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Received  
Washington State Supreme Court

FEB 1 2016

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Ronald R. Carpenter  
Clerk

In re  
**DONALD PETER OSBORNE,**  
Lawyer (Bar No. 7386).

Supreme Court No. ~~2014356~~  
ODC'S PETITION FOR  
INTERIM SUSPENSION (ELC  
7.2(a)(2))

As required by Rule 7.2(a)(2) of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association petitions this Court for an order suspending lawyer Donald Peter Osborne (Respondent) from the practice of law during the remainder of disciplinary proceedings against him.

This petition is based on the Disciplinary Board's Order Declining Sua Sponte Review and Adopting Hearing Officer's Decision, entered June 23, 2015 (attached as Appendix A). The Disciplinary Board (Board) adopted the hearing officer's decision, which recommended that Respondent be disbarred for: (1) knowingly and intentionally engaging in a conflict of interest by drafting a will for his client that gave him a substantial testamentary gift though he was not related to her and made him personal representative of the estate; (2) making false declarations; (3) willfully disobeying court orders; and (4) falsely purporting to have healthcare decision-making authority for his client.

## BACKGROUND

Respondent was charged by formal complaint dated October 10, 2013, with five counts of having violated the Rules of Professional Conduct (RPC). A disciplinary hearing was held on October 1-3, 2014 and January 12-14, 2015. The hearing officer entered her Findings of Fact, Conclusions of Law and Recommendation (FFCL) on May 5, 2015 (attached as Appendix B).<sup>1</sup> She concluded that ODC had proved all of the charged violations, FFCL at pgs. 18-25, and that Respondent acted knowingly, intentionally, and willfully causing serious and significant injury to his client, her estate, and to a legal proceeding, id. at pgs. 27-28, 30-31. She also found that Respondent's conduct seriously adversely reflected on his fitness to practice law. Id. at pg. 32.

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 of the five counts was disbarment. FFCL at pgs. 26-32. She found six aggravating factors: dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, vulnerability of victim, and substantial experience in the practice of law, id. at pgs. 32-

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<sup>1</sup> Findings of Fact are numbered by paragraph and will be referred to by the paragraph number. Conclusions of Law are not numbered and will be referred to by page number.

34, and one mitigating factor: absence of a prior disciplinary record, id. at pg. 34. The hearing officer concluded that the aggravating factors substantially outweighed the one mitigating factor. Id. at pg. 35. She recommended that Respondent be disbarred. Id.

Respondent did not file a notice of appeal to the Board. The FFCL was circulated to the Board, which considered whether to order sua sponte review under ELC 11.3(a). The Board declined to order sua sponte review and adopted the FFCL by order entered June 23, 2015. Appendix A.

Respondent filed a notice of appeal of the Board's order declining sua sponte review with the Court on July 6, 2015. ODC moved to strike the notice of appeal, but the motion was untimely. However, on January 22, 2016, the Court entered an order finding that the Board's order declining sua sponte review was appealable under ELC 12.3(a), that the record on review was limited to the FFCL, and that the scope of the appeal was "limited to whether the Disciplinary Board erred by not finding that sua sponte review was required to 'prevent substantial injustice or to correct a clear error'" (attached as Appendix C).

#### **NATURE OF THE MISCONDUCT WARRANTING INTERIM SUSPENSION**

The nature of the misconduct that warrants interim suspension is described in the FFCL and briefly outlined here.

While Respondent's client Elizabeth Hancock was hospitalized and shortly before she died, Respondent intentionally prepared a will for her that gave him a testamentary gift of her residual estate, valued at approximately \$600,000, and made him personal representative of the estate. FFCL ¶¶ 31-41, at pg. 27. But Respondent was not a relative of Ms. Hancock and was not an "individual" with whom Ms. Hancock maintained a "close, familial relationship." Id. ¶ 18, at pgs. 20-21. At best, he had a casual friendship with her. Id. ¶ 17.

After Ms. Hancock died, friends of hers became suspicious of the circumstances surrounding Respondent's activities as personal representative of the estate and asked a lawyer they knew to check into the matter. Id. ¶ 45. Once it was discovered that Respondent had not only drafted Ms. Hancock's new will, but also had been named as the residual beneficiary of the estate, Ms. Hancock's daughter petitioned the court to remove Respondent as personal representative. Id. ¶¶ 46, 52. The court removed Respondent and appointed a successor personal representative who sought the return of property Respondent had taken from the estate. Id. ¶¶ 51, 53-54. After being ordered more than once by the court to return property of the estate, Respondent filed a declaration with the court on February 24, 2011, falsely asserting that he had returned all of Ms. Hancock's property to the estate when he knew he had not, and knowingly

made similar false assertions in other pleadings. Id. ¶¶ 54-55, 57-58, 61-63, at pgs. 23-24. Sheriff's detectives and the successor personal representative found property of Ms. Hancock in plain sight in Respondent's home office while executing a writ of judgment. Id. ¶¶ 62-63. Respondent's failure to return Ms. Hancock's property to the estate despite being repeatedly ordered by the court to do so was knowing and willful. Id. at pgs. 24-25.

While Ms. Hancock was hospitalized, she signed a power of attorney that gave Respondent authority over her financial affairs, but not over her health care. Id. ¶ 27. But while she was in a nursing home between hospital stays, Respondent signed a Physician's Order on Life Sustaining Treatment (POLST) for her, thereby falsely purporting to have health care decision-making authority over his client when he knew he did not. Id. ¶ 28, at pg. 25.

### **LEGAL ARGUMENT**

Under ELC 7.2(a)(2), following a disbarment recommendation from the Board, it is presumed that the respondent lawyer be suspended until the appellate proceedings are concluded. The respondent lawyer bears the burden of proving that he should not be suspended, and must make an "affirmative showing" that the lawyer's "continued practice of

law will not be detrimental to the integrity and standing of the bar and the administration of justice, or contrary to the public interest.”<sup>2</sup>

The Rule recognizes that disbarment recommendations arise only in cases of extremely serious misconduct, and that allowing such a lawyer to continue to practice as if nothing had happened injures the integrity of the profession and is contrary to the public interest.

In this case, although the Board did not engage in full review of the matter because the Respondent did not appeal the hearing officer’s decision to the Board, the Board’s adoption of the hearing officer’s decision, which recommended disbarment, operates as a recommendation of disbarment for purposes of ELC 7.2(a)(2).<sup>3</sup> Otherwise, a respondent lawyer could avoid interim suspension despite a disbarment recommendation by a hearing officer through the convenience of avoiding Board review. Here, the Board’s order declining sua sponte review and adopting the hearing officer’s decision under ELC 11.3(a) will not be final

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<sup>2</sup> This standard differs markedly from that required to justify an interim suspension during the course of disciplinary proceedings prior to the entry of a sanction order by the Board. See ELC 7.2(a)(1) (ODC must prove that the lawyer’s continuing to practice will result in “substantial threat of serious harm to the public”).

<sup>3</sup> In its motion to strike Respondent’s notice of appeal, ODC argued that a Board order declining sua sponte review under ELC 11.3(a) is not a “Board decision recommending suspension or disbarment” under ELC 12.3(a) and is, therefore, not appealable. In its January 22, 2016 order, the Court held that the Board’s order denying sua sponte review “is an appealable order under ELC 12.3(a).” Appendix C.

until after the Court considers the appeal of the Board's declination of sua sponte review. Thus, interim suspension is appropriate.

