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SUPREME COURT  
STATE OF WASHINGTON

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No. 200469-5

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re

JACK L. BURTCH, Attorney at Law

Bar No. 4161

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APPEAL FROM DISCIPLINARY BOARD  
OF THE WASHINGTON STATE  
BAR ASSOCIATION

---

BERTHA B. FITZER, HEARING OFFICER

---

BRIEF OF APPELLANT

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LAW OFFICE OF JACK L. BURTCH

  
\_\_\_\_\_  
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## INTRODUCTION:

It is apparent that the nature of the Washington State Bar Disciplinary hearing, and what are its evidentiary guidelines, is a question that has to be answered in the first instance.

ELC Title 10 sets the hearing procedures. ELC 10.1 requires that “The civil rules for the Superior Courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly.

ELC 10.14(a) indicates disciplinary hearings are neither civil nor criminal but are sui generis. In other words these cases are of its own kind or class. However, the fact is that they are treated as a civil administrative hearing. ELC 10.14(e)

ELC 10.14(b) requires that disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence. A clear preponderance of the evidence is not defined, but is obviously a greater burden than is imposed on a plaintiff in a common civil action. It is submitted that a clear preponderance of the evidence means the same as clear, cogent, and convincing evidence.

Certainly the right to practice law is as important as a medical license. The language in Nguyen v. Dep’t of Health, 144 Wn.2d 516, 26 P.3d 689 (En Banc, 2001) explains the individual professional’s interests in his licensure, and eloquently expresses my feelings towards my right to practice law. The Nguyen court noted that “persons have a basic liberty interest in pursuing vocations...” and that medical licensure is a property interest. *Id.*, citing Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). In noting that the professionals individuals interest in this licensure is “profound”, the Nguyen court stated:

Dr. Nguyen's professional license clearly represents a property interest to which due process protections apply. Moreover this court has recognized a doctor has a liberty interest in preserving his professional reputation that is entitled to protection under the Fourteenth Amendment. Ritter v. Bd. of Comm'rs of Adams County Pub. Hosp. Dist. No. 1, 96 Wn.2d 503, 510-11, 637 P.2d 940 (1981). When facing a medical disciplinary board, "The defendant suffers the possible loss of a constitutionally protected property right, the loss of a livelihood, and the loss of a professional reputation." Johnson, 913 P.2d at 1346. "The loss of a professional license is more than a monetary loss; it is a loss of a person's livelihood and loss of a reputation." *Id.* at 1345.

Loss or suspension of the physician's license destroys his or her ability to practice medicine, diminishes the doctor's standing in both the medical and lay communities, and deprives the doctor of the benefit of a degree for which he or she has spent countless hours and probably tens (if not hundreds) of thousands of dollars pursuing. The severity of such a penalty has led the United States Supreme Court to note that in such situations jurisdictions "reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff's burden of proof." Addington, 441 U.S. at 424. Id.

On May 11<sup>th</sup> I will be 81 years of age. In October of this year, I will have practiced law for 52 years. I must have done something right to last that long. I resent bitterly the allegation of the Bar Association that I have done something dishonest and that I am not truthful. My right to practice law defines my life and my pursuit of happiness.

My right to practice law was not easily obtained. If I would not have served in World War II, I would have never got an education. I worked hard to be a lawyer and will fight to keep that privilege.

I deny that the two complaints in this case justify my disbarment. I deny any misconduct. I do not ask that any mitigation be made because of my age and experience. I do ask that you consider that I have successfully practiced law for almost 52 years. During that time I have made a good living but certainly am not rich. If I am the liar and thief that the hearing officer has charged, I would be rich.

In making a denial of misconduct, I understand the Bar Association considers such a denial to be an aggravating factor. I believe this is illogical and contrary to this courts statement in the case of In re Discipline of Kronenberg, 155 Wn.2d 184, 117 P.3d 1134 (2005).

ELC Title 12 sets forth the rules for appeal to the Washington Supreme Court. ELC 12.1 provides "The rules of appellate procedure serve as guidance for review under this Title except as to matters specifically dealt with in these rules."

The hearing officer and the Bar Association counsel consistently took the position that whether or not I violated the rules of professional conduct was a question of law so that any opinions contrary to the hearing officer was irrelevant.

In other words according to the hearing officer ER 702 is not relevant to Rules of Professional Conduct.

It is ironic that I was accused of not using due diligence in the Moreland case. It should be pointed out to this court that the hearing officer did not comply with ELC 10.16 which required her to render her decision within 20 days after the proceedings against me were concluded, unless extended by agreement. The hearing was completed on May 5, 2006, and decision was not rendered until September, 11, 2006. It is submitted that this is one example of the prejudice that the hearing officer had against me, which violated my due process rights. It can reasonably be inferred that the excessive time spent in formulating her decision was not necessary except to figure out justification for a preconceived decision.

ELC 10.4(d) indicates that the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings, with the exception that ELC 10.4(d)(1) directs that evidence, including hearsay evidence is admissible if in the hearing officers judgment is the kind of evidence upon which reasonably prudent persons are accustomed to rely on in the conduct of their affairs.

This would appear to give the hearing officer substantial power in a case so vital as disbarment of an attorney.

Finally ELC 10.4(e) refers the hearing officer to the evidence standard in the Washington Administrative Procedure Act for guidance. RCW 34.05.452 regarding evidence in an administrative hearing is very similar to ELC 10.4. A copy of that statute is attached. App. 1

Essential to such a hearing as disbarment is the added requirement of due process. In re Meade, 103 Wn.2d 374, 693 P.2d 713 (En Banc, 1985).

The due process concept promises a fair hearing and a fair and impartial hearing officer without preconceived opinions. It also requires fair notice. The concept of fair notice is specifically set forth in ELC 10.3(a)(3) which provides:

(3) Content. The formal complaint must state the respondents acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.

#### **ASSIGNMENTS OF ERROR:**

Assignment of Error No. 1: Appellant did not receive a fair hearing.

### **ISSUES:**

*Issue No. 1:* Should the hearing officer have considered evidence on issues not charged in the Bar Association's formal complaint including a charge of "pattern of misconduct"?

*Issue No. 2:* Did the appellant have the right to have fellow lawyers express an expert legal opinion regarding violation of the rules of professional conduct?

*Issue No. 3:* Should the hearing officer have allowed impeachment and reputation evidence to be admitted in the form it was submitted?

*Issue No. 4:* Did such evidence that was admitted by the hearing officer met the requirements of reputation evidence?

*Issue No. 5:* Did the hearing officer improperly deny appellants motions for mistrial?

Assignment of Error No. 2: Were the Findings of Fact entered by the hearing officer supported by substantial evidence?

### **ISSUES:**

*Issue No. 1:* What is the meaning of clear preponderance of the evidence?

*Issue No. 2:* Were the Findings of fact entered by the hearing officer supported by substantial evidence?

### **STATEMENT OF THE CASE:**

The allegations of the case are set forth in the formal complaint filed by the Bar Association, and the answer that I filed. App. 2-15 (Inclusive)

It is my position that the allegations were fairly simple, and the hearing on this matter should have been about one-third of the time that was actually spent.

The essential allegations relating to the alleged violations concerning Ms. McGuin was the fact that I did not pay sanctions ordered by the Bar to be paid to Donna McGuin, and that when she sued me for payment, I was not truthful to the district court.

The allegation regarding the complaint of Roxie Moreland, was that I was not diligent in my representation of her, that the retainer agreement I made with her was not clear, and that when she discharged me, I should have refunded her the retainer that she paid me in the amount

of two thousand dollars. There is also an allegation that I falsified the amount of time that I actually spent working on her case.

In regard to Donna McGuin, I first began representing her sometime in 1988. I was paid a flat fee to argue an appeal for her, because her attorney had withdrawn because she had failed to pay him.

She then retained me to handle a case involving her bank and the bank manager Mr. Olin. Our original agreement that she was to pay me on my regular hourly basis. Subsequently, because she was unable to pay me, and it was too late to withdraw, I agreed to go to trial on a contingent fee basis provided that she pay me enough attorney fees to take care of sanctions and costs and give me a little bit in addition on those fees. Ex. 11, page 209-212. I have testified consistently that originally she was to pay me on a hourly basis, and that at the last moment it was changed to a conditional contingent fee agreement. I have also testified consistently that the money I used to pay all of the sanctions were earned fees.

Eventually when the matter came to trial in 1996, after starting our case with the testimony of the defendants, the defense offered to settle for \$75,000.00. Ms. McGuin refused to settle for less than a million and a half. When the trial was finally concluded, we lost. Ex. 11, pages 189-192. At the time of the first disciplinary hearing regarding Ms. McGuin, the Bar Association made a computation that I had total legal fees recorded of \$18,474 and the net legal fees that I received was \$3,002.29. Ex. 54 (copy in the appendix). App. 16-30 (Inclusive)

After the jury held against my client, she asked me to handle an appeal from the jury verdict. I advised her against this, and told her if she wanted me to handle the appeal, she would have to pay me \$5,500.00 up front.

Ms. McGuin never actually made a complaint to the bar, but she wrote a letter to the bar dated January 8, 1997. App. 31, 32. In that letter there was no complaint about my services, but the Bar Association made a complaint against me alleging that I had forced her to pay sanctions that I should have paid.

Appeal was made from the hearing officer to the disciplinary board. The disciplinary board on July 9, 2002, reversed the sanction, and entered its board order. Ex. 35. No where in that order did it say that I had to pay any restitution or sanctions to Ms. McGuin.

Subsequently there was a motion by the Bar Association to clarify the disciplinary board order regarding sanction. Ex. 5.

My position was that Ms. McGuin since she had made a complaint to the bar, had breached our agreement, and that she would owe me more than I owed her in sanctions. I was never given an opportunity when the motion to clarify was made to argue that point before the disciplinary board. TR. 837. The Bar was kept fully informed of my position. EX. R-59. App. 33-34. (Inclusive)

My bill was turned over to a collection agency, and I believe this happened before the letter that Ms. McGuin wrote to the Bar Association. That bill should not have been turned over for collection as I had agreed to take it on a contingent fee basis. TR. 839.

The original agreement that I had with Ms. McGuin was an hourly agreement. I would never have agreed to a contingent fee. The issues were too complicated and too uncertain. In addition the defendant Mr. Olin had gone through bankruptcy so the only asset was an insurance policy and the insurance company was defending Mr. Olin on a reservation of rights. TR. 559.

Subsequently I could not find the written agreement. But my agreement was always an hourly fee agreement. The problem was that my representation of Ms. McGuin started in 1988. So although I know it was a hourly agreement, even to this day it is not clear in my memory whether it was in writing. TR. 583.

When I first started practicing, written agreements were not that common.

I stated to the small claims court:

“Now she has stated today that I was suppose to take it on a contingent fee basis and that has never been true.”

What I was trying to convey was that our original agreement provided that I was to be paid on an hourly basis; not a contingent fee basis. My theory of the case was when Ms. McGuin breached our agreement regarding the contingent fee that the contingent fee agreement no longer existed and she owed me earned fees on our original hourly contract or on the basis of quantum meruit. TR. 886.

I believe that the Bar Association took that statement out of context, for the purpose of trying to show that I did not display candor to the court.

In fact had Ms. McGuin been successful in her action against Mr. Olin, an oral contingent fee agreement was invalid under RPC 1.5(c)(1) and I would have had to recover any fees on the basis of quantum meruit.

I withdrew any collection action on fees, but felt I had the right to offset the fees that I felt that she actually owed me.

The second complaint was the complaint of Roxie Moreland. Roxie Moreland hired me on August 16, 2004. She gave me a big stack of papers, which took me a considerable amount of time to read. I also read the insurance code, the regulations and the insurance policy. I also read the statute on mechanic liens and I looked at the case law regarding mechanics liens. TR. 844-845. I also told her at that time that we needed to get damage estimates from somebody who could testify. I never got the final damage estimates until November. I was hired on August 16<sup>th</sup>. The statute of limitations on the insurance policy was to run on December 31. TR. 844-845.

At the first meeting with Roxie Moreland, I indicated to her that I did not want to take the case on a contingent fee basis, and she was very upset about this. She told me that she had spoken with several attorneys, and none of them would take her case. Because I thought that she had not been treated properly, I finally decided to take her case.

We both agreed that in consideration of taking her case on a contingent fee basis that she would pay me a \$2,000.00 non-refundable retainer. TR. 855-865. Because I had planned on charging on a hourly basis, I had with me an hourly retainer agreement. Instead of filling out a contingent fee agreement, I filled out the retainer agreement I had with me and modified it by paragraph 11. I told her to read the agreement and I specifically asked her to read and initial paragraph 11. EX. A-12. The non-refundable retainer was consistent with the holding in Schmidt v. Curtiss, 72 Wash. 211 130 P. 89 (1913), which held:

When a contract for the employment of attorneys provided that \$1,000 be paid as a retainer fee, out of which the attorneys were to pay all expenses of the case, and that at the end of the litigation, they should be paid the reasonable value of their services, no part of the retainer need be returned where other attorneys were substituted before the end of the litigation.

This case has never been reversed.

It is my recollection that when she first hired me, she wanted me to sue John Lupo for performing poor repairs on her house. TR. 200. Subsequently she asked me to represent her against Farmers Insurance Company on a bad faith claim. TR. 200, 201. In regard to the retainer agreement, I made it very clear as to what it meant, and explained it to her. I observed

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her reading the agreement and she initialed paragraph 11 regarding the payment of the \$2,000.00 non refundable retainer. TR. 205-206, 210. EX. A-12 Ms. Moreland fired me on December 6, 2004. At that time I was preparing the complaint against the insurance company but had not yet dictated it. TR. 213. I also told her that I did not want to bring a damage action against Lupo until the eight months after the filing of the lien had expired. I was hoping that Mr. Lupo would not bring a claim on his mechanic lien, because if he was successful and she was not, he would get an attorney fee judgment against her. TR. 215, 853-856 Inclusive.

### **ARGUMENT:**

The Assignment of Errors and Issues will be discussed together.

I charge that the hearing officer did not afford me a fair hearing, and that she was prejudiced against me from the beginning of the hearing. I also think that she made serious errors of law which prevented me from having a fair hearing.

I intended to have Judge Kirkwood and other lawyers express opinions as to the allegations against me, including the question of due diligence, recoupment and the clarity of my contract with Roxanne Moreland.

The disciplinary board reviewed the hearing officers Findings of Fact for substantial evidence and Conclusions of Law and recommendations on a de novo basis. ELC 11.12(b). The same standard of review applies to an appeal to the Supreme Court. Discipline of Kagele, 149 Wn.2d 793, 72 P.3d 1067 (En Banc, 2003). The court clearly stated that the Findings of Fact would be upheld if they were supported by substantial evidence.

However, in this case, the hearing officer stated on numerous occasions that in regard to the issues regarding interpretation of the rules of professional conduct, the issues were one of law, not fact. TR. 184, 185. TR. 716. If the Findings of Fact are actually interpreted as a matter of law, then the Findings of Fact would not be binding on the Supreme Court and should also be reviewed de novo. See, Eriks v. Denver, 118 Wn.2d 451, 824 P.2d 1207 (En Banc, 1992) as compared to Kagele, supra and In re Discipline of Romero, 152 Wn.2d 124, 94 P.3d 939 (En Banc, 2004). However, since the appeal to the Supreme Court is not de novo, there would have to be substantial evidence supporting any findings made by the hearing officer.

