

# ROBERT STARK

# THE SUPREME COURT OF WASHINGTON

IN RE: )  
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ROBERT E. STARK,  
ATTORNEY AT LAW.

ORDER

BAR NO. 26732

Supreme Court No.  
201,011-3

RECEIVED  
JAN 06 2012

This matter came before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order in the matter of Robert E. Stark, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court has reviewed the Disciplinary Board's Recommendation and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the Court has determined unanimously that the Recommendation should be approved. Now, therefore, it is hereby

ORDERED:

Robert E. Stark is disbarred from the practice of law. Pursuant to ELC 13.2, the effective date of disbarment is January 12, 2012. Costs and expenses, pursuant to ELC 13.9, as approved by the disciplinary board and restitution, pursuant to ELC 13.7, as approved by the disciplinary board will be paid by Robert E. Stark.

DATED at Olympia, Washington, this 5<sup>th</sup> day of January, 2012.

For the Court

Madsen, C. J.  
CHIEF JUSTICE

FILED  
CLERK OF SUPREME COURT  
JAN 06 2012  
BY: D. A. CARPENTER  
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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**ROBERT E. STARK,**  
Lawyer (WSBA No. 26732)

Proceeding No. 11#00032  
DISCIPLINARY BOARD ORDER  
AMENDING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its November 21, 2011 meeting, on automatic review of Hearing Officer Andrekita Silva's October 4, 2011 decision recommending disbarment following a default hearing.

Having reviewed the materials submitted by the Association, and considering the applicable case law and rules;

**IT IS HEREBY ORDERED THAT** the Hearing Officer's decision is adopted<sup>1</sup> with the following amendment:

¶ 124. Count 3-ABA Standard 7.0 applies to violations of RPC 1.5. Respondent acted knowingly in taking fees and then failing to perform the work he agreed to do for Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn, Mr. Carlisle, Ms. Lockwood and Mr. McClanahan, causing injury to all of them. The presumptive sanction is suspension.<sup>2</sup>

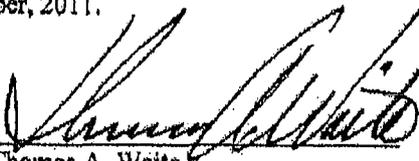
<sup>1</sup> The vote on this matter was 13-0, Those voting were: Bruy, Broom, Butterworth, Carrington, Evans, Ivarinen, Kaba, Maier, Neiland, Ogura, Trippett, Waite and Wilson.

<sup>2</sup> Original ¶ 124 stated: Count 3-ABA Standard 7.0 applies to violations of RPC 1.5. Respondent acted knowingly in charging unreasonable fees to Mr. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn, Mr.

053

1 The Board modified this conclusion of law to make it consistent with the allegation in  
2 Count 3 of the Formal Complaint.

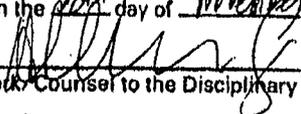
3 Dated this 29th day of November, 2011.

4 

5 Thomas A. Waite  
6 Disciplinary Board Chair

7  
8 CERTIFICATE OF SERVICE

9 I certify that I caused a copy of the DB Order Appending AD's Decision  
10 to be delivered to the Office of Disciplinary Counsel and to be mailed  
to ROBERT STARK Respondent/Respondent's Counsel  
at 2015 15th Ave NE, Seattle, WA 98105 by Certified first class mail,  
11 postage prepaid on the 29th day of NOVEMBER, 2011.

12   
13 Clerk, Counsel to the Disciplinary Board

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17 Carlisle, Ms. Lockwood and Mr. McClanahan, causing injury to all of them. The presumptive sanction is suspension.

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OCT 04 2011

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ROBERT E. STARK,**  
Lawyer (Bar No. 26732).

Proceeding No. 11#00032

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on October 4, 2011.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged Robert E.  
Stark with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in  
the Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the  
Formal Complaint is admitted and established as follows:

4. Count 1 - By failing to file documents necessary to complete the dissolutions of

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1 Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn and Mr. Carlisle,  
2 Respondent violated RPC 1.3.

3 5. Count 2 - By failing to respond in any way to the inquires of Ms. Walters, Ms.  
4 Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn or Mr. Carlisle about the status of their  
5 dissolutions, Respondent violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

6 6. Count 3 - By taking fees from Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms.  
7 Starr, Mr. Wellborn, Mr. Carlisle, Ms. Lockwood and Mr. McClanahan, and then failing to  
8 perform the work he agreed to do, Respondent violated RPC 1.5.

9 7. Count 4 - By attending court appearances on behalf of Mr. McClanahan when he  
10 was intoxicated, by attending court appearances on behalf of Ms. Lockwood when he was  
11 unprepared and intoxicated, and by failing to attend a hearing in January 2011 on behalf of Ms.  
12 Lockwood, Respondent violated RPC 1.3 and RPC 8.4(d).

13 8. Count 5 - By failing to respond to requests for responses to the grievances of Ms.  
14 Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn, Mr. Carlisle, Ms.  
15 Lockwood, Ms. Walker and Mr. McClanahan, and by failing to cooperate with the  
16 Association's investigation of those grievances, Respondent violated RPC 8.4(l) through a  
17 violation of ELC 1.5, ELC 5.3(e), and ELC 5.3(f).

18 9. Count 6 - By engaging in all of the behavior described in the Formal Complaint,  
19 including abandoning his client's files and his law practice, Respondent violated RPC 8.4(n).

20 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
21 **REGARDING RECOMMENDED SANCTION**

22 The Walters Grievance

23 10. In June 2010, Kristi Walters retained Respondent to file an uncontested  
24 dissolution.

1 11. She paid Respondent \$565.

2 12. On July 20, 2010, Respondent filed a Petition for Dissolution on behalf of Ms.  
3 Walters in Lincoln County Superior Court No. 10-3-02449-7.

4 13. Respondent never filed the documents necessary to complete the dissolution.

5 14. Respondent gave Ms. Walters a number of excuses as to why the dissolution was  
6 not complete.

7 15. As of October 2010, Respondent stopped responding to Ms. Walter's emails and  
8 phone calls.

9 16. Respondent knowingly failed to file the documents necessary to complete Ms.  
10 Walter's dissolution.

11 17. Respondent knowingly failed to communicate with Ms. Walters.

12 18. There was injury to Ms. Walters, who paid for work that was not performed and  
13 had her dissolution delayed.

14 The Starr Grievance

15 19. In August 2010, Dawna Starr retained Respondent to complete a dissolution.

16 20. She paid Respondent \$390.

17 21. On September 8, 2010, Respondent filed a Petition for Dissolution on behalf of  
18 Ms. Starr in King County Superior Court.

19 22. After the required waiting period of 90 days, Ms. Starr attempted numerous times  
20 by email and telephone to contact Respondent but he did not respond.

21 23. Respondent had never filed the paperwork necessary to complete her dissolution.

22 24. Respondent knowingly failed to file the documents necessary to complete Ms.  
23 Starr's dissolution.

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1           25. Respondent knowingly failed to communicate with Ms. Starr.

2           26. There was injury to Ms. Starr, who paid for work that was not performed and had  
3 her dissolution delayed. Because of the delay, Ms. Starr and her husband had to file an  
4 extension on their 2010 taxes.

5           The Stone Grievance

6           27. In August 2010, Allyson Stone retained Respondent to complete a dissolution.

7           28. She paid Respondent \$585.

8           29. On October 27, 2010, Respondent filed a Petition for Dissolution on behalf of Ms.  
9 Stone in Lincoln County Superior Court.

10          30. Respondent never filed the paperwork necessary to complete Ms. Stone's  
11 dissolution.

12          31. Beginning on January 13, 2011, Ms. Stone attempted numerous times to contact  
13 Respondent but he did not respond.

14          32. Respondent knowingly failed to file the documents necessary to complete Ms.  
15 Stone's dissolution.

16          33. Respondent knowingly failed to communicate with Ms. Stone.

17          34. There was injury to Ms. Stone, who paid for work that was not performed and had  
18 her dissolution delayed.

19           The Lockwood Grievance

20          35. In early November 2010, Andrea Lockwood retained Respondent to represent her  
21 in the dissolution proceedings in King County Superior Court No. 10-3-06173-1.

22          36. Ms. Lockwood paid Respondent \$4,000 cash and received receipts for the money.

23          37. Respondent appeared in court with Ms. Lockwood in December 2010.

24

1 38. Respondent was under the influence of drugs and/or alcohol at that court  
2 appearance.

3 39. Respondent was confused, stated a number of times that he was having trouble  
4 sleeping and had taken melatonin, and made peculiar references to topics such as the Bible,  
5 prisms, and Russia.

6 40. On January 14, 2011, Respondent appeared in court on behalf of Ms. Lockwood.

7 41. He was not prepared, had not filed the necessary paperwork, and smelled of  
8 alcohol.

9 42. The case was continued to January 19, 2011.

10 43. Respondent did not appear on that date. Respondent has not communicated with  
11 Ms. Lockwood since January 2011.

12 44. Respondent knowingly appeared in court under the influence of drugs and/or  
13 alcohol.

14 45. Respondent knowingly failed to appear in court on behalf of Ms. Lockwood.

15 46. Respondent knowingly failed to communicate with Ms. Lockwood.

16 47. There was injury to Ms. Lockwood, who paid for work that was not performed.

17 48. There was potential serious injury to Ms. Lockwood; visitation with her children  
18 was restricted and she was financially harmed by the terms of the dissolution.

19 The Wellborn Grievance

20 49. In September 2010, Sheldon Wellborn retained Respondent to complete a  
21 dissolution on his behalf.

22 50. Mr. Wellborn paid Respondent \$565.

23 51. Respondent filed a petition for dissolution on Mr. Wellborn's behalf in Lincoln  
24

1 65. Respondent knowingly failed to communicate with Mr. Ortloff.

2 66. There was injury to Mr. Ortloff, who paid for work that was not performed and had  
3 his dissolution delayed.

4 The Bergh Grievance

5 67. In October 2010, James Bergh retained Respondent to complete a dissolution on  
6 his behalf.

7 68. Mr. Bergh paid Respondent \$565.

8 69. On November 29, 2010, Respondent filed the Petition for Dissolution on behalf of  
9 Mr. Bergh in Lincoln County Superior Court No. 10-3-03953-2.

10 70. Respondent never filed the paperwork necessary to complete the dissolution.

11 71. Beginning in February 2011 Mr. Bergh attempted to contact Respondent via email  
12 and telephone calls but received no response.

13 72. Respondent knowingly failed to file the documents necessary to complete Mr.  
14 Bergh's dissolution.

15 73. Respondent knowingly failed to communicate with Mr. Bergh.

16 74. There was injury to Mr. Bergh, who paid for work that was not performed and had  
17 his dissolution delayed.

18 The McClanahan Grievance

19 75. On October 11, 2010, Billy McClanahan retained Respondent to represent him in  
20 Pierce County Superior Court proceedings relating to a Protection Order.

21 76. Mr. McClanahan paid Respondent \$1,000.

22 77. On October 14, 2010, Respondent arrived late to court.

23 78. Respondent was under the influence of drugs and/or alcohol.

24

1 79. Respondent was argumentative with the Commissioner, talking over him several  
2 times.

3 80. When Mr. McClanahan was called to testify, Respondent again became  
4 argumentative.

5 81. Mr. McClanahan told the court that he wished to fire Respondent, the court  
6 allowed him to do so, and Respondent left the courtroom.

7 82. Later that day, Mr. McClanahan sent Respondent an email asking for a return of  
8 his fee.

9 83. Respondent has not returned Mr. McClanahan's fee.

10 84. Respondent knowingly appeared in court under the influence of drugs and/or  
11 alcohol.

12 85. Respondent knowingly failed to return Mr. McClanahan's unearned fee.

13 86. There was injury to Mr. McClanahan, who did not receive the representation he  
14 had retained and paid Respondent to perform.

15 The Carlisle Grievance

16 87. On December 23, 2010, Jared Carlisle retained Respondent to file an uncontested  
17 dissolution on his behalf.

18 88. Mr. Carlisle paid Respondent \$390

19 89. Mr. Carlisle subsequently left a total of eight voicemail messages for Respondent  
20 and sent two emails. Respondent never responded to Mr. Carlisle's attempts to contact him.

21 90. Respondent never filed a petition for dissolution in any court in Washington State  
22 on behalf of Mr. Carlisle.

23 91. Respondent knowingly failed to file the documents necessary to complete Mr.  
24

1 Carlisle's dissolution.

2 92. Respondent knowingly failed to communicate with Mr. Carlisle.

3 93. There was injury to Mr. Carlisle, who paid for work that was not performed and  
4 had his dissolution delayed.

5 Respondent's Failure to Cooperate and Abandonment of Practice

6 94. The Association received Ms. Walters' grievance on December 8, 2010. On  
7 December 10, 2010, the Association sent a letter to Respondent requesting his response to the  
8 grievance. He did not respond.

9 95. On January 13, 2011, the Association sent Respondent a letter, via certified mail,  
10 requesting his response to the Walters grievance within ten days. Respondent did not respond  
11 to this letter.

12 96. The Association received Ms. Lockwood's grievance on January 19, 2011. On  
13 January 20, 2011, the Association sent a letter to Respondent requesting his response to the  
14 grievance. He did not respond.

15 97. The Association received Mr. Carlisle's grievance on January 19, 2011. On  
16 January 20, 2011, the Association sent a letter to Respondent requesting his response to the  
17 grievance. He did not respond.

18 98. On January 26, 2011, the Association received a grievance from Suzanne Walker.  
19 Ms. Walker is Ms. Lockwood's mother and her grievance related to Respondent's  
20 representation of Ms. Lockwood.

21 99. On January 27, 2011, the Association sent a letter to Respondent requesting his  
22 response to the Walker grievance. He did not respond.

23 100. On February 11, 2011, the Association received Mr. Wellborn's grievance On  
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1 February 15, 2011, the Association sent a letter to Respondent requesting his response to the  
2 grievance. He did not respond.

3 101. On February 22, 2011, Respondent was personally served at his home, by the  
4 Association's investigator, with a subpoena requiring his attendance at a deposition on March  
5 30, 2011.

6 102. Respondent told the investigator that he knew he had grievances and was behind in  
7 responding. The investigator suggested that he call disciplinary counsel immediately and  
8 Respondent said he would do so.

9 103. On February 23, 2011, the Association received Ms. Starr's grievance. On  
10 February 24, 2011, the Association sent a letter to Respondent requesting his response to the  
11 grievance. He did not respond.

12 104. On February 24, 2011, the Association sent Respondent a letter, via certified mail,  
13 requesting his response to the Lockwood grievance within ten days. The receipt was signed on  
14 February 25, 2011 by Charissa Weirbach. Respondent did not respond to the request for  
15 response.

16 105. On February 24, 2011, the Association sent Respondent a letter, via certified mail,  
17 requesting his response to the Carlisle grievance within ten days. Respondent did not respond.  
18 The letter was returned "not deliverable as addressed, unable to forward."

19 106. On March 2, 2011, the Association sent Respondent a letter, via certified mail,  
20 requesting his response to the Walker grievance within ten days. The receipt for this letter has  
21 not been returned. Respondent has never responded to the grievance.

22 107. On March 22, 2011, the Association sent Respondent a letter, via certified mail,  
23 requesting his response to the Wellborn grievance within ten days. Respondent did not respond.  
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1 The letter was returned "undeliverable as addressed, unable to forward."

2 108. On March 24, 2011, the Association received Michael Ortloff's grievance. On  
3 March 29, 2011, the Association sent a letter to Respondent requesting his response to the  
4 grievance. Respondent has not responded. The letter was returned "not deliverable as  
5 addressed, unable to forward."

6 109. On March 29, 2011, the Association sent Respondent a letter, via certified mail,  
7 requesting his response to the Starr grievance within ten days. Respondent did not respond.  
8 The letter was returned "undeliverable as addressed, unable to forward."

9 110. Respondent failed to appear at his deposition on March 30, 2011.

10 111. On April 5, 2011, the Association received Mr. Bergh's grievance. On April 6,  
11 2011, the Association sent a letter to Respondent requesting his response to the grievance. He  
12 did not respond. The letter was returned "not deliverable as addressed, unable to forward."

13 112. On April 18, 2011, the Association received Ms. Stone's grievance. On April 19,  
14 2011, the Association sent a letter to Respondent requesting his response to the grievance. He  
15 did not respond. The letter was returned "undeliverable as addressed, unable to forward."

16 113. Respondent has been evicted from his home.

17 114. In April 2011, Respondent's landlord allowed Ms. Lockwood to come to  
18 Respondent's home to search for her file.

19 115. When she arrived, client files were stacked on the front and back porch of the  
20 home. Ms. Lockwood was unable to locate her own file.

21 116. After that, all of the items in the home (including client files) were taken to the  
22 dump by Respondent's landlord.

23 117. A receptionist at Respondent's business address listed on file with the Association  
24

1 | told the Association's investigator that Respondent no longer occupies office space at that  
2 | location and they had no forwarding address for Respondent.

3 |       118. Respondent knowingly failed to cooperate with the Association's investigation into  
4 | all of the grievances as described in the Formal Complaint.

5 |       119. Respondent knowingly abandoned his clients, his client files, and his practice.

6 |       120. Respondent's conduct caused actual injury to the lawyer discipline system as a  
7 | whole, which depends on lawyer cooperation and honesty to function, and actual harm to the  
8 | Office of Disciplinary Counsel in the form of increased effort and costs.

9 |       121. The following standards of the American Bar Association's Standards for  
10 | Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively  
11 | apply in this case:

12 |       122. Count 1 - ABA Standard 4.4 applies to violations of RPC 1.3. Respondent acted  
13 | knowingly. There was injury to Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr.  
14 | Wellborn and Mr. Carlisle. The presumptive sanction is suspension.

15 |       123. Count 2 - ABA Standard 4.4 applies to violations of RPC 1.4(a)(3) and RPC  
16 | 1.4(a)(4). Respondent acted knowingly. There was injury to Ms. Walters, Ms. Stone, Mr.  
17 | Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn and Mr. Carlisle. The presumptive sanction is  
18 | suspension.

19 |       124. Count 3 - ABA Standard 7.0 applies to violations of RPC 1.5. Respondent acted  
20 | knowingly in charging unreasonable fees to Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff,  
21 | Ms. Starr, Mr. Wellborn, Mr. Carlisle, Ms. Lockwood and Mr. McClanahan, causing injury to  
22 | all of them. The presumptive sanction is suspension.

23 |       125. Count 4 - ABA Standard 4.4 applies to violations of RPC 1.3 and ABA Standard  
24 |

1 6.1 applies to violations of RPC 8.4(d). Respondent acted knowingly when he attended court  
2 appearances on behalf of Mr. McClanahan when he was intoxicated, attended court appearances  
3 on behalf of Ms. Lockwood when he was unprepared and intoxicated, and failed to attend a  
4 hearing in January 2011 on behalf of Ms. Lockwood. There was injury to Mr. McClanahan and  
5 potential serious injury to Ms. Lockwood. The presumptive sanction is disbarment.

6 126. Count 5 - ABA Standard 7.0 applies to violations of RPC 8.4(l). Respondent  
7 knowingly failed to cooperate with the Association's investigation into all of the grievances as  
8 described in the Formal Complaint. Respondent's conduct caused actual injury to the lawyer  
9 discipline system as a whole, which depends on lawyer cooperation and honesty to function,  
10 and actual harm to the Office of Disciplinary Counsel in the form of increased effort and costs.  
11 The presumptive sanction is suspension.

12 127. Count 6 - ABA Standard 4.4 applies to violations of RPC 8.4(n). Respondent  
13 abandoned his practice, knowingly failed to perform services for his clients, and engaged in a  
14 pattern of neglect. There was injury to Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms.  
15 Starr, Mr. Wellborn, Mr. Carlisle, and Mr. McClanahan. There was potentially serious injury to  
16 Ms. Lockwood. The presumptive sanction is disbarment.

17 128. Where the Hearing Officer finds multiple ethical violations, the "ultimate sanction  
18 imposed should at least be consistent with the sanction for the most serious instance of  
19 misconduct among a number of violations." In re Disciplinary Proceeding Against Petersen,  
20 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

21 129. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
22 apply in this case:

- 23 (b) dishonest or selfish motive;  
24 (d) multiple offenses; and

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(i) substantial experience in the practice of law [Respondent was admitted to practice law in 1997].

130. The following mitigating factor set forth in Section 9.32 of the ABA Standards applies to this case:

(a) absence of a prior disciplinary record.

**RECOMMENDATION**

131. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent Robert E. Stark be disbarred. In addition, Respondent shall pay restitution to the following clients: Kristi Walters in the amount of \$565; Dawna Starr in the amount of \$390; Allyson Stone in the amount of \$585; Andrea Lockwood in the amount of \$4,000; Sheldon Wellborn in the amount of \$565; Michael Ortloff in the amount of \$390; James Bergh in the amount of \$565; Billy McClanahan in the amount of \$1,000; and Jared Carlisle in the amount of \$390. A total Restitution of \$8,450.

DATED this 4th day of October, 2011.

Andrekita Silva  
Andrekita Silva  
Hearing Officer

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the FOF, COL & HD's Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to ROBERT STARK ~~Respondent~~ Respondent's Counsel at 2008 BURNING WOOD DRIVE, WA 98148 by Certified first class mail postage prepaid on the 4th day of October, 2011.

[Signature]  
Clerk/Counsel to the Disciplinary Board

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3 **FILED**

4 JUL 07 2011

5 **DISCIPLINARY BOARD**

6  
7 **BEFORE THE**  
8 **DISCIPLINARY BOARD**  
9 **OF THE**  
10 **WASHINGTON STATE BAR ASSOCIATION**

11 **In re**

12 **ROBERT E. STARK,**  
13 **Lawyer (Bar No. 26732).**

14 **Proceeding No. 11#00032**  
15 **FORMAL COMPLAINT**

16 Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the  
17 Washington State Bar Association (the Association) charges the above-named lawyer with acts  
18 of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

19 **ADMISSION TO PRACTICE**

20 1. Respondent Robert E. Stark was admitted to the practice of law in the State of  
21 Washington on May 12, 1997.

