No. # 200,536-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 MAR 21 PM 4:37

IN RE
BRADLEY G. BEHRMAN
(WSBA No. 13420),
an Attorney at Law (WSBA No. 13420)

APPENDIX
TO
OPENING BRIEF OF APPELLANT BEHRMAN
March 21, 2008

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 MAR 25 AM 8:18
BY RONALD R. CARPENTER
CLERK

Submitted by
Bradley G. Behrman (WSBA No. 13420),
Appellant (*pro se*)
232 Queen Anne Ave. N. #106
Seattle, WA 98109
Telephone 206-284-0490

TABLE OF CONTENTS OF APPENDIX

Exhibits

Exhibit A: March 9, 2008 Westlaw printout of list of all Washington Supreme Court cases found by Westlaw using "pattern of neglect" as the search term (5 pages)

Copies of Unpublished Disciplinary Cases and Slip-Opinion Cases Cited in the Brief

1. *In re* ***Blanchard,*** 158 Wn.2d 317 (2006) (slip opinion, Docket Number: 200,316-8, issued October 12, 2006) (14 pages not including this cover page)

2. *In re* ***Burtch***, 112 Wn.2d 19 (1989) (7 pages not including this cover page)

3. *In re* ***Esau,*** WSBA Review No. 00#00146 (reported in *Wash. St. Bar News,* Dec. 2000) (7 pages not including this cover page):

(a) Stipulation to Reprimand (dated January 10, 2000; 6 pages, including 2 versions of the signature page, the earliest of which was dated December 2, 1999)

(b) Order on Stipulation to Reprimand (mistitled "Order on Stipulation to Two Admonitions) (dated January 12, 2000; 1 page)

4. *In re* ***Funk*** (Bar No. 14349; no review number found) (14 pages not including this cover page):

(a) Order of Suspension (dated December 30, 1994; 1 page)

(b) Disciplinary Board Order on Hearing Officer's Recommendation (dated September 16, 1994; 2 pages)

(c) Concurring Opinion of Norman McAdory (dated October 6, 1994; 1 page)

(d) Dissenting Opinion of Leonard M. Cockrill (dated October 20, 1994; 1 page)

(e) Dissenting Opinions of Theodore Spearman and Victoria L. Vreeland (dated November 14, 1994; 1 page)

(f) Dissenting Opinion of Kathryn Culpepper (dated November 16, 1994; 1 page)

(g) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated August 2, 1994; 7 pages)

5. *In re* ***George***, WSBA Review No. 00#00039 (reported in *Wash. St. Bar News,* Dec. 2001) (18 pages not including this cover page):

(a) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated October 16, 2000; 5 pages)

(b) Stipulation to Facts and Misconduct (dated September 6, 2000; 11 pages including 5-page exhibit)

(c) Letter from WSBA President regarding censure (dated December 4, 2000; 1 page)

(d) Notice of Disciplinary Action (dated December 13, 2000; 1 page)

6. *In re* ***Guthrie***, WSBA Review No. 02#00036 (reported in *Wash. St. Bar News,* Dec. 2003) (12 pages not including this cover page):

(a) Stipulation to Discipline (dated March 21, 2002; 7 pages)

(b) Order on Stipulation to Reprimand (dated May 8, 2002; 2 pages)

(c) Reprimand (dated October 19, 2002; 2 pages)

(d) Notice of Disciplinary Action (dated December 12, 2002; 1 page)

7. *In re* ***Jones***, WSBA Review No. 94#00207 (reported in *Wash. St. Bar News,* June 1999) (10 pages not including this cover page):

(a) Stipulation to Reprimand (dated January 29, 1999; 7 pages)

(b) Order on Stipulation to Reprimand (dated March 19, 1999; 1 page)

(c) Reprimand (dated September 9, 1999; 2 pages)

8. *In re* ***Kram,*** **WSBA** Review No. 02#00061 (reported in *Wash. St. Bar News,* Feb. 2003) (5 pages not including this cover page):

(a) Admonition (dated May 31, 2002; 2 pages)

(b) Finding and Order of Review Committee IV (dated May 31, 2002, 1 page)

(c) Notice (dated May 31, 2002; 1 page)

(d) Notice of Disciplinary Action (dated July 23, 2002; 1 page)

9. *In re* ***Lux***, WSBA Review No. 02#00066 (reported in *Wash. St. Bar News,* July 2003) (15 pages not including this cover page):

(a) Stipulation to Suspension (dated August 6, 2002; 12 pages)

(b) Order Approving Stipulation to 60-Day Suspension (dated October 2, 2002; 1 page)

(c) Washington Supreme Court Order Approving Stipulation Day Suspension (dated December 17, 2002; 1 page)

(d) Notice of Disciplinary Action (dated December 24, 2002; 1 page)

10. *In re* ***Malone,*** WSBA Review No. 02#00004 (reported in *Wash. St. Bar News,* Dec. 2002) (4 pages not including this cover page):

(a) Admonition (dated January 25, 2002; 2 pages)

(b) Finding and Order of Review Committee IV (dated January 25, 2002, 1 page)

(c) Notice of Disciplinary Action (dated March 12, 2002; 1 page)

11. *In re* ***McLees,*** WSBA Public No. 00#00066 (reported in *Wash. St. Bar News,* July 2001) (10 pages not including this cover page):

(a) Stipulation to Reprimand (dated October 5, 2000; 6 pages)

(b) Order on Stipulation to Reprimand (dated November 17, 2000; 1 pages)

(c) Reprimand (dated February 9, 2001; 3 pages)

12. *In re* ***Means,*** WSBA Review No. 01#00087 (reported in *Wash. St. Bar News,* Oct. 2002) (4 pages not including this cover page):

(a) Admonition (dated August 10, 2001; 2 pages)

(b) Finding and Order of Review Committee II (dated August 10, 2001, 1 page)

(c) Notice of Disciplinary Action (dated March 11, 2002; 1 page)

13. *In re* ***Poole,*** WSBA Review No. 02#00077 (reported in *Wash. St. Bar News,* July 2004) (26 pages not including this cover page):

(a) Hearing Officer's Modified Findings of Fact, Conclusions of Law, and Recommendation (dated August 12, 2003; 23 pages including certificate of service)

(b) Notice of Disciplinary Action (dated November 4, 2003; 1 page)

(c) Reprimand (dated February 27, 2004; 2 pages)

14. *In re* ***Salazar,*** WSBA Review No. 02#00022 (decided by Disciplinary Board Aug. 24, 2004; reported in *Wash. St. Bar News,* July 2005) (26 pages not including this cover page):

(a) Disciplinary Board Order Modifying Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation (dated August 24, 2004; 4 pages)

(b) Findings of Fact, Conclusions of Law and the Hearing Officer's Recommendation (dated March 23, 2003; 19 pages)

(c) Washington Supreme Court Order (30-Day Suspension) (dated February 8, 2005; 1 page)

(d) Washington Supreme Court Order denying motion for extension of effective date of suspension (dated February 11, 2005; 1 page)

(e) Notice of Suspension (dated February 23, 2005; 1 page)

15. *In re* ***Seago,*** WSBA Review No. 00#00154 (reported in *Wash. St. Bar News,* Feb. 2001) (11 pages not including this cover page):

(a) Stipulation to Two Censures (dated October 15, 1999; 9 pages)

(b) Order on Stipulation to Discipline (dated January 12, 2000; 1 page)

(c) Letter from WSBA President regarding censure (undated; 1 page)

16. *In re* ***Seibly,*** WSBA Review No. 02#00071 (reported in *Wash. St. Bar News,* March 2003) (6 pages not including this cover page):

(a) Admonition (dated June 21, 2002; 3 pages including certificate of service)

(b) Finding and Order of Review Committee I (dated June 21, 2002; 1 page)

(c) Notice of Admonition (dated June 21, 2002; 1 page)

(d) Notice of Disciplinary Action (dated August 6, 2002; 1 page)

17. *In re* ***Stomsvik,*** WSBA Review/Public No. 05#00049 (reported in *Wash. St. Bar News,* March 2006) (3 pages not including this cover page): Admonition (dated May 6, 2005; 3 pages)

18. *In re* ***Unger,*** WSBA Review No. 03#00007 (reported in *Wash. St. Bar News,* Oct. 2004) (17 pages not including this cover page):

(a) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated February 23, 2004; 14 pages including certificate of service)

(b) Admonition (dated April 6, 2004; 2 pages)

(c) Notice of Disciplinary Action (dated April 29, 2004; 1 page)

QUERY - "PATTERN OF NEGLECT" DATABASES(S) - WA-CS

1. → State v. Cote, Not Reported in P.3d, 135 Wash.App. 1047, 2006 WL 3307586, , Wash.App. Div. 2, November 14, 2006(No. 33173-0-II.)

   ...the first day of trial, defense counsel stated that he had already subpoenaed CPS workers to testify about the "escalating **pattern**" of **neglect** of BLM by McGinnis. Br. of Appellant at 8. He wanted to establish that McGinnis and BLM had motives to...

2. In re Disciplinary Proceeding Against Blanchard, 158 Wash.2d 317, 144 P.3d 286, 2006 WL 2938855, , Wash., October 12, 2006(No. 200,316-8.)

   ...perform services for a client and causes injury or potential injury to a client; or a lawyer engages in a **pattern** of **neglect** and causes injury or potential injury to the client. ABA Standards std. 4.42, at 33. Mr. Blanchard failed to ...

   ...Wash.2d 19, 26-28, 770 P.2d 174 (1989) , where we imposed a 45-day suspension based on a **pattern** of **neglect**, failure to communicate with clients, failure to properly handle fee arrangements, lack of diligence, violation of trust account requirements, and...

3. In re Disciplinary Proceeding Against Longacre, 155 Wash.2d 723, 122 P.3d 710, 2005 WL 3028233, , Wash., November 10, 2005(Nos. 200,116-5, 200,125-4.)

   ...request for additional proceedings. The Board determined that, contrary to the hearing officer's conclusion, the WSBA did not establish a **pattern** of **neglect** with respect to Longacre's failure to advise his client of the plea offers and potential sentences. Therefore, the presumptive sanction ...

   ...The WSBA filed a petition for discretionary review. The WSBA assigned error to the Board's determination that there was no **pattern** of **neglect** and that Longacre's state of mind was negligent rather than knowing; therefore, the presumptive sanction for count II was a ...