Judge Kirkwood was called to testify under authority of ER 702, 703, and 704. He was not called as a character witness. My position has been consistent that the Findings of Fact in this case were improperly made due in large part to the hearing officers exclusion of expert testimony under ER 704.

It is my contention that the hearing officer denied me the opportunity to call expert witnesses to establish the standard of care in the legal industry and the interpretation of the RPCs as charged against me. Although some expert testimony was allowed, the hearing officer made it clear that she was not going to consider it or give it any weight.

Because of the error in omitting adequate expert testimony as to the application of the RPCs to my alleged misconduct, I did not receive a fair hearing and the case should be reviewed de novo and ultimately remanded for additional testimony by experts, or completely set aside.

Before I get to the issues regarding testimony, I would like to argue the point that pattern of misconduct was not charged in the Bar Association's formal complaint. ELC 10.3(a)(3) states very clearly that the formal complaint must state my actions or omissions in sufficient detail to inform me of the nature of the allegations of misconduct. The issue was my unfitness to practice law, i.e. pattern of misconduct. Nowhere can such an allegation be found in the formal complaint filed by the bar. TR. 630.

An attorney has a cognizable due process right to be notified of clear and specific charges and to be afforded an opportunity to anticipate, prepare, and present a defense. In re Discipline of Romero, 152 Wn.2d 124, 94 P.3d 939 (En Banc, 2004).

The mere fact that pattern of conduct was considered by the hearing officer should be sufficient to reverse the decision of the hearing officer.

In the testimony of Judge Kirkwood, he was not allowed to give any opinion regarding the standard of care in the legal industry and the interpretation of the RPCs as charged against me. TR. 33-50. During the questioning on direct of Judge John Kirkwood, my counsel did not inquire beyond issues that would be in the public arena or that were the personal fact-based knowledge of Judge Kirkwood. Judge Kirkwood was asked a fact question as follows, to wit:

Q: During the years you were on the Grays Harbor bench, did you have any reason to sanction Mr. Burtch for inappropriate conduct in your court?

A: No.

Because of this question, the hearing officer allowed extensive cross examination of Judge Kirkwood regarding alleged specific acts of misconduct on my part. TR. 50, 51, 52, 54, 55, 56, 57, 58, 59, and 60. The Judge actually allowed evidence in the form of a newspaper article to be introduced into evidence. EX. A-3. This was under the guise of impeaching Judge Kirkwood's statement that he had never sanctioned me. This kind of questioning continued throughout the cross examination of Judge Kirkwood. In fact the Bar Association counsel was even allowed to ask what other attorneys had said about me. TR. 65, 66, and 67.

The cross examination of Judge Kirkwood should have been sufficient to grant a motion for mistrial.

In fact I made a motion for mistrial on day two of the hearing. TR. 172-176. The mistrial was denied. TR. 176. Again the hearing officer made it very clear that the rules of Professional Conduct is a question of law, and that any expert testimony regarding whether or not I had violated the rule of Professional Conduct would have little or no value in the eyes of the hearing officer. TR. 177.

ELC 10.15(b)(1) states that... "evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondents credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or the absence of mistake or accident." None of these things were an issue.

The hearing officer ruled that the documents involving the March 19, 1999 ruling by Judge McCauley regarding a case that had nothing to do with the complaints made by the Bar Association and the unpublished decision of the Court of Appeals in that decision would be relevant on the issue of impeachment. TR. 637 (Impeachment of whom?) EX. A-48, EX. A-49. Judge Kirkwood had not expressed an opinion regarding my character.

Furthermore the hearing officer ruled said evidence was relevant to the question of my intent and absence of mistake or accident in other disciplinary hearings that had already been decided. TR. 637, 638. Essentially she ruled that she would consider my whole legal past to show I was untruthful.

It is my position that the basic nature of a Bar Association hearing is a civil action. That is because of the reference to the Rules of Evidence in the Administrative Procedures Act and other reasons previously discussed.

In civil cases, specific instances of conduct may be used to prove character only when character is “in issue”, i.e. only in cases for which a persons character is an essential element of a claim or defense. 5A Washington Practice § 405.5 and cases cited therein. Also see Dickerson v. Chadwell, Inc., 62 Wn. App. 426, 814 P.2d 687 (1991).

In most civil cases, a party’s character will not be an issue, and specific instances of that party’s conduct will thus be inadmissible to prove character. 5A Washington Practice § 405.5 and cases cited. Also see ER 405.

The Bar Associations behavior in this regard was obviously to prejudice the hearing officer against me. This writer understands that the disciplinary boards recommended sanctions are to be given “serious consideration”, but “this court retains ultimate responsibility for determining the proper measure of discipline.” In re McLeod, 104 Wn.2d 859, 865, 711 P.2d 310 (1985).

It is clear that the hearing officer gave little consideration to the witnesses offered by the respondent even though they were lawyers and are required to know the rules of ethics. TR. 177.

The hearing officer committed egregious error in allowing alleged specific acts of misconduct to be put in evidence. It is clear that with regard to specific instances of conduct, the character witness may be cross examined about a parties misconduct that casts doubt on the witnesses testimony about the parties good reputation, but extrinsic evidence of specific instances of misconduct remain inadmissible, even on rebuttal. 5A Washington Practice § 405.7 and cases cited.

Despite the fact that there was no character evidence presented by Judge Kirkwood, in addition to questions to him of specific misconduct, the hearing officer allowed into evidence A31, A48, A49, and A56. All of these exhibits should have been inadmissible, and were introduced only for the purpose of prejudicial effect.

On day 4 of the hearing, the hearing officer stated: “Counsel, Mr. Burke, you made the reference to proof of pattern of conduct, and I’m looking at your formal complaint, and it does not allege pattern, so how do I get to pattern?” At that point, bar counsel admitted that he did not know if the case met the category of the pattern of misconduct. TR. 631. Mr. Burke stated:

Pattern of misconduct can include things outside the record, for instance, in case of Cohan, where the considered his past record as part of the pattern of misconduct, and in this case you can consider the pattern of misconduct as to Mr. Burtch’s prior discipline. So

on that topic I am not sure, as I sit here today, whether this fits into that category. I think I need to do a little more research on that.

In response to Mr. Burke's argument, my counsel again objected to the use of character and reputation under ER 404(b) and based on uncharged counts. TR. 633. The objection, in pertinent parts, was as follows:

"When I went through the complaint, it is striking to me that we are here now evaluating character and essentially bringing up cases that have not been charged, are not part of the record, that are not proper, that the weight and prejudice against my client is enormous."

"We seem to be retrying essentially Mr. Burtch's entire life and I don't think that that's appropriate. I also don't think that it is well plead. I think you have to do a list... if you are alleging a deliberate pattern of conduct, you have a right under the due process clause to know that, that is actually what is being charged..."

Despite vigorous objection, the hearing officer allowed pattern of misconduct to be an issue in the hearing. TR. 636-642. Inclusive.

The courts initial ruling in allowing this evidence was that it was impeachment of Judge Kirkwood's testimony. Subsequently however the hearing officer ruled not only were the entry of those exhibits relevant on the issue of impeachment, but that she was allowing that evidence under the terms of ER 404(b) because the information was relevant to the question of intent and the questions of absence of mistake or accident. None of these issues had been raised by me. TR. 638-642. Again I moved for a mistrial which was denied. TR. 641.

The hearing officer erred when she made the determination to allow testimony under ER 404(b). The transcript is silent as to any ER 403 balancing test. Among other issues, ER 403 requires that the tribunal make a determination whether the danger of undue prejudice out weighs the probative value of the evidence. See State v. Kelly, 102 Wn.2d 188, 685 P.2d 564 (1984); State v. Anderson, 41 Wn. App. 85, 702 P.2d 481, rev. gr. 106 Wn.2d 1001 (1985). Because the Findings of fact involve the hearing officers determination of credibility it is difficult to ascertain the prejudicial effect the evidence of prior misconduct and uncharged acts had on the case at bar. As such I challenge all Findings of fact which rely in anyway in the hearing officers determination of credibility of witnesses. I also challenge the hearing officers Conclusions of

Law and argue that each of the Conclusions 1-7 should be rejected. Further discussion will be made regarding these findings.

Reference is made to TR. 772 where the hearing officer struck the testimony of attorney John Farra because of statements in his appellate brief in the case of In re Disciplinary Proceedings Against Burtch, 112 Wn.2d 19, 770 P.2d 174 (1989), EX. 31. Another example of the unfair conduct of the hearing officer.

The hearing officer committed error when she made Findings of fact that are not supported by substantial evidence in this case.

The testimony of the witnesses called by the Bar Association to support their complaint did not justify the Findings entered by the hearing officer.

Gary Randall testified that he was the owner of Service Master First Choice in Aberdeen, Washington. He stated that his firm specialized in fire and water damage.

On TR. 290, he was asked if he became aware of my reputation in the community for honesty. Objection was immediately made because my character had not been put into issue. This testimony was allowed by the hearing officer. TR. 291. His basis for testifying about my reputation for honesty was set forth on page TR 293, that he had talked to his attorney about a completely unrelated matter and that the attorney asked who Ms. Moreland's attorney was. He testified that he stated my name, and his attorney just shook his head and said well, did he ask for any money? And the attorney on page TR. 294 stated well he won't do anything for it and that is the last you will see of it. See TR. 295 when I objected to the opinion of an attorney that I did not get along with. My objection was overruled.

The other source regarding Gary Randall's reputation was based upon a statement from a Dave Kilwien who was a contractor. Objection was made but he was allowed to say that this individual told him that I am ineffective. TR. 297. Dave Kilwien had looked at a mold remediation work for another client of mine. The fact was that I still represented those people, and they have made no complaint about my representation. TR. 298 and TR. 299.

Gary Randall further testified that he would not testify in any case against Mr. Lupo. Mr. Randall admitted that the last report he gave me was in October, and that there was a substantial change between his initial report and the last report. TR. 320.

Admitting Mr. Randall's testimony, as stated, for the purpose of impugning my character, did not meet the requirements of ER 405. Again, it was admitted only for its prejudicial effect,  
*Page 13 of 16*

and its admission showed clearly the bias and unfairness of the hearing officer. Furthermore my character had not been put in issue.

The next witness was Roxanne Lee Moreland. Complaint had been made by the bar regarding the agreement that I entered into with Roxie Moreland. EX. A-12. She testified on TR. 331 that she had given me a lot of stuff (her words). That her whole file was given to me. She indicated that she talked to about 17 other attorneys before she came to me. That she also talked to Mr. Brown, but he wanted at least \$3,700.00 up front to take the case. TR. 368. Nothing in her testimony would support any of the findings made by the hearing officer.

Michael Norman, the attorney that took over for me with the Roxie Moreland case, testified. His testimony was made under a confidential agreement, and we were severely limited in our cross examination. TR. 433-442. Nothing in that testimony would support the findings entered by the hearing officer. It became obvious I was being tried for past offenses for which I had already been punished.

The next witness was Ms. McGuin. During the hearing, in the middle of cross examination of Ms. McGuin, the hearing officer stopped Ms. McGuin's testimony. TR. 505-507. The hearing officer found that Ms. McGuin was not competent to testify. TR. 507. Because Ms. McGuin could not be fully cross examined, I was denied the chance to fully confront my accuser on the issues at that hearing.

As a matter of fact in the decision of the hearing officer, she did strike Ms. McGuin's testimony in its entirety. See Findings page 7. The hearing officer committed egregious error when she then considered McGuin's testimony in a district court proceeding. This obviously prevented me from effective cross examination of Ms. McGuin and was unfair. No cross-examination was allowed in the small claims court.

It is my position that no credence should be given to any of Ms. McGuin's testimony, including the testimony at the original hearing.

Douglas Goelz, who was a district court judge, who presided at the small claims court case between Ms. McGuin and myself, was allowed to testify as an expert. His testimony consisted of speculative opinions and was not supportive of anything other than the fact that he identified the tape of the hearing made in the case of Ms. McGuin v. Jack L. Burtch. TR. 75-133.

Douglas Goelz agreed that I did not make the offset claim in bad faith. TR. 125. He also agreed that the theory of recoupment in regard to a Bar Association sanction was a case of first impression. TR. 127. TR. 75-133 Inclusive.

I also consistently objected to re-litigating the issues that were at previous administrative hearings. I certainly objected to the recomputing of the billing, EX. A-7, that was set forth in Exhibit EX. A-50. EX. R-54 was the computations made by Bar Association in the first McGuin hearing.

The Bar Association should have been collaterally estopped from arguing a new calculation of fees regarding Ms. McGuin in this case. The September 2000 Bar hearing addressed the billing, and the Bar's calculations, was set forth in EX. R-54. Moreover the ruling of the board in the McGuin case was res judicata, as to any issues regarding the determination of the account regarding Ms. McGuin. As such, the hearing officer should not have allowed the introduction of EX. A-50 nor should she have allowed the re-litigation of a matter determined by WSBA in the earlier hearing.

There is no cross-examination allowed in district court small claims. The hearing officer stated on page 7 that the factual findings are further supported by documentary evidence, respondent's testimony and the unchallenged Findings of Fact and Conclusions of Law entered in the previous disciplinary action. I consider this unfair, as I did not think it should be relevant evidence in this hearing as the Bar had made its Findings. EX. A-54. EX. 54, was a finding by the Bar Association that in fact Ms. McGuin owed me more money than I owed her in sanctions.

It is my position that no weight should be given to any of Ms. McGuin's testimony, including the testimony at the district court.

RPC 3.1 requires that an attorney refrain from making frivolous claims in a court of law.

I realize I owed Ms. McGuin the restitution ordered by the Bar. However Ms. McGuin owed me much more money than I owed and I claimed an offset, or recoupment, relying on case law established in Felthouse & Co. v. Bresnahan, 145 Wash. 548, 260 P. 1075 (1927) and on Jordan v. Bergsma, 63 Wn. App. 825, 822 P.2d 319 (1992). Neither of these cases have been overturned.

Copies of the Findings of Fact made by the hearing officer, and the Conclusions of Law are in the Appendix. Some of the Findings of Fact appear to be Conclusions of Law. Others of

the Findings of Fact are partly accurate in my opinion, but are not entirely accurate. I challenge all of those Findings.

I do admit the following Findings, to wit:

- A) Findings applicable to all charges: 1;
- B) General Findings of Fact relevant to the Donna McGuin matter; 6, 18, 20, 21, 22, 23, 30, 31, 32, 33, 45, 46, 56, and 69;
- C) Findings related to specific charges involving Donna McGuin; Count 1, Assertion of a frivolous defense: Findings 75, 76, 88, and 90.
- D) In regard to Count 2, Violation of Duty of Candor the Court: admit Findings 91, 92, 93, 95, 96, 100.
- E) In regard to Count 3, Failure to Comply with Restitution Order: Findings 103, 104, and 109.
- F) General Findings regarding Roxie Moreland Matter: Findings 124 and 125.
- G) Deny all of the Conclusions of Law and state that they are not supported by substantial evidence.

**CONCLUSION:**

I am asking that this matter be dismissed because the hearing was totally unfair and a violation of my due process rights. I am further asking that court rule that the burden of proof regarding a lawyers license is the same as a doctors license and that the evidence must be clear, cogent and convincing to support Findings. I ask the court to find that the evidence in this case does not support the Findings and therefore the Conclusions of Law are in error.