22 **FACTS REGARDING COUNTS 1-6**

23 The Walters Grievance

24 2. In June 2010, Kristi Walters retained Respondent to file an uncontested  
dissolution.

3. She paid Respondent \$565.

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1           4.    On July 20, 2010, Respondent filed a Petition for Dissolution on behalf of Ms.  
2 Walters in Lincoln County Superior Court No. 10-3-02449-7.

3           5.    Respondent never filed the documents necessary to complete the dissolution.

4           6.    Respondent gave Ms. Walters a number of excuses as to why the dissolution was  
5 not complete.

6           7.    As of October 2010, Respondent stopped responding to Ms. Walter's emails and  
7 phone calls.

8           8.    Respondent knowingly failed to file the documents necessary to complete Ms.  
9 Walter's dissolution.

10          9.    Respondent knowingly failed to communicate with Ms. Walters.

11          10.   There was injury to Ms. Walters, who paid for work that was not performed and  
12 had her dissolution delayed.

13          The Starr Grievance

14          11.   In August 2010, Dawna Starr retained Respondent to complete a dissolution.

15          12.   She paid Respondent \$390.

16          13.   On September 8, 2010, Respondent filed a Petition for Dissolution on behalf of  
17 Ms. Starr in King County Superior Court.

18          14.   After the required waiting period of 90 days, Ms. Starr attempted numerous times  
19 by email and telephone to contact Respondent but he did not respond.

20          15.   Respondent had never filed the paperwork necessary to complete her dissolution.

21          16.   Respondent knowingly failed to file the documents necessary to complete Ms.  
22 Starr's dissolution.

23          17.   Respondent knowingly failed to communicate with Ms. Starr.

24          18.   There was injury to Ms. Starr, who paid for work that was not performed and had

1 her dissolution delayed. Because of the delay, Ms. Starr and her husband had to file an  
2 extension on their 2010 taxes.

3 The Stone Grievance

4 19. In August 2010, Allyson Stone retained Respondent to complete a dissolution.

5 20. She paid Respondent \$585.

6 21. On October 27, 2010, Respondent filed a Petition for Dissolution on behalf of Ms.  
7 Stone in Lincoln County Superior Court.

8 22. Respondent never filed the paperwork necessary to complete Ms. Stone's  
9 dissolution.

10 23. Beginning on January 13, 2011, Ms. Stone attempted numerous times to contact  
11 Respondent but he did not respond.

12 24. Respondent knowingly failed to file the documents necessary to complete Ms.  
13 Stone's dissolution.

14 25. Respondent knowingly failed to communicate with Ms. Stone.

15 26. There was injury to Ms. Stone, who paid for work that was not performed and had  
16 her dissolution delayed.

17 The Lockwood Grievance

18 27. In early November 2010, Andrea Lockwood retained Respondent to represent her  
19 in the dissolution proceedings in King County Superior Court No. 10-3-06173-1.

20 28. Ms. Lockwood paid Respondent \$4,000 cash and received receipts for the money.

21 29. Respondent appeared in court with Ms. Lockwood in December 2010.

22 30. Respondent was under the influence of drugs and/or alcohol at that court  
23 appearance.

1           31. Respondent was confused, stated a number of times that he was having trouble  
2 sleeping and had taken melatonin, and made peculiar references to topics such as the Bible,  
3 prisms, and Russia.

4           32. On January 14, 2011, Respondent appeared in court on behalf of Ms. Lockwood.

5           33. He was not prepared, had not filed the necessary paperwork, and smelled of  
6 alcohol.

7           34. The case was continued to January 19, 2011.

8           35. Respondent did not appear on that date. Respondent has not communicated with  
9 Ms. Lockwood since January 2011.

10          36. Respondent knowingly appeared in court under the influence of drugs and/or  
11 alcohol.

12          37. Respondent knowingly failed to appear in court on behalf of Ms. Lockwood.

13          38. Respondent knowingly failed to communicate with Ms. Lockwood.

14          39. There was injury to Ms. Lockwood, who paid for work that was not performed.

15          40. There was potential serious injury to Ms. Lockwood; visitation with her children  
16 was restricted and she was financially harmed by the terms of the dissolution.

17          The Wellborn Grievance

18          41. In September 2010, Sheldon Wellborn retained Respondent to complete a  
19 dissolution on his behalf.

20          42. Mr. Wellborn paid Respondent \$565.

21          43. Respondent filed a petition for dissolution on Mr. Wellborn's behalf in Lincoln  
22 County Superior Court No. 10-3-03552-9.

23          44. Respondent has never filed the paperwork necessary to complete the dissolution.  
24

1           45. Mr. Wellborn attempted to contact Respondent via email and telephone calls but  
2 received no response.

3           46. Mr. Wellborn eventually retained another lawyer for \$200 and his dissolution was  
4 complete on March 28, 2011.

5           47. Respondent knowingly failed to file the documents necessary to complete Mr.  
6 Wellborn's dissolution.

7           48. Respondent knowingly failed to communicate with Mr. Wellborn.

8           49. There was injury to Mr. Wellborn, who paid for work that was not performed, had  
9 his dissolution delayed, and paid more money to a new lawyer to complete the dissolution.

10 The Ortloff Grievance

11           50. In October 2010, Michael Ortloff retained Respondent to complete the dissolution.

12           51. Mr. Ortloff paid Respondent \$390.

13           52. On November 29, 2010, Respondent filed a Petition for Dissolution on behalf of  
14 Mr. Ortloff in Lincoln County Superior Court No. 10-3-03592-4.

15           53. Respondent emailed Mr. Ortloff to tell him that the dissolution would be finalized  
16 by the end of February 2011.

17           54. Respondent has never filed the paperwork necessary to complete the dissolution.

18           55. Mr. Ortloff attempted to contact Respondent beginning in January but his  
19 telephone number was no longer in service.

20           56. Respondent knowingly failed to file the documents necessary to complete Mr.  
21 Ortloff's dissolution.

22           57. Respondent knowingly failed to communicate with Mr. Ortloff.

23           58. There was injury to Mr. Ortloff, who paid for work that was not performed and had  
24

1 his dissolution delayed.

2 The Bergh Grievance

3 59. In October 2010, James Bergh retained Respondent to complete a dissolution on  
4 his behalf.

5 60. Mr. Bergh paid Respondent \$565.

6 61. On November 29, 2010, Respondent filed the Petition for Dissolution on behalf of  
7 Mr. Bergh in Lincoln County Superior Court No. 10-3-03953-2.

8 62. Respondent never filed the paperwork necessary to complete the dissolution.

9 63. Beginning in February 2011 Mr. Bergh attempted to contact Respondent via email  
10 and telephone calls but received no response.

11 64. Respondent knowingly failed to file the documents necessary to complete Mr.  
12 Bergh's dissolution.

13 65. Respondent knowingly failed to communicate with Mr. Bergh.

14 66. There was injury to Mr. Bergh, who paid for work that was not performed and had  
15 his dissolution delayed.

16 The McClanahan Grievance

17 67. On October 11, 2010, Mr. McClanahan retained Respondent to represent him in  
18 Pierce County Superior Court proceedings relating to a Protection Order.

19 68. Mr. McClanahan paid Respondent \$1,000.

20 69. On October 14, 2010, Respondent arrived late to court.

21 70. Respondent was under the influence of drugs and/or alcohol.

22 71. Respondent was argumentative with the Commissioner, talking over him several  
23 times.

1           72. When Mr. McClanahan was called to testify, Respondent again became  
2 argumentative.

3           73. Mr. McClanahan told the court that he wished to fire Respondent, the court  
4 allowed him to do so, and Respondent left the courtroom.

5           74. Later that day, Mr. McClanahan sent Respondent an email asking for a return of  
6 his fee.

7           75. Respondent has not returned Mr. McClanahan's fee.

8           76. Respondent knowingly appeared in court under the influence of drugs and/or  
9 alcohol.

10          77. Respondent knowingly failed to return Mr. McClanahan's unearned fee.

11          78. There was injury to Mr. McClanahan, who did not receive the representation he  
12 had retained and paid Respondent to perform.

13 The Carlisle Grievance

14          79. On December 23, 2010, Jared Carlisle retained Respondent to file an uncontested  
15 dissolution on his behalf.

16          80. Mr. Carlisle paid Respondent \$390

17          81. Mr. Carlisle subsequently left a total of eight voicemail messages for Respondent  
18 and sent two emails. Respondent never responded to Mr. Carlisle's attempts to contact him.

19          82. Respondent never filed a petition for dissolution in any court in Washington State  
20 on behalf of Mr. Carlisle.

21          83. Respondent knowingly failed to file the documents necessary to complete Mr.  
22 Carlisle's dissolution.

23          84. Respondent knowingly failed to communicate with Mr. Carlisle.  
24

1           85. There was injury to Mr. Carlisle, who paid for work that was not performed and  
2 had his dissolution delayed.

3 Respondent's Failure to Cooperate and Abandonment of Practice

4           86. The Association received Ms. Walters' grievance on December 8, 2010. On  
5 December 10, 2010, the Association sent a letter to Respondent requesting his response to the  
6 grievance. He did not respond.

7           87. On January 13, 2011, the Association sent Respondent a letter, via certified mail,  
8 requesting his response to the Walters grievance within ten days. Respondent did not respond  
9 to this letter.

10           88. The Association received Ms. Lockwood's grievance on January 19, 2011. On  
11 January 20, 2011, the Association sent a letter to Respondent requesting his response to the  
12 grievance. He did not respond.

13           89. The Association received Mr. Carlisle's grievance on January 19, 2011. On  
14 January 20, 2011, the Association sent a letter to Respondent requesting his response to the  
15 grievance. He did not respond.

16           90. On January 26, 2011, the Association received a grievance from Suzanne Walker.  
17 Ms. Walker is Ms. Lockwood's mother and her grievance related to Respondent's  
18 representation of Ms. Lockwood.

19           91. On January 27, 2011, the Association sent a letter to Respondent requesting his  
20 response to the Walker grievance. He did not respond.

21           92. On February 11, 2011, the Association received Mr. Wellborn's grievance. On  
22 February 15, 2011, the Association sent a letter to Respondent requesting his response to the  
23 grievance. He did not respond.

24           93. On February 22, 2011, Respondent was personally served at his home, by the

1 Association's investigator, with a subpoena requiring his attendance at a deposition on March  
2 30, 2011.

3 94. Respondent told the investigator that he knew he had grievances and was behind in  
4 responding. The investigator suggested that he call disciplinary counsel immediately and  
5 Respondent said he would do so.

6 95. On February 23, 2011, the Association received Ms. Starr's grievance. On  
7 February 24, 2011, the Association sent a letter to Respondent requesting his response to the  
8 grievance. He did not respond.

9 96. On February 24, 2011, the Association sent Respondent a letter, via certified mail,  
10 requesting his response to the Lockwood grievance within ten days. The receipt was signed on  
11 February 25, 2011 by Charissa Weirbach. Respondent did not respond to the request for  
12 response.

13 97. On February 24, 2011, the Association sent Respondent a letter, via certified mail,  
14 requesting his response to the Carlisle grievance within ten days. Respondent did not respond.  
15 The letter was returned "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

16 98. On March 2, 2011, the Association sent Respondent a letter, via certified mail,  
17 requesting his response to the Walker grievance within ten days. The receipt for this letter has  
18 not been returned. Respondent has never responded to the grievance.

19 99. On March 22, 2011, the Association sent Respondent a letter, via certified mail,  
20 requesting his response to the Wellborn grievance within ten days. Respondent did not respond.  
21 The letter was returned "UNDELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

22 100. On March 24, 2011, the Association received Michael Ortloff's grievance. On  
23 March 29, 2011, the Association sent a letter to Respondent requesting his response to the  
24

1 grievance. Respondent has not responded. The letter was returned "NOT DELIVERABLE AS  
2 ADDRESSED UNABLE TO FORWARD."

3 101. On March 29, 2011, the Association sent Respondent a letter, via certified mail,  
4 requesting his response to the Starr grievance within ten days. Respondent did not respond.  
5 The letter was returned "UNDELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

6 102. Respondent failed to appear at his deposition on March 30, 2011.

7 103. On April 5, 2011, the Association received Mr. Bergh's grievance. On April 6,  
8 2011, the Association sent a letter to Respondent requesting his response to the grievance. He  
9 did not respond. The letter was returned "NOT DELIVERABLE AS ADDRESSED UNABLE  
10 TO FORWARD."

11 104. On April 18, 2011, the Association received Ms. Stone's grievance. On April 19,  
12 2011, the Association sent a letter to Respondent requesting his response to the grievance. He  
13 did not respond. The letter was returned "UNDELIVERABLE AS ADDRESSED UNABLE  
14 TO FORWARD."

15 105. Respondent has been evicted from his home.

16 106. In April 2011, Respondent's landlord allowed Ms. Lockwood to come to  
17 Respondent's home to search for her file.

18 107. When she arrived, client files were stacked on the front and back porch of the  
19 home. Ms. Lockwood was unable to locate her own file.

20 108. After that, all of the items in the home (including client files) were taken to the  
21 dump by Respondent's landlord.

22 109. A receptionist at Respondent's business address listed on file with the Association  
23 told the Association's investigator that Respondent no longer occupies office space at that  
24

1 location and they had no forwarding address for Respondent.

2 110. Respondent knowingly failed to cooperate with the Association's investigation into  
3 all of the grievances as described in ¶86-¶104 above.

4 111. Respondent knowingly abandoned his clients, his client files, and his practice.

5 112. Respondent's conduct caused actual injury to the lawyer discipline system as a  
6 whole, which depends on lawyer cooperation and honesty to function, and actual harm to the  
7 Office of Disciplinary Counsel in the form of increased effort and costs.

8 **COUNT 1**

9 113. By failing to file documents necessary to complete the dissolutions of Ms. Walters,  
10 Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn and Mr. Carlisle, Respondent  
11 violated RPC 1.3.

12 **COUNT 2**

13 114. By failing to respond in any way to the inquires of Ms. Walters, Ms. Stone, Mr.  
14 Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn or Mr. Carlisle about the status of their  
15 dissolutions, Respondent violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

16 **COUNT 3**

17 115. By taking fees from Ms. Walters, Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr,  
18 Mr. Wellborn, Mr. Carlisle, Ms. Lockwood and Mr. McClanahan, and then failing to perform  
19 the work he agreed to do, Respondent violated RPC 1.5.

20 **COUNT 4**

21 116. By attending court appearances on behalf of Mr. McClanahan when he was  
22 intoxicated, by attending court appearances on behalf of Ms. Lockwood when he was  
23 unprepared and intoxicated, and by failing to attend a hearing in January 2011 on behalf of Mr.  
24 Lockwood, Respondent violated RPC 1.3 and RPC 8.4(d).

1 **COUNT 5**

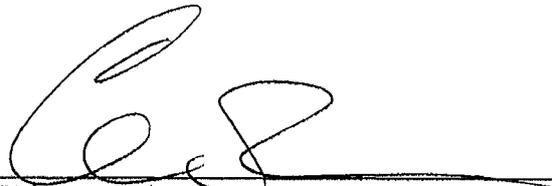
2 117. By failing to respond to requests for responses to the grievances of Ms. Walters,  
3 Ms. Stone, Mr. Bergh, Mr. Ortloff, Ms. Starr, Mr. Wellborn, Mr. Carlisle, Ms. Lockwood, Ms.  
4 Walker and Mr. McClanahan, and by failing to cooperate with the Association's investigation of  
5 those grievances, Respondent violated RPC 8.4(l) through a violation of ELC 1.5, ELC 5.3(e),  
6 and ELC 5.3(f).

7 **COUNT 6**

8 118. By engaging in all of the behavior described above in ¶2-¶112, including  
9 abandoning his client's files and his law practice, Respondent violated RPC 8.4(n).

10  
11 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for  
12 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,  
13 restitution, and assessment of the costs and expenses of these proceedings.

14  
15 Dated this 7 day of July 2011.

16  
17   
18 Erica Temple, Bar No. 28458  
Disciplinary Counsel

# CHRISTINA DENISON

# THE SUPREME COURT OF WASHINGTON

IN RE:

**FILED**

**ORDER**

CHRISTINA S. DENISON,

DEC 27 2010

BAR NO. 25096

ATTORNEY AT LAW.

**DISCIPLINARY BOARD**

Supreme Court No.  
200,888-7

**RECEIVED**  
DEC 27 2010

This matter came before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order dated November 12, 2010, in the matter of Christina S. Denison, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court having reviewed the Disciplinary Board's Recommendation and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the Court having determined that the Recommendation should be approved. Now, therefore, it is hereby

**ORDERED:**

Christina S. Denison is disbarred from the practice of law. Pursuant to ELC 13.2, the effective date of December 27, 2010. Costs and expenses, pursuant to ELC 13.9, as approved by the disciplinary board will be paid by Christina S. Denison.

DATED at Olympia, Washington, this 20th day of December, 2010.

For the Court

*Christina S. Denison, C.J.*

**CHIEF JUSTICE**

BY *[Signature]* CLERK  
DEC 27 PM 2:50

589/789

*[Handwritten initials]*

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Ronald R. Carpenter, Clerk of the Supreme Court of  
the State of Washington, do hereby certify that this is  
a true and correct copy of the original on file in my  
office.

Dated this 20<sup>th</sup> day of December, 2010  
By Donella Hall



FILED

NOV 12 2010

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**CHRISTINA S. DENISON,**  
Lawyer (WSBA No. 25096).

Proceeding No. 10#00065

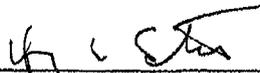
ORDER APPROVING HEARING  
OFFICER'S DECISION

This matter came before the Disciplinary Board at its November 5, 2010 meeting on automatic review of Hearing Officer Julian Correll Dewel's disbarment recommendation following a default hearing.

On review of the decision, the materials designated and submitted by Disciplinary Counsel, and the applicable rules and case law;

IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation is unanimously<sup>1</sup> adopted. This Order is the Disciplinary Board's recommendation to the Supreme Court. Any sanction ordered in this matter will take effect as provided by ELCs 12.2(b) and 13.2.

Dated this 12th day of November 2010.

  
\_\_\_\_\_  
H.E. Stiles II, Chair  
Disciplinary Board

<sup>1</sup> Those voting were: Bahn, Handmacher, Ivarinen, Ogura, Stiles, Trippett, Waite and Wilson.

027

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order Approving HOIC Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to CHRISTINA DANSON Respondent/ Respondent's Counsel  
at PO BOX 1234 BARKING by Certified/first class mail  
postage prepaid on the 10th day of NOVEMBER, 2010

[Signature]  
Clerk/Counsel to the Disciplinary Board

FILED

SEP 08 2010

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

Christina S. Denison,  
Lawyer (Bar No. 25096).

Public No. 10#00065

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held a default hearing on September 8, 2010.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged Christina S. Denison with misconduct as set forth therein.
2. Under ELC 10.6(a)(3), an Order of Default was filed on August 13, 2010.
3. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
4. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the Formal Complaint is admitted and established as follows:

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**COUNT 1**

4. By failing to provide diligent representation and by abandoning her practice, and consequently abandoning Ms. Estrada prior to the completion of her matter, Respondent violated RPC 1.3 (diligence).

**COUNT 2**

5. By failing to comply with reasonable requests for information and failing to keep Ms. Estrada reasonably informed about the status of her case and by failing to inform Ms. Estrada of her change of address and change of telephone number, Respondent violated RPC 1.4 (communication).

**COUNT 3**

6. By failing to respond to the Association's requests for a written response, Respondent violated RPC 8.4(l) (failing to comply with the duties imposed by ELC 1.5, ELC 5.3(e) and ELC 5.3(f)).

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING RECOMMENDED SANCTION**

Counts 1-2

7. Respondent knowingly failed to provide diligent representation to Ms. Estrada. Formal Complaint, ¶ 59.

8. Respondent knowingly abandoned her practice and Ms. Estrada's matter. Formal Complaint, ¶ 60.

9. Respondent knowingly failed to comply with Ms. Estrada's reasonable requests for information. Formal Complaint, ¶ 61.

10. Respondent knowingly failed to keep Ms. Estrada reasonably informed about the status of her case. Formal Complaint, ¶ 62.

1           11. Respondent knowingly failed to inform Ms. Estrada of her change of address and  
2 change of telephone number. Formal Complaint, ¶ 63.

3           12. There was potentially serious injury to Ms. Estrada's immigration status because,  
4 had Mr. Julian not informed her of the February 2010 master calendar hearing, she could have  
5 been ordered removed in absentia. Formal Complaint, ¶ 64.

6           13. There is actual injury to her in the form of the stress and frustration she suffered  
7 from the lack of information. Formal Complaint, ¶ 65.

8           14. The following standard of the American Bar Association's Standards for Imposing  
9 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to  
10 Counts 1-2 (lack of diligence and failure to communicate<sup>1</sup>):

11           4.41 Disbarment is generally appropriate when:

- 12           (a) a lawyer abandons the practice and causes serious or potentially  
13           serious injury to a client; or  
14           (b) a lawyer knowingly fails to perform services for a client and  
             causes serious or potentially serious injury to a client; or  
             (c) a lawyer engages in a pattern of neglect with respect to client  
             matters and causes serious or potentially serious injury to a client.

15           Count 3

16           15. Respondent knowingly failed to update her addresses and other contact  
17 information with the Association, resulting in her failure to respond to the Association's  
18 requests for a written response. Formal Complaint, ¶ 85.

