the facts was more credible than hers. OB at 31-32. But even if "this count comes down to a credibility contest between Marshall and his client," the Court gives great weight to the hearing

²² EX 278, the copy of the invoice offered in evidence by Respondent, was not admitted because Respondent could not establish how it was created, how it came to be marked "paid" when it was not paid, or whether it was sent to Mrs. Richard on or about the date indicated. TR 312-13, 386-98. EX 154, the copy of the invoice that Respondent sent to Mrs. Richard's lawyer in October 2003, was admitted. TR 711-14.

²³ Those three pleadings are a Response to a Motion to Dismiss dated December 23, 2002, EX 83, a Motion for Summary Judgment dated April 5, 2002, EX 226, and a Joint Settlement Memorandum dated May 31, 2002, EX 241. Most of the trial memorandum, EX 277, was lifted word-for-word from the Motion for Summary Judgment, as a simple comparison of those documents will show. In violation of RPC 1.5(a), Respondent had already billed Mrs. Rheubottom, Mrs. Wormack, and Mrs. Harris in April 2002 for the time that a contract worker spent preparing that motion. EX 25-28; AFFCL at 14-16, 32-33.

officer's evaluation of the credibility and veracity of witnesses, and, “obviously, the hearing officer believed [Mrs. Richard] over Marshall.” Marshall, 160 Wn.2d at 332, 337. The findings of fact are supported by ample evidence, and they will not be overturned based on an alternative explanation of the facts or on a version of the facts previously rejected by the hearing officer and the Board. Id. at 331.

E. DISBARMENT IS THE APPROPRIATE SANCTION

The ABA Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) govern sanctions in lawyer discipline cases. Marshall, 160 Wn.2d at 342. First, the Court considers whether the Board determined the correct presumptive sanction, considering the ethical duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. Id. Next, the Court considers the aggravating or mitigating factors. Id. Finally, the Court determines whether the degree of unanimity among Board members and the proportionality of the sanction justify a departure from the Board's recommendation. Id.

1. Presumptive Sanctions

The hearing officer determined that Respondent acted knowingly in committing the violations charged in Counts 1, 2, 3, 4, 8, 10 and 11; and with the intent to benefit himself in committing the violations charged in

Counts 1, 2, 4, and 10. The hearing officer's findings as to the respondent's credibility and state of mind are entitled to deference. See In re Disciplinary Proceeding Against Stansfield, No. 200,479-2, 2008 WL 2764584, at *8-9 (Wash. July 17, 2008). Based on those findings, the hearing officer and the Board correctly determined that the presumptive sanction for Counts 1, 2, 4, and 10 is disbarment under ABA Standards 7.1 (Counts 1 and 4), 4.31 (Count 2), and 4.61 (Count 10); and that the presumptive sanction for Counts 3, 8 and 11 is suspension under ABA Standards 7.2 (Counts 3 and 8) and 4.42 (Count 11).²⁴

In contesting the presumptive sanctions, Respondent fails to present any argument as to why the hearing officer's findings are unsupported. See Marshall, 160 Wn.2d at 331. Instead, he merely asserts that "the sanctions should be based on a negligent state of mind" and, even less cogently, that he did nothing wrong to begin with. OB at 43-44. If the hearing officer's findings will not be overturned based merely on an alternative explanation of the facts, Marshall, 160 Wn.2d at 331, then they cannot be overturned based merely on an assertion that the Respondent has done no wrong.

²⁴ The applicable ABA Standards are attached as Appendix E.

2. Aggravating Factors

Respondent has been the subject of three prior disciplinary actions. AFFCL ¶ 158; DBO at 3. In 1989, he received an admonition for failing to respond promptly, completely or accurately to the Association's requests for information. EX 153. In 1998, he received a reprimand for conduct involving dishonesty, fraud, deceit or misrepresentation. EX 152. In May 2007, this Court suspended Respondent for 18 months for (1) "deceitful" conduct, in violation of RPC 8.4(c); (2) improperly charging contract attorney fees as "costs," in violation of RPC 1.5(a); (3) failing to maintain complete records of client funds, failing to provide an appropriate accounting, and failing to remit client funds, in violation of RPC 1.14; (4) representing multiple clients without explaining the implications of common representation or obtaining their written consent, in violation of RPC 1.7(b); and (5) failing to abide by his clients' decisions, in violation of RPC 1.2(a). DBO at 3; Marshall, 160 Wn.2d at 332-40.

In addition to Respondent's prior disciplinary offenses, the hearing officer and the Board found that Respondent had a selfish motive in demanding additional fees and in adding clients to the litigation without obtaining his clients' written consent, that Respondent's failure to respond appropriately to requests for information reflected a pattern of misconduct,

that Respondent's conduct during the disciplinary proceeding was deceptive, that Respondent refused to acknowledge the wrongful nature of his misconduct, and that Respondent had substantial experience in the practice of law, having been admitted to practice in 1986. AFFCL ¶¶ 160-61, 163-64, 166; DBO at 1. All of these findings are supported by the evidence described above, and, together with Respondent's prior misconduct, they would justify a sanction more severe than disbarment if one existed.

Respondent argues, as he did in Marshall, 160 Wn.2d at 347, that it is improper to consider a lawyer's refusal to acknowledge the wrongful nature of his misconduct as an aggravating factor. But this Court has acknowledged that it is appropriate where the lawyer (1) admits committing the acts but denies they were wrongful or (2) tries to explain away his misconduct as mere sloppiness. In re Disciplinary Proceeding Against Holcomb, 162 Wn.2d 563, 588, 173 P.3d 898 (2007); see also Marshall, 160 Wn.2d at 347; In re Disciplinary Proceeding Against Poole, 156 Wn.2d 563, 588, 173 P.3d 898 (2007); In re Disciplinary Proceeding Against Dynan, 152 Wn.2d 601, 621, 98 P.3d 444 (2004).

This is precisely what Respondent has done. He concedes that he failed to obtain his clients' written consent to common representation, but he denies that it was wrongful, even in light of clear precedent to the

contrary. See Marshall, 160 Wn.2d at 336. He admits that he told his clients, contrary to fact, that their claims had been dismissed, but he tries to explain away his misconduct as mere inartful drafting. But what speaks just as loudly “to the likelihood of future harm to the public” is Respondent’s insistence that the predicament in which he now finds himself is entirely the fault of persons other than himself. Marshall, 160 Wn.2d at 347; see also In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 81, 960 P.2d 416 (1998) (lawyer’s harsh characterization of grievant supports finding of refusal to acknowledge wrongful nature of conduct). The record fully supports the finding that Respondent refuses to acknowledge the wrongful nature of his misconduct, although in light of the presumptive sanctions and the many other aggravating factors, the significance of this particular aggravating factor is minor.

3. Unanimity

The Board’s decision in this case was unanimous, and therefore entitled to great deference by this Court. See In re Disciplinary Proceeding Against Day, 162 Wn.2d 527, 538-39, 173 P.3d 915 (2007).

4. Proportionality

In proportionality review, the Board considers whether the recommended sanction is appropriate by comparing the case at hand with other similar cases in which the same sanction was either approved or

disapproved. In re Disciplinary Proceeding Against Cohen, 150 Wn.2d 744, 763, 82 P.3d 224 (2004). In determining whether a case is sufficiently similar to the case at hand, the Board takes into account *all* of the lawyer's misconduct, including his record of prior disciplinary offenses, and especially any prior, similar misconduct. See Cohen, 150 Wn.2d at 763-64; In re Disciplinary Proceeding Against Anschell, 141 Wn.2d 593, 616, 9 P.3d 193 (2000). The Respondent bears the burden of proving that the recommended sanction is disproportionate. In re Disciplinary Proceeding Against Kagele, 149 Wn.2d 793, 821, 72 P.3d 1067 (2003).

Respondent has not cited one case that is even remotely similar to this one, when taking into account *all* of his misconduct, where the sanction of disbarment was disapproved. None of the cases cited by Respondent involve a lawyer who is subject to discipline for (1) dishonesty (2) non-cooperation, (3) unreasonable fees, (4) conflicts of interest and (5) failing to abide by his clients' decisions. And none of them involve a lawyer who also has previously been disciplined for (1) dishonesty (2) non-cooperation, (3) unreasonable fees, (4) conflicts of interest and (5) failing to abide by his clients' decisions. Proportionality review provides no reason to depart from the Board's unanimous recommendation.

5. The Appropriate Sanction

Where there are multiple violations, the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Taking into account the presumptive sanctions for the multiple violations established here, along with the many serious aggravating factors, including Respondent’s prior discipline for similar misconduct, the only appropriate sanction is disbarment.

IV. CONCLUSION

For the foregoing reasons, the Association respectfully urges this court to adopt the Board’s unanimous recommendation that Respondent Bradley R. Marshall be disbarred.

RESPECTFULLY SUBMITTED this 7th day of August, 2008.

WASHINGTON STATE BAR ASSOCIATION



Scott G. Busby, Bar No. 17522
Disciplinary Counsel

APPENDIX A

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FILED

MAR 29 2007

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re) Public File No. 05#00103
)
BRADLEY R. MARSHALL,) AMENDED FINDINGS OF FACT,
) CONCLUSIONS OF LAW, AND HEARING
Lawyer) OFFICER'S RECOMMENDATION
)
WSBA No. 15830)

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was held before the undersigned Hearing Officer on February 20 through February 27, 2007. Respondent appeared personally and through his attorney Kurt M. Bulmer, and Disciplinary Counsel Christine Gray and Scott Busby appeared for the Association.

FORMAL COMPLAINT

The Respondent was charged by Amended Formal Complaint, dated May 2, 2006, with twelve counts of violation of the Rules of Professional Conduct.

HEARING

At the hearing on February 20-27, 2007, witnesses were sworn and presented testimony, and documents were admitted into evidence. Having considered the evidence and argument of counsel, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommendation.

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FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence (ELC 10.14(b)) Findings 1-8, 11, 13-20, 22-29, 31, 34, 36-39, 43, 44, 47, 49, 55, 57-65, 68-77, 84-95, 97-100, 103-105, 107, 109-113, 115-119, 121-126, 128. 129, 131, 136, 139, 143-145, 149 were made upon admitted pleadings. (ELC 10.5)

ADMISSION TO PRACTICE

1. Respondent Bradley R. Marshall was admitted to the practice of law in the State of Washington on June 2, 1986.

FINDINGS REGARDING ALL COUNTS

2. In or about October 2000, Respondent agreed to represent Callie Rheubottom and Essie Wormack in bringing a lawsuit against the Prince Hall Grand Chapter Order of the Eastern Star (Grand Chapter).

3. The Grand Chapter is a sister organization to the Prince Hall Grand Lodge of Washington (Grand Lodge), a Masonic organization. Mrs. Rheubottom and Mrs. Wormack were former members of the Grand Chapter.

4. In general, Mrs. Rheubottom and Mrs. Wormack alleged that they had been improperly suspended from the Grand Chapter.

5. On October 4, 2000, Respondent sent written fee agreements to Mrs. Rheubottom and Mrs. Wormack to represent them jointly for a flat "non-refundable fee" of \$15,000. The agreement was "to pursue a claim for breach of contract, tortuous [sic] conduct and related claims" against the Grand Chapter and Patricia Simpson, one of the officers of the Grand Chapter.

1 6. On January 9, 2001, Respondent filed a lawsuit against the Grand Chapter and
2 Patricia Simpson on behalf of Mrs. Rheubottom and Mrs. Wormack: Callie Rheubottom and
3 Essie M. Wormack v. Grand Chapter Order of Eastern Star, et al., No. 01-2-00900-1 SEA,
4 King County Superior Court (the "Rheubottom litigation").

5
6 7. In or about February 2001, Respondent agreed to represent Lorraine Harris,
7 another former member of the Grand Chapter, joining her as a plaintiff in the Rheubottom
8 litigation.

9 8. In February 2001, Mrs. Harris paid Respondent \$7,500 as a flat fee for
10 representing her in the Rheubottom litigation.

11 9. Mrs. Wormack objected both orally and in writing to Respondent about
12 Mrs. Harris becoming involved in the Rheubottom litigation.

13 10. Respondent knew that Mrs. Wormack objected to having Mrs. Harris brought
14 into the Rheubottom litigation and knew that objection created a conflict of interest that
15 would preclude his continuing to represent both, absent a waiver of the conflict of interest.

16 11. On April 20, 2001, Respondent filed an amended complaint to the Rheubottom
17 litigation, adding Mrs. Harris as a plaintiff.

18 12. Respondent claims that the clients worked out the conflict of interest, but he
19 never advised them in writing about the conflict nor did he obtain a written waiver of the
20 conflict of interest.

21 13. On May 8, 2001, in the Rheubottom litigation, the Grand Chapter filed an
22 answer, and included counterclaims against all three plaintiffs, and a third-party complaint
23 against Lindia Richard, William Rheubottom, and Bert Harris.

1 14. Lindia Richard was another former member of the Grand Chapter, who had filed
2 a separate lawsuit against the Grand Chapter: Lindia Richard v. Ola Dean Miller, Patricia Y.
3 Simpson, and Prince Hall Grand Chapter, Order of Eastern Star, No. 01-2-04832-1, Pierce
4 County Superior Court (the "Richard litigation").