   ...of diligence was a reprimand rather than suspension, the Board rejected the hearing officer's determination that Longacre's conduct constituted a **pattern** of **neglect** and the WSBA's argument that Longacre acted knowingly rather than negligently. See ABA Standards std. 4.42. After concluding that...

4. In re Disciplinary Proceeding Against Lopez, 153 Wash.2d 570, 106 P.3d 221, 2005 WL 322364, , Wash., February 10, 2005(No. 17502-1.)

   ...services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a **pattern** of **neglect** and causes injury or potential injury to a client. 7.0 Violations of Duties Owed as a Profession 7.3 ...

   ...services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a **pattern** of **neglect** and causes injury or potential injury to a client. 4.43 Reprimand is generally appropriate when a lawyer is negligent...

5. In re Disciplinary Proceedings Against Cohen, 150 Wash.2d 744, 82 P.3d 224, 2004 WL 63504, ,

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Wash., January 15, 2004(No. 00373-4.)

...WSBA established that Cohen knowingly failed to perform services for Erickson which resulted in injury and/or engaged in a **pattern** of **neglect**, the hearing officer determined that suspension served as the presumptive sanction for counts I and II pursuant to Standards std ...

...services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a **pattern** of **neglect** and causes injury or potential injury to a client. FN7. STANDARDS std. 7.2 states: Suspension is generally appropriate when...

6. In re Disciplinary Proceeding Against Kagele, 149 Wash.2d 793, 72 P.3d 1067, 2003 WL 21664214, , Wash., July 17, 2003(No. 04851-7.)

...to abide by one client's decision to request jury trial in action in which attorney was representing client, represented a **pattern** of **neglect**, and thus, suspension rather than reprimand was the presumptive sanction. RPC 1.2 1.3 1.4 [12] 45 Attorney ...

...Kagele's multiple incidents of lack of diligence, failure to communicate, and failure to abide by a client's wishes established a **pattern** of **neglect** causing injury or potential injury to the clients but not serious or potentially serious injury. For these violations, the hearing officer determined the presumptive sanction to be suspension under ABA Standards std. 4.42(b) (**pattern** of **neglect** causing injury or potential injury). As to Kagele's violations of charging an unreasonable fee, RPC 1.5 , and failing to ...

...to clients upon his termination violates RPC 1.5 and 1.15(d) and (2) whether Kagele engaged in a **pattern** of **neglect** of clients' matters, negligently drafted the Shutes' complaint, and failed to expedite litigation in the Sewell, Turner, and Hite matters...

7. In re Disciplinary Proceeding Against Anschell, 149 Wash.2d 484, 69 P.3d 844, 2003 WL 21230884, , Wash., May 29, 2003(No. 9756.)

...for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a **pattern** of **neglect** with respect to client matters and causes serious or potentially serious injury to a client. The hearing officer obviously concluded ...

...knowledge when he failed to perform services for Mr. Barakat, std. 4.41(b), and negligence in engaging in a **pattern** of **neglect** with respect to the Barakat matter, std. 4.41(c). Anschell does not directly address the propriety of these determinations ...

...re Disciplinary Proceedings Against Burtch, 112 Wash.2d 19, 770 P.2d 174 (1989) , involved numerous rule violations involving a **pattern** of **neglect**, failure to communicate with clients, failure to properly handle fee arrangements, lack of diligence, violation of trust account agreements, and...

8. In re Juarez, 143 Wash.2d 840, 24 P.3d 1040, 2001 WL 661200, , Wash., June 14, 2001(No. 05686-2.)

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

QUERY - "PATTERN OF NEGLECT" DATABASES(S) - WA-CS

...2) Definite Suspension 45 59 13(3) k. In General. (Formerly 45k58 Attorney's failure diligently to pursue client's criminal appeal constituted **pattern** of **neglect** and caused serious potential injury to his client, including prolongation of client's incarceration and risk of dismissal of client's appeal ...

...7 The lack of diligence exhibited in Count VII caused potential injury to Respondent's client. This was due to a **pattern** of **neglect** exhibited by Respondent's failure to prosecute the client's appeal. ABA Standard 4.42 dictates suspension. The failure of Respondent timely ...

...turn over files of his client to successor counsel of record in the Court of Appeals was part of a **pattern** of **neglect** demonstrating a lack of diligence. This had the potential to cause grave injury to his client. 2.8 The failure...

9. In re Disciplinary Proceeding Against Anschell, 141 Wash.2d 593, 9 P.3d 193, 2000 WL 1290372, , Wash., September 14, 2000(No. 09756-9.)

...clients, the presumptive sanction for his neglect of client matters should have been disbarment, irrespective of the existence of a **pattern** of **neglect**. [18] 45 Attorney and Client 45I The Office of Attorney 45I(C) Discipline 45 37 Grounds for Discipline 45 44 ...

...diligence-disbarment) "does not apply because, even though there are multiple instances of neglect this does not amount to a **pattern** of **neglect**." CP at 104. Five aggravating factors were found to apply: (1) prior disciplinary offense; (2) multiple offenses; (3) bad faith ...

...for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a **pattern** of **neglect** with respect to client matters and causes serious or potentially serious injury to a client. 4.42 Suspension is generally...

10. Matter of Disciplinary Proceedings Against Hankin, 116 Wash.2d 293, 804 P.2d 30, 1991 WL 9055, , Wash., January 31, 1991(C.D. No. 12531.)

...These include Standards 4.12 (dealing improperly with client property); 4.42 (failing to perform services or engaging in a **pattern** of **neglect**); 4.62 (deceiving a client); 6.22 (violating a court order or rule); and 7.2 (violating a duty owed...

11. Matter of McGough, 115 Wash.2d 1, 793 P.2d 430, 1990 WL 88139, , Wash., June 28, 1990(No. 6771.)

...representation, 11 and where an attorney has previously been disciplined for neglect of client matters but persists in a continued **pattern** of **neglect**. Yates, 110 Wash.2d at 453, 755 P.2d 770 Accordingly, our initial assessment in this case is that the ...

...for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a **pattern** of **neglect** with respect to client matters and causes serious or potentially serious injury to a client. Standards, at 10, 32. FN11...

12. Matter of Disciplinary Proceedings Against Burtch, 112 Wash.2d 19, 770 P.2d 174, 1989 WL 9769, , Wash., February 09, 1989(Bar No. 4161.)

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

QUERY - "PATTERN OF NEGLECT" DATABASES(S) - WA-CS

...Attorney at Law. Bar No. 4161. Feb. 9, 1989. In attorney disciplinary proceeding the Supreme Court, Brachtenbach, J., held that **pattern** of **neglect**, failure to communicate with clients, failure to properly handle fee arrangements, lack of diligence, violation of trust account requirement, and ...

...a clear violation of RLD 2.8 We have detailed the factual foundation of Burtch's violations. His conduct shows a **pattern** of **neglect**, failure to communicate, failure to properly handle fee arrangements, lack of diligence, violation of the trust account requirement, and failure...

13. Matter of Disciplinary Proceedings Against Witteman, 108 Wash.2d 281, 737 P.2d 1268, 68 A.L.R.4th 677, , Wash., June 04, 1987(C.D. No. 4305.)

...and (3) the availability of restitution to his clients through malpractice insurance. Where, as here, a lawyer engages in a **pattern** of **neglect** and causes injury or potential injury to a client, either disbarment or suspension may be the appropriate sanction depending on ...

...client for wrongs which should not have happened. Witteman's conduct over a period of 11 years clearly shows a repetitive **pattern** of **neglect** and misrepresentation. He obviously does not learn from his serious mistakes. Enough effort, time, expense and frustration has been spent...

14. In re Clark, 99 Wash.2d 702, 663 P.2d 1339, 37 A.L.R.4th 639, , Wash., June 02, 1983(C.D. No. 7398.)

...those duties upon him, more severe action must be taken to impress upon Mr. Clark the seriousness of his continued **pattern** of **neglect**. We are of the opinion that under the facts and circumstances of this case a significant suspension is warranted. Therefore...

15. Matter of Welfare of Tarango, 23 Wash.App. 126, 595 P.2d 552, , Wash.App. Div. 2, April 18, 1979(No. 2880-II.)

...son's best interests and in concluding that deprivation was necessary; (5) evidence supported the court's conclusion that the petitioners continued **pattern** of **neglect** of her parental responsibilities demonstrated that she was unable to assume the care of the son now or in foreseeable ...

...be a factor in determining whether to enter a deprivation order after the child's natural parent has demonstrated a consistent **pattern** of **neglect** of her responsibilities as a parent. [7] 211 Infants 211VIII Dependent, Neglected, and Delinquent Children 211VIII(B) Subjects and Grounds ...

...and Sufficiency 211 181 k. Parental Unfitness or Incompetence. (Formerly 211k16.8 Evidence supported the trial court's conclusion that mother's continued **pattern** of **neglect** of her parental responsibilities demonstrated that she was unable to assume the care for son who was in care of...

16. Good v. Associated Students of University of Washington, 86 Wash.2d 94, 542 P.2d 762, , Wash., November 20, 1975(No. 43073.)

...any, are of such magnitude as to require mandatorily the stopping of such violations. Thus if

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

QUERY - "PATTERN OF NEGLECT" DATABASES(S) - WA-CS

the violations exhibit a **pattern** of **neglect** to supervise, it might fairly be said that the university is not enforcing its own guidelines and in effect has...

17. In re Price's Welfare, 13 Wash.App. 437, 535 P.2d 475, , Wash.App. Div. 2, May 08, 1975(No. 1615-II.)

...the three children. [6] There is no evidence of parental brutality in this case, nor do we believe the Prices' **pattern** of **neglect** stems from malice. However, they are parents who-from a combination of low intellect, [FN2] stubborn distrust of dedicated public...

© 2008 Thomson/West. No Claim to Orig. U.S. Govt. Works.

1. ***Blanchard***

In re Blanchard, 158 Wn.2d 317 (2006) (slip opinion, Docket Number: 200,316-8, issued October 12, 2006) (14 pages not including this cover page)

In re Disciplinary Proceeding Against Blanchard
Wash.,2006.