I greatly value my privilege to practice law. If I am going to lose that privilege, then it should be at a fair hearing, with an unbiased hearing officer.

Respectfully submitted this 7<sup>th</sup> day of May, 2007,

LAW OFFICE OF JACK L. BURTCH

  
\_\_\_\_\_  
Jack L. Burtch, WSBA #4161  
Pro Se

**RCW 34.05.452**

**Rules of evidence -- Cross-examination.**

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

JACK L. BURTCH  
Lawyer (Bar No. 4161)

Public No. 05#00084

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 Jack L. Burtch (Respondent) was admitted to the practice of law in the State of Washington on September 14, 1955.

**FACTS REGARDING MCGUIN MATTER**

2. From 1988 through 1996, Respondent represented Donna McGuin in litigation in which she was a third party plaintiff with a claim against third party defendants Richard and Carol Olin.

3. By no later than October 1993, Respondent was representing Ms. McGuin on a

1 contingent fee basis.

2 4. The litigation resulted in no recovery for Ms. McGuin and, therefore, Respondent was  
3 not entitled to any contingent fee.

4 5. On January 8, 1997, Ms. McGuin filed a grievance with the Association against  
5 Respondent.

6 6. After Ms. McGuin filed the grievance, Respondent sent her a billing statement  
7 (Billing Statement), dated January 29, 1997, reflecting that she owed him \$11,738.24 in unpaid  
8 fees.

9 7. The Billing Statement sent to Ms. McGuin reflected that Respondent's fees were  
10 calculated on an hourly fee basis.

11 8. Respondent knew that it was improper to charge Ms. McGuin on an hourly basis  
12 because Respondent had agreed to charge her a contingent fee. Ms. McGuin did not owe  
13 Respondent any fees because Respondent was unsuccessful in obtaining any recovery for Ms.  
14 McGuin.

15 9. As a result of Ms. McGuin's grievance, Respondent was formally charged with  
16 violating RPC 1.5(a) and RPC 8.4(d) for charging Ms. McGuin for sanctions imposed against  
17 Respondent personally by the court during the litigation.

18 10. During the disciplinary proceeding on September 11, 2000, Respondent testified that  
19 "I agreed to take it [the case] on the contingent-fee basis. Where I made the mistake was  
20 sending her the bill. That was not proper . . ." Respondent further testified and/or implied in  
21 his testimony during the disciplinary proceeding that he agreed to represent Ms. McGuin on a  
22 contingent fee basis.

23 11. During Respondent's April 13, 2002 oral argument before the Disciplinary Board,  
24

1 Respondent stated "before we went to trial on the final trial I agree that I would take it on a  
2 contingent fee basis because it was obvious that she couldn't pay me."

3 12. On July 9, 2002, Respondent was ordered to be admonished.

4 13. On July 19, 2002, the Disciplinary Board entered a Disciplinary Board Order On  
5 Motion to Clarify Disciplinary Board Order requiring Respondent to pay restitution to Ms.  
6 McGuin of \$2,640.15 plus 12% interest accruing from January 29, 1997 until the amount is  
7 paid.

8 14. Respondent did not appeal the order and/or decision by the Disciplinary Board,  
9 including the order to pay restitution to Ms. McGuin.

10 15. The Disciplinary Board's order to pay restitution to Ms. McGuin became final on  
11 August 20, 2002.

12 16. Respondent deadline under the RLD and ELC for paying restitution was September  
13 19, 2002.

14 17. Respondent knew that he was obligated to pay restitution to Ms. McGuin.

15 18. Respondent intentionally and/or knowing failed to pay restitution to Ms. McGuin.

16 19. In or about 2004, Ms. McGuin commenced a lawsuit against Respondent in small  
17 claims court for failing to pay the restitution ordered by the Disciplinary Board.

18 20. Respondent's defense in the lawsuit was that the restitution he was ordered to pay by  
19 the Disciplinary Board to Ms. McGuin was offset by the \$11,738.24 she owed him in unpaid  
20 legal fees as set forth in the Billing Statement.

21 21. At the time Respondent presented his defense in small claims court, Respondent  
22 knew that Ms. McGuin did not owe him \$11,738.24 because Respondent represented Ms.  
23 McGuin on a contingent fee basis.  
24

1 22. Respondent intentionally misrepresented to the small claims court that his obligation  
2 to pay restitution was offset by \$11,738.24 to avoid paying restitution he was ordered to pay by  
3 the Disciplinary Board.

4 23. On August 8, 2004, Respondent intentionally testified falsely in small claims court  
5 that he never represented Ms. McGuin on a contingent basis and that the \$11,738.24 was a valid  
6 outstanding bill for legal services that were billed on an hourly basis.

7 24. On August 8, 2004, Respondent submitted the Billing Statement in small claims court  
8 as evidence of the outstanding debt owed by Ms. McGuin.

9 25. At the time Respondent submitted the Billing Statement as evidence, Respondent  
10 knew that the Billing Statement was misleading, false, and did not accurately reflect the fees  
11 owed by Ms. McGuin.

12 26. On September 9, 2004, the Court awarded Ms. McGuin \$2,640.15 plus \$69.00 in  
13 costs.

14 27. The judgment entered by the court did not include the accrued interest Respondent  
15 was ordered to pay by the Disciplinary Board.

16 28. In October or November 2004, Respondent paid \$2,709.15 to Ms. McGuin.

17 29. Respondent never paid Ms. McGuin the interest that accrued on the restitution that he  
18 was ordered to pay by the Disciplinary Board.

19 **COUNT 1**

20 30. By claiming in small claims court that Ms. McGuin owed Respondent an outstanding  
21 debt for \$11,738.24 and/or by claiming that the Billing Statement reflected an actual debt owed  
22 by Ms. McGuin that could offset the restitution owed to her, Respondent violated RPC 3.1

23 **COUNT 2**

24 31. By falsely testifying about the nature of his fee arrangement with Ms. McGuin and/or

*apps*

1 by falsely testifying about the obligation owed by Ms. McGuin, and/or by submitting the Billing  
2 Statement to the court as evidence of the obligation owed to Respondent by Ms. McGuin,  
3 Respondent violated RPC 3.3(a) and/or RPC 8.4(c).

4 **COUNT 3**

5 32. By refusing to pay restitution to Ms. McGuin as required by the Disciplinary Board's  
6 order, ELC 13.7 and/or former RLD 5.3(b), Respondent violated RPC 3.4(c) and/or RPC 8.4(l)  
7 and/or former RLD 1.1(n).

8 **COUNT 4**

9 33. In the event that Respondent represented Ms. McGuin on an hourly fee basis,  
10 Respondent violated RPC 8.4(c) by falsely testifying at the September 11, 2000 disciplinary  
11 hearing that he represented Ms. McGuin on a contingent fee basis, and/or by falsely stating  
12 during his oral argument before the Disciplinary Board on April 13, 2001 that he represented  
13 Ms. McGuin on contingent fee basis.

14 **FACTS REGARDING MORELAND MATTER**

15 34. On August 16, 2004, Respondent was hired by Roxie Moreland to represent her in  
16 connection with her claim against Farmer's Insurance Company (Farmer's) regarding insurance  
17 coverage for damages to Ms. Moreland's residence caused by a storm.

18 35. On August 16, 2004, Respondent was also hired by Ms Moreland to represent her in  
19 connection with claims asserted by contractor John Lupo Construction, Inc. (Lupo) regarding  
20 (a) the adequacy of the repairs performed on Ms. Moreland's residence, and (b) a materialman's  
21 lien filed against Ms. Moreland's residence by Lupo.

22 36. At the time Respondent was hired, Respondent knew and understood that Ms.  
23 Moreland wanted these legal matters pursued promptly and that the limitation period on  
24 pursuing the claim against Farmer's was due to expire on December 31, 2004.

1 37. Respondent represented to Ms. Moreland and other third parties who were present  
2 that he would promptly pursue Ms. Moreland's legal matters.

3 38. Respondent knew that Mr. Moreland would not have hired Respondent if there would  
4 be significant delay in pursuing her legal matters.

5 39. Respondent agreed to represent Ms. Moreland on all of the legal matters for a one-  
6 third contingent fee, plus a \$2,000, which Ms. Moreland was required to immediately pay to  
7 Respondent.

8 40. On August 16, 2004, Ms. Moreland paid \$2,000 to Respondent.

9 41. Respondent did not adequately and/or reasonably explain the terms of the fee  
10 agreement regarding the payment of \$2,000, which Respondent designated in his fee agreement  
11 as "non-refundable."

12 42. From August 30, 2004 through early November 2004, Respondent repeatedly told  
13 and/or implied to Ms. Moreland that he would promptly file pleadings with the court to vacate  
14 or release Lupo's lien.

15 43. Respondent failed to diligently pursue the release or vacation of Lupo's lien.

16 44. Respondent failed to diligently pursue any of the legal matters he was hired to  
17 perform for Ms. Moreland.

18 45. On October 14, 2004, Ms. Moreland demanded that Respondent refund the \$2,000  
19 and return her file because he had failed to diligently pursue her client matters.

20 46. At that time, Respondent refused to refund the \$2,000 paid by Ms. Moreland on  
21 grounds that the \$2,000 was "non-refundable."

22 47. Starting in early November 2004, Respondent failed to reasonably respond to Mr.  
23 Moreland's reasonable requests for information regarding the status of her claims and for  
24

1 information about the claims that Respondent was retained to handle for her.

2 48. On or about December 6, 2004, Ms. Moreland terminated Respondent and requested  
3 the return of the money she paid him.

4 49. Respondent refused to refund any money to Ms. Moreland.

5 50. Respondent sent Ms. Moreland a billing statement reflecting he had performed legal  
6 services totaling \$2,248.

7 51. Respondent's billing statement was unreasonable, unsubstantiated, and contrary to his  
8 prior representations that he would not charge Ms. Moreland for telephone calls.

9 52. Respondent provided no beneficial legal services to Ms. Moreland.

10 53. Respondent's delay in pursuing Ms. Moreland's claims detrimentally affected her  
11 ability to pursue those claims after she terminated him.

12 **COUNT 5**

13 54. By failing to diligently pursue either or both of Ms. Moreland's claims, Respondent  
14 violated RPC 1.3.

15 **COUNT 6**

16 55. By failing to adequately and accurately explain the fee agreement, and/or by failing to  
17 inform Ms. Moreland about his ability to timely pursue her legal matters, Respondent violated  
18 RPC 1.4(b) and/or RPC 1.5(b).

19 **COUNT 7**

20 56. By failing to return unearned fees to Ms. Moreland and/or by failing to timely  
21 withdraw from representing her, Respondent violated RPC 1.5(a) and/or RPC 1.15(d).

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

1 Dated this 1<sup>ST</sup> day of September 2005.

2  
3 Jonathan Burke  
4 Jonathan H. Burke, Bar No. 20910  
5 Disciplinary Counsel  
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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

JACK L. BURTCH

Lawyer (Bar No. 4161)

Public No. 05#00084

ANSWER TO FORMAL COMPLAINT

COMES NOW Jack L. Burtch, Pro Se, and Answers the Formal Complaint as follows:

**ADMISSION TO PRACTICE**

1. Respondent admits the same.

**FACTS REGARDING MCGUIN MATTER**

2. Respondent is not sure of the dates, but knows it was for a long period of time. In addition, Respondent represented Donna McGuin in other matters during that period of time. With these conditions Respondent admits to the allegations paragraph 2.

3. Respondent denies the allegations contained in paragraph 3 except: Respondent agrees that because he had not been paid on the amount owed to him by Ms. McGuin, that he would continue as her attorney only if Ms. McGuin would pay enough on his earned fees for him to pay sanctions, and that he would collect on a contingent fee if the trial was successful. It was never agreed that Ms. McGuin did not owe him the money that Respondent already earned.

Answer to Formal Complaint – Page 1 of 6

*app. 10*

LAW OFFICE OF JACK L. BURTCH  
ATTORNEYS AT LAW  
218 NORTH BROADWAY  
POST OFFICE BOX A  
ABERDEEN, WASHINGTON 98520-0247  
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4. Paragraph 4 is admitted.

5. It is admitted that Ms. McGuin filed a grievance with the Association against Respondent but he does not know the exact date at this time.

6. It is not known when Respondent sent a billing statement to Ms. McGuin, however it probably was on the date alleged by the Bar, and it believed that the amount indicated in paragraph 6 is accurate. Billing statements had been sent periodically previously

7. Paragraph 7 is admitted.

8. Paragraph 8 is denied in its entirety.

9. Paragraph 9 is admitted, however Respondent has always maintained that he did not receive any money for sanctions exceeding earned fees.

10. Respondent has not reviewed the disciplinary proceeding on September 11, 2000. If he testified that he agreed originally to take the case on a contingent fee basis that would not be correct. Respondents' position always was that they had an hourly fee contract, which disappeared. He did admit that later he agreed to continue in the case on a contingent fee basis, but never agreed that the amount already earned should not be paid.

11. Respondent has not reviewed the oral argument before the Disciplinary Board, however Respondent admits that he agreed he would continue the litigation on a contingent fee basis, but never agreed that the earned fees up to that time should not be paid.

12. Respondent admits paragraph 12 of said complaint.

13. Respondent admits paragraph 13 of said complaint expect to state that Respondent was never given an opportunity or a hearing regarding whether or not he should pay restitution to Ms. McGuin, or whether or not Ms. McGuin owed him money exceeding said resitution.

14. Answering paragraph 14 Respondent refers to paragraph 13 of his answer.

15. Not having enough information to form a belief, paragraph 15 is denied.

16. Not having enough information to form a belief, paragraph 16 is denied, however Respondent takes the position that the restitution was paid in full because Ms. McGuin owed him more than he owed her as a result of the Disciplinary Board decision.

17. Answering paragraphs 17 and 18 of said complaint Respondent denies each and every allegation.

19. Answering paragraph 19 of said complaint Respondent admits the same.

20. Answering paragraph 20 of said complaint Respondent admits the same.

Answer to Formal Complaint – Page 2 of 6

*app. 11*

LAW OFFICE OF JACK L. BURTCH  
ATTORNEYS AT LAW  
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ABERDEEN, WASHINGTON 98520-0247  
(360) 533-1982



1 basis if Ms. McGuin would pay him at least enough on his earned fees to pay the sanctions.  
2 Never at anytime was there an agreement that he would not collect the earned fees.  
3

#### 4 **FACTS REGARDING MORELAND MATTER**

5 34. Answering paragraph 34 of said complaint Respondent denies the same except to state  
6 that he was hired to sue contractor John Lupo Construction, Inc. for improper workmanship and  
7 failure to complete its contract.

8 35. Answering paragraph 35 of said complaint Respondent agrees that he was hired to  
9 represent her in connection with claims asserted by contractor John Lupo Construction, Inc.  
10 regarding the adequacy of repairs performed by Ms. Moreland's residence and a materialman's  
11 lien filed against Ms. Moreland's residence by Lupo. Subsequently at the request of Roxie  
12 Moreland, Respondent did agree to represent her with her claim against Farmers Insurance  
13 Company and knew that the deadline was December of 2004 and was going to make sure that the  
14 complaint was filed before the deadline.