19           16. Respondent's actions caused actual injury to the disciplinary system as a whole,  
20 which depends on lawyer cooperation and honesty to function. Formal Complaint, ¶ 86. Given  
21 the limited resources available to investigate allegations of lawyer misconduct, "such  
22

23  
24 <sup>1</sup> There is no ABA Standard that covers lack of communication explicitly. ABA Standard 4.4 (lack of  
diligence) applies by analogy.

1 investigations depend upon the cooperation of attorneys.” In re Disciplinary Proceeding  
2 Against McMurray, 99 Wn.2d 920, 930, 655 P.2d 1352 (1983).

3 17. The following ABA Standard presumptively applies to Count 3 (failure to  
4 cooperate<sup>2</sup>):

5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
6 conduct that is a violation of a duty owed as a professional and causes  
injury or potential injury to a client, the public, or the legal system.

7 18. Where there are multiple ethical violations, the “ultimate sanction imposed should  
8 at least be consistent with the sanction for the most serious instance of misconduct among a  
9 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,  
10 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

11 19. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
12 apply in this case:

13 (a) prior disciplinary offenses [Although not final prior to this misconduct, in  
14 November 2008, Ms. Denison participated in a disciplinary hearing in which  
15 she was charged with failing to communicate with her clients, including  
16 failing to notify her clients of her office move, resulting in a  
17 recommendation of a suspension. On April 21, 2010, the Supreme Court  
ordered that Ms. Denison be suspended for one year, effective April 28,  
2010. Ms. Denison’s “concurrent” discipline is relevant for consideration.  
See, In re Disciplinary Proceeding Against Cramer, 168 Wn.2d 220, 237 fn.  
7, 225 P.3d 881 (2010)];

18 (b) a pattern of misconduct [In addition to the present conduct, Respondent  
19 violated RPC 1.3, 1.4 (two counts), 1.5, 1.15(d) and 1.16(d) in 2006 and  
20 early 2007 involving two other clients (see above), thus she has committed  
multiple violations involving multiple clients over an extended period of  
time]; and

21 (i) substantial experience in the practice of law [admitted October 25, 1995].

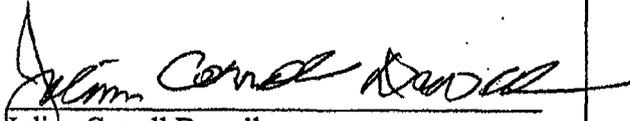
22  
23 <sup>2</sup> There is no ABA Standard that covers failure to cooperate explicitly. ABA Standard 7.0 (duties owed  
24 as a professional) applies by analogy.

1 20. No mitigating factors set forth in Section 9.32 of the ABA Standards apply to this  
2 case.

3 **RECOMMENDATION**

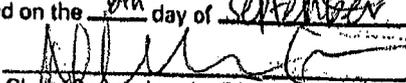
4 21. Based on the ABA Standards and the applicable aggravating and mitigating  
5 factors, the Hearing Officer recommends that Respondent Christina S. Denison be disbarred.

6  
7 DATED this 8<sup>th</sup> day of SEPTEMBER, 2010.

8  
9   
10 Julian Correll Dewell,  
11 Hearing Officer

12  
13 **CERTIFICATE OF SERVICE**

14 I certify that I caused a copy of the FOF COL of His Recommendation  
15 to be delivered to the Office of Disciplinary Counsel and to be mailed  
16 to CHRISTINA DENISON Respondent/Respondent's Counsel  
17 at PO BOX 437 BELLINGHAM WA 98207 by Certified/first class mail  
18 postage prepaid on the 8<sup>th</sup> day of SEPTEMBER, 2010

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21 Clerk/Counsel to the Disciplinary Board

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FILED

JUL 01 2010

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

CHRISTINA S. DENISON,  
Lawyer (Bar No. 25096).

Public No. 10#00065

FORMAL COMPLAINT

DENISON  
EXHIBIT NO. 2  
J. Gersten, FRM

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent Christina S. Denison was admitted to the practice of law in the State of Washington on October 25, 1995.

**FACTS REGARDING COUNTS 1 and 2**

2. Sonia Estrada is a citizen of El Salvador who has lived in the United States since 1997.

3. In November 2001, Ms. Estrada's Application for Temporary Protected Status (TPS) was denied and she was placed in removal proceedings before the immigration court.

003

1           4. In March 2006, Ms. Estrada hired Respondent to represent her in the removal  
2 proceedings.

3           5. Ms. Estrada and Respondent agreed to a non-refundable flat fee of \$3,000, which  
4 Ms. Estrada paid.

5           6. The fee was to cover both a Freedom of Information (FOIA) request to the  
6 Department of Homeland Security (DHS) and the master calendar and immigration court  
7 hearings in Ms. Estrada's matter.

8           7. On July 31, 2006, Respondent appeared on Ms. Estrada's behalf at the master  
9 calendar hearing in the removal proceedings.

10          8. At the time of the July 31, 2006 master calendar hearing, Respondent had not  
11 submitted a FOIA request on behalf of Ms. Estrada.

12          9. At the July 31, 2006 master calendar hearing, Respondent requested that the  
13 immigration court perform a de novo review of the denial of TPS.

14          10. At the July 31, 2006 master calendar hearing, Respondent informed the court that  
15 she would file the FOIA request for Ms. Estrada's TPS file.

16          11. At the July 31, 2006 master calendar hearing, Respondent expressed concerns that  
17 the FOIA request could take months and that she would not be able to submit the documentation  
18 prior to the next calendar hearing in Ms. Estrada's case.

19          12. The Court set the next hearing for January 8, 2007, giving Respondent five months  
20 to obtain the documents.

21          13. On or about August 1, 2006, Respondent moved her office from the Bellevue  
22 Corporate Plaza, 600 108<sup>th</sup> Avenue NE, Bellevue, Washington (Corporate Plaza office) to Plaza  
23 Center, 10900 NE 8<sup>th</sup> Street, Bellevue, Washington (Plaza Center office).  
24

1           26. At the January 8, 2007 hearing, the court denied her request because she had not  
2           tried to expedite or compel the Government to honor the FOIA request in the U.S. District  
3           Court.

4           27. At the January 8, 2007 hearing, the court further found that it did not have  
5           jurisdiction or legal authority to hear Ms. Estrada's request for TPS.

6           28. At the January 8, 2007 hearing, the immigration court held that it lacked  
7           jurisdiction to hear the matter de novo because the charging document was not issued under the  
8           circumstances required for such review.

9           29. At the January 8, 2007 hearing, the court also found that nothing in the FOIA  
10          request would provide the court with jurisdiction.

11          30. At the January 8, 2007 hearing, the court found Ms. Estrada ineligible for any  
12          other form of relief, granted voluntary departure in lieu of removal, and ordered her to pay a  
13          voluntary departure bond.

14          31. Sometime in February 2007, Respondent appealed Ms. Estrada's case to the Board  
15          of Immigration Appeals (BIA).

16          32. Respondent did not inform Ms. Estrada that she filed the appeal on her behalf.

17          33. On or about March 1, 2007, Respondent moved her office to the Key Bank  
18          Building, 601 108<sup>th</sup> Ave NE, Suite 1900, Bellevue, Washington (Key Bank office).

19          34. Again, she communicated her address change to Ms. Estrada.

20          35. Ms. Estrada and her friend, Ramon Barajas, met once with Respondent at her new  
21          office.

22          36. They attempted to meet with Respondent a second time, but she refused.  
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1           37. Thereafter, communication with Respondent became increasingly difficult for Ms.  
2 Estrada. Respondent continued to ignore Ms. Estrada's and Ms. Nagos' numerous telephone  
3 messages requesting information about the case.

4           38. In late 2007, while the appeal was pending, there was a favorable decision in  
5 another immigration case, which gave Immigration Court judges authority to issue decisions on  
6 TPS applications.

7           39. Given this decision, on November 2, 2007, the Government filed a motion to  
8 remand Ms. Estrada's case to the immigration court.

9           40. On September 15, 2008, the BIA remanded Ms. Estrada's case.

10           41. On November 28, 2008, the immigration court sent Respondent a notice of hearing  
11 in Ms. Estrada's removal proceedings, which set a master calendar hearing for February 3,  
12 2010.

13           42. Respondent did not inform Ms. Estrada of this hearing.

14           43. Respondent continued to ignore Ms. Estrada's requests for information.

15           44. In August 2009, Mr. Barajas went to Respondent's Key Bank office several times  
16 to find out why she was not returning Ms. Estrada's telephone calls.

17           45. On the first visit, the receptionist told him Respondent had moved. Respondent  
18 had not informed Ms. Estrada or any of Ms. Estrada's friends about her office move.

19           46. Mr. Barajas returned a second time to the Key Bank office to request Respondent's  
20 new address. The receptionist informed him that Respondent did not leave any notes, contact  
21 information, or forwarding address.

22           47. Mr. Barajas could see from the lobby area of the building that Respondent's office  
23 was empty.

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48. At some point, Respondent disconnected her office telephone.

49. Respondent did not provide Ms. Estrada with another phone number.

50. By November 2009, Ms. Estrada hired lawyer Patrick Julian to handle her immigration matter.

51. At the time she hired Mr. Julian, Ms. Estrada did not know the status of her case nor was she aware of the hearing scheduled on February 3, 2010.

52. Mr. Julian sent a copy of his motion to substitute counsel to Respondent's office address, but it was returned as undeliverable.

53. In early November 2009, Ms. Estrada was able to contact Respondent and request her client file.

54. Respondent provided Ms. Estrada with the file and, with a transmittal letter dated November 10, 2009, indicating that she could no longer represent her.

55. However, the file Respondent provided was not complete.

56. It is unclear from the client file whether the Government ever complied with the FOIA request.

57. On February 3, 2010, Mr. Julian and Ms. Estrada appeared at the master calendar hearing.

58. Despite the fact that she was still counsel of record and had not been released by the immigration court, Respondent did not appear on February 3, 2010.

59. Respondent knowingly failed to provide diligent representation to Ms. Estrada.

60. Respondent knowingly abandoned her practice and Ms. Estrada's matter.

61. Respondent knowingly failed to comply with Ms. Estrada's reasonable requests for information.



1           70. Later on November 10, 2009, Respondent contacted the Regulatory Services  
2 Department (RSD) at the Association and updated her mailing address to Post Office Box 439,  
3 Bellevue, Washington.

4           71. On November 19, 2009, the Association's initial request for response was returned  
5 as undeliverable.

6           72. ODC resent the request for response to the new address on file with the  
7 Association (the post office box).

8           73. On November 30, 2009, the request for response was again returned as  
9 undeliverable.

10           74. On December 29, 2009, ODC sent a letter by certified mail to Respondent's  
11 address on file with the Association advising Respondent that she must provide the requested  
12 information within 10 days or she would be subject to a deposition, and reminding Respondent  
13 of her duty to respond under Rule 5.3(e) of the Rules for Enforcement of Lawyer Conduct  
14 (ELC).

15           75. This letter was returned as undeliverable.

16           76. Due to her failure to provide a response to the grievance, on January 8, 2010, ODC  
17 issued a subpoena duces tecum for Respondent's deposition.

18           77. Because Respondent's address on file with the Association was a post office box,  
19 on January 12, 2010, ODC attempted to have the subpoena personally served on Respondent at  
20 her home address.

21           78. The current resident at Respondent's home address informed the process server  
22 that the current resident had moved into the home two months earlier and that she did not know  
23 Respondent.

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THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

Dated this 1<sup>st</sup> day of July, 2010.



Sachia Stonefeld Powell, Bar No. 21166  
Disciplinary Counsel

# SHANGE PETRINI

# THE SUPREME COURT OF WASHINGTON

IN RE: )

SHANGE H. PETRINI, )

ATTORNEY AT LAW. )

ORDER

BAR NO. 40210

Supreme Court No.  
200,886-1

RECEIVED  
DEC 27 2010

This matter came before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order dated November 12, 2010, in the matter of Shange H. Petrini, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court having reviewed the Disciplinary Board's Recommendation and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the Court having determined that the Recommendation should be approved. Now, therefore, it is hereby

ORDERED:

Shange H. Petrini is disbarred from the practice of law. Pursuant to ELC 13.2, the effective date of December 27, 2010. Costs and expenses, pursuant to ELC 13.9, as approved by the disciplinary board and restitution, pursuant to ELC 13.7, as approved by the disciplinary board will be paid by Shange H. Petrini.

DATED at Olympia, Washington, this 20<sup>th</sup> day of December, 2010.

For the Court

Madsen, C. J.  
CHIEF JUSTICE

589/794

DBB

FILED

NOV 12 2010

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

SHANGE H. PETRINI,

Lawyer (WSBA No. 40210).

Proceeding No. 10#00045

ORDER APPROVING HEARING  
OFFICER'S DECISION

This matter came before the Disciplinary Board at its November 5, 2010 meeting on automatic review of Hearing Officer David A. Thorner's disbarment recommendation following a default hearing.

On review of the decision, the materials designated and submitted by Disciplinary Counsel, and the applicable rules and case law;

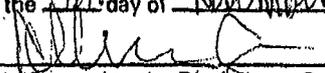
IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation is unanimously<sup>1</sup> adopted. This Order is the Disciplinary Board's recommendation to the Supreme Court. Any sanction ordered in this matter will take effect as provided by ELCs 12.2(b) and 13.2.

Dated this 12th day of November 2010.

  
H.E. Stiles II, Chair  
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ORDER APPROVING HEARING OFFICER'S DECISION  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to SHANGE H. PETRINI Respondent/Respondent's Counsel  
at 14 PINE HILL ST. PA. CANYON CA 91512 by Certified/first class mail  
postage prepaid on the 12th day of NOVEMBER, 2010

  
Clerk/Counsel to the Disciplinary Board

<sup>1</sup> Those voting were: Bahn, Handmacher, Ivarinen, Ogura, Stiles, Trippett, Waite and Wilson.

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FILED

SEP 23 2010

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

SHANGE H. PETRINI,  
Lawyer (Bar No. 40210).

Public No. 10#00045

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on September 21, 2010.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged lawyer Shange  
H. Petrini with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the  
Formal Complaint is admitted and established. These facts are incorporated herein by reference.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the  
Formal Complaint are admitted and established as follows:

COUNT 1 -- By failing to act with reasonable diligence and promptness in representing

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1 Ms. Houle, Respondent violated RPC 1.3.

2           COUNT 2 -- By failing to respond to Ms. Houle's reasonable requests for information,  
3 and by failing to keep Ms. Houle reasonably informed about the status of the matter,  
4 Respondent violated RPC 1.4(a)

5           COUNT 3 -- By charging Ms. Houle \$1,175 to represent her in her dissolution  
6 proceedings, and by not completing the work that he was hired to do, Respondent violated RPC  
7 1.5(a).

8           COUNT 4 -- By failing to refund any portion of Ms. Houle's advanced fee and by  
9 failing to give her copies of the documents that he had prepared, Respondent violated RPC  
10 1.16(d).

11           COUNT 5 -- By failing to inform Ms. Houle that he was moving to California and  
12 would no longer work on her case so that Ms. Houle could make informed decisions regarding  
13 the representation, Respondent violated RPC 1.4(b).

14           COUNT 6 -- By failing to respond to the Association's requests for a response to Ms.  
15 Houle's grievance, and by failing to appear at his deposition, and by failing to submit an  
16 affidavit showing compliance with ELC Title 14, Respondent violated RPC 8.4(l).

17           COUNT 7 -- By failing to act with reasonable diligence and promptness in his  
18 representation of Mr. Yu, Respondent violated RPC 1.3.

19           COUNT 8 -- By failing to keep Mr. Yu reasonably informed about the status of his H1-  
20 B visa application and/or by failing to comply with Mr. Yu's reasonable requests for  
21 information, Respondent violated RPC 1.4(a).

22           COUNT 9 -- By charging Mr. Yu \$2,000 and not completing the work he was hired to  
23 do, Respondent violated RPC 1.5(a).



1 8. ABA Standard 7.2 applies to Counts 6 and 12.

2 7.2 **Suspension** is generally appropriate when a lawyer knowingly  
3 engages in conduct that is a violation of a duty owed as a  
4 professional and causes injury or potential injury to a client, the  
public, or the legal system.

5 9. Where, as here, there are multiple offenses, 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) (quoting  
8 ABA Standards at 6). Here, the most serious misconduct, Respondent's abandonment of his  
9 practice and knowing failure to perform services for his clients, resulting in serious or  
10 potentially serious injury, warrants disbarment.

11 10. The following aggravating factors set forth in ABA Standard 9.22 apply in this case:

- 12 (c) pattern of misconduct;  
13 (d) multiple offenses; and  
(j) indifference to making restitution.

14 11. The following mitigating factors set forth in ABA Standard 9.32 apply to this case:

- 15 (a) absence of prior disciplinary record; and  
16 (f) inexperience in the practice of law (Respondent was admitted to practice in  
2008).

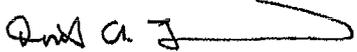
### 17 RECOMMENDATION

18 12. Based on the ABA Standards and the applicable aggravating and mitigating factors,  
19 the Hearing Officer recommends that Respondent Shange H. Petrini be disbarred and that  
20 Respondent be ordered to pay the following restitution pursuant to ELC 13.7:

- 21 • To Ms. Houle in the amount of \$1,175, plus 12% interest as of May 18, 2009; and  
22 • To Mr. Yu in the amount of \$1,000, plus 12% interest as of June 12, 2009.

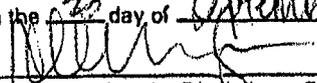
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DATED this 21<sup>st</sup> day of September, 2010.

  
David A. Thorer, WSGA 4783  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF COL & HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Sevinia Mann Respondent/ Respondent's Counsel  
at 1111 1st Ave - Landa CA 98101 by Certified first class mail,  
postage prepaid on the 22<sup>nd</sup> day of September, 2010

  
Clerk/Counsel to the Disciplinary Board

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**FILED**

JUN 01 2010

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

Shange Holden Petrini,  
Lawyer (Bar No. 40210).

Public No. 10#00045

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent Shange Holden Petrini was admitted to the practice of law in the State of Washington on June 12, 2008.

**FACTS REGARDING COUNTS 1 through 6 [HOULE GRIEVANCE]**

2. On October 21, 2008, Marcy Houle hired Respondent to file a dissolution action.
3. Ms. Houle paid Respondent a \$1,000 advance fee.
4. Respondent met with Ms. Houle on January 22, 2009 so that she could sign the dissolution documents.

- 1           5.    At that meeting, Ms. Houle paid Respondent an additional \$175.
- 2           6.    Respondent did not file the dissolution documents.
- 3           7.    Instead, Respondent mailed the documents to Ms. Houle's husband.
- 4           8.    Ms. Houle's husband eventually returned the dissolution documents with some
- 5   changes.
- 6           9.    Ms. Houle called Respondent and left a message, stating that she agreed to the
- 7   changes.
- 8           10.   Respondent did not return Ms. Houle's call.
- 9           11.   Ms. Houle made repeated efforts to contact Respondent, including leaving several
- 10   messages and several emails.
- 11           12.   Respondent did not respond to Ms. Houle's attempts to contact him.
- 12           13.   Respondent never filed Ms. Houle's dissolution action.
- 13           14.   Respondent moved to California and abandoned his practice.
- 14           15.   Respondent did not inform Ms. Houle that he was moving or that he would no
- 15   longer be working on her case.
- 16           16.   On May 18, 2009, Ms. Houle sent Respondent a message terminating the
- 17   representation and requesting a refund.
- 18           17.   Ms. Houle left additional messages requesting copies of her documents.
- 19           18.   Respondent did not respond to Ms. Houle's messages or emails.
- 20           19.   Respondent acted knowingly in not responding Ms. Houle's efforts to contact him.
- 21           20.   Respondent acting knowingly in not responding to Ms. Houle's request for a
- 22   refund and her documents.
- 23           21.   To date, Ms. Houle has not received copies of the documents that Respondent
- 24

1 prepared.

2 22. Ms. Houle has been unable to raise funds to hire another lawyer to help her with  
3 her dissolution.

4 23. Ms. Houle filed a grievance against Respondent on July 24, 2009.

5 24. The Association forwarded a copy of the grievance with a request to respond to  
6 Respondent at his address on file with the Association.

7 25. The grievance and request was returned as undeliverable.

8 26. The Association subsequently learned that Respondent had moved to California.

9 27. On September 21, 2009, the Association sent another copy of the Houle grievance  
10 to Respondent, asking that he provide a response within two weeks as required by ELC 5.3(e).

11 28. Respondent did not respond.

12 29. On October 12, 2009, the Association sent a certified letter to Respondent  
13 requesting that he respond by October 26, 2009 or he would be subpoenaed for a deposition  
14 under ELC 5.3(f).

15 30. The certified letter was returned unclaimed.

16 31. On November 4, 2009, Respondent was served personally in California with a  
17 subpoena to appear at a deposition on November 16, 2009.

18 32. The subpoena required that Respondent produce his complete file and any  
19 documents that may be in his possession regarding the grievant and all financial records relating  
20 to funds received in connection to his representation of Ms. Houle.

21 33. Respondent did not appear at the deposition or produce the documents requested in  
22 the subpoena.

23 34. Respondent did not inform the Association that he would not be appearing at the  
24

1 deposition.

2 35. The Association moved for Respondent's interim suspension and personally served  
3 him with the petition at his mother's address in California.

4 36. A hearing was set for January 28, 2010.

5 37. Respondent did not respond to the petition or indicate his intent to appear at the  
6 hearing.

7 38. On January 29, 2010, the Supreme Court suspended Respondent's license pending  
8 his cooperation with these proceedings.

9 39. On February 1, 2010 disciplinary counsel sent Respondent a letter informing  
10 Respondent of his duties under ELC Title 14 and informing him that he must submit an affidavit  
11 of compliance with ELC Title 14 within 25 days of the effective date of his suspension.

12 40. To date, Respondent has not responded to Ms. Houle's grievance, has not  
13 submitted the required affidavit of compliance, and remains suspended from the practice of law.