Supreme Court of Washington,En Banc.
In re the Matter of the DISCIPLINARY PROCEEDING AGAINST Stephen B. BLANCHARD, Bar No. 12294, an Attorney at Law.
No. 200,316-8.

Argued June 6, 2006.
Decided Oct. 12, 2006.

Background: The Disciplinary Board of the Washington State Bar Association (Board) recommended that attorney's misconduct warranted one-year suspension as sanction. Attorney appealed.

Holdings: The Supreme Court, J.M. Johnson, J., held that:

(1) it could review Board's decision, despite lack of written reasons justifying Board's deviation from hearing officer's recommended sanction of one-month suspension;

(2) Board's procedural deficiency did not violate attorney due process rights; and

(3) six-month suspension was appropriate sanction.

Attorney suspended.

Fairhurst, J., filed dissenting opinion, in which Madsen, Bridge, and Chambers, JJ., joined.

West Headnotes

[1] Attorney and Client 45 ⇐57

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 k. Review. Most Cited Cases
The Supreme Court is the ultimate authority for attorney discipline in the state.

[2] Attorney and Client 45 ⇐57

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 k. Review. Most Cited Cases
On review of an attorney disciplinary proceeding, the Supreme Court accepts unchallenged findings of fact as verities.

[3] Attorney and Client 45 ⇐57

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 k. Review. Most Cited Cases
The Supreme Court reviews the Disciplinary Board of the Washington State Bar Association's conclusions of law in an attorney disciplinary proceeding de novo and requires that they be supported by the findings of fact.

[4] Attorney and Client 45 ⇐57

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k57 k. Review. Most Cited Cases
Because Supreme Court was ultimate authority over attorney disciplinary proceedings, it could review Disciplinary Board of the Washington State Bar Association's recommendation that attorney's misconduct warranted one-year suspension as sanction, notwithstanding Board's failure to provide written reasons justifying its deviation from hearing officer's recommended sanction of one-month suspension. ELC 11.12(e), 12.2.

[5] Attorney and Client 45 ⇐52

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

45k47 Proceedings
45k52 k. Charges and Answers Thereto. Most Cited Cases

Attorney and Client 45 ⇐54

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k47 Proceedings
45k54 k. Trial or Hearing. Most Cited Cases

Constitutional Law 92 ⇐4273(3)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4273 Attorneys
92k4273(3) k. Conduct and Discipline. Most Cited Cases
(Formerly 92k306(5))

Disciplinary Board of the Washington State Bar Association's failure to provide written reasons justifying its upward deviation from hearing officer's recommended sanction of one-month suspension did not violate attorney's due process rights, as attorney was notified of charges against him and received full evidentiary process, and thus received due process at hearing resulting in Board's recommended sanction of one-year suspension. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law 92 ⇐4273(3)

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4273 Attorneys
92k4273(3) k. Conduct and Discipline. Most Cited Cases
(Formerly 92k306(5))

An attorney has a due process right to be notified of clear and specific disciplinary charges and to be afforded an opportunity to anticipate, prepare, and present a defense. U.S.C.A. Const.Amend. 14.

[7] Attorney and Client 45 ⇐59.13(3)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.13 Suspension
45k59.13(2) Definite Suspension
45k59.13(3) k. In General. Most Cited Cases

Attorney and Client 45 ⇐59.13(4)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.13 Suspension
45k59.13(2) Definite Suspension
45k59.13(4) k. Mishandling of Trust Account or Client Funds. Most Cited Cases

Given aggravators of prior disciplinary offenses, multiple offenses, substantial experience in the practice of law, and indifference to making restitution, and mitigators of remorse and absence of dishonest or selfish motive, and applying intercase proportionality, six-month suspension was appropriate sanction for attorney's misconduct in failing to deposit clients' advanced fees into a trust account, failing to maintain and render complete records and accounts, failing to keep clients reasonably informed, failing to refund money, and failing to cooperate with two grievance investigations.

[8] Attorney and Client 45 ⇐59.5(2)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.5 Factors Considered

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

45k59.5(2) k. Standards and Guidelines. Most Cited Cases
The ABA Standards for Imposing Lawyer Sanctions guide the Supreme Court's determination of appropriate sanctions in bar disciplinary cases.

[9] Attorney and Client 45 ⇐59.5(4)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.5 Factors Considered
45k59.5(4) k. Factors in Aggravation. Most Cited Cases

Attorney and Client 45 ⇐59.5(5)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.5 Factors Considered
45k59.5(5) k. Factors in Mitigation. Most Cited Cases

Attorney and Client 45 ⇐59.6

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.6 k. Presumptive, Baseline, or Preliminary Potential Sanction. Most Cited Cases
After misconduct by a lawyer is found, the Supreme Court determines the presumptive sanction based on the ethical duty violated, the attorney's mental state, and the extent of actual or potential harm caused by the conduct, and then considers aggravating and mitigating factors, which may alter the presumptive sanction.

[10] Attorney and Client 45 ⇐59.5(3)

45 Attorney and Client
45I The Office of Attorney
45I(C) Discipline
45k59.1 Punishment; Disposition
45k59.5 Factors Considered
45k59.5(3) k. Comparable Disposition Within Jurisdiction. Most Cited Cases
The Supreme Court is committed to consistency in attorney discipline cases, and thus attempts to impose sanctions that are roughly proportionate to sanctions imposed in similar situations or for analogous levels of culpability.

****287** Stephen Bruce Blanchard, Blanchard Law Offices, Edmonds, WA, pro se.
Kurt M. Bulmer, Attorney at Law, Seattle, WA, for Petitioner.
Natalea Skvir, Washington State Bar Association, Seattle, WA, for Respondent.
J.M. JOHNSON, J.
***320** ¶ 1 Stephen Blanchard appeals the Washington State Bar Association (WSBA) Disciplinary Board's (the Board) recommendation that he be suspended from the practice of law for one year. Mr. Blanchard does not dispute the findings of fact or conclusions of law. Instead, Mr. Blanchard argues that the length of the suspension is inappropriate. ****288** Mr. Blanchard also makes a procedural argument that the Board erred when it failed to set forth any reasoning for amending the hearing officer's recommended suspension-30 days-in favor of an increased suspension of one year. Thus, he argues his due ***321** process rights were violated and we must remand to the Board in order for it to state its reasons for increasing the sentence.

¶ 2 Remand is unnecessary because we have plenary authority over disciplinary actions. Moreover, we find no violation of Mr. Blanchard's due process rights. However, we note that the Board erred when it failed to follow its own rules and did not set forth reasoning pursuant to ELC 11.12(e) when it amended the hearing officer's recommendation. Thus, we review Mr. Blanchard's case de novo.

¶ 3 After considering Mr. Blanchard's violations, aggravating and mitigating factors, and comparing his case with the facts of other cases, we conclude that Mr. Blanchard should be suspended for six months.

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Facts and Procedure

I. Facts

¶ 4 Mr. Blanchard has been a licensed attorney in the state of Washington since May 17, 1982.

¶ 5 The facts giving rise to this disciplinary action arise from Mr. Blanchard's dealing on two cases: the Weiser matter and the Taft matter. The facts of these cases are not in dispute.

A. Weiser Matter

¶ 6 Charles and Elizabeth Weiser (a married couple) sought Mr. Blanchard's representation regarding loans they had made to Ms. Weiser's son, William Saunders. The loans totaled $187,592.87. The loans were consolidated into a single promissory note secured by deeds of trust on three pieces of property owned by William in Kingston, Washington.

¶ 7 In 1996 William filed chapter 7 bankruptcy and failed to make payments on the promissory note to Mr. and Ms. Weiser. Through the bankruptcy, two of the Kingston ***322** properties were sold and Mr. and Ms. Weiser received the proceeds. The third piece of property remained part of William's bankruptcy estate.

¶ 8 In January 1997 Mr. and Ms. Weiser asked Mr. Blanchard to represent them in collecting on the loan that William owed them regarding this third piece of property (Lot A). Mr. Blanchard said he would charge an hourly fee for this collection matter.

¶ 9 At the end of January 1997 Mr. Blanchard sent Mr. Weiser a $1,578.92 bill for fees relating to a prior representation. Mr. Weiser wrote Mr. Blanchard a check for $1,500, which contained the handwritten note "Advance on Legal Service." Clerk's Papers (CP) at 87. Mr. Blanchard deposited the check into his general account, not his trust account.

¶ 10 At the end of February 1997 Mr. Blanchard sent Mr. Weiser a $229.71 bill for additional fees. Mr. Blanchard does not have any record of having billed Mr. Weiser following this bill nor does he have any records for work performed on Mr. and Ms. Weiser's case following this bill.

¶ 11 In October 1998 Mr. Blanchard phoned Mr. and Ms. Weiser and requested $1,000 so that he could seek authorization for the sale of Lot A. Mr. and Ms. Weiser paid Mr. Blanchard $1,000 in order for him to sell Lot A. Mr. Blanchard deposited the $1,000 into his general account, not his trust account.

¶ 12 Mr. Blanchard did not pursue the foreclosure on Lot A.

¶ 13 Mr. Weiser died on April 6, 1999. Ms. Weiser and her other son, Ronald Saunders, met with Mr. Blanchard in August 1999 regarding collecting on the loan to William. Ms. Weiser also asked Mr. Blanchard for paperwork regarding the money that Mr. Weiser had paid him. Mr. Blanchard said he would send an accounting to her.

¶ 14 Mr. Blanchard did not make further contact with Ms. Weiser and did not provide an accounting or any paperwork regarding the money paid. Between September ***323** 1999 and January 2001 Ronald wrote Mr. Blanchard five letters, on behalf of Ms. Weiser,****289** requesting an accounting and a refund. Mr. Blanchard received all five of these letters; however, he failed to respond to any of them. Mr. Blanchard did not provide an accounting to Ronald or Ms. Weiser. Mr. Blanchard does not have any records to demonstrate that he earned the $770.29 difference that was paid in October 1998 in excess of the $229.71 billed. Mr. Blanchard did not refund any money to Ms. Weiser.

¶ 15 William's bankruptcy closed in March 2001 and Lot A, which did not sell during the bankruptcy, was distributed back to William.