15 36. Answering paragraph 36 Respondent understood that Ms. Moreland wanted these  
16 legal matters pursued promptly and that the limitation period on pursuing the claim against  
17 Farmers was due to expire on December 31, 2004. Respondent alleges that he was in fact  
18 pursuing these claims promptly and as fast as he could but that he had other matters in his office  
19 that had to also be taken care of and believed that he did not receive all needed information until  
20 November of 2004.

21 37. Responding to paragraph 37 Respondent was hired to deal with Lupo Construction  
22 and no other claims. That Lupo Construction was pursued promptly, and Roxie Moreland was  
23 not damaged by anything that the Respondent failed to do. The only representation to Ms.  
24 Moreland was that everything would be done timely.

25 38. Answering paragraph 38 of said complaint Respondent denies the same.

26 39. Answering paragraph 39 of said complaint Respondent agreed to represent Ms.  
27 Moreland on the Lupo Construction case for a 1/3 contingent fee and that he required a retainer  
28 non-refundable fee of \$2,000.00 in order for him to become involved. Anything inconsistent  
with this statement in said paragraph is denied.

*Apr. 13*



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**COUNT 6**

55. Answering paragraph 55 Respondent denies the same.

**COUNT 7**

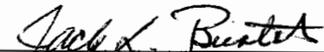
55. Answering paragraph 56 Respondent denies the same.

**FOR AFFIRMATIVE DEFENSE**

Respondent states that said complaint fails to state a cause of action that does not support  
Disciplinary proceedings.

WHEREFORE, Respondent prays that said complaint be dismissed with prejudice.

Dated: September 20, 2005

  
\_\_\_\_\_  
Jack L. Burtch, WSBA #4161  
Pro Se

*app. 15*

## SUMMARY OF FEES, COSTS, SANCTIONS, AND PAYMENTS

The following is a summary of money paid to Jack Burtch by Donna McGuin to cover costs and fees incurred on her behalf, legal fees recorded by Mr. Burtch, costs of litigation paid by Mr. Burtch, and fees paid by Donna McGuin to Mr. Burtch.

The summary is based on a Billing Statement and Trust Account Statement prepared by Mr. Burtch, dated January 29, 1997, copy of which is attached hereto as Exhibit A. Some entries for payments, fees, and costs are recorded on both the Billing and Trust Account Statements; some are recorded on only one Statement.

In order to calculate the total amounts paid or incurred in each category, we have identified each entry with a letter and a number.

"P" designates a payment of money by Donna McGuin made into Jack Burtch's Trust account or directly to Jack Burtch. Certain payments made by or on behalf of McGuin are recorded on the Trust Account Statement; other payments are recorded on the Billing Statement.

"T" designates a transfer of money from the Trust Account to Mr. Burtch. Certain transfers are recorded on both the Trust Account and Billing Statement -- for example, "T1" appears on the Billing Statement as "2/28/88 Jack Burtch Trust, Receipt #002896 \$500.00" and on the Trust Account Statement as "2/27/89 Jack Burtch, Check #4301 \$500.00". Other transfers are recorded only on the Billing Statement -- for example, T10 "5/17/96 Jack L. Burtch Trust Account, Receipt #86296 \$85.80".

"S" designates money paid to opposing counsel pursuant to the Court award of sanction's against Mr. Burtch.

"F" designates legal fees recorded by Mr. Burtch.

"C" designates costs of litigation paid by Mr. Burtch. Certain payments for costs are recorded on the Billing Statement; other payments for costs are recorded on the Trust Account Statement.

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**SUMMARY OF FEES, COSTS, SANCTIONS, AND PAYMENTS**

**APRIL 4, 1988 TO OCTOBER 6, 1993**

Total Fees Recorded	\$ 2,925.00
Total Costs Incurred	\$ <u>220.00</u>
<b>TOTAL COSTS AND FEES INCURRED</b>	<b>\$ 3,145.00</b>
Total Payments by McGuin	\$ <u>4,500.00</u>
<b>NET BALANCE</b>	<b>\$ 1,355.00</b>

**APRIL 4, 1988 TO JANUARY 29, 1997**

Total Payments by McGuin	\$ 8,240.00
Total Costs Paid by Burtch	\$ 2,359.85
Total Sanctions Paid by Burtch	\$ 2,877.86
<b>NET LEGAL FEES RECEIVED BY BURTC</b>	<b>\$ <u>3,002.29</u></b>
Total Legal Fees Recorded by Jack Burtch	\$18,474.00

a 17

# 9700 133

JACK L. BURTCH  
 ATTORNEY AT LAW  
 100 E. FIRST STREET, P. O. BOX A  
 ABERDEEN, WASHINGTON 98520

JACK L. BURTCH

TELEPHONE  
 (206) 533-1992

MS. DONNA J. MCGUIN  
 POST OFFICE BOX 1226  
 ELMA, WA 98541

RE: PACIFIC COAST INVESTMENT (OLIN)  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

P1	04/07/88	DONNA MCGUIN PAYMENT, RECEIPT #151153	\$ 175.00
P2	05/03/88	OLIVER JOHNSON PAYMENT, RECEIPT #151203	50.00
F	12/28/88	OFFICE CONFERENCE, .7HR.	- 59.50
T1	02/28/88	JACK BURTCH TRUST, RECEIPT #002896	500.00
T2	03/26/89	JACK BURTCH TRUST, RECEIPT #002920	1,000.00
T3	04/28/89	JACK BURTCH TRUST, RECEIPT #002950	500.00
F	04/30/89	CONFERENCE, RE: DEPOSITION, 1HR.	- 85.00
F	05/04/89	DEPOSITION OF CLIENT, 1.5HR.	- 127.50
F	06/06/89	PHONE CONFERENCE, .4HR.	- 38.00
F	06/16/89	PREPARE OBJECTION TO REOPEN BANKRUPTCY, 1HR.	- 95.00
T4	06/23/89	JACK BURTCH TRUST, RECEIPT #1806	1,000.00
F	09/04/89	REVIEW OF FILE, CONFERENCE WITH CLIENT, 2.5HR.	- 212.50
F	10/11/89	MOTION, RE: CONTINUANCE, 1HR.	- 95.00
F	10/23/89	COURT APPEARANCE REGARDING APPEARANCE	- 50.00
T5	05/08/91	JACK BURTCH TRUST, RECEIPT #2338	385.50
F	08/08/91	FILING OBTAINING ORDER, ARRANGE SERVICE, 1HR.	- 100.00

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 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT CO.  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

C1	11/14/92	SUPERIOR COURT CLERK, CHECK #1043	-	50.00
F	10/06/92	HEARINGS & PREPARATION IN BANKRUPTCY COURT, 5HR.	-	625.00
C2	10/13/92	U.S. BANKRUPTCY COURT, CHECK #2121	-	120.00
P3	01/12/93	DONNA MCGUIN PAYMENT, RECEIPT #18640		175.00
P4	02/17/93	DONNA MCGUIN PAYMENT, RECEIPT #18760		200.00
P5	04/01/93	DONNA MCGUIN PAYMENT, RECEIPT #2026		200.00
P6	04/01/93	DONNA MCGUIN PAYMENT, RECEIPT #2201		100.00
C3	04/20/93	GHC SUPERIOR COURT CLERK, CHECK #2804	-	50.00
F	04/20/93	PREPARE & ARRANGE FOR TRIAL DEMAND FOR JURY, FILE & MAIL, 1HR.	-	125.00
P7	04/01/93	DONNA MCGUIN PAYMENT, RECEIPT #2026		100.00
F	10/03/93	PREPARE FOR TRIAL, 3HR.	-	375.00
F	10/03/93	SERVE MOTION, 2HR.	-	250.00
F	10/03/93	OFFICE CONFERENCE, .5HR.	-	62.50
F	10/05/93	PREPARE TRIAL 5HR.	-	625.00
TB(Pg)	10/11/93	DONNA MCGUIN PAYMENT, RECEIPT #2276		2,500.00
F	11/02/93	OFFICE CONFERENCE, 1HR.	-	125.00
C4	12/01/93	ABC LEGAL MESSENGER	-	26.85
F	02/08/94	REVIEW FILE, CONFERENCE WITH CLIENT, 1HR.	-	<del>125.00</del>
C5	03/01/94	GRAYS HARBOR COUNTY AUDITOR, CHECK #3906	-	10.00
F	03/04/94	REVIEW FILE, GET COPIES OF PLATS, 2.5HR.	-	312.50

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 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

C6	03/07/94	RICHARD STERLING, CHECK #3910	-	20.00
F	03/07/94	REVIEW & CONFERENCE, 2HR.	-	250.00
F	03/09/94	PREPARE FOR TRIAL, 3.5HR.	-	437.50
F	03/30/94	REVIEW LAW & FILE, 3.5HR.	-	437.50
F	04/01/94	SEATTLE, 3HR.	-	375.00
C7	04/02/94	79 COPIES @.30, POSTAGE \$2.94	-	26.64
F	04/09/94	RESEARCH, DRAFT COMPLAINT, 4HR.	-	500.00
F	04/10/94	REVIEW FILE, DICTATE COMPLAINT, 2HR.	-	250.00
F	04/11/94	REVIEW COMPLETED COMPLAINT, .5HR.	-	62.50
F	04/25/94	COURT APPEARANCE, 1HR.	-	125.00
C8	05/04/94	20 COPIES	-	7.16
C9	09/20/94	4 COPIES @.30, POSTAGE .29	-	1.49
F	11/11/94	RESEARCH & REVIEW FOR TRIAL, 3.5HR.	-	437.50
C10	11/17/94	3 COPIES @.30, POSTAGE .29	-	1.19
F	11/20/94	CONFERENCE, .5HR.	-	62.50
F	11/20/94	NOTICE OF DEPOSITION, 1HR.	-	125.00
C11	11/23/94	29 COPIES @.30	-	8.70
C12	11/23/94	17 COPIES @.30, POSTAGE .58	-	5.68
C13	11/28/94	6 FAX COPIES, 1 @\$3.00, 5 @\$2.00	-	13.00
C14	11/28/96	1 FAX COPY @\$3.00	-	3.00
C15	11/29/94	4 FAX COPIES, 1 @\$3.00, 3 @\$2.00	-	9.00

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 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

C1612/06/94	3 COPIES @.30, POSTAGE .29	-	1.19
F12/09/94	DEPOSITIONS, 1.5HR.	-	187.50
C1712/14/94	1 COPY @.30, POSTAGE .29	-	.59
C1812/19/94	DENNIS REAMS SERVICE, CHECK #4943	-	15.00
C1912/21/94	5 COPIES @.30, POSTAGE .29	-	1.79
C2004/28/95	3 COPIES @.30, POSTAGE .32	-	1.22
C2105/08/95	U.S. POSTMASTER, CHECK #5462	-	2.02
C2205/08/95	14 COPIES @.30, POSTAGE .96	-	5.16
C2305/08/95	81 COPIES @.30, POSTAGE .78	-	25.08
F05/08/95	DISCOVERY, 1HR.	-	125.00
C2405/16/95	U.S. POSTMASTER, CHECK #5517	-	3.21
C2505/16/95	25 COPIES @.30, POSTAGE .64	-	8.14
C2606/07/95	DENNIS REAMS SERVICE, CHECK #5578	-	23.40
C2706/15/95	4 COPIES @.30, POSTAGE .32	-	2.32
F11/26/95	REVIEW FILE & LAW, 5HR.	-	500.00
C2811/27/95	14 COPIES @.30, RE: LETTER, BALANCE SHEETS, LAW, AFFIDAVIT	-	4.20
F11/28/95	RESEARCH, 4.5HR.	-	562.50
F11/29/95	DICTATE BRIEF, RESEARCH, 2HR.	-	250.00
F11/30/95	REVIEW TRIAL MEMO, 5HR.	-	62.50
C2911/30/95	72 COPIES @.30, RE: TRIAL BRIEF	-	21.60
C3011/30/95	11 COPIES @.30, POSTAGE \$1.88, RE: LETTER, CERT. OF MAILING, BRIEF	-	5.18

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 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT CO.  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

F 11/30/95	PREPARE FOR TRIAL, 4HR.	-	500.00
C3111/30/95	10 FAX COPIES, 1 @\$3.00, 9 @\$2.00, RE: STEVE BEAN	-	21.00
C3211/30/95	10 FAX COPIES, 1 @\$3.00, 9 @\$2.00, RE: POPE	-	21.00
C3312/01/95	21 COPIES @.30, RE: BRIEF	-	6.30
F12/01/95	GET CLERK'S PAPERS, ARRANGE SUBPOENAS, .5HR.	-	62.50
C3412/01/95	DENNIS REAMS SERVICE	-	92.40
F12/02/95	PREPARE FOR TRIAL, 5HR.	-	625.00
F12/04/95	CONFERENCE, INSTRUCTIONS, .5HR.	-	62.50
C3512/05/95	46 COPIES @.30, POSTAGE \$2.66, RE: LETTERS, CERT. OF SERVICE, CERT. OF MAILING, AVAILABLE DATES	-	16.46
C 12/21/95	JACK L. BURTCH TRUST ACCOUNT, RECEIPT #85959		166.54
3612/30/96	DENNIS REAMS SERVICE, CHECK #6297	-	92.40
3701/17/96	3 COPIES @.30, POSTAGE .32, RE: COURT DATE	-	1.22
9 01/23/96	JACK L. BURTCH TRUST ACCOUNT		93.62
F 05/11-12/96	PREPARE FOR TRIAL, 8HR.	-	1,080.00
3805/13/96	286 COPIES @.30, RE: JURY INSTRUCTIONS	-	85.80
F05/14/96	TRIAL & COURT, 5HR.	-	675.00
<del>9 05/15/96</del>	<del>12 COPIES @.30, POSTAGE .64, RE: AVAILABLE DATES</del>	<del>-</del>	<del>4.24</del>
005/17/96	JACK L. BURTCH TRUST ACCOUNT, RECEIPT #86296		85.80

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PAGE 6  
 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT(OLIN)  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

C4006/16/96	7 COPIES @.30, POSTAGE .64, RE: LETTER	-	2.74
F 06/16/96	OFFICE CONFERENCE, .4HR.	-	54.00
C4106/21/96	CAPITOL PACIFIC REPORTING, RE: COPY OF VERBATIM REPORT OF PROCEEDINGS	-	96.90
C4207/26/96	U.S. POSTMASTER, CHECK #7083	-	7.00
C4308/05/96	DATA COMPUTER SERVICE, CHECK #7128	-	29.65
C4408/06/96	STEVE BEAN, RE: COSTS	-	36.62
F11/04/96	ARGUE SANCTION, 1HR.	-	135.00
C4511/29/96	10 COPIES @.30, POSTAGE .96, RE: LETTER, TRUST CHECK FOR TERMS TO ATTORNEY, COURT	-	3.96
T11 11/29/96	JACK L. BURTCH TRUST ACCOUNT, RECEIPT #86668	-	107.87
F12/05/96	PREPARE FOR TRIAL, 7HR.	-	945.00
C4612/06/96	19 COPIES @.30, RE: SUBPOENAS	-	5.70
F12/06/96	PREPARE FOR TRIAL, 8HR.	-	1,080.00
F12/07/96	PREPARE FOR TRIAL, 4.5HR.	-	607.50
C4712/09/96	27 COPIES @.30, POSTAGE .32, RE: LETTER, CERT. OF SERVICE, RE: SUBPOENAS, CERT. OF MAILING	-	9.06
<del>F1212/09/96</del>	<del>JACK L. BURTCH TRUST ACCOUNT, RECEIPT #86683</del>	<del>-</del>	<del>217.84</del>
C4812/09/96	POSTAGE, RE: CERT. OF SERVICE	-	.69
F12/09/96	PREPARE TRIAL, TALK TO WITNESSES, 6HR.	-	810.00

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PAGE 7  
 MS. DONNA MCGUIN  
 RE: PACIFIC COAST INVESTMENT (OLIN)  
 OUR FILE #88048  
 STATEMENT  
 01/29/97

F 12/10/96	1 DAY TRIAL	-	1,200.00
F 12/11/96	1 DAY TRIAL	-	1,200.00
F 12/12/96	1 DAY TRIAL	-	1,200.00
C49 12/30/96	7 FAX COPIES, 1 @ \$3.00, 6 @ \$2.00, RE: WILLIAM POPE	-	15.00
T13 01/29/97	JACK BURTCH TRUST ACCOUNT, RECEIPT #86800		126.30

BALANCE ON ATTORNEY FEES AND COSTS TO DATE \$ 11,738.24

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COSTS: C1 - C49 ON BILLING STATEMENT

RECEIPTS: PR1 - PR19 ON BILLING STATEMENT

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MS. DONNA MCGUIN

RE: PACIFIC COAST INVESTMENT CO.