14 41. Respondent acted knowingly when he failed to respond to Ms. Houle's grievance,  
15 failed to produce his client file, financial records, and documents relating to his representation  
16 of Ms. Houle, and failed to submit the required affidavit of compliance.

17 42. There was serious injury to Ms. Houle in that she lost the money that she paid  
18 Respondent and could not afford to hire another lawyer to assist her with her dissolution.

19 **COUNT 1**

20 43. By failing to act with reasonable diligence and promptness in representing Ms.  
21 Houle, Respondent violated RPC 1.3.

22 **COUNT 2**

23 44. By failing to respond to Ms. Houle's reasonable requests for information, and/or  
24 by failing to keep Ms. Houle reasonably informed about the status of the matter, Respondent

1 violated RPC 1.4(a).

2 **COUNT 3**

3 45. By charging Ms. Houle \$1,175 to represent her in her dissolution proceedings, and  
4 by not completing the work that he was hired to do, Respondent violated RPC 1.5(a).

5 **COUNT 4**

6 46. By failing to refund any portion of Ms. Houle's advanced fee and/or give her  
7 copies of the documents that he had prepared, Respondent violated RPC 1.16(d).

8 **COUNT 5**

9 47. By failing to inform Ms. Houle that he was moving to California and would no  
10 longer work on her case so that Ms. Houle could make informed decisions regarding the  
11 representation, Respondent violated RPC 1.4(b).

12 **COUNT 6**

13 48. By failing to respond to the Association's requests for a response to Ms. Houle's  
14 grievance, and/or by failing to appear at his deposition, and/or by failing to submit an affidavit  
15 showing compliance with ELC Title 14, Respondent violated RPC 8.4(l).

16 **FACTS REGARDING COUNTS 7 through 12 [YU GRIEVANCE]**

17 49. On March 6, 2009, Chang-Ta Yu hired Respondent to prepare and file an H-1B  
18 visa application on Mr. Yu's behalf.

19 50. Mr. Yu paid Respondent \$2,000 to prepare and file the H-1B visa application.

20 51. Mr. Yu told Respondent that it was important that the application be filed as close  
21 to April 1, 2009 as possible because this was the first day that the applications were being  
22 accepted for 2009 and Mr. Yu's student visa was set to expire on February 1, 2010.

23 52. Mr. Yu's continued employment after February 1, 2010 was dependant on his H-  
24 1B visa application being granted.

1 53. Respondent prepared the necessary documents and Mr. Yu signed them on April 2,  
2 2009.

3 54. On April 7, 2009, Mr. Yu emailed Respondent and asked if there was anything else  
4 Mr. Yu needed to do in relation to obtaining his H-1B visa.

5 55. Respondent did not respond to Mr. Yu's email.

6 56. Over the next two months, Mr. Yu called Respondent six times and sent  
7 Respondent increasingly anxious emails asking for an update on Mr. Yu's H-1B visa  
8 application.

9 57. Respondent did not respond.

10 58. Respondent moved to California and abandoned his practice.

11 59. Respondent did not inform Mr. Yu of his move or that he would no longer be  
12 working on his case.

13 60. Respondent acted knowingly when he failed to respond to Mr. Yu's numerous  
14 requests for information relating to the H-1B visa application.

15 61. On June 11, 2009, Mr. Yu called the United States Citizenship and Immigration  
16 Service and learned that Respondent never submitted his application.

17 62. On June 12, 2009, Mr. Yu emailed Respondent again and told Respondent that he  
18 wanted to cancel his contract and get his \$2,000 back.

19 63. Respondent did not respond.

20 64. On July 1, 2009, Mr. Yu emailed Respondent again, demanding his money back.

21 65. Respondent did not respond.

22 66. Respondent acted knowingly when he failed to respond to Mr. Yu's demands for a  
23 refund and when he failed to refund Mr. Yu's advance fee payment.  
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1 **COUNT 8**

2 81. By failing to keep Mr. Yu reasonably informed about the status of his H-1B visa  
3 application and/or by failing to comply with Mr. Yu's reasonable requests for information,  
4 Respondent violated RPC 1.4(a)

5 **COUNT 9**

6 82. By charging Mr. Yu \$2,000 and not completing the work he was hired to do,  
7 Respondent violated RPC 1.5(a).

8 **COUNT 10**

9 83. By failing to refund \$1,000 of Mr. Yu's advanced fee, Respondent violated RPC  
10 1.16(d).

11 **COUNT 11**

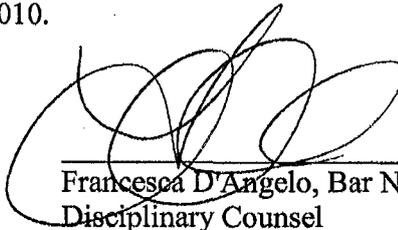
12 84. By failing to inform Mr. Yu that he was moving to California and would no longer  
13 work on his case so that Mr. Yu could make informed decisions regarding the representation,  
14 Respondent violated RPC 1.4(b).

15 **COUNT 12**

16 85. By failing to respond to disciplinary counsel's request for a response to the  
17 grievance, Respondent violated RPC 8.4(l) (by violating ELC 5.3(e)).  
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1           THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for  
2 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,  
3 restitution, and assessment of the costs and expenses of these proceedings.  
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5           Dated this   1   day of   June  , 2010.

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9 Francesca D'Angelo, Bar No. 22979  
10 Disciplinary Counsel  
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# SHANE NEES



FILED

APR 22 2010

BEFORE THE DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

**SHANE O. NEES,**

Lawyer (WSBA No. 29944)

Proceeding No. 09#00011

AMENDED DISCIPLINARY BOARD  
ORDER ADOPTING HEARING  
OFFICER'S DECISION

This matter came before the Disciplinary Board at its March 19, 2010 meeting, on automatic review of Hearing Officer John H. Loeffler's decision recommending disbarment, following a default hearing.

Having reviewed the materials designated and submitted by Disciplinary Counsel, and the applicable case law and rules;

**IT IS HEREBY ORDERED THAT** the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment are adopted.<sup>1</sup>

This decision is the Disciplinary Board's recommendation to the Supreme Court. Any sanction ordered in this matter will take effect on the date stated in the Supreme Court order, or as provided by ELC 12.8 or 13.2.

<sup>1</sup> The vote on this matter was unanimous. Those voting were: Anderson, Bahn, Barnes, Fine, Greenwich, Handmacher, Meehan, Stiles, Ureña, Waite and Wilson.

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Dated this 21st day of April, 2010.

Seth A. Fine  
Seth A. Fine  
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Board Order Adopting His Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to State Nees Respondent/Respondent's Counsel  
at PO Box 77 Fairview WA 98148 by Certified/first class mail,  
postage prepaid on the 22nd day of April 2010.

[Signature]  
Clerk/Counsel to the Disciplinary Board

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**FILED**

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**DISCIPLINARY BOARD**

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OCT 13 2009

OLSON, LOEFFLER & LANDIS, P.S.

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

Shane O. Nees,  
Lawyer (Bar No. 29944).

Public No. 09#00011

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on October 21, 2009.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged Shane O. Nees with misconduct as set forth therein.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations charged in the Formal Complaint is admitted and established.

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1 with disciplinary investigations, thereby impeding the Association's ability to act in the public  
2 interest and wasting limited resources.

3 14. The following standards of the American Bar Association's Standards for  
4 Imposing Lawyer Sanctions (ABA Standards) (1991 ed. & Feb. 1992 Supp.) apply in this case:

5 ABA Standard 4.1 -- Failure to Preserve the Client's Property

- 6 4.11 **Disbarment** is generally appropriate when a lawyer knowingly converts  
7 client property and causes injury or potential injury to a client.  
8 4.12 **Suspension** is generally appropriate when a lawyer knows or should  
9 know that he is dealing improperly with client property and causes injury  
10 or potential injury to a client.  
11 4.13 **Reprimand** is generally appropriate when a lawyer is negligent in  
12 dealing with client property and causes injury or potential injury to a  
13 client.  
14 4.14 **Admonition** is generally appropriate when a lawyer is negligent in  
15 dealing with client property and causes little or no actual or potential  
16 injury to a client.

17 ABA Standard 4.4 -- Lack of Diligence

- 18 4.41 **Disbarment** is generally appropriate when:  
19 (a) a lawyer abandons the practice and causes serious or potentially  
20 serious injury to a client; or  
21 (b) a lawyer knowingly fails to perform services for a client and  
22 causes serious or potentially serious injury to a client; or  
23 (c) a lawyer engages in a pattern of neglect with respect to client  
24 matters and causes serious or potentially serious injury to a client.  
4.42 **Suspension** is generally appropriate when:  
(a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client, or  
(b) a lawyer engages in a pattern of neglect and causes injury or  
potential injury to a client.  
4.43 **Reprimand** is generally appropriate when a lawyer is negligent and does  
not act with reasonable diligence in representing a client, and causes  
injury or potential injury to a client.  
4.44 **Admonition** is generally appropriate when a lawyer is negligent and does  
not act with reasonable diligence in representing a client, and causes little  
or no actual or potential injury to a client.

25 ABA Standard 5.1 -- Failure to Maintain Personal Integrity

- 26 5.11 **Disbarment** is generally appropriate when:  
(a) a lawyer engages in serious criminal conduct, a necessary element

1 of which includes intentional interference with the administration  
2 of justice, false swearing, misrepresentation, fraud, extortion,  
3 misappropriation, or theft; or the sale, distribution or importation  
4 of controlled substances; or the intentional killing of another; or  
5 an attempt or conspiracy or solicitation of another to commit any  
6 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.

ABA Standard 6.1 – False Statements, Fraud, Misrepresentation

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.

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 adverse effect on the legal proceeding.

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.

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.

1           ABA Standard 7.0 – Violation of Duties Owed to the Profession

2           7.1    **Disbarment** is generally appropriate when a lawyer knowingly  
3                   engages in conduct that is a violation of a duty owed as a  
4                   professional with the intent to obtain a benefit for the lawyer or  
5                   another, and causes serious or potentially serious injury to a client,  
6                   the public, or the legal system.

7           7.2    **Suspension** is generally appropriate when a lawyer knowingly  
8                   engages in conduct that is a violation of a duty owed as a  
9                   professional and causes injury or potential injury to a client, the  
10                  public, or the legal system.

11          7.3    **Reprimand** is generally appropriate when a lawyer negligently  
12                  engages in conduct that is a violation of a duty owed as a  
13                  professional and causes injury or potential injury to a client, the  
14                  public, or the legal system.

15          7.4    **Admonition** is generally appropriate when a lawyer engages in an  
16                  isolated instance of negligence that is a violation of a duty owed as a  
17                  professional, and causes little or no actual or potential injury to a client,  
18                  the public, or the legal system.

19          15.    The presumptive sanction for Counts 1, 2, 4, 5, 8, 9, 12, and 13 is disbarment  
20                  under ABA Standard 4.41(a) and (c) because Respondent abandoned his practice, engaged in a  
21                  pattern of neglect with respect to client matters, and caused serious injury to a client.

22          16.    The presumptive sanction for Count 6 is disbarment under ABA Standard 6.11  
23                  because Respondent made knowingly false statements to a court with intent to deceive the court.

24          17.    The presumptive sanction for Counts 10 and 14 is suspension under ABA Standard  
                4.12 because Respondent knew he was dealing improperly with client property and caused  
                injury to his clients.

                18.    The presumptive sanction for Counts 16 and 17 is disbarment under ABA  
                Standards 5.11(a) and 4.11 because Respondent engaged in serious criminal conduct when he  
                misappropriated his client's funds, and knowingly converted his client's funds and thereby  
                caused injury.

                19.    The presumptive sanction for counts 3, 7, 11, 15, and 18 is suspension under ABA  
                Standard 7.2 because Respondent knowingly violated his duty to cooperate with disciplinary

1 investigations and caused injury to the legal system.

2 20. Where there are multiple ethical violations, the "ultimate sanction imposed should  
3 at least be consistent with the sanction for the most serious instance of misconduct in among a  
4 number of violations." In re Petersen, 120 Wn2d 833, 854, 846 P.2d 1330 (1993) (quoting the  
5 ABA Standards at 6). Here, the presumptive sanction for the most serious instance of  
6 misconduct is disbarment.

7 21. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
8 apply in this case:

- 9 (b) dishonest or selfish motive (as to counts 16 and 17); and  
10 (d) multiple offenses.

11 22. The following mitigating factor set forth in Section 9.32 of the ABA Standards  
12 applies to this case:

- 13 (a) absence of a prior disciplinary record.

14 23. On balance, the aggravating and mitigating factors do not provide cause to deviate  
15 from the presumptive sanction of disbarment.

### 16 RECOMMENDATION

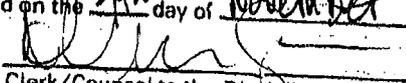
17 24. Based on the ABA Standards and the applicable aggravating and mitigating  
18 factors, the Hearing Officer recommends that Respondent Shane O. Nees be disbarred. The  
19 Hearing Officer further recommends that restitution be ordered to Sunkidd Venture, Inc., dba  
20 American Bonded Collection, in the amount of \$2,198.95, plus 12% interest as of November 1,  
21 2008.

22 DATED this 2nd day of November 2009.

23 \_\_\_\_\_  
24 John H. Loeffler,  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOI, COL & HO Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to SHANE NILES Respondent/ Respondent's Counsel  
at PO BOX 22 BAINBRIDGE WA 99012 Certified/first class mail  
postage prepaid on the 24th day of NOVEMBER, 2009

  
Clerk/Counsel to the Disciplinary Board

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FILED  
JUN 25 2009  
DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
SHANE O. NEES,  
Lawyer (Bar No. 29944).

Public No. 09#00011  
FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent Shane O. Nees was admitted to the practice of law in the State of Washington on June 2, 2000.

**FACTS REGARDING COUNTS 1 through 3 [BEE GRIEVANCE]**

2. Charlene Bee hired Respondent in April 2006 to represent her in a personal injury matter that arose out of an auto accident.

3. At the time, Respondent worked in the law firm of his father.

4. Respondent forwarded a settlement offer from the other party's insurance company to Ms. Bee later that month.

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1           5.    Respondent told Ms. Bee the insurance company was claiming she was 50 percent  
2 at fault for the accident.

3           6.    Ms. Bee disagreed and declined the offer.

4           7.    The insurance company issued a check to Ms. Bee in June 2006 for 50 percent of  
5 the damages to her vehicle.

6           8.    Ms. Bee retained the check, but did not cash it as she was not accepting the  
7 insurance company's offer.

8           9.    In March 2007, Respondent left his father's firm and, with Ms. Bee's agreement,  
9 took her case with him.

10          10.   Respondent did not change his address of record with the Association until May 22,  
11 2008, and then changed it to a post office box.

12          11.   Respondent never notified Ms. Bee of his new address after leaving his father's law  
13 firm.

14          12.   The insurance company attempted to contact Respondent about Ms. Bee's matter,  
15 but he did not respond.

16          13.   The insurance company contacted Ms. Bee in April 2007, told her it had been  
17 unable to contact Respondent, asked her why she had not cashed the check, and advised her not  
18 to cash it after that because it was "stale dated."

19          14.   Ms. Bee called Respondent, who told her that he would call the insurance company.

20          15.   Respondent did not call the insurance company.

21          16.   Respondent took no further action on Ms. Bee's case.

22          17.   Ms. Bee tried on many subsequent occasions to contact Respondent to obtain  
23 information about her case.

24

- 1 18. Respondent did not respond.
- 2 19. Ms. Bee's attempts to obtain information from Respondent about her matter were  
3 reasonable.
- 4 20. After March 2008, Ms. Bee called Respondent and discovered his phone number  
5 had been disconnected.
- 6 21. Ms. Bee attempted to deal with the insurance company herself, but the insurance  
7 company would not speak with her because Respondent had notified it that he was her lawyer.
- 8 22. Respondent never withdrew from Ms. Bee's representation.
- 9 23. Ms. Bee filed a grievance on May 19, 2008.
- 10 24. The Association requested a response from Respondent on May 21, 2008.
- 11 25. Respondent did not respond.
- 12 26. Respondent was suspended from the practice of law in Washington for non-  
13 payment of Bar membership fees, effective June 17, 2008.
- 14 27. Respondent never notified Ms. Bee of his suspension.
- 15 28. The Association sent Respondent a "10-day" letter under ELC 5.3(f) by certified  
16 mail on July 8, 2008.
- 17 29. Respondent received the letter on July 10, 2008.
- 18 30. Respondent did not respond to Ms. Bee's grievance.
- 19 31. The Association subpoenaed Respondent for a non-cooperation deposition under  
20 ELC 5.3(f) to be held on September 23, 2008.
- 21 32. Respondent was personally served with the subpoena on September 8, 2008.
- 22 33. Respondent did not appear at the deposition.
- 23 34. On October 17, 2008, the Association filed a petition for interim suspension under  
24

1 ELC 7.2(a)(3).

2 35. The Supreme Court issued an order directing Respondent to appear before the Court  
3 on November 18, 2008 to show cause why the petition should not be granted.

4 36. The Court's order was personally served on Respondent on October 24, 2008.

5 37. Respondent contacted the Association after the order was issued and said he would  
6 respond to Ms. Bee's grievance in writing by November 10, 2008.

7 38. Respondent never provided a written response to Ms. Bee's grievance.

8 39. Respondent did not appear at the show cause hearing or file a response to the  
9 petition for interim suspension.

10 40. On November 19, 2008, the Court granted the Association's petition, suspending  
11 Respondent from the practice of law until he cooperates with the Association's investigation of  
12 Ms. Bee's grievance.

13 41. Respondent remains suspended as of this date.

14 42. Respondent has abandoned the practice of law.

15 **COUNT 1**

16 43. By failing to take any action on Ms. Bee's case after April 2007 and/or by  
17 abandoning the practice of law, Respondent violated RPC 1.3 (diligence).

18 **COUNT 2**

19 44. By failing to communicate with Ms. Bee about the status of her case and/or to  
20 respond to her reasonable requests for information and/or failing to notify her of his suspension,  
21 Respondent violated RPC 1.4 (communication).

22 **COUNT 3**

23 45. By failing to timely respond to Ms. Bee's grievance, Respondent violated RPC  
24 8.4(l) by violating RPC 5.3(e) (duty to respond to grievance investigations).

1                   **FACTS REGARDING COUNTS 4 through 7 [WALDEN GREIVANCE]**

2           46. In April 2006, Respondent filed a personal injury lawsuit on behalf of Orville  
3 Walden and his wife arising out of an automobile accident.

4           47. At the time, Respondent worked in the law firm of his father.

5           48. Respondent left his father's law firm in March 2007.

6           49. Respondent took Mr. Walden's case with him.

7           50. Respondent did not change his address of record with the Association until May  
8 2008, when he changed his address to a post office box.

9           51. Respondent never notified Mr. Walden of his new address after leaving his father's  
10 law firm.

11           52. In July 2007, the defendants in Mr. Walden's case prevailed in a mandatory  
12 arbitration.

13           53. Respondent filed for trial de novo, which was set for October 8, 2007.

14           54. Respondent informed Mr. Walden of the request for trial de novo and of the  
15 October 2007 trial date.

16           55. Respondent called Mr. Walden on October 6, 2007, and told Mr. Walden that the  
17 trial was going to be continued because the docket was too full.

18           56. Respondent appeared in court on October 8, 2007, but Mr. Walden and his wife did  
19 not appear because Respondent had told Mr. Walden that the trial would be continued.

20           57. The trial would not have been continued if Mr. Walden and his wife had appeared  
21 and if Respondent had been prepared for trial.

22           58. Respondent's statement to Mr. Walden that the trial was going to be continued  
23 because the docket was too full was false.

24           59. The court continued the trial date to February 2008 on Respondent's motion, but

1 ordered that terms of \$447.80 be paid to the defendants by November 26, 2007, because Mr.  
2 Walden and his wife had failed to appear.

3 60. Respondent did not advise Mr. Walden of the new trial date or of the order  
4 requiring payment of terms.

5 61. Respondent did not pay the terms.

6 62. Mr. Walden did not pay the terms because Respondent did not tell him they had  
7 been ordered.

8 63. Mr. Walden subsequently wrote to Respondent twice seeking information about his  
9 case.

10 64. Respondent did not respond to Mr. Walden's letters.

11 65. Mr. Walden and his wife then went to Arizona for the winter, not knowing about  
12 the upcoming trial date.

13 66. Respondent failed to appear for a court-ordered pretrial conference on February 1,  
14 2008.

15 67. Respondent knew of the pretrial conference.

16 68. The court struck the trial date because Respondent failed to appear.

17 69. The defendants filed a motion to dismiss.

18 70. In response, Respondent filed a motion to continue the trial.

19 71. In his declaration accompanying the motion, Respondent stated that he had advised  
20 Mr. Walden of the February 2008 trial date but Mr. Walden said he could not drive back to  
21 Spokane due to inclement weather.

22 72. The representations Respondent made in the declaration were untrue.

23 73. Respondent knew the representations were untrue.  
24

1 74. On March 14, 2008, the court dismissed Mr. Walden's action with prejudice,  
2 finding that plaintiffs and plaintiffs' attorney had willfully disregarded the court's orders,  
3 willfully and without reasonable excuse failed to pay the \$447.80 in terms, and that their failure  
4 to appear at the October 2007 trial date and their lawyer's failure to appear at the pre-trial  
5 conference had prejudiced the defendants.

6 75. The court awarded the defendants attorney fees and costs of \$4,094.67.

7 76. Respondent did not inform Mr. Walden that his case had been dismissed or that the  
8 defendants had been awarded \$4,094.67.

9 77. Mr. Walden returned to Washington in March 2008 and left phone messages for  
10 Respondent seeking an update on the status of his matter.

11 78. Respondent did not respond to Mr. Walden's messages.

12 79. Mr. Walden's attempts to contact Respondent for information on his matter were  
13 reasonable.

14 80. Mr. Walden filed a grievance on May 12, 2008.