Respondent engaged in serious, predatory misconduct in regard to his client and her estate, resisted attempts by others to remedy the situation, lied to the court and others, and refused to obey court orders. This conduct and ensuing disbarment recommendation adopted by the Board merits interim suspension pending final resolution of this matter.

### CONCLUSION

Under ELC 7.2(a)(2), ODC asks the Court to issue an Order requiring that Respondent appear before this Court on a date certain to show cause why this Petition should not be granted. ODC further requests that the Court issue an order on that date immediately suspending him from the practice of law.

DATED THIS 28th day of January, 2016.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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M Craig Bray, Bar No. 20821  
Disciplinary Counsel  
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# APPENDIX A

**FILED**

JUN. 24 2015

DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**DONALD PETER OSBORNE,**

Lawyer (WSBA No.7386)

Proceeding No. 13#00082

DISCIPLINARY BOARD ORDER  
DECLINING *SUA SPONTE* REVIEW AND  
ADOPTING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On June 11, 2015, the Clerk distributed the attached decision to the Board.

**IT IS HEREBY ORDERED THAT** the Board declines *sua sponte* review and adopts the Hearing Officer's decision<sup>1</sup>.

Dated this 23 day of June, 2015.

Jennifer A. Dremousis  
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order Declining sua sponte review & Adopting H/O Decision to be delivered to the Office of Disciplinary Counsel and to be mailed to KATE BULLER, Respondent/Respondent's Counsel at 740 Belmont Pl. #303 Seattle WA 98104 Certified/first class mail, postage prepaid on the 24th day of June, 2015.

[Signature]  
Clerk/Counsel to the Disciplinary Board

<sup>1</sup> The vote on this matter was 14-0. The following Board members voted: Dremousis, Bloomfield, Davis, Carney, Coy, McInville, Fischer, Andeen, Berger, Cottrell, Smith, Mesher, Egeler and Myers.

# APPENDIX B

BEFORE THE DISCIPLINARY BOARD  
OF THE WASHINGTON STATE BAR ASSOCIATION

**FILED**  
MAY 06 2015  
DISCIPLINARY  
BOARD

In re **DONALD PETER OSBORNE**,  
Lawyer (Bar No. 7386)

Proceeding No. 13#00082  
HEARING OFFICER'S FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
RECOMMENDATION

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), Hearing Officer Nadine Scott held a six (6) day Disciplinary Hearing on October 1, 2 and 3, 2014, and January 12, 13 and 14, 2015, at the offices of the Washington State Bar Association in Seattle. Disciplinary counsel Craig Bray appeared for the Office of Disciplinary Counsel and Respondent Donald Peter Osborne (hereinafter "Respondent") appeared with his legal counsel Kurt Bulmer.

**I. FORMAL COMPLAINT**

Respondent was charged by formal complaint dated October 10, 2013, with five (5) counts of having violated the Rules of Professional Conduct (RPC). The respective counts are set forth verbatim as:

**"COUNT 1:** By preparing the 2009 will, which gave him a substantial gift from Ms. (Elizabeth) Hancock's estate, Respondent violated RPC 1.8(c).

**"COUNT 2:** By naming himself as P(ersonal) R(epresentative) of Ms. Hancock's estate while simultaneously making himself the residual beneficiary while representing Ms. Hancock, Respondent violated RPC 1.7(a)(2).

**"COUNT 3:** By filing a declaration with the court on February 24, 2011, asserting that he had returned all property formerly belonging to Ms. Hancock to the estate

and/or successor PR when he knew had not and/or by knowingly making similar false assertions in other pleadings, Respondent violated RPC 3.3(a), RPC 4.1(a), and/or RPC 8.4(c).

**“COUNT 4:** By failing to return property formerly belonging to Ms. Hancock to the estate and/or the successor PR despite being ordered to do so by the court, Respondent violated RPC 3.4(a), RPC 3.4(c), and/or RPC 8.4(j).

**“COUNT 5:** By purporting to have authority to execute the September 2009 POLST and/or by entering Ms. Hancock’s safety deposit box on October 27, 2009, under purported authority of the power of attorney granted him by Ms. Hancock, which had expired, Respondent violated RPC 8.4(c).” (NOTE: At the hearing, the Office of Disciplinary Counsel dismissed that part of Count 5 pertaining to Respondent’s entering Ms. Hancock’s safety deposit box on October 27, 2009; therefore, this aspect of Count 5 will not be addressed any further.)

## **II. HEARING**

At the above-stated hearing, witnesses testified under oath and exhibits were admitted into evidence. Having considered the testimonial evidence and the documentary evidence, as well as the argument of counsel for both parties, the Hearing Officer makes the following Findings of Fact, Conclusions of Law and Recommendation regarding the charged violations.

## **III. FINDINGS OF FACT**

Based on the totality of the testimonial evidence and documentary evidence presented at the hearing, the following facts were proven by a clear preponderance of that evidence:

1. Donald Peter Osborne ("Respondent") was admitted to the practice of law in the State of Washington on May 13, 1977. Transcript ("TR") 945.

2. Respondent admitted he is not related to Elizabeth Hancock ("Ms. Hancock") by either blood or marriage. TR 1268.

3. William Spencer and his wife, Susan, lived across the street from Ms. Hancock for many years prior to her death. TR 312-13. Through a "great big window" in their home and through their front yard, the Spencers had a direct view of Ms. Hancock's home which permitted them to see people coming and going from Ms. Hancock's home. TR 314; TR 326. Their relationship with Ms. Hancock became closer after the death of Ms. Hancock's husband, George. TR 296; TR 316. Ms. Spencer and Ms. Hancock talked with each other about common interests such as yards, birds and flowers. TR 496. Using a porch light and kitchen blinds, Ms. Hancock had a signaling code with the Spencers to indicate to them if she was having problems. TR 502. They considered her to be a friendly neighbor and like a family member. TR 316. Mr. Spencer took Ms. Hancock to her doctor's appointments and to be with her. TR 324. He cared for her in a number of ways, including taking care of her home and her yard, cooking some of her meals and even helping her with sponge baths when necessary. TR 325. His caring for her increased in approximately 2008 after Ms. Hancock had a hip problem. TR 379; TR 397. Prior to Ms. Hancock's being hospitalized, the Spencers never saw Respondent at Ms. Hancock's home. TR 404.

4. Prior to her experiencing a fall in August 2009, Ms. Hancock mentioned Respondent only once by name to Mr. Spencer, said he was her husband George's lawyer, and stated she was not happy with Respondent and did not trust him; otherwise,

she never mentioned Respondent. TR 490-91; Exhibit (hereinafter "EX") A-16-1. After Ms. Hancock was hospitalized in August 2009, Mr. Spencer visited her daily at Overlake Hospital and at Mission Care. TR 446. While at Mission Care, Ms. Hancock asked the Spencers to contact "a" lawyer so she could change her will. TR 313; TR 331; TR 506. Without specifying Respondent by name, TR 331, Ms. Hancock told them to look in her address book under "lawyer." TR 331; TR 506. Ms. Hancock's address book listed "Donald P. Osborne, Attorney at Law" and included an address and phone number. TR 332; TR 336; TR 506; TR 509-10.

5. Prior to Ms. Hancock's injury and hospitalization, the Spencers never saw Respondent at Ms. Hancock's home. TR 326; TR 517. Between the time when Ms. Hancock asked the Spencers to contact a lawyer and when Ms. Hancock died, Ms. Spencer saw Respondent at Ms. Hancock's home several times. TR 518. Mr. Spencer first met Respondent in Ms. Hancock's driveway, then saw him at the hospital the next day. TR 421.