OUR FILE #88048

STATEMENT

01/29/97

TRUST ACCOUNT ACTIVITIES TO DATE

PB	01/23/89	OLIVER JOHNSON PAYMENT, RECEIPT #006006	\$ 3,500.00
T1	02/27/89	JACK BURTCH, CHECK #4301	- 500.00
T2	03/26/96?	JACK BURTCH, CHECK #4312	- 1,000.00
T3	04/28/89	JACK BURTCH, CHECK #4319	- 500.00
C50	06/16/89	DOUG SIPE, RE: SERVICE, CHECK #4249	- 35.00
T4	06/23/89	JACK BURTCH GENERAL ACCOUNT, CHECK #4345	- 1,000.00
C51	08/17/89	GRAYS HARBOR PACIFIC REPORTING, CHECK #4358	- 106.50
T5	05/08/91	JACK BURTCH, CHECK #4545	- 358.50
PA	10/11/93	DONNA MCGUIN PAYMENT, RECEIPT #8003	2,500.00
S1	05/03/94	STEPHEN J. BEAN, RE: TERMS, CHECK #4868	- 1,000.00
S2	05/03/94	WILLIAM B. POPE, RE: TERMS, CHECK #4869	- 1,000.00
C52	05/04/94	ATTORNEY INFORMATION BUREAU, CHECK #4872	- 54.50
C53	12/06/94	SW TRUCKING, ROBERT J. WINKLER, RECEIPT #00023	200.00
P10	12/06/94	K.D. EQUITIES, JONNA MCGUIN, RECEIPT #00024	200.00
C54	12/21/94	CAPITOL REPORTING, RE: DEPOSITION, CHECK #4947	- 199.75
C55	01/25/95	ABC LEGAL MESSENGER, RE: SERVICE, CHECK #4952	- 62.75
P11	11/29/95	DONNA MCGUIN PAYMENT, RE: SERVICE, RECEIPT #00121	150.00

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MS. DONNA MCGUIN

RE: PACIFIC COAST INVESTMENT CO.

OUR FILE #88048

STATEMENT

01/29/97

C56	11/29/95	S.W. TRUCKING, RE: CLERK'S PAPER,	\$	150.00
C57	11/30/95	WAYNE STALEY, RE: WITNESS FEES, CHECK #5055	-	70.00
T7	11/30/95	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5056	-	149.57
C58	11/30/95	G.H. COUNTY CLERK, RE: 1500 CERTIFIED COPIES, CHECK #5057	-	139.00
P5	12/08/95	KAREN STENGEL/DONNA MCGUIN PAYMENT, RECEIPT #00124		500.00
T8	12/21/95	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5059	-	166.54
T9	01/23/96	JACK BURTCH GENERAL ACCOUNT, CHECK #5073	-	93.62
P12	11/22/96	DONNA MCGUIN, RE: SANCTIONS, RECEIPT #00182		890.00
S3	11/29/96	WILLIAM B. POPE, JR. RE: TERMS, CHECK #5150	-	877.86
T11	11/29/96	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5151	-	107.87
C59	12/05/96	WAYNE STANLEY, RE: WITNESS FEES, CHECK #5154	-	70.00
C60	12/06/96	G.H. COUNTY AUDITOR'S OFFICE, CHECK #5156	-	82.00
C61	12/06/96	G.H. COUNTY CLERK, CHECK #5155	-	15.00
C62	12/09/96	DENNIS REAMS, RE: SERVICE, CHECK #5157	-	87.40
C63	12/09/96	YVETTE CHAPMAN, RE: WITNESS FEES, CHECK #5158	-	70.00
T12	12/09/96	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5159	-	217.84

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PAGE 10  
MS. DONNA MCGUIN  
RE: PACIFIC COAST INVESTMENT (OLIN)  
OUR FILE #88048  
STATEMENT  
01/29/97

T13 01/29/97 JACK BURTCHE GENERAL ACCOUNT, RECEIPT #86800 - \$ 126.30

TRUST ACCOUNT BALANCE TO DATE \$ - 0 -

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000147

COSTS: C1 - C49 ON BILL STATEMENT

RECEIPTS: P11 - P19 ON BILLING STATEMENT

PAGE 8

MS. DONNA MCGUIN

RE: PACIFIC COAST INVESTMENT CO.

OUR FILE #88048

STATEMENT

01/29/97

TRUST ACCOUNT ACTIVITIES TO DATE

P8	01/23/89	OLIVER JOHNSON PAYMENT, RECEIPT #006006	\$ 3,500.00
T1	02/27/89	JACK BURTCH, CHECK #4301	- 500.00
T2	03/26/96?	JACK BURTCH, CHECK #4312	- 1,000.00
T3	04/28/89	JACK BURTCH, CHECK #4319	- 500.00
C50	06/16/89	DOUG SIPE, RE: SERVICE, CHECK #4249	- 35.00
T4	06/23/89	JACK BURTCH GENERAL ACCOUNT, CHECK #4345	- 1,000.00
C51	08/17/89	GRAYS HARBOR PACIFIC REPORTING, CHECK #4358	- 106.50
T5	05/08/91	JACK BURTCH, CHECK #4545	- 358.50
P9	10/11/93	DONNA MCGUIN PAYMENT, RECEIPT #8003	2,500.00
	05/03/94	STEPHEN J. BEAN, RE: TERMS, CHECK #4868	- 1,000.00
SZ	05/03/94	WILLIAM B. POPE, RE: TERMS, CHECK #4869	- 1,000.00
C52	05/04/94	ATTORNEY INFORMATION BUREAU, CHECK #4872	- 54.50
C53	12/06/94	SW TRUCKING, ROBERT J. WINKLER, RECEIPT #00023	200.00
P10	12/06/94	K.D. EQUITIES, JONNA MCGUIN, RECEIPT #00024	200.00
C54	12/21/94	CAPITOL REPORTING, RE: DEPOSITION, CHECK #4947	- 199.75
C55	01/25/95	ABC LEGAL MESSENGER, RE: SERVICE, CHECK #4952	- 62.75
P11	11/29/95	DONNA MCGUIN PAYMENT, RE: SERVICE, RECEIPT #00121	150.00

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PAGE 9

MS. DONNA MCGUIN

RE: PACIFIC COAST INVESTMENT CO.

OUR FILE #88048

STATEMENT

01/29/97

56	11/29/95	S.W. TRUCKING, RE: CLERK'S PAPER,	\$	150.00
57	11/30/95	WAYNE STALEY, RE: WITNESS FEES, CHECK #5055	-	70.00
7	11/30/95	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5056	-	149.57
58	11/30/95	G.H. COUNTY CLERK, RE: 1500 CERTIFIED COPIES, CHECK #5057	-	139.00
5	12/08/95	KAREN STENGEL/DONNA MCGUIN PAYMENT, RECEIPT #00124		500.00
8	12/21/95	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5059	-	166.54
9	01/23/96	JACK BURTCH GENERAL ACCOUNT, CHECK #5073	-	93.62
12	11/22/96	DONNA MCGUIN, RE: SANCTIONS, RECEIPT #00182		890.00
11	11/29/96	WILLIAM B. POPE, JR. RE: TERMS, CHECK #5150	-	877.86
1	11/29/96	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5151	-	107.87
5	12/05/96	WAYNE STANLEY, RE: WITNESS FEES, CHECK #5154	-	70.00
60	12/06/96	G.H. COUNTY AUDITOR'S OFFICE, CHECK #5156	-	82.00
61	12/06/96	G.H. COUNTY CLERK, CHECK #5155	-	15.00
62	12/09/96	DENNIS REAMS, RE: SERVICE, CHECK #5157	-	87.40
63	12/09/96	YVETTE CHAPMAN, RE: WITNESS FEES, CHECK #5158	-	70.00
2	12/09/96	JACK L. BURTCH GENERAL ACCOUNT, CHECK #5159	-	217.84

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PAGE 10  
MS. DONNA MCGUIN  
PACIFIC COAST INVESTMENT (OLIN)  
FILE #88048  
STATEMENT  
01/29/97

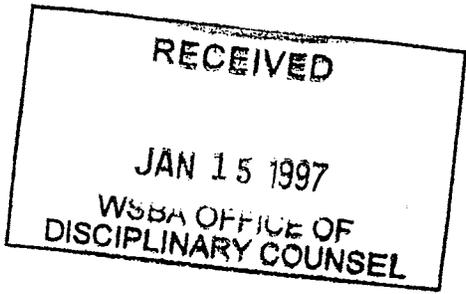
01/29/97 JACK BURTCH GENERAL ACCOUNT, RECEIPT  
#86800 - \$ 126.30

TRUST ACCOUNT BALANCE TO DATE \$ - 0 -

*app. 30*

000147

MAR 31 1997



January 8, 1997

Attention: Bar Association  
Attorney Generals Office  
Banking Commission  
Judicial Review System

Please find enclosed the following items:

- A- Three Notice of Trial Hearings
- B- Order for Allowing Amended third Party complaint
- C- Letters to Attorney Generals office (just some)
- D- Banking Letters to Mr. Oldfield
- E- Copy of a Bank Statement
- F- Receipts of sanctions

The documents are all lettered accordingly to number please read them.

The irony of this situation after ten years and one month is that I must appeal the decision. My attorney feels the Judge never allowed him to be given the chance for me even to tell the Jury why I said the documented documentation to the Banks Attorney when the incident happened. I had never been to Court in my life, I believed in Justice. I had a preponderene amount of evidence for a civil matter. One jury lady slept the entire morning and afternoon, did anyone say anything. Not even the Bailiff did anything. It was a secured trial, no one could even listen to it. I was informed one month before this last trial date, by my Attorney that I would have to pay the Sactions against Him that Judge Mc Cauley in May of 96 put against him, my attorney, or he wouldn't go to Court. I have paid this Attorney 18,200.00. I have paid two other attorneys 22,000.00, same case, and I still owe one Attorney 3,000.00.

So before I can file an appeal, my attorney needs \$5,500.00.

According to the constitution, I should have a fair trial. All I have received is paying up front, procrastinations by Judges, no one wants to hear a case on a Bank President or a Bank. The Judges in Superior Court I guess are just sick of this case. I lost everything and I have absolutely nothing. I am still making payments on the last sanction, to the Court that I paid. The Judges said Sactions went against the Attorney. I also paid over 2,000.00 in a saction in 94, that Foscue did against my Attorney.

No one told me my evidence isn't mine anymore. I cannot get it. In my records are my original bank statements showing that the Bank took money out of my account without a signed card from me. What happened to fairness, where were the examiners looking?

*copy 31*

You have reduced me to a hopeless nothing I cannot pay \$5500.00 to an Attorney for an Appeal.

I believe it was, an is, a conspiracy. My Attorney at least was able to say that in the trial. I couldn't afford the Attorneys that Mr. Olin had, as he was represented by the Banks Liability Policy.

Please find enclosed my documents.

Could someone please help me?

Sincerely,

*Donna J. Mc Guin*

Donna J. Mc Guin  
Box 1226  
Elma, Washington

Phone number is 360-482-4040 no answering machine.

PS

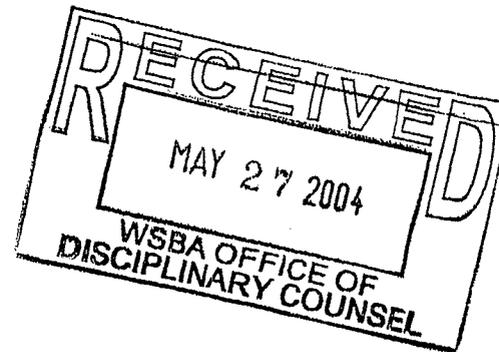
Don't you find it strange the Bank could sue me for over \$400,000.00 and then in this trial tell the Jury oh! Well the Attorneys for the Bank President said, its over 10 years they can't collect anymore. I wanted them paid. All my land was in them.

Please help me.

*They even the Depense  
wanted to settle  
with me for 75,000<sup>00</sup>  
before last day.  
atly wanted all or most  
I said no  
app. 32*

JACK L. BURTCHE  
LAWYER  
218 NORTH BROADWAY  
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May 26, 2004



Via fax: (206) 727-8325

Washington State Bar Association  
Office of Disciplinary Counsel  
2101 Fourth Avenue, Suite 400  
Seattle, Washington 98121-2330

RE: In re: Jack Lee Burtch, WSBA #4161  
Cause Number: 04-00542

Attention: Heather:

Donna McGuin has filed a complaint against me because I have failed to pay sanctions that were imposed against me by the Washington State Bar Association.

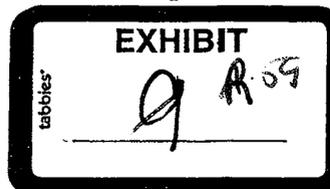
In fact, I have more than paid the sanctions.

I represented Mrs. McGuin for many years. I always charged her on an hourly rate. The problem was that I could never get paid. She also had problems with other attorneys in that regard.

I do not believe that sanctions should have been imposed against me, because they were as a result of her failing to give me records that I needed. However, I accepted the fact that there were sanctions, and as a result, I decided not to bring an action against her to recover the attorney fees that she owed me. She owed me in excess of \$11,000.00. I am enclosing a Summary of Fees, Costs, Sanctions, and Payments that was made by the attorney for the Bar Association.

It is my position that I have more than paid the sanctions.

It also should be pointed out that the only reason a complaint was made against me to the Bar Association, was that Mrs. McGuin wanted me to appeal the verdict against her in the last trial, and I said I would not do so because she never paid me. I said the only way I would do it, was if she paid me the \$5,500.00 up front. She then made a complaint to the Bar Association.



app. 33

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Since her sanctions that I was to pay was less than \$3,000.00 and she owed me over \$11,000.00, I feel that she had been more than paid.

