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Supreme Court No. 201,352-0

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE DISCIPLINARY PROCEEDING AGAINST

KATHRYN B. ABELE,

Lawyer (Bar No. 32763).

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**ANSWERING BRIEF OF THE  
OFFICE OF DISCIPLINARY COUNSEL  
OF THE WASHINGTON STATE BAR ASSOCIATION**

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 ORIGINAL

**TABLE OF CONTENTS**

I. COUNTERSTATEMENT OF THE ISSUES..... 1

II. COUNTERSTATEMENT OF THE CASE..... 2

    A. PROCEDURAL FACTS ..... 2

    B. SUBSTANTIVE FACTS..... 3

        1. The False Police Report (Count 2)..... 3

        2. Conduct Resulting in Contempt of Court (Count 1)..... 7

III. SUMMARY OF ARGUMENT ..... 15

IV. ARGUMENT..... 16

    A. STANDARD OF REVIEW ..... 16

    B. THE EVIDENCE AND FINDINGS OF FACT SUPPORT  
    THE CONCLUSIONS OF LAW..... 19

        1. The Evidence and Findings Support the Conclusion  
        That Respondent Knowingly Made a False Statement  
        to Law Enforcement (Count 2)..... 19

            a. Substantial Evidence Supports the Hearing  
            Officer’s Findings That Respondent was Not  
            Tripped and Knew She Had Not Been Tripped.....20

                i. Circumstantial Evidence is as Good as Direct  
                Evidence ..... 20

                ii. The ODC Offered Much More Than Simply  
                “Negative” Evidence ..... 22

            b. Substantial Evidence Establishes that Respondent  
            Knew That Her Statements were False (FFCL ¶¶  
            37, 39, 40, 41, 44, 45).....24

            c. Hearing Officer Properly Exercised His Discretion  
            Regarding Julie Herber’s Testimony, and Any  
            Error Was Harmless Because Ms. Herber Testified ...27

            d. The Hearing Officer Did Not Impermissibly Shift  
            the Burden to Respondent.....29

        2. The Evidence and Findings Support the Conclusion  
        that Respondent Engaged in the Conduct Resulting in  
        the Contempt of Court (Count 1)..... 31

a.	Substantial Evidence Supports FFCL ¶ 11 Regarding the Cause of Respondent’s Scream in August.....	31
b.	Substantial Evidence Supports the Hearing Officer’s Finding that Respondent Acted Intentionally .....	33
C.	THE COURT SHOULD AFFIRM THE DISCIPLINARY BOARD’S UNANIMOUS RECOMMENDATION OF A 12-MONTH SUSPENSION .....	37
a.	Suspension is Appropriate for Respondent’s False Report (Count 2) .....	37
b.	Suspension is Appropriate for Respondent’s Conduct Resulting in Contempt (Count 1) .....	38
c.	The ABA Standards Support a 12-Month Suspension .....	39
1.	The Record Supports All Three Aggravating Factors Found by the Hearing Officer and Board, As Well As a Fourth.....	39
a.	Dishonest and Selfish Motive .....	40
b.	Failure to Acknowledge Wrongful Nature of Her Conduct.....	41
c.	Substantial Evidence Supports the Aggravating Factor of Multiple Offenses .....	45
2.	Respondent Fails to Meet Her Burden of Proving the Mitigating Factors She Seeks.....	46
3.	The Board Recommended a 12-Month Suspension Unanimously .....	47
4.	Respondent Fails to Meet Her Burden of Proving that the Suspension is Disproportionate.....	47
V.	CONCLUSION.....	50

## TABLE OF AUTHORITIES

### Cases

<u>Hauswirth v. Pom-Arleau</u> , 11 Wn.2d 354, 119 P.2d 674 (1941).....	22
<u>In re Anshell</u> , 149 Wn.2d 484, 69 P.3d 844 (2003) .....	46
<u>In re Bonet</u> , 144 Wn.2d 502, 29 P.3d 1242 (2001).....	27
<u>In re Brothers</u> , 149 Wn.2d 575, 70 P.3d 940 (2003).....	49
<u>In re Burtch</u> , 162 Wn.2d 873, 175 P.3d 1070 (2008).....	18, 21
<u>In re Cohen (Cohen I)</u> , 149 Wn.2d 323, 67 P.3d 1086 (2003).....	17, 34, 49
<u>In re Cohen (Cohen II)</u> , 150 Wn.2d 774, 82 P.3d 224 (2004) .....	39
<u>In re Conteh</u> , 175 Wn.2d 134, 284 P.3d 724 (2012).....	48
<u>In re Cramer (Cramer I)</u> , 165 Wn.2d 323, 198 P.3d 485 (2008) .....	24
<u>In re Cramer (Cramer II)</u> , 168 Wn.2d 220, 225 P.3d 881 (2010) .....	48
<u>In re Dann</u> , 136 Wn.2d 67, 960 P.2d 416 (1998).....	34
<u>In re DeRuiz</u> , 152 Wn.2d 558, 99 P.3d 881 (2004) .....	49
<u>In re Dynan</u> , 152 Wn.2d 601, 98 P.3d 444 (2004).....	44
<u>In re Egger</u> , 152 Wn.2d 393, 98 P.3d 477 (2004).....	48
<u>In re Eugster</u> , 166 Wn.2d 293, 209 P.3d 435 (2009) .....	50
<u>In re Guarnero</u> , 152 Wn.2d 51, 93 P.3d 166 (2004) .....	16, 21, 36
<u>In re Halverson</u> , 140 Wn.2d 475, 998 P.2d 833 (2000).....	39
<u>In re Holcomb</u> , 162 Wn.2d 563, 173 P.3d 898 (2007).....	44
<u>In re Huddleston</u> , 137 Wn.2d 560, 974 P.2d 325 (1999).....	47
<u>In re Kamb</u> , 177 Wn.2d 851, 305 P.3d 1091 (2013).....	41, 44
<u>In re Kronenberg</u> , 155 Wn.2d 184, 117 P.3d 1134 (2005) .....	21
<u>In re Longacre</u> , 155 Wn.2d 723, 122 P.3d 710 (2005) .....	34, 46
<u>In re Marshall</u> , 160 Wn.2d 317, 157 P.3d 859 (2007) .....	16, 17, 18, 19, 27
<u>In re McGrath</u> , 174 Wn.2d 813, 280 P.3d 1091 (2012).....	16, 18
<u>In re Petersen</u> , 120 Wn.2d 833, 846 P.2d 1330 (1993).....	37
<u>In re Poole (Poole I)</u> , 156 Wn.2d 196, 125 P.3d 954 (2006) .....	45
<u>In re Poole (Poole II)</u> , 164 Wn.2d 710, 193 P.3d 1064 (2008).....	21

<u>In re Preszler</u> , 169 Wn.2d 1, 232 P.3d 1118 (2010).....	45, 49
<u>In re Rodriguez</u> , 177 Wn.2d 872, 306 P.3d 893 (2013).....	48
<u>In re Scannell</u> , 169 Wn.2d 723, 239 P.3d 332 (2010).....	16
<u>In re Schafer</u> , 149 Wn.2d 148, 66 P.3d 1036 (2003) .....	48
<u>In re Simmerly</u> , 174 Wn.2d 963, 285 P.3d 838 (2012).....	17, 18, 21, 27
<u>In re Starczewski</u> , 177 Wn.2d 771, 306 P.3d 905 (2013) .....	45
<u>In re Tasker</u> , 141 Wn.2d 557, 9 P.3d 822 (2000).....	49
<u>In re Trejo</u> , 163 Wn.2d 701, 185 P.3d 1160 (2008).....	46
<u>In re Van Camp</u> , 171 Wn.2d 781, 257 P.3d 599 (2011) .....	37
<u>In re VanDerbeek</u> , 153 Wn.2d 64, 101 P.3d 88 (2004) .....	48
<u>In re Whitney</u> , 155 Wn.2d 451, 120 P.3d 550 (2005).....	47
<u>In re Whitt</u> , 149 Wn.2d 707, 72 P.3d 173 (2003) .....	34
<u>Morse v. Antonellis</u> , 149 Wn.2d 572, 70 P.3d 125 (2003) .....	17
<u>Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C.</u> , 152 Wn.2d 387, 97 P.3d 745 (2004).....	21
<u>State v. Bencivenga</u> , 137 Wn.2d 703, 974 P.2d 832 (1999).....	17, 18, 28
<u>State v. Emery</u> , 174 Wn.2d 741, 278 P.3d 653 (2012) .....	30
<u>State v. Read</u> , 147 Wn.2d 238, 53 P.3d 26 (2002).....	30
<u>Sunderland Family Treatment Services v. City of Pasco</u> , 127 Wn.2d 782, 903 P.2d 986 (1995).....	17
<u>United States v. Burgos</u> , 94 F.3d 849 (4th Cir. 1996) .....	36

### **Rules of Professional Conduct (RPC)**

RPC 1.3 .....	49
RPC 1.4 .....	49
RPC 1.5 .....	48, 49
RPC 1.6 .....	48
RPC 1.7 .....	48, 49
RPC 1.10 .....	48
Former RPC 1.14 .....	49

Former RPC 1.15 .....	49
RPC 3.2 .....	49
Former RPC 3.3 .....	49
RPC 3.4 .....	49
RPC 3.4(c).....	2, 15, 31
RPC 3.5 .....	49
RPC 3.5(d) .....	2, 15, 31
Former RPC 5.3 .....	49
RPC 5.4 .....	49
RPC 8.4(b) .....	2, 15, 19, 37, 49
RPC 8.4(c).....	2, 15, 19, 37, 49
RPC 8.4(d) .....	2, 15, 19, 31, 37, 49
RPC 8.4(j) .....	2, 15, 31, 49

**Rules for Enforcement of Lawyer Conduct (ELC)**

ELC 11.2(b)(1).....	3
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**ABA Standards for Imposing Lawyer Sanctions (ABA Standards)**

ABA <u>Standard</u> 5.1 .....	2
ABA <u>Standard</u> 5.12.....	37, 38
ABA <u>Standard</u> 6.2 .....	2
ABA <u>Standard</u> 6.22.....	33, 38, 39
ABA <u>Standard</u> 9.32(d) .....	46
ABA <u>Standard</u> 9.32(d), cmt. ....	47
ABA <u>Standards</u> , Definitions .....	33, 34

**Evidence Rules (ER)**

ER 103(a) .....	27
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**Rules of Appellate Procedure (RAP)**

RAP 10.3(g) ..... 19

**Revised Code of Washington (RCW)**

RCW 9A.76.175 ..... 2, 19, 20, 37

**Other Authorities**

Former RLD 2.8(a) ..... 49

## I. COUNTERSTATEMENT OF THE ISSUES

1. The Court gives great deference to a hearing officer's mental state findings because the hearing officer's role is to evaluate the evidence and assess credibility. Here, Respondent falsely reported to police that a King County Court Marshall tripped her in the courthouse and, separately, Respondent engaged in such obstreperous and disruptive behavior in court that she was held in contempt. The primary issue at hearing was Respondent's state of mind. The hearing officer rejected Respondent's innocent explanations, resolved all credibility disputes against her, and drew reasonable inferences from the evidence. She asks this Court to adopt the version of the facts that the hearing officer rejected. Should the Court retry the facts?

2. The presumptive sanction for Respondent's conduct is suspension. The hearing officer and unanimous Disciplinary Board found three aggravating factors and only one mitigating factor. The recommended 12-month sanction is not disproportionate to sanctions in similar cases. Should the Court affirm the Disciplinary Board's unanimous sanction recommendation?

## II. COUNTERSTATEMENT OF THE CASE

### A. PROCEDURAL FACTS

In August 2012, the Office of Disciplinary Counsel (ODC) filed a formal complaint charging Respondent with two Counts of misconduct:

- Count 1: By engaging in the behavior that resulted in the court finding her in contempt, Respondent violated RPC 3.4(c), 3.5(d), 8.4(d), and /or RPC 8.4(j); and
- Count 2: By knowingly making a false and/or misleading statement to an officer of the Seattle Police Department, Respondent violated RPC 8.4(b) (by violating RCW 9A.76.175), RPC 8.4(c) and/or RPC 8.4(d).