6. J. Scott Greer lived across the street from Ms. Hancock and is likewise a neighbor of the Spencers. TR 33-34; TR 47. He practices law from home and is constantly there; his living room is his office. TR 52. He recognized who were and who were not regular visitors at Ms. Hancock's home. TR 52. Mr. Greer saw that Respondent did not start arriving at Ms. Hancock's home until after she became ill approximately a month or so before she died. TR 49. Mr. Greer saw that Mr. Spencer was constantly at Ms. Hancock's home doing yard work; it was his understanding that Mr. Spencer would cook and do whatever Ms. Hancock needed to help out around her home. TR 50.

7. During his legal representation of Ms. Hancock's daughter, Sandra

Hudson, attorney Randall Petgrave became aware of a box of greeting cards in Ms. Hancock's home; his client wanted to retrieve the ones she had sent to her mother, Ms. Hancock. He found that from about 2001 through 2009, Ms. Hancock had kept greeting cards she had received, including those from Ms. Hudson to her mother. Mr. Petgrave found there were no greeting cards from Respondent to Ms. Hancock. Ms. Hancock also kept a list of persons to whom she sent and from whom she received Easter cards from year to year; Respondent was not on that list. TR 873.

8. In her address and day books, Ms. Hancock listed her friends and family members, along with their respective dates of birth; Respondent was not on that list. EX A-96, at Bates Stamp 2449-50.

9. The only entry for Respondent in Ms. Hancock's address book listed him as "Donald P. Osborne, Attorney at Law." EX A-96, at Bates Stamp 2385.

10. Toni Grandaw had known Ms. Hancock since approximately 1954, beginning when they started working together at a meat packing company. TR 139. After retirement, they kept in touch all the time. TR 140. This relationship between Ms. Grandaw continued until Ms. Hancock died in 2009. TR 141. They got together once every two months, talked and ate out all the time. TR 142-43. Ms. Hancock talked with Ms. Grandaw about Sandra (Ms. Hancock's) daughter, about Sandra's family, about Ms. Hancock's family in Europe and about the Spencers. TR 143; TR 147; TR 150; TR 152-53. She told Ms. Grandaw that Mr. Spencer was always there to help out in caring for her home, such as fixing the gutters, taking care of the yard, having a key to and watching over her home. TR 152. Ms. Hancock also talked with Ms. Grandaw about legal and financial matters, stating she was concerned that her investments were losing money.

TR 155-56. Ms. Hancock told Ms. Grandaw that she did not have a lawyer and never mentioned Respondent. TR 157-58. George Hancock, Ms. Hancock's late husband, had likewise never mentioned Respondent to Ms. Grandaw. TR 159. Ms. Grandaw had never heard of Respondent until Ms. Hancock got sick, saw him once at the hospital and never met him until Ms. Hancock's funeral. TR 158-59. Ms. Grandaw visited Ms. Hancock at Overlake Hospital and Mission Healthcare 6-7 times. TR 159. During one of those visits, Ms. Hancock mentioned that a lawyer had come to the hospital and was helping her get things done. TR 163. Ms. Hancock told Ms. Grandaw that she wanted to change her will regarding her daughter, her charities, her nephew and the Spencers. TR 163. When the Spencers told her that Ms. Hancock had changed her will in the hospital, Ms. Grandaw was flabbergasted that Ms. Hancock had left the rest of her estate to Respondent, a person whom Ms. Hancock had never mentioned to her. TR 165. While undergoing health care prior to her death, Ms. Hancock no longer appeared to Ms. Grandaw to be the same person. TR 166.

11. Jean Phillips helped Respondent with such things as typing since approximately 2003. TR 220. The first time she met Ms. Hancock was in Overlake Hospital. Respondent talked with her about his friends. TR 221. Prior to Ms. Hancock's falling and being hospitalized, Ms. Phillips had never heard Respondent mention Ms. Hancock in the 20 years she has known him. TR 239.

12. Rosina Opong knew Ms. Hancock very well. TR 583. While attending beauty school in 1989 and 1990, she first met Ms. Hancock, at which time she started doing Ms. Hancock's hair and continued doing so every two weeks since then. TR 582-84. Ms. Hancock talked with Ms. Opong about family and friends. TR 589. When she

would go to Ms. Hancock's home to do her hair in the upstairs kitchen, Ms. Opong saw Mr. Spencer working in the yard. TR 604; TR 599. She was first in contact with Respondent after Ms. Hancock's death. TR 592-93.

13. Respondent asserts that, between 2003 and 2009, he occasionally "swung by" Ms. Hancock's home to see how she was doing but also admits that he seldom shared holidays with her. TR 1014. Respondent exchanged recipes with her, EX R-211, but admitted that he shared recipes with everyone. TR 1017. On a couple of occasions, he had dinner with her at a restaurant and they also socialized in her back yard when circumstances fit. TR 1019-20. No one else was present at Ms. Hancock's home on such occasions. TR 1021.

14. Other than himself, Respondent presented no witness or any documentary evidence to corroborate his testimony about his relationship with Ms. Hancock prior to her being injured in a fall at her home and having to be hospitalized. After the Spencers phoned him that Ms. Hancock had been hospitalized, Respondent went to Overlake Hospital to assess what needed to be done. TR 1022. At that point, he started going relatively frequently to the hospital and also started going to her home to do such things as getting the mail, newspapers and magazines, doing her banking, setting up a bill-paying account, checking on her flowers and retrieving a change of clothing for her. TR 1027; TR 1033; TR 1035. Both he and Ms. Spencer did Ms. Hancock's laundry. TR 1028. No evidence was presented which demonstrated that he helped Ms. Hancock in any of these ways prior to her being hospitalized.

15. As personal representative ("PR") of Ms. Hancock's estate following her death, Respondent engaged in such activities as preparing pleadings to probate the

estate, undertaking the marshaling of her assets, opening bank accounts and notifying financial institutions, paying bills, watering plants at her home and protecting the estate's physical property. TR 1163-64.

16. After the court named Ms. Coster to succeed Respondent as PR of Ms. Hancock's estate, she was in the Hancock home and saw photographs of people but none of the photographs included Respondent. TR 662-63.

17. Prior to her death, Respondent maintained a casual friendship with Ms. Hancock.

18. Respondent did not have a close, familial relationship with Ms. Hancock.

19. In 1986, Respondent prepared a will for Elizabeth Hancock and her husband, George. This will was witnessed by attorneys Eric Lind and Richard Atherton. EX A-1.

20. In 2003, following the death of George Hancock, Respondent prepared another will for Ms. Hancock. This will was witnessed by Robert F. Koreski and his wife, Joyce J. Koreski. EX A-3.

21. Both the 1986 will and the 2003 will nominated Respondent as the PR of the respective estates. EX A-1; EX A-3.

22. After falling at home and suffering from that and other medical issues, Ms. Hancock was hospitalized at Overlake Hospital between August 29, 2009 and September 19, 2009. EX A-35 at Bates Stamp 371.

23. Ms. Hancock was discharged from Overlake Hospital and transferred to Mission Healthcare, a nursing home, on September 19, 2009. TR 313; TR 331; TR 506.

24. While at Mission Healthcare, Ms. Hancock asked the Spencers to find a

lawyer to help her with legal matters and to possibly change her will. She did not specify Respondent by name. TR 313; TR 331; TR 506.