¶ 16 Jeannette Cyphers, an attorney representing Ms. Weiser in Mr. Weiser's probate, agreed to assist Ms. Weiser in collecting on the loan to William. The outstanding principal balance of the loan was between $75,000 and $80,000. The promissory

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

note and deed of trust was foreclosed, and Lot A was sold for $60,500 in December 2002.

¶ 17 In December 2001 Ms. Weiser filed a grievance against Mr. Blanchard with the WSBA. The WSBA referred Ms. Weiser to fee arbitration. Mr. Blanchard did not respond to Ms. Weiser's petition for fee arbitration, and she renewed her grievance in November 2002. The WSBA sent Mr. Blanchard several copies of the grievance, but Mr. Blanchard failed to respond. Finally, the WSBA served Mr. Blanchard with a subpoena duces tecum, and he appeared for deposition on March 12, 2003.

B. Taft Matter

¶ 18 Norman Taft hired Mr. Blanchard to represent him in his dissolution action.

¶ 19 Mr. Taft and Gay Westmoreland married on August 4, 2001. On August 23, 2002, Ms. Westmoreland told Mr. Taft that she wanted a divorce-Mr. Taft was away on business at the time. Mr. Taft made arrangements for a friend, Jeff Madsen, to retrieve his personal possessions from the residence where he and Ms. Westmoreland had ***324** lived. Mr. Madsen retrieved some of Mr. Taft's property; however, Ms. Westmoreland refused to allow Mr. Madsen to pick up many of Mr. Taft's personal possessions, including a large screen television and family heirlooms.

¶ 20 In August 2002 Mr. Taft hired Mr. Blanchard to represent him in the dissolution. At a meeting on August 25, 2002, Mr. Taft informed Mr. Blanchard that he wished the dissolution to move along as quickly as possible and that he wanted the rest of his belongings from Ms. Westmoreland. Mr. Taft and Ms. Westmoreland had no children together; thus, the primary issue in the dissolution was the division of property.

¶ 21 Mr. Blanchard and Mr. Taft agreed that Mr. Blanchard would charge an hourly fee ($175 per hour); however, no written fee agreement was executed. Mr. Taft paid $750 to Mr. Blanchard on August 27, 2002.

¶ 22 On August 29, 2002, Mr. Taft signed dissolution pleadings prepared by Mr. Blanchard. On the same day, Mr. Blanchard filed a summons and petition for dissolution on behalf of Mr. Taft in Snohomish County Superior Court. However, the petition did not contain Mr. Taft's signature as required by law. Mr. Blanchard never filed a petition that was signed by Mr. Taft.

¶ 23 Ms. Westmoreland's attorney, Ms. Hendricks, informed Mr. Blanchard that Ms. Westmoreland would not accept service of the summons and petition and that he needed to properly serve her client. On October 8, 2002, Ms. Hendricks sent Mr. Blanchard a letter stating, "just a reminder that my client has yet to receive service in this case." CP at 95. On November 5, 2002, Ms. Hendricks sent another letter to Mr. Blanchard stating, "please personally serve my client with the necessary papers or I will move to have this action dismissed at your client's expense." CP at 95. On December 20, 2002, Ms. Hendricks sent a third letter to Mr. Blanchard again requesting that her client be served so that the matter could continue. Mr. Blanchard did not serve Ms. Westmoreland.

***325** ¶ 24 Mr. Taft repeatedly informed Mr. Blanchard that he wanted the case to move forward quickly and that he would not put up with stalling tactics. Mr. Taft also repeatedly asked Mr. Blanchard to take action to secure the return of certain items of personal property that remained in Ms. Westmoreland's possession. Mr. Blanchard did not file ****290** a motion for the return of Mr. Taft's personal property.

¶ 25 Around October 2002 Mr. Blanchard asked Mr. Taft to pay him $1,500-he did not provide Mr. Taft with a billing statement. Mr. Taft thought the money was for anticipated fees and costs in deposing Ms. Westmoreland. Mr. Taft paid Mr. Blanchard $1,500. Mr. Blanchard deposited the money into his general account, not his trust account.

¶ 26 Mr. Blanchard scheduled a deposition for Ms. Westmoreland for October 2002, but it was continued. Mr. Blanchard rescheduled the deposition for

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

December. Ms. Hendricks informed Mr. Blanchard that she would not allow Ms. Westmoreland to be deposed until she was served with the summons and petition.

¶ 27 When Mr. Blanchard informed Mr. Taft that the December deposition had been canceled, Mr. Taft learned for the first time that the summons and petition had never been served.

¶ 28 Mr. Taft sought the help of another attorney, Paula McManus. Mr. Taft and Ms. McManus reviewed Mr. Taft's court file and Ms. McManus noticed that the petition for dissolution lacked Mr. Taft's signature-this was the first time that Mr. Taft learned that the petition was unsigned and invalid.

¶ 29 On January 3, 2003, Mr. Taft sent a letter to Mr. Blanchard informing him that he no longer wished to use his services and requesting a refund. Mr. Blanchard originally indicated that he would give Mr. Taft a refund; ***326** however, Mr. Blanchard later informed Mr. Taft that he would not refund any money.[FN1]

> FN1. Ms. McManus filed an amended petition for dissolution and arranged for Ms. Westmoreland to be personally served. Ms. McManus filed several motions with the court seeking the return of Mr. Taft's personal property. The court allowed Mr. Taft to retrieve much of his property. A trial date was set; however, prior to the start of trial, Mr. Taft and Ms. Westmoreland agreed on a settlement.

¶ 30 On January 21, 2003, Mr. Taft filed a grievance against Mr. Blanchard with the WSBA. Mr. Blanchard failed to respond to Mr. Taft's grievance. The WSBA issued a subpoena duces tecum requiring Mr. Blanchard to appear on April 16, 2003 for a deposition regarding Mr. Taft's grievance. Mr. Blanchard requested and obtained a continuance until May 1, 2003.

¶ 31 Following the subpoena by the WSBA, on April 30, 2003, Mr. Blanchard printed a statement of the work he performed on Mr. Taft's dissolution from Ms. Westmoreland; however, Mr. Blanchard never sent Mr. Taft any invoices.

II. Procedure

A. Charges

¶ 32 On November 13, 2003, the disciplinary counsel of the WSBA filed a formal complaint against Mr. Blanchard.[FN2] The complaint set forth 10 counts against Mr. Blanchard. The charges against Mr. Blanchard follow:

> FN2. The disciplinary counsel filed an amended complaint on August 10, 2004.

Count 1: violation of RPC 1.14(a) for failing to deposit Mr. Weiser's advanced fees and/or costs into his trust account.
Count 2: violation of RPC 1.4 and/or 1.14(b) for failing to maintain complete records and/or failing to render appropriate accounts to Mr. and/or Ms. Weiser.
Count 3: violation of RPC 1.5(a), 1.14(b), and/or 1.15(d) for failing to refund any money to Ms. Weiser.
Count 4: violation of RPC 8.4(1) (ELC 1.5 and 5.3) for failing to cooperate with the investigation of Ms. Weiser's grievance.
***327** Count 5: violation of RPC 1.3 and/or 3.2 for failing to properly file Petition for Dissolution, failing to serve the Summons and Petition for Dissolution on Ms. Westmoreland, and/or by failing to pursue the return of Mr. Taft's personal property.
Count 6: violation of RPC 1.4 for failing to keep Mr. Taft reasonably informed regarding the status of his case and/or failing to explain matters to the extent reasonably necessary for Mr. Taft to make informed decisions.
****291** Count 7: violation of RPC 1.14(a) for failing to deposit Mr. Taft's payment of $1,500 into his trust account.
Count 8: violation of RPC 1.4 and/or 1.14(b) for failing to keep Mr. Taft informed regarding the status of his account and/or by failing to render appropriate accounts.
Count 9: violation of RPC 1.5(a), 1.14(b), and/or 1.15(d) for failing to refund any money to Mr. Taft.

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Count 10: violation of RPC 8.4(1) (ELC 1.5 and 5.3) for failing to cooperate with the investigation of Mr. Taft's grievance.

CP at 17-24.

B. Hearing

¶ 33 On December 6 and 7, 2004, the hearing officer heard testimony and argument in this matter. Following the presentation of evidence, the WSBA asked the hearing officer to suspend Mr. Blanchard for a minimum of six months.

¶ 34 On January 26, 2005, the hearing officer entered findings of fact, conclusions of law, and a recommendation. The hearing officer found that counts 1-6, 8, and 10 were proved by a clear preponderance of the evidence (the WSBA withdrew counts 7 and 9 and thus the hearing officer dismissed them).

¶ 35 The hearing officer noted that the presumptive sanction was suspension. The hearing officer found the following aggravating factors applied: prior disciplinary offenses, multiple offenses, vulnerability of victim (Ms. Weiser), substantial experience in the practice of law, and indifference ***328** to making restitution. The hearing officer also found the following mitigating factors applied: absence of dishonest or selfish motive, efforts to rectify consequences of misconduct, and remorse. CP at 107-08.

¶ 36 The hearing officer recommended that Mr. Blanchard be suspended for 30 days and be ordered to pay $770.29 restitution to Ms. Weiser. CP at 108.

C. Disciplinary Board

¶ 37 The Board adopted the hearing officer's findings of fact, conclusions of law, and recommendation with the following modification:
The sanction recommendation is increased to a 1 year suspension. The Board recommends that the Court require Mr. Blanchard to make the $770 restitution payment within 30 days of the Court's order.

Decision Papers at 3. Ten members of the Board voted in favor of the above order. Two members disagreed and instead would have increased the sanction to a two year suspension. The order (one page in length) does not reflect any reasoning behind the increased sanction.

Analysis

[1][2][3] ¶ 38 This court is the ultimate authority for attorney discipline in Washington. *In re Disciplinary Proceeding Against Miller*, 149 Wash.2d 262, 276, 66 P.3d 1069 (2003). We accept unchallenged findings of fact as verities on appeal. *In re Disciplinary Proceeding Against Whitney*, 155 Wash.2d 451, 461, 120 P.3d 550 (2005). We review conclusions of law de novo and require that they be supported by the findings of fact. *Id.*

1. What is the proper remedy when the Board fails to state its reasons for amending the hearing officer's recommendation?

[4] ¶ 39 The Rules for Enforcement of Lawyer Conduct (ELC) require the Board to issue a written opinion or order and state the reasons for its decision if it amends the hearing officer's recommendation. ELC 11.12(e) provides:
***329** The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer or panel, the Board must state the reasons for its decision in a written order or opinion.