BF 2.<sup>1</sup> The disciplinary hearing occurred in November 2013. The hearing officer entered his Findings of Fact, Conclusions of Law and Recommendation (FFCL) in December 2013.<sup>2</sup> BF 67. He concluded that the ODC proved each Count by a clear preponderance of the evidence. Id. ¶¶ 49-50.<sup>3</sup>

The hearing officer applied the American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) to find that the presumptive sanction for each Count was suspension under ABA Standards 5.1 and 6.2. FFCL ¶¶ 53-54.<sup>4</sup> The

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<sup>1</sup> In March 2013, ODC filed an Amended Formal Complaint, which charged a third count of misconduct. BF 13. The hearing officer dismissed count 3 during the hearing. TR 396-97. The dismissal is not challenged.

<sup>2</sup> The FFCL are attached as Appendix A.

<sup>3</sup> The pertinent RPC are attached as Appendix B.

<sup>4</sup> The pertinent ABA Standards are attached as Appendix C.

hearing officer found three aggravating factors (dishonest or selfish motive, refusal to acknowledge the wrongful nature of the misconduct, and substantial experience in the practice of law) and one mitigating factor (absence of a prior disciplinary record).<sup>5</sup> FFCL ¶¶ 59-60. The hearing officer recommended that Respondent be suspended for 12 months, undergo a fitness to practice evaluation and be deemed fit to practice, and reimburse ODC's costs. Id. ¶¶ 61-63.

In July 2014, following review under ELC 11.2(b)(1), the Disciplinary Board adopted the hearing officer's decision unanimously. BF 87.

## **B. SUBSTANTIVE FACTS**

### **1. The False Police Report (Count 2)**

On May 16, 2011, Respondent was in the King County Courthouse representing a client in a family law matter. FFCL ¶ 30; TR 201. While in the courtroom, Respondent became disruptive and the court requested that a court marshal come to the courtroom to "stand by." FFCL ¶ 30. King County Court Marshal Samuel Copeland responded to the request and stayed in the back of the courtroom for approximately 10 minutes. Id. Respondent went in and out of the courtroom several times while Marshal

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<sup>5</sup> The hearing officer also found that Respondent committed multiple offenses, but did not apply that aggravating factor. Compare, FFCL ¶¶ 47 with 59.

Copeland was there. Id. At one point, after Respondent had left the courtroom, Marshal Copeland heard a loud, agitated female voice in the hallway. Id. He investigated and discovered that it was Respondent who was loud. Id. He then asked her to quiet down, which angered her. Id. Respondent accused Marshal Copeland of harassing her. TR 207. Marshal Copeland told Respondent that she would be asked to leave the courthouse if she continued to be loud and disruptive. FFCL ¶ 31. Marshal Copeland then returned to the courtroom in an effort to de-escalate the situation. Id.; TR 207.

Respondent entered and exited the courtroom a few more times. TR 208. When in the courtroom, she repeatedly told Marshal Copeland that she did not respect him. TR 206-08. Marshal Copeland was not interacting with Respondent at the time of these comments, other than looking at her when she tried to catch his eye. Id. Eventually, Respondent left the courtroom, as did Marshal Copeland. TR 210.

Marshal Copeland headed to the Fourth Avenue entrance to the courthouse and, while on his way there, Respondent re-engaged him, yelling things like “someone should fart in your face.” FFCL ¶ 32. Marshal Copeland disengaged a second time, and walked to the nearby security checkpoint to join King County Marshal Gregory Webb. Id. Respondent followed Marshal Copeland to the checkpoint. TR 25, 212-

13, 467-68.

Marshal Webb had not previously met Respondent. TR 21. Respondent apparently believed that he was Marshal Copeland's supervisor. FFCL ¶ 33. She approached Marshal Webb in an animated, loud, and aggressive manner and informed him she was upset with Marshal Copeland. Id. After listening to Respondent for a short time, Marshal Webb told her to go about her business. Id. Respondent told Marshal Webb that he had to listen to her; he replied that he did not. Id. Respondent aggressively forced herself between the two marshals, slamming her binder down on the security podium and demanding their names. EX A-6 (2167-6 at 10:56:49-10:57:17); TR 25-27, 31-32, 44-45, 213-15.

During this conversation, Marshal Webb was seated on a chair with his back against the hallway wall and Marshal Copeland was standing facing him, approximately one foot away. FFCL ¶ 34. There was approximately six to eight feet of room between Marshal Copeland and the other side of the hallway, with few people passing by. FFCL ¶¶ 35, 40; EXs A-6, A-7; TR 222. Despite this, Respondent pushed between the two men, yelling: "Are you going to get out of my way?" FFCL ¶ 35. She passed between Marshal Copeland on her left and Marshal Webb on her right. EX A-6 (2167-6 at 10:57:18-10:57:24). Respondent's "choice

of aggressively coming in between the narrow space between Marshal Webb and Marshal Copeland caused [her] to brush Marshal Copeland's body and Marshal Webb's knee. When [her] body pushed Marshal Copeland, she caused him to move." FFCL ¶ 36; EX A-6 (2167-6 at 10:57:20-10:57:23); TR 214.

Immediately after passing between Marshals Webb and Copeland, Respondent turned Counterclockwise to face Marshal Copeland. FFCL ¶ 37; EX A-6 (2167-6 at 10:57:21-10:57:24); TR 222-23. She then pointed at Marshal Webb, yelled at him, and accused him of trying to trip her. FFCL ¶ 37; EX A-6 (2167-6 at 10:57:21-10:57:24); TR 222-23. Marshal Webb did not extend his leg or otherwise try to trip Respondent. FFCL ¶ 38. Respondent did not stumble or fall. Id. The courthouse surveillance video does not corroborate Respondent's version of events. FFCL ¶ 40; EX A-6. Respondent knew that Marshal Webb did not try to trip her, but was angry with him for failing to take action on her complaint regarding Marshal Copeland. FFCL ¶ 39; TR 213-14.

Soon after the exchange, Respondent used her cellular phone to call 911, reporting the alleged trip. FFCL ¶ 41; TR 488. Seattle Police Officer James Ritter arrived in response to the call. FFCL ¶ 41; EX A-7. Respondent reported to Officer Ritter that Marshal Webb had intentionally tripped her. FFCL ¶ 41; EX A-7; TR 257.

The hearing officer found that Respondent's version of events was not credible and that her statement to Officer Ritter was intentionally false and misleading. FFCL ¶¶ 40, 41, 44. Respondent knew that she had not been tripped, but she knowingly gave a false report to Officer Ritter after deliberately seeking "multiple exchanges with the Marshals in order to justify the filing of a complaint against one or both of them." FFCL ¶ 44; EX A-7; TR 264-65. This finding is consistent with Respondent's deposition testimony that, "What I say to a cop has no meaning to me." EX A-12 at 83.

Respondent's false report wasted law enforcement resources and subjected Marshal Webb to an internal investigation. FFCL ¶¶ 42, 45; TR 42-43. Her conduct both inside and outside the courtroom departed from the minimum standards of professionalism expected of attorneys and injured the profession and adversely reflected on her fitness to practice law. FFCL ¶ 46.

## **2. Conduct Resulting in Contempt of Court (Count 1)**

Also in 2011, Respondent represented the father in a parentage/custody action in Snohomish County Superior Court. FFCL ¶¶ 4, 6. The Honorable Anita Farris presided over the matter. TR 130-32. During pretrial proceedings, Respondent became upset with a ruling and, as the judge put it, got "slammy" – "where you slam around your books

and so forth.” TR 133-34; FFCL ¶ 5. She also interrupted the proceedings with loud, belligerent comments, reargued matters that had been ruled upon, and indicated that she was not going to participate fully in the proceeding when she did not like a ruling. FFCL ¶ 5; TR 134-35, 188-89.

This behavior continued through the 13-day trial. During the trial, Respondent was disruptive during the proceedings, blurting out remarks about witnesses and counsel and interrupting opposing counsel and the judge. FFCL ¶ 6. Her conduct made it difficult for the other attorneys to examine witnesses. *Id.* She did not stop when the court requested her to do so. In fact, she would increase the behavior or do other disruptive things such as loudly commenting on things the other lawyers or witnesses were doing, or talking during the court’s rulings. FFCL ¶¶ 6-7; TR 136-42, 197-98. As Judge Farris testified: “This was a pattern of behavior that went on throughout the trial that I tried to get to stop, and she would just look me in the eye and do it more.” TR 138-39. When warned about her loud, interruptive statements, Respondent would falsely respond: “I did not say anything.” *Id.* She referred to the court’s decisions as “wrong” and “stupid” in front of court staff. FFCL ¶ 7; TR 67-68.

During a post-trial hearing in August 2011, Respondent made it clear that she would be extremely angry if the matter did not conclude that

day. TR 149-51, 190. When the court indicated that it would not be possible to conclude that day, Respondent stated: "You've got to leave now. We have to take a break now." TR 151, 182-84. Judge Farris interpreted that comment as "I'm going to blow up" and called a recess. Id.; EX A-1 at 13; TR 150-51. After the judge left the bench, Respondent made a loud screaming noise that could be heard in other rooms in the courthouse. FFCL ¶ 11; TR 152, 174.

On September 28, 2011, the court held a two-hour hearing to resolve the final parenting plan. FFCL ¶ 12. Respondent and opposing counsel Janal Rich were present in the courtroom, and lawyer Richard Jones was present by telephone. Id. During this hearing, Respondent repeatedly interrupted the court and counsel, preventing the court from getting everything on the record. TR 155-58, 166-69, 178-80, 193-94. Judge Farris testified about the incident as follows: "I'm not talking about a little interruption. I mean over and over and over again. And I would request that she would stop, and she would not stop." TR 166. When Respondent persisted, Judge Farris put her impression of Respondent's scream during the August hearing on the record. FFCL ¶ 12. At this point, Respondent interrupted at a high volume, further disrupting the proceeding. Id. Judge Farris was concerned about Respondent's pattern of behavior and hoped that a warning would prevent further

transgressions. FFCL ¶ 13; TR 167. However, Respondent's interruptions prevented Judge Farris from accomplishing this or making the necessary changes to the parenting plan. FFCL ¶ 13.

Once Respondent began screaming, Judge Farris asked for security to be called. FFCL ¶ 15. At this point, Respondent turned to face the courtroom door, began to walk toward it, and yelled, "I'm going to jail, I'm going to jail!" *Id.*; TR 160-61. She repeatedly placed her hands over her head, crossed at the wrists or with her wrists close together as if handcuffed. FFCL ¶ 15; TR 160-61. She also "dramatically rocked her hands around, making occasional upward body thrusts with a motion and speed similar to calisthenics." FFCL ¶ 15; TR 160-61.

Ultimately, Respondent abruptly left the courtroom while the court was in session, causing the proceedings to come to a halt and leaving her client unrepresented. FFCL ¶ 16; TR 168-69, 179-80. Judge Farris testified that Respondent "knew fully well that I was about to put on the record her bad behavior during the trial. She knew that fully well. That's why she started to turn around and walk out. She did not want it on the record." TR 180. The court took a recess, during which time Respondent reentered the courtroom, told Ms. Rich that she was not going to participate further, and left the courtroom again. FFCL ¶ 16.

Meanwhile, the court asked security personnel to locate

Respondent and bring her back to the courtroom. FFCL ¶ 17. Snohomish County Court Marshal Patrick Miles approached Respondent in the courthouse hallway. Id. She was angry and stated that she would not go back to the courtroom. Id. Notwithstanding her statement, she did return to the courtroom, followed by Marshal Miles. Id.

When the hearing reconvened, Respondent continued to speak loudly and interrupted the court several times despite being asked to stop. FFCL ¶ 18. She yelled loudly to demonstrate what it sounded like when she “really yells,” and continued to display “loud, disrespectful conduct, interrupting the judge, waving her arms around in a histrionic and defiant manner. She defiantly invited being taken away in handcuffs.” Id.; TR 164-65. Marshal Miles observed furtive looks of concern on the faces of the court staff. FFCL ¶ 18; TR 289.

Judge Farris entered an order finding Respondent in contempt of court for her conduct on September 28, 2011. FFCL ¶ 19; TR 192-93. The finding was triggered by the accumulation and continuation of problems during the trial, primarily Respondent’s disruption of the proceedings. FFCL ¶ 19-20; TR 134, 136-39. Respondent’s conduct was intentional. FFCL ¶ 28; TR 168-69. She decided to not obey the tribunal, walked out of the courtroom during the proceedings, and repeatedly interrupted the judge during the hearing. FFCL ¶ 28; TR 168-69.