5
6 15. William Rheubottom, Mrs. Rheubottom's husband, and Bert Harris, Mrs. Harris's
7 husband, were former members of the Grand Lodge, and were among the defendants in a
8 lawsuit brought in April 2000 by the Grand Chapter: Grand Chapter Order of the Eastern
9 Star, et al. v. Callie Rheubottom, et al., No. 00-2-09881-2 SEA, King County Superior Court
10 (the "Grand Chapter litigation").
11

12 16. In general, in the Grand Chapter litigation, the Grand Chapter sought to enjoin
13 the defendants, which included Mrs. Rheubottom and Mrs. Harris, from acting on behalf of
14 Prince Hall. In May 2001, the Grand Chapter added Essie Wormack and Lindia Richard as
15 additional defendants in the Grand Chapter litigation.
16

17 17. In or about May 2001, Respondent agreed to represent Mr. Rheubottom and
18 Mr. Harris in the Rheubottom litigation and the Grand Chapter litigation.

19 18. In or about May 2001, Respondent received a flat fee of \$10,000 for his
20 representation of Mr. Rheubottom.
21

22 19. In or about May 2001, Respondent received a flat fee of \$9,000 for his
23 representation of Mr. Harris.
24

25 20. On May 29, 2001, on behalf of Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris,
26 Mr. Rheubottom and Mr. Harris, Respondent filed an answer to the counterclaims and third-
27 party complaint in the Rheubottom litigation.

1 21(a). At the time Respondent undertook to represent Mrs. Rheubottom and
2 Mrs. Wormack, those two clients were not adverse, and no conflict of interest or potential
3 conflict of interest existed.

4 21(b). When Respondent agreed to take on the representation (defense) of
5 Mr. Rheubottom and Mr. Harris, there was an existing conflict of interest between
6 Mr. Harris, and Mrs. Wormack. Mrs. Wormack's objection to Mrs. Harris being in the lawsuit
7 was compounded by Respondent's undertaking to represent of Mr. Harris.
8

9 21(c). The conflicts issues ranged from how costs of the litigation would be allocated
10 among, now, five clients; how global settlement proposals would be dealt with if one client
11 wanted to settle and others did not; and how the different agendas of Mrs. Harris and
12 Mrs. Wormack would be reconciled.
13

14 21(d). Respondent did not obtain consent in writing from any of his clients
15 concerning the potential for conflict of interest when he undertook to represent Mrs. Harris
16 and later Mr. Harris.
17

18 22. On July 13, 2001, the Rheubottom litigation and the Grand Chapter litigation
19 were consolidated.
20

21 23. As of December 2001, all three lawsuits – the Richard litigation, the Rheubottom
22 litigation and the Grand Chapter litigation -- were consolidated.

23 24. The following year, in April 2002, on behalf of Mrs. Rheubottom, Mrs. Wormack
24 and Mrs. Harris, Respondent negotiated and accepted a settlement agreement as to the
25 two individual defendants named in the consolidated litigations. The settlement agreement
26 did not include the third defendant, the Grand Chapter.
27

1 25. Under the terms of the settlement, Mrs. Rheubottom, Mrs. Wormack and Mrs.
2 Harris were to be paid \$12,500 each by the individual defendants' insurers.

3 26. Mrs. Richard was represented by another lawyer in April 2002. Mrs. Richard's
4 lawyer negotiated a similar settlement on behalf of Mrs. Richard.

5 27. In later May 2002, Respondent received the settlement checks for Mrs.
6 Rheubottom, Mrs. Wormack and Mrs. Harris.

7 28. In early June 2002, Respondent agreed to represent Mrs. Richard in her
8 litigation with the Grand Chapter.
9

10 29. Respondent and Mrs. Richard entered into a written fee agreement dated June
11 6, 2002, and signed by Mrs. Richard on June 11, 2002. The fee agreement provides for an
12 hourly fee of \$175.
13

14 30(a). Both before and after agreeing to represent Mrs. Richard, Respondent did not
15 explain to Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris, Mr. Rheubottom, Mr. Harris and
16 Mrs. Richard the implications of adding Mrs. Richard to the case and the risks involved in
17 common representation.
18

19 30(b). The risks of adding Mrs. Richard to the litigation included how the costs were
20 going to be divided among, now, six clients; how the hours that Respondent would spend
21 on the case would be allocated between five clients who were on a flat fee agreement and
22 one client who was on an hourly fee agreement; and how global settlement proposals would
23 be dealt with if one client wished to settle when others did not.
24

25 31(a). In or about early June 2002, after he had received the settlement funds on
26 behalf of Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris, Respondent informed each of
27

1 them that they would have to pay him additional fees if they wanted to continue to pursue
2 their claims against the Grand Chapter.

3 31(b). Paragraph 31a above was admitted in the pleadings. At the hearing,
4 Respondent testified that it was not additional fees that he was demanding, but rather an
5 additional deposit against costs. After considering the documentary evidence, and the
6 testimony received at the hearing, I find that the Respondent was not credible that he was
7 demanding only an additional deposit against costs. He was asking for additional attorney
8 fees.
9

10
11 32. Mrs. Wormack and Mrs. Harris refused to pay additional fees.

12 33. After Mrs. Wormack and Mrs. Harris refused to pay any additional fees, there
13 was no effective communication between Respondent and Mrs. Wormack and Mrs. Harris.
14 Respondent did not file a notice of withdrawal, and while still attorney of record did not do
15 anything to effectively represent Mrs. Wormack and Mrs. Harris after the settlement
16 conference of June 3, 2003. On the first morning of trial, when confronted with a defense
17 motion to dismiss with prejudice for failure to participate in pretrial procedures, Respondent,
18 at the suggestion of the trial judge, attempted to preserve the claims of Mrs. Wormack and
19 Mrs. Harris by taking a voluntary non-suit.
20
21

22 34. Mr. and Mrs. Rheubottom paid Respondent \$15,000 in additional fees for his
23 continued representation.

24 35. After June 10, 2002, the Grand Chapter was attempting to resolve the matter,
25 offering to dismiss its claims against Respondent's clients in return for a dismissal of
26 Respondent's clients' claims with prejudice, or in the alternative it would dismiss its claims
27

1 without prejudice as to clients who would not make a reciprocal dismissal.

2 36. The Grand Chapter nonsuited its claims in September 2002.

3 37. On January 17, 2003, Respondent wrote to Mrs. Harris. In that letter,
4 Respondent reminded her that she remained a plaintiff in the Rheubottom litigation and
5 inquired whether she was interested in pursuing her claims at trial.
6

7 38. Mrs. Harris responded by letter dated January 20, 2003, indicating that she was
8 "still interested in this case to the same extent that I shared with you in previous
9 conversations," but further indicating that her "husband's health will not allow me to make
10 any effort to pay additional funds to you."
11

12 39. On January 21, 2003, in response to Mrs. Harris's letter, Respondent wrote, "In
13 order for me to proceed to trial on your behalf, you will need to forward a check to me in the
14 amount of \$15,000.00 by Thursday, January 23, 2003."
15

16 40(a). By means of his January 21, 2003 letter, Respondent was demanding that
17 Mrs. Wormack and Mrs. Harris pay him additional attorney fees in order for him to continue
18 to them in the Rheubottom litigation. Respondent was not credible in his statement that the
19 additional \$15,000 payments were an advance against costs. Respondent did not have a
20 realistic expectation that costs would exceed \$36,000, and further did not tell Mrs. Harris
21 and Mrs. Wormack that any funds received would be deposited in trust and returned to
22 them if costs did not run that high.
23

24 40(b). Respondent's costs after January 21, 2003 through the completion of trial
25 totaled \$53.92. Respondent was not credible that there were extensive other costs that
26 were not recorded by his firm or billed to his clients even though incurred and paid.
27

1 49. During his May 2004 deposition, Respondent testified:

2 Q. How did you come to enter into this agreement, dated
3 June 10th, 2002 [fee agreement with Callie and William
4 Rheubottom]?

5 A. The defendant, the Prince Hall Grand Chapter, had
6 brought a counterclaim against the Rheubottoms, and the
7 Rheubottoms asked me to defend them on that action. And that
8 was the reason for the additional retainer.

9 50. The original fee agreement signed by Mrs. Rheubottom (Exhibit 3) provided
10 for a flat fee unless the lawyer and the clients "otherwise agreed." The June 10, 2002
11 second fee agreement was an amendment to the original flat fee agreement signed by
12 Mrs. Rheubottom that covered the additional responsibilities Respondent was undertaking
13 in defending Mr. and Mrs. Rheubottom.

14 51. During his May 2004 deposition, Respondent testified:

15 Q. And what did you tell them [Mrs. Rheubottom, Mrs.
16 Wormack and Mrs. Harris] it would cost them in terms of your
17 fees if they continued to pursue those claims against the Prince
18 Hall Chapter?

19 A. There would be no additional fees. There would be
20 additional costs, and the costs were going to be significant and
21 substantial. Depositions had to be transcribed. Trial preparation
22 had to go forward in terms of exhibits and getting witnesses to
23 testify, and those costs were going to probably exceed the cost
24 of the settlement amounts that they received. And so we ended
25 up going into mediation with Judge Heavey to try [to settle the]
26 case.

27 52. In fact, contrary to his testimony set forth in the preceding paragraph,
Respondent told Mrs. Wormack and Mrs. Harris they would have to pay additional fees for
continuing his representation of them in the Rheubottom litigation.

1 2002, and not previously accounted for.

2 61. On November 1, 2002, Respondent issued an invoice to Mrs. Richard
3 reflecting a total amount due of \$556.55. This invoice included new costs of \$15.89,
4 summarized previous invoices and, for the first time, credited Mrs. Richard for the additional
5 \$100 paid to Respondent in June 2002.
6

7 62. On November 26, 2002, Mrs. Richard paid the \$556.55.

8 63. On December 20, 2002, Respondent issued an invoice to Mrs. Richard for
9 \$1,335.44.
10

11 64. On January 16, 2003, Mrs. Richard paid \$1,350 to the Marshall firm.

12 65. On January 16, 2003, Mrs. Richard and her husband, James Richard, met
13 with Respondent and discussed his legal fees.

14 66. At the January 16, 2003 meeting, Respondent agreed to complete the
15 representation of Mrs. Richard for a flat fee of an additional \$5,000, and agreed to prepare
16 an amended fee agreement when the \$5,000 was received.
17

18 67. Respondent received the \$5,000 and never prepared an amended fee
19 agreement.
20

21 68. As of January 16, 2003, Mrs. Richard had paid in full all invoices from
22 Respondent.

23 69. On January 27, 2003, Mrs. Richard sent a \$5,000 cashier's check to
24 Respondent's office. Along with the \$5,000 payment, Mrs. Richard included a handwritten
25 note that indicates: "Cashier's check of \$5,000.00 for Retainer completing the PHGC case.
26 Per your agreement on 1/16/03. Thank you for your attention."
27

1 70. On February 3, 2003, Respondent's office deposited Mrs. Richard's payment
2 of \$5,000 to Respondent's client trust account on February 3, 2003.

3 71. After a March 2003 trial, in which a jury awarded \$3,500 to Mrs. Richard and
4 \$3,500 to Mrs. Rheubottom, Respondent sent Mrs. Richard an invoice dated April 1, 2003,
5 charging her \$21,787.50 for professional legal services between March 10, 2003 and March
6 29, 2003.

7 72. Upon receiving the April 1, 2003 invoice, Mrs. Richard spoke to her previous
8 lawyer, Edward M. Lane, about the bill. On April 24, 2003, Mr. Lane wrote Respondent a
9 letter on Mrs. Richard's behalf, challenging Respondent's April 1, 2003 invoice, and setting
10 forth Mrs. Richard's position that the \$5,000 payment in January constituted full payment of
11 Respondent's legal fees.

12 73. Respondent replied by letter dated April 28, 2003, asserting his position that
13 the \$5,000 was an advance fee deposit for services to be provided at a rate of \$175 per
14 hour.

15 74. On April 30, 2003, Respondent filed an attorney's lien for \$21,787.50 in the
16 Rheubottom litigation case in King County Superior Court.

17 75. On or about May 2, 2003, Respondent filed a lawsuit against Mrs. Richard for
18 \$21,787.50 in fees.

19 76. On May 30, 2003, Respondent's office removed Mrs. Richard's payment of
20 \$5,000 from his trust account.

21 77. In or about August 2004, Respondent dropped his lawsuit against Mrs.
22 Richard.

- 1 78. [Left blank.]
- 2 79. [Left blank.]
- 3 80. [Left blank.]
- 4 81. [Left blank.]

ADDITIONAL FINDINGS REGARDING COUNT 8

7 82. Based upon their fee agreements with Respondent, each of which provided
8 for payment of a flat fee for representation, Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris,
9 Mr. Rheubottom and/or Mr. Harris reasonably believed that the flat fees would cover all
10 work to be performed on their behalf that fell within the expertise and/or ability of
11 Respondent and/or his employees.

13 83. Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris, Mr. Rheubottom and/or Mr.
14 Harris never agreed in writing that Respondent could charge them for costs incurred by
15 Respondent in hiring contract employees to perform legal, paralegal, or administrative work.

17 84. By invoices dated March 1, 2002, Respondent's law firm billed the
18 Rheubottoms and the Harrises for costs of \$33.33 each for "1/3 of 5 hours Interrogatories &
19 requests."

21 85. By invoices dated April 1, 2002, the Respondent's law firm billed the
22 Rheubottoms, the Harrises and Mrs. Wormack for costs of \$33.33 each for "5 hrs research
23 – Motion for Summary Judgement [sic]." In addition, the Respondent's law firm billed the
24 Rheubottoms, the Harrises and Mrs. Wormack for costs of \$93.34 or \$93.33 each for
25 "Motion for Summary Judgement [sic]."