Pursuant to this rule, the Board was obligated to state its reasons for amending the hearing officer's recommendation, and it did not.

¶ 40 Due to this error, Mr. Blanchard argues that we should remand the case to the Board and instruct it to issue reasons for its amendment. Alternatively, Mr. Blanchard ****292** argues that we should review the case pursuant to our plenary authority but should give no weight to the Board's decision because it is in violation of the rules.

¶ 41 The WSBA maintains that remand is not re-

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

quired because we have plenary authority in attorney discipline cases. The WSBA also notes that the factual findings are unchallenged, and this court reviews conclusions of law de novo.

¶ 42 We possess plenary power regarding attorney disciplinary matters:
The Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

ELC 2.1; *In re Disciplinary Proceeding Against Poole*, 156 Wash.2d 196, 208, 125 P.3d 954 (2006); *In re Disciplinary Proceeding Against Vanderbeek*, 153 Wash.2d 64, 73, 101 P.3d 88 (2004) (this court used its plenary power under ELC 2.1 to amend a hearing officer's conclusions of law, which contained a typographical error).

¶ 43 Because this court is the ultimate authority for attorney discipline matters, we may review the Board's decision notwithstanding its lack of reasoning.

¶ 44 ELC 12.2 also supports this conclusion. ELC 12.2 sets forth the methods for seeking review of the Board's ***330** decisions-review as a matter of right and discretionary review. However, the rule then states: "This rule does not affect the Court's power to review *any Board decision* recommending suspension or disbarment and to exercise its inherent and exclusive jurisdiction over the lawyer discipline and disability system." (Emphasis added.) Because this court may review "any board decision," this court may review the current board decision even though the Board failed to explain its reasoning. Remand is unnecessary.

¶ 45 However, we must determine what, if any, weight we give to the Board's recommendation. We review conclusions of law de novo, thus the Board is entitled no deference in that determination. And "[w]hile we 'do [ ] not lightly depart from the Board's recommendation,' we are 'not bound by it.' " *In re Disciplinary Proceeding Against Haley*, 156 Wash.2d 324, 333, 126 P.3d 1262 (2006) (quoting *In re Disciplinary Proceeding Against Tasker*, 141 Wash.2d 557, 565, 9 P.3d 822 (2000)). Moreover, the "ultimate responsibility for determining the nature of discipline nevertheless rests with this court." *In re Disciplinary Proceeding Against Johnson*, 118 Wash.2d 693, 703, 826 P.2d 186 (1992). Thus, we are not bound by the Board's recommended sanction, and we would be amiss to follow it because it gave no reasoning and as such we cannot determine whether the reasoning supports the Board's one year suspension.

[5] ¶ 46 Lastly, Mr. Blanchard argues that the Board's failure to state its reasons for increasing his sanction violated his due process rights because he is without notice as to why the Board made its decision. The WSBA argues that Mr. Blanchard was notified of the charges against him and received a full evidentiary hearing and thus received due process.[FN3]

> FN3. The WSBA also argues that Mr. Blanchard could have filed a motion with the Board seeking an explanation of its reasoning, but he did not. However, no ELC specifically contemplates such a motion. *See* ELC 10.1, 11.12(g), 12.3.

[6] ***331** ¶ 47 An attorney has a 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 Disciplinary Proceeding Against Romero*, 152 Wash.2d 124, 136-37, 94 P.3d 939 (2004).

¶ 48 Mr. Blanchard's due process rights were not violated. He was notified of the charges against him and received a full hearing. Moreover, Mr. Blanchard has not been prejudiced by the Board's err because he was able to appeal the decision to this court; and we are reviewing his case pursuant to our plenary authority.

****293** *2. What is the proper sanction for Mr. Blanchard's violations of the Rules of Professional Con-*

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

duct?

[7] ¶ 49 Mr. Blanchard argues that the 30 day suspension was appropriate and the Board erred when it increased the suspension to one year. Mr. Blanchard also argues that the hearing officer and the Board erred when they found the aggravating factors of noncooperation into the investigation, vulnerable victim, and indifference to restitution.

¶ 50 The WSBA maintains that a one year suspension is appropriate for Mr. Blanchard. The WSBA also argues that the hearing officer incorrectly found the mitigating factors of remorse and timely efforts to make restitution.

[8][9] ¶ 51 The American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 & Supp.1992) (ABA *Sanctions*) guides our determination of appropriate sanctions in bar disciplinary cases. *Haley*, 156 Wash.2d at 339, 126 P.3d 1262. First, we determine the presumptive sanction based on the ethical duty violated, the attorney's mental state, and the extent of actual or potential harm caused by the conduct. *Id.* Second, we consider aggravating and mitigating factors, which may alter the presumptive sanction. *Id.*

¶ 52 The ABA has established guidelines for determining when disbarment, suspension, reprimand, or admonition are appropriate. Here, Mr. Blanchard's violations primarily involved a lack of diligence. For a lack of diligence, the ABA recommends suspension when:
***332** (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or a lawyer engages in a pattern of neglect and causes injury or potential injury to the client.

ABA *Standards* std. 4.42, at 33. Mr. Blanchard failed to expedite litigation, failed to keep clients fully informed, and failed to return unearned fees causing injury and potential injury. Thus, suspension is the presumptive sanction for Mr. Blanchard.

¶ 53 According to the ABA, suspension should generally be for a period of time equal to or greater than six months. ABA *Standards* std. 2.3, at 20-21. However, the length of the suspension is also affected by aggravating and/or mitigating factors. Mr. Blanchard challenges several of the aggravating factors found by the hearing officer: vulnerability of victim (Ms. Weiser) and indifference to making restitution.[FN4]

> FN4. Mr. Blanchard also states that the hearing officer improperly found and used as an aggravator his failure to cooperate, which caused injury to the public, profession, and administration of justice. However, the hearing officer did not use this as an aggravator.

¶ 54 The hearing officer found vulnerability of victim because "Ms. Weiser is an elderly widow who suffers from health problems." CP at 107. However, "clients unfamiliar with the legal system, and clients who have cultural and language barriers, are not vulnerable victims absent a showing of physical or mental disability or other characteristic that renders them 'particularly vulnerable.' " *In re Disciplinary Proceeding Against Christopher*, 153 Wash.2d 669, 682, 105 P.3d 976 (2005) (citing *In re Disciplinary Proceeding Against Anschell*, 149 Wash.2d 484, 514, 69 P.3d 844 (2003) (immigration client with a language barrier who was trusting and completely dependent on attorney for legal advice was not a vulnerable victim)). The hearing officer did not find that Ms. Weiser had a physical or mental disability. Thus, there is no evidence that Ms. Weiser was "particularly vulnerable." Moreover, Ms. Weiser's son, Ronald, accompanied and assisted Ms. Weiser in her dealings***333** with Mr. Blanchard. Thus, the hearing officer incorrectly used vulnerability of victim as an aggravator.

¶ 55 The hearing officer noted that Mr. Blanchard "has not refunded any money to Ms. Weiser" and thus applied the aggravator of indifference to making restitution. CP at 107. Mr. Blanchard has not denied that he retained an unearned portion of Ms. Weiser's fee even after his services were terminated. Thus, the hearing officer properly found the aggravator of indifference to making restitution.

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

**294 ¶ 56 The hearing officer found the mitigating factor of remorse because Mr. Blanchard expressed remorse during the disciplinary hearing. At the hearing, Mr. Blanchard stated that he was "very sorry that I basically just stuck my head in the sand on two clients." Tr. of Proceedings (Dec. 7, 2004) at 270. Before the Board, Mr. Blanchard again expressed remorse stating, "I want the Board to realize how sorry I am about being here and the fact of what gave rise to this action." Tr. of Proceedings (Sept. 16, 2005) at 4. These admissions are sufficient to support the hearing officer's finding of remorse.

¶ 57 The hearing officer also found the mitigating factor of "efforts to rectify consequences of misconduct ([Mr. Blanchard] is trying to change his billing practices to provide timely billings to clients)." CP at 107-08. Mr. Blanchard admitted that he was a poor bill keeper and sought assistance with his billing. However, Mr. Blanchard did not actually return the money owed to Ms. Weiser. Thus, while he was making efforts to change his billing practices, he was not actually making efforts to rectify the consequences of his misconduct. Thus, the hearing officer improperly found the mitigating factor of efforts to rectify the consequences of misconduct.

¶ 58 Therefore, the aggravating and mitigating factors that we must balance in determining Mr. Blanchard's sanction are the aggravating factors of prior disciplinary offenses, multiple offenses, substantial experience in the practice of law, indifference to making restitution, and the *334 mitigating factors of remorse and absence of dishonest or selfish motive.

[10] ¶ 59 Having determined the applicable mitigating and aggravating factors, we now must compare the facts of Mr. Blanchard's case with the facts of other cases for consistency. We are committed to consistency in attorney discipline cases. *Johnson*, 118 Wash.2d at 704, 826 P.2d 186. We attempt to impose sanctions that are roughly proportionate to sanctions imposed in similar situations or for analogous levels of culpability. *In re Disciplinary Proceeding Against Gillingham*, 126 Wash.2d 454, 469, 896 P.2d 656 (1995).

¶ 60 In *In re Disciplinary Proceeding Against Burtch*, 112 Wash.2d 19, 770 P.2d 174 (1989), this court imposed a 45 day suspension against attorney Jack Burtch, who committed similar violations to those committed by Mr. Blanchard. Mr. Burtch and Mr. Blanchard both lacked diligence and failed to expedite litigation, failed to keep the client fully informed, failed to return unearned fees, and failed to cooperate with a disciplinary investigation. *See id.* at 20, 770 P.2d 174. Specifically, in *Burtch*, the findings and conclusions established:
(1) three violations of RPC 1.5(b) (failure to communicate fees); (2) six violations of RPC 1.3 and 3.2 (lack of diligence and failure to expedite litigation); (3) two violations of RPC 1.4 (failure to keep client fully informed); (4) two violations of RPC 1.15(d) (failure to return client documents and unearned fees); (5) one violation of RLD 13.3 (failure to timely file trust account declaration); and (6) one violation of RLD 2.8 (failure to cooperate with disciplinary investigation).