25. By referencing her address book in Ms. Hancock's home, the Spencers located the name and telephone number for Respondent, listed therein as "Donald P. Osborne, Attorney at Law," phoned him and informed him of what Ms. Hancock had stated. TR 332; TR 336; TR 506; TR 509-10.

26. Respondent met with Ms. Hancock at both Overlake Hospital and at Mission Healthcare. TR 1060; TR 1064; TR 1130-32; TR 1133-34.

27. On September 22, 2009, while she was hospitalized, Ms. Hancock signed a power of attorney which gave Respondent authority over her financial affairs. This power of attorney was witnessed by the Spencers and notarized by Respondent. This power of attorney did not give authority to Respondent to make health care decisions for Ms. Hancock. EX A-4.

28. On September 22, 2009, Respondent signed a document entitled "Physician's Order for Life Sustaining Treatment" (POLST) on behalf of Ms. Hancock, thereby indicating that he did have the authority to make health care decisions for Ms. Hancock. EX A-5. An official at Overlake Hospital had demanded that Respondent sign the POLST. Respondent told the Overlake Hospital official that he did not have the authority to sign the POLST. EX A-5; A-62 at 3-4; EX A-98 at 71-75. Respondent signed the POLST form but struck that part of the form that indicated he was signing it pursuant to his having a healthcare power of attorney. Subsequently, Overlake Hospital voided the POLST after finding Respondent did not have the authority to sign it. Later, in his verified accounting and in his sworn deposition in March 2011, Respondent

repeated his assertion that he did not have the authority to sign the POLST. EX-98 at 71-75. At the hearing, Respondent produced a power of attorney which he testified had been executed by Ms. Hancock and gave him the authority to sign the POLST presented to him by the Overlake Hospital official. EX R-222; TR 1289-90.

29. Several days before September 22, 2009, Ms. Hancock had indicated she wanted her daughter, Sandra Hudson, to make healthcare decisions for her in the event she were to become unable to make those decisions for herself. EX A-55, at Bates Stamp 365; EX A-10.

30. On October 5, 2009, after being transferred from Mission Healthcare, Ms. Hancock was readmitted to Overlake Hospital and intubated.

31. While she was at Overlake Hospital, Respondent consulted with Ms. Hancock about a new will and what revisions were to be made. TR 1023.

32. In October 2009, Respondent directed Jean Phillips to prepare a will, hereinafter referred to as the 2009 will, based on instructions and handwritten notes Respondent provided to Ms. Phillips. TR 224.

33. In the 2003 will, Ms. Hancock identified a number of charities as the residual beneficiaries of her estate. In the 2009 will, Respondent became the residual beneficiary of Ms. Hancock's estate and the charities were no longer the residual beneficiaries. This change in the identity of the residual beneficiary was the primary difference between the 2003 will and the 2009 will. EX A-1, A-2, A-3. Like the 1986 will and the 2003 will, the 2009 will left the penalty clause intact. EX A-3 at Bates Stamp 16 (Clauses Eighth and Ninth).

34. Ms. Hancock's gift to Respondent of her residual estate included her

home, representing the bulk of her estate. EX A-3 at 2-5; TR 661. Both Respondent and Ms. Coster, the successor PR, valued Ms. Hancock's residual estate at approximately \$600,000.00. EX A-28; A-86 at Bates Stamp 1004-05; TR 658.

35. Ms. Hancock's bequest of her residual estate to Respondent in the 2009 will, regarding which she had retained Respondent to represent her interests, was a substantial gift to Respondent and gave him a personal interest in her estate.

36. Respondent's personal interest in Ms. Hancock's estate presented a substantial risk that his ability to continue to represent Ms. Hancock and/or Ms. Hancock's estate would be materially limited.

37. Like the 1986 will and the 2003 will, the 2009 will nominated Respondent as PR of the estate. EX A-3 at Bates Stamp 16 (Clauses Eighth and Ninth).

38. Ms. Phillips accompanied Respondent to Overlake Hospital so Ms. Hancock could execute the 2009 will. TR 226.

39. At Overlake Hospital, Respondent had a private consultation with Ms. Hancock about the newly prepared will. He told Professor John Strait that, during this consultation with Ms. Hancock, he thought that between the advice he gave her about healthcare decisions, powers of attorney and the will, he had used the phrase "independent advice of counsel" at some point. EX A-27 at 5. In his March 29, 2011, sworn deposition, Respondent testified that he did discuss independent counsel with Ms. Hancock regarding the 2009 will. EX A-98 at 59. In his sworn testimony at the hearing, Respondent stated that Ms. Hancock had specifically waived independent counsel. Respondent produced handwritten notes and testified that these notes bear Ms. Hancock's initials next to a waiver of her right to consult independent counsel. TR 1081-

82; EX R-200 at 2. At hearing, however, Mr. Greer and Mr. Petgrave testified that Respondent admitted to them that he had not advised Ms. Hancock that she had the right to consult with another attorney as independent counsel prior to her bequeathing to Respondent her residual estate. TR 76; EX A-17.

40. On October 14, 2009, while in declining health, Ms. Hancock executed the new will. In addition to bearing the signature of Jean Phillips as a witness to Ms. Hancock's signing the 2009 will, this will contained the signature of Elaine Kerns as also having witnessed Ms. Hancock's signing the will. EX A-3. Yet when Jean Phillips witnessed Ms. Hancock's affixing her signature to execute the 2009 will, no other witness was in the room to witness Ms. Hancock's signing. Ms. Phillips has never seen nor met Elaine Kerns. Ms. Phillips admits it was wrong for her to have witnessed the will under these circumstances. TR 228. Respondent notarized the 2009 will and later presented it to the court for probate. TR 229.

41. On October 15, 2009, Ms. Hancock was discharged from Overlake Hospital and transferred to Mission Healthcare where she died on October 27, 2009. TR 1151.

42. Respondent was notified of Ms. Hancock's death. TR 1151.

43. Upon her death on October 27, 2009, any power of attorney granted by Ms. Hancock to Respondent expired. EX A-4.

44. On October 29, 2009, Respondent had the 2009 will admitted to probate and himself appointed as PR of the estate. EX A-11; EX A-13.

45. Following Ms. Hancock's death, Respondent went to the Spencers' home and gave them a check from her estate for \$15,000.00. TR 349. Respondent had shown

Mr. Spencer a prior will under which Ms. Hancock was going to give the Spencers \$10,000.00. TR 349. The Spencers went to Mr. Greer with their concerns about this \$15,000.00 bequest. Mr. Spencer wanted to know why there had been a change. TR 350.

46. After reading the 2009 will, Mr. Greer became concerned that Respondent was acting unethically when he learned that Respondent had not only drafted Ms. Hancock's 2009 will but also had been named as the residual beneficiary of Ms. Hancock's estate. TR 36. Though he is an attorney, Mr. Greer is neither an estate planner nor an estate attorney; therefore, he called attorney Randolph Petgrave, whose practice includes estate planning, probate and probate litigation, and related his concerns. TR 38. After Mr. Greer spoke with the Spencers, he contacted Sandra Hudson, the daughter of Ms. Hancock. Ms. Hudson then contacted and retained Mr. Petgrave as her attorney. TR 39.