27 86. On the June 1, 2002 invoices to the Rheubottoms, Mrs. Wormack and the

1 Harrises, the Respondent's law firm charged each of them \$35.33 for "Rheubottom
2 deposition attendance; research Masonic law."

3 87. On the June 1, 2002 invoices to the Rheubottoms, Mrs. Wormack and the
4 Harrises, the Respondent's law firm also charged each of them \$329.16 or \$329.17 for
5 "research, review, drafting."
6

7 88. By letter to Respondent dated June 25, 2002, Mrs. Wormack questioned
8 certain items on her bills. In that letter, she challenged Respondent's charges for a
9 "researcher," indicating that "[d]uring the litigation you never discussed hiring this person at
10 our expense."
11

12 89. On the July 1, 2002 invoices to the Rheubottoms and Mrs. Wormack, the
13 Respondent's law firm charged them a total of \$1,050.00 for "Legal work Rheubottom v.
14 Prince Hall 6/7-6/10."
15

16 90. By letter to Respondent dated July 23, 2002, Mrs. Harris objected to items
17 related to her bills. Among other things, she stated:

18 You hired other persons to serve you and charged each one of
19 the three Essie, Callie & Lorraine. You did not get my
20 permission to place these charges to me.

21 91. On the October 1, 2002 invoice to the Rheubottoms, the Respondent's law
22 firm charged \$50 for "professional legal services: review new CR 56 motion."
23

24 92. On the October 16, 2002 invoice to the Rheubottoms, the Respondent's law
25 firm charged \$1,800 for "Review Prince Hall Supplemental CR 56 Motion, start research,
26 research case law, draft memo response."
27

93. Each of the cost items described in the preceding paragraphs, ¶¶84 to 92,

1 related to work performed by a contract employee of Respondent's law firm.

2 94. Each of the cost items described in the preceding paragraphs, ¶¶84 to 92,
3 related to work that Respondent and/or his employees had the ability and/or expertise to
4 perform.

5
6 95. In 2002, Respondent received payment for each of the cost items described in
7 the preceding paragraphs, ¶¶84 to 92.

8 96. [Left blank.]

9
10 **ADDITIONAL FINDINGS REGARDING COUNT 9**

11 97. On May 20, 2003, Mrs. Richard filed a grievance against Respondent, WSBA
12 File No. 03-00826.

13 98. By letter dated June 4, 2003, ODC requested a response to Mrs. Richard's
14 grievance. By letter dated June 16, 2003, Respondent provided a response.

15 99. By letter dated July 24, 2003, ODC requested additional information from
16 Respondent regarding Mrs. Richard's grievance. Shortly thereafter, by telephone,
17 Respondent requested additional time within which to respond to the July 24, 2003 letter.
18 ODC extended Respondent's deadline to September 8, 2003. Subsequently, Respondent
19 requested deferral of the investigation.
20
21

22 100. After the deferral issue had been resolved, by letter dated October 14, 2003,
23 ODC repeated its request for additional information that had initially been made on July 24,
24 2003.

25
26 101. On October 15, 2003, Respondent left a voicemail message for Disciplinary
27 Counsel, but did not request any extension of time.

1 102. Within the time frame set forth in the October 14, 2003 letter, Respondent
2 failed to respond to ODC's July 24, 2003 request, and did not request any extension of time
3 within which to respond.

4 103. By letter dated October 30, 2003, ODC notified Respondent that his failure to
5 provide the requested information within ten days would result in the issuance of a
6 subpoena.

7 104. By letter dated November 5, 2003, Respondent requested an additional ten
8 days to file his response and notified ODC that Kurt M. Bulmer would be representing him
9 regarding Mrs. Richard's grievance.

10 105. On November 11, 2003, Mr. Bulmer confirmed that he was representing
11 Respondent.

12 106. Within the time frame established by Respondent's extension request of
13 November 5, 2003, Respondent failed to respond to ODC's July 24, 2003 request. Neither
14 Respondent nor his counsel requested any additional extension of time within which to
15 respond.

16 107. On November 24, 2003, ODC issued a subpoena duces tecum and mailed a
17 copy to Mr. Bulmer. On December 1, 2003, Mr. Bulmer agreed to accept service by mail on
18 behalf of Respondent.

19 108. On December 18, 2003, Respondent, through his counsel, responded for the
20 first time to some of the requests for information made in ODC's July 24, 2003 letter.
21 Respondent did not provide any of the requested documents until December 19, 2003.

22 109. By letter dated December 23, 2003, ODC informed Respondent that it had
23

1 opened a grievance (WSBA File No. 03-03047) against him and requested a written
2 response to a number of questions and the production of various financial records.

3 110. Within the time frame set forth in the December 23, 2003 letter, Respondent
4 failed to provide any response to the Association and failed to request any extension of time
5 for providing a response.
6

7 111. By letter dated January 27, 2004, addressed to Mr. Bulmer, ODC notified
8 Respondent that his failure to provide the requested information within ten days would result
9 in the issuance of a subpoena.
10

11 112. Within the time frame set forth in the January 27, 2004 letter, Respondent
12 failed to provide any response with the Association and failed to request any extension of
13 time for providing a response.
14

15 113. On February 11, 2004, ODC issued a subpoena duces tecum to Respondent,
16 and mailed a copy to Mr. Bulmer.

17 114. On February 19 or 20, 2004, Respondent delivered three boxes of documents
18 to the Association, which contained some, but not all, of the documents responsive to the
19 Association's December 23, 2003 request. At that time, Respondent did not provide any
20 written response to the questions posed in ODC's letter of December 23, 2003.
21

22 115. On February 23, 2004, Mr. Bulmer accepted service of the subpoena on
23 Respondent's behalf.

24 116. On May 20, 2004, ODC deposed Respondent regarding this matter.

25 117. At the May 20, 2004 deposition, the Association requested that Respondent
26 follow up by providing certain information and documents, which he agreed to do by June 2,
27

1 2004.

2 118. By letter from Mr. Bulmer dated June 3, 2004, Respondent provided some, but
3 not all, of that follow-up information.

4 119. By letter to Mr. Bulmer dated July 7, 2004, ODC reminded Respondent of the
5 outstanding requests from the deposition, and indicated that if he did not comply by July 21,
6 2004, that it would issue a subpoena.

7 120. Within the time frame set forth in the July 7, 2004 letter, Respondent failed to
8 provide the requested information to the Association and failed to request any extension of
9 time for providing a response.

10 121. On July 27, 2004, ODC issued a subpoena duces tecum.

11 122. By letter from Mr. Bulmer dated August 5, 2004, Mr. Bulmer provided the
12 additional information. As a result, ODC cancelled the scheduled deposition.

13 123. On March 1, 2005, ODC sent an additional request for response to
14 Respondent, through Mr. Bulmer, on March 1, 2005.

15 124. On March 23, 2005, Mr. Bulmer requested a ten-day extension of time for
16 responding to the March 1, 2005 request, which ODC granted.

17 125. Within the time frame established by Mr. Bulmer's March 23, 2005 request,
18 Respondent failed to provide the requested information to the Association and failed to
19 request any additional extension of time for providing a response.

20 126. By letter to Mr. Bulmer dated April 18, 2005, ODC notified Respondent that his
21 failure to provide the requested information within ten days would result in the issuance of a
22 subpoena.

1 127. Within the time frame set forth in the April 18, 2005 letter, Respondent failed to
2 provide any response with the Association and failed to request any extension of time for
3 providing a response.

4 128. On May 3, 2005, ODC issued a subpoena duces tecum to Respondent, and
5 mailed a copy to Mr. Bulmer.
6

7 129. By letter from Mr. Bulmer dated May 11, 2005, Respondent responded to
8 ODC's March 1, 2005 request for information. As a result, ODC cancelled the scheduled
9 deposition.
10

11 130. [Left blank.]

12 **ADDITIONAL FINDINGS REGARDING COUNTS 10 THROUGH 12**

13 131. On June 3, 2002, at a mediation proceeding before the Honorable Michael
14 Heavey, the Grand Chapter attempted to reach a settlement resolving all pending claims in
15 the consolidated litigation.
16

17 132. As a result of the June 3, 2002 mediation, counsel for the Grand Chapter,
18 Respondent, the mediation judge, and some, if not all the clients, thought a settlement
19 agreement had been reached. No written settlement agreement was signed by any of the
20 clients, no written stipulation was entered into in open court by any of the attorneys, and
21 shortly after the mediation, all clients confirmed to Respondent that they had not agreed to a
22 settlement.
23

24 133. By letter dated June 17, 2002, addressed to Mrs. Wormack, Mrs. Harris,
25 Mrs. Rheubottom and Mrs. Richard, Respondent stated:
26

27 The court has directed Ms. Wormack and Ms. Harris sign the

1 release and settlement agreement and the Chapter to do the
2 same in order to consummate this matter.

3 134. In fact, the court had not directed Mrs. Wormack or Mrs. Harris to sign a
4 release and settlement agreement.

5 135. Respondent intentionally and knowingly made the misrepresentation
6 contained in the June 17, 2002 letter.

7 136. With Mrs. Wormack's copy of the June 17, 2002 letter, Respondent enclosed
8 the release documents for Mrs. Wormack to sign and then forward to Mr. and Mrs. Harris.

9 137. Mrs. Wormack did not sign the documents that purported to carry into effect
10 the undocumented settlement reached at the June 3, 2002 mediation.

11 138. By letter to Respondent dated June 25, 2002, Mrs. Wormack indicated that
12 she had not agreed to settle her case against the Grand Chapter. She further stated:

13 I do not have any documents in my possession where the court
14 has directed me and Ms. Harris to signa [sic] release and
15 settlement agreement[.] I feel that you are threatening Ms.
16 Harris and I [sic], but I will have my day in court.

17 139. By letter dated July 8, 2002, Respondent sent the settlement agreement to Mr.
18 and Mrs. Harris and requested that they sign and return the document as soon as possible.

19 140. Mr. and Mrs. Harris did not sign the document.

20 141. By letter to the Harrises dated July 15, 2002, Respondent stated:

21 On July 8, 2002, I forwarded the original Settlement Agreement
22 in the above-referenced matter to you for you to sign and return
23 to me. As of this date I have not received the original back. It is
24 imperative that you contact me as soon as possible and let me
25 know if you plan to participate in the settlement of this case or if
26 you wish to proceed to trial.

1 142. By letter dated July 23, 2002, Mrs. Harris informed Respondent:

2 Both you and Judge Heavey heard something during the
3 mediation meeting that I did not hear. I don't understand how
4 you arrived at this. You directed me to sign a settlement which I
5 totally disagree with. Who told you that Essie and Lorraine will
6 not be reinstated into the Eastern Star. Your next sentence
7 seemed to be a clear threat. Since we seemed to have been in
8 the same Hearing Room with Judge Heavey, Mr. & Mrs.
9 Rheubottom, Linda [sic] Richard, Essie Wormack and Lorraine
10 B. Harris, how could you demand my signature on a document
11 which is not truthful. I totally disagree with you [sic] hearing and
12 finalization of this case.

13 143. By letter dated July 31, 2002 to the Harrises and Mrs. Wormack, Respondent
14 stated, "It is my understanding that you each have settled your case."

15 144. Respondent sent opposing counsel a copy of his July 31, 2002 letter to the
16 Harrises and Mrs. Wormack.

17 145. In his July 31, 2002 letter to the Harrises and Mrs. Wormack, Respondent also
18 stated:

19 Despite your reluctance to sign the Settlement Agreement, your
20 claims have been dismissed and will not be heard at trial.

21 146. In fact, as of July 31, 2002, Mrs. Wormack's and the Harrises' claims against
22 the Grand Chapter had not been dismissed.

23 147. Respondent intentionally and knowingly made the misrepresentation
24 contained in the July 31, 2002 letter.

25 148. In early August 2002, in a telephone conversation, Respondent and Terry E.
26 Thomson, counsel for the Grand Chapter, discussed the status of the case. The
27 Association has not borne the burden of proof that Respondent "suggested" that a motion to

1 compel be filed.

2 149. On or about August 14, 2002, the Grand Chapter filed a motion to compel
3 Mrs. Wormack and the Harrises to execute a settlement agreement between the Grand
4 Chapter and Mrs. Wormack and the Harrises.

5 150 Respondent did not oppose the motion.

6
7 151. As of the beginning of July 2002, Respondent knew that Mrs. Wormack
8 refused to pay additional fees for his continued representation of her in the consolidated
9 litigation against the Grand Chapter and that Mrs. Wormack did not agree to settle her
10 claims against the Grand Chapter.
11

12 152. Respondent never disclosed to Mrs. Wormack, given his demand for
13 additional funds, that his continued representation of her may be materially limited by his
14 own interest in not having to disburse to her the \$12,500 in settlement funds in his trust
15 account, but rather have Mrs. Wormack authorize him to change his fee agreement in view
16 of the receipt of those funds. Mrs. Wormack never consented in writing to such a limitation.
17

18 153. By the end of July 2002, Respondent knew that Mrs. Harris refused to pay
19 additional fees for his continued representation of her in the consolidated litigation against
20 the Grand Chapter and that Mrs. Harris did not agree to settle her claims against the Grand
21 Chapter.
22

23 154. Respondent never disclosed to Mrs. Harris, given his demand for additional
24 funds, that his continued representation of her may be materially limited by his own interest
25 in not having to disburse to her the \$12,500 in settlement funds in his trust account, but
26 rather have Mrs. Harris authorize him to change his fee agreement in view of the receipt of
27

1 those funds. Mrs. Harris never consented in writing to such a limitation.