15 81. The Association requested a response from Respondent on May 14, 2008.

16 82. Respondent did not respond to the Association's May 14, 2008 request.

17 83. Respondent was suspended from the practice of law in Washington for non-  
18 payment of Bar membership fees effective June 17, 2008.

19 84. Respondent did not notify Mr. Walden of his suspension.

20 85. The Association sent Respondent a "10-day letter" under ELC 5.3(f) by certified  
21 mail on July 1, 2008.

22 86. Respondent did not pick up the certified letter.

23 87. The Association subpoenaed Respondent for a non-cooperation deposition to be  
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1 held on September 23, 2008.

2 88. Respondent was personally served with the subpoena duces tecum on September 8,  
3 2008.

4 89. Respondent did not appear at the deposition on September 23, 2008 or produce any  
5 records.

6 90. On October 17, 2008, the Association filed a petition for interim suspension under  
7 ELC 7.2(a)(3).

8 91. The Supreme Court issued an order directing Respondent to appear before the Court  
9 on November 18, 2008 to show cause why the petition should not be granted.

10 92. The Court's order was personally served on Respondent on October 24, 2008.

11 93. Respondent contacted the Association after the order was issued and said he would  
12 respond to Mr. Walden's grievance in writing by November 10, 2008.

13 94. Respondent never provided a written response to Mr. Walden's grievance.

14 95. Respondent did not appear at the show cause hearing or file a response to the  
15 petition for interim suspension.

16 96. On November 19, 2008, the Court granted the Association's petition, suspending  
17 Respondent from the practice of law until he cooperates with the Association's investigation of  
18 Mr. Walden's grievance.

19 97. Respondent remains suspended.

20 98. Respondent abandoned the practice of law.

21 **COUNT 4**

22 99. By failing to have his clients appear on the October 2007 trial date, failing to  
23 arrange for payment of the terms the court ordered, failing to appear at the pretrial conference,  
24 willfully disregarding the court's orders, failing to take other actions to expedite Mr. Walden

1 case and/or by abandoning the practice of law, Respondent violated RPC 1.3 (diligence) and/or  
2 RPC 3.2 (expediting litigation).

3 **COUNT 5**

4 100. By failing to respond to Mr. Walden's requests for information, failing to inform  
5 Mr. Walden that terms had been awarded against him, failing to inform Mr. Walden that his trial  
6 had been continued to February 2008, failing to inform Mr. Walden of the defendants' motion to  
7 dismiss, failing to inform Mr. Walden of the dismissal of the case, and/or failing to notify Mr.  
8 Walden of his suspension, Respondent violated RPC 1.4 (communication).

9 **COUNT 6**

10 101. By falsely stating in a declaration that he had advised Mr. Walden of the February  
11 2008 trial date when he knew that was untrue, Respondent violated RPC 3.3(a)(1) (knowingly  
12 making false statements to a tribunal) and/or RPC 8.4(c) (conduct involving dishonesty, fraud,  
13 deceit, or misrepresentation).

14 **COUNT 7**

15 102. By failing to timely respond to Mr. Walden's grievance, Respondent violated RPC  
16 8.4(l) by violating RPC 5.3(e) (duty to respond to grievance investigations).

17 **FACTS REGARDING COUNTS 8 through 11 [MINER GRIEVANCE]**

18 103. Michael Miner hired Respondent in April 2007 to pursue a personal injury matter.

19 104. Mr. Miner left the country for three weeks in August 2007.

20 105. Prior to leaving, Mr. Miner tried to contact Respondent for an update on his matter,  
21 but Respondent did not respond.

22 106. After he returned, Mr. Miner tried to re-establish contact with Respondent.

23 107. Respondent did not respond to several voice messages and emails left by Mr.  
24 Miner.

1 108. Mr. Miner threatened to terminate Respondent's representation on October 9, 2007.

2 109. Respondent contacted Mr. Miner after the threat and responded to Mr. Miner's  
3 requests for information.

4 110. Mr. Miner sent Respondent a medical report at the end of November 2007 and  
5 asked Respondent to keep him posted on any progress in his matter.

6 111. Respondent contacted Mr. Miner in December 2007 and January 2008, told Mr.  
7 Miner that progress was being made in negotiating the matter, and said he was working on a  
8 settlement package to present to the other party.

9 112. Mr. Miner attempted to contact Respondent after January 2008 to obtain  
10 information on the status of his matter.

11 113. Respondent did not respond to any of Mr. Miner's post-January 2008 attempts to  
12 obtain information about the progress of his matter.

13 114. Mr. Miner's attempts to contact Respondent for updates on the status of his matter  
14 were reasonable.

15 115. Respondent never completed or forwarded the settlement package to the other  
16 party.

17 116. Mr. Miner terminated Respondent's representation by email sent to Respondent on  
18 March 11, 2008, and asked Respondent to give him his client file.

19 117. Mr. Miner was entitled to possession of his client file.

20 118. Respondent did not respond to Mr. Miner's email and did not give Mr. Miner his  
21 file.

22 119. Mr. Miner contacted the Association for help in obtaining his file.

23 120. The Association attempted to contact Respondent and left messages, but  
24

1 Respondent did not respond and did not provide Mr. Miner with his file.

2 121. Mr. Miner filed this grievance on April 21, 2008.

3 122. The Association requested a response from Respondent on April 22, 2008.

4 123. Respondent did not respond to the Association's request for a response to Mr.  
5 Miner's grievance.

6 124. The Association sent Respondent a "10-day" letter under ELC 5.3(f) by certified  
7 mail on May 29, 2008.

8 125. That letter was returned unclaimed.

9 126. Respondent was suspended for non-payment of Bar membership fees effective June  
10 17, 2008.

11 127. The Association subpoenaed Respondent for a non-cooperation deposition under  
12 ELC 5.3(f) to be held on September 23, 2008.

13 128. Respondent was personally served with the subpoena on September 8, 2008.

14 129. Respondent did not appear at the September 8, 2008 deposition.

15 130. The Association filed a petition for interim suspension under ELC 7.2(a)(3).

16 131. The Supreme Court issued an order directing Respondent to appear before the Court  
17 on November 18, 2008 to show cause why the petition should not be granted.

18 132. The Court's order was personally served on Respondent on October 24, 2008.

19 133. Respondent contacted the Association after the order was issued and said he would  
20 provide a written response to Mr. Miner's grievance by November 10, 2008.

21 134. Respondent never provided a written response to Mr. Miner's grievance.

22 135. Respondent did not appear at the show cause hearing or file a response to the  
23 petition for interim suspension.

1 136. On November 19, 2008, the Court granted the Association's petition, suspending  
2 Respondent from the practice of law until he cooperates with the investigation of Mr. Miner's  
3 grievance.

4 137. Respondent remains suspended.

5 138. Respondent abandoned the practice of law.

6 **COUNT 8**

7 139. By failing to complete or forward the settlement package to the other party in Mr.  
8 Miner's case and/or by abandoning the practice of law, Respondent violated RPC 1.3 (diligence).

9 **COUNT 9**

10 140. By failing to respond to Mr. Miner's reasonable requests for information about his  
11 matter, Respondent violated RPC 1.4 (communication).

12 **COUNT 10**

13 141. By failing to surrender Mr. Miner's client file after being terminated, Respondent  
14 violated RPC 1.16(d) (termination of representation).

15 **COUNT 11**

16 142. By failing to timely respond to Mr. Miner's grievance, Respondent violated RPC  
17 8.4(l) by violating RPC 5.3(e) (duty to respond to grievance investigations).

18 **FACTS REGARDING COUNTS 12 through 15 [DENNY GRIEVANCE]**

19 143. Ethelann Denny met with Respondent in October 2007 and retained him to pursue a  
20 personal injury claim on her behalf.

21 144. Ms. Denny gave Respondent paperwork relating to her accident that included  
22 medical records, bills, and insurance information for the at-fault party.

23 145. Respondent advised Ms. Denny to call him on February 27, 2008, after seeing her  
24 doctor, to discuss strategy for settlement.

1 146. Ms. Denny left Respondent a voicemail message on February 27, 2008, but  
2 Respondent did not respond.

3 147. Respondent did not respond to multiple subsequent calls from Ms. Denny.

4 148. Ms. Denny's attempts to contact Respondent for information about her case and to  
5 discuss strategy for accomplishing her objectives were reasonable.

6 149. Respondent did not take any action to settle Ms. Denny's matter or to pursue it in  
7 court.

8 150. Ms. Denny eventually hired another attorney to handle her case.

9 151. Ms. Denny called and left Respondent messages informing him that she was  
10 terminating his representation and asking him to return her client file and paperwork.

11 152. Ms. Denny was entitled to possession of her client file and other paperwork.

12 153. Respondent did not respond and did not return Ms. Denny's file or the other  
13 paperwork she had given him.

14 154. Ms. Denny filed a grievance on April 3, 2008.

15 155. The Association requested a response from Respondent on April 4, 2008.

16 156. Respondent did not respond to the Association's request.

17 157. The Association's Consumer Affairs department left voicemails with both  
18 Respondent and his father in an effort to get Respondent to return Ms. Denny's file.

19 158. Respondent did not respond to the Association's attempts to contact him.

20 159. Respondent never returned Ms. Denny's file and did not provide a timely response  
21 to the grievance.

22 160. The Association sent Respondent a "10-day" letter under ELC 5.3(f) on May 8,  
23 2008.

1 161. Respondent filed a response to the grievance on May 20, 2008.

2 162. Respondent abandoned the practice of law.

3 **COUNT 12**

4 163. By failing to act with reasonable diligence in pursuing Ms. Denny's case and/or by  
5 abandoning the practice of law, Respondent violated RPC 1.3 (diligence).

6 **COUNT 13**

7 164. By failing to respond to Ms. Denny's reasonable attempts to obtain information  
8 about her case and to consult with him about it, Respondent violated RPC 1.4 (communication).

9 **COUNT 14**

10 165. By failing to return Ms. Denny's client file and/or the paperwork she had given him  
11 upon being terminated, Respondent violated RPC 1.16(d) (termination of representation).

12 **COUNT 15**

13 166. By failing to timely respond to Ms. Denny's grievance, Respondent violated RPC  
14 8.4(I) by violating RPC 5.3(e) (duty to respond to grievance investigations).

15 **FACTS REGARDING COUNTS 16 through 18 [JOHNSON GRIEVANCE]**

16 167. Grievant Jay Johnson's company, Sunkidd Venture, Inc. dba American Bonded  
17 Collection (ABC), hired Respondent to collect a debt.

18 168. Respondent filed suit in Spokane County District Court and obtained a judgment  
19 and order directing the debtor's employer, Wal-Mart, to garnish the debtor's wages and pay ABC  
20 \$386.60.

21 169. Wal-Mart paid the funds to Respondent by check made payable to him on June 4,  
22 2008.

23 170. Respondent endorsed the check and negotiated it.

24 171. Respondent did not notify ABC of his receipt of the check or tender payment of the

1 funds to his client.

2 172. Respondent was not entitled to any offset for fees or costs.

3 173. Respondent exerted unauthorized control over the funds from Wal-Mart with intent  
4 to deprive ABC of the funds.

5 174. ABC found out that Wal-Mart had paid the money when it contacted Wal-Mart  
6 directly and was given a copy of the cancelled check.

7 175. ABC also hired Respondent to collect another debt from a debtor named Dunbar.

8 176. Respondent filed suit in King County District Court – West Division and obtained a  
9 default judgment against Dunbar.

10 177. ABC thereafter terminated Respondent's representation and hired a new lawyer.

11 178. Respondent was suspended from the practice of law for nonpayment of Bar  
12 membership fees, effective June 17, 2008.

13 179. The new lawyer sought to collect the judgment by garnishment of Dunbar's  
14 employer.

15 180. Dunbar's employer paid the funds that were sought to the Clerk of the Court in two  
16 separate payments totaling \$1,812.35, each paid by check. The payments were made in  
17 September and October 2008.

18 181. The Clerk forwarded the checks to Respondent instead of to ABC's new lawyer.

19 182. Respondent endorsed the checks and negotiated them.

20 183. Respondent did not notify ABC or its new lawyer that he had received the checks  
21 and did not tender the funds to either of them.

22 184. Respondent was not entitled to any offset for fees or costs.

23 185. Respondent negotiated the checks after he had been suspended from the practice of  
24

1 law.

2 186. Respondent wrongfully obtained and exerted unauthorized control over the Dunbar  
3 funds with intent to deprive ABC of the funds.

4 187. ABC found out that the Dunbar funds had been paid after it contacted the garnishee  
5 defendant who provided copies of the cancelled checks.

6 188. ABC filed this grievance on September 19, 2008.

7 189. The Association requested a response from Respondent on September 24, 2008.

8 190. Respondent did not respond.

9 191. The Association sent Respondent a "10-day" letter under ELC 5.3(f) by certified  
10 mail on October 28, 2008.

11 192. That letter was returned unclaimed.

12 193. To date, Respondent has not responded to Mr. Johnson's grievance.

13 **COUNT 16**

14 194. By exerting unauthorized control over the Wal-Mart funds belonging to ABC  
15 exceeding \$250.00 in value, Respondent committed the crime of Theft in the Second Degree, as  
16 proscribed by RCW 9A.56.040, a Class C felony, and thereby violated RPC 8.4(b) (criminal  
17 activity), RPC 8.4(c) (dishonest conduct), and/or RPC 8.4(i) (acts involving moral turpitude,  
18 corruption, or acts reflecting disregard for the rule of law).

19 **COUNT 17**

20 195. By wrongfully obtaining and/or exerting unauthorized control over the Dunbar  
21 funds belonging to ABC exceeding \$1,500.00 in value, Respondent committed the crime of  
22 Theft in the First Degree, as proscribed by RCW 9A.56.030, a Class B felony, and thereby  
23 violated RPC 8.4(b) (criminal activity), RPC 8.4(c) (dishonest conduct), and/or RPC 8.4(i) (acts  
24 involving moral turpitude, corruption, or acts reflecting disregard for the rule of law).

COUNT 18

196. By failing to timely respond to Mr. Johnson's grievance, Respondent violated RPC 8.4(l) by violating RPC 5.3(e) (duty to respond to grievance investigations).

THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

Dated this 25<sup>th</sup> day of June, 2009.

  
\_\_\_\_\_  
Craig Bray, Bar No. 20821  
Disciplinary Counsel

# JAMES FREELEY

# THE SUPREME COURT OF WASHINGTON

IN RE: )  
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JAMES E. FREELEY,

ATTORNEY AT LAW.

RECEIVED  
ORDER APR 27 2007

BAR NO. 11251

Supreme Court No.  
200,474-1

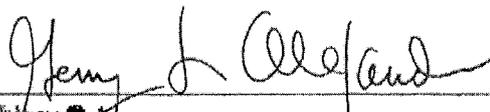
This matter came before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order in the matter of James E. Freeley, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court (Justice J. M. Johnson recused) having reviewed the Disciplinary Board's Recommendation and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the Court having unanimously determined that the Recommendation should be approved. Now, therefore, it is hereby

ORDERED:

James E. Freeley is disbarred from the practice of law. Pursuant to ELC 13.2 the effective date of disbarment is May 3, 2007.

DATED at Olympia, Washington, this 26<sup>th</sup> day of April, 2007.

For the Court



CHIEF JUSTICE

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STATE OF WASHINGTON  
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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**JAMES E. FREELEY,**

Lawyer (Bar No. 11251).

WSBA File No. 05#00015

DISCIPLINARY BOARD ORDER  
ADOPTING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its March 16th, 2007 meeting on automatic review Hearing Officer Nancy K. McCoid's decision recommending disbarment following a default hearing.

Having reviewed the documents designated by disciplinary counsel, and disciplinary counsel's brief<sup>1</sup>:

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

The vote on this matter was unanimous.

<sup>1</sup> On November 15, 2006, Hearing Officer McCoid entered an Order of Default against Mr. Freeley. Mr. Freeley did not seek to vacate the order of default. ELC 10.6 controls default proceedings. Mr. Freeley is not entitled to participate in the proceedings unless the order of default is vacated. (ELC 10.6(a)(4)).

1 Those voting were:

2 Andrews, Cena, Darst, Dickinson-Mina, Fine, Heller, Hollingsworth, Kuznetz, Lee,  
3 Mosner and Romas.

4  
5  
6 Dated this 16th day of March, 2007.

7  
8 Lawrence Kuznetz  
9 Lawrence Kuznetz, Vice Chair  
10 Disciplinary Board

11  
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13 CERTIFICATE OF SERVICE

14 I certify that I caused a copy of the Order Adopting HC's Decision  
15 to be delivered to the Office of Disciplinary Counsel and to be mailed  
16 to James Freeley, Respondent/Respondent's Counsel  
17 at 1725 1st Avenue, by certified/tirst class mail  
18 postage prepaid on the 16 day of March, 2007  
19 Olympia, WA  
20 as soc  
21 Bader Lewis  
22 Clerk/Counsel to the Disciplinary Board  
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FILED

JAN 08 2007

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES E. FREELEY  
Lawyer (Bar No. 11251).

Public No. 05#00015

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on January 4, 2007.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged James E. Freeley with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations charged in the Formal Complaint is admitted and established.

033



1 Count 2:

2 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
3 conduct that is a violation of a duty owed as a professional and causes injury  
4 or potential injury to a client, the public, or the legal system.

5 10. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
6 apply in this case:

- 7 (c) a pattern of misconduct;  
8 (d) multiple offenses;  
9 (i) substantial experience in the practice of law [admitted 1980].

10 11. The following mitigating factor set forth in Section 9.32 of the ABA Standards  
11 applies to this case:

- 12 (a) absence of a prior disciplinary record.

13 12. When multiple ethical violations are found, the "ultimate sanction imposed should at  
14 least be consistent with the sanction for the most serious instance of misconduct among a  
15 number of violations." In re Petersen, 120 Wn2d 833, 854, 846 P.2d 1330 (1993).

16 13. The appropriate sanction under the ABA Standards is disbarment.

17 **RECOMMENDATION**

18 14. Based on the ABA Standards and the applicable aggravating and mitigating  
19 factors, the Hearing Officer recommends that Respondent James E. Freeley be disbarred.

20 DATED this 4<sup>th</sup> day of January, 2007.

21 Nancy K McCoid WSBA-13763  
22 Nancy K. McCoid  
23 Hearing Officer  
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FILED

MAR 29 2005

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES E. FREELEY

Lawyer (Bar No. 11251).

Public No. 05#00015

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent James E. Freeley was admitted to the practice of law in the State of Washington on October 28, 1980.

**FACTS REGARDING COUNT 1**

2. In approximately October 2004, Respondent ceased practicing law without notice to his clients, the courts or opposing counsel.

The Palm matter

3. In January 2004, Respondent appeared as counsel of record for the defendant in

1 State v. Palm, Thurston Count District Court No. 4DV109, a domestic violence matter.

2 4. Respondent failed to appear for hearings on April 7, 2004, June 30, 2004, July 22,  
3 2004 and October 20, 2004.

4 5. A different lawyer appeared for Respondent on October 27 and November 1, 2004,  
5 but he did not have the case file and did not know of the plea offer.

6 6. By that time, however, the prosecutor could no longer locate the victim and had to  
7 dismiss the case.

8 7. The case could have proceeded to trial but for Respondent's repeated absences  
9 because the prosecutor had been able to subpoena the victim for the June 2004 and September  
10 2004 trial dates.

11 8. Respondent knowingly ceased representing Mr. Palm without notice to his client, the  
12 court or opposing counsel.

13 The Koepp matter

14 9. In January 2004, Respondent appeared as counsel of record for defendant in State v.  
15 Koepp, Thurston Count District Court No. 4DV434, a domestic violence matter.

16 10. Respondent failed to appear at a readiness hearing on October 20, 2004.

17 11. Another lawyer appeared for the defendant in late November 2004, and Respondent  
18 was removed as counsel on December 29, 2004.

19 12. By that time the prosecutor was unable to serve the victim and, eventually, had to  
20 dismiss the case.

21 13. Had Respondent appeared at the October 20, 2004 readiness hearing the case could  
22 have proceeded to trial because the prosecutor was in contact with the victim at that time.

23 14. Respondent knowingly ceased representing Mr. Koepp without notice to his client,  
24

1 the court or opposing counsel.

2 The Cencich matter

3 15. In April 2002 Respondent was appointed "standby" counsel in State v. Cencich,  
4 Thurston Count Superior Court No. 97-1-00100-9, an attempted murder case.

5 16. In approximately the Fall of 2004 Respondent began showing up late for court.

6 17. On October 1, 2004 Respondent failed to appear for a pretrial hearing and the court  
7 removed him as standby counsel.

8 18. Respondent's conduct contributed to the delay of trial because it took several weeks  
9 for the Office of Assigned Counsel to find and appoint another standby counsel.

10 19. Respondent knowingly ceased representing Mr. Cencich without notice to his client,  
11 the court or opposing counsel.

12 The Galegher matter

13 20. In approximately April 2004 Respondent was hired to represent the defendant in  
14 State v. Galegher, Olympia Municipal Court No. CR0192596, a probation violation related to a  
15 narcotics offense.

16 21. Sometime in the Fall of 2004, Mr. Galegher ceased being able to reach Respondent.

17 22. Respondent missed court appearances in this matter on October 12, 2004, December  
18 14, 2004 and January 18, 2005.

19 23. Mr. Galegher eventually resolved the matter pro se.

20 24. Respondent knowingly ceased representing Mr. Galegher without notice to his  
21 client, the court or opposing counsel.

22 **COUNT 1**

23 25. By failing to appear at one or more of his clients' court proceedings, failing to  
24 provide for alternate representation for one or more of his clients, failing to communicate with

1 one or more of his clients regarding his unavailability, and/or abandoning one more of his  
2 clients without notice to them, the court or opposing counsel, Respondent violated RPC 1.3  
3 (duty of diligence), RPC 1.4 (duty to communicate), RPC 1.15 (duties regarding withdrawal)  
4 and/or RPC 8.4(d) (interference with the administration of justice).