47. Mr. Petgrave was concerned that Respondent had a conflict-of-interest under RPC 1.7 by having been both the drafter of a will and the executor of the estate and by Respondent's being a beneficiary under the will, and was also concerned because Respondent had not done an inventory and appraisal within ninety (90) days of his being appointed as the PR of Ms. Hancock's estate. TR 72-73.

48. Mr. Greer and Mr. Petgrave had a discussion with Respondent at Ms. Hancock's home to discuss the concerns they had about the 2009 will. In this discussion, they asked Respondent to step down as the PR of Ms. Hancock's estate but Respondent refused to do so. TR 40; TR 75.

49. At hearing, Respondent testified that he spoke with Ms. Hancock about

her wanting to name him in her 2009 will, that he advised her that she had a right to get a second opinion and a right to have someone else do the will. He further testified that Ms. Hancock told him she "Does not want 2<sup>nd</sup> Opinion or someone else to do (the will)." TR 1081-82. However, according to the hearing testimony of both Mr. Greer and Mr. Petgrave, Respondent admitted to each of them that he had drafted the 2009 will, that he had named himself as the PR of the estate, that he was named as the estate's residual beneficiary, that Ms. Hancock had not had an opportunity to consult with other counsel about her will and that he had not advised Ms. Hancock that she had the right to seek independent counsel prior to her bequeathing his her residual estate. TR 76; EX A-17.

50. When Mr. Greer and Mr. Petgrave stated to Respondent that he had violated the Rules of Professional Conduct, Respondent asked which one. TR 41. Mr. Greer and Mr. Petgrave replied that there were a number of ethical issues about Respondent's having a conflict-of-interest in violation of RPC 1.7 and that Respondent had committed a "very blatant violation" of RPC 1.8 which prohibits Respondent's drafting Ms. Hancock's will while also drafting himself into his client's will. TR 41; TR 77. Though Respondent denied doing anything wrong, he admitted to Mr. Greer and Mr. Petgrave that he was not familiar with those RPC's; he also told them that he had a close familial relationship with Ms. Hancock. TR 41; TR 77; TR 79. At the hearing, Respondent testified that he had researched the RPC's for two hours prior to presenting the 2009 will to Ms. Hancock. TR 1158.

51. After being appointed PR of the estate in October 2009, Respondent began removing Ms. Hancock's property from her home and sought control of her financial assets. EX A-62 at Bates Stamp 594-99. For instance, the Spencers saw Respondent take

boxes, plants and clothing from Ms. Hancock's home after her death. TR 346-47. Ms. Spencer also saw him take Ms. Hancock's fur coats and put them in his Jeep. TR 570. Ms. Grandaw knew that George Hancock had a big stamp and coin collections as she had seen them in the painting room of the Hancock home. TR 167. Ms. Hancock had shown Ms. Grandaw jewelry that Mr. Hancock had given to his wife on birthdays or at Christmas, jewelry which Ms. Grandaw recognized as being real jewelry, i.e., not costume jewelry. TR 167-68. Ms. Opong saw glass Chinese antiques in Ms. Hancock's upstairs kitchen when she would do Ms. Hancock's hair and then visit with her afterwards. TR 605. When Ms. Spencer later bought Ms. Hancock's address book at the estate sale, someone had removed its previous contents, leaving only blank pages. TR 512.

52. Mr. Petgrave was concerned that Respondent was stealing from Ms. Hancock's estate; in behalf of Sandra Hudson, Ms. Hancock's daughter, Mr. Petgrave petitioned the King County Superior Court to remove Respondent as PR of Ms. Hancock's estate. TR 79. In addition to the petition filed in behalf of Ms. Hudson, a number of charities likewise petitioned the court to challenge the validity of the 2009 will. EX A-17.

53. Pursuant to Mr. Petgrave's petition filed in behalf of Sandra Hudson, the court removed Respondent as PR of the estate on May 21, 2010, and appointed attorney Barbara Coster as successor PR. EX A-23.

54. In 2010, the King County Superior Court issued orders on June 10 and on June 17 pursuant to which Respondent was required to deliver to Ms. Coster all personal papers and records of any kind, information, keys and property of the estate, including

Ms. Hancock's address book. EX A-26; EX A-29.

55. In July 2010, Respondent filed pleadings in the King County Superior Court stating that he had already turned over all records to Ms. Coster. EX A-34; EX A-41. On December 17, 2010, the court issued another order, again requiring Respondent to turn over to Ms. Coster all assets of the estate. EX A-52.

56. On November 9, 2010, after the court had permanently removed him as the Hancock estate's PR and after he had failed to regain control of the estate, Respondent disclaimed his personal interest in the estate. EX A-46.

57. On February 24, 2011, Respondent filed a sworn declaration with the King County Superior Court stating that he had already turned over to Ms. Coster or to Ms. Hancock's estate all of the "financial records, contents of the safety deposit box, collectibles, jewelry, collection of old currency, decedent's purse, contents of a two drawer file cabinet, papers and records, all estate funds from my IOLTA account, and all other personal property." EX A-57.

58. On March 2, 2011, the King County Superior Court found that Respondent had still not turned over all items of personal property belonging to the Hancock estate, e.g., personal and financial records, the original wills from 1986 and 2003, Ms. Hancock's purse and its contents, and pages from her address book. EX A-58.

59. In sworn deposition testimony on March 29, 2011, Respondent stated that he took Ms. Hancock's identification and credit cards out of her purse and disposed of them. EX A-98 at 89. He also testified that he took financial documents and statements for SunTrust, Merrill Lynch, Jackson National Life, Puget Power and AIG from Ms. Hancock's home and disposed of them by shredding them and throwing them away. EX

A-98 at 89-91.

60. In sworn deposition testimony on April 8, 2011, Respondent stated that after looking "high and low" for files and a copy of the 2003 will with interlineations on it, all he found was George Hancock's original notes for his 1986 will. EX A-99.

61. The King County Superior Court entered judgment against Respondent for fees and costs. EX A-60; EX A-66. After judgment was confirmed, Respondent moved for reconsideration, again claiming that he had turned over all assets and property belonging to Ms. Hancock and her estate, and also claiming that Ms. Coster's assertions to the contrary were false. EX A-61.

62. Pursuant to judgment being entered, the King County Superior Court issued a writ of execution on August 23, 2011. EX A-74. Acting on the writ of execution, officers from the King County Sheriff's Department entered Respondent's home which contained his office from which he practiced law. Respondent allowed Ms. Coster and Matthew Green, her attorney, to enter the premises as well. They located records and property belonging to Ms. Hancock and her estate lying in plain sight in Respondent's home office. TR 697. The officers seized these records and property including, for example, Ms. Hancock's identification, some of her credit cards, pages from her address book with handwritten data on them and financial records including records of an insurance policy that was a not a probate asset. A-95; TR 717-18. As to the insurance policy, Respondent had not disclosed the nature of that asset or his efforts to have its proceeds paid to himself. TR 709-11. Since the King County Superior Court had previously ordered Respondent to deliver those records and property to Ms. Coster, the court later ordered all of these records and property released to Ms. Coster as the

estate's successor PR. EX A-52; EX A-78.

63. During the search of Respondent's home office in the course of acting on the writ of execution, Ms. Hancock's identification, credit cards and financial records were found. EX A-95; EX A-107; EX A-111; EX A-87 at 4-5; TR 709-11. TR 716-18. At hearing, Respondent testified that he did not know he had those items because he had directed Jean Phillips to find and dispose of them. TR 1168-69; TR 1215-16. At hearing, Jean Phillips testified that Respondent had not directed her to find and dispose of them. TR 1437-38; TR 1441.