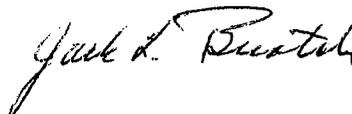
In this regard, it has been held that the running of a statutory limitation period prevents the enforcement of an obligation, but it does not render the obligation void. Jordan v. Bergsma, 63 Wn. App. 825, 822 P.2d 319 (1992).

Since she owed me far more than I owed her, I felt that the offset was clearly in her favor.

The case of Felthouse & Co. v. Bresnahan, 145 Wash.548, 260 Pac. 1075 (1927), made it very clear that recoupment is not barred by the statute of limitations. The only thing that is barred is I can not take affirmative action for the balance of my fees in an action against her as a counterclaim.

I might point out that I never did have an opportunity to argue before the Disciplinary Board the issue of money that Mrs. McGuin owed me. I am enclosing attachments which may be of interest.

Yours very truly,



Jack L. Burtch

Enclosures (7)

jml

att. 34

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**IV. FINDINGS OF FACT**

**A. Findings Applicable All Charges**

After having considered the testimony of the witnesses, the exhibits admitted into evidence, reviewing written arguments of counsel and being fully advised, the Hearing Officer finds the following facts are either undisputed or were proven by a clear preponderance of the evidence.

1. Respondent was admitted to the practice of law in the State of Washington on September 14, 1955.

2. Respondent's testimony regarding his dealing with both clients often conflicted with documentary evidence such as time records, telephone records, billing invoices and other documents and conflicted with his prior testimony in related proceedings.

1           3.       As a result of the inconsistencies in testimony in comparison to written  
2 documentation and because the Respondent has provided conflicting testimony in several  
3 different proceedings, Respondent's testimony was generally not credible.

4           4.       A former member of Respondent's staff, Janice LaVelle, testified  
5 concerning both client matters. Ms. LaVelle's testimony was also contradicted by  
6 documentary evidence and other testimony. Ms. LaVelle's testimony was not credible<sup>2</sup> on  
7 the issues of client contacts with Respondent and the existence of written fee agreements.

8           5.       Expert testimony regarding Respondent's conduct in these cases was  
9 elicited through incomplete hypothetical questions and was therefore of limited assistance  
10 in interpreting the ethical rules applicable to the facts of the instant charges.

11           **B.       General Findings of Fact Relevant To Donna McGuin Matter.**

12           6.       Respondent represented Donna McGuin from approximately 1988 to the  
13 end of 1996 in separate, but related, matters.

14           7.       Ms. McGuin consistently maintained that she understood that Respondent  
15 had agreed to a contingent fee agreement with payment of costs and sanctions.

16           8.       Respondent has at various times confirmed that he had agreed to a  
17 contingent fee on the condition that Ms. McGuin pay some fees and provide him with  
18 funds sufficient to pay sanctions.  
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24 <sup>2</sup> Judge Goelz also found that Ms. LaVelle was not credible in presented testimony in the district court  
25 proceeding. TR 82.

1           9.       Respondent's references to the contingent fee agreement were accompanied  
2 by statements that Ms. McGuin did not owe him anything after the trial and that the  
3 billing statement, Exhibit A-7, was sent in error. See Ex. 11, pp. 50-51; 193.

4           10.       In the present proceeding, Respondent claimed that he and Ms. McGuin at  
5 one time had a written fee agreement based on an hourly agreement. He asserted further  
6 that Ms. McGuin stole it at some unspecified time when she took the files home.

7           11.       The testimony that Ms. McGuin stole the fee agreement is not credible.  
8 There is no evidence that Ms. McGuin had access to the files after the fee dispute arose.  
9 Prior to the dispute Ms. McGuin would have had no motive for removing the document.

10           12.       Had the agreement been "stolen" nothing would have prevented the  
11 Respondent from preparing a new document from computer backups, which Ms. Lavelle  
12 testified were kept in the ordinary course of business. No explanation was given for why  
13 a new agreement was not drafted after the first allegedly disappeared.

14           13.       Twice during his representation of Ms. McGuin, Respondent incurred  
15 significant sanctions because of his conduct. The first set of sanctions occurred in 1993  
16 when Respondent informed the court that he was not ready to proceed to trial on the trial  
17 date. The court imposed sanctions of \$2,000 at this time.

18           14.       The second incident regarding sanctions occurred in 1996 when the  
19 Respondent disregarded the court's rulings regarding motions in limine. The court  
20 imposed sanctions of \$877.86.

21           15.       Respondent agreed that he would transform his hourly fee agreement into a  
22 contingent fee agreement if Ms. McGuin provide him hourly fees in an amount equal to  
23 the sanctions.  
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1 16. Ms. McGuin complied with this condition and provided funds equal to or  
2 greater than both sanctions at the time the sanctions were imposed.

3 17. In the current proceeding, Respondent testified that the agreement to convert  
4 the hourly fee agreement to a contingent fee agreement occurred shortly before the 1996  
5 trial. This testimony is not credible. It is contradicted by Respondent's testimony in the  
6 prior disciplinary action, documentary evidence and by circumstantial evidence that the  
7 payment of sanctions would more likely be an issue for the larger sanctions imposed in  
8 1993 than the much smaller amount imposed in 1996.

9 18. Respondent eventually tried Ms. McGuin's case in December 1996. During  
10 the course of the trial, Ms. McGuin rejected a settlement offer made by the defendants.  
11 Ms. McGuin, as the client, had the right to make the final decision on this issue. RPC 1.2.  
12 The jury returned a verdict adverse to Ms. McGuin.  
13

14 19. On January 8, 1997, Ms. McGuin contacted the Bar Association. The Bar  
15 Association treated this contact as a grievance, although it is not clear that that was Ms.  
16 McGuin's original intent.

17 20. On an invoice dated January 29, 1997, Exhibit A-7, Respondent claimed  
18 that Ms. McGuin owed his firm \$11,738.24 in addition to amounts paid during the 1988-  
19 1996 period. It is not clear whether this invoice was sent before or after Respondent  
20 learned that Ms. McGuin had contacted the WSBA regarding issues she had with  
21 Respondent. However, that uncertainty does not affect the conclusions contained herein.  
22

23 21. The relationship between Respondent and Ms. McGuin was the subject of a  
24 prior disciplinary hearing conducted on September 11, 2000.  
25

1           22.     During the course of the prior disciplinary proceeding, Respondent testified  
2 and argued that he had an hourly fee agreement, which was transformed into a contingent  
3 fee agreement. This position is expressed in at least eight different places in the  
4 transcript. *See, e.g.*, Ex. 11, pp. 50-51; 184; 191-92; 199-200; 201; 210; 253; 264.  
5 Respondent's statements that the hourly fee agreement had been transformed into a  
6 contingent fee agreement were unequivocal.

7           23.     During the course of the hearing, Respondent also testified, under oath, that  
8 the invoice, Exhibit A-7, had been sent to Ms. McGuin in error, that sending it "was not  
9 proper," that Ms. McGuin was right in complaining about the bill and that, "she didn't  
10 owe me any money. I had agreed to that." Ex. A-11, pp. 184, 191, 193.

11           24.     Findings of Fact, Conclusions of Law and Recommendations were filed on  
12 October 12, 2000. The Hearing Officer's findings do not include a detailed discussion of  
13 the January 1997 invoice nor do they resolve the issue of whether a contingent fee  
14 agreement in fact existed between Ms. McGuin and Respondent. The Hearing Officer did  
15 conclude, however, that Respondent owed Ms. McGuin \$2640.15 in restitution because he  
16 had forced her to pay sanctions, which were levied against him. Ex. A-34 at p. 23.

17           25.     The Hearing Officer recommended that Respondent be suspended for a  
18 period of 6 months for misconduct associated with his representation of Ms. McGuin.  
19

20           26.     Respondent appealed and represented himself during the appeal of the  
21 Hearing Officer's Findings and Conclusions. The Disciplinary Board heard argument on  
22 April 13, 2001.  
23

24           27.     During argument on the appeal of the disciplinary recommendation,  
25 Respondent again stated that he had agreed to a contingent fee with Ms. McGuin.

1           28.     There is no reference in these prior proceedings to a "conditional"  
2 contingent fee agreement nor is there any claim that Ms. McGuin breached the contingent  
3 fee agreement by bringing Respondent's conduct to the attention of the Bar Association.

4           29.     The Disciplinary Board reduced the Hearing Officer's recommended  
5 sanction to an admonition based on its reversal of one count. It did not alter the Hearing  
6 Officer's other Findings of Fact or his restitution requirement. Ex. A-5. The Board  
7 ordered that Respondent pay Ms. McGuin \$2,640.15 with 12% interest on that amount  
8 from January 29, 1997 until the amount was paid.

9           30.     Respondent filed an exception to costs and expenses on August 1, 2001.  
10 Ex. A-44. In that document, Respondent argued that costs and expenses should not be  
11 imposed because the restitution order created a significant financial burden and further  
12 costs and expense would exacerbate the financial hardship created by the restitution order.

13           31.     The Bar Association informed Respondent that the restitution payment of  
14 \$4,097.52, which represented the restitution amount plus interest, was to be paid within 30  
15 days or September 5, 2002. The Bar Association further informed Respondent that the  
16 money was to be paid unless he demonstrated in writing that he was unable to pay. Ex.  
17 45. The letter went on to state that unless arrangements were made, the Bar would assume  
18 that the Respondent would pay the full amount due Ms. McGuin.

19           32.     Respondent did not provide written proof of an inability to pay the  
20 restitution order nor did he take any other steps consistent with the position that he did not  
21 understand his obligations under the restitution order. Respondent did not appeal the  
22 order.  
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25           33.     The restitution order became final on September 19, 2002.

1           34.     Respondent was angry with Ms. McGuin for filing the Bar complaint and  
2 intentionally did not comply with the Bar's order to pay restitution.

3           35.     The prior disciplinary hearing resolved the issue of whether the sanctions  
4 could be passed on to Ms. McGuin against Respondent.

5           36.     In the present proceeding, Respondent claims that Ms. McGuin owed him  
6 money in excess of the restitution amount because she had breached her agreement to pay  
7 sanctions by reporting the matter to the Bar Association.

8           37.     Respondent did not raise the defense during the prior hearing or his appeal  
9 that Ms. McGuin owed him money because she was litigating the issue of who was  
10 responsible for sanctions. He also did not claim that she was in breach of their fee  
11 agreement.

12           38.     At no time following the prior disciplinary hearing, the appeal or the  
13 restitution order, did Respondent inform Ms. McGuin or the Bar Association that Ms.  
14 McGuin owed him money over and above the amount of restitution. He informed no one  
15 associated with the case that he was not required to pay the restitution order because Ms.  
16 McGuin had breached a condition of their agreement to transform the hourly fee  
17 agreement into a contingent fee.  
18

19           39.     Respondent's testimony in the prior proceedings along with his conduct  
20 following those proceedings is inconsistent with the claim that Ms. McGuin owed him  
21 money over and above the amount he owed her in restitution.  
22

23           40.     The issues and the parties before the Hearing Officer on September 11, 2000  
24 and those before this Hearing Officer regarding the nature of the fee agreement between  
25 Respondent and Ms. McGuin are identical.

1           41.     Respondent's failure to challenge the restitution order precludes  
2 Respondent's argument that he did not owe Ms. McGuin restitution or that she owed him  
3 sums in excess of the restitution order and therefore he did not have to pay it.

4           42.     Respondent is estopped from challenging the fact that he owed Ms. McGuin  
5 at least the amount contained in the restitution order.<sup>3</sup>

6           43.     Alternatively, and in addition, this Hearing Officer finds overwhelming  
7 evidence that the Respondent's hourly fee agreement was converted to a contingent fee  
8 agreement upon the payment by Ms. McGuin of an amount equal to or greater than the  
9 sanctions imposed in October 1993. Ms. McGuin complied with this condition in October  
10 1993.

11           44.     The prior calculations contained in the Hearing Officer's Findings of Fact  
12 and Conclusions of Law do not coincide with the contents of Exhibit A-7. It appears that  
13 Bar Counsel in the previous matter inaccurately computed the amounts owed under that  
14 invoice and that the Hearing Officer relied upon those computations.

15           45.     In the present proceeding, Respondent has argued that all issues pertaining  
16 to Exhibit A-7 were resolved in the prior hearing and cannot be reexamined. However,  
17 issues relating to the exact amount of overpayment and the dates of the change from an  
18 hourly to contingent fee occurred were not resolved and res judicata does not apply.  
19

20           46.     In subsequent proceedings before a district court judge, and in this hearing,  
21 Respondent claimed that he did not have to pay restitution because he was entitled to an  
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25 <sup>3</sup> As explained later in these findings, the restitution ordered in 2000 actually understated the total amount  
Respondent owed Ms. McGuin.

1 offset. He relied upon Exhibit A-7 to substantiate his claim that Ms. McGuin owed him  
2 more money than he owed her.

3 47. To assess whether the defense is frivolous it is necessary to analyze Exhibit  
4 A-7 independently in light of the testimony presented in this hearing and in the prior  
5 disciplinary proceeding.

6 48. Respondent's invoice and trust accountings document that Ms. McGuin paid  
7 Respondent a total of \$11,626.62.<sup>4</sup>

8 49. Respondent incurred reimbursable costs in the amount of \$1,976.23.

9 50. In 1993, the Court imposed sanctions of \$2,000, which Respondent  
10 subsequently paid with funds provided by Ms. McGuin.

11 51. Ms. McGuin fulfilled her part of the agreement to convert the hourly fee  
12 agreement into a contingent fee contract by paying \$2,500 towards sanctions prior to  
13 October 11, 1993 and an additional \$2,500. The hourly fee agreement was converted to a  
14 contingent fee agreement as of this date.

15 52. Ms. McGuin also paid an additional \$890.00 for sanctions Respondent  
16 incurred in 1996.

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21 <sup>4</sup> Ms. McGuin testified in prior hearings that her payments to Respondent were closer to \$18,000.  
22 Respondent has not retained supporting documentation relating to this invoice or his trust accountings.  
23 Respondent's inability to provide records was an issue in the 2000 hearing, even though Respondent was  
24 informed shortly after his representation of Ms. McGuin terminated that there was a dispute regarding fees.  
25 In responding to questions during his appeal, Respondent first attempted to assert that the complaint had  
come in long after the events and records were not kept. When the error of this claim was pointed out to  
Respondent, he stated that he didn't know why the records were not available and suggested it was because  
of a move. Ex. 42, pp. 42-43. Respondent's poor record keeping and a reference to the fact that he had an  
employee who embezzled from him suggests that Ms. McGuin's claim of having paid a greater amount  
may have merit. She has not pursued additional amounts, however, and there is no way of presently  
resolving this dispute.

1           53.     The payments of \$2,500 and \$890.00 fulfilled all obligations Ms. McGuin  
2 had to pay sanctions as a condition of Respondent performing his services on a  
3 contingent fee basis.

4           54.     Respondent was entitled to legal fees of \$2925.00 for services rendered  
5 prior to October 11, 1993.

6           55.     Respondent is not entitled to any hourly fees accrued after Ms. McGuin  
7 fulfilled the terms of the oral agreement converting the hourly fee agreement to a  
8 contingent fee agreement. As of October 11, 1993, Respondent's sole avenue of  
9 obtaining fees was the oral contingent fee agreement, which required him to successfully  
10 prosecute the action.

11           56.     Respondent was not successful in obtaining a verdict in favor of Ms.  
12 McGuin.