Judge Farris tried diligently to prevent Respondent from being the subject of a disciplinary proceeding:

And I didn't bring this complaint, as you all know. I did not complain to the Bar about her. I also -- You know, I could have done a lot worse. My intent was that she not end up in a hearing like this. My intent was that she have a wake-up call so that she didn't get here. [ . . . ] I know judges if she had done this behavior in front of, there would have been a lot of trouble.

TR 167-68. Judge Farris, opposing counsel Janal Rich, court reporter Sheralyn Barton, and Marshal Patrick Miles all testified that they had never before seen behavior like Respondent's by a lawyer. FFCL ¶¶ 20-21; TR 90, 168-69, 295; EX A-14 at 27, 54. According to Marshal Miles, "There is no other attorney that misbehaves like [how Respondent acted on September 28, 2011]." TR 295.

After the hearing, Respondent exited the courtroom and yelled: "that bitch!" FFCL ¶ 24. She proceeded to the Snohomish County Bar Association office, continuing to behave in an agitated manner, at one point swearing at one of the marshals. FFCL ¶ 26. Ms. Rich, who had been present for the hearing, was so shaken by Respondent's conduct at the hearing that she requested that a marshal escort her. FFCL ¶ 25.

Judge Farris ordered Respondent to contact the Lawyers' Assistance Program (LAP) to purge the contempt. FFCL ¶ 19. Despite

her statements that she would not contact LAP, Respondent complied with the order in a timely manner. FFCL ¶¶ 19, 27.

Respondent caused problems outside the courtroom as well. While the matter was pending, Ms. Rich had to institute office procedures specific to Respondent. FFCL ¶ 9; TR 68-71. She instructed her staff to put Respondent's calls through to her voicemail because Respondent yelled at Ms. Rich's staff on the phone. FFCL ¶ 9; TR 68-71. Respondent's prior opposing counsel had to institute the same procedure for the same reason. TR 68-71. Ms. Rich described Respondent's other behavior outside the courtroom – including referring to the court's rulings as “stupid” – as bordering on unprofessional. TR 66-68.

Respondent's disruptive behavior extended beyond this matter. As Snohomish County Court Marshal Patrick Miles testified:

We have been taking call after call after call with her, with her clients. We are well aware when she now enters the building, and we're just watching her. There was just an outburst a few months ago where I'm standing over by the security table, and there's yelling at the elevator. And I look over towards the elevator, and I see Ms. Abele standing in the elevator, and a lady in a wheelchair. And I have an Everett police detective come to me and staff come to me saying, [remainder stricken following a hearsay objection]. So -- So that's not of a level of writing a report. That is offensive. It's not propriety. It's not decent. It's not mannerly, especially for an attorney, but it doesn't surprise me. You know. And I just had an incident with her in the

last two weeks, last month, dealing with one of her clients.  
So we're well aware of it, of her behavior issues.

TR 293-94. Following the events of September 28, 2011, the Snohomish County Court Marshals decided “that if we were going to have any more serious incidents, we're now going to document anything that happens with Kathryn Abele.” TR 294.

King County Marshals experienced similar problems with Respondent. Marshal Webb testified that he previously had coordinated requests for “standbys” (having a marshal present in the courtroom) from judges or bailiffs involving Respondent, and Marshal Copeland testified that the courthouse staff had a “past history or issues with this specific attorney” TR 21-22, 204.

At the disciplinary hearing, Respondent testified that she has a hearing disability that makes it difficult for her to modulate the volume of her voice. TR 449-50. The hearing officer found that this claim was unsupported by medical evidence and was not credible. FFCL ¶ 22. Instead, the hearing officer found that Respondent modulated the volume of her voice for effect, reinforcing her verbal message with disruptive physical gestures during the hearing. FFCL ¶ 28; EX A-1; TR 145-46, 160-61, 290.

Respondent’s conduct in court on September 28, 2011, adversely

affected the proceedings, requiring a recess, security, and extensive colloquy that would not have otherwise been necessary. FFCL ¶ 23; EX A-1; TR 169. Consequently, it injured the legal proceeding because it disrupted the proceeding itself. FFCL ¶ 23; EX A-1; TR 169. Respondent's conduct also potentially injured her client because she left the courtroom, potentially subjecting her client to a lack of representation during ongoing proceedings. FFCL ¶ 29; TR 82, 169.

### **III. SUMMARY OF ARGUMENT**

Respondent Kathryn Abele engaged in ongoing obstreperous and disruptive conduct in a Snohomish County Court proceeding that resulted in the court holding her in contempt (Count 1). She also falsely reported to the police that a King County Court Marshal tripped her in the courthouse (Count 2). The hearing officer found that Respondent violated RPC 3.4(c), 3.5(d), 8.4(b), 8.4(c), 8.4(d), and 8.4(j). The hearing officer recommended a one-year suspension, with reinstatement conditioned on the successful completion of a fitness to practice evaluation. FFCL ¶¶ 61-62. The Disciplinary Board unanimously affirmed. BF 87.

Respondent asks the Court to reverse the hearing officer's credibility determinations and adopt the version of events that the hearing officer rejected. The Court has never done so and should not do so here.

Substantial evidence in the record supports the hearing officer's findings and conclusions. Suspension is the appropriate sanction.

#### IV. ARGUMENT

##### A. STANDARD OF REVIEW

Unchallenged findings of fact are verities on appeal. In re Marshall, 160 Wn.2d 317, 329-30, 157 P.3d 859 (2007). When challenged on appeal, a hearing officer's findings of fact will be upheld where they are supported by substantial evidence. In re Guarnero, 152 Wn.2d 51, 58-59, 93 P.3d 166 (2004). The Court upholds challenged factual findings if they are supported by substantial evidence, even if the evidence is disputed. In re McGrath, 174 Wn.2d 813, 818, 280 P.3d 1091 (2012). "Substantial evidence supports a finding if the record would persuade a fair and rational person that the finding is true." In re Scannell, 169 Wn.2d 723, 737, 239 P.3d 332 (2010). "Even if there are several reasonable interpretations of the evidence, it is substantial if it reasonably supports the finding. And circumstantial evidence is as good as direct evidence." McGrath, 174 Wn.2d at 818 (quotation omitted). The substantial evidence standard requires the reviewing body to view the evidence and the reasonable inferences "in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority."

Sunderland Family Treatment Services v. City of Pasco, 127 Wn.2d 782, 788, 903 P.2d 986 (1995).

The Court defers to the hearing officer with respect to witness credibility, In re Simmerly, 174 Wn.2d 963, 988, 285 P.3d 838 (2012), because the hearing officer has had direct contact with the witnesses and is best able to make such judgments, Marshall, 160 Wn.2d at 330; see generally Morse v. Antonellis, 149 Wn.2d 572, 70 P.3d 125 (2003) (overturning Court of Appeals for substituting its credibility determination for that of the jury). The hearing officer is entitled to draw reasonable inferences from circumstantial evidence. See In re Cohen (Cohen I), 149 Wn.2d 323, 332-33, 67 P.3d 1086 (2003). It is the role of the fact finder, not the reviewing court, to draw such inferences: “An essential function of the fact finder is to discount theories which it determines unreasonable because the finder of fact is the sole and exclusive judge of the evidence, the weight to be given thereto, and the credibility of the witnesses.” State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). The ODC is not required to disprove a Respondent’s theory of the case simply because circumstantial evidence is involved; the hearing officer is entitled to disbelieve the Respondent’s version of the facts. Simmerly, 174 Wn.2d at 982. “Even if there are several reasonable interpretations of the evidence, it is substantial if it reasonably supports the finding. And circumstantial

evidence is as good as direct evidence.” McGrath, 174 Wn.2d at 818 (quotation omitted). It is the role of the factfinder, not the reviewing court, to draw such inferences. Bencivenga, 137 Wn.2d at 709.

Parties challenging factual findings must not simply reargue their version of the facts but, instead, must argue “why the specific findings are unsupported and cite to the record to support that argument.” Marshall, 160 Wn.2d at 331; Simmerly, 174 Wn.2d at 985, 988-89 (declining to consider challenges without specific citation to the record). The Court will not overturn findings “based simply on an alternative explanation or versions of the facts previously rejected by the hearing officer . . . .” Marshall, 160 Wn.2d at 331; In re Burtch, 162 Wn.2d 873, 895, 175 P.3d 1070 (2008) (Court ordinarily will not disturb findings made on conflicting evidence).

The Court reviews conclusions of law de novo and upholds them if supported by the findings of fact. Simmerly, 174 Wn.2d at 981. The Court also reviews sanction recommendations de novo but will uphold a unanimous Board recommendation absent “a clear reason for departure.” McGrath, 174 Wn.2d at 832 (quotation omitted).

**B. THE EVIDENCE AND FINDINGS OF FACT SUPPORT THE CONCLUSIONS OF LAW**

It is unclear which Findings of Fact and Conclusions of Law (FFCL) Respondent challenges. She challenges only one specific FFCL by number – FFCL ¶ 40.<sup>6</sup> RB 27. It appears from her brief that she also challenges factual findings FFCL ¶¶ 37, 38, 39, 41, 43, and 44, and conclusion of law FFCL ¶ 50 (with respect to Count 2), factual findings FFCL ¶¶ 11, 28, and 29 (with respect to Count 1), and conclusions of law FFCL ¶¶ 47, 48, 53, 56, 59, 60, and 61 (with respect to the sanction). But she simply reiterates the testimony and arguments that the hearing officer and Disciplinary Board rejected. This is insufficient to overturn factual findings. Marshall, 160 Wn.2d at 331.

**1. The Evidence and Findings Support the Conclusion That Respondent Knowingly Made a False Statement to Law Enforcement (Count 2)**

Count 2 charged Respondent with knowingly making a false and/or misleading statement to an officer of the Seattle Police Department in violation of RPC 8.4(b) (by violating RCW 9A.76.175), RPC 8.4(c), and/or 8.4(d). BF 2. With respect to the charged violation of RPC 8.4(b), therefore, ODC was required to prove that Respondent 1) acted knowingly

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<sup>6</sup> Rule of Appellate Procedure (RAP) 10.3(g) requires that a party assign error to specific findings of fact by number. “The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.” RAP 10.3(g).

when she 2) made a false or misleading statement, 3) to a public servant, and 4) that the statement was material (i.e., was reasonably likely to be relied upon by a public servant in the discharge of his official duties). RCW 9A.76.175. Respondent concedes that ODC proved that her statement was material and made to a public servant. RB 12, 16. She argues that she believed she had been tripped by a court marshal, and therefore her statement was neither false nor knowingly made. But the hearing officer properly found that Marshal Webb did not trip Respondent and she knew it.

- a. Substantial Evidence Supports the Hearing Officer's Findings That Respondent was Not Tripped and Knew She Had Not Been Tripped
  - i. Circumstantial Evidence is as Good as Direct Evidence

Respondent argues that the hearing officer's finding that Respondent knew that she had not been tripped is supported only by speculative, circumstantial evidence. RB 17-25. But the direct and circumstantial evidence amply supports the hearing officer's findings that Respondent intentionally made a false report to law enforcement. FFCL ¶ 44.

Circumstantial evidence is as good as direct evidence, including as proof of mental state. See, e.g., In re Kronenberg, 155 Wn.2d 184, 191,

117 P.3d 1134 (2005). In In re Guarnero, this Court held that circumstantial evidence alone can constitute substantial evidence to support the hearing officer's findings. 152 Wn.2d at 61. In In re Simmerly, this Court held that ODC is not required to disprove Respondent's theory of the case simply because circumstantial evidence is involved. 174 Wn.2d at 848. By doing so, the Court clarified that the holding in Guarnero only means that, "if the hearing officer believes two possible explanations are reasonable, then the WSBA has not met its burden." Id. However, the Court clearly stated that the hearing officer is free to disbelieve a Respondent's version of events and make findings accordingly:

The hearing officer is still entitled to make credibility determinations, which we give great weight to, when evaluating an alternative explanation. Id. The attorney "must argue why the findings are not supported by the evidence and cite to the record in support of the argument." Id. at 725, 193 P.3d 1064. If there is conflicting evidence, this court typically will not disturb the findings. Id. (citing In re Disciplinary Proceedings Against Burch, 162 Wash.2d 873, 895, 175 P.3d 1070 (2008)). And as stated above, when evaluating evidence, "circumstantial evidence is as good as direct evidence." Rogers Potato Serv., LLC, 152 Wash.2d at 391, 97 P.3d 745.