64. Litigation pertaining to the Hancock estate continued until a settlement agreement was reached a year later in November 2011. Pursuant to that settlement agreement, Respondent paid \$200,000.00 in attorney fees and sanctions, including payment of the judgment which had been executed at Respondent's home office. EX A-81; EX A-84; EX A-85.

#### IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Hearing Officer makes the following Conclusions of Law:

**COUNT 1:** By preparing the 2009 will, which gave him a substantial gift from Ms. Hancock's estate when he did not have a close familial relationship with Ms. Hancock, Respondent violated RPC 1.8(c).

Pursuant to RPC 1.8(c), a "lawyer shall not ... prepare on behalf of the client an instrument giving the lawyer ... any substantial gift unless the lawyer ... is related to the client. For purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client

maintains a close, familial relationship.”

Prior to the 2006 amendment, RPC 1.8(c) required that the lawyer must be related to the client in order to be qualified to both draft the will and also take a substantial gift under the will. The intent of the 2006 amendment to this RPC was to expand the definition of “related” but only for the purpose of encompassing non-traditional family relationships. Ref Reporter’s Explanatory Memorandum to the Ethics 2003 Committee’s Proposed Rules of Professional Conduct 155. Washington specifically rejected the construction of other states which had held that persons not related by blood or marriage could be considered to be “related.” Ref Washington Ethics Advisory Opinions 87-07 and 99-03. The Reporters Notes to the drafting of Washington’s current RPC 1.8(c) point out that the rule prohibits a client from giving a lawyer a substantial gift unless that lawyer is a relative of the client by blood or marriage or unless that lawyer is an “other relative with whom the lawyer or the client maintains a close, familial relationship.” The Drafters Notes, authored by Doug Ende [who was then Reporter to the Washington Ethics 2003 Ethics Commission and then later became Chief Disciplinary Counsel for the Washington State Bar Association], explicitly emphasize “other relative” rather than “other individual.” EX A-27, at Bates Stamp 000134.

Quoting expert witness John Strait, whom the King County Superior Court appointed as Special Master in the 2009 will litigation, “... the Reporter’s Notes to the Washington RPC 1.8(c) make it fairly clear that the language Mr. Osborne relies upon was not intended to extend to lawyers who are not relatives of Mrs. Hancock, but rather to expand the definition of how far the *family* relationship could extend. In my view,

WRPC 1.8(c) as amended in 2006 does not provide a basis for Mr. Osborne to claim that he is 'another individual.' The purpose of our adoption of WRPC 1.8(c) language in 2006 was to clarify that it could apply to extended but still familial, related individuals or people such as in-laws who occupied the same type of family relationship although not by direct blood. It is uncontested that Mr. Osborne is not related by marriage or otherwise to Mrs. Hancock. In my view, this makes it unnecessary to resolve how 'close' his relationship was to Mrs. Hancock. Mr. Osborne should not have drafted the will in which he was made a substantial beneficiary." (Italics added) EX A-27, at Bates Stamp 000135.

Assuming that, at the very most, Respondent was a close friend of Ms. Hancock, being her "close friend" is not tantamount to having had a "close familial relationship" with her. Ref CJE Opinion No. 97-3 (Massachusetts, April 22, 1997). In that Respondent admitted he was not related to Ms. Hancock by either blood or marriage, TR 1268, he violated RPC 1.8(c) when he both drafted the will and also took a substantial gift from the estate as the residual beneficiary.

In a 2008 decision, the Oregon Supreme Court addressed a similar issue wherein a lawyer had drafted a will which gifted to his wife antiques, furniture and half of his client's estate. The court found that substantial testamentary gifts (in that instance worth at least \$1,000) conveyed to a will-drafting lawyer (or his family) was a violation of RPC 1.8(c). *In re Schenck*, 345 Or 350, 358, *mod on recon*, 345 Or 652 (2008).

Even if RPC 1.8(c) were to be construed to allow a lawyer who is not related to the testator by either blood or marriage to both draft a will and to also take from that will a substantial gift as the residual beneficiary, Respondent still violated this RPC. Ref *In re*

*Horgos*, 682 A.2d 447 (Penn. Court of Jud'l. Discipline, 1996). In *Horgos*, the court deliberated the issue of what is a "close familial relationship" by considering several factors: (1) intimacy of address, (2) recognition by others of a close relationship, (3) shared meals, (4) frequent contact either by phone or in-person, (5) shared holidays, (6) shared family events, (7) assistance with physical, medical, legal or emotional needs, and (8) longevity.

Pursuant to the totality of the facts set forth above and herein incorporated by reference, and considering the *Horgos* factors, (1) Respondent had no intimacy of address with Ms. Hancock; (2) there is no evidence that others recognized a close relationship between Respondent and Ms. Hancock; (3) other than sharing cookies on occasion, there is insufficient evidence that Respondent shared meals with Ms. Hancock; (4) other than infrequent, catching-up phone calls, there is insufficient evidence that Respondent visited Ms. Hancock on a frequent basis; (5) there is no evidence that Respondent shared holidays with Ms. Hancock; (6) other than his seeing Ms. Hancock's relative from European when that person would come to town on a rare occasion, there is no evidence that Respondent shared family events with Ms. Hancock; (7) though he did assist with her legal needs in drafting the September 2009 will and two prior wills, there is no evidence that Respondent assisted with Ms. Hancock's physical, medical or emotional needs prior to September 2009; and (8) as to longevity, he had been acquainted with her since 1986. Pursuant to the totality of the facts set forth above and incorporated herein by reference, Respondent did not have a close familial relationship with Ms. Hancock.

Additionally, based upon Respondent's testimony that Ms. Hancock refused to seek a second opinion or to have another lawyer prepare the 2009 will, Respondent either knew or should have known that he should proceed no further. If the client refuses to seek independent legal advice, then the lawyer may not draft the will or other instrument. Ref Los Angeles County Bar Association Ethics Opinion 462 (November 1990).

By both drafting the will and being the recipient of a substantial gift as the named residual beneficiary of the estate under the totality of the circumstances herein, Respondent violated RPC 1.8(c).

**COUNT 2:** By naming himself as PR of Ms. Hancock's estate while simultaneously making himself the residual beneficiary while representing Ms. Hancock, Respondent violated RPC 1.7(a)(2).

Pursuant to RPC 1.7(a)(2), "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

Due to his being both the residual beneficiary of Ms. Hancock's estate, which constituted his having a personal interest in the estate, while also purporting to represent the interests of Ms. Hancock and the estate, Respondent had a concurrent conflict of interest. RPC 1.7(a)(2) bars Respondent's having such a concurrent conflict of interest where there is a significant risk that his personal interests in the estate could

potentially affect his taking an appropriate course of action for Ms. Hancock or her estate. "Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." Comment (8) to RPC 1.7.

**COUNT 3:** By filing a declaration with the court on February 24, 2011, asserting that he had returned all property formerly belonging to Ms. Hancock to the estate and/or successor PR when he knew he had not and/or by knowingly making similar false assertions in other pleadings, Respondent violated RPC 3.3(a), RPC 4.1(a), and/or RPC 8.4(c).

RPC 3.3(a) provides that "a lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; ... or (4) offer evidence that the lawyer knows to be false."