2 155. [Left blank.]

3 156. [Left blank.]

4 157. [Left blank.]

5
6 **ADDITIONAL FINDINGS OF FACT RE AGGRAVATING**
7 **AND MITIGATING FACTORS**

8 158. Respondent has been the subject of two prior disciplinary offenses: (a) a May
9 1989 admonition for failure to put funds in a trust account and lack of response to a WSBA
10 request for information (Exhibit 153); (b) a July 17, 1998 reprimand for filing declarations in
11 an action, knowing that the signatures were not authentic. (Exhibit 152)

12
13 159. The Hearing Officer did not admit or consider discipline that is pending in front
14 of the Washington State Supreme Court, but did allow to be marked Exhibit 150 as an offer
15 of proof and Respondent's counteroffer of proof (Exhibit 450).

16
17 160. Respondent had a selfish motive in demanding additional fees from
18 Mrs. Wormack and Mrs. Harris and in adding clients to the litigation without obtaining written
19 consents.

20
21 161. The failure to place funds in trust and the lack of response to WSBA requests
22 for information reflect a pattern of misconduct with Count 4, Count 6, and Count 9.

23 162. The aggravating factor of bad faith obstruction does not apply.

24
25 163. Respondent's attempt during deposition and elsewhere during the conduct of
26 these disciplinary proceedings to characterize the requests for additional fees as costs was
27 a deceptive practice in the course of the disciplinary process.

1 164. Respondent has refused to acknowledge the wrongful nature of his conduct in
2 requesting the fees, and not obtaining conflict of interest waivers.

3 165. While all the clients in this matter were elderly, they were not vulnerable.

4 166. Respondent has substantial experience in the practice of law, having been
5 admitted and practiced continuously since 1986.
6

7 167. A prior hearing officer in this matter was appointed December 12, 2005, and
8 considered Respondent's motion for a continuance on May 5, 2006 by telephone
9 conference call. The motion had been filed on May 4, 2006. On May 15, 2006, the prior
10 hearing officer entered an order granting the continuance and setting a new date for
11 hearing. On June 2, 2006, the prior hearing officer entered an order revising prehearing
12 deadlines. On June 22, 2006, the prior hearing officer received a joint letter by
13 Respondent's counsel and ODC counsel requesting recusal. On June 26, 2006, the prior
14 hearing officer recused herself.
15
16

17 168. The prior hearing officer had written the WSBA on January 14, 2005
18 concerning a disciplinary counsel position. The prior hearing officer again wrote May 26,
19 2006 re a disciplinary counsel position. On June 2, 2006, the Association wrote to the prior
20 hearing officer concerning her application for a disciplinary counsel position. On June 8,
21 2006, Randy Beitel emailed Cindy Jacques concerning a disciplinary counsel interview with
22 the prior hearing officer. During the time that the prior hearing officer was seeking a
23 position as disciplinary counsel with the ODC, she did not disclose to Respondent that she
24 was applying for that position. That pending employment application formed the basis of
25 the June 22, 2006 joint letter requesting that the prior hearing officer recuse herself.
26
27

1 169. In June 2006, the Respondent had not filed any trial exhibits, and by July 19,
2 2006, Respondent had not filed any hearing brief.

3 170. The application for employment with ODC is a matter that should have been
4 disclosed to Respondent's counsel, but the failure to disclose and the ultimate recusal on
5 June 26, 2006 did not result in delay in the disciplinary proceedings.
6

7 171. The only mitigating factor is that the admonition was in 1989.

8 172. Respondent's request for additional fees from Mrs. Harris and Mrs. Wormack,
9 and then failing to follow through on his representation of them caused both potential
10 serious injury and actual serious injury to Mrs. Wormack and Mrs. Harris. The potential
11 serious injury was the loss of their legal claim. The actual serious injury was the loss of the
12 fees they had paid up to that point. (This finding applies to Counts 1, 4, and 8.)
13

14 173. The conduct of taking multiple clients without written conflict waivers caused
15 actual serious injury to both Mrs. Wormack and Mrs. Harris, in that it resulted in the loss of
16 the fees they spent having Respondent represent them without written consent.
17 Respondent's conduct in misrepresenting to Mrs. Wormack and Mrs. Harris of the status of
18 their case and directing them to sign settlement documents created potential serious injury
19 in that it would have resulted in the dismissal of cases contrary to their clearly stated wishes
20 not to have the cases dismissed. (This finding applies to Counts 2 and 12.)
21

22 174. In providing misleading statements in his investigative deposition, Respondent
23 caused injury or potential injury to his clients, the public, and the legal system when he
24 attempted to characterize his request for fees as a request for advanced costs. (This
25 finding applies to Count 3.)
26
27

1 175. Respondent's conduct in failing to deposit the \$100 received from Mrs.
2 Richard in trust and to account for it properly for approximately 90 days, was a bookkeeping
3 problem in his office, which he knew or should have known and negligently failed to
4 supervise. (This finding applies to Counts 5, 6, and 7.)

5
6 176. In failing to timely reply to requests for information from the ODC, Respondent
7 negligently failed to respond in a timely fashion, and caused injury or potential injury to his
8 clients, the public, and the legal system. (This finding applies to Count 9.)

9
10 177. Respondent's conduct, in writing Mrs. Wormack and Mrs. Harris and
11 misrepresenting that a judge had ordered them to sign the stipulation and order of
12 dismissal, and later telling them that their case had been dismissed, was done with
13 knowledge of the true circumstances. Respondent was intending to benefit himself by
14 getting the clients' cases out of his office, contrary to their wishes, and he caused serious
15 harm to his clients. (This finding applies to County 10.)

16
17 178. By failing to listen to and follow the decisions of Mrs. Wormack and Mrs. Harris
18 not to settle their claims, and by misrepresenting the status of their cases, Respondent
19 acted knowingly and caused serious injury to his clients. (This finding applies to Count 11.)

20
21 179. By continuing to attempt to finalize a settlement that had been rejected by
22 Mrs. Wormack and the HARRISES, Respondent acted knowingly and caused serious or
23 potentially serious injury to his client. (This finding applies to County 12.)

24
25 **ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW RE DEFENSES**

26 180. (Respondent's Answer ¶167) Respondent presented no evidence or legal
27 authority that the proceedings resulted in denial of due process fundamental fairness, or

1 violation of equal protection. The Hearing Officer finds that there was no denial of due
2 process or fundamental fairness, or violation of equal protection and concludes that ¶167
3 should be dismissed.

4 181. (Respondent's Answer ¶168) Respondent presented no evidence or legal
5 authority that the structure of the disciplinary system as it relates to economic
6 circumstances and costs is an unconstitutional denial of equal protection and due process.
7 The Hearing Officer finds that there was no such denial of equal protection and due process
8 and concludes that ¶168 should be dismissed.

9 182. (Respondent's Answer ¶169) Respondent presented no evidence or legal
10 authority to support the claim that these hearings were an impermissible delegation of
11 authority by the Supreme Court to a private organization, and the Hearing Officer finds there
12 was no impermissible delegation and concludes that ¶169 should be dismissed.

13 183. (Respondent's Answer ¶170) Respondent presented no evidence or legal
14 authority to support the claim that he had been denied an adequate opportunity to prepare a
15 response to the Amended Formal Complaint. The Hearing Office finds that Respondent
16 has not been denied an adequate opportunity to prepare a response to the Amended
17 Formal Complaint and concludes that ¶170 should be dismissed.

18
19
20
21
22 **CONCLUSIONS OF LAW, PRESUMPTIVE SANCTIONS**
23 **AND RECOMMENDATIONS**

24 **Count 1**

25 **Conclusion.** By requesting and/or receiving additional fees from Mrs. Wormack and
26 Mrs. Harris for representation that had already been paid for under a flat fee agreement,
27

1 Respondent violated RPC 1.5(a), RPC 8.4(a), and RPC 8.4(c). Respondent's mental state
2 was not impaired and he acted knowingly. The misconduct caused potential and actual
3 serious injury to Mrs. Wormack and Mrs. Harris.

4 Presumptive Sanction. ABA Standard §7.1 provides:

5
6 Disbarment is generally appropriate when a lawyer knowingly
7 engages in conduct that is a violation of a duty owed as a
8 professional with the intent to obtain a benefit for the lawyer or
9 another, and causes serious or potentially serious injury to a
10 client, the public, or the legal system.

11 Recommendation: Applying the aggravating and mitigating circumstances found
12 above, there is no reason to depart from the standard in §7.1, and disbarment is
13 recommended on Count 1.

14 Count 2

15 Conclusion. By agreeing to represent Mrs. Harris over the objection of
16 Mrs. Wormack, and later agreeing to represent Mr. Harris without obtaining consent in
17 writing from Mrs. Wormack, Mrs. Harris and Mr. Harris, Respondent violated RPC 1.7(b).
18 The allegations as to Mr. and Mrs. Rheubottom and Mrs. Richard are dismissed. The
19 Hearing Officer concludes that RPC 1.7(b) is not a *per se* rule that requires every
20 representation of more than one client in a matter to require written waivers of conflict.
21

22 Respondent knew of the conflict of interest from both oral and written
23 communications from Mrs. Wormack. By failing to get the conflict of interest waiver,
24 Respondent caused injury or potential injury to his clients. Respondent's mental state was
25 not impaired and he acted knowingly.
26

27 Presumptive Sanction. ABA Standards §4.31(b) provides:

1 Disbarment is generally appropriate when a lawyer, without the
2 informed consent of the client(s)...

3 (b) simultaneously represents clients that the lawyer knows have
4 adverse interests with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to a client.

5 Recommendation: Applying the aggravating and mitigating circumstances found
6 above, there is no reason to depart from the presumptive sanction and disbarment is
7 recommended for Count 2.

8
9 **Count 3**

10 By making a misleading statement in his investigative deposition that he was not
11 requesting attorney fees but only costs from Mrs. Wormack and Mrs. Harris, Respondent
12 violated RPC 8.4(c) and RPC 8.4(d), and RPC 8.4(l). Respondent's mental state was not
13 impaired and he was acting knowingly. Respondent's actions caused injury or potential
14 injury to his clients, the public, and the legal system.

15
16 Presumptive Sanction. ABA Standard §7.2 provides:

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

21 Recommendation. Applying the aggravating and mitigating circumstances, including
22 prior discipline for filing forged declarations, the Hearing Officer has concluded that the
23 recommended sanction should be disbarment for Count 3.

24
25 **Count 4**

26 Conclusion. After agreeing in January 2003 to complete Mrs. Richard's case for a
27 flat fee, then billing her \$21,787.50 in April 2003, filing a lawsuit against her in an attempt to

1 collect the fee, and filing a lien against Mrs. Richard's award in the Rheubottom litigation,
2 Respondent violated RPC 1.5(a). Respondent's mental state was not impaired and he
3 acted knowingly. Respondent's actions caused actual serious injury to Mrs. Richard in
4 having to hire a lawyer to defend herself in the claim.

5
6 Presumptive Sanction. ABA Standard §7.1 provides:

7 Disbarment is generally appropriate when a lawyer knowingly
8 engages in conduct that is a violation of a duty owed as a
9 professional with the intent to obtain a benefit for the lawyer or
10 another, and causes serious or potentially serious injury to a
11 client, the public, or the legal system.

12 Recommendation. Applying the aggravating and mitigating circumstances, the
13 Hearing Officer sees no reason to depart from the presumptive sanction, and recommend
14 disbarment on Count 4.

15 **Count 5**

16 Conclusion. By failing to place into his clients' trust account \$100 of Mrs. Richard's
17 June 2002 payment, Respondent violated RPC 1.14(a). Respondent's mental state was not
18 impaired and he acted negligently in failing to ensure that the client's funds were deposited
19 in trust. The failure to deposit the \$100 caused little or no actual or potential injury to the
20 client, the public or the legal system.

21
22 Presumptive Sanction. ABA Standard §7.4 provides:

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

27 Recommendation. Applying the aggravating and mitigating circumstances,

1 particularly the fact that that Respondent had been admonished in the past for failing to
2 deposit client funds in trust, it is the Hearing Officer's recommendation that Respondent be
3 reprimanded for his conduct under Count 5.

4 **Count 6**

5 **Conclusion.** By failing to account properly to Mrs. Richard between June 2002 and
6 October 2002 as to the status of the \$100 paid in June 2002, Respondent violated RPC
7 1.14(b)(3), but the Hearing Officer concludes that this count is subsumed in Count 5, and
8 therefore recommends one reprimand on Count 5 and/or Count 6.

9 **Count 7**

10 **Conclusion.** Respondent's failure to remove \$5,000 of Mrs. Richard's funds from his
11 clients' trust account as promptly as he was entitled to, does not amount to a violation of the
12 RPCs relating to commingling of funds, and Count 7 should be dismissed.

13 **Count 8**

14 **Conclusion.** By charging his flat fee clients for work performed by contract
15 employees that would have been expected by his flat fee clients to be part of the legal
16 services provided for the flat fee, Respondent violated RPC 1.5(a). Respondent's mental
17 state was not impaired and he acted knowingly. Respondent caused injury or potential
18 injury to a client. After the WSBA provided the Respondent an analysis letter, he did make
19 restitution to his clients. The Hearing Officer concludes that is not a mitigating factor. ABA
20 Standard §9.4 provides that "forced or compelled restitution" is neither an aggravating or
21 mitigating factor.