Id. at 982-83; see also, In re Poole (Poole II), 164 Wn.2d 710, 724-25, 193 P.3d 1064 (2008).

As in Simmerly, the hearing officer here found that Respondent's proffered explanation was not reasonable, leaving only one reasonable inference to be drawn from the evidence: that Respondent knew that she had not been tripped. Nothing in Guarnero or its progeny require the hearing officer to believe the Respondent. The hearing officer's findings are supported by substantial evidence, as discussed below.

ii. The ODC Offered Much More Than Simply  
"Negative" Evidence

Respondent argues that ODC offered only the "negative" evidence of Marshal Copeland, who testified that he could not see past Respondent to see what happened at the moment of the alleged tripping, to establish that Marshal Webb did not trip Respondent. RB 20-21. Respondent cites Hauswirth v. Pom-Arleau, 11 Wn.2d 354, 119 P.2d 674 (1941), to support the argument that "negative" evidence does not constitute sufficient evidence to support factual findings. RB 18, 20-21. In Hauswirth, the jury found that the defendant was driving without lights at the time of the accident based solely on the testimony of one witness who merely stated that he saw no lights. 11 Wn.2d at 366-67. Additionally, this "negative" evidence was contradicted by other evidence indicating that the lights were on at the time of the accident. Id. The appellate court reversed the finding that the defendant was driving without lights. Id.

Hauswirth is inapplicable here. Here, unlike Hauswirth, substantial “positive” evidence supports the finding that Marshal Webb did not trip Respondent:

- Marshal Webb testified that he did not trip Respondent. TR 44.
- Marshal Webb had both feet up on the chair rungs when Respondent initially approached him. TR 469. Marshal Copeland testified: “I saw his [Webb’s] boots were still on the chair after she went by. So unless he’s The Flash, that [tripping] could not happen.” TR 227.
- The surveillance video showed that Respondent’s head does not bobble as she passes between Marshals Webb and Copeland, as would happen if she tripped or stumbled. EX A-6 (2167-6 at 10:57:21 – 10:57:35).
- The surveillance video showed that, after passing between Marshals Webb and Copeland, she turns to her left, to yell at Marshal Copeland, rather than turning toward Marshal Webb on her right, as would be expected if she believed that Marshal Webb had tried to trip her. Id.
- The surveillance video showed that, after Respondent passed between the marshals, Marshall Copeland’s expression does not change as might be expected if Marshall Webb, seated only 12 inches away, had just tripped Respondent. Id.
- Marshal Webb had never met Respondent before, and had no incentive to trip her. TR 21.

This substantial “positive” evidence supports the finding that Marshal Webb did not trip Respondent.

b. Substantial Evidence Establishes that Respondent Knew That Her Statements were False (FFCL ¶¶ 37, 39, 40, 41, 44, 45)

Respondent does not challenge the finding that Marshal Webb did not extend his leg or try to trip her and that she did not stumble or fall. FFCL ¶ 38. This finding is therefore a verity. Instead, Respondent's primary challenge to Count 2 is that she did not act "knowingly" when she made a false police report. This Court gives great weight to a hearing officer's findings regarding state of mind. See, e.g., In re Cramer (Cramer I), 165 Wn.2d 323, 332, 198 P.3d 485 (2008).

Here, the hearing officer found that:

- Immediately after she passed between Marshals Webb and Copeland the second time, Respondent turned Counterclockwise to face Marshal Copeland. FFCL ¶ 37. She then pointed at Marshal Webb and yelled at him, falsely accusing him of trying to trip her. Id.
- Respondent knew that Marshal Webb did not trip her, but was angry at him for failing to take action on her complaints against Marshal Copeland after their interaction in the hallway outside W-278. FFCL ¶ 39.
- The surveillance video from the courthouse (EX A-6) does not support Respondent's claim that she was tripped. FFCL ¶ 40. Respondent's version of the incident is not credible. Id. Respondent's interactions and behavior with Marshal Copeland and Marshal Webb demonstrates that Respondent was the aggressor, moving into them when there was ample room to take another route in the hallway. Id.
- Soon thereafter, Respondent called 911 using her mobile phone. FFCL ¶ 41. Seattle Police Officer Ritter arrived, and Respondent reported that Marshal Webb intentionally tripped

her. Id. This statement was false and misleading. Id.

- Respondent's conduct on May 16, 2011, was intentional when she knowingly gave a false report to law enforcement personnel, falsely accusing Marshal Greg Webb of assault. FFCL ¶ 44. Respondent was not tripped, and she knew that she had not been tripped. Id.
- In addition, the surveillance video and testimony of witnesses demonstrates that Respondent deliberately sought multiple exchanges with the Marshals in order to justify the filing of a complaint against one or both of them. Id.
- Respondent's conduct on May 16, 2011, wasted law enforcement resources and subjected Marshal Webb to an internal investigation that never should have taken place. FFCL ¶ 45.

Respondent argues that ODC offered only one piece of objective evidence – the surveillance video – and circumstantial evidence to establish that she knew she had not been tripped. RB 19. This argument ignores the bulk of the evidence admitted at the hearing. Contrary to Respondent's assertion, ODC offered substantial evidence to support the finding that Respondent was not tripped, and the reasonable inference that she knew that she had not been tripped. In addition to the "positive" evidence listed above, this evidence includes:

- "Marshal Webb did not extend his leg or try to trip Respondent. Respondent did not stumble or fall." FFCL ¶ 38.
- Marshal Copeland's testimony that he did not see any indication that Marshal Webb tripped Respondent, that he is 100% certain that Marshal Webb did not trip her, and that it was "just not something that he would do." TR 225-26.

- Respondent's testimony that she "felt a shin against my shin."<sup>7</sup> And I corrected myself from a trip," TR 486-87, that she "fell. Lurched forward," EX A-12 at 184, and "lurched forward and caught myself," EX A-12 at 186, all despite the fact that the surveillance video shows no bobble by Respondent. EX A-6 (2167-6 at 10:57:21-10:57:35).
- Respondent tried unsuccessfully twice to engage Marshal Copeland in a confrontation. TR 206-08, 211-12. Respondent then tried to engage in a confrontation with Marshal Webb. TR 25-26, 213-14.
- Respondent's behavior toward Marshal Copeland leading up to the incident, including telling him that she did not respect him and would not listen to him, and claiming that he was harassing her when he simply asked her to be quieter, repeatedly telling him that she did not respect him when he was standing quietly in the courtroom, and telling him that someone should "fart in his face" for no apparent reason. TR 25, 206-08, 211-12.
- Respondent's behavior toward Marshals Copeland and Webb at the entrance to the courthouse, including aggressively forcing herself between them when they were approximately 12 inches apart, slamming her binder down on the security podium, demanding their names, and then pushing between them again, forcing Marshal Copeland to take a step back. TR 25-27, 31-32, 44-45, 213-15.
- Respondent had no reason to force her way between Marshals Copeland and Webb, who were approximately 12 inches apart, when there was ample room (7-8 feet) behind Marshal Webb in which to pass. TR 221-23; EX A-6.
- Respondent's overall disdain for law enforcement, including her deposition testimony, that "What I say to a cop has no meaning to me." EX A-12 at 83-84.

Based on all the evidence, the hearing officer reasonably could infer that

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<sup>7</sup> Given their respective positions, Marshal Webb's knee would have grazed Respondent's thigh. TR 32, 220-21, 223; EX A-6.

Respondent knew Marshal Webb did not trip her and that she knowingly made a false police report.<sup>8</sup>

c. Hearing Officer Properly Exercised His Discretion Regarding Julie Herber's Testimony, and Any Error Was Harmless Because Ms. Herber Testified

Respondent curiously argues that the hearing officer improperly excluded the testimony of Julie Herber because it did not fall within the excited utterance hearsay exception. RB 28-29. But Ms. Herber testified to precisely the information that Respondent claims was excluded. TR 350-54.

A hearing officer's evidentiary rulings are reviewed for abuse of discretion. Marshall, 160 Wn.2d at 341. "An abuse of discretion occurs only when no reasonable person would take the view adopted." In re Bonet, 144 Wn.2d 502, 510, 29 P.3d 1242 (2001). Any error in excluding evidence is harmless unless the evidence would have affected a substantial right of a party. ER 103(a).

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<sup>8</sup> Respondent relies on the testimony of Rakesh Pai to support her argument that she believed that she had been tripped. RB 25-26. Mr. Pai testified that Respondent held onto the metal detector post or security bar after passing between Marshalls Webb and Copeland. TR 477-78. The hearing officer found that Mr. Pai's testimony was not credible because the metal detector and security station were several feet from the location of Respondent's encounter with the marshals, rendering it impossible for her to grab onto them. FFCL ¶ 43. The hearing officer's credibility determination is given great weight, and should not be reversed simply because Respondent disagrees with his assessment. Simmerly, 174 Wn.2d at 982-83. Regardless, it is unclear how Mr. Pai's testimony at the hearing would support Respondent's belief at the time of the misconduct.

Here, Ms. Herber was asked to testify regarding the content of two phone conversations she had with Respondent on May 16, 2011. TR 343-54. Initially, ODC objected to this line of testimony as hearsay, and the hearing officer ruled that the testimony of the conversation must qualify as an excited utterance to be admissible. TR 344-49. However, after laying additional foundation, Ms. Herber proceeded with her testimony about the telephone calls. TR 350-54. The hearing officer ultimately overruled ODC's hearsay objection and allowed Ms. Herber's testimony, stating that he wished to give Respondent "latitude." TR 351-52. Ms. Herber's testimony regarding the content of the telephone calls - including her perception of Respondent's state of mind - was not excluded.

The hearing officer did not abuse his discretion by initially ruling that the testimony must qualify as an excited utterance. Further, any error was harmless because the testimony came into the record when he changed his ruling. TR 343-54. The hearing officer considered Respondent's statements to Ms. Herber, but found them unpersuasive in light of all the evidence. FFCL ¶ 44 (finding that Respondent was not tripped and knew that she had not been tripped). Such weighing of evidence is precisely what fact finders must do. Bencivenga, 137 Wn.2d at 709.

d. The Hearing Officer Did Not Impermissibly Shift the Burden to Respondent

Respondent argues that the hearing officer's ruling regarding Ms. Herber's testimony, as well as FFCL ¶ 40, suggests that he impermissibly shifted the burden of proof from ODC (to prove that Respondent was not tripped and knew that she was not tripped) to Respondent (to prove that she was tripped). RB 27-31. She cites no authority to support this concept. Id.

FFCL ¶ 40 states:

The surveillance video from the courthouse (Exhibit A-6) does not support Respondent's claim that she was tripped. Respondent's version of the incident is not credible. Respondent's interactions and behavior with Marshal Copeland and Marshal Webb demonstrates that Respondent was the aggressor, moving into them when there was ample room to take another route in the hallway.

Respondent asserts that this finding demonstrates that the hearing officer required Respondent to prove the tripping. RB 30-31. To the contrary, this finding simply demonstrates that the hearing officer did not believe one of two possible conclusions from the evidence presented to him – that Respondent was tripped. Respondent was allowed to submit evidence to support her belief that she had been tripped. The hearing officer simply did not believe it.

There is case law addressing the allegation that a party, such as the prosecutor in a criminal case, impermissibly shifted the burden to the other party. See, e.g., State v. Emery, 174 Wn.2d 741, 278 P.3d 653 (2012). But in those instances, the test is whether the alleged burden-shifting action was improper and, if so, whether it was incurable and prejudicial. Id. ODC was unable to find any cases that addressed an allegation that the fact finder shifted the burden. However, the hearing officer is presumed to know the law and properly apply it to the facts. State v. Read, 147 Wn.2d 238, 245, 53 P.3d 26 (2002). Here, ODC argued that it had the burden of proof, BF 49 at 2-3, and the hearing officer was clearly aware of ODC's burden. See FFCL at 11 ("the hearing officer finds that the Association proved the following"). Respondent did not demonstrate otherwise.