This rule applies to Respondent's conduct in representing Ms. Hancock's estate in the King County Superior Court in which he filed or caused to be filed certain pleadings in which he made representations regarding the status or location of property of estate property. Ref Comment (1) to RPC 3.3. The totality of the facts, as set forth above, demonstrate by a clear preponderance that Respondent knew those representations made to the court were false, conduct which violates RCP 3.3. An "assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes to be true on the basis of a reasonably diligent

inquiry.” Ref Comments (2) and (3) to RPC 3.3.

RPC 4.1(a) provides: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person ...” The subject declaration Respondent filed with the court would have likewise been provided to others who were challenging Respondent regarding the location of the estate’s property. Respondent was prohibited from making misrepresentations to those other person when dealing with them. Comment (1) to RPC 4.1.

RPC 8.4 provides: “It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation ...” The totality of the facts set forth above demonstrate by a clear preponderance of the evidence that, in filing this subject declaration with the King County Superior Court, Respondent engaged in acts of dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c). See Comment (1) to RPC 8.4(c).

**COUNT 4:** By failing to return property formerly belonging to Ms. Hancock to the estate and/or the successor PR despite being ordered to do so by the court, Respondent violated RPC 3.4(a), RPC 3.4(c), and/or RPC 8.4(j).

RPC 3.4(a) provides that a “lawyer shall not: (a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value ... (or) (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 ...” The totality of facts set forth above demonstrate by a clear preponderance that Respondent failed or refused to return certain property to either Ms. Hancock’s estate and/or to Ms. Coster as the estate’s successor PR despite the

court's ordering him to do so. This property had potential evidentiary value in the proceedings pending before the court. Respondent's conduct unlawfully obstructed the right of the estate's access and/or Ms. Coster's access to that property or concealed that property from the estate and/or Ms. Coster. Respondent's conduct was well beyond the scope of competition in the adversary system or fair discovery and constituted professional misconduct. Ref Comment (1) to RPC 3.4(a) and (c).

RPC 8.4(j) provides: "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 ..." The totality of the facts set forth above demonstrate by a clear preponderance that Respondent willfully disobeyed or violated one or more orders of the Superior Court, more specifically identified above directing him as to what to do about certain property of Ms. Hancock's estate. In so acting, Respondent engaged in professional misconduct.

**COUNT 5:** By his purporting to have authority to execute the September 2009 POLST when he did not have such authority, Respondent violated RPC 8.4(c).

RPC 8.4(c) provides: "It is professional misconduct for a lawyer to: ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The totality of the facts set for above demonstrate by a clear preponderance that, by signing the POLST, Respondent was representing that he had the authority to do so. Respondent admitted that he had no such authority to execute the POLST. Therefore, by his signing the POLST when he knew he had no authority to sign it, Respondent engaged in an act of misrepresentation. This act of misrepresentation constitutes professional misconduct under RPC 8.4(c).

## V. PRESUMPTIVE SANCTIONS

The American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) – hereinafter “ABA Standards” – govern bar discipline cases in Washington. *In the Matter of the Disciplinary Proceeding Against Halverson*, 140 Wn2d 475, 492, 998 P2d 833 (2000); *In re Disciplinary Proceeding Against Boelter*, 139 Wn2d 81, 99, 985 P2d (1999); *In re Disciplinary Proceeding Against Lynch*, 114 Wn2d 598, 610, 789 P2d 752 (1990). Applying the respective ABA Standards to each of the counts against Respondent:

**COUNT 1:** ABA Standard 4.3 “Failure to Avoid Conflicts of Interest” applies to Respondent’s preparing the 2009 will which gave him a substantial gift from Ms. Hancock’s estate. This standard states that absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest.

ABA Standard 4.31 (a) provides: Disbarment is generally appropriate when a lawyer, without the informed consent of client engages in representation of a client knowing that the lawyer’s interests are adverse to the client’s with the intent to benefit the lawyer, and causes serious or potentially serious injury to the client.

ABA Standard 4.32 provides: Suspension is generally appropriate when the lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ABA Standard 4.33 provides: Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests, or whether the representation will adversely

affect another client, and causes injury or potential injury to a client.

ABA Standard 4.34 provides: Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

The totality of the factual circumstances demonstrate by a clear preponderance that, in representing Ms. Hancock, Respondent prepared the 2009 will, that he knew that his personal interests in being the recipient of a substantial gift under the 2009 will as the residual beneficiary were adverse to or potentially adverse to the interests of Ms. Hancock, that he acted intentionally, that his conduct caused serious or potentially serious injury to the client through her estate and that he either knew or should have known that his conduct was unethical under the Rules of Professional Conduct.

As to Count 1, the presumptive sanction is disbarment.

**COUNT 2:** ABA Standard 4.3 "Failure to Avoid Conflicts of Interest" applies to Respondent's preparing the 2009 will which named himself as the personal representative of Ms. Hancock's estate and also, in naming himself as the residual beneficiary, gave Respondent a substantial gift from Ms. Hancock's estate. This standard states that, absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

ABA Standard 4.31 (a) provides: Disbarment is generally appropriate when a lawyer, without the informed consent of client engages in representation of a client

knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer, and causes serious or potentially serious injury to the client.

ABA Standard 4.32 provides: Suspension is generally appropriate when the lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ABA Standard 4.33 provides: Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

ABA Standard 4.34 provides: Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

The totality of the factual circumstances demonstrate by a clear preponderance that, in representing Ms. Hancock, Respondent prepared the 2009 will in which he was simultaneously named as the residual beneficiary, that he knew his personal interests in being the recipient of a substantial gift under the will as the residual beneficiary were adverse to or potentially adverse to the interests of Ms. Hancock and her estate, that he acted intentionally, that his conduct caused serious or potentially serious injury to the client through her estate and that he either knew or should have known that his conduct was unethical under the Rules of Professional Conduct.

As to Count 2, the presumptive sanction is disbarment.

**COUNT 3:** ABA Standard 6.1 "False Statements, Fraud, and Misrepresentation" applies to Respondent's filing a declaration with the court on February 24, 2011, asserting that he had returned all property formerly belonging to Ms. Hancock to the estate and/or successor PR when he knew he had not and/or by knowingly making similar false assertions in other pleadings. This standard states that, absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

ABA Standard 6.11: Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

ABA Standard 6.12: Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially effect on the legal proceeding.

ABA Standard 6.13: Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially

adverse effect on the legal proceeding.

ABA Standard 6.14: Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

As set forth in the Findings of Facts, Respondent asserted in a sworn declaration he filed with the King County Superior Court on February 24, 2011, that he had returned to the estate all property formerly belonging to Ms. Hancock. The totality of the facts set forth above demonstrate by a clear preponderance that Respondent's declaration and/or other similar assertions he made in other pleadings filed with the court were false and that he made such false declarations and/or assertions with the intent to deceive the court. His conduct had the potential to cause serious injury to a party or to cause a significant or potentially significant adverse effect on the legal proceeding.

As to Count 3, the presumptive sanction is disbarment.

**COUNT 4:** ABA Standard 6.2 "Abuse of the Legal Process" applies to Respondent's failing to return property formerly belonging to Ms. Hancock to the estate and/or the successor PR despite being ordered to do so by the court. This standard states that absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or 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:

ABA Standard 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.

ABA Standard 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.

ABA Standard 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.

ABA Standard 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.

The totality of the facts set forth above demonstrate by a clear preponderance that when Respondent failed to return property formerly belonging to Ms. Hancock to the estate and/or the successor PR despite being ordered to do so by the court, he knowingly violated one or more court orders with the intent to obtain a personal benefit and caused serious or potentially serious interference with a legal proceeding.