Id. Based on these findings, the hearing officer recommended a reprimand and a one-year probation, but the Board recommended a 90 day suspension and a two-year probation. *Id.* While this court agreed that the 90 day suspension imposed by the Board was justified, this court specifically chose not to follow the recommendation of the Board and instead imposed a lesser suspension of 45 days. *Id.* at 28, 770 P.2d 174. This court found six aggravating factors and seven mitigating factors but noted that the "personal and emotionalmitigating *335 facts justify more leniency than we otherwise would be inclined to grant." *Id.* While in Mr. Blanchard's case we have not found any "personal and emotional mitigating facts," the *Burtch* case is a useful comparison because Burtch and Mr. Blanchard committed very similar violations.

¶ 61 In *In re Disciplinary Proceeding Against Cohen*, 149 Wash.2d 323, 67 P.3d 1086 (2003), this court imposed a six month suspension when an attorney failed to prepare and file a substantive re-

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

sponse to a summary judgment motion, failed to timely reply to a court order, failed to keep his clients informed of the status of their case, ****295** and billed his clients for an appeal that stemmed from his misconduct. This court found that Cohen lacked diligence, failed to communicate with clients, and failed to charge reasonable fees. *Id.* at 334-37, 67 P.3d 1086. This court also found five aggravating factors and zero mitigating factors, yet still determined that a six month suspension was appropriate. *Id.* at 339-42, 67 P.3d 1086.

¶ 62 Cohen's failures are similar to the failures of Mr. Blanchard, who also lacked diligence, failed to communicate with clients, and failed to keep accurate billing. Moreover, similar to Mr. Blanchard's case, Cohen had more aggravating factors than mitigating factors (in fact five aggravating factors balanced with zero mitigating factors), but this court balanced all of the facts of the case and still determined that a six-month suspension was appropriate. Thus, the six month suspension imposed in *Cohen* is also instructive in determining the appropriate sanction for Mr. Blanchard.

¶ 63 Mr. Blanchard's conduct, in sum, amounted to failing to deposit advanced fees into a trust account, failing to maintain and render complete records and accounts, failing to keep clients reasonably informed, failing to refund money, and failing to cooperate with the grievance investigation.

¶ 64 Considering the aggravating and mitigating factors and comparing these RPC violations with the violations in the above cases and their respective sanctions, we impose a ***336** six month suspension and order Mr. Blanchard to pay $770.29 restitution to Ms. Weiser.

WE CONCUR: Chief Justice GERRY L. ALEXANDER, Justice CHARLES W. JOHNSON, Justice SUSAN OWENS, ELAINE HOUGHTON, Justice Pro Tem.

FAIRHURST, J. (dissenting).

¶ 65 Attorney Stephen Blanchard engaged in eight counts of misconduct including failure to deposit a client's fees into a trust fund, failure to refund unearned client money, and failure to cooperate with a disciplinary investigation. The Washington State Bar Association (WSBA) Disciplinary Board (Board), having adopted without change the hearing officer's findings of fact and conclusions of law, recommended a sanction of one-year suspension. In light of the facts, the Board clearly thought a 30-day suspension was too lenient as does each member of this court. Ten board members thought the sanction should be a one-year suspension and two thought it should be a two-year suspension. The Board erred in not specifically stating its reasons for amending the hearing officer's recommendation. ELC 11.12(e). Still, we have previously noted that " '[w]e should not lightly depart from recommendations shaped by th[e] experience and perspective' " of the Board. *In re Disciplinary Proceeding Against Boelter*, 139 Wash.2d 81, 98, 985 P.2d 328 (1999) (quoting *In re Disciplinary Proceeding Against Noble*, 100 Wash.2d 88, 94, 667 P.2d 608 (1983)). Because the Board's unique position in these proceedings makes it the " 'only body to hear the full range of disciplinary matters,' " *Boelter*, 139 Wash.2d at 98, 985 P.2d 328 (quoting *Noble*, 100 Wash.2d at 94, 667 P.2d 608), we have previously adopted the Board's recommendation even where the Board has neglected to provide written findings. *Id.* at 107, 667 P.2d 608. Based on the record, I see no reason to deviate from the Board's recommended one-year suspension.

¶ 66 The American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 & Supp.1992) (*Standards*) governs our inquiry. *In re Disciplinary Proceeding Against Poole*, 156 Wash.2d 196, 220, 125 P.3d 954 (2006). Under the ***337** *Standards*, we determine the presumptive sanction based on the ethical duty violated by the lawyer, the lawyer's mental state, and actual or potential injury caused by the misconduct. *In re Disciplinary Proceeding Against Cohen*, 150 Wash.2d 744, 758, 82 P.3d 224 (2004) (*Cohen* II) (citing *In re Disciplinary Proceeding Against Halverson*, 140 Wash.2d 475, 492, 998 P.2d 833 (2000)). The majority concludes that this inquiry yields a presumptive sanction of suspension. Majority at 293. Because Mr. Blanchard does not dispute the findings of fact or conclusions

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

of law adopted by the Board, I agree with the majority regarding this presumptive sanction. However, I would reach a different result based on ****296** our remaining considerations: (1) the aggravating and mitigating factors, (2) the degree of unanimity among the Board, and (3) the proportionality of the sanction to sanctions imposed for similar conduct. *Cohen* II, 150 Wash.2d at 758, 82 P.3d 224 (citing *Halverson*, 140 Wash.2d at 492, 998 P.2d 833). Because I would find that the aggravating factors outweigh the mitigating factors, that all 12 members of the Board found *at least* a one-year sanction to be appropriate, and that the Board's recommended sanction does not depart significantly from sanctions imposed in similar cases, I would uphold the Board's recommendation.

1. Aggravating and mitigating factors

¶ 67 A six-month suspension is the accepted minimum sanction, appropriate in cases where there are no aggravating factors and some mitigating factors or where mitigating factors " 'clearly outweigh' " aggravating factors. *Cohen* II, 150 Wash.2d at 762, 82 P.3d 224 (quoting *In re Disciplinary Proceeding Against Cohen*, 149 Wash.2d 323, 339, 67 P.3d 1086 (2003) (*Cohen* I)). A suspension above the minimum may be appropriate where the aggravating factors outweigh the mitigating factors. *Id.* The majority finds four aggravating factors-prior disciplinary offenses, multiple offenses, substantial practice in the law, and indifference to making restitution-coupled with two mitigating factors-absence of dishonest or selfish motive and remorse. Majority at 294. ***338** Because I would find that the four aggravating factors clearly outweigh the two mitigating factors, I would hold that a sanction that departs from the recommended minimum suspension is warranted.

2. Degree of unanimity

¶ 68 We also consider the agreement among the board members and hesitate to alter the recommendation of the Board given a high degree of unanimity. *Cohen* II, 150 Wash.2d at 763, 82 P.3d 224 (upholding recommendation where Board voted 11 to 1 in favor of a one-year suspension). Though the majority does not consider unanimity, the Board voted 10 to 2 in favor of a one-year suspension, with two dissenting members voting in favor of a *longer* suspension. In effect, a unanimous Board recommended *at least* a one-year suspension. As the Board was the only body exposed to all of the disciplinary matters, I would uphold the recommendation. *See Boelter*, 139 Wash.2d at 98, 985 P.2d 328 (citing *Noble*, 100 Wash.2d at 94, 667 P.2d 608).

3. Proportionality

¶ 69 In addition, we "generally adopt the Board's recommended sanction unless the sanction *departs significantly* from sanctions imposed in other cases." *In re Disciplinary Proceeding Against Haley*, 156 Wash.2d 324, 339, 126 P.3d 1262 (2006) (emphasis added) (citing *In re Disciplinary Proceeding Against Kuvara*, 149 Wash.2d 237, 259, 66 P.3d 1057 (2003)). The "attorney facing discipline bears the burden of bringing cases to the court's attention that demonstrate the disproportionality of the sanction imposed." *Cohen* II, 150 Wash.2d at 763, 82 P.3d 224 (citing *In re Disciplinary Proceeding Against Kagele*, 149 Wash.2d 793, 821, 72 P.3d 1067 (2003)).

¶ 70 To meet his burden, Mr. Blanchard points to several cases in which we imposed 60-day suspensions. None of these cases is analogous to the case before us. Blanchard first relies on *In re Disciplinary Proceeding Against Lopez*, in which we imposed a 60-day suspension where the attorneyfailed ***339** to file an opening brief, failed to take reasonable steps to protect a client's interests upon termination of his representation, and failed to timely respond to a show cause order. 153 Wash.2d 570, 597, 106 P.3d 221 (2005). *Lopez* is not instructive here. First, we imposed a 60-day suspension, but did so on the recommendation of a nearly unanimous Board. *Id.* at 581, 106 P.3d 221. We also specifically noted that based on the aggravating and mitigating factors, the "60-day suspension was lenient." *Id.* at 596 n. 11, 106 P.3d 221. Furthermore, whereas *Lopez* involved three counts of misconduct, only one of which warranted suspension, six

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

of the eight counts against Mr. Blanchard hold a presumptive sanction of suspension. *Id.* at 595, 106 P.3d 221; Answering Br. of WSBA, App. A (Findings of Fact, Conclusions of ****297** Law and Hearing Officer's Recommendation (FOF and COL)), at 22-24. Next, Mr. Blanchard cites *In re Disciplinary Proceeding Against Longacre,* in which we imposed a 60-day suspension based on violation of the duty to provide diligent and competent representation, failure to communicate with a client, and violation of the duty to refrain from conduct prejudicial to the administration of justice. 155 Wash.2d 723, 740-42, 122 P.3d 710 (2005). Mr. Blanchard's reliance is again misplaced. In *Longacre,* unlike here, the presumptive sanction for each count was reprimand. *Id.* at 746, 122 P.3d 710. Finally, Mr. Blanchard cites *In re Disciplinary Proceeding Against Carmick,* in which we imposed a 60-day suspension where the attorney had misrepresented an ex parte order to the court and negotiated directly with an adverse party represented by counsel. 146 Wash.2d 582, 600-01, 48 P.3d 311 (2002). But in *Carmick,* unlike here, only one count of misconduct warranted a presumptive suspension. *Id.* at 604, 48 P.3d 311. Because Mr. Blanchard has not directed our attention to cases which would demonstrate disproportionality, I would uphold the Board's recommended sanction.