As noted above, Respondent does not establish that the hearing officer's ruling regarding Ms. Herber's testimony, and his findings in FFCL ¶ 40, were improper. However, even assuming there was error, it was not prejudicial. To determine whether any alleged shifting was prejudicial, the reviewing court determines whether it would affect the ultimate decision, looking not just at the action in isolation "but in the context of the total argument, the issues in the case, the evidence, and the instructions given to the jury." Emery, 174 Wn.2d at 764 n.14. Given the

volume of evidence in this matter, the fact that Ms. Herber's testimony was allowed, the presumption that the hearing officer applied the law properly, and the argument and references to ODC's burden of proof in the FFCL, Respondent's argument that the hearing officer improperly shifted the burden is wholly unsupported.

**2. The Evidence and Findings Support the Conclusion that Respondent Engaged in the Conduct Resulting in the Contempt of Court (Count 1)**

Respondent minimizes her behavior in Snohomish County, calling it an "isolated instance" and a "rare, emotional outburst," and attributes her misconduct to Judge Farris's inability to control the courtroom or to admonish her more. RB 36, 40. To the contrary, Respondent's conduct on September 28, 2011, was a continuation of her long-running disruptive behavior in that proceeding and beyond. Time and time again the trial judge was required to address Respondent's behavior, placing an unreasonable burden on the court in a case that was already contentious. See, pp 7-13, above. The hearing officer's finding that Respondent violated RPC 3.4(c), 3.5(d), 8.4(d), and 8.4(j) as charged in Count 1 is supported by substantial evidence.

a. Substantial Evidence Supports FFCL ¶ 11 Regarding the Cause of Respondent's Scream in August

FFCL ¶ 11 states:

After the judge left the bench, it is undisputed that

Respondent made a loud screaming noise that could be heard in other rooms of the courthouse. There was conflicting testimony on the cause of this and it remains unclear. Judge Farris herself was not present in her courtroom at the time and did not find the Respondent in contempt for this scream.

Respondent argues that ODC offered purely speculative evidence to support the FFCL ¶ 11. RB 36-37. But there is substantial evidence to support this finding, including:

- Janal Rich and Richard Jones testified that, after Judge Farris left the bench, Respondent made a loud expression of pain because, they believe, she hurt her hip. TR 84-85, 115-16.
- Respondent testified that she twisted her hip, causing her cry out in pain. TR 404-07; EX A-1 at 14, EX A-12 at 39.
- Judge Farris testified that she did not know the cause of the outburst because she was not in the room at the time, but heard “a really loud noise of frustration” causing her to jump in chambers, and her staff told her it was just “Ms. Abele being Ms. Abele.” TR 151, 174, 189-90.

Respondent takes issue with the finding regarding the cause of the screaming noise made in the late August hearing. RB 36. But, as set forth in the finding itself, the testimony was conflicting. In any event, the cause of the scream at the August hearing is irrelevant. Respondent was not held in contempt for anything that happened at the August hearing in which she screamed. FFCL ¶ 11; TR 191, 193. As stated by Judge Farris: “To me that's irrelevant [whether Respondent's hip popped causing her to exclaim in pain] because her behavior was bad for 13 days straight. That

was not the only day.” TR 153.

b. Substantial Evidence Supports the Hearing Officer’s Finding that Respondent Acted Intentionally

The hearing officer found that Respondent acted intentionally when she interrupted the judge, made disruptive physical gestures, disobeyed the tribunal, and walked out of the courtroom during the proceedings, on September 28, 2011.<sup>9</sup> FFCL ¶ 28. Respondent claims she acted negligently when she engaged in a “purely emotional reaction.” RB 33-34. However, Respondent’s long-running disruptive behavior in the Snohomish County proceedings belies this argument. See, pp 6-13, above.

The ABA Standards define “intent” as “the conscious objective or purpose to accomplish a particular result.” ABA Standards, Definitions at 17. “Knowledge” is defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” Id. Finally, the Standards define “negligence” as “the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would

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<sup>9</sup> Notably, the ABA Standard that the hearing officer applied to this count requires only that the lawyer know that she is violating a court order or rule. See, ABA Standards § 6.22. It does not require intentional conduct.

exercise in the situation.” Id. The evidence supports the hearing officer’s finding.

The hearing officer’s determination that Respondent acted intentionally is a factual finding to be given great weight on review. In re Longacre, 155 Wn.2d 723, 744, 122 P.3d 710 (2005) (hearing officer is in the best position to determine the applicable mental state based on the evidence presented). The hearing officer was not required to accept, and did not accept, Respondent’s self-serving testimony that she was unable to control the volume of her voice. FFCL ¶¶ 8, 22. See In re Whitt, 149 Wn.2d 707, 722, 72 P.3d 173 (2003); In re Dann, 136 Wn.2d 67, 78-79, 960 P.2d 416 (1998).

Respondent argues that ODC offered only speculation to prove her mental state. RB 2. Yet Respondent concedes that mental state generally is proven through circumstantial evidence from which the hearing officer may draw reasonable inferences. RB 33; see also Cohen I, 149 Wn.2d at 332-33. Here, substantial evidence supports the finding that Respondent acted intentionally, including:

- Judge Farris repeatedly warned Respondent about her conduct. TR 136.
- In pretrial proceedings, Respondent did not cease her disruptive behavior when asked to do so, but instead increased the behavior or did other disruptive things such as loudly commenting on things the other lawyers or witnesses were

doing, or talking during the court's rulings. FFCL ¶ 7; TR 133.

- When warned about her loud, interruptive statements, Respondent would falsely respond: "I did not say anything." FFCL ¶ 7; TR 139-40.
- During the proceeding, Respondent repeatedly interrupted the court and counsel with her loud comments, preventing the court from getting everything on the record. TR 155-58, 166-69, 178-80, 193-94. She did not stop, even after numerous warnings. TR 63, 136, 156-58, 166.
- At two different points in the proceeding Respondent stood up, jumping up and down, with her fists in the air and arms crossed at the wrists as if being handcuffed, screaming: "I'm going to jail, I'm going to jail!" FFCL ¶ 15; EX A-1 at 13-15; TR 160-61, 164-65.
- Respondent continued to make loud, disrespectful statements to the court, even after Judge Farris indicated that she was holding Respondent in contempt for that very conduct. See, EX A-1 at 15-16, 21.
- Respondent continued to engage in the disruptive behavior even after she returned to the courtroom accompanied by security, including speaking loudly and interrupting the court. FFCL ¶¶ 17-18. She continued to display "loud, disrespectful conduct, interrupting the judge, waving her arms around in a histrionic and defiant manner." FFCL ¶ 18.
- After the hearing, Respondent exited the courtroom and yelled: "that bitch!" FFCL ¶ 24.
- Judge Farris testified: "Her behavior on the 28th was completely deliberate, and she – There was no -- She was doing it on purpose." TR 193.

Contrary to Respondent's assertion, her ongoing obstreperous and disruptive conduct throughout the 13-day proceeding was hardly the result of a rare, isolated emotional outburst (RB 15, 34, 36, 39), but instead

provides ample evidence of her intentional actions interrupting the judge, making disruptive physical gestures, disobeying the tribunal, and walking out of the courtroom during the proceedings, on September 28, 2011.

In addition, false or improbable explanations may also provide circumstantial evidence of guilt. Guarnero, 152 Wn.2d at 60; see United States v. Burgos, 94 F.3d 849, 868 (4th Cir. 1996), cert. denied, 519 U.S. 1151 (1997) (“[a] defendant's credibility is a material consideration in establishing guilt, and if a defendant take[s] the stand . . . and denies the charges and the jury thinks he's a liar, this becomes evidence of guilt to add to the other evidence”) (quotation omitted). Here, although Respondent claimed that she was unable to control the volume of her voice, she provided no medical evidence to that effect and the hearing officer found Respondent's explanation “not credible.” FFCL ¶¶ 8, 22. He also found her testimony “not credible” when she testified that she merely placed her hands in a “prayerful position,” FFCL ¶ 15, and said “I'm going to jail?” in the form of a question.<sup>10</sup> Id.; TR 439.

Substantial evidence supports the hearing officer's inference that Respondent acted intentionally in Judge Farris's courtroom on September 28, 2011.

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<sup>10</sup> Respondent made these statements before she knew that there was an audio recording of the proceeding. EX A-12 at 49, 51, and 57.

**C. THE COURT SHOULD AFFIRM THE DISCIPLINARY BOARD'S UNANIMOUS RECOMMENDATION OF A 12-MONTH SUSPENSION**

Under the ABA Standards, the Court first determines the presumptive sanction by examining the ethical duty violated, the lawyer's mental state, and the injury caused. In re Van Camp, 171 Wn.2d 781, 809, 257 P.3d 599 (2011). It then determines whether to increase or reduce the presumptive sanction due to aggravating or mitigating factors. Id. Finally, the Court reviews the degree of Board unanimity and the proportionality of the sanction. Id. Where multiple ethical violations exist, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct . . . ." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993). The hearing officer recommended that Respondent be suspended for a period of 12 months. FFCL ¶¶ 56, 61. Respondent argues for an admonition or reprimand. RB 39-40. The Standards support the recommended sanction.

a. Suspension is Appropriate for Respondent's False Report (Count 2)

The hearing officer found that suspension was the presumptive sanction for Respondent's false report to the Seattle Police, in violation of RPC 8.4(b) (by violating RCW 9A.76.175), RPC 8.4(c), and 8.4(d). FFCL ¶ 54. ABA Standard 5.12 provides:

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

As addressed above, ample evidence supports Respondent's knowing conduct when she falsely reported that she had been tripped. Her dishonest conduct adversely reflects on her fitness to practice. FFCL ¶ 46. A suspension under ABA Standard 5.12 is appropriate.

b. Suspension is Appropriate for Respondent's Conduct Resulting in Contempt (Count 1)

Suspension is also the appropriate sanction for Respondent's contemptuous conduct in September 2011. ABA Standard 6.22 provides:

Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Although the applicable Standard requires only knowledge, the hearing officer found that Respondent acted intentionally in violating the court's orders. FFCL ¶ 28; see TR 192-93. In light of the repeated warnings to cease the disruptive behaviors, and the finding of contempt, the hearing officer properly found that Respondent knew that she was violating the court's order by continuing to disrupt. FFCL ¶ 28. Respondent caused potential injury to her client and interference with a legal proceeding.

FFCL ¶ 29; TR 169-71. A suspension under ABA Standard 6.22 is appropriate.

c. The ABA Standards Support a 12-Month Suspension

“A six-month suspension is the accepted minimum term of suspension.” In re Cohen (Cohen II), 150 Wn.2d 774, 762, 82 P.3d 224 (2004). The minimal suspension is warranted when “there are either no aggravating factors and at least some mitigating factors, or where the mitigators clearly outweigh any aggravating factors.” In re Halverson, 140 Wn.2d 475, 497, 998 P.2d 833 (2000). Here, as set forth below, the aggravating factors outweigh the mitigating factors and support the recommended 12-month suspension.

**1. The Record Supports All Three Aggravating Factors Found by the Hearing Officer and Board, As Well As a Fourth**

The hearing officer found that three aggravating factors applied to Respondent’s misconduct: dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law. FFCL ¶¶ 47, 59. In addition, the facts support a fourth aggravating factor: multiple offenses. FFCL ¶ 47. He found only one mitigating factor: absence of prior discipline. FFCL ¶¶ 48, 60. Respondent challenges two of the three factors found by the hearing officer: dishonest or selfish motive and failure to acknowledge wrongful

nature of the conduct. RB 41. However, the factors are supported by substantial evidence and outweigh the single mitigating factor. A 12-month suspension is appropriate in this matter.

a. Dishonest and Selfish Motive

The hearing officer found that Respondent “demonstrated a dishonest or selfish motive by interrupting the judge, yelling in court, walking out of court, and submitting a false police report.” FFCL ¶¶ 47, 59. Respondent challenges this finding based on her characterization of Judge Farris’s “speculation” testimony. RB 41.

The hearing record is replete with details of Respondent’s courtroom – and other – misconduct demonstrating a dishonest and selfish motive. See, pp. 3-15, above. And Judge Farris testified regarding the motive for Respondent’s interruptions:

And by doing it, she does gain advantages. It's a form of belligerent bullying by which she gets extra argument. She gets facts in the record that are not subject to cross-examination. She throws her opponents off because they are disrupted.

TR 168.