As to Count 4, the presumptive sanction is disbarment.

**COUNT 5:** ABA Standard 5.1 “Failure to Maintain Personal Integrity” applies to Respondent’s purporting to have authority to execute the September 2009 POLST when he did not have such authority. This standard states that absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

ABA Standard 5.11(b): Disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.

ABA Standard 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.

ABA Standard 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.

The totality of the facts set forth above demonstrate by a clear preponderance that when, Respondent purported to have authority to execute the September 2009 POLST, he knew he did not have such authority and thereby engaged in intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice law.

As to Count 5, the presumptive sanction is disbarment.

## **VI. AGGRAVATING OR MITIGATING FACTORS**

A. Pursuant to ABA Standard 9.22, the following *aggravating* factors apply:

1. Standard 9.22 (b): Dishonest or selfish motive.

Respondent left the penalty clause in the 2009 will, made false claims during the underlying litigation in an attempt to preserve his personal interests in the estate as the residual beneficiary, made false statements that concealed his continued possession of estate property and executed the POLST on September 22, 2009, under false pretenses.

2. Standard 9.22 (c): A pattern of misconduct.

The conduct Respondent engaged in included: While representing Ms. Hancock and without there existing between them a close familial relationship, Respondent prepared the 2009 will with the penalty clause intact from the prior wills, named himself as the personal representative of Ms. Hancock's estate, bestowed upon himself a substantial gift when naming himself as the residual beneficiary, executed the POLST without apparent authority to do so, asserted in court pleadings that he had turned over to the successor personal representative all estate property formerly belonging to Ms. Hancock when he knew he had not done so, and violated court orders directing him to turn over estate property to the successor personal representative. The totality of the conduct Respondent engaged in is set forth above in the Findings of Fact and incorporated herein by reference. This represents a pattern of misconduct, including personal greed, selfishness, conflict of interest, deceit, dishonesty, lack of candor and/or defiance inconsistent with the standards to be practiced by a lawyer admitted to practice in the State of Washington.

3. Standard 9.22 (d): Multiple offenses.

As set forth above, incorporated herein by reference, Respondent committed multiple violations of the Rules of Professional Conduct.

4. Standard 9.22 (g): Refusal to acknowledge wrongful nature of conduct.

Respondent has admitted that he prepared the 2009 will knowing that, as the residual beneficiary, he was the recipient of a substantial gift but denies that he violated the Rules of Professional Conduct in doing so. Without being able to sufficiently elucidate substantial supporting facts, Respondent asserts that he had a close, familial relationship with Ms. Hancock. Respondent has admitted that he retained certain property belonging to Ms. Hancock's estate but asserts that the property was worthless and attempts to shift the blame to others by accusing them of impropriety in serving the writ of execution that led to the discovery of the property in his custody, possession or control. In executing the POLST on September 22, 2009, Respondent admits that he had no authority to do so but rationalizes his behavior by asserting that he executed the document while engaging in an argument with an official of a nursing home. Ref *In re Disciplinary Proceeding Against Jackson*, 180 Wn2d 201, 322 P3d 795 (2014).

5. Standard 9.22 (h): Vulnerability of the victim.

Ms. Hancock was elderly and hospitalized due to injury and/or illness when interacting with Respondent about the preparation and execution of the 2009 will.

6. Standard 9.22 (i): Substantial experience in the practice of law.

Since Respondent was admitted to practice law in the State of Washington in 1977, he had 32 years of experience prior to the misconduct in which he engaged herein.

B. Pursuant to ABA Standard 9.23, the following *mitigating* factors apply:

Standard 9.23 (a): Absence of a prior disciplinary record.

Respondent has no prior disciplinary record.

**VII. RECOMMENDATION**

With aggravating factors substantially outweighing mitigating factors as to each of the Counts 1-5, inclusive, the Hearing Officer makes the following recommendations:

**COUNT 1:** Disbarment.

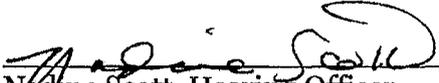
**COUNT 2:** Disbarment.

**COUNT 3:** Disbarment.

**COUNT 4:** Disbarment.

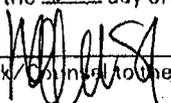
**COUNT 5:** Disbarment.

Dated this 5th day of May, 2015.

  
Nadene Scott, Hearing Officer  
Washington State Bar Association

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of this PDF, COL by HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Kurt Bullmer Respondent Respondent's Counsel  
at 10 Belmont Pl. #3, Seattle, WA 98108 by Certified first class mail,  
postage prepaid on the 5th day of May, 2015

  
Clerk/Counsel to the Disciplinary Board

# APPENDIX C

JAN 22 2016

THE SUPREME COURT OF WASHINGTON

Ronald R. Carpenter  
Clerk

IN RE: )

BAR NO. 7386

DONALD PETER OSBORNE, )

Supreme Court No. )

201,435-6 )

ATTORNEY AT LAW. )

ORDER )

RECEIVED

JAN 22 2016

2016

This matter came before the Court at its January 7, 2016, En Banc Conference. The Court considered the "ODC'S MOTION UNDER RAP 17.7 TO MODIFY CLERK'S RULING DENYING MOTION TO STRIKE OSBORNE'S NOTICE OF APPEAL" and the "ODC'S MOTION FOR EXTENSION OF TIME TO FILE MOTION TO MODIFY CLERK'S RULING" and determined unanimously that the following order should be entered. Now, therefore, it is

ORDERED:

The ODC'S Motion for Extension of Time to File Motion to Modify Clerk's Ruling is denied, therefore, ODC'S Motion Under RAP 17.7 to Modify Clerk's Ruling Denying Motion to Strike Osbornes' Notice of Appeal was not considered;

The Disciplinary Board's Order Denying Sua Sponte Review and Adopting the Hearing Officer's Decision is an appealable order under ELC 12.3(a);

Mr. Osborne's appeal of the Order Denying Sua Sponte Review and Adopting the Hearing Officer's Decision is limited to ONLY the record and scope of the Disciplinary Board's review as required by ELC 11.3(a);

The record of this review is therefore limited to the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation;

The scope of the issue on appeal is limited to whether the Disciplinary Board erred by not finding that sua sponte review was required to "prevent substantial injustice or to correct a clear error," see ELC 11.3(d); and

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Page 2  
ORDER  
201,435-6

The Clerk of the Court shall set a briefing schedule for the parties by separate correspondence.

DATED at Olympia, Washington this 20<sup>th</sup> day of January, 2016.

For the Court

Madsen, C. J.  
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

**DONALD PETER OSBORNE**,

Lawyer (Bar No. 7386).

Supreme Court No. 201,435-6

DECLARATION OF MAIL  
SERVICE

The undersigned Disciplinary Counsel of the Office of Disciplinary Counsel of the Washington State Bar Association (ODC) declares that he caused a copy of ODC's Petition for Interim Suspension (ELC 7.2(a)(2)) to be mailed by regular first class mail with postage prepaid on January 28, 2016 to:

Kurt M. Bulmer  
Attorney at Law  
740 Belmont Pl E Apt 3  
Seattle, WA 98102-4442

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

*1/28/2016, Seattle, WA*  
Date and Place

  
M Craig Bray,  
Bar No. 20821  
Disciplinary Counsel  
1325 4<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98101-2539  
(206) 239-2110