5 **FACTS REGARDING COUNT 2**

6 26. On November 8, 2004, Thurston County District Court Judge Susan Dubuisson filed  
7 a grievance with the Association based on Respondent's repeated failure to appear in court on  
8 behalf of clients.

9 27. On November 12, 2004, the Association sent Respondent a letter via regular first  
10 class mail requesting his response to the grievance within two weeks.

11 28. That letter was not returned to the Association.

12 29. Respondent did not respond to the grievance as requested.

13 30. On December 17, 2004, the Association sent Respondent a certified letter to his  
14 office address on file with the Association seeking his response to Judge Dubuisson's grievance  
15 on or before December 30, 2004, and advising him that he would be subpoenaed to a deposition  
16 if he did not respond.

17 31. This letter was received by Respondent's office on December 20, 2004.

18 32. Respondent still did not respond to Judge Dubuisson's grievance.

19 33. The Association attempted to serve Respondent with a subpoena commanding him to  
20 appear for a deposition regarding Judge Dubuisson's grievance and to bring certain client files.  
21 Neither the process server nor the Association's investigator could locate Respondent at his  
22 home or office.

23 34. Disciplinary Counsel effected service of the subpoena under ELC 4.1(b)(3)(B)(ii) by  
24 sending copies of the subpoena to Respondent's home address and office address by both

1 regular and certified mail.

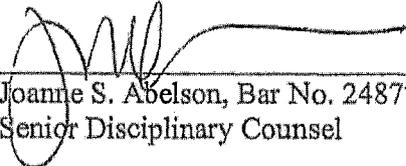
2 35. Respondent did not appear for the deposition.

3 **COUNT 2**

4 36. By failing to provide timely response(s) to one or more of the Association's requests  
5 for information regarding Judge Dubuisson's grievance, Respondent violated RPC 8.4(I).

6 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for  
7 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,  
8 restitution, and assessment of the costs and expenses of these proceedings.

9  
10 Dated this 29<sup>th</sup> day of March, 2005.

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14 Joanne S. Abelson, Bar No. 24877  
15 Senior Disciplinary Counsel  
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# E. ARMSTRONG WILLIAMS

# THE SUPREME COURT OF WASHINGTON

IN RE:

E. ARMSTRONG WILLIAMS,

ATTORNEY AT LAW.

)  
)  
) RECEIVED ORDER  
) MAR 12 2007 BAR NO. 30361  
)  
) Supreme Court No.  
) 200,461-0

This matter came before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order in the matter of E. Armstrong Williams, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court having reviewed the Disciplinary Board's Recommendation and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the Court having unanimously determined that the Recommendation should be approved. Now, therefore, it is hereby

ORDERED:

E. Armstrong Williams is disbarred from the practice of law. Pursuant to ELC 13.2 the effective date of disbarment is March 14, 2007.

DATED at Olympia, Washington, this 7<sup>th</sup> day of March, 2007.

FILED  
CLERK OF THE SUPREME COURT  
OF WASHINGTON  
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*alc*

For the Court  
STATE OF WASHINGTON  
COUNTY OF THURSTON

*Henry L. Alexander*

CHIEF JUSTICE

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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
E. ARMSTRONG WILLIAMS  
Lawyer  
WSBA No. # 30361

Proceeding No. 05#00089  
DISCIPLINARY BOARD ORDER  
ADOPTING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its November 17, 2006 meeting on automatic review of Hearing Officer John Loeffler's decision recommending disbarment following a default hearing.

Having reviewed the documents designated by Disciplinary Counsel and the brief filed by Disciplinary Counsel:

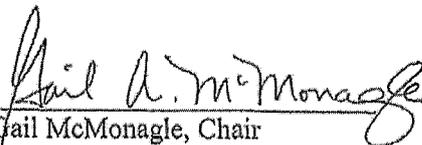
IT IS HEREBY ORDERED THAT the Board unanimously adopts the Hearing Officer's decision.

Those voting in this matter were: McMonagle, Kuznetz, Heller, Romas, Mosner, Cena, Mina, Andrews, Darst, Madden, Fine and Carlson.

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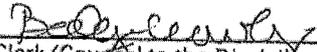
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DATED this 13<sup>th</sup> day of December, 2006.

  
Gail McMonagle, Chair  
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the DB Board Order Adopting Hearing for Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to F. Armstrong Williams, Respondent/Respondent's Counsel  
at 1882 W. Broadway Ave. 98101, by certified/first class mail,  
WA 98101  
postage prepaid on the 14 day of December, 2006.

  
Clerk/Counsel to the Disciplinary Board

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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

E. ARMSTRONG WILLIAMS,  
Lawyer (Bar No. 30361).

Public No. 05#00089

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on April 25, 2006.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, a copy of which is attached hereto, charged E. Armstrong Williams with misconduct as set forth therein.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. The Hearing Officer makes the following additional Findings of Fact based on the Declaration of Carlos M. Simmons, admitted into evidence as Exhibit 1:
4. Respondent did not perform or complete the legal work for which Mr. Simmons had hired and paid him, and the little work that he did perform was incomplete, contained errors, and had to be re-done by another lawyer that Mr. Simmons hired to represent him.
5. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations

1 | charged in the Formal Complaint is admitted and established.

2 | **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
3 | **REGARDING RECOMMENDED SANCTION**

4 | 6. In the Haberman, Shaver, Carter and Simmons client matters, Respondent  
5 | abandoned his law practice, knowingly failed to perform services for his clients, and engaged in  
6 | a pattern of neglect with respect to each of the legal matters. Respondent intentionally failed to  
7 | cooperate with the Association's investigation into the grievances filed against him.

8 | 7. Ms. Haberman was seriously injured by Respondent's failure to act with  
9 | reasonable diligence in representing her—her eldest daughter turned 18 and the family court lost  
10 | its jurisdiction to consider whether continued child support during college was appropriate.

11 | 8. Mr. Carter was seriously was injured by Respondent's failure to appear at a July  
12 | 20, 2004 pretrial hearing, thus delaying resolution of his criminal case. Mr. Carter also  
13 | seriously was injured because, with the exception of the initial client meeting and appearing at  
14 | the arraignment, Respondent did no work on Mr. Carter's case, yet kept \$1,500 legal fees that  
15 | Mr. Carter had paid for his defense.

16 | 9. Ms. Shaver was seriously injured by Respondent's abandonment of his law  
17 | practice—Respondent failed to return Ms. Shaver's original documents, including an original  
18 | stock certificate and her insurance and retirement papers, some of which have monetary value  
19 | and contain information valuable to Ms. Shaver's dissolution case. Ms. Shaver potentially, if  
20 | not actually, was seriously injured because Respondent's abandonment meant that she had to  
21 | obtain new counsel (and pay additional legal fees) for the November 8, 2004 dissolution trial, or  
22 | risk default.

23 | 10. Mr. Simmons was seriously injured when Respondent abandoned his law practice  
24 | without taking steps to protect Mr. Simmons' interests: Respondent failed to return Mr.

1 Simmons' original documents and client file, and Mr. Simmons had to pay an additional \$2,000  
2 to another lawyer, for work he had already paid Respondent \$2,000 to perform.

3 11. Respondent's failure to appear at scheduled hearings or give notice that he would  
4 no longer appear on behalf of his clients wasted court resources, thus resulting in actual serious  
5 injury to the legal system—hearings unnecessarily were held and had to be rescheduled, and  
6 opposing counsels' time was wasted. The legal profession also was seriously harmed because  
7 others had to resolve the myriad issues that always arise when a lawyer abandons his law  
8 practice (such as locating and returning client files). Respondent's failure to cooperate with the  
9 Association's investigations seriously injured the legal system and the public as a whole: the  
10 disciplinary system relies on lawyers to cooperate with grievance investigations to ensure that  
11 the system operates efficiently and effectively.

12 12. The following standards of the American Bar Association's Standards for  
13 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively  
14 apply in this case:

15 13. ABA Standard Section 4.41 applies to a Respondent's failure to reasonably  
16 communicate with and diligently represent his clients and his failure to take steps to protect the  
17 interests of his clients when he abandoned the practice of law:

18 **4.41** Disbarment is generally appropriate when:

- 19 (a) a lawyer abandons the practice and causes serious or potentially  
20 serious injury to a client; or  
21 (b) a lawyer knowingly fails to perform services for a client and  
22 causes serious or potentially serious injury to a client; or  
23 (c) a lawyer engages in a pattern of neglect with respect to client  
24 matters and causes serious or potentially serious injury to a client.

22 The presumptive sanction when clients are seriously or potentially seriously injured because  
23 Respondent abandons his law practice, knowingly fails to perform services for clients, and  
24

1 engages in a pattern of neglect with respect to client matters, (violations of RPC 1.3, RPC 1.4,  
2 and RPC 1.15(d)) is **disbarment** under ABA Standards 4.41(a), 4.41(b) and 4.41(c). [Counts 1  
3 - 3, 7 - 9, 12 - 14, and 17 - 19.]

4 14. ABA Standard 7.1 applies the Respondent's knowing violations of his duties as a  
5 professional, with the intent to benefit himself, and which causes serious or potentially serious  
6 injury.

7 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
8 conduct that is a violation of a duty owed as a professional with the intent  
9 to obtain a benefit for the lawyer or another, and causes serious or  
potentially serious injury to a client, the public, or the legal system.

10 15. Respondent violated his duties to the profession with the intent to benefit himself.  
11 His unreasonable fees and failure to return unearned fees in the Carter and Simmons cases gave  
12 him a windfall of \$3,500. His failure to notify his clients, opposing counsel, and the courts of  
13 his suspension (and when he left the practice), and his failure to cooperate with the  
14 Association's investigation of grievances, freed up time that otherwise would have been spent  
15 closing his practice and responding to resulting grievances.

16 16. The presumptive sanction for Respondent's unreasonable fees, his failure to return  
17 unearned fees in the Carter and Simmons matters, his failure to notify his clients, opposing  
18 counsel, and the courts of his suspension, and his failure to cooperate with the Association's  
19 investigation into the grievances filed against him (violations of RPC 1.5(a) and RPC 8.4(l)) is  
20 **disbarment** under ABA Standard 7.1. [Counts 4 - 6, 10 - 11, 15 - 16, and 20 - 22.]

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

24 18. The appropriate ultimate sanction under the ABA Standards is **disbarment**.

1 19. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
2 apply in this case:

- 3 (a) prior disciplinary offenses (in 2003, Respondent received a reprimand for  
4 engaging in a conflict of interest; he was suspended for 60 days in March  
5 2005 for violating RPC 1.8(k)(1)(sex with client);  
6 (c) a pattern of misconduct (Respondent violated RPC 1.3, 1.4, 1.15(d) and  
7 8.4(l) in four separate client matters; he violated RPC 1.5(a) in two  
8 separate client matters);  
9 (d) multiple offenses (lack of diligence; failure to communicate;  
10 opposing counsel, and the courts that he was suspended; and  
11 noncooperation with grievance investigations);  
12 (e) bad faith obstruction of the disciplinary proceeding by intentionally  
13 failing to comply with rules or orders of the disciplinary agency (arising  
14 from failure to cooperate with investigation, failure to answer formal  
15 complaint and failure to participate in disciplinary hearing); and  
16 (j) indifference to making restitution.

17 20. The following mitigating factor set forth in Section 9.32 of the ABA Standards  
18 applies to this case:

- 19 (f) inexperience in the practice of law (Respondent was sworn into the  
20 practice of law in October 2000).

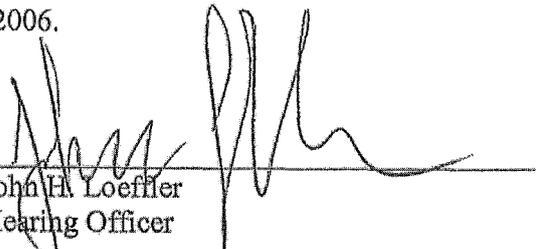
### 21 RECOMMENDATION

22 21. Based on the ABA Standards and the applicable aggravating and mitigating  
23 factors, the Hearing Officer recommends that Respondent E. Armstrong Williams be disbarred.  
24 In addition to the above sanction, the Hearing Officer recommends that Respondent be ordered  
to pay restitution:

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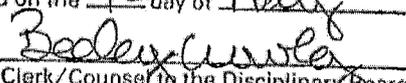
- a) of \$1,500 plus 12% interest per annum to Justin Carter or his assigns;
- b) of \$2,000 plus 12% interest per annum to Carlos M. Simmons or his assigns; and
- c) to the Association's Lawyers' Fund for Client Protection (LFCP), the amount that LFCP pays to any individual injured as a result of Respondent abandoning his law practice.

DATED this 9<sup>th</sup> day of May, 2006.

  
 \_\_\_\_\_  
 John H. Loeffler  
 Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FF/LL & HO recommendation  
 to be delivered to the Office of Disciplinary Counsel and to be mailed  
 to C. Armstrong Williams, Respondent/Respondent's Counsel  
 at 1835 W. Broadway Ave., by Certified/first class  
 postage prepaid on the 12 day of May, 2006  
 Spokane, WA 99201

  
 \_\_\_\_\_  
 Clerk/Counsel to the Disciplinary Board

FILED

SEP 20 2005

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

E. ARMSTRONG WILLIAMS

Lawyer (Bar No. 30361).

Public No. 05#00089

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent E. Armstrong Williams was admitted to the practice of law in the State of Washington on October 31, 2000.

**BACKGROUND INFORMATION**

2. On July 28, 2004, the Supreme Court of Washington suspended Respondent from practicing law for failing to pay his bar dues.

3. Respondent did not notify his clients, opposing counsel or the Court that he was suspended from practicing law.

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1 4. In or before September 2004, Respondent abandoned his law practice.

2 5. Respondent did not make arrangements for any lawyer to take over his active  
3 cases.

4 6. On March 3, 2005, the Supreme Court of Washington suspended Respondent for  
5 60 days for violating a Rule of Professional Conduct in an unrelated case.

6 7. Respondent has not been reinstated to the practice of law.

7 **FACTS REGARDING COUNTS 1 THROUGH 6 [CARTER GRIEVANCE]**

8 8. In June 2004, Justin Carter hired Respondent to defend him against possession of  
9 marijuana charges.

10 9. Mr. Carter paid Respondent's \$1,500 fee on June 7, 2004.

11 10. Respondent appeared with Mr. Carter at the arraignment on June 14, 2004.

12 11. The court set Mr. Carter's pretrial hearing for July 20, 2004. Neither Mr. Carter  
13 nor Respondent appeared at the hearing.

14 12. Respondent has not returned any of Mr. Carter's letters or telephone messages  
15 since the June 14, 2004 arraignment.

16 13. Respondent did not return Mr. Carter's client file to him when he abandoned his  
17 law practice.

18 14. But for meeting Mr. Carter on June 7, 2004 and appearing at the June 14, 2004  
19 arraignment, Mr. Williams has not done any legal work on Mr. Carter's case.

20 15. Respondent has not refunded any unearned fees that Mr. Carter advanced to him.

21 16. On September 15, 2004, Mr. Carter filed a grievance against the Respondent.

22 17. Between September 21, 2004 and November 2, 2004, the Association sent  
23 Respondent four letters by certified and first class mail asking him to respond to Mr. Carter's  
24 grievance.

1 18. Respondent did not respond to Mr. Carter's grievance.

2 19. On February 10, 2005, the Association served Respondent with a subpoena duces  
3 tecum to appear at the offices of the Washington State Bar Association on March 1, 2005 for a  
4 non-cooperation deposition. The subpoena demanded Respondent's production of certain client  
5 files, including the Mr. Carter's client file.

6 20. Respondent did not respond to the subpoena duces tecum nor did he appear at the  
7 deposition.

8 **COUNT 1**

9 21. By failing to respond to his client's attempts to communicate with him,  
10 Respondent violated Rule for Professional Conduct (RPC) 1.4.

11 **COUNT 2**

12 22. By failing to pursue Mr. Carter's defense with reasonable diligence, Respondent  
13 violated RPC 1.3.

14 **COUNT 3**

15 23. By failing to return Mr. Carter's client file and abandoning his practice without  
16 taking reasonable steps to protect the client's interests, Respondent violated RPC 1.3 and/or  
17 RPC 1.15(d).

18 **COUNT 4**

19 24. By retaining all of the \$1,500 in fees that Mr. Carter paid without providing the  
20 expected legal representation, Respondent's fees were unreasonable, in violation of RPC 1.5(a)  
21 and/or RPC 1.15(d).

22 **COUNT 5**

23 25. By failing to notify Mr. Carter, opposing counsel and the court that he had been  
24 suspended within ten days of the effective date of his suspension, Respondent violated RPC

1 8.4(I) (by violating ELC 1.5 and/or ELC 14.1(c)).

2 **COUNT 6**

3 26. By failing to respond to the Association's written requests for responses to Mr.  
4 Carter's grievance and/or failing to appear as commanded by an ensuing subpoena, Respondent  
5 violated RPC 8.4(I) (through violations of ELC 1.5, 5.8(e) and/or 5.8(f)).

6 **FACTS REGARDING COUNTS 7 THROUGH 11 [SHAYER GRIEVANCE NO. 2]**

7 27. In April 2004, Thongkham Shaver hired Respondent to represent her in marriage  
8 dissolution proceedings brought by her husband.

9 28. Mrs. Shaver paid Respondent \$500 for legal fees and gave him all of her original  
10 documents, including her insurance and retirement papers and an original stock certificate. Mrs.  
11 Shaver did not retain a copy of any of her original documents.

12 29. Respondent reassured Mrs. Shaver that he would send copies of the original  
13 documents to her. He did not.

14 30. Respondent filed his Notice of Appearance and Ms. Shaver's Response on April 9,  
15 2004. A status conference was held on May 27, 2004. The next day the Court entered a case  
16 schedule with November 8, 2004 trial date.

17 31. Respondent took no further action on the case.

18 32. Respondent did not return Ms. Shaver's client file or original documents to her  
19 when he abandoned his law practice.

20 33. Respondent did not respond to Ms. Shaver's many attempts to contact him after  
21 August 2004.

22 34. Respondent did not notify Ms. Shaver, opposing counsel or the Court that he was  
23 suspended from practicing law nor did he arrange for any substitution of counsel.

24 35. Ms. Shaver filed her grievance against Respondent on September 15, 2004.

1 36. Between September 21, 2004 and November 2, 2004, the Association sent  
2 Respondent four letters by certified mail and by first class mail asking him to respond to Ms.  
3 Shaver's grievance.

4 37. Respondent did not respond to Ms. Shaver's grievance.

5 38. On February 10, 2005, the Association served Respondent with a subpoena duces  
6 tecum to appear at the offices of the Washington State Bar Association on March 1, 2005 for a  
7 non-cooperation deposition. The subpoena demanded Respondent's production of certain client  
8 files, including Ms. Shaver's client file.

9 39. Respondent did not respond to the subpoena duces tecum nor did he appear at the  
10 deposition.

11 **COUNT 7**

12 40. By failing reasonably to respond to Mrs. Shaver's attempts to communicate with  
13 him, Respondent violated RPC 1.4.

14 **COUNT 8**

15 41. By failing to represent Mrs. Shaver with reasonable diligence in the dissolution  
16 proceedings brought by her estranged husband, Respondent violated RPC 1.3.

17 **COUNT 9**

18 42. By failing to return Mrs. Shaver's client file and original documents and/or  
19 abandoning his practice without taking reasonable steps to protect Mrs. Shaver's interests,  
20 Respondent violated RPC 1.3 and/or RPC 1.15(d).

21 **COUNT 10**

22 43. By failing to notify Mrs. Shaver, opposing counsel and the court that he had been  
23 suspended within ten days of the effective date of his suspension, Respondent violated RPC  
24 8.4(l) (by violating ELC 1.5 and/or ELC 14.1(c)).

1 **COUNT 11**

2 44. By failing to respond to the Association's written requests for responses to Ms.  
3 Shaver's grievance, and failing to appear as commanded by an ensuing subpoena, Respondent  
4 violated RPC 8.4(l) (through violations of ELC 1.5, 5.8(e) and/or 5.8(f)).

5 **FACTS REGARDING COUNTS 12 THROUGH 16 [HABERMAN GRIEVANCE NO. 3]**

6 45. In or about January 2004, Judy Haberman hired Respondent to obtain an order for  
7 post-secondary education child support while her daughter (then 16) attended college.

8 46. Respondent encouraged Ms. Haberman to seek increased child support for both her  
9 daughters.

10 47. Ms. Haberman paid Respondent legal fees of \$1,000.

11 48. On February 26, 2004 Respondent filed a Motion and Order for Show Cause which  
12 was opposed. The hearing was continued to May 11 and 14, 2004.

13 49. On May 14, 2004, Respondent filed a summons and petition for modification of  
14 support, which was opposed.

15 50. Respondent took no further action on behalf of Ms. Haberman.

16 51. Respondent did not notify Ms. Haberman, opposing counsel or the court that he  
17 was suspended from practicing law, nor did he arrange for any substitution of counsel.

18 52. Respondent has not returned any of Ms. Haberman's telephone calls, emails or  
19 correspondence since August 2004.

20 53. Ms. Haberman filed her grievance against Respondent on September 2, 2004.

21 54. Between September 7, 2004 and October 22, 2004, the Association sent  
22 Respondent four letters by certified and first class mail asking him to respond to Ms.  
23 Haberman's grievance.

24 55. Respondent did not respond to Ms. Haberman's grievance.



1 Haberman's grievance, and failing to appear as commanded by an ensuing subpoena,  
2 Respondent violated RPC 8.4(l) (through violations of ELC 1.5, 5.8(e) and/or 5.8(f)).