Respondent also acted selfishly and dishonestly by falsely reporting a crime that did not occur. She did so because she was angry at Marshal Webb for not taking action on her complaints. FFCL ¶ 39. Respondent tried unsuccessfully twice to engage Marshall Copeland in a

confrontation. TR 206-08, 211-12. She then tried unsuccessfully to engaged Marshal Webb in a confrontation. TR 25-26, 213-14. Failing at both, she was determined to get someone in trouble. As Marshal Webb testified: “And it's my feeling at the time, I guess, that she wanted Copeland to get in trouble for something.” TR 27. Respondent herself testified that she hoped that Marshal Webb would be reprimanded based on her report. EX A-12 at 192. This supports the conclusion that she acted to further her own purposes. FFCL ¶¶ 42, 45. Her motivation was selfish because she sought revenge against the officers who dismissed her. The hearing officer was entitled to reach that conclusion, especially when her “explanations of and excuses for her conduct were not credible.” FFCL ¶ 47.<sup>11</sup>

b. Failure to Acknowledge Wrongful Nature of Her Conduct

The hearing officer found that “Respondent refused to acknowledge the wrongful nature of conduct; Respondent's explanations of and excuses for her conduct were not credible.” FFCL ¶¶ 47, 59. Respondent argues that this aggravating factor applies only when a lawyer admits committing acts but denies they were wrongful or rationalizes the

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<sup>11</sup> Respondent's reliance on Kamb is misplaced because, unlike Kamb, Respondent acted intentionally. See In re Kamb, 177 Wn.2d 851, 867, 305 P.3d 1091 (2013) (declining to apply the aggravating factor of dishonest or selfish motive to negligent conduct).

misconduct. RB 42. This is exactly what Respondent did here. Respondent acknowledged making a report that she had been tripped to a Seattle Police Officer, but rationalized her conduct as justified because she claims that she believed in the truth of it, despite all the evidence demonstrating that her belief was not credible. See, pp. 19-23, above.

Likewise, while Respondent describes some of her actions in the Snohomish County courtroom as “wrong,” she argues that they are the result of a rare, isolated outburst. RB 36. This description minimizes the extensive evidence of her long-running disruptive behavior in that proceeding alone. See, pp. 7-13, above. Other actions she denies outright, despite the fact that they are well-established. For example, Respondent testified in a July 2013 deposition and at the November 2013 hearing that she said “I’m going to jail” as a question rather than an exclamation. EX A-12 at 51; TR 439. However, she is clearly heard on the audio recording of the September 28, 2011 proceeding shouting it. EX A-2. Moreover, she appears even now to blame Judge Farris. RB 7-8, 35. Respondent’s argument that Judge Farris was unable to control the courtroom or should have handled things differently is simply misplaced. FFCL ¶ 23; EX A-1; TR 166-67.

At her deposition, taken a mere four months before the hearing, Respondent bluntly denied the wrongfulness of her courtroom theatrics:

Q. Have you, in your mind, come to a conclusion as to why we're here today? A. Actually, no, I don't understand, because I purged the contempt, and the judge didn't send in the contempt, why I'm here today for this particular issue.

EX A-12 at 97. See also, EX A-12 at 81 (“To this day I don't understand what I did wrong in front of her.”); EX A-12 at 66 (referring to Judge Farris: “There was nothing I could do to please this woman.”) She also testified that Judge Farris held her in contempt simply because she did not like her. TR 423-24; EX A-12 at 65-66. Thus, while Respondent admits committing the acts, she denies they were wrongful and/or rationalizes the misconduct. The hearing officer found that “Respondent's explanations of and excuses for her conduct were not credible.” FFCL ¶ 47. This evidence supports the aggravating factor of failure to acknowledge the wrongful nature of her conduct.

Similarly, Respondent cites her recognition of wrongdoing and subsequent improved behavior to prove that she acknowledges wrongdoing. RB 44-47. She relies on Marshall Miles's testimony that he has noticed a change in her behavior since the finding of contempt. RB 46. However, Respondent ignores the salient portions of Marshall Miles's actual testimony. Marshall Miles testified that he's seen a change in her “but we have things that show up, just two weeks ago” (referencing two incidents, one as recently as two weeks prior to the hearing, during which

Respondent again engaged in disruptive conduct in the courthouse). TR 293-94, 296. Based on the evidence in its entirety, the hearing officer reasonably could conclude that Respondent has not truly acknowledged the wrongful nature of her conduct.

The aggravating factor of refusal to acknowledge the wrongful nature of the conduct is primarily based on a lawyer's credibility, and the hearing officer's determinations are therefore great weight. Kamb, 177 Wn.2d at 867. In Kamb, the Court stated:

Further, "reasoning away the misconduct does not constitute acknowledgement of misconduct." Dynan, 152 Wash.2d at 621, 98 P.3d 444. Although Kamb apologized for his actions and admitted he made a mistake, he continues to argue that his most culpable misconduct was the result of negligence, rather than intent. The evidence supports the hearing officer's conclusion that Kamb has not acknowledged the wrongful nature of his conduct.

Kamb, 177 Wn.2d at 867-68. Like Kamb, Respondent attempts to reason away her misconduct and argue that her most culpable misconduct was the result of negligence. RB 41. As in Kamb, this supports the aggravating factor of refusal to acknowledge the wrongful nature of the conduct. Her conduct goes far beyond a simple factual denial as in Holcomb, as Respondent argues in her brief. RB 41-42; In re Holcomb, 162 Wn.2d 563, 588, 173 P.3d 898 (2007) (declining to apply the factor where the lawyer challenges whether the acts occurred).

c. Substantial Evidence Supports the Aggravating Factor of Multiple Offenses

The hearing officer found that Respondent committed multiple offenses, but did not specifically apply that aggravating factor. Compare, FFCL ¶¶ 47 with 59. However, there is substantial evidence to support the finding that Respondent engaged in multiple offenses.

This aggravating factor applies where a lawyer commits multiple Counts of violating the RPCs. In re Poole (Poole I), 156 Wn.2d 196, 225, 125 P.3d 954 (2006) (applying the multiple-offenses factor because the court upheld two Counts of misconduct against the attorney). See also, In re Starczewski, 177 Wn.2d 771, 792, 306 P.3d 905 (2013) (the factor applies even where the hearing officer failed to list what he found to be the multiple offenses). “The purpose of the aggravating factor of multiple offenses is to deter multiple violations of the RPCs.” In re Preszler, 169 Wn.2d 1, 27, 232 P.3d 1118 (2010).

Here, Respondent committed two separate Counts of ethical misconduct, involving the violation of six separate rules. The hearing officer found that she had committed multiple offenses, but did not list it among the enumerated aggravating factors. Nevertheless, Respondent’s multiple offenses deserve weight as an aggravating factor.

**2. Respondent Fails to Meet Her Burden of Proving the Mitigating Factors She Seeks**

The hearing officer found one mitigating factor – absence of a prior disciplinary record. FFCL ¶ 60. Respondent argues for additional mitigation based on her timely good-faith efforts to rectify the consequences of her misconduct and her “emotional state at the time of the incident.”<sup>12</sup> RB 45; see ABA Standard 9.32(d). A respondent lawyer bears the burden of proving mitigating factors. In re Trejo, 163 Wn.2d 701, 730, 185 P.3d 1160 (2008). Respondent fails to do so here.

Respondent has not previously raised the argument that she made a timely good-faith effort to rectify the consequences of her misconduct. See BF 68 (transcript of hearing); BF 74 and 81 (Respondent’s briefing to the Disciplinary Board). Therefore, the Court should not consider this argument now. See Longacre, 155 Wn.2d at 745 (declining to consider mitigating factors argued for the first time before the Court).

In any event, the record does not support this finding. This Court has declined to apply this mitigating factor where the rectifying conduct

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<sup>12</sup> A respondent’s “emotional state” is not an enumerated mitigating factor, and is already considered within the requisite analysis of Respondent’s mental state. See, e.g., In re Anshell, 149 Wn.2d 484, 69 P.3d 844 (2003) (to determine the appropriate sanction, the court considers the attorney’s mental state, among other things specified by the ABA Standards). Respondent does not appear to be seeking mitigation based on “personal or emotional problems” nor would the evidence support it. Additionally, the fact that Respondent was “frustrated and even distraught” (RB 46) during both incidents should not mitigate the consequences of her misbehavior.

was ordered. See In re Huddleston, 137 Wn.2d 560, 579, 974 P.2d 325 (1999) (declining to give credit for compelled restitution). Consequently, Respondent's return to the courtroom and contact with the Lawyer's Assistance Program (LAP), both ordered by Judge Farris, do not warrant mitigation. Additionally, "[t]he purpose of recognizing such action [timely good faith effort to make restitution] as a mitigating factor, in part, is to ensure that the lawyer has recognized the wrongfulness of his conduct." ABA Standard 9.32(d), cmt. Here, Respondent continued to demonstrate a lack of understanding regarding the wrongfulness of her actions.

Finally, even if the Court applied this mitigating factor, it would be insufficient to alter the outcome given the seriousness of the misconduct and the additional aggravating factors.

**3. The Board Recommended a 12-Month Suspension Unanimously**

The Court gives "great deference" to a unanimous Board. In re Whitney, 155 Wn.2d 451, 469, 120 P.3d 550 (2005). Here, the Board voted unanimously for a 12-month suspension. BF 87 at 1 n.1.

**4. Respondent Fails to Meet Her Burden of Proving that the Suspension is Disproportionate**

In proportionality review, the Court compares the case at hand with "similarly situated cases in which the same sanction was approved or

disapproved.” In re VanDerbeek, 153 Wn.2d 64, 97, 101 P.3d 88 (2004) (quotation omitted). In doing so, the Court focuses on “the misconduct found, the presence of aggravating factors, the existence of prior discipline, and the lawyer’s culpability.” In re Conteh, 175 Wn.2d 134, 152-53, 284 P.3d 724 (2012) (citations omitted). The Court also considers the underlying facts, the presumptive sanction, and mitigating factors. In re Rodriguez, 177 Wn.2d 872, 890-94, 306 P.3d 893 (2013). The lawyer bears the burden of demonstrating disproportionality. In re Cramer (Cramer II), 168 Wn.2d 220, 240, 225 P.3d 881 (2010).

Respondent cites several cases to support her view that a 12-month suspension is disproportionate. RB 47-48. But none of the cases is “similarly situated.” Rather than look to cases with similar facts and violations, Respondent cites to cases with dissimilar facts and violations but for which the lawyer received a suspension.<sup>13</sup> Respondent cites:

- In re Schafer, 149 Wn.2d 148, 66 P.3d 1036 (2003) (6-month suspension for violations of RPC 1.6; four aggravating factors and two mitigating factors);
- In re Egger, 152 Wn.2d 393, 98 P.3d 477 (2004) (6-month suspension for violations of RPC 1.5, RPC 1.7, and RPC 1.10; three aggravating factors and four mitigating factors);

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<sup>13</sup> The cases cited do not necessarily involve “emotionally charged circumstances,” or “temper and impulsive responses,” as Respondent argues. RB 47.

- In re Brothers, 149 Wn.2d 575, 70 P.3d 940 (2003) (12-month suspension for violations of RPC 1.5, former RPC 1.14, and RPC 5.4; two aggravating factors and two mitigating factors);
- In re Cohen (Cohen I), 149 Wn.2d 323, 67 P.3d 1086 (2003) (6-month suspension for violations of RPC 1.3, RPC 1.4, and RPC 1.5; five aggravating factors and no mitigating factors);
- In re DeRuiz, 152 Wn.2d 558, 99 P.3d 881 (2004) (12-month suspension for violations of RPC 1.3, RPC 1.4, RPC 1.5, former RPC 1.15, RPC 3.2, RPC 8.4(c), and former RLD 2.8(a) in two consolidated actions; seven aggravating factors and one mitigating factor applied in DeRuiz I, and six aggravating factors and no mitigating factors applied in DeRuiz II); and
- In re Tasker, 141 Wn.2d 557, 9 P.3d 822 (2000) (2-year suspension for violations of RPC 1.3, RPC 1.4, RPC 1.5, RPC 1.7, former RPC 1.14, former RPC 3.3, former RPC 5.3, and RPC 8.4(c); four aggravating factors and four mitigating factors).