22 **Presumptive Sanction.** ABA Standard §7.2 provides:

1 Suspension is generally appropriate when a lawyer knowingly
2 engages in conduct that is a violation of a duty owed as a
3 professional and causes injury or potential injury to a client, the
4 public, or the legal system.

5 Recommendation. Applying the aggravating and mitigating circumstances, the
6 Hearing Officer recommends that a period of suspension of one year be the sanction for the
7 violation of Count 8. If the aggravating and mitigating circumstances did not exist, the
8 recommendation would have been six months suspension.

9 **Count 9**

10 Conclusion. By failing to respond in timely fashion to one or more of the WSBA's
11 requests for information regarding the grievances, Respondent violated RPC 8.4(I).
12 Respondent's mental state was not impaired and he acted negligently when he failed to
13 provide the information in a timely fashion. Respondent's conduct caused injury or potential
14 injury to his clients, the public, and the legal system.

15 Presumptive Sanction. ABA Standard §7.3 provides:

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

20 Recommendation. Applying the aggravating and mitigating circumstances,
21 particularly the aggravating circumstance that Respondent had previously been disciplined
22 for failing to provide information in a timely fashion to the Bar Association, the Hearing
23 Officer recommends that the presumptive sanction of reprimand is not appropriate and that
24 the Respondent should be suspended for six months on Count 9.

25 **Count 10**

1 Conclusion. By making one or more misrepresentations in his letters of June 17,
2 2002 and July 31, 2002, Respondent violated RPC 8.4(c). Respondent's mental state was
3 not impaired and he acted knowingly, and his conduct caused potential serious injury and
4 actual serious injury to his clients.

5
6 Presumptive Sanction. ABA Standard §4.61 provides:

7 Disbarment is generally appropriate when a lawyer knowingly
8 deceives a client with the intent to benefit the lawyer or another,
9 and causes serious injury or potential serious injury to a client.

10 Recommendation. Applying the aggravating and mitigating circumstances, the
11 Hearing Officer sees no reason to depart from the presumptive sanction, and recommends
12 that Respondent be disbarred for Count 10.

13 **Count 11**

14 Conclusion. By failing to abide by the decision of Mrs. Wormack and Mrs. Harris to
15 not settle their claims against the Grand Chapter and continuing to attempt to force a
16 settlement contrary to his clients' wishes, Respondent violated RPC 1.2(a). Respondent's
17 mental state was not impaired and he acted knowingly, and caused injury to his clients.

18
19 Presumptive Sanction. ABA Standard §4.42 provides:

20 Suspension is generally appropriate when (a) a lawyer knowingly
21 fails to perform services for a client and causes injury or potential
22 injury to a client.

23 Recommendation. Applying the aggravating and mitigating circumstances, the
24 Hearing Officer recommends that the Respondent be disbarred for the violation of Count 11.

25 **Count 12**

26 Count 12 is subsumed in Counts 10 and 11. Count 12 should be dismissed.
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ULTIMATE RECOMMENDATION

I have found multiple ethical violations and the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations. I therefore recommend that the Respondent be disbarred. I further recommend that Respondent be ordered to pay restitution of \$7,500 to Mrs. Wormack, \$7,500 to Mrs. Harris, and \$4,000 of the restitution for the benefit of Mrs. Wormack should be either paid in a joint check to Mrs. Wormack and Mrs. Rheubottom, or \$4,000 paid to Mrs. Rheubottom and \$3,500 to Mrs. Wormack. I do not recommend any restitution to the Rheubottoms other than as may be derivative of the order of restitution to Mrs. Wormack.

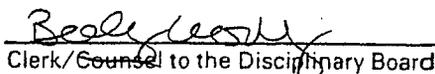
DATED this 29th day of March, 2007.



JAMES M. DANIELSON, WSBA #01629
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Amended F/F, CL to be delivered to the Office of Disciplinary Counsel and to be mailed to Kurt Bulmer, Respondent/Respondent's Counsel at 740 Belmont Pike #3, Seattle, by Certified/first class mail, postage prepaid on the 29 day of March, 2007.


Clerk/Counsel to the Disciplinary Board

APPENDIX B

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FILED

JAN 25 2008

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

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

Proceeding No. 05#00103

DISCIPLINARY BOARD ORDER
MODIFYING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its November 30, 2007 meeting on automatic review of Hearing Officer James Danielson's disbarment recommendation following a hearing.

Having reviewed the documents designated by the parties, the briefs and the applicable case law and rules, and having heard oral argument:

IT IS HEREBY ORDERED THAT the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation are approved.¹

¹ The vote on this matter was unanimous. Those voting were Andrews, Carlson, Cena, Coppinger, Darst, Fine, Kuznetz, Madden, Meehan, Montez and Urena. Mr. Meyers recused from this matter and did not participate. He was not present during the argument, deliberations or voting.

ORIGINAL

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FINDINGS OF FACT

The Hearing Officer's Findings of Fact are approved with the following amendment:

Finding 21A:

At the time Respondent undertook to represent Ms. Rheubottom and Mrs. Wormack, a potential conflict of interest existed.²

² Original Finding 21(a): "At the time Respondent undertook to represent Ms. Rheubottom and Mrs. Wormack, those 2 clients were not adverse, and no conflict of interest or potential conflict of interest existed."

The Hearing Officer's finding contains an error of law. A potential conflict of interest always exists when a lawyer accepts representation of multiple parties, as the Court stated in *In re Marshall*, 2007 WASC 200 302-8 051007; "Marshall and the dissent claim that there could be no conflict of interest here because the plaintiffs' interests were aligned. However, the hearing officer and Board found that while they shared broad goals, including elimination of racial discrimination in the longshore industry, their individual issues, needs, and claims were different. More importantly, we have recognized that former RPC 1.7(b) applies even absent a direct conflict. *In re Disciplinary Proceeding Against Egger*, 152 Wn.2d 393, 412, 98 P.3d 477 (2004). Marshall himself testified that there are *potential* conflicts whenever multiple representation occurs. There was a risk that Marshall would not be able to simultaneously abide by all of his clients' wishes when conflicts arose among the plaintiffs. The Association also notes that the "strength in numbers" strategy could work to the benefit of some, but to the detriment of others. Even if Marshall reasonably believed that his representation of all of the *Jefferies* clients would not be adversely affected, Marshall had a duty to explain to each client "the implications of the common representation and the advantages and risks involved" and to get consent in writing from each. Former RPC 1.7(b)(2). The dissent ignores the plain language of the rule."

There is substantial evidence in the record to support the hearing officer's and Board's findings regarding Marshall's violation of former RPC 1.7(b). To the extent that the dissent asserts that there was no *actual* conflict in this case, it forgets that the rule requires full disclosure of *potential* conflicts and written consent of the client where multiple representation *may* materially affect the client's case. Former RPC 1.7(b)."

1
2 Finding 158

3 Respondent has been the subject of three prior disciplinary offenses: (a) a May
4 1989 admonition for failure to put funds in a trust account and lack of response to
5 a WSBA request for information (Exhibit 153); and (b) a July 17, 1998 reprimand
6 for filing a declaration in an action, knowing that the signatures were not
7 authentic Exhibit 152; and a 1997 18 month suspension for (1) deceitful conduct
8 in violation of RPC 8.4(c), (2) improperly charging contract attorney fees as costs
9 in violation of RPC 1.5; (3) failing to maintain complete records of client funds,
10 provide client accountings and remit client funds upon request, violation of RPC
11 1.14, and representing multiple clients without explaining the implications of
12 common representation or obtaining written consent, in violation of RPC 1.7(b).³

13 Finding 159

14 Exhibit 150 is admitted and considered.⁴

15
16 The Board upholds the Hearing Officer's disbarment recommendation.

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³ Original Finding 158: "Respondent has been the subject of two prior disciplinary offenses: (a) a May 1989 admonition for failure to put funds in a trust account and lack of response to a WSBA request for information (Exhibit 153); and (b) a July 17, 1998 reprimand for filing declaration in an action, knowing that the signatures were not authentic Exhibit 152." On May 10, 2007, the Supreme Court issued an opinion suspending Respondent for 18 months. *In re Marshall*, 2007 WASC 200 302-8 051007. Respondent was aware that he was being investigated in the 2007 suspension matter at the time he committed the misconduct involved in this current case. Consequently, Respondent has three prior disciplinary offenses that are properly considered.

⁴ Original Finding 159: "The Hearing Officer did not admit or consider discipline that is pending in front of the Washington State Supreme Court, but did allow to be marked Exhibit 150 and 450 as an offer of proof and Respondent's counteroffer of proof Exhibit 450." Exhibits 150 and 450 are admitted and considered.

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Dated this 25th day of January, 2008.


William Carlson, Vice Chair
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the order Modifying HO Decision
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Bradley Marshall, Respondent/Respondent's Counsel
at 2 Lakeside Ave Ste. 100B, Seattle, WA 98122, by certified/first class mail,
postage prepaid on the 25 day of January, 2008


Clerk/Counsel to the Disciplinary Board

APPENDIX C

SELECTED RULES OF PROFESSIONAL CONDUCT

(Effective 10-31-2000 through 10-1-2004)

RPC 1.2 – SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to sections (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RPC 1.5 – FEES

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly and the terms of the fee agreement between the lawyer and client;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) The amount involved in the matter on which legal services are rendered and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

RPC 1.7 – CONFLICT OF INTEREST; GENERAL RULE

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) Each client consents in writing after consultation and a full disclosure of the material facts (following authorization from the other client to make such a disclosure).

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents in writing after consultation and a full disclosure of the material facts (following authorization from the other client to make such a disclosure). When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(c) For purposes of this rule, when a lawyer who is not a public officer or employee represents a discrete governmental agency or unit that is part of a broader governmental entity, the lawyer's client is the particular governmental agency or unit represented, and not the broader governmental entity of which the agency or unit is a part, unless:

(1) Otherwise provided in a written agreement between the lawyer and the governmental agency or unit; or

(2) The broader governmental entity gives the lawyer timely written notice to the contrary, in which case the client shall be designated by such entity.

Notice under this subsection shall be given by the person designated by law as the chief legal officer of the broader governmental entity, or in absence of such designation, by the chief executive officer of the entity.

RPC 1.14 – PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT

(a) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable interest bearing trust accounts maintained as set forth in section (c), and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein;

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) A lawyer shall:

(1) Promptly notify a client of the receipt of his or her funds, securities, or other properties;

- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them;
- (4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(c) Each trust account referred to in section (a) shall be an interest bearing trust account in any bank, credit union or savings and loan association, selected by a lawyer in the exercise of ordinary prudence, authorized by federal or state law to do business in Washington and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Washington Credit Union Share Guaranty Association, or the Federal Savings and Loan Insurance Corporation, or which is a qualified public depository as defined in RCW 39.58.010(2), which bank, credit union, savings and loan association or qualified public depository has filed an agreement with the Disciplinary Board pursuant to rule 13.4 of the Rules of Lawyer Discipline. Interest bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation.

(1) A lawyer who receives client funds shall maintain a pooled interest bearing trust account for deposit of client funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to The Legal Foundation of Washington, as established by the Supreme Court of Washington. All other fees and transaction costs shall be paid by the lawyer. A lawyer may, but shall not be required to, notify the client of the intended use of such funds.

(2) All client funds shall be deposited in the account specified in subsection

(1) unless they are deposited in:

- (i) a separate interest bearing trust account for the particular client or client's matter on which the interest will be paid to the client; or
- (ii) a pooled interest bearing trust account with sub accounting that will provide for computation of interest earned by each client's funds and the payment thereof to the client.

(3) In determining whether to use the account specified in subsection (1) or an account specified in subsection (2), a lawyer shall consider only whether

the funds to be invested could be utilized to provide a positive net return to the client, as determined by taking into consideration the following factors:

- (i) the amount of interest that the funds would earn during the period they are expected to be deposited;
- (ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and
- (iii) the capability of financial institutions to calculate and pay interest to individual clients.

(4) As to accounts created under subsection (c)(1), lawyers or law firms shall direct the depository institution:

- (i) to remit interest or dividends, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Legal Foundation of Washington. Other fees and transaction costs will be directed to the lawyer;
- (ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing lawyer or law firm.

(5) The Foundation shall prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the program established by section (c) of this rule.

(6) The provisions of section (c) shall not relieve a lawyer or law firm from any obligation imposed by these rules with respect to safekeeping of clients' funds, including the requirements of section (b) that a lawyer shall promptly notify a client of the receipt of his or her funds and shall promptly pay or deliver to the client as requested all funds in the possession of the lawyer which the client is entitled to receive.

(d) Escrow and other funds held by a lawyer incident to the closing of any real estate or personal property transaction are client funds subject to this rule regardless of whether the lawyer, the law firm, or the parties view the funds as belonging to clients or non clients.

RPC 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

...

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

...

(j) Violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5

APPENDIX D

1 Q. Was a settlement agreement signed at that
2 settlement conference?

3 A. No.

4 Q. Was a settlement completed at that conference?

5 A. No.

6 Q. Now, after that settlement conference do you
7 remember a conversation that you had with Mr. Marshall
8 concerning fees?

9 A. Yes, briefly.

10 Q. Let me ask you before we get to the substance
11 of it when and where did it take place?

12 A. Leaving the Kent Regional Justice Center
13 walking to the parking lot -- I mean, walking to our
14 cars.

15 Q. And who was there?

16 A. Mrs. Lorraine B. Harris, Mr. Marshall and I.

17 Q. And what did Mr. Marshall tell you about how
18 much it would cost to continue litigation?

19 A. In walking to the car he was between
20 Mrs. Harris and I and talking back and forth to the two
21 of us and he said to take it to a jury trial that he
22 would charge us more money.