3 **FACTS REGARDING COUNTS 17 THROUGH 22** *[SIMMONS GRIEVANCE NO. 4]*

4 63. In August 2003, Mr. Simmons hired Respondent to handle problems that he had  
5 encountered with his parenting plan. He gave Respondent some of his original documents for  
6 the case. At that time, Respondent was an associate at the Maxey Law Offices.

7 64. In October 2003, Respondent left the Maxey Law Offices to form his own firm and  
8 took Mr. Simmons's file with him.

9 65. Between August 2003 and June 2004, Mr. Simmons made installment payments on  
10 Respondent's flat fee of \$2,000.

11 66. Respondent has not returned any of Mr. Simmons' telephone calls, emails or  
12 correspondence since June 2004.

13 67. Mr. Simmons has not been able to obtain any of his original documents or his  
14 client file from Respondent.

15 68. Respondent did not notify Mr. Simmons, opposing counsel or the court that he was  
16 suspended from practicing law, nor did he arrange for any substitution of counsel.

17 69. Mr. Simmons filed his grievance against Respondent on December 17, 2004.

18 70. Between December 28, 2004 and February 1, 2005, the Association sent  
19 Respondent three letters by certified and first class mail asking him to respond to Mr. Simmons'  
20 grievance.

21 71. On February 10, 2005, the Association caused Respondent to be served with a  
22 subpoena duces tecum to appear at the offices of the Washington State Bar Association on  
23 March 1, 2005 for a non-cooperation deposition. The subpoena demanded Respondent's  
24 production of certain client files.

1 72. Respondent did not respond to the subpoena duces tecum nor appear at the  
2 deposition.

3 **COUNT 17**

4 73. By failing to respond to Mr. Simmons attempts to communicate with him,  
5 Respondent violated Rule for Professional Conduct (RPC) 1.4.

6 **COUNT 18**

7 74. By failing to complete the work for which Mr. Simmons had hired him,  
8 Respondent violated RPC 1.3.

9 **COUNT 19**

10 75. By failing to return Mr. Simmons' client file and/or abandoning his practice  
11 without taking reasonable steps to protect the client's interests, Respondent violated RPC 1.3  
12 and/or RPC 1.15(d).

13 **COUNT 20**

14 76. By failing to notify Mr. Simmons, opposing counsel and the court that he had been  
15 suspended within ten days of the effective date of his suspension, Respondent violated RPC  
16 8.4(l) (by violating ELC 1.5 and/or 14.1(c)).

17 **COUNT 21**

18 77. By retaining all of the \$2,000 in fees that Mr. Simmons had paid Respondent for  
19 without providing the expected legal representation, Respondent's fees were unreasonable, in  
20 violation of RPC 1.5(a) and/or RPC 1.15(d).

21 **COUNT 22**

22 78. By failing to respond to the Association's written requests for responses to Mr.  
23 Simmons' grievance, and failing to appear as commanded by an ensuing subpoena, Respondent  
24

1 violated RPC 8.4(l) (through violations of ELC 1.5, 5.8(e) and/or 5.8(f)).  
2

3 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for  
4 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,  
5 restitution, and assessment of the costs and expenses of these proceedings.  
6

7 Dated this 21<sup>st</sup> day of September 2005.



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10 Leslie Ching Allen, Bar No. 13069  
Disciplinary Counsel  
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# MATTHEW DEVER

# THE SUPREME COURT OF WASHINGTON

IN RE: )

MATTHEW DEVER, )

ATTORNEY AT LAW. )

BAR NO. 24193

ORDER

MAR 27 2003

This matter came on before the Supreme Court on the ~~Washington State Bar Association~~ (WSBA) Disciplinary Board's order in the matter of Matthew Dever, wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court having reviewed the Disciplinary Board's Order and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the court having unanimously determined that the Order should be approved. Now, therefore, it is hereby

ORDERED:

Matthew Dever is disbarred from the practice of law effective on this date.

DATED at Olympia, Washington, this 26<sup>th</sup> day of March, 2003.

For the Court

*Gerry J. Alexander*  
CHIEF JUSTICE

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2003 MAR 26 P 2:18  
BY C.J. MERRITT  
CLERK

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FEB 18 2003

DISCIPLINARY BOARD

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
  
MATTHEW J. DEVER,  
Lawyer  
WSBA No. 24193

Public No. 01#00109  
  
DISCIPLINARY BOARD ORDER  
REGARDING HEARING OFFICER'S  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION

THIS MATTER came before the Disciplinary Board at its February 14, 2003 meeting. On review of the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and supporting documentation,

IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation are approved and adopted.

The vote on this matter was: unanimous

Those voting were: Fancher, Leeper, Schaps, Robson, Horne, Baumgardner, Beale, Hansen, Fearing and Wilson.

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DATED this 14<sup>th</sup> day of February, 2003.

James E. Horne  
James Horne  
Chair, Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the D Board order regarding H.O.  
FFCL re: recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to MATTHEW J. DEVER, Respondent/Respondent's Counsel  
at 112 W. Market Puyallup, WA 98371, by Certified/first class mail,  
postage prepaid on the 15th day of FEBRUARY, 2003

Sandra Selous  
Clerk/Counsel to the Disciplinary Board  
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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In Re

**MATTHEW DEVER,**

Lawyer

WSBA # 24193

Public Proceeding No. 01#00109

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

Pursuant to Rule 4.10 of the former Rules for Lawyer Discipline ("RLD") and/or Rule 10.6 of the Rules for Enforcement of Lawyer Conduct ("ELC"), the undersigned hearing officer held the hearing on October 22, 2002 for the submission of evidence. Respondent Matthew Dever ("Respondent") did not appear at the hearing. Jonathan H. Burke, Disciplinary Counsel, appeared for the Washington State Bar Association ("WSBA").

**FORMAL COMPLAINT  
FILED BY DISCIPLINARY COUNSEL**

The First Amended Formal Complaint filed by Disciplinary Counsel charged Respondent Matthew Dever with the following counts of misconduct:

**COUNT 1**

Respondent's conduct in failing to act with reasonable diligence and promptness in the Ford Motor Credit Company lawsuit by failing to file a Notice of Default and/or by failing to respond to

1 pleadings, and/or by failing to respond to summons, and/or failing to appear in court violated RPC  
2 1.3, which subjects Respondent to discipline pursuant to [former] RLD 1.1(i).

3 **COUNT 2**

4 Respondent's conduct in failing to respond to Mr. Reese's reasonable requests for  
5 information, which were made on behalf of FMCC and/or failing to keep Mr. Reese and/or FMCC  
6 informed about the status of the Ford Motor Credit Company matter, violated RPC 1.4, which  
7 subjects Respondent to discipline pursuant to [former] RLD 1.1(i).

8 **COUNT 3**

9 Respondent's conduct in failing to act with reasonable diligence and promptness in  
10 representing Dr. Lackie by failing to defend the counterclaim filed by Ms. Ellis and/or by failing to  
11 respond to opposing counsel violated RPC 1.3, and subjects Respondent to discipline pursuant to  
12 [former] RLD 1.1(i). WSBA agrees to dismiss Count 3.

13 **COUNT 4**

14 Respondent's conduct in failing to respond to Dr. Lackie's reasonable requests for  
15 information, and/or failing to notify Dr. Lackie that he was vacating his office (without providing a  
16 forwarding address or telephone number) and/or failing to keep Dr. Lackie informed about the  
17 status of his case, violated RPC 1.4, and subjects Respondent to discipline pursuant to [former]  
18 RLD 1.1(i).

19 **COUNT 5**

20 Respondent's conduct in failing to preserve and/or account for Dr. Lackie's \$4,000 in  
21 checks, and/or failing to place the funds in a trust account, violated RPC 1.14, and subjects  
22 Respondent to discipline pursuant to [former] RLD 1.1(i).

1 **COUNT 6**

2 Respondent's conduct in failing to act with reasonable diligence and promptness in  
3 representing Ms. Griffin, and/or by failing to advance her matter and/or take any action on her  
4 collection, appears to have violated RPC 1.3, and subjects Respondent to discipline pursuant to  
5 [former] RLD 1.1(i).

6 **COUNT 7**

7 Respondent's conduct in failing to respond to Ms. Griffin's reasonable requests for  
8 information and/or failing to notify Ms. Griffin that he was vacating his office (without providing a  
9 forwarding address or telephone number), and/or failing to keep Ms. Griffin informed about the  
10 status of her case, violated RPC 1.4, and subjects Respondent to discipline pursuant to [former]  
11 RLD 1.1(i).

12 **COUNT 8**

13 Respondent's failure to cooperate fully and promptly with a disciplinary investigation by  
14 failing to appear at his deposition scheduled for November 15, 2001, and/or by failing to provide  
15 requested documents and information to WSBA in the course of its investigation into the grievance  
16 of Harlan Reese, violated [former] RLD 2.8(a) [now RPC 8.4(l) and ELC 5.3], and subjects  
17 Respondent to discipline pursuant to [former] RLD 1.1(j) [now ELC 1.5] and/or former RLD  
18 2.8(b) [now ELC 5.3(f)].

19  
20 **EVIDENCE CONSIDERED**

21 The Hearing Officer considered the following evidence:

- 22 (a) Declaration of Harlan Reese, and the exhibits attached thereto.  
23 (b) Declaration of Michael McCarty, and the exhibits attached thereto.  
24 (c) Declaration of Peter Perron, and the exhibits attached thereto.  
25 (d) Declaration of Kathy Griffin, and the exhibits attached thereto.  
26 (e) Declaration of Jonathan H. Burke, and the exhibits attached thereto.  
27 (f) Declaration of Dr. Larry Lackie, and the exhibits attached thereto.

1 **FINDINGS OF FACT**

2 A default hearing was conducted October 22, 2002. Evidence in the form of declarations  
3 and attached exhibits was presented at the default hearing. A stenographic reporting was made of  
4 the hearing. Based upon the evidence presented, the Hearing Officer makes the following findings  
5 of fact:  
6

7 1. Respondent was admitted to the practice of law in the State of Washington on  
8 November 10, 1994.

9 **Findings Related to Respondent's Representation of Ford Motor Credit Company**

10 2. In January or February 2000, lawyer Harlan Reese was shareholder and manager for  
11 Morgan & Reese, a law firm located in San Diego, California that had a substantial debt collection  
12 practice.  
13

14 3. Mr. Reese hired Respondent to represent clients of Morgan & Reese in Washington  
15 State. When Morgan & Reese assigned a collection matter to Respondent, he was provided with,  
16 among other things, a summons and complaint to review. Respondent was responsible for signing  
17 and filing the summons and complaint with the appropriate court, effectuating proper service, and  
18 drafting and signing subsequent pleadings.  
19

20 4. When a defendant/debtor did not file an answer or responsive pleadings by the  
21 deadline established by the Court Rules, it was the standard practice of Morgan & Reese to send  
22 Respondent a default package. The default package contained an affidavit, a judgment summary,  
23 and/or other default pleadings. Respondent was responsible for reviewing the default pleadings  
24 and obtaining the default judgment, if appropriate. This process made it very simple for  
25 Respondent to obtain default judgments because it typically only required him to review and sign  
26 the pleadings prepared by Morgan & Reese and present the default judgment to the court in ex  
27 parte proceedings. It was the practice of Morgan & Reese to monitor cases sent to Respondent.

1           5.       Under the arrangement Respondent had with Morgan & Reese, he was required to  
2 forward copies of all of responsive pleadings to Morgan & Reese's California office as well as all  
3 bankruptcy notices he received from debtor/defendants.

4           6.       Respondent was also responsible for resolving the cases filed in Washington by  
5 settlement, summary disposition, or trial.

6           7.       In late September or early October 2000, Morgan & Reese became concerned about  
7 the collection cases assigned to Respondent because it had not received any invoices or  
8 declarations of service from ABC Legal Messenger Service, the process server used by Morgan &  
9 Reese. After contacting several courts, Morgan & Reese discovered that Respondent had not filed  
10 default pleadings or responsive pleadings in pending cases.

11           8.       On or about December 15, 2000, Mr. Reese terminated Respondent's employment.  
12 Respondent agreed to conclude his pending cases for Morgan & Reese.

13           9.       In April 2001, Mr. Reese discovered that a judgment had been entered against one  
14 of his clients, Ford Motor Credit Company (FMCC), in a matter that Respondent was responsible  
15 for handling.

16           10.      The FMCC case began on April 26, 2000, when Respondent filed a Summons and  
17 Complaint in Ford Motor Credit Company v. Nancy M. Vanrisseghem, King County District Court  
18 case number 3141-00. According to Morgan & Reese's records, FMCC could have obtained a  
19 default judgment because Ms. Vanrisseghem did not file a timely answer to the complaint.

20           11.      In June 2000, Morgan & Reese sent Respondent a default package to review and  
21 file so that FMCC could get a default judgment against Ms. Vanrisseghem.

22           12.      Respondent did not file the default pleadings provided by Morgan & Reese with the  
23 court. He did not obtain a default judgment against Ms. Vanrisseghem on behalf of FMCC.  
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1           13.     In June and July 2000, lawyer Michael McCarty, on behalf of Ms. Vanrisseghem,  
2 attempted to contact Respondent by telephone to discuss the action against her by FMCC. Mr.  
3 McCarty left messages for Respondent to contact him. No one returned Mr. McCarty's calls. On  
4 July 5, 2000, Mr. McCarty sent a letter and a Notice of Appearance to Respondent on behalf of Ms.  
5 Vanrisseghem.  
6

7           14.     Respondent did not respond to Mr. McCarty's July 5, 2000 letter.

8           15.     On or about September 11, 2000, Mr. McCarty filed, on behalf of Ms.  
9 Vanrisseghem, an answer and counterclaims against FMCC. On or about September 11, 2000, Ms.  
10 Vanrisseghem's answer and counterclaims were served on Respondent.  
11

12           16.     Respondent failed to answer Ms. Vanrisseghem's counterclaims. He did not notify  
13 FMCC or Morgan & Reese about Ms. Vanrisseghem's answer or counterclaims.

14           17.     On or about November 14, 2000, Mr. McCarty, on behalf of Ms. Vanrisseghem,  
15 served Respondent with a set of interrogatories and requests for production of documents.

16           18.     Respondent failed to respond to the interrogatories and requests for production. He  
17 did not inform FMCC or Morgan & Reese about the interrogatories and requests for production.  
18

19           19.     On January 24, 2001, Mr. McCarty filed a motion for summary judgment and a  
20 motion to compel against FMCC. Mr. McCarty served Respondent with these pleadings. The  
21 motion for summary judgment was scheduled to be heard on February 6, 2001.

22           20.     Respondent failed to respond to Ms. Vanrisseghem's motions. He did not notify  
23 FMCC or Morgan & Reese about the motion for summary judgment or motion to compel filed by  
24 Mr. McCarty on behalf of Ms. Vanrisseghem.  
25

26           21.     On February 6, 2001, Respondent failed to appear for FMCC at the motion for  
27 summary judgment hearing. Consequently, there was no opposition to Ms. Vanrisseghem's motion

1 for summary judgment against FMCC. The court entered a judgment against FMCC in the amount  
2 of \$12,222.94, plus \$3,400 for attorney fees.

3 22. In or about April 2001, FMCC informed Mr. Reese about the \$15,622.94 judgment  
4 entered in favor of Ms. Vanrisseghem.

5 23. In April 2001, Mr. Reese called Respondent and left at least nine messages for him  
6 to contact him regarding Ms. Vanrisseghem's judgment. Respondent did not return Mr. Reese's  
7 telephone calls.

8 24. Mr. Reese sent Respondent a letter informing him that FMCC was going to file a  
9 Civil Rule 60(b) motion to set aside the judgment entered in favor of Ms. Vanrisseghem.

10 25. Mr. Reese hired lawyer Jay Jump to file a CR 60(b) motion to vacate Ms.  
11 Vanrisseghem's judgment against FMCC. In addition, Mr. Reese directed Mr. Jump to pick up the  
12 collection files that were assigned to Respondent.

13 26. Mr. Reese left telephone messages for Respondent and sent a letter requesting him  
14 to draft and file a declaration in support of the CR 60(b) motion to set aside Ms. Vanrisseghem's  
15 judgment. Respondent did not return Mr. Reese's calls and did not respond to his letter.  
16 Respondent did not draft a declaration to support FMCC's motion to set aside Mr. Vanrisseghem's  
17 judgment against FMCC.

18 27. In April 2001, Mr. Jump filed a CR 60(b) motion to set aside Ms. Vanrisseghem's  
19 judgment against FMCC. The motion was scheduled to be heard on May 22, 2001.

20 28. On May 22, 2001, the court denied FMCC's motion to set aside Ms.  
21 Vanrisseghem's judgment against FMCC.

22 29. Mr. Reese discovered that Respondent had failed to file many other collection  
23 lawsuits that were assigned to him by Morgan & Reese. Mr. Reese also discovered the Respondent  
24  
25  
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27

1 had failed to obtain default orders and judgments in many collection actions that were assigned to  
2 Respondent by Morgan & Reese. In one collection matter, Respondent failed to appear at a trial  
3 and the matter was dismissed.

4 **Facts Related to Respondent's Representation of Dr. Larry Lackie**

5 30. In late 2000, Dr. Larry Lackie contracted with Howard Higbee of Evict-A-Quick to  
6 assist Dr. Lackie with an eviction. When litigation became necessary, Mr. Higbee hired  
7 Respondent to represent Dr. Lackie in the unlawful detainer action.

8 31. On December 7, 2000, Respondent filed an unlawful detainer action in King County  
9 Superior Court, Larry A. Lackie v. Renee Ellis, et al., King County Superior Court cause number  
10 00-2-30633-4 KNT.

11 32. On December 15, 2000, the defendant, Renee Ellis, filed a counterclaim.

12 33. On December 18, 2000, Respondent represented Dr. Lackie at hearing. The court  
13 ruled in favor of Dr. Lackie and set over the Ms. Ellis' counterclaim for a separate trial.

14 34. After December 18, 2000, Respondent did not communicate with Dr. Lackie, and  
15 failed to return Dr. Lackie's telephone calls or respond to his requests for information.

16 35. Pending disposition of the counterclaim, the court ordered Ms. Ellis to pay Dr.  
17 Lackie \$1,000 a month as compensation for the defendant's continuing occupancy.

18 36. In January and February 2001, Ms. Ellis paid the \$1,000 directly to Dr. Lackie.

19 37. After February 2001, Ms. Ellis sent the \$1,000 monthly payments to her lawyer,  
20 Larry J. Landry.

21 38. In March, April, May, June, and July 2001, Mr. Landry sent the \$1,000 payments to  
22 Respondent.

23 39. Respondent did not forward the March, April, May, June or July checks to Dr.  
24 Lackie.  
25  
26  
27

1           40.     On July 11, 2001, Peter Perron, a lawyer Dr. Lackie hired to represent him, met with  
2 Respondent. Respondent delivered the July 2001 check for \$1,000 to Mr. Perron. Respondent did  
3 not know the status or location of Dr. Lackie's March, April, May or June 2001 checks.

4           41.     On July 12, 2001, Mr. Perron appeared as the attorney of record for Dr. Lackie.

5           42.     It does not appear that Respondent ever cashed the checks from March, April, May  
6 or June 2001.

7           43.     On September 7, 2001, Mr. Perron subpoenaed Respondent to appear at a court  
8 hearing scheduled for September 20, 2001 regarding the four missing checks.

9           44.     On September 7, 2001, Mr. Perron sent the subpoena by certified mail to  
10 Respondent's business address of record. On September 10, 2001, Kristin Bjornard signed for  
11 receipt of the letter.

12           45.     In September 2001, Mr. Perron left several telephone messages for Respondent.  
13 Respondent did not return any of Mr. Perron's telephone calls.

14           46.     On September 20, 2001, Respondent failed to appear at the hearing regarding the  
15 four checks that were not sent to Dr. Lackie.

16           47.     The court ordered Respondent to appear at a hearing scheduled for October 26,  
17 2001. The court also ordered that Ms. Ellis stop payment on the four missing checks for March,  
18 April, May, and June 2001.

19           48.     On September 20, 2001, Mr. Perron sent Respondent the court's order and had a  
20 copy of the court's order delivered to Respondent's business address of record.

21           49.     On October 26, 2001, Respondent failed to appear at the hearing. The court  
22 sanctioned Respondent and ordered him to pay \$480 to his former client, Dr. Lackie, and \$500 to  
23 the defendant, Ms. Ellis.  
24  
25  
26  
27

1           50.     On October 26, 2001, Mr. Perron sent the court's order to Respondent's business  
2 address of record. The letter was returned as "refused".

3           51.     In a letter dated November 5, 2001, Mr. Perron wrote to Respondent a second time  
4 and again enclosed a copy of the court's order.

5           52.     Mr. Perron's November 5, 2001 letter addressed to Respondent's business address  
6 of record was returned to Mr. Perron as "address unknown, return to sender".

7  
8 **Facts Related to Respondent's Representation of Kathy Griffin**

9           53.     On July 10, 2001, Kathy Griffin hired Respondent and paid him \$70 to enforce a  
10 judgment of \$877.00 against Linnea McClelland. Ms. Griffin understood the \$70 to be  
11 Respondent's fees for garnishing Ms. McClelland's wages and for any costs that Respondent might  
12 incur. Ms. Griffin did not sign a written fee agreement.

13  
14           54.     Sometime after July 10, 2001, Ms. Griffin called Respondent and asked him about  
15 the status of her case. Respondent told her that garnishment of wages could take a number of  
16 months. Ms. Griffin never heard from Respondent after that telephone call.

17           55.     In November 2001, Ms. Griffin received a notice that Ms. McClelland filed for  
18 bankruptcy.

19           56.     In November 2001, Ms. Griffin went to Respondent's offices. Respondent had  
20 moved out of his office without leaving a forwarding address or telephone number.

21           57.     Respondent did not notify Ms. Griffin that he changed his offices or telephone  
22 number.  
23

24           58.     Respondent did not perform any services on behalf of Ms. Griffin.  
25  
26  
27

1 **Facts Related to Respondent's Failure to Cooperate With WSBA's Investigation**

2 59. On August 16, 2001, WSBA received a grievance from Harlan Reese against  
3 Respondent.