¶ 71 Without addressing whether Mr. Blanchard has met his burden, the majority cites cases in which we imposed suspensions of less than one year as evidence of the disproportionality of the Board's recommendation. Majority ***340** at 294-95. Like the cases cited by Mr. Blanchard, the cases cited by the majority are not instructive here. The majority first relies on *In re Disciplinary Proceeding Against Burtch,* 112 Wash.2d 19, 26-28, 770 P.2d 174 (1989), where we imposed a 45-day suspension based on a pattern of neglect, failure to communicate with clients, failure to properly handle fee arrangements, lack of diligence, violation of trust account requirements, and failure to cooperate with a WSBA investigation. While the majority correctly notes that *Burtch* involved violations similar to those committed by Mr. Blanchard, majority at 294, that case differs significantly from the case before us. In *Burtch,* we balanced six aggravating factors against seven mitigating factors, specifically finding that attorney Burtch's personal and emotional problems constituted a "major and decisive mitigating factor" justifying more leniency than we would usually show. *Burtch,* 112 Wash.2d at 28, 770 P.2d 174. Because the aggravating factors in the case before us outweigh the mitigating factors, and because the majority has not identified such a "decisive mitigating factor" here, I find the comparison to *Burtch* misplaced.[FN1] Next, the majority relies on *Cohen* I, 149 Wash.2d at 327, 67 P.3d 1086, where we imposed a six-month suspension upon finding that attorney Cohen failed to respond to a summary judgment motion, failed to timely reply to a court order, failed to keep his clients informed of the progress of their case, and billed his clients for an appeal that stemmed from his misconduct. While the majority is correct in noting that, like in the case before us, the aggravating factors in *Cohen* I greatly outweighed the mitigating factors, majority at 295, the majority overlooks the fact that in *Cohen* I we specifically acted to uphold a unanimous decision of the Board below. *Cohen* I, 149 Wash.2d at 330, 67 P.3d 1086. To the contrary, here the majority would reverse a nearly unanimous Board.

> FN1. While the majority acknowledges that we have not identified such a decisive mitigating factor in Mr. Blanchard's case, the majority nonetheless contends that the comparison is "useful" because of the similarity between the violations in each case. Majority at 295. But because we must consider the violations in light of the aggravating and mitigating factors and the unanimity of the Board, *Cohen* II, 150 Wash.2d at 758, 82 P.3d 224, *Burtch* is not analogous to the case before us.

***341** ¶ 72 While I would hold that Mr. Blanchard has not met his burden of demonstrating disproportionality, several of our cases nonetheless illustrate the proportionality of a one-year suspension. In *Kagele,* we upheld a one-year suspension where the attorney committed various violations warranting

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

suspension, including three violations of diligence, four violations of communication, and one violation of failure to abide by a client's decision. 149 Wash.2d at 818, 72 P.3d 1067. Finding five aggravating factors and three mitigating factors, and based on an 8 to 1 board recommendation, we upheld the ****298** one-year suspension. *Id.* at 821-22, 72 P.3d 1067. In *Cohen* II, we upheld a one-year suspension where attorney Cohen failed to diligently pursue his client's case or expedite the litigation, failed to communicate with his client, and improperly withdrew from the case. 150 Wash.2d at 755-57, 82 P.3d 224. In upholding an 11 to 1 board recommendation, we found suspension above the minimum six months appropriate because, like here, aggravating factors, including prior disciplinary offenses, outweighed mitigating factors. *Id.* at 762-63, 82 P.3d 224. In *In re Disciplinary Proceeding Against DeRuiz,* we imposed two consecutive six-month suspensions where attorney DeRuiz, similar to Mr. Blanchard, failed to communicate with clients, failed to refund unreasonable fees, and failed to cooperate with grievance proceedings against him. 152 Wash.2d 558, 562, 99 P.3d 881 (2004). Finding that aggravating factors far outweighed mitigating factors, we upheld the Board's unanimous decision and concluded that the suspensions should run consecutively for a total of one year. *Id.* at 581-83, 99 P.3d 881. Finally, we have found one-year and two-year suspensions warranted in light of the nature of the harm caused coupled with prior disciplinary offenses. *Cohen* II, 150 Wash.2d at 764, 82 P.3d 224 (citing *In re Disciplinary Proceeding Against Anschell (Anschell* I), 141 Wash.2d 593, 618, 9 P.3d 193 (2000)). Mr. Blanchard caused both Elizabeth Weiser and Norman Taft actual harm by delaying resolution of legal claims. Furthermore, Mr. Blanchard was censured for almost identical behavior in 1998. FOF and COL at 24. The harm caused, coupled with past disciplinary offenses, justifies a one-year suspension.

***342** ¶ 73 We have previously been willing to impose sanctions above the presumptive minimum where attorneys engage in multiple rules violations. *Longacre,* 155 Wash.2d at 746, 122 P.3d 710. We have done so in light of the fact that "[t]he *ABA Standards* ... 'do not account for multiple charges of misconduct. The ultimate sanction ... might well be and generally should be greater than the sanction for the most serious misconduct.' " *Id.* at 746-47, 122 P.3d 710 (second alteration in original) (quoting *ABA Standards* at 6). Given that the hearing officer found a presumptive sanction of suspension for six of the eight counts against Mr. Blanchard, FOF and COL at 22-24, and in consideration of the aggravating and mitigating factors and the near unanimity of the Board, I would suspend Mr. Blanchard for one year and order that he pay $770.29 to Ms. Weiser.

WE CONCUR: Justice TOM CHAMBERS, Justice BARBARA A. MADSEN, Justice BOBBE J. BRIDGE.

Wash.,2006.

In re Disciplinary Proceeding Against Blanchard
158 Wash.2d 317, 144 P.3d 286

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

2. ***Burtch***

In re ***Burtch***, 112 Wn.2d 19 (1989) (7 pages not including this cover page)

112 Wn.2d 19; IN RE BURTCH; 770 P.2d 174

112 Wn.2d 19, IN RE **BURTCH**

CITE: 112 Wn.2d 19, 770 P.2d 174

IN RE **BURTCH**

CASE TITLE: In the Matter of the Disciplinary Proceeding Against Jack L. **Burtch**, an Attorney at Law.

[1] Attorney and Client - Discipline - Findings of Fact - Review. The hearing officer in an attorney disciplinary proceeding can best determine the credibility and veracity of witnesses and his findings of fact ordinarily will not be disturbed on review.

[2] Attorney and Client - Discipline - Degree of Punishment - Factors - In General. The Supreme Court decides the appropriate type and duration of discipline for an attorney by considering the ethical duties violated, his mental state at the time of the misconduct, the extent of the actual or potential injury caused by the misconduct, and the presence of aggravating or mitigating circumstances.

NAMES OF CONCURRING OR DISSENTING JUDGES: Smith, J., did not participate in the disposition of this case.

NATURE OF ACTION: Disciplinary action based on an attorney's lack of diligence and failure to communicate fees, to expedite litigation, to keep clients fully informed, to return client documents and unearned fees, to file a trust account declaration on time, and to cooperate in the Bar Association's investigation. The Disciplinary Board, with

one member dissenting, recommended a 90-day suspension from the practice of law and a 2-year probationary period.

Supreme Court: Holding that a shorter period of suspension followed by a conditional probation would satisfy the purposes of attorney discipline, the court SUSPENDS the attorney from the practice of law for 45 days and places him on supervised PROBATION for 2 years.

COUNSEL: ROBERT D. WELDEN, for Bar Association.

JOHN L. FARRA, for respondent lawyer.

AUTHOR OF MAJORITY OPINION: Brachtenbach, J.-

MAJORITY OPINION: This is a disciplinary proceeding against Aberdeen attorney Jack L. **Burtch**, admitted in 1955. The hearing officer entered 113 findings of fact and 12 conclusions of law. The findings and conclusions establish: (1) three violations of RPC 1.5(b) (failure to communicate fees); (2) six violations of RPC 1.3 and 3.2 (lack of diligence and failure to expedite litigation); (3) two violations of RPC 1.4 (failure to keep client fully informed); (4) two violations of RPC 1.15(d) (failure

to return client documents and unearned fees); (5) one violation of RLD 13.3 (failure to timely file trust account declaration); and (6) one violation of RLD 2.8 (failure to cooperate with disciplinary investigation).

The hearing officer recommended a reprimand and a 1-year supervised probation. The Disciplinary Board of the Washington State Bar Association adopted the hearing officer's findings and conclusions, but modified the recommended sanction to a 90-day suspension and a 2-year probationary period. One dissenting Board member voted for disbarment.

For reasons discussed hereafter we impose a 45-day suspension from practice and a 2-year supervised probation as set forth hereafter. We note that **Burtch** had received letters of admonition in 1982 and 1983 for neglect, failure to carry out a contract of employment, delay in completing a probate, and delay in responding to a Bar Association inquiry.

At the outset we categorically reject three assertions made by **Burtch** in his briefs. First, he "suggests" that the hearing officer would not have signed the findings of fact "if he felt that his decision regarding reprimand and probation was to be appealed by the Bar Association." Reply Brief of Respondent, at 1. That is a gross speculation without support in fact or reason, an argument better not made.

Second, **Burtch** asserts "It is obvious that the rules of lawyer discipline are only general guidelines . . ." Brief of Respondent, at 14. The rules regulating a lawyer's conduct are not general guidelines; they are mandatory and "state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." RPC Preliminary Statement, 104 Wn.2d 1105 (1985). SEE RLD 1.2 ("A lawyer admitted to the practice of law in this state . . . shall be subject to these Rules for Lawyer Discipline.").

The third **Burtch** position which we reject is his repeated defense that there was "no actual or potential injury" to the involved clients who complained to the Bar Association. This shows a gross lack of understanding of the nature and purpose of the Rules of Professional Conduct. It also demonstrates a disregard for the facts in this case. Financial injury to the client is not a threshold to discipline. The complaining clients had to resort to the Bar Association to resolve their difficulties with **Burtch**. An isolated incident might be questioned but here six clients were forced to complain. Some clients were compelled to employ other counsel to ascertain the status of their cases and to force a refund of unearned fees. Denial of actual injury to these clients is contrary to the facts.