23 Q. Did he say how much more money he would charge
24 you?

25 A. He did but I can't remember.

1 Q. And did you talk to Mr. Marshall in that
2 conversation about whether you wanted to pursue your
3 claims against the Grand Chapter?

4 A. Not in walking to the car because the car was
5 so close to the Regional Justice Center, not at that
6 time.

7 Q. At some other time?

8 A. At some other time.

9 Q. When was that?

10 A. It was after that and approaching the time for
11 the jury trial but I can't recall the date.

12 Q. During that conversation what did you tell
13 Mr. Marshall about giving him more money to continue the
14 litigation?

15 A. Well, he said he would charge us more money,
16 and Mrs. Harris and I both were on each side of him and
17 we were talking and the two of us said, "No way, José."

18 MR. BULMER: Objection, hearsay.

19 THE WITNESS: "We will not give you
20 another dime. I will not give you another dime."

21 THE HEARING OFFICER: Just a minute.

22 THE WITNESS: Sorry.

23 MR. BULMER: Objection to hearsay as to
24 what Mrs. Harris said.

25 THE HEARING OFFICER: I'm going to

1 sustain the objection because I don't know who she is
2 identifying as the speaker, so why don't you rephrase.

3 Q. (By Mr. Busby) When I say what you I mean you
4 singular, what you, Essie Mae Wormack, told Mr. Marshall
5 rather than what Lorraine Harris told her.

6 A. Oh.

7 Q. What did you tell Mr. Marshall about paying
8 more money during this conversation on the way to the
9 car after the June 3rd settlement conference?

10 A. My only statement was, "No way, you will never
11 get another dime from me."

12 Q. And what was that position based on?

13 A. Because when I hired him he said he would
14 represent me for \$7500 and we did not do it on an hourly
15 basis because we were supposed to go to a jury trial,
16 and at that time nothing was said.

17 Q. Was it your desire to continue to trial?

18 A. Yes.

19 Q. Did you tell Mr. Marshall that?

20 A. I did.

21 Q. Now, after that discussion that you had on
22 June 3rd, 2002 did you get a letter from Mr. Marshall
23 about the settlement conference?

24 A. I got a letter that he had sent a copy of I
25 think to Judge Shaffer and, yes, I did get a copy of the

1 letter.

2 Q. Let me have you look at Exhibit No. 42.

3 MR. BULMER: Which one are we looking at;
4 42?

5 MR. BUSBY: 42, and I think that's in
6 evidence.

7 Q. (By Mr. Busby) Do you recognize that letter,
8 Mrs. Wormack?

9 A. Yes.

10 Q. Did you receive that from Mr. Marshall?

11 A. Yes.

12 Q. And June 17th would have been about two weeks
13 after the settlement conference, is that right?

14 A. Yes.

15 Q. Let me ask you about some of the statements
16 that are made in that letter. The very first sentence
17 under the word settlement -- and first of all, who is
18 this letter addressed to?

19 A. It's addressed to Mrs. Essie Wormack,
20 Mrs. Lorraine B. Harris, Mrs. Callie Rheubottom and
21 Mrs. Lindia Richard.

22 Q. In the first sentence under the word
23 settlement that's underlined there Mr. Marshall states,
24 "Mrs. Harris and Mrs. Wormack have now resolved their
25 case against the chapter."

1 At the time as of June 17th, 2002 was
2 that a true statement?

3 A. Absolutely untrue.

4 Q. And had you told Mr. Marshall whether or not
5 you had resolved your claims against the Grand Chapter?

6 A. No.

7 Q. Let me clarify. Had you told him that you did
8 or did not resolve your claims against the Grand
9 Chapter?

10 A. I told him I did not.

11 Q. Now, on the second page of that letter, the
12 third line down, do you see where it says: "The court
13 has directed Mrs. Wormack and Mrs. Harris to sign the
14 release and settlement agreement and the chapter to do
15 the same in order to consummate the matter," do you see
16 that?

17 A. Yes.

18 Q. Did the court ever direct you to sign
19 something?

20 A. No.

21 Q. Was there anything drafted or presented at the
22 settlement conference for you to sign?

23 A. No.

24 Q. And then a little further on Mr. Marshall
25 states: "If the parties do not sign then the chapter

1 THE HEARING OFFICER: Objection, counsel?

2 He's offering 43.

3 MR. BULMER: Oh, no objection.

4 THE HEARING OFFICER: 43 is admitted.

5 MR. BULMER: I was going to say hearsay
6 but I was going to lose it, so ...

7 THE HEARING OFFICER: You are correct.
8 You can proceed, counsel.

9 Q. (By Mr. Busby) You state in your letter, and
10 I'll point it out to you, you are talking to
11 Mr. Marshall about a statement that he made to you and
12 about a third of the way down the page you say, "You
13 stated that if the lawsuit is continued it would cost us
14 another \$10,000." Is that what Mr. Marshall told you?

15 A. Yes.

16 Q. And when did he tell you that?

17 A. In thinking back it was on the way from the
18 Regional Justice Center to the car.

19 Q. So, it was an additional \$10,000?

20 A. Yes.

21 Q. And what did you tell Mr. Marshall about
22 whether or not you felt he could charge you another
23 \$10,000 to continue the case?

24 A. I told him that he initially charged \$7500, it
25 wasn't on an hourly fee, and that he could not charge me

1 any more money to continue to a jury trial.

2 Q. And you stated in the middle of the page, "You
3 can't legally recharge us again for a case that was not
4 settled at the mediation and is still not settled."

5 Was it your position that Mr. Marshall
6 had been paid in full?

7 A. Yes.

8 Q. And was that your position based on the
9 original fee agreement that you reached with him?

10 A. Yes.

11 Q. You said in the letter also that, "You have
12 not talked to Mrs. Harris and I since June 3rd, 2002."
13 Is that a true statement?

14 A. That's a true statement.

15 Q. Had you tried to talk to Mr. Marshall?

16 A. I live in Tacoma and I tried to call many
17 times and it was kind of hard to get past the office.

18 Q. Now, down at the bottom of the first page and
19 onto the second page you requested certain things. Let
20 me ask you to look specifically at Item No. 5 on the
21 second page. In that Item No. 5 you are requesting "a
22 copy of the bill signed by me permitting you to hire a
23 researcher, the charges paid per hour, the hours worked,
24 subject researched. During the litigation you never
25 discussed hiring this person at our expense."

1 your lawyer did he explain to you that there might be
2 any risks involved in your being represented by a lawyer
3 who was representing other people in the same lawsuit?

4 A. No.

5 Q. Did he ever ask you or did you ever sign
6 anything, any document waiving any potential conflicts
7 of interest?

8 A. No.

9 Q. Now, during the course of Mr. Marshall's
10 representation of you did he send you invoices?

11 A. Yes.

12 Q. And did you pay them as they came?

13 A. Yes.

14 Q. Let me have you take a look at Exhibit No. 66.

15 MR. BULMER: 65?

16 MR. BUSBY: 66.

17 Q. (By Mr. Busby) Do you recognize that document,
18 Mrs. Richard?

19 A. Yes.

20 Q. Is that a payment that you made to
21 Mr. Marshall?

22 A. Yes.

23 Q. And when was that check issued?

24 A. January 15th, 2003.

25 Q. And what's the amount?

1 A. \$1350.

2 Q. Now, let me have you look back two exhibits to
3 No. 64, and I think that's in evidence. Would you just
4 tell me the date of that invoice, Exhibit 64?

5 A. December 30th, 2002.

6 Q. And the balance due in the bottom right-hand
7 corner?

8 A. \$1335.44 -- no, balance due is zero.

9 Q. So, as of the date that you sent Mr. Marshall
10 this check that's marked Exhibit 66, the one we just
11 looked at, were your bills all paid up?

12 A. Yes.

13 Q. Now, let me ask you about a meeting that you
14 had at Mr. Marshall's office. Do you remember going to
15 Mr. Marshall's office with your husband?

16 A. Yes.

17 Q. Now, was your husband involved in the
18 litigation?

19 A. No.

20 Q. And why did he accompany you to the office?

21 A. Due to the fact that it was raining that week
22 and I had been driving to Seattle quite a lot and I
23 needed somebody, you know, to go with me because I had
24 been driving by myself, and I insisted so he said okay.

25 And he wanted to know exactly where was

1 this office and I said it's down at the lake, Lake
2 Washington, Mr. Marshall's office.

3 And he said, okay, maybe I'll sit in the
4 reception room or, you know, wherever.

5 And I said, no, you could sit with us,
6 it's no secret, and so he did, and that's why we went
7 into his office.

8 Q. Now, do you remember that letter that we
9 looked at that was Exhibit 34 that you wrote 175 on and
10 you wrote \$1000 cashier's check?

11 A. Um hum.

12 Q. Is that something you took with you to that
13 meeting?

14 A. Yes.

15 Q. And while you were at the meeting with
16 Mr. Marshall at his office did you have a discussion
17 about how much money it would cost to complete the case?

18 A. Yes.

19 Q. And what did Mr. Marshall agree to do?

20 A. Mr. Marshall agreed for me to pay him \$5000
21 then. I was flabbergasted that he asked that, so I told
22 him, wait a minute, that wasn't our arrangement, period,
23 you know.

24 And he said, well, \$5000 will finish the
25 case if you pay me the \$5000 today. I said, I can't pay

1 you the \$5000 today.

2 And then my husband, with his condition,
3 he was sitting there and Mrs. Rheubottom was also
4 sitting there. So, he got up. I asked my husband to go
5 and sit in the foyer because he had a stroke and I
6 didn't want him to go through the same thing again, and
7 I mentioned this to Mr. Marshall.

8 I did not come here to discuss this, I
9 wanted to discuss the case that's coming up and the
10 questions and what to say, you did not call me about
11 this. So, for you to start this situation here with my
12 husband, you don't want my husband to have another
13 stroke in here.

14 Q. What did Mr. Marshall tell you that he would
15 do in exchange for the \$5000?

16 A. To finish the case.

17 Q. And let me have you look now at Exhibit 65,
18 and look specifically at the last page, that's the third
19 page. Is that your writing at the bottom of the page?

20 A. Yes.

21 Q. Could you just read that? It might be a
22 little hard to read.

23 A. "Cashier's check", then there's "\$1000,
24 additional \$5000 flat fee per Mr. Marshall."

25 Q. And below that?

1 A. "This contract amended to retainer \$5000 to
2 finish the case. Mr. Marshall will send in writing and
3 mail to me once he receive the \$5000."

4 Q. And when did you write that?

5 A. The same day that I met with Mr. Marshall when
6 my husband was there.

7 Q. And does that reflect, that writing at the
8 bottom of the page, does that reflect the agreement that
9 you entered into with Mr. Marshall at that meeting?

10 A. No.

11 Q. What was the agreement that you entered into
12 at that meeting?

13 A. At that meeting after we talked about it, the
14 \$5000, and he insisted on the \$5000 to finish the case,
15 I got my husband in there and I said Mr. Marshall wants
16 \$5000 and that was not my agreement with him.

17 So, \$5000, I don't want to give him 5000,
18 I want him to keep my agreement. So, my husband ask
19 him --

20 MR. BULMER: Hearsay objection.

21 MR. BUSBY: He's asking a question so it
22 doesn't assert anything. It doesn't assert the truth of
23 any proposition, it's a question.

24 THE HEARING OFFICER: Overruled. She can
25 say what her husband asked in her presence.

1 THE WITNESS: My husband asked him \$5000,
2 and he said yes.

3 Q. (By Mr. Busby) When you say he you need to say
4 who you are referring to.

5 A. Mr. Marshall. Okay, my husband asked
6 Mr. Marshall this. So, my husband look at me and said
7 well, and then he asked Mr. Marshall, well, is this to
8 finish the case?

9 And Mr. Marshall said yes.

10 So then my husband say, win, lose or
11 draw, my husband, win, lose or draw, and he told my
12 husband yes.

13 Q. He, being?

14 A. Mr. Marshall.

15 Q. Told your husband?

16 A. Yeah, win, lose or draw, yes.

17 Q. Now, can you tell me, describe briefly how
18 this writing came about on this copy of the June 6th,
19 2002 letter?

20 A. Because when Mr. Marshall, he decided on the
21 \$5000, okay, my husband and I, we right there with him.
22 And that's why this writing came to be, that I was doing
23 my notes on this contract with Mr. Marshall there, that
24 this is what we were paying to finish the case.

25 Q. Okay. And when you wrote this on Exhibit 65

1 at the bottom of the third page was Mr. Marshall with
2 you?

3 A. Yeah, he was at the table.

4 Q. And did he tell you that he agreed to this
5 arrangement that you wrote down?

6 A. \$5000.

7 Q. Now, after you did that, after you had that
8 meeting did you send Mr. Marshall a check?

9 A. Yes.

10 Q. Well, let me ask you one more thing about
11 that. Do you see where it says additional \$5000 flat
12 fee?

13 A. Yes.

14 Q. That term flat fee, were those Mr. Marshall's
15 words?

16 A. Yes.

17 Q. Now, after that meeting did you send
18 Mr. Marshall a check?

19 A. Yes.

20 Q. And would you look at Exhibit 70, please.
21 What is Exhibit 70?

22 A. It's a note that I had here t on 1/27/03 to
23 Mr. Marshall, cashier's check of \$5000 for retainer
24 completing the Prince Hall Grand Chapter case.