4 60. On August 23, 2001, WSBA mailed a copy of the grievance along with a letter to  
5 Respondent at his office address of record, requesting Respondent's written response to the  
6 grievance.  
7

8 61. Respondent did not provide a response or otherwise contact WSBA.

9 62. On September 28, 2001, WSBA mailed to Respondent a warning letter (known as a  
10 "10-day" letter) by certified mail, directed to his business address of record, informing him that he  
11 was obliged to respond to WSBA's inquiry on or before October 11, 2001, or his deposition would  
12 be scheduled in accordance with Rule for Lawyer Discipline (RLD) 2.8(b).  
13

14 63. On October 1, 2001, Wendy A. Mayhew signed for receipt of the September 28,  
15 2001 letter.

16 64. Respondent did not provide a response or otherwise contact WSBA regarding Mr.  
17 Reese's grievance.  
18

19 65. On October 22, 2001, disciplinary counsel issued a subpoena duces tecum under the  
20 authority of former RLD 2.8 [now ELC 5.3] for Respondent to appear for a deposition on  
21 November 15, 2001 at 1:30 p.m., and to provide all documents in his possession relating to his  
22 representation of the grievant.

23 66. On October 25, 2001, ABC Legal Services, Inc. personally served Respondent at his  
24 home address with the October 22, 2001 subpoena duces tecum.  
25

26 67. On November 15, 2001, Respondent did not appear for the scheduled deposition.  
27 Respondent did not submit an explanation for his failure to appear or otherwise contact WSBA.



1 **COUNT 2**

2           2.       The Hearing Officer concludes that WSBA proved by a clear preponderance of  
3 evidence that Respondent violated RPC 1.4 (lack of communication) by failing to (1) respond to  
4 Mr. Reese's reasonable requests for information, which were made on behalf of FMCC, and (2)  
5 keep Mr. Reese and/or FMCC informed about the status of the Ford Motor Credit Company matter.  
6

7 **COUNT 3**

8           3.       WSBA agrees that the complaint and the declarations submitted in this matter do  
9 not set forth facts sufficient to provide Count 3. WSBA proposed to dismiss Count 3. The Hearing  
10 Officer concludes that Count 3 will be dismissed.  
11

12 **COUNT 4**

13           4.       The Hearing Officer concludes that WSBA proved by a clear preponderance of  
14 evidence that Respondent violated RPC 1.4 (lack of communication) by failing to respond to Dr.  
15 Lackie's telephone calls and failing to keep Dr. Lackie informed about the status of the case.  
16

17 **COUNT 5**

18           5.       The Hearing Officer concludes that WSBA proved by a clear preponderance of  
19 evidence that Respondent violated RPC 1.14 (preserving a client's property) by failing to preserve  
20 and/or account for \$4,000 in checks issued to Dr. Lackie, and/or by failing to promptly disburse the  
21 four rental checks to Dr. Lackie.  
22

23 **COUNT 6**

24           6.       The Hearing Officer concludes that WSBA proved by a clear preponderance of  
25 evidence that Respondent violated RPC 1.3 (lack of diligence) by failing to diligently pursue  
26 collection of the debt owed to Ms. Griffin and/or otherwise diligently represent Ms. Griffin.  
27

1 **COUNT 7**

2 7. The Hearing Officer concludes that WSBA proved by a clear preponderance of  
3 evidence that Respondent violated RPC 1.4 (lack of communication) by failing to (1) respond to  
4 Ms. Griffin's reasonable requests for information, (2) notify Ms. Griffin that he was vacating his  
5 office (without providing a forwarding address or telephone number), and (3) keep Ms. Griffin  
6 informed about the status of her matter.  
7

8 **COUNT 8**

9 8. The Hearing Officer concludes that WSBA proved by a clear preponderance of  
10 evidence that Respondent violated ELC 5.3(e) and (f), ELC 1.5 and RPC 1.8(l) [formerly RLD  
11 2.8(a) and RLD 1.1(j)] by failing to (1) cooperate with a disciplinary investigation, (2) appear at  
12 Respondent's deposition scheduled for November 15, 2001, and (3) provide requested documents  
13 and information to WSBA in the course of its investigation into the grievance of Harlan Reese.  
14

15 **SANCTION RECOMMENDATION**

16 9. The ABA *Standards* provide the presumptive sanction for each category of violation  
17 of the RPC. The ABA *Standards* require examination of (1) the duty violated, (2) the lawyer's  
18 mental state, (3) the potential for injury from the lawyer's conduct, and (4) aggravating and  
19 mitigating factors.  
20

21 **A. Lack Of Diligence And Non-Communication (Count 1, Count 2, Count 4, Count 6,**  
22 **and Count 7)**

23 10. Duty. The Respondent repeatedly failed in his duty to diligently represent and  
24 communicate with his clients by (1) failing to diligently handle the lawsuit on behalf of FMCC  
25 against Nancy Vanrisseghem, (2) failing to communicate with FMCC or Mr. Reese, (3) failing to  
26 handle checks belonging to Dr. Lackie, (4) failing to communicate with Dr. Lackie, (5) failing to  
27

1 pursue garnishment for Kathy Griffin, (6) failing to communicate with Kathy Griffin regarding the  
2 status of her matter.

3 11. Mental State. Respondent knew that he was failing to diligently represent and  
4 communicate with FMCC, Mr. Reese, Dr. Lackie, and Ms. Griffin.  
5

6 12. Injury or Potential Injury. Respondent's failure to diligently represent FMCC  
7 resulted in a \$15,622.94 judgment against, and actual injury to, FMCC and the dismissal of  
8 FMCC's claims against Ms. Vanrisseghem. Respondent's failure to diligently represent Dr. Lackie  
9 resulted in the loss of four \$1,000 checks and additional attorneys' fees to correct the problems  
10 Respondent caused. Ultimately, Dr. Lackie received the \$4,000, but it required him to incur legal  
11 expenses. Respondent's failure to diligently represent Ms. Griffin resulted in the loss of  
12 opportunity to garnish McClelland's wages from July 2001 until he filed bankruptcy in November  
13 2001.  
14

15 13. Presumptive Sanction. Applying the above duties, mental state, and injury or  
16 potential injury to the ABA *Standards*, the Hearing Officer finds that the following ABA  
17 *Standards* are applicable to this case:  
18

19 **4.4 Lack of Diligence**

20 4.41 Disbarment is generally appropriate when:

- 21 (b) a lawyer knowingly fails to perform services for a client and causes  
22 serious or potentially serious injury to a client; or  
23 (c) a lawyer engages in a pattern of neglect with respect to client matters  
and causes serious or potentially serious injury to a client.

24 **B. Loss Of Client Property (Count 5)**

25 14. Duty. Respondent violated his duty to promptly pay or deliver funds and property  
26 belonging to a client when he failed to promptly deliver four \$1,000 rent checks to Dr. Lackie.

27 15. Mental State. Respondent's acted with negligence when he failed to deliver checks  
to Dr. Lackie.

1           16.    Injury or Potential Injury. Respondent's misconduct required Dr. Lackie to hire  
2 another lawyer and incur legal fees to pursue Respondent and take corrective action. The potential  
3 injury was that Dr. Lackie could have lost \$4,000.

4           17.    Presumptive Sanction. Applying the above duties, mental state, and injury or  
5 potential injury to the ABA *Standards*, the Hearing Officer finds that the following ABA  
6 *Standards* are applicable to this case:

7                   4.1 *Failure to Preserve the Client's Property*

8                         4.13 Reprimand is generally appropriate when a lawyer is negligent  
9 in dealing with client property and causes injury or potential  
injury to a client.

10 **C.    Failure To Cooperate With Bar Investigations (Count 8)**

11           18.    Duty. Respondent failed to comply with his duty to cooperate with WSBA  
12 investigations by failing to respond to Mr. Reese's grievance and by failing to appear at a  
13 deposition that was scheduled due to his noncooperation.

14           19.    Mental State. Respondent knowingly failed to cooperate with WSBA's  
15 investigation of grievances and knowingly failed to appear at his deposition.

16           20.    Injury or Potential Injury. Respondent's failure to respond to the grievances has  
17 impeded WSBA's ability to ascertain the extent of Respondent's violations and the extent of the  
18 harm caused by Respondent's misconduct. Respondent's conduct also harms the lawyer discipline  
19 system.  
20

21           21.    Presumptive Sanction. Applying the above duties, mental state, and injury or  
22 potential injury to the ABA *Standards*, the Hearing Officer finds that the following ABA  
23 *Standards* are applicable to this case:  
24

25                   7.0 *Violations of Duties Owed as a Professional*

26                         7.2 Suspension is generally appropriate when a lawyer knowingly  
27 engages in conduct that is a violation of a duty owed as a professional and  
causes injury or potential injury to a client, the public, or the legal system.

1 **D. Aggravating And Mitigating Factors**

2 22. The ABA *Standards* provide that aggravating and mitigating factors be taken into  
3 consideration. Under ABA *Standards* Section 9.22, the following aggravating factors are present:

4 (c) Pattern of misconduct. Respondent engaged in a pattern of abandoning client  
5 matters and a pattern of disregarding his legal responsibilities.

6 (d) Multiple offenses. Respondent repeatedly many ethics rules, including RPC 1.3,  
7 RPC 1.4, RPC 1.14, and RPC 1.8(1).

8 (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to  
9 comply with rules or orders of the disciplinary agency. Respondent refused to  
10 participate in the disciplinary proceedings and did not respond to the formal  
11 complaint.  
12

13 (j) Indifference to making restitution. Respondent did not pay restitution of  
14 unearned fees or other restitution to any of the clients he harmed.  
15

16 23. Under ABA *Standards* Section 9.32, one mitigating factor is applicable:

17 (a) Absence of prior disciplinary record. Respondent has no prior discipline.

18 24. Where there are multiple charges of misconduct, the ultimate sanction imposed  
19 should at least be consistent with the sanction for the most serious instance of misconduct among a  
20 number of violations; it might be and generally should be greater than the sanction for the most  
21 serious misconduct. Discipline of Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting  
22 ABA Standards at 6). Here, the sanction for the most serious misconduct is disbarment.  
23

24 25. In the event that the presumptive sanction was suspension rather than disbarment,  
25 the aggravating factors set forth in paragraph 22 and the lack of mitigating factors would  
26 substantially affect the presumptive standard of suspension resulting in a sanction of disbarment.  
27

1 26. Based upon the ABA Standards, the Hearing Officer recommends that Respondent  
2 Matthew J. Dever be disbarred.

3 DATED this 22nd day of October, 2002.

4  
5   
6 \_\_\_\_\_  
7 Ronald Roberts  
8 Hearing Officer

9  
10  
11  
12  
13 **CERTIFICATE OF SERVICE**

14 I certify that I caused a copy of the HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS  
15 to be delivered to the Office of Disciplinary Counsel and to be mailed OF LAW AND RECOMMENDATION  
16 to MATTHEW J. DEVER, Respondent/Respondent's Counsel  
17 at 112 W. MEELER PUYALLUP WA, by Certified/first class mail,  
18 postage prepaid on the 22ND day of OCTOBER, 2002.

Sandra Lewis  
Clerk/Counsel to the Disciplinary Board  
7000 0520 0021 0780 9994

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

MATTHEW DEVER

Postage \$

Fees

Certified Fee

Return Receipt Fee  
(Endorsement Required)

Postmark  
Here

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees \$

10/22/02 W

Recipient's Name (Please Print Clearly) (To be completed by mailer)

MATTHEW DEVER

Street, Apt. No., or PO Box No.

112 W. MEELER

City, State, ZIP+4

PUYALLUP WA 98371

PS Form 3800, February 2000

See Reverse for Instructions

# WAYNE TORNEBY

# THE SUPREME COURT OF WASHINGTON

IN RE: )  
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R. WAYNE TORNEBY, JR.,

ATTORNEY AT LAW.

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BAR NO. 12431

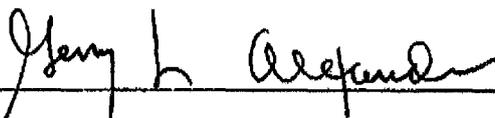
ORDER

This matter came on before the Supreme Court on the Washington State Bar Association (WSBA) Disciplinary Board's order in the matter of R. Wayne Torneby, Jr., wherein the Disciplinary Board adopted the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of disbarment. The Court having reviewed the Disciplinary Board's Order and the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and the court having determined that the Order should be approved. Now, therefore, it is hereby

ORDERED:

R. Wayne Torneby, Jr. is disbarred from the practice of law effective on this date.

DATED at Olympia, Washington, this 19th day of June, 2002.

  
\_\_\_\_\_  
CHIEF JUSTICE

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
JUN 19 12:52  
BY C. J. MERRITT  
CLERK

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FILED

MAY 1 2002

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
R. WAYNE TORNEBY, JR.,  
Lawyer  
WSBA No. 12431

Public Nos. 01-00778, 01-00874,  
01-00934

DISCIPLINARY BOARD ORDER  
REGARDING HEARING OFFICER'S  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION

THIS MATTER came before the Disciplinary Board at its May 3, 2002 meeting.  
On review of the Hearing Officer's Findings of Fact, Conclusions of Law and  
Recommendation and supporting documentation,

IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions  
of Law and Recommendation are approved and adopted.

OR

IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions  
of Law and Recommendation are adopted with the following  
modifications/reversals:

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\_\_\_\_\_

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The Board's reasons for the modifications/reversals are as follows:

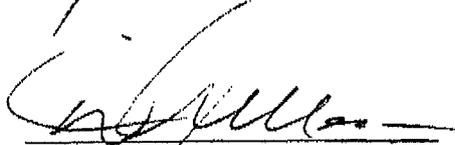
OR

IT IS ORDERED that

The vote on this matter was: unanimous

Those voting in the majority were: Wear, head, Hayon, Delaney, Luper, Schaps, Duclancy, Wilson, Brink, Cullen, Horn,  
Those voting in the minority were: Robson, Baumgardner, Bennett.

DATED this 8 day of May, 2002.

  
David Cullen  
Chair, Disciplinary Board

FILED

RECEIVED

MAR 14 2002

MAR 07 2002

MARC L SILVERMAN  
ATTORNEY AT LAW

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

R. WAYNE TORNEBY, JR.

Lawyer

WSBA No. 12431

Public No. 01#00095

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

In accordance with Rules 4.10 and 4.10A of the Rules for Lawyer Discipline (RLD), the undersigned Hearing Officer held a default hearing on March 8, 2002. Respondent R. Wayne Torneby, Jr. was served with the Order of Default. He did not appear at the hearing. Managing Disciplinary Counsel Joanne S. Abelson appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Respondent with the following counts of misconduct:

Count 1 -- By failing promptly to deliver Ms. Kern's L & I pension funds to her, Respondent violated RPC 1.3 (diligence) and/or RPC 1.14 (preserving client property), which subjects him to discipline under RLD 1.1(i).

ORIGINAL



1 3. In 2000, L & I placed Ms. Kern on pension status. In approximately October 2000,  
2 L & I began sending pension checks of \$1,786.65 to Ms. Kern c/o Respondent.

3 4. Ms. Kern's understanding was that Respondent would deposit the pension check  
4 into his trust account, deduct his fee, and send her a check for the balance.  
5

6 5. In April 2001, Respondent signed Ms. Kern's name and his name to the back of  
7 Ms. Kern's April 2001 pension check, deposited the check into his trust account, and  
8 withdrew his fee.

9 6. Respondent never sent Ms. Kern any portion of her April 2001 L & I pension  
10 check.

11 7. Ms. Kern became concerned when she did not receive her portion of her April 2001  
12 pension check. She telephoned Respondent's office and learned that his phone had been  
13 disconnected.  
14

15 8. Respondent abandoned his practice without notice to Ms. Kern.

16 9. Ms. Kern filed a Statement of Forged Endorsement with the State of Washington  
17 on May 30, 2001.

18 10. The Office of State Treasurer recovered the funds from Respondent's IOLTA  
19 account and reissued her warrant to her.  
20

21 Grievance of Sheila Williams and James Monk

22 11. Respondent represented Ms. Williams and Mr. Monk in a L & I matter and in a  
23 personal injury action (Monk and Williams v. Passafield et. al., Cowlitz County Superior  
24 Court No. 98-2-01297-9).

25 12. In approximately February 2001, Mr. Monk arrived at Respondent's office for a  
26 scheduled meeting in anticipation of a hearing in the L & I case. The receptionist advised  
27

1 Grievance of Denise Whitcraft

2 20. RCW 51.48.020(b) makes it a felony for an employer to knowingly fail to report  
3 employees' payroll or hours to L & I, with the intent to evade determination and payment  
4 of the correct amount of industrial insurance premiums.

5  
6 21. Respondent ceased reporting employees and paying industrial insurance premiums  
7 to L & I in 1997.

8 22. As of 1997, Respondent knew that he was not reporting his employees' hours to L  
9 & I, and failed to report these hours with the intent to evade determination and payment of  
10 the correct amount of industrial insurance premiums.

11 23. Using information obtained from the Employment Security Department, L & I  
12 estimated the taxes due and served Respondent with an order of assessment.

13  
14 24. Nonetheless, Respondent has not voluntarily paid any industrial insurance  
15 premiums since 1997.

16 Noncooperation

17 25. On May 10, 2001, disciplinary counsel asked Respondent to respond to Ms.  
18 Whitcraft's grievance. He did not respond.

19 26. On June 7, 2001, disciplinary counsel asked Respondent to respond to Deanna  
20 Kern's grievance. He did not respond.

21  
22 27. On June 13, 2001, disciplinary counsel asked Respondent to respond to Ms.  
23 Williams's and Mr. Monk's grievance. He did not respond.

24 28. On July 18, 2001 disciplinary counsel had Respondent personally served with a  
25 subpoena duces tecum to appear at a deposition and to produce Ms. Kern's and Ms.  
26

27

1 Williams's and Mr. Monk's files. Respondent never contacted disciplinary counsel and did  
2 not appear for the deposition.

3 Mental State

4 29. Respondent acted knowingly, if not intentionally, in connection with all these  
5 matters.

6 Injury

7 30. Respondent's clients suffered injury when he failed to deliver their property and  
8 files, the state suffered injury when he failed to file reports and pay his L & I taxes, the  
9 legal system suffered injury when he failed to cooperate with these disciplinary  
10 proceedings, and the profession suffered injury in the eyes of the public dues to the conduct  
11 described herein.  
12

13 CONCLUSIONS OF LAW

14 Violations Analysis

15 31. The Hearing Officer finds that the Association proved the following:  
16

17 32. By failing promptly to deliver Ms. Kern's L & I pension funds to her, Respondent  
18 violated RPC 1.3 (diligence) and RPC 1.14 (preserving client property), which subjects him  
19 to discipline under RLD 1.1(i). Count 1 is proven by a clear preponderance of the  
20 evidence.  
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22 33. By abandoning his practice without notice to his clients, Respondent violated RPC  
23 1.3 (diligence) and RPC 1.4 (communication), which subjects him to discipline under RLD  
24 1.1(i). Count 2 is proven by a clear preponderance of the evidence.

25 34. By allowing Ms. Williams's and Mr. Monk's personal injury matter to be  
26 dismissed for lack of prosecution, Respondent violated RPC 1.3 (diligence) and RPC 1.4  
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1 (communication), which subjects him to discipline under RLD 1.1(i). Count 3 is proven by  
2 a clear preponderance of the evidence.

3 35. By knowingly failing to report to L & I his employees' payroll or hours since 1997,  
4 with the intent to evade determination and payment of the correct amount of premiums,  
5 Respondent violated RCW 51.48.020(b), which subjects him to discipline under RLD  
6 1.1(a). Count 4 is proven by a clear preponderance of the evidence.

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8 36. By failing to cooperate with the Bar Association's investigation of the grievances  
9 described in this Formal Complaint, Respondent violated RLD 2.8, which subjects him to  
10 discipline under RLD 1.1(j). Count 5 is proven by a clear preponderance of the evidence.

11 Sanction Analysis

12 37. The following standards of the American Bar Association's Standards for Imposing  
13 Lawyer Sanctions (ABA Standards) (1991 ed. & Feb. 1992 Supp.) are presumptively  
14 applicable in this case:  
15

- 16 • ABA Standard 4.41 (disbarment) for abandoning his practice;  
17 • ABA Standard 5.13 (reprimand) for failing to file reports and pay L & I taxes; and  
18 • ABA Standard 7.2 (suspension) for failing to cooperate this these proceedings.  
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20 38. The "ultimate sanction imposed should at least be consistent with the sanction for  
21 the most serious instance of misconduct among a number of violations." In re Petersen,  
22 120 Wn.2d 833, 854 (1993). The overall presumptive sanction in this case is disbarment.

23 39. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
24 are applicable in this case:

- 25 (c) a pattern of misconduct;  
26 (d) multiple offenses;  
27 (e) bad faith obstruction of the disciplinary proceeding by intentionally failing  
to comply with rules or orders of the disciplinary agency;

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(i) substantial experience in the practice of law [admitted 1982].

40. The following mitigating factor set forth in Section 9.32 of the ABA Standards is applicable to this case:

(a) absence of a disciplinary record.

41. The mitigating factor does not provide reason to deviate from the presumptive sanction of disbarment.

Recommendation

42. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent R. Wayne Torneby, Jr. be disbarred.

DATED this 10th day of March, 2002.

  
Marc L. Silverman  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION to be delivered to the Office of Disciplinary Counsel and to be mailed to R. WAYNE TORNEBY, Respondent/Respondent's Counsel at 402 Broadway St. Longview, by Certified/first class mail, via ~~air~~ <sup>both</sup> postage prepaid on the 14th day of MARCH 2002.

Sandra Skowron  
Clerk/Counsel to the Disciplinary Board  
SR

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