13           57.     Respondent is not entitled to any fees accrued after October 11, 1993.

14           58.     Ms. McGuin and those acting on her behalf paid Respondent \$6,725.39 in  
15 excess of the amount owed in fees and costs.

16           59.     As a condition of converting the fee agreement from an hourly agreement to  
17 the contingent fee agreement, however, Ms. McGuin agreed to pay fees in the same  
18 amount as the sanctions.

19           60.     Assuming that this agreement was valid, Respondent was entitled to an  
20 additional \$2877.86 in fees. As noted above, these amounts were paid as required.

21           61.     Deducting the \$2,877.86 from the total amount Ms. McGuin paid results in  
22 a net overpayment of fees by Ms. McGuin of \$3,847.53 as of January 1997.  
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1           62.     At the end of the attorney client relationship, Respondent owed Ms. McGuin  
2     \$3,847.53, which is the amount in excess of the fees Respondent earned under his oral  
3     agreement that Ms. McGuin paid to Respondent.

4           63.     Exhibit A-7 falsely stated that Ms. McGuin owed Respondent money. Even  
5     assuming that the facts are as Respondent represents in this hearing, Ms. McGuin did not  
6     breach the parties' agreement by asserting her right to have the Bar determine who  
7     should pay the sanctions. Ms. McGuin had fulfilled her obligation to pay an amount  
8     equal to sanctions independent of the restitution order. Respondent's reliance upon  
9     exhibit A-7 to document his argument that Ms. McGuin owed him money over and  
10    above the amount of restitution ordered by the Bar Association is frivolous.

11           64.     The prior restitution amount appears to be in error. The minimum amount  
12    of restitution Respondent owed Ms. McGuin was \$3,847.53. This is the amount of money  
13    Ms. McGuin paid in excess fees over and above the sanctions.

14           65.     The restitution order of July 2001, understated the amount of unearned fees  
15    due Ms. McGuin by a minimum of \$1207.38.

16           66.     The Respondent was obligated to return the excess payment of \$3847.53  
17    plus 12% interest to run from January 29, 1997.

18           67.     Respondent paid \$2640.15 but has paid no interest on that amount.

19           68.     Respondent owes Ms. McGuin the following; (1) the unpaid interest on the  
20    initial restitution order; (2) \$1207.38 which is the difference between what should have  
21    been ordered as restitution for unearned fees and what was actually awarded, and (3)  
22    interest from January 29, 1997 on the sum of \$1207.38. These sums do not include any  
23    amount toward payment of sanctions.  
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1           69.     The agreement that Ms. McGuin pay fees equal to the amount of sanctions  
2 is not in and of itself a breach of the ethical rules if the purpose of the arrangement was  
3 to liquidate the amount of fees due in return for switching from an hourly to a contingent  
4 fee agreement. Both parties voluntarily agreed to this arrangement.

5           70.     In the event that the purpose of the prior restitution amount was to return the  
6 fees, which Ms. McGuin paid to reimburse the Respondent for sanctions, and the  
7 agreement is deemed invalid, Respondent owes Ms. McGuin \$2,877.86 in addition to the  
8 amounts described in Finding of Fact 68.

9           71.     Despite the agreement to convert the hourly fee agreement to a contingent  
10 fee, Respondent sent Ms. McGuin's account to a collection agency after Ms. McGuin  
11 contacted the Bar Association. This action was motivated by Respondent's anger with  
12 Ms. McGuin for having turned him into the Bar Association.

13           72.     Respondent continued to attempt to collect the sums contained on Exhibit  
14 A-7 until 1998. On December 29, 1998 Respondent's office informed the collection  
15 agency that he was no longer interested in pursuing payment of the invoice. Ex. R-53.  
16 Respondent's reason for recalling the matter from collections was his apparent belief that  
17 he would be unsuccessful in collecting the money.  
18

19           73.     Respondent had an obligation to review Exhibit A-7 prior to sending it to  
20 collections to determine whether or not it accurately reflected an amount legally owed to  
21 him.  
22

23           74.     Respondent did not review his invoice. Had he done so, it would have been  
24 clear that the claim that Ms. McGuin owed him money was inaccurate and frivolous.  
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1           **C. Findings Relating to Specific Charges Involving Donna McGuin**

2                           **Count 1 Assertion of a Frivolous Defense**

3           75. In an attempt to collect the restitution as ordered by the Disciplinary Board,  
4 Ms. McGuin filed an action in district court in 2004.

5           76. Respondent defended this action by claiming that he was entitled to an  
6 offset of the amount of restitution against outstanding fees that Ms. McGuin owed him  
7 and by offering Exhibit A-7 to substantiate his claim.

8           77. At the time Respondent made this representation, Respondent knew that Ms.  
9 McGuin did not owe him fees. Respondent's own records establish that Ms. McGuin had  
10 paid Respondent all hourly fees she had incurred. The remaining fees were subject to the  
11 contingent fee agreement. He had previously testified that she did not owe him money  
12 and he had been ordered to pay her restitution.

13           78. Despite this previous testimony and Respondent's knowledge that Ms.  
14 McGuin did not owe him money, Respondent took a position directly contradicting his  
15 prior testimony. During the hearing before District Court Judge Douglas Goetz.  
16 Respondent informed Judge Goetz that Ms. McGuin owed him fees and claimed that he  
17 had documented fees in excess of \$11,000.

18           79. This testimony was false.

19           80. During this disciplinary hearing, Respondent testified that he was unable to  
20 explain the fees and costs documented in Exhibit A-7. Respondent had an obligation to  
21 understand and to explain completely that document as it was issued under his name and  
22 was an attempt to collect fees in his name. This Officer provided additional time for  
23 Respondent to work with his attorney and his staff, if needed, to ensure that Respondent  
24 had every opportunity to explain the invoice. Despite being provided such time,  
25

1 Respondent claimed he could not explain the invoice or why it justified his testimony  
2 before Judge Goelz that Ms. McGuin owed him money.

3 81. Even though Respondent asserts Exhibit A-7 justified his claim of entitlement  
4 to an offset against the restitution previously ordered by the Bar Association, he offered  
5 no credible testimony as to why the charges contained on that invoice justified an offset.

6 82. Exhibit A-7 differs in form from sample invoices offered by the Bar  
7 Association from the same period of time contained in Exhibit A-9. The sample invoices  
8 reflect that Respondent's office provided clients with monthly, detailed accountings  
9 typical of those maintained by other legal offices. These statements contained data  
10 regarding prior transactions, balances being carried forward and clear statements of  
11 outstanding charges. The invoice sent to Ms. McGuin contains no such documentation  
12 even though it covers eight years of attorney/client financial transactions.

13 83. In the district court proceeding, Respondent intentionally omitted the  
14 material fact that he had previously testified under oath that Ms. McGuin did not owe him  
15 money. The district court judge was not aware of the substance of Respondent's previous  
16 testimony and that Respondent and Ms. McGuin had had a contingent fee agreement.

17 84. Respondent's testimony during the district court proceeding was  
18 unequivocal that there had been no contingent fee agreement between Respondent and  
19 Ms. McGuin.

20 85. Respondent's failure to reveal the material fact that he and Ms. McGuin had  
21 previously entered into a contingent fee agreement caused the district court judge to  
22 conduct research that would not have been needed had this fact been revealed during the  
23 hearing.

24 86. Had Respondent revealed that he and Ms. McGuin had a contingent fee  
25 agreement, the judge would have summarily disposed of the claimed right to offset.



1           95.     Respondent testified that “no attorney in his right mind would ever take it  
2 on a contingent fee basis and that it had “never been true” that he had agreed to take the  
3 case on a contingent fee basis.<sup>5</sup>

4           96.     Respondent testified that “it was always our understanding that I was  
5 charging on an hourly basis and that we sent her (Ms. McGuin) many, many statements  
6 and she never contested those statements.”

7           97.     Respondent intentionally submitted this false testimony intending it to  
8 influence the district court and the outcome of Ms. McGuin’s claim against him.

9           98.     Respondent’s manner of litigating this issue was abusive. At one point in  
10 the proceedings, Ms. McGuin informed the district court that Respondent had not mailed  
11 statements to her. Respondent then stated: “Ms. McGuin, you are a liar.” Judge Goelz  
12 imposed a \$100.00 sanction as a result of this action. It is not clear whether or not  
13 Respondent has paid this sanction. According to Judge Goelz, at the time of the district  
14 court proceeding, Ms. McGuin appeared frail.

15           99.     Respondent was not able to produce the “many, many” statements referred  
16 to in his testimony before the district court. In fact, the only statement that has ever been  
17 produced appears to be Exhibit A-7, which was also used in the prior hearing.

18           100.    During this disciplinary hearing, Respondent testified that his firm did not  
19 send statements to Ms. McGuin because she would not pay them and would “cry” when  
20 she received them.

21           101.    Respondent’s statements to Judge Goelz intentionally misled the tribunal  
22 regarding the agreement between the parties.

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24  
25           <sup>5</sup>     The tape of the District Court proceedings was played and transcribed as part of the present  
proceedings. See TR 93-122.

1           102. Respondent's false statements were motivated by the desire to avoid his  
2 financial obligation to Ms. McGuin and to retaliate against her for her complaint to the  
3 Bar Association.  
4

5                           **Count 3 Failure to Comply With Restitution Order**

6           103. Respondent was obligated to pay restitution and interest to Ms. McGuin on  
7 or before September 19, 2002.

8           104. Respondent was fully informed of his obligation to make this payment and  
9 the date by which payment was to be made.

10          105. Respondent's own records document the fact that Ms. McGuin had paid him  
11 amounts in excess of the amount she was required to pay.

12          106. Respondent intentionally did not pay restitution until after he was ordered to  
13 do so by a district court judge when Ms. McGuin forced the issue by bringing suit.

14          107. Respondent resisted the obligation to pay Ms. McGuin in bad faith from  
15 September 19, 2002 until June 8, 2004.

16          108. As a result of his failure to pay the restitution and interest, Ms. McGuin  
17 filed a second Bar complaint against the Respondent.

18          109. On June 8, 2004, Bar Counsel informed Respondent and Ms. McGuin that  
19 the Bar Association was not going to act upon the complaint until after the litigation was  
20 completed.

21          110. By responding to the grievance in this matter, the Bar Association confused  
22 the issue of whether or not restitution had to be paid under the prior order. Respondent  
23 would not have been confused, however, had he complied with the restitution order in a  
24 timely fashion.  
25

1 111. Respondent asserts that the Bar Association could have obtained payment if  
2 it had reduced the matter to judgment. Respondent consistently exhibits a cavalier and  
3 hostile attitude regarding the Bar Association and his obligation to comply with  
4 disciplinary orders.

5  
6 **Count 4: False Statements to Disciplinary Board in First Proceeding.**

7 112. The testimony and exhibits offered before the Hearing Officer in September  
8 2000 and before the Disciplinary Board on April 13, 2001 were truthful. 113.

9 Respondent's testimony in the present proceeding relating to these same issues  
10 contradicts his testimony in the prior proceedings. Ms. McGuin did not owe Respondent  
11 money following the termination of their attorney/client relationship.

12 114. Respondent intentionally provided false testimony before the Hearing  
13 Officer in the present proceeding to avoid his obligations under the prior restitution order  
14 and to his former client. Respondent's testimony changed depending on what result he  
15 intended to achieve, without regard to the actual facts of the case.

16  
17 **D. Findings Regarding Harm**

18 115. After learning that Ms. McGuin had brought her concerns to the attention of  
19 the Bar Association, Respondent sent the invoice, which falsely stated that Ms. McGuin  
20 owed him additional funds to a collection agency.

21 116. Respondent testified that his motivation for attempting to claim the  
22 additional fees was that he viewed Ms. McGuin's actions in going to the Bar Association  
23 as a breach of their contingent fee agreement. Respondent claimed that as a result of Ms.  
24 McGuin's actions, including her complaints to the Bar Association, he was entitled to an  
25 hourly fee.

1 117. Respondent's actions were in retaliation for Ms. McGuin's exercise of her  
2 right to inquire as to whether or not an attorney has complied with his ethical obligations.

3 118. While Respondent did eventually recall the case from collections, the  
4 documents admitted at this hearing establish that this was done more than a year after the  
5 original referral to collections and solely because the Respondent did not believe further  
6 collection efforts would be successful.

7 119. Ms. McGuin, an elderly client with Parkinson's disease, is particularly  
8 vulnerable. To a lesser extent, Ms. McGuin was also vulnerable during 2004 when the  
9 district court proceeding occurred.

10 120. Ms. McGuin was seriously injured by Respondent's abusive litigation  
11 conduct in that she was denied access to restitution money that Respondent owed her.

12 120. Ms. McGuin was seriously injured by Respondent's conduct. She was  
13 repeatedly subjected to the stress of litigation with her former attorney for issues that  
14 should have been resolved conclusively following the Board's final orders in the prior  
15 disciplinary hearing. Respondent's manner in questioning and responding to Ms. McGuin  
16 was demeaning, rude and unprofessional.

17 121. Ms. McGuin was seriously injured by Respondent's manner of asserting his  
18 rights, including the allegations of dishonesty and theft made against her during these  
19 multiple proceedings.

20 122. The public and the legal system were seriously injured by Respondent  
21 repeatedly flaunting the disciplinary process and his refusal to fulfill his obligations under  
22 the ethical rules.  
23  
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1 123. Respondent's assertion of a frivolous defense in the district court injured the  
2 legal system by consuming resources that are better utilized for meritorious disputes. His  
3 claim of a right of offset involved Judge Goelz in research that would not have been  
4 necessary had Respondent been truthful regarding the nature of the prior proceedings, his  
5 prior testimony and the contingent fee agreement between he and Ms. McGuin.  
6

7 **E. General Findings Regarding Roxie Moreland Matter.**  
8

9 124. Respondent entered into an attorney client relationship with Roxie Moreland  
10 on August 16, 2004.

11 125. Respondent's normal course of business was to take notes during the initial  
12 client interview.

13 126. No notes were produced which document the initial interview between  
14 Roxie Moreland and Respondent.

15 127. Ms. Moreland brought a contractor, Gary Randall, who had pertinent  
16 information regarding Ms. Moreland's claim with her to this initial interview.

17 128. Mr. Randall corroborated Ms. Moreland's testimony that Respondent was  
18 hired to bring a bad faith claim against Farmer's Insurance and to take action regarding a  
19 lien that had been filed against Ms. Moreland's property.

20 129 Respondent's testimony contradicted that of Ms. Moreland and the  
21 independent witness, Mr. Randall, regarding the purpose of the representation and the  
22 ability to provide services in a timely fashion described below. Respondent testified that  
23 he was initially hired only to bring a claim against the contractor. Respondent's testimony  
24 was not credible.  
25

1           130. Respondent was aware of the need to act promptly. Ms. Moreland informed  
2 him of her need to have things done rapidly. Mr. Randall's testimony corroborated that of  
3 Ms. Moreland. He testified that he discussed the need for prompt remediation of the toxic  
4 mold problem in Ms. Moreland's house during the initial interview with Respondent. In  
5 addition, the statute of limitations for Ms. Moreland's claim against the insurance  
6 company was set to expire at the end of 2004.

7           131. During the course of the initial interview, Respondent volunteered that he  
8 would be available to handle the claim in a timely fashion. He indicated that he would  
9 have the lien taken care of in a week and would file the lawsuits within two weeks.