25 Q. And did you send that with the check?

1 A. Yes.

2 Q. Do you see where it says "per your agreement
3 1/16/03"?

4 A. Um-hum.

5 Q. Is that what that says?

6 A. Yes.

7 Q. That 1/16/03, is that when you had that
8 meeting that we just talked about?

9 A. Yes.

10 Q. Now, after you sent that check along with the
11 note to Mr. Marshall did Mr. Marshall ever object to
12 your characterization of your fee arrangement?

13 A. No.

14 Q. Did he ever tell you, for example, I didn't
15 agree to complete the case for \$5000?

16 A. No.

17 Q. Would you look at Exhibit No. 71. Do you
18 recognize Exhibit 71?

19 A. Yes.

20 Q. And down at the bottom is that your
21 handwriting?

22 A. Yes.

23 Q. Can you read that?

24 A. "Mr. Marshall agreed to finish the case."

25 Q. And you see where it says "nonrefundable

1 retainer"?

2 A. Yes.

3 Q. What did you understand that to mean?

4 A. To me that was kind of confusing.

5 Q. Okay. Now, you said earlier that Mr. Marshall
6 agreed to prepare an amended fee agreement after
7 receiving the \$5000.

8 A. Yes.

9 Q. Did he do that?

10 A. No.

11 Q. Now, you had a trial in this matter, right?

12 A. Yes.

13 Q. And after the trial did you get another bill
14 from Mr. Marshall?

15 A. Yes.

16 Q. Would you look at Exhibit No. 74, please. Do
17 you recognize Exhibit 74?

18 A. Yes.

19 Q. Do you remember receiving that?

20 A. Yes.

21 Q. What was your reaction when you got that bill
22 from Mr. Marshall after the trial?

23 A. I was flabbergasted.

24 Q. Why?

25 A. 21,787, I was flabbergasted because the

1 contract back. He went back and got the contract. It
2 took him 10, 15 minutes. He said the machine was broke
3 down. Then he come back, the secretary is taking a
4 copy, and it took him another 10 minutes.

5 So, he finally got it back to me. We
6 agreed on the \$5000, the discussion continued about the
7 \$5000. I sat there on that table in his office in that
8 first foyer room and wrote what we talk about, and also
9 verbally, okay? So, this is what it was, and I wrote
10 \$5000 to go back home to get to send to Mr. Marshall.

11 This contract, there was nothing written
12 here when I went to Mr. Marshall's office that day in
13 the back, not until that day. We agreed on the \$5000,
14 and that's what that come about.

15 It was a blank part with my signature in
16 there, okay? That's it. And the check number is open
17 because I was going to get a cashier's check and then
18 write the number in when I went back home.

19 So, there was nothing written prior on
20 that until the day I went with him on the \$5000.

21 Q. So, when you met with him, everything below
22 the signature line on page 3 --

23 A. Okay.

24 Q. Do you see where it says your signature?

25 A. Yes.

1 A. Yes.

2 Q. Could you just describe how that discussion
3 went?

4 A. Well, when she came back and told me that we
5 had to pay -- that he wanted \$5000 more I wanted to know
6 for what, and she said before the case is presented to
7 the court. And she was explaining to me that she didn't
8 want to pay it.

9 I asked Mr. Marshall would that be for
10 the win, lose or draw, whatever it is; if it's won, if
11 it's lost or whatever, would that be it, and
12 Mr. Marshall stated yes.

13 Q. Did you talk about whether there would be any
14 additional charges to finish the case beyond that \$5000
15 fee?

16 A. No.

17 Q. Did you ask Mr. Marshall whether that would be
18 the rest that you would have to pay in order to finish
19 the case?

20 A. No.

21 Q. And what did Mr. Marshall say that he would do
22 for that \$5000 payment?

23 A. Well, he said that would be it, that would be
24 the end of it.

25 MR. BUSBY: Thank you, Mr. Richard.

1 For example, Jane may have taken the information that
2 was typed up and then placed it on this computer program
3 and put it out that way. I'm just not sure as I sit
4 here.

5 Q. On this invoice where did the information
6 regarding the hours worked come from?

7 A. Where did the hours come from?

8 Q. Where did the information that ended up on
9 this invoice come from?

10 A. It would have come from me because I did the
11 work.

12 Q. And so how did you track your work originally
13 before it got onto this invoice?

14 A. I use a yellow pad. I keep track of my time
15 on a yellow pad.

16 Q. And do you have your yellow pad records with
17 regard to this invoice?

18 A. Everything that I have in this file we
19 provided to your office, so I can't tell you if it's in
20 the file. There's about 12 boxes of stuff.

21 Q. So, with regard to that I guess I'm going to
22 ask you then -- you brought those boxes with you,
23 correct?

24 A. They are here if you would like to look
25 through them. I think you already have.

1 A. No, sir.

2 Q. And did you tell her that this was a flat --

3 MS. GRAY: I'm objecting to the leading.

4 THE HEARING OFFICER: Sustained.

5 Rephrase.

6 Q. (By Mr. Bulmer) Now, what did you tell her the
7 purpose of the additional 5000 was?

8 A. As I explained, that the case was gearing up,
9 we were going to be going into litigation. I needed to
10 have some funds to bill against on an hourly basis and I
11 needed that as a retainer.

12 Q. Now, was the fee to be considered a refundable
13 retainer or a nonrefundable?

14 A. Just as we had before, it was a nonrefundable
15 retainer.

16 Q. What was her reaction when you told her you
17 wanted her to pay a \$5000 retainer?

18 A. She wasn't happy. She said, Mr. Marshall, we
19 have an agreement for the \$175 per hour. And I said,
20 yes, that's true, but we are going to be doing a lot of
21 work here in the next couple of weeks and the next
22 couple of months and I would like to have a retainer so
23 I have it in my account and I don't have to come back
24 and bother you for that.

25 And she said I don't really think I want

1 to do that or something to that effect, and she said I
2 need to talk to my husband about that. And I said that
3 that's fine, I would be happy to talk with him.

4 Q. And at some point did you then meet with --
5 her husband wasn't there for the first part.

6 A. No.

7 Q. Then did you meet with she and her husband?

8 A. Briefly I went out, and I'm not sure if
9 Mr. Richard -- she went out and she contacted him and
10 then I stood up. And we have an aquarium that sits
11 between the conference room and the lobby and my
12 recollection is that was in that area that we had a
13 brief conversation.

14 He indicated -- he used the term win,
15 lose or draw. I told him this is a nonrefundable
16 retainer that I'm going to use to put in my account and
17 bill against.

18 And he said so I don't have to -- the
19 point was, if I lose this money it's still going to be I
20 don't get it back?

21 I said it doesn't matter, it's a
22 nonrefundable retainer. I'm going to use it to bill
23 against for the work that I'm going to be doing.

24 He said, okay, this is between you and
25 Lindy, this is not between me. This is you and Lindy,

1 I'm not involved, and I said I understand.

2 Q. Where in the course of the conversation and in
3 what context did win, lose or draw come out? Were those
4 words from his mouth?

5 A. He used that term.

6 Q. And when he used that term did you have an
7 understanding as to what that meant?

8 A. I thought he was responding to my point that
9 it was nonrefundable when he said win, lose or draw; in
10 other words, that this money, no matter what happens in
11 the case this is not going to be returned to me, and I
12 agreed with him.

13 Q. And so did they agree to send you the \$5000
14 retainer?

15 A. They did.

16 Q. And subsequently you did get it?

17 A. Yes.

18 Q. And let's look at Exhibit 70. Now, Exhibit 70
19 is a note from Ms. Richard enclosing the \$5000 retainer,
20 right?

21 A. Yes.

22 Q. And it was stamped in at your office on
23 January 28th.

24 A. Um-hum.

25 Q. Do you have any recollection of seeing this

1 note?

2 A. I don't specifically recall seeing it but I'm
3 certain that that was sent at some point.

4 Q. That she sent it?

5 A. Yes.

6 Q. Do you remember whether when it came into your
7 office you saw it, you got a copy of this note?

8 A. It would be generally the practice for my
9 office to give me a copy of that.

10 Q. Do you see where it says "cashier's check of
11 \$5000 for retainer completing the PHGC case"?

12 A. Yes.

13 Q. Assuming you saw this -- well, you said you
14 did. Did you see this note? What did you understand?
15 Did you have any understanding about the word
16 completing?

17 A. I didn't understand that to mean that this
18 meant this was all that they were going to pay to
19 complete the case. I understood that to be exactly what
20 it says, a retainer that's going to be used in an effort
21 to complete the case, not that that would be the entire
22 amount. There was nothing that would suggest to me that
23 there was something misunderstood in the prior
24 conversation or in the agreement that she signed.

25 Q. And if we could look at Exhibit 71, that is a

1 receipt from your office?

2 A. Yes.

3 Q. Except for the parts that we discussed with
4 Ms. Richard that she hand wrote, we know which those
5 are, but the receipt itself, the handwriting on there,
6 it appears to be signed by Ms. Lee?

7 A. Yes.

8 Q. And so do you think the rest of the
9 handwriting on there is Ms. Lee's?

10 A. Yes, sir, except for this other language at
11 the bottom of the receipt, I don't think that's Kelly's.

12 Q. Oh, we understood that was Ms. Richard's, she
13 testified that that's her writing across the bottom of
14 the receipt, okay, but we're talking about the body of
15 the receipt.

16 A. Yes, that is Kelly's.

17 Q. At least from Kelly's point of view she wrote
18 it up as a nonrefundable retainer, correct?

19 A. Yes, sir.

20 Q. Then what happened to that \$5000?

21 A. Then it was placed in our trust account.

22 Q. And then ultimately it was removed from the
23 trust account?

24 A. After it was earned, yes, sir.

25 Q. And if we look at Exhibit 73 --

1 A. Yes.

2 Q. -- we see that Exhibit 73 is a record from
3 your office showing that it was actually deposited to
4 the trust in early February --

5 A. Right.

6 Q. -- and removed in late May.

7 A. Right.

8 Q. And by late May you had had the trial?

9 A. Yes.

10 Q. All right. And was the 5000 to be billed
11 against or was the 5000 -- the 5000 wasn't a flat fee?

12 A. No, sir.

13 Q. If you didn't earn enough hours you weren't
14 entitled to the whole \$5000?

15 A. Exactly.

16 Q. Do you know why the 5000 remained in the
17 account then from February to the end of May? Do you
18 know why it was removed at that time?

19 A. It was removed because my hands were full
20 focusing on the trial. I was not focused on determining
21 whether I had earned enough hours to deduct that from
22 the trust account. I was just focused on the trial so I
23 was doing a lot of work.

24 Q. At the time you removed it did you feel it was
25 wholly earned?

1 you have finished questioning me.

2 Q. (By Ms. Gray) Now that they are admitted I
3 don't need to question you about it. If you don't mind
4 doing the work of putting them in the book for us, that
5 would be helpful.

6 (Off the record.)

7 THE HEARING OFFICER: Back on the record.

8 Q. (By Ms. Gray) Mr. Marshall, I'm going to hand
9 you Exhibit 154 for identification.

10 A. All right.

11 MR. BULMER: Wait a minute. Okay, I have
12 reviewed it.

13 Q. (By Ms. Gray) Mr. Marshall, is this a copy of
14 a fax cover sheet and invoice faxed during the course of
15 your lawsuit for fees against your former client, Lindia
16 Richard?

17 A. The cover sheet certainly indicates that but
18 it also indicates seven pages were sent and I can't say
19 whether this is a complete copy of what was sent or if
20 this was included, but from looking at the second page
21 it has the same date.

22 Q. It apparently is not a complete copy of what
23 was sent, which was eight pages overall; is that
24 correct?

25 A. It says seven pages plus this cover sheet.

1 Q. Right. And does it indicate in the front the
2 content, what the other pages may have been?

3 A. Let's see, here: Copies of invoices billed to
4 Lindia Richard.

5 Q. So, other than that this is incomplete, is
6 this a cover sheet and one of the faxed invoices faxed
7 from you to Smith Alling Lane on October 9th, 2003?

8 A. I wouldn't know for sure but I wouldn't argue
9 with it.

10 Q. And Smith Alling Lane was giving Mrs. Richard
11 some assistance with regard to your lawsuit for fees
12 against her, is that correct?

13 A. Yes.

14 Q. And the invoice on page 2, was that presented
15 to the court in that lawsuit for fees against
16 Mrs. Richard during summary judgment argument?

17 A. I would like to see the motion if we could,
18 please. We never argued the motion. You need to show
19 it to me, Ms. Gray, I don't know.

20 MR. BULMER: That's the answer.

21 Q. (By Ms. Gray) Well, with regard to the summary
22 judgment motion I'm going to show you a document that's
23 been marked for identification as 545. If you will look
24 at the entry on 545 at the bottom of page 2 and the top
25 of page 3 for October 9th, 2003.

1 A. October 9th did you say, ma'am?

2 Q. October 9th, 2003.

3 A. Yes, ma'am.

4 Q. Does that indicate that there was a summary
5 judgment argument on October 9th, 2003 in your lawsuit
6 against Mrs. Richard for fees?