RB 47-48. Respondent however violated RPC 3.4, RPC 3.5, and RPC 8.4(b), (c), (d), and (j). Consequently she shares only one rule violation each with DeRuiz and Tasker, and none with the remaining lawyers. Similarly, while five of the six cited cases share the presumptive sanction of suspension, and three of the six have no prior discipline, no other case has the same number of aggravating and mitigating factors. These cases are not “similar situated” with this one. Preszler, 169 Wn.2d at 38 (rejecting proportionality argument where cases dealt with different presumptive sanctions and charges of misconduct). Consequently, Respondent fails to demonstrate that a 12-month suspension is disproportionate.

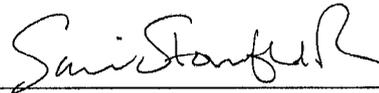
Likewise, Respondent's reliance on Eugster is also misplaced. RB 40. In Eugster, the Court found that the lawyer's conduct "involv[ing] only one client in one legal proceeding and last[ing] only two months" before he took steps to correct the misconduct, constituted an isolated incident of misconduct, warranting a sanction lower than disbarment. In re Eugster, 166 Wn.2d 293, 209 P.3d 435 (2009). This case does not involve disbarment.

#### V. CONCLUSION

Respondent intentionally engaged in ongoing obstreperous and disruptive conduct in a Snohomish County Court proceeding that resulted in the court holding her in contempt and falsely reported to the police that a King County Court Marshal tripped her in the courthouse. Several aggravating factors outweigh the lone mitigating factor. The Court should affirm the Board's unanimous recommendation of a 12-month suspension, with reinstatement conditioned on her fitness to practice.

RESPECTFULLY SUBMITTED this 25th day of November, 2014.

WASHINGTON STATE BAR ASSOCIATION



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Sachia Stonefeld Powell, Bar No. 21166  
Disciplinary Counsel

# APPENDIX A

**RPC 3.4(c):**

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

**RPC 3.5(d):**

A lawyer shall not:

(d) engage in conduct intended to disrupt a tribunal.

**RPC 8.4(b):**

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

**RPC 8.4(c):**

It is professional misconduct for a lawyer to:

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

**RPC 8.4(d):**

It is professional misconduct for a lawyer to:

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

**RPC 8.4(j):**

It is professional misconduct for a lawyer to:

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

# APPENDIX B

## 5.1 Failure to Maintain Personal Integrity

- 5.11 **Disbarment** is generally appropriate when:
- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
  - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 **Suspension** is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 **Reprimand** is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
- 5.14 **Admonition** is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

## 6.2 Abuse of the Legal Process

- 6.21 **Disbarment** is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 **Suspension** is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 **Reprimand** is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
- 6.24 **Admonition** is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

# APPENDIX C

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**FILED**

DEC 19 2013

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**KATHRYN B. ABELE,**  
Lawyer (Bar No. 32763).

Proceeding No. 12#00072

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on November 12-15, 2013. Respondent Kathryn B. Abele appeared at the hearing and was represented by Sam Franklin and Natalie Cain. Special Disciplinary Counsel Colin Folawn appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Amended Formal Complaint filed by Disciplinary Counsel charged Ms. Abele with the following counts of misconduct:

Count I - Engaging in the behavior that resulted in the court finding her in contempt, in violation of RPC 3.4(c), 3.5(d), 8.4(d), and/or RPC 8.4(j).

Count II - Knowingly making a false and/or misleading statement to an officer of the



1 witnesses.

2 7. Respondent repeatedly was admonished by the judge to stop interrupting other  
3 counsel, but Respondent did not comply, doing this behavior even more. When warned by the  
4 judge about making loud statements that interrupted the proceedings, Respondent would falsely  
5 say, "I did not say anything." Respondent would refer to the judge's decisions as wrong and  
6 stupid in front of court staff.

7 8. Judge Farris observed that Respondent was able to exercise complete control over  
8 the volume of her speech, getting loud or soft at will. Respondent was able to say things to her  
9 client in a soft tone that Judge Farris could not hear. Respondent got loud because she was  
10 angry, not because she did not know that she was being loud.

11 9. During the time this matter was pending, Respondent was abusive to Ms. Rich's staff  
12 over the phone. Ms. Rich implemented an office-wide policy of screening Ms. Abele's  
13 telephone calls, having them put through to her voicemail,

14 10. In post-trial proceedings, Respondent generally exhibited good conduct until the end  
15 of an August hearing that preceded the presentation hearing of September 28, 2011. At the  
16 preceding hearing, after Judge Farris would not sign Respondent's proposed findings,  
17 Respondent became angry, saying words to the effect of, "We have to take a break now."

18 11. After the judge left the bench, it is undisputed that Respondent made a loud  
19 screaming noise that could be heard in other rooms of the courthouse. There was conflicting  
20 testimony on the cause of this and it remains unclear. Judge Farris herself was not present in her  
21 courtroom at the time and did not find the Respondent in contempt for this scream.

22 12. On September 28, 2011, a two-hour hearing was held to resolve the final parenting  
23 plan in *In re the De Facto Parentage and Custody of Mason Miller*. Ms. Rich was present. Mr.

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1 Jones attended the hearing by phone. When Respondent interrupted the court, Judge Farris  
2 asked Respondent not to. When Respondent persisted, Judge Farris stated on the record her  
3 impressions of the scream Respondent made after the end of the August hearing. At this point,  
4 Respondent interrupted at a high volume, further disrupting the proceeding.

5 13. A member of the Snohomish County Superior Court bench since March, 1994, Judge  
6 Farris was concerned about Respondent's pattern of behavior and hoped that a warning would  
7 prevent further transgressions. Respondent's interruptions prevented the judge from  
8 accomplishing this or making the necessary changes in the parenting plan.

9 14. Sheralyn Barton was the court reporter that day. Unbeknownst to Respondent, a  
10 backup system in Ms. Barton's court reporting equipment audio-recorded the proceedings.  
11 Respondent did not learn of this until part way through her deposition in these disciplinary  
12 proceedings.

13 15. Once Respondent began screaming at the hearing on September 28, 2011, Judge  
14 Farris asked for security to be called. Respondent turned to face the courtroom door, began to  
15 walk, and yelled, "I'm going to jail, I'm going to jail!" Respondent repeatedly placed her hands  
16 above her head, crossed at the wrists or with her wrists close so as to reflect being handcuffed.  
17 Respondent dramatically rocked her hands around, making occasional upward body thrusts with  
18 a motion and speed similar to calisthenics. Respondent's later testimony was not credible that  
19 she placed her hands in a prayerful position and said the words, "I'm going to jail," in the form  
20 of a question,

21 16. While the court was still in session, Respondent abruptly exited the courtroom,  
22 causing the proceedings to come to a halt. The court then took a recess. Respondent re-entered  
23 the courtroom, told Ms. Rich that she was abstaining from further proceedings and then left  
24

1 again.

2 17. Security was asked to locate Respondent and bring her back to the courtroom. When  
3 approached by Marshal Miles, Respondent was angry and stated that she would not do so.  
4 Notwithstanding her words, Respondent voluntarily returned to the courtroom. Marshals Miles  
5 and Hayes followed her in.

6 18. When the hearing reconvened, Respondent continued to talk in a loud voice,  
7 interrupting the court multiple times, despite being requested to stop. Marshal Miles saw furtive  
8 looks of concern on the faces of court staff, but did not take further action at that time.  
9 Respondent yelled loudly to demonstrate what it sounded like when she really yells. Respondent  
10 continued to display loud, disrespectful conduct, interrupting the judge, waving her arms around  
11 in a histrionic and defiant manner. She defiantly invited being taken away in handcuffs.

12 19. An order was entered finding Respondent in contempt of court for her conduct on  
13 September 28, 2011. Respondent was ordered to purge her contempt by contacting the Lawyers'  
14 Assistance Program (LAP). While Respondent stated that she would not do this, she in fact did  
15 comply with this order of Judge Farris in a timely manner.

16 20. Judge Farris's discipline of the Respondent in her courtroom was triggered by the  
17 accumulation and continuation of prior problems during the trial of the same matter, primarily  
18 Respondent's loud running commentary that disrupted the proceedings. Judge Farris never had  
19 seen this kind of conduct from a lawyer before. In her nearly 20 years on the bench, Judge  
20 Farris only has held two lawyers in contempt. Respondent's was the only one that remained  
21 until it was purged by her contacting the LAP.

22 21. Respondent's conduct made the court staff ill at ease, unsure what to expect from  
23 her. Court reporter Sheralyn Barton never had seen this kind of conduct in an attorney before.

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1           22. Respondent has represented many times that she has a hearing disability. However,  
2 throughout the trial and subsequent proceedings, Respondent demonstrated the ability to  
3 deliberately modulate the volume of her voice. She presented no medical evidence to support  
4 her claim of a hearing disability. She was observed during these disciplinary proceedings  
5 communicating with her counsel in low voices that could not be heard by others. Respondent  
6 had the ability to control the volume of her voice at the September 28, 2011, hearing and her  
7 testimony to the contrary is not credible.

8           23. Respondent's conduct adversely affected the proceedings before Judge Farris,  
9 requiring recess, security, and extensive colloquy that would not have otherwise been necessary.  
10 Her behavior was not necessitated in any way by the conduct of the court. Judge Farris spoke to  
11 the Respondent in a calm, low-key manner, trying to secure her compliance with basic decorum.

12           24. After the hearing, Respondent exited the courtroom and yelled, "that bitch!"

13           25. Ms. Rich, who had been present for the entirety of the hearing, requested an escort  
14 from one of the marshals, shaken by Respondent's conduct at this hearing.

15           26. Directly after the September 28<sup>th</sup> hearing, Respondent went to the Snohomish  
16 County Bar Association office, continuing to behave in an agitated, unprofessional manner,  
17 swearing at one of the marshals at one point.

18           27. Respondent timely purged the contempt by contacting the Lawyers' Assistance  
19 Program.

20           28. Respondent's conduct on September 28, 2011, was intentional. She decided to not  
21 obey the tribunal. She walked out of the courtroom during the proceedings. She repeatedly  
22 interrupted the judge during the hearing on or about September 28, 2011. In addition, the audio  
23 recording (Exhibit A-2) and the testimony of witnesses demonstrate that Respondent  
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1 | deliberately modulated the volume of her voice for effect. In addition to her voice, Respondent  
2 | made disruptive physical gestures during the hearing.

3 |         29. Respondent's conduct on September 28, 2011, caused injury to the legal proceeding  
4 | because it disrupted—rather forced the abrupt halt of—the proceeding itself. Respondent's  
5 | conduct also caused potential injury to Respondent's client, because she left the courtroom and  
6 | thereby potentially subjected her client to a lack of representation during ongoing proceedings  
7 | for the entry of final orders. Respondent's conduct inside the courtroom fell below the minimum  
8 | standards of professionalism expected of attorneys. Nothing occurred during the hearing that  
9 | justified this behavior.

10 |         30. On or about May 16, 2011, Respondent was representing a client at the King County  
11 | Courthouse. King County Sheriff's Court Marshal Samuel Copeland was dispatched to Room  
12 | W-278 for standby backup. Upon arriving, the bailiff pointed out the Respondent as a subject of  
13 | concern. Marshal Copeland observed at the back of the courtroom for about ten minutes. The  
14 | Respondent went in and out several times. When he heard a loud, agitated female voice in the  
15 | hallway, Marshal Copeland went out to investigate. He encountered Respondent and asked her  
16 | to quiet down. Respondent was angry at this, believing it infringed on her prerogatives as an  
17 | attorney.

18 |         31. Marshal Copeland told Respondent that she would be asked to leave if she continued  
19 | to be loud and disruptive. Marshal Copeland then decided to stop the exchange and leave the  
20 | area, in order to de-escalate the situation.

21 |         32. While Marshal Copeland was on his way to the 4<sup>th</sup> Avenue security checkpoint,  
22 | Respondent re-engaged him by the central elevator bank and yelled at him. Among other things,  
23 | Respondent said words to the effect of, "someone should fart in your face!" Marshal Copeland  
24 |

1 | disengaged a second time from Respondent and walked down to the security checkpoint, where  
2 | Marshal Greg Webb was present. Marshal Webb had never met Respondent before. Respondent  
3 | then followed Marshal Copeland, over to where Marshal Webb was seated.