10           132. Respondent testified that he could not bring the lawsuit earlier because he  
11 needed documents relating to Ms. Moreland's damages. This testimony is not credible.  
12 Ms. Moreland provided Respondent with documents and information sufficient to  
13 commence the litigation against Farmers and against the contractor during the initial  
14 interview.

15           133. Despite his claim that he needed additional information in order to start the  
16 lawsuits, Respondent took no action to obtain further information regarding damages until  
17 several months after Ms. Moreland hired him. Unlike the subsequent attorney, Mr.  
18 Norman, Respondent did not visit the subject home or send an investigator or an expert  
19 there to document the damage.

20           134. Respondent prepared and had Ms. Moreland sign a retainer agreement that  
21 purportedly documents the agreement between the parties. Exhibit A-12. Paragraphs one,  
22 two, three, five, six and seven of the agreement describe an hourly fee agreement.  
23 Paragraph ten and eleven contain references to a two thousand dollar nonrefundable  
24 retainer and a contingent fee agreement. The retainer agreement is unclear as to the  
25 obligations of the parties. At least one of the Respondent's experts confirmed that the

1 agreement was internally inconsistent and would have to be construed against the  
2 Respondent.

3 135. Ms. Moreland has difficulty reading. She testified that she simply signed  
4 where Respondent instructed her to sign and provided Respondent with the \$2,000 he  
5 demanded before he would take the case. Ms. Moreland's testimony was credible.  
6 During the hearing her demeanor, her response to questions and her ability to follow the  
7 proceedings indicated that she had impaired abilities.

8 136. Paragraph six of the agreement provided that the client would receive  
9 monthly or other periodic billings from the Respondent. Respondent did not provide  
10 periodic statements to the client. The only invoice or accounting prepared for this client is  
11 that which Respondent sent on December 8, 2004 following Ms. Moreland's termination  
12 of the attorney/client relationship.

13 137. Respondent's telephone message records document that Ms. Moreland  
14 contacted Respondent on September 10, 14 and 27, 2004. The first two messages  
15 establish that Ms. Moreland expressed concern regarding whether Respondent had made  
16 efforts to remove the lien. These messages contradict Respondent's testimony that he was  
17 not hired to remove the lien.

18 138. The evidence established that Ms. Moreland informed Respondent no later  
19 than September 27, 2004<sup>6</sup> that she wanted her file returned and that she felt he was  
20 "misrepresenting her."  
21

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22 <sup>6</sup> Ms. Moreland testified that according to her notes, she requested the file back on September 13,  
23 2004. As there are irregularities in Respondent's time records that suggest fabrication, it is possible that  
24 other records, including the telephone messages were also fabricated, that the one for September 13, 2004  
25 does not meet the clear preponderance test, however. It is therefore assumed that the first clear decision to  
terminate Respondent occurred on September 27, 2004. Respondent's own records document that it  
occurred no later than that date.

1           139. Respondent did not honor this request to terminate the attorney/client  
2 relationship. Instead, he assured Ms. Moreland that he would complete the promised  
3 services within a week.

4           140. Respondent did not perform work on Ms. Moreland's case in a timely  
5 fashion given the need for immediate action and his promises to the client. His time  
6 records document that he did not review the file until approximately one month had  
7 elapsed and Ms. Moreland had called to inquire about the status of her case. The first  
8 time entry documenting services by Respondent is dated four days after Ms. Moreland's  
9 September 10, 2004 telephone message.

10           141. Between the date he was retained and the date Ms. Moreland first requested  
11 her file be returned, Respondent did not contact any parties to ascertain their positions,  
12 take any steps to begin the lawsuit or investigate how to lift the lien on Ms. Moreland's  
13 house.

14           142. Respondent did not work on Ms. Moreland's file again until October 25,  
15 2004. Respondent's time records document he researched the issues regarding the house  
16 lien on this date, more than two months after Ms. Moreland hired him. These records  
17 contradict Respondent's testimony that he did not act on the lien matter because he was  
18 waiting, as a litigation tactic, to see if the lien was perfected within the eight-month  
19 window.

20           143. Respondent's testimony that he waited to act on the lien dispute as a  
21 litigation tactic is not credible. The timing of his research on the issue suggests he did not  
22 analyze the issues until much later. In addition, the lien was filed by an attorney on behalf  
23 of the contractor, a fact Respondent knew, or should have known from the documents.  
24 The presence of an attorney representing the contractor makes it substantially unlikely that  
25 the lien would not be perfected in a timely fashion.

1           144. Ms. Moreland contacted Respondent in late November setting a deadline for  
2 completion of the work. Respondent did not complete the work within the deadline.

3           145. The statute of limitations for filing and service of the complaint against the  
4 insurer was set to run less than thirty days from the date Ms. Moreland set for  
5 Respondent to act.

6           146. Ms. Moreland's decision to terminate Respondent's services on December  
7 6, 2004 and request a refund of \$1,600 was reasonable. The statute of limitations was  
8 about to expire and Respondent had consistently failed to fulfill his promises regarding  
9 when services would be provided.

10          147. Respondent refused to refund fees. Instead, Respondent produced an  
11 accounting, which allegedly documented provision of services valued in excess of the  
12 \$2,000 Ms. Moreland had provided to Respondent.

13          148. The accounting, Exhibit A-16, is based on incomplete data, conflicts with  
14 documented phone messages between the parties and appears to have been fabricated for  
15 the purposes of justifying retention of the retainer.

16          149. Respondent's file, as received by Mr. Norman, contained no research, no  
17 correspondence with parties, and no work product. While Respondent asserts he did work  
18 on this file, there is no evidence other than his testimony that he did anything other than  
19 make one call to Mr. Randall in late October and make some rough notes regarding the  
20 case. Respondent's testimony regarding the services he allegedly provided to Ms.  
21 Moreland is not credible.

22          150. Respondent provided no services of value to Ms. Moreland.  
23  
24  
25

1 **Findings Pertaining to Count 5**

2 151. Respondent was retained to provide immediate assistance regarding the lien  
3 filed on Ms. Moreland's house and to file two actions.

4 152. Respondent did not review the file immediately and did so only upon  
5 receiving complaints from Ms. Moreland.

6 153. Respondent did not research the lien placed on Ms. Moreland's house in a  
7 timely fashion. He took no actions to remove the lien. His testimony that his failure to act  
8 on the lien was a tactical decision is not credible. Expert testimony elicited on this topic  
9 did not include full disclosure of the facts relevant to the issue and was thus of little value  
10 in resolving the issue.

11 154. Respondent did not investigate the dispute between Ms. Moreland and her  
12 insurer in a timely fashion. He did not draft and file a complaint in a timely fashion given  
13 Ms. Moreland's need to have the issues resolved quickly. While Respondent's conduct  
14 did not result in loss of the cause of action because of statute of limitations issues, this was  
15 because Ms. Moreland took preemptive action and changed attorneys before the deadline.

16 155. Respondent's failure to research applicable lien statutes and/or take action  
17 regarding the lien, constitutes a failure to diligently complete the agreed upon services.

18 156. Under the facts of this case where Ms. Moreland specifically requested and  
19 required immediate legal assistance, Respondent's delay in reviewing Ms. Moreland's  
20 file, delay in researching the lien issues and delay in drafting the complaint constitutes a  
21 failure to provide diligent representation.

22  
23 **Findings Regarding Count 6**

1 157. Respondent's fee agreement with Ms. Moreland is ambiguous, contains  
2 contradictory terms and is unclear as to the client's responsibilities and the terms of the  
3 agreement.

4 158. Respondent is aware of his obligation to explain clearly the terms of fee  
5 agreements to clients, as this issue has been the subject of prior discipline.

6 159. The fee agreement with Ms. Moreland does not comply with the  
7 Respondent's obligation to inform his client fully of her obligations.

8  
9 **Findings Regarding Count 7**

10 160. Respondent's fee agreement, including the provision for the non-refundable  
11 retainer is void. The agreement does not comply with the requirements for fee agreements,  
12 as its terms are internally inconsistent.

13 161. Respondent breached his obligations under the agreement by not providing  
14 the services requested in a timely manner.

15 162. Respondent had an obligation to withdraw from the case and return the  
16 retainer when Ms. Moreland first demanded her file. Instead of returning the file,  
17 Respondent falsely informed Ms. Moreland that he was working on her case. According  
18 to Respondent's own records, he had not done needed research or performed any work of  
19 substance on the file.

20 163. The irregularity of the billing documents, combined with Respondent's  
21 failure to provide representation in a timely fashion, precludes a finding that Respondent  
22 earned the retainer. Respondent is entitled to only those fees associated with the initial  
23 one-hour consultation or \$100.00.

1           **F.     Harm Relating to Moreland Matter**

2           164.   Roxie Moreland is disabled and has limited comprehension of the  
3 complexity of her legal situation.

4           165.   Respondent knowingly engaged in this conduct and was motivated by desire  
5 for financial gain.

6           166.   Respondent's conduct regarding Ms. Moreland caused her serious injury by  
7 preventing her access to needed funds and delaying resolution of her case.

8           167    Ms. Moreland was seriously injured by the delay associated with starting  
9 work on her case after being assured that such work would commence immediately. The  
10 delay extended the length of time Ms. Moreland was required to live in unhealthy  
11 conditions caused by the toxic mold.

12          168.   Ms. Moreland was seriously injured by having to seek alternative  
13 representation in order to commence her legal action in a timely fashion. Ms. Moreland's  
14 injury was mitigated by the prompt, effective action of Mr. Norman who ultimately  
15 resolved the matter in a manner beneficial to Ms. Moreland.

16          169.   The public and legal system were damaged by Respondent's failure to  
17 correct his callous disregard of his obligation to communicate clearly with his clients as to  
18 fee arrangements, to follow through with his promises to perform work in a timely  
19 fashion, and his failure to correct conduct for which he had previously been disciplined.

20  
21           **G.     Pattern of Misconduct**

22           The Bar Association argued that the Respondent engaged in a pattern of misconduct  
23 that justifies disbarment. Respondent argued that the pattern of misconduct allegation was  
24 not pled in the Formal Complaint and should not be considered. Under ABA Standard  
25

1 9.22(c) pattern of misconduct is an appropriate factor to be considered as an aggravating  
2 factor.

3 170. Respondent's prior disciplinary record includes multiple incidents of failing  
4 to communicate fee agreements with clients and the charging of excess fees.

5 171. Respondent's dispute with Ms. Moreland appears to be essentially the same  
6 conduct for which he was suspended in 1989.

7 172. Respondent's conduct regarding Ms. McGuin and Ms. Moreland is  
8 consistent with the Respondent's prior pattern of failing to comply with an attorney's  
9 obligation to explain fully his charges for services and to retain only those fees that are  
10 reasonable.

11 173. Evidence exists that Respondent has a pattern of conduct prejudicial to the  
12 administration of justice.

13 174. In representing Ms. McGuin, Respondent was sanctioned at least twice.

14 175. In litigating his frivolous defense in district court, Respondent drew a  
15 sanction for calling Ms. McGuin a liar during the proceeding.

16 176. The Bar Association submitted a 1999 case, which resulted in dismissal of a  
17 client's case as a sanction for Respondent's actions in court. Exhibits A-48; A-49.

18 177. Respondent's prior disciplinary records indicate that he has drawn sanctions  
19 before courts in other instances. The number of sanctions imposed by different judicial  
20 officers on Respondent clearly exceeds that which could be anticipated during the course  
21 of the legal career of an attorney whose courtroom conduct was consistent with his ethical  
22 and legal obligations.

23 178. In the present hearing, Respondent engaged in conduct disruptive of the  
24 legal process, including proclaiming that certain testimony was "bullshit," advancing  
25 frivolous arguments and presenting false testimony and exhibits.

1 179. Respondent's conduct in handling client matters, failing to comply with  
2 court orders, disrupting court proceedings, failing to comply with a disciplinary order  
3 which required restitution to be paid in a timely fashion, presenting a frivolous defense  
4 and testifying falsely constitutes a pattern of misconduct which evidences disrespect for  
5 the legal system, indifference to his role as an officer of the court, and a failure to  
6 comprehend the impact of his actions on vulnerable clients.

7 180. Respondent has multiple incidents of prior discipline, including a 1989 45-  
8 day suspension arising out of conduct regarding fee disputes substantially similar to  
9 those that he experienced with Ms. Moreland in 2004.

10 181. Respondent's total disciplinary record includes one 45-day suspension, one  
11 reprimand, three admonitions and two-year probation. These disciplinary actions were  
12 the result of misconduct with 14 different clients.

13 182. Respondent's pattern of conduct has seriously injured his clients and the  
14 legal system. Respondent is directly responsible for dismissal of two cases because of  
15 his misconduct.<sup>7</sup>

16 183. Respondent's age is not a contributing factor to his conduct. Respondent's  
17 conduct at the disciplinary hearing was consistent with the description of his conduct  
18 dating back more than twenty years.

19 184. At this disciplinary hearing, Respondent's manner and demeanor indicated  
20 that he was fully competent, aware of the pertinent legal and factual issues and skilled at  
21 presenting and responding to arguments. He did not exhibit memory problems except at  
22 times when the claim of poor memory worked to his advantage.

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23  
24 <sup>7</sup> Only one of these cases resulted in a bar complaint. However, the Bar Association submitted  
25 documentation establishing that Respondent's conduct in the case of *Visser v. Coastal Community Church*  
resulted in dismissal of the client's case. Ex. A-49. The dismissal was affirmed by Division Two in an  
unpublished decision. Ex. A-50.

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V. CONCLUSIONS OF LAW

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

**Count 1.** By asserting the right to an offset for fees based on Exhibit A-7 and by claiming that Ms. McGuin owed him money during the course Ms. McGuin's litigation against him, Respondent violated RPC 3.1.

**Count 2.** Respondent violated RPC 3.3(a) and RPC 8.4(c) by testifying falsely regarding his fee agreement with Ms. McGuin and submitting Exhibit A-7 to the district court.

**Count 3.** Respondent refused to pay restitution as ordered by the Disciplinary Board's order and thereby violated RPC 3.4 and RPC 8.4(1).

**Count 4.** Respondent did not provide false testimony during the September 11, 2000 disciplinary hearing or the oral argument before the Disciplinary Board. A clear preponderance of the evidence supports the proposition that Respondent's testimony that he had a contingent fee agreement with Ms. McGuin was true. This charge is dismissed.

Respondent's testimony before this tribunal, however, was false. The falsity of Respondent's testimony during this proceeding is an aggravating factor discussed below.

**Count 5.** Respondent failed to provide diligent representation in handling Ms. Moreland's claims. The circumstances of her case required immediate action and Respondent had agreed to those terms. His conduct violated RPC 1.3.

**Count 6.** Respondent failed to explain, adequately and accurately, his fee agreement and his ability to timely complete the requested services. Respondent's fee agreement is void as it violates RPC 1.4(b) and RPC 1.5(b) and because Respondent breached RPC 1.3 as established in Court 5.

1           **Count 7.** Respondent failed to withdraw from representation of Ms. Moreland in a  
2 timely fashion to allow an attorney who had the ability to commit time to the case and  
3 handle the matter. He failed to return unearned fees in violation of RPC 1.5(a) and RPC  
4 1.15(d).

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