7 A. This tells me, this refreshes my memory that
8 there was no motion for summary judgment argued.

9 Q. And this document is the court docket, is that
10 right, the computerized court docket?

11 MR. BULMER: Mr. Marshall -- may I ask my
12 client a question?

13 THE HEARING OFFICER: Why don't you
14 approach him and take a sidebar.

15 MR. BULMER: I just want to make sure
16 he's looking at the right date.

17 THE HEARING OFFICER: Unless you have an
18 objection, Ms. Gray.

19 MS. GRAY: I do not object.

20 (Off the record.)

21 Q. (By Ms. Gray) So, it's your testimony that
22 this refreshes your recollection that the summary
23 judgment was argued by Mr. Winkelhake on October 9th,
24 2003, is that correct?

25 A. Yes, ma'am. I believe that's correct.

1 Q. And Aaron Winkelhake, and that's
2 W-I-N-K-E-L-H-A-K-E, is that correct, Mr. Marshall?

3 A. That's right.

4 Q. And he was representing you in that matter, is
5 that correct?

6 A. He was representing the firm.

7 Q. And he was one of the employees of your firm
8 at the time?

9 A. Yes.

10 Q. Thank you, Mr. Marshall.

11 MS. GRAY: I offer Exhibit 154.

12 MR. BULMER: No objection.

13 THE HEARING OFFICER: 154 is admitted.

14 MS. GRAY: I'm handing the Hearing
15 Officer his copy.

16 Q. (By Ms. Gray) Now, if you would turn to I
17 think the second notebook of your exhibits and find
18 Exhibit 420.

19 A. 420, okay.

20 Q. And Exhibit 420 is a letter of March 25th,
21 2004 from the Office of Disciplinary Counsel to
22 Mr. Bulmer?

23 A. Yes.

24 Q. And in it it describes generally some issues
25 related to ODC's decision to begin the WSBA grievance?

1 2003, is that correct?

2 A. It indicates 2/20/03 but then it says sent on
3 2/17/03.

4 Q. Actually, doesn't it appear to be typewritten
5 2/10/03 with the 10 scribbled out and the 17 handwritten
6 up above?

7 A. Oh, maybe that's what it is, 2/10, yes.

8 Q. Now, the hours that are listed on this
9 invoice, are those all hours that you worked,
10 personally?

11 A. Yes.

12 Q. And so isn't it correct that right before,
13 during and right after January 21st, 2003 you were
14 working on the trial memorandum for the trial in the
15 Grand Chapter consolidated matters?

16 A. Yes.

17 Q. And January 21st, 2003 is the same date when
18 you sent letters to Mrs. Wormack and Mrs. Harris
19 referring to \$15,000 for financial arrangements?

20 A. Yes.

21 Q. If you would turn to Exhibit 277.

22 A. Yes.

23 Q. That's your trial memorandum dated
24 January 23rd, 2003, is that correct?

25 A. Yes.

1 Q. Is that the trial memorandum that's referred
2 to on the invoice that's the second page of Exhibit 154?

3 A. I don't know, I would assume so.

4 Q. Well, in this trial memorandum, Exhibit 277,
5 you don't mention any expert witnesses, do you?

6 A. I don't generally mention what witnesses will
7 necessarily be called.

8 Q. In the trial memorandum you don't mention
9 equitable relief wanted by Ms. Richard of expunging her
10 financial reports, do you?

11 A. Expunging her financial reports?

12 Q. Yes. If you will recall, the original
13 complaint filed by Mr. Lane in Mrs. Richard's case had
14 raised an issue of expunging certain reports that had
15 been submitted.

16 A. Um ...

17 Q. Let me ask the question a different way, it
18 might be simpler. You don't mention any equitable
19 relief in your trial memorandum regarding an accounting
20 system, is that correct?

21 A. I don't think I actually set forth the relief
22 at all. I just mentioned a concluding statement but I
23 wasn't very specific with my relief itemizations.

24 Q. Now, this trial memorandum, Exhibit 277, was
25 written for the benefit of both Mrs. Rheubottom and

1 Mrs. Richard, is that correct?

2 A. Yes, ma'am.

3 Q. And on the invoice, Exhibit 154, did you put
4 down all the time you spent writing the brief or only
5 half the time you spent writing the brief and
6 researching the brief?

7 A. It would have been significantly less, but
8 that's commonplace for me. What I took in consideration
9 in all the hours I billed to Ms. Richard was what my
10 normal hourly rate would be, and this is something she
11 and I discussed. And so for every hour that I put into
12 that case I billed Ms. Richard at \$175 an hour as
13 opposed to the 240 so that Ms. Richard wasn't paying for
14 work I was doing on behalf of Ms. Rheubottom.

15 Q. So, is your testimony that you worked more
16 than the hours reflected on this invoice in preparing
17 the trial memorandum, is that your testimony?

18 A. That's typically the case for me, yes.

19 Q. Well, are you assuming that you did that or do
20 you recall that you did that?

21 A. Oh, I know that I did that.

22 Q. And there are a lot of hours, you know, there
23 are 17 to 20 hours reflected on this invoice for
24 drafting the trial memorandum that's about 15 pages
25 long. Did it take you that long to write this brief?

1 A. Absolutely. What you will note from my brief
2 is that there's a number of -- there's research, legal
3 research that's contained within the brief itself.

4 Q. And did you do this legal research?

5 A. Yes, I did, or it's possible that I received
6 some work from someone else, but everything that was
7 billed to Ms. Richard was work I did personally.

8 Q. Well, do you recall doing any of the legal
9 research in January of 2003 for this brief?

10 A. Yes, I do.

11 Q. What do you recall?

12 A. There was an issue -- well, let me just take
13 you through this. There was an issue with respect to
14 vicarious liability that I wanted to nail down so that I
15 could hold the Chapter responsible for the conduct of
16 Ms. Simpson and Bennie Sue Wright.

17 Q. I'm sorry, before you go on, and I'll let you
18 go on, on this issue of the vicarious liability did you
19 do that research in January of 2003?

20 A. It may have been sometime in December that I
21 did it but it was a continuous thing because it was an
22 issue that came up throughout the case in the deposition
23 testimony. We had to nail that issue down.

24 Q. But I'm trying to figure out, you know, what
25 took so long in January of 2003 to write the brief. And

1 please, I interrupted you before.

2 A. I was going to answer your prior question.
3 Can I do that?

4 Q. Yes. I was just about to say, Mr. Marshall,
5 if you would go back, in looking through is there any
6 research or part that you remember working on in
7 January 2003?

8 A. Can I answer the prior question first, ma'am?

9 Q. I'm sorry, I've lost the prior question but go
10 ahead and answer it, whatever you think it is.

11 A. There was an issue of the breach of fiduciary
12 responsibility that was also a major issue in this case.
13 I needed to show Judge Glenna Hall those issues that I
14 thought we would be able to win on, and then I just laid
15 out some of the other theories. You can see that it's
16 heavily researched.

17 To answer your second question, I don't
18 know exactly whether all of the research was conducted
19 in December or some was done in January but I do know it
20 was a continuous issue and I wanted to make sure we were
21 on solid ground.

22 There were summary judgment motions that
23 were being filed by Mr. Thomson fairly routinely, or
24 some other motion of one type or another, and I needed
25 to be sure that I was on solid ground because he was

1 going to get it dismissed if I wasn't.

2 And it was a fairly novel case. There
3 wasn't a lot of case law dealing with non-profit
4 organizations involving people who were in these kind of
5 associations.

6 Q. You mentioned specifically the legal research
7 on page 8 under the breach of fiduciary responsibility
8 section.

9 A. Um-hum.

10 Q. That goes from page 8 to page 10.

11 A. Yes, ma'am.

12 Q. Do you recall whether or not you conducted any
13 of that research in January?

14 A. Ms. Gray, I can't say if all of the research
15 or if this particular bit of research was done in
16 December or January or even perhaps November, but I have
17 a section -- what I tend to do on my cases is I keep a
18 section, a whole section within the file on legal
19 research, so I can't say when that was done.

20 Q. And when you drafted this trial memorandum did
21 you dictate it?

22 A. Yes, I did.

23 Q. Do you do your own keyboarding?

24 A. I do. I'm very good at it, actually.

25 Q. But in this case you dictated this?

1 A. I dictated it.

2 Q. And then a member of your staff typed it up?

3 A. Kelly Lee typed it up.

4 Q. Now, this February 2003 invoice that's the
5 second page of Exhibit 154, you didn't attach it to the
6 summary judgment papers that you filed in your lawsuit
7 against Mrs. Richard for fees, did you? If you will
8 look at Exhibit 285 that might assist you.

9 A. Did you say 285, ma'am?

10 Q. Yes, 285. You have to go a fair bit into the
11 exhibit before you get a full copy of the papers, as
12 opposed to just the first pages, but I would ask you if
13 anywhere in the summary judgment papers that you filed
14 in Exhibit 285 does it mention the February 2003
15 invoice?

16 A. I don't know that we have a complete -- do we
17 have a complete declaration for Mr. Winkelhake?

18 Q. I believe further down in the exhibit you will
19 find the documents are submitted in their full form.

20 A. Okay. I don't see anything that references
21 it.

22 Q. Now, do you recall at your January 2004
23 deposition or one of your depositions that a complete
24 copy of your original accounting file for Lindia Richard
25 was made part of the deposition record?

1 A. Yes.

2 Q. And the fee agreement doesn't contain any
3 language about renewing or refreshing the \$1000 advance
4 payment after it's expended, does it?

5 A. I don't see the section that talks about that.

6 Q. Now, keeping with Mrs. Richard but now
7 focusing on your January 16th, 2003 meeting with
8 Mrs. Richard, do you recall testifying about that?

9 A. Could you --

10 Q. January, in your office on January 16th, 2003.
11 Mrs. Richard came and her husband was there and I
12 believe that the Rheubottoms were in the office that
13 day.

14 A. Yes, ma'am.

15 Q. With regard to the January 16th, 2003 meeting
16 that involved you, Mrs. Richard and Mr. Richard I'm
17 going to ask you some questions about that. Do you
18 recall testifying about that on direct last Thursday?

19 A. Yes, I do.

20 Q. And that occurred on January 16th, 2003,
21 correct?

22 A. You know, you have the dates. I don't recall
23 exactly the date, ma'am, I just remember the meeting.

24 Q. But do you recall testifying on direct
25 examination that you deposited the \$5000 that you

1 received after the meeting into trust to be drawn on as
2 hours were worked and billed?

3 A. That's what we did, yes.

4 Q. And do you recall testifying on direct
5 examination that the \$5000 that Mrs. Richard paid in
6 January was an advance on the fees that she would owe
7 you as you worked towards trial?

8 A. Correct.

9 Q. And do you recall testifying on direct
10 examination that if the \$5000 worth of hours weren't
11 worked that any part of the \$5000 not used would be
12 returned to her?

13 A. If we didn't do the work then we would refund
14 her the money.

15 Q. Isn't it a fact that at the time you received
16 the \$5000 in January of 2003 you thought the \$5000 was a
17 nonrefundable fee and you thought that the funds had
18 been deposited into your general account?

19 A. I didn't have a specific understanding of
20 where the funds -- my understanding was that the funds
21 were being put into our trust account and that the funds
22 would be kept there until the money was earned.

23 Q. And is it your testimony that that was your
24 understanding in January of 2003?

25 A. That's what I would have expected to have

1 happen, yes.

2 Q. If you will look at Exhibit 408.

3 A. Yes, ma'am.

4 Q. That's a letter from Mr. Bulmer to the Office
5 of Disciplinary Counsel regarding Mrs. Richard's
6 grievance, correct?

7 A. Um-hum.

8 Q. Now, if you will turn to the second page, do
9 you see the second full paragraph?

10 A. Yes.

11 Q. Does Mr. Bulmer say in this letter: "As for
12 the January 28, 2003 \$5000 payment, the gathering of
13 these records at your request has cleared up the
14 sequence of events concerning the handling of the funds.
15 Mr. Marshall thought then and thought until this
16 paperwork emerged that since the funds were for a
17 nonrefundable fee that they had been deposited to his
18 general account. However, the funds were apparently
19 deposited to trust on February 3rd, 2003 and then
20 removed on May 30th, 2003."

21 A. Um-hum.

22 Q. Do you see where it says that?

23 A. Yes.

24 Q. Isn't it correct that you thought then in
25 January 2003 that the \$5000 was a nonrefundable fee that

1 had been deposited to your general account?

2 A. No, I think there must have just -- the
3 nonrefundable retainer versus nonrefundable fee I think
4 is a mistake that was made there.

5 Q. Now, if you will turn to Exhibit 70, this is
6 the note Mrs. Richard sent you with the \$5000 payment,
7 correct?

8 A. Yes.

9 Q. And it refers to the agreement on
10 January 16th, 2003.

11 A. It makes mention, yeah, of the agreement that
12 she signed.

13 Q. And Mrs. Richard wrote on this "cashier's
14 check of \$5000 for retainer completing the PHGC case,"
15 is that correct?

16 A. Correct.

17 Q. And you never wrote back to Mrs. Richard
18 referencing this note, did you?

19 A. No, I wouldn't have had reason to.

20 Q. Now, if you will look at Exhibit 71 with
21 regard to the writing inside the box.

22 A. Right.

23 Q. The writing inside the box was all prepared by
24 your office, correct?

25 A. Yes.

APPENDIX E

SELECTED ABA STANDARDS

4.3 Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
 - (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another and causes serious or potentially serious injury to a client.
- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
- 4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
- 4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

4.4 *Lack of Diligence*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

- 4.41 Disbarment is generally appropriate when:
 - (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
 - (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

4.6 *Lack of Candor*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
- 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

- 4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

7.0 Violations of Duties Owed as a Professional

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

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