4 |         33. Respondent, seeing the stripes on Marshal Webb's uniform, believed that he was  
5 | Marshal Copeland's superior. When Respondent approached Marshal Webb, she was animated,  
6 | loud, and aggressive. Respondent conveyed that she was upset with Marshal Copeland. After  
7 | listening to Respondent for a short time, Marshal Webb told Respondent to go about her  
8 | business. Respondent told Marshal Webb that he had to speak with her, and he responded that  
9 | he did not have to.

10 |         34. During this conversation, Marshal Webb was seated with his back against the  
11 | hallway wall, and Marshal Copeland was facing him, standing about one foot away from  
12 | Marshal Webb. Marshal Webb is about 6'2" tall. The seat of the stool was about 30" from the  
13 | floor. The front of the podium was not touching the hallway wall and was about 1-2 inches  
14 | away.

15 |         35. Following Marshal Webb's statement to Respondent that she should go about her  
16 | business, despite the fact that there was ample room (about six to eight feet) in the hallway to  
17 | walk around them, Respondent deliberately pushed between them. Just before doing so,  
18 | Respondent yelled, "Are you going to get out of my way?"

19 |         36. Respondent's choice of aggressively coming in between the narrow space between  
20 | Marshall Webb and Marshall Copeland caused Respondent to brush Marshal Copeland's body  
21 | and Marshal Webb's knee. When Respondent's body pushed Marshal Copeland, she caused him  
22 | to move.

23 |         37. Immediately thereafter, Respondent turned counterclockwise to face Marshal  
24 |

1 Copeland. She then pointed at Marshal Webb and yelled at him, falsely accusing him of trying  
2 to trip her.

3 38. Marshal Webb did not extend his leg or try to trip Respondent. Respondent did not  
4 stumble or fall.

5 39. Respondent knew that Marshal Webb did not trip her, but was angry at him for  
6 failing to take action on her complaints against Marshal Copeland after their interaction in the  
7 hallway outside W-278.

8 40. The surveillance video from the courthouse (Exhibit A-6) does not support  
9 Respondent's claim that she was tripped. Respondent's version of the incident is not credible.  
10 Respondent's interactions and behavior with Marshal Copeland and Marshal Webb  
11 demonstrates that Respondent was the aggressor, moving into them when there was ample room  
12 to take another route in the hallway.

13 41. Soon thereafter, Respondent called 911 using her mobile phone. Seattle Police  
14 Officer Ritter arrived, and Respondent reported that Marshal Webb intentionally tripped her.  
15 This statement was false and misleading.

16 42. An internal investigation was conducted because of Respondent's false report.  
17 Marshal Webb received a letter stating that Respondent's charge was unsubstantiated.

18 43. Respondent offered telephonic testimony from a man named Rakesh Pai, who  
19 claimed to have witnessed Marshal Webb trip Respondent. Contrary to the surveillance video,  
20 Mr. Pai testified that Ms. Abele got tripped "a little bit" and held onto the metal detector post or  
21 the security bar. The surveillance video demonstrates that the metal detector and security station  
22 were several feet from where the incident occurred and that Respondent could not have held  
23 onto them. Mr. Pai's testimony was not credible.

24

1           44. Respondent's conduct on May 16, 2011, was intentional. She knowingly gave a false  
2 report to law enforcement personnel, falsely accusing Marshal Greg Webb of assault.  
3 Respondent was not tripped, and she knew that she had not been tripped. In addition, the  
4 surveillance video and testimony of witnesses demonstrates that Respondent deliberately sought  
5 multiple exchanges with the Marshals in order to justify the filing of a complaint against one or  
6 both of them.

7           45. Respondent's conduct on May 16, 2011, wasted law enforcement resources and  
8 subjected Marshal Webb to an internal investigation that never should have taken place.

9           46. Respondent's conduct on May 16, 2011 also injured the image of the legal  
10 profession. Respondent's conduct inside and outside of the courtroom was far afield from the  
11 minimum standards of professionalism expected of attorneys. The image of the legal profession  
12 is clearly damaged when lawyers are not truthful. Respondent's actions also adversely reflect on  
13 her fitness to practice law.

14           47. Several aggravating factors apply in this matter. Respondent demonstrated a  
15 dishonest or selfish motive by interrupting the judge, yelling in court, walking out of court, and  
16 submitting a false police report. There are multiple offenses in this case. Respondent has  
17 substantial experience in the practice of law (*i.e.*, between nine and ten years of practice at the  
18 time of the misconduct). In addition, Respondent refused to acknowledge the wrongful nature of  
19 conduct; Respondent's explanations of and excuses for her conduct were not credible.

20           48. One mitigating factor applies in this matter: Ms. Abele does not have a prior  
21 disciplinary record. Respondent has the burden of proving mitigation. But Respondent did not  
22 prove, with admissible evidence, any other basis for mitigation.

1 CONCLUSIONS OF LAW

2 Violations Analysis

3 The Hearing Officer finds that the Association proved the following:

4 49. Respondent engaged in the behavior that resulted in the court finding her in  
5 contempt, in violation of RPC 3.4(c), 3.5(d), 8.4(d), and RPC 8.4(j). Count I is proven by a clear  
6 preponderance of the evidence.

7 50. Respondent knowingly made a false and misleading statement to an officer of the  
8 Seattle Police Department, in violation of RPC 8.4(b) (by violating RCW 9A.76.175), RPC  
9 8.4(c), and 8.4(d). Count II is proven by a clear preponderance of the evidence.

10 51. Count III is dismissed. The Association did not prove by a clear preponderance of  
11 the evidence that Ms. Abele engaged in conduct involving dishonesty, fraud, deceit, or  
12 misrepresentation or engaged in conduct that is prejudicial to the administration of justice when  
13 she communicated to court clerk Mary McHugh.

14 Sanction Analysis

15 52. A presumptive sanction must be determined for each ethical violation. In re  
16 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American  
17 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &  
18 Feb. 1992 Supp.) are presumptively applicable in this case:

19 53. The presumptive ABA Standard for Count I is:

20 **6.2 Abuse of the Legal Process**

21 Absent aggravating or mitigating circumstances, upon application of the  
22 factors set out in Standard 3.0, the following sanctions are generally appropriate  
23 in cases involving failure to expedite litigation or bring a meritorious claim, or  
24 failure to obey any obligation under the rules of a tribunal except for an open  
refusal based on an assertion that no valid obligation exists:

1           6.21 **Disbarment** is generally appropriate when a lawyer knowingly  
2 violates a court order or rule with the intent to obtain a benefit for the lawyer or  
3 another, and causes serious injury or potentially serious injury to a party or causes  
4 serious or potentially serious interference with a legal proceeding.

5           6.22 **Suspension is generally appropriate when a lawyer knows that  
6 he or she is violating a court order or rule, and causes injury or potential  
7 injury to a client or a party, or causes interference or potential interference  
8 with a legal proceeding.**

9           6.23 **Reprimand** is generally appropriate when a lawyer negligently  
10 fails to comply with a court order or rule, and causes injury or potential injury to a  
11 client or other party, or causes interference or potential interference with a legal  
12 proceeding.

13           6.24 **Admonition** is generally appropriate when a lawyer engages in an  
14 isolated instance of negligence in complying with a court order or rule, and causes  
15 little or no actual or potential injury to a party, or causes little or no actual or  
16 potential interference with a legal proceeding.

17           54. The presumptive ABA Standard for Count II is:

18           **5.1 Failure to Maintain Personal Integrity**

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

24           5.11 **Disbarment** is generally appropriate when:

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

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

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

1           5.13 **Reprimand** is generally appropriate when a lawyer knowingly  
2 engages in any other conduct that involves dishonesty, fraud, deceit, or  
misrepresentation and that adversely reflects on the lawyer's fitness to practice  
3 law.

4           5.14 **Admonition** is generally appropriate when a lawyer engages in  
any other conduct that reflects adversely on the lawyer's fitness to practice law.

5           55. When multiple ethical violations are found, the "ultimate sanction imposed should at  
6 least be consistent with the sanction for the most serious instance of misconduct among a  
7 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

8           56. Based on the Findings of Fact and Conclusions of Law and application of the ABA  
9 Standards, the appropriate presumptive sanction is a suspension.

10           57. "A period of six months is generally the accepted minimum term of suspension." In  
11 re Cohen, 149 Wn.2d 323, 67 P.3d 1086, 1094 (2003).

12           58. A six-month suspension is appropriate in a case where there are either no  
13 aggravating factors and at least some mitigating factors, or where the mitigating factors clearly  
14 outweigh any aggravating factors. In re Halverson, 140 Wn.2d 475, 497, 998 P.2d 833 (2000).

15 This is not the case here.

16           59. The following aggravating factors set forth in Section 9.22 of the ABA Standards are  
17 applicable in this case:

- 18           (b) dishonest or selfish motive;
- 19           (g) refusal to acknowledge wrongful nature of conduct; and
- (i) substantial experience in the practice of law [admitted 2002].

20           60. The following mitigating factors set forth in Section 9.32 of the ABA Standards are  
21 applicable to this case:

- 22           (a) absence of a prior disciplinary record;

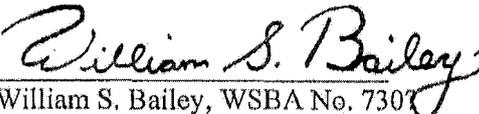
23 Recommendation

1 61. Based on the ABA Standards and the applicable aggravating and mitigating factors,  
2 the Hearing Officer recommends that Respondent Kathryn B. Abele be suspended for a period  
3 of twelve months.

4 62. Additionally, the Hearing Officer recommends that, as a condition precedent to  
5 reinstatement, Respondent must undergo a fitness to practice evaluation and be deemed fit to  
6 practice law, and she also must bear all costs relating to the fitness to practice evaluation.

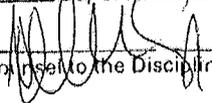
7 63. Additionally, the Hearing Officer recommends that Respondent must reimburse the  
8 Association's costs incurred in this matter.

9 Dated this 18th day of December, 2013.

10  
11   
12 William S. Bailey, WSBA No. 7307  
Hearing Officer

13  
14  
15  
16  
17 CERTIFICATE OF SERVICE

I certify that I caused a copy of the FoF, CoL & How Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to San Francisco & Natalie Cain Respondent/Respondent's Counsel  
at 701 Allee St. #1000 Seattle WA 98101 by Certified/first class mail  
postage prepaid on the 19th day of December, 2013

18  
19  
20   
Clerk/Counsel to the Disciplinary Board

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

Kathryn B. Abele,  
Lawyer  
Bar No. 32763

Supreme Court No. 201,352-0

DECLARATION OF  
SERVICE BY MAIL

The undersigned Disciplinary Counsel of the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association declares that she caused a copy of the Answering Brief of the Office of Disciplinary Counsel to be mailed by regular first class mail with postage prepaid on November 25, 2014 to:

Peter E. Sutherland  
Lee Smart PS Inc.  
701 Pike Street, Ste 1800  
Seattle, WA 98101-3929

Dated this 25th day of November, 2014.

The undersigned declares under penalty of perjury under the laws of the state of Washington that the foregoing declaration is true and correct.

11/25/14 Seattle, WA  
Date and Place

  
Sachia Stonefeld Powell  
Bar No. 21166  
Disciplinary Counsel  
1325 4th Avenue – Suite 600  
Seattle, WA 98101-2539  
(206) 733-5907

## OFFICE RECEPTIONIST, CLERK

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**To:** Sachia Stonefeld Powell  
**Cc:** Chandler, Desiree R.; Peter E. Sutherland  
**Subject:** RE: In re Kathryn Abele, Supreme Court No. 201,352-0

Received 11-25-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Sachia Stonefeld Powell [mailto:sachiasp@wsba.org]  
**Sent:** Tuesday, November 25, 2014 11:20 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Chandler, Desiree R.; Peter E. Sutherland  
**Subject:** In re Kathryn Abele, Supreme Court No. 201,352-0

Dear Clerk,

Attached for filing are the following documents in the case of In re Kathryn Abele, Supreme Court No. 201,352-0, Bar No. 32763:

1. The Answering Brief of the Office of Disciplinary Counsel of the Washington State Bar Association
2. Appendix A
3. Appendix B
4. Appendix C
5. Declaration of Service by Mail

Please send confirmation that these documents have been received. Thank you.

Sincerely,

**Sachia Stonefeld Powell, Bar No. 21166**

Disciplinary Counsel  
Washington State Bar Association  
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Seattle, Washington 98101  
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