[1] It is necessary to review the facts of each incident here involved. We accept the findings of fact entered by the hearing officer, Ernest L. Meyer, who is an experienced, highly respected attorney. Each finding is fully supported by the testimony and exhibits. In some instances the testimony from **Burtch** was at variance to that of his client. However, it has long been the rule of this court that while

we review and evaluate the entire record, "'. . . we ordinarily will not disturb the findings of fact made upon conflicting evidence.' The fact finder can best determine the credibility and veracity of witnesses." (Citations omitted.) IN RE SIMMONS, 110 Wn.2d 925, 928, 757 P.2d 519 (1988).

1. Maresh dissolution. Ms. Maresh retained **Burtch** to obtain a dissolution. She paid his requested fee of $500 which she understood was the total fee. Later she paid an additional $100 for "costs." The dissolution hearing took less than 1 hour. Thereafter **Burtch** rendered an unitemized bill for fees in the amount of $280. The client immediately questioned that amount and asked for an itemized statement. None was given so Ms. Maresh complained to the Bar Association. Maresh then learned that the findings, conclusions and decree had never been entered; they were entered nearly 7 months after the hearing. **Burtch** ultimately billed Maresh $1,150, credited Maresh for $252.30 paid by her husband, and agreed to reduce the balance to $100. These facts constitute violation of RPC 1.3, 1.4, 1.5(b) and 3.2. We are not impressed by Burtch's assertions that the complaint is without merit, that the client never asked for an itemized statement, and that she was not harmed by the 7-month delay in entering the decree.

2. Werner matter. **Burtch** was retained by Peterman, a real estate broker, to defend Peterman and a contract seller, Werner. Later, Peterman's insurer retained another attorney, Curtis Janhunen, who sent **Burtch** a notice of substitution which clearly stated that Janhunen was to represent only Peterman. **Burtch** thus continued to represent Werner. Janhunen wrote **Burtch** specifically reminding him that he, Janhunen, was not representing Werner; in fact, a cross complaint was filed by Janhunen against Werner. Upon receiving a motion for default, **Burtch** contacted Werner for the first time, on a Sunday, and warned him that a default would be taken the next day if he was not represented. **Burtch** agreed to represent Werner for a fee of approximately $1,000. Werner paid in installments. He requested, by telephone and in writing, a status report.

None was given. Finally Werner complained to the Bar Association and **Burtch** gave him a status report.

Ultimately **Burtch** advised Werner to accept a settlement offer to Werner of $3,500. He did not advise Werner of any additional fee owing, but stated that Werner would receive at least a portion of the settlement. Instead **Burtch** kept the $3,500, billing Werner a total of $4,562.50. This conduct violates RPC 1.4 and 1.5(b).

3. Snyder matter. Snyder retained **Burtch** to represent him to obtain a dissolution. By November 1984, he had paid $422. The petition was filed in August 1984. Receiving no satisfactory response from his inquiries as to status, Snyder retained another attorney in February 1986. Snyder then learned for the first time that his petition had been dismissed for want of prosecution in October 1985. **Burtch** had not advised Snyder of the motion for or order of dismissal. After receiving four letters from the new attorney, **Burtch** finally refunded all fees. This conduct violates RPC 1.3, 1.4 and 3.2.

4. LaBrec and other cases. In 1976 **Burtch** agreed to represent LaBrec and three other plaintiffs in a suit against the State. He prepared and served a summons and complaint. There was no fee agreement with the clients, but they paid $500 to cover bond costs.

From 1977 until after a complaint to the Bar Association in 1986, **Burtch** did nothing. Then **Burtch** demanded payment of $750 from each of the four plaintiffs. The defendant's motion for summary judgment was granted and affirmed on appeal. LABREC v. DEPARTMENT OF EMPL. SEC., 52 Wn. App. 188, 758 P.2d 501 (1988).

Burtch claims he agreed to process the case only if and when he had time. He claims he proceeded only because of "unfair pressure" by the Bar Association and that the complaint against him was false and frivolous. We are not impressed with this explanation. This conduct violates RPC 1.3 and 1.4.

5. Keim matter. In July 1985 Mr. Keim engaged **Burtch** to represent him, for an agreed hourly rate, to enforce a

foreign dissolution decree and child custody order. On November 1, 1985, Keim's mother, who was assisting him with payment of fees, requested an itemized statement from **Burtch** who requested a payment of $1,000 representing $500 for application to Burtch's fee and $500 for a court appointed mediator. No itemized statement has ever been furnished. By March 1986 Keim had paid **Burtch** a total of $2,065. No court appointment of a mediator was obtained.

In May 1986, Keim engaged a new attorney who wrote **Burtch**, advising of termination of Burtch's services and requested a refund of $1,250 in unearned fees. **Burtch**, instead of responding to the new attorney, contacted Keim requesting that he be allowed to represent Keim, who declined Burtch's request. Having no response from **Burtch**, the new lawyer, 3 months later, moved to force Burtch's withdrawal. **Burtch** withdrew and refunded $500 to Keim. Just before the hearing herein **Burtch** refunded another $500.

Burtch admits he failed to keep his client reasonably informed but denies failure to act with reasonable diligence, denies improper action when discharged, and denies improper conduct in the refund of unearned fees. The evidence supports a conclusion that **Burtch** violated RPC 1.3, 1.4 and 3.2.

6. Little case. In July 1985 Little employed **Burtch** to pursue a claim against Lord Bros. Contractors, Inc., and the City of Raymond. Little paid $450 at that initial meeting. In December 1985 **Burtch** billed Little including "dictation of pleadings, arranging for filing and service." The bill also showed a disbursement of $70 to the Pacific County Clerk.

In April 1986, Little advised **Burtch** that he was discharging him. **Burtch** asked that Little not do so and promised to file a claim on the City the next day. Little understood this would be done without additional charge. **Burtch** billed $150 for filing and serving a claim on the City. Little discharged **Burtch** and requested his file. Little then learned his suit had never been filed. **Burtch** has never furnished the client his file nor returned any money,

including the "filing fee." Little obtained a default judgment against **Burtch** for $500, which is unpaid. Burtch's version of the matter is contrary to the client's, and he challenges Little's veracity. The hearing officer believed the client. This conduct violates RPC 1.15(d), 1.3 and 3.2.

7. Trust account declaration. **Burtch** did not file his 1985 declaration of his trust account compliance with RPC 1.14. It was due January 1, 1986. In response to a Bar Association notice, **Burtch** on April 4, 1986, filed a declaration that he maintained a trust account but which did not comply with RPC 1.14. A proper declaration, despite several letters from the Bar, was not filed until

August 27, 1986.

Burtch's violation was failure to comply with the IOLTA requirements of RPC 1.14(c). He admits his error and lack of diligence, but "questions the right of the court to arbitrarily require a third party's money . . . to be appropriated in this manner." Reply Brief of Respondent, at 24. Apparently he is unaware of the extensive notice and publicity about the IOLTA procedures, including an adversary public hearing by this court on that subject. His failure violates RPC 1.14(c) and is a ground for discipline under RLD 13.3(b).

8. Failure to cooperate. Despite assurances to the Bar Association counsel that he would respond to the Werner and Snyder complaints, he did not do so. **Burtch** did not appear for a deposition for which he had been subpoenaed. Two weeks later he blamed his secretary and trial schedule for his failure to appear. **Burtch** did not respond to the Keim complaint. Not until Bar Association counsel advised **Burtch** that counsel was recommending to the Disciplinary Board that a petition for immediate suspension be filed did **Burtch** respond to the four pending complaints.

In concluding, the hearing officer was particularly troubled by what he described as Burtch's

"rather cavalier attitude toward the Bar Association when all these things were brought to his attention. That in my opinion is the most damning evidence you have here on the problem whether or not the circumstances that

brought on all these difficulties are now behind him and he will not be plagued again with a series of complaints from his clients.

Closing Argument and Oral Decision, at 24. Burtch's conduct is a clear violation of RLD 2.8.

We have detailed the factual foundation of Burtch's violations. His conduct shows a pattern of neglect, failure to communicate, failure to properly handle fee arrangements, lack of diligence, violation of the trust account requirement, and failure to cooperate in the Bar Association's investigation.

This brings us to the appropriate sanctions, the most troublesome element of many discipline matters.

[2] In a recent case, IN RE YATES, 110 Wn.2d 444, 755 P.2d 770 (1988), we summarized much of the court's philosophy and approach to sanctions. That case and ones cited therein have made extensive reference to and use of the ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS (Approved Draft, 1986).

Without repeating all of the text of the YATES opinion, we look first to the four initial questions stated.

First, what ethical duty did the lawyer violate? Our recitation of the facts shows serious and repeated violations as described. Second, what was the lawyer's mental state? This question will be dealt with in the subject of aggravating and mitigating circumstances. Third, what was the extent of the actual or potential injury caused by the misconduct?

The findings of the hearing officer on their face demonstrate actual injury in some cases, such as the necessity of hiring another lawyer and the deprivation of unearned fees. Potential injury was present in every instance. **Burtch** seems to fail to recognize the very real harm he has caused to those persons who put their trust and confidence in his care. People involved in a dissolution, a child custody conflict or a lawsuit often are in a period of emotional and

financial turmoil. Of necessity they look to the legal profession for advice and resolution of their problems and ultimately for the satisfactory as possible end to the tempest and turmoil in which they are embroiled. Sometimes they are difficult to deal with; often they are dissatisfied with the results in their traumatic times.

One thing is certain. Those clients do not need the added agitation of a neglectful, undiligent lawyer with concomitant problems of fees, lack of information, lack of reasonable progress and final resort to the offices of the Bar Association. The Rules of Professional Conduct rightfully condemn such conduct. As the Preamble to the RPC states, the ultimate sanction to the lawyer, and indeed to the profession, is the loss of respect and confidence of the members of the legal profession. That injury occurred here.

Fourth, are there aggravating or mitigating circumstances? Both are present here. The ABA STANDARDS refer to 10 aggravating factors. IN RE YATES, SUPRA at 452. The ones pertinent here are (a) prior disciplinary offenses, (b) a pattern of misconduct, (c) multiple offenses, (d) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply (**Burtch** contends his lack of cooperation was not intentional), (e) substantial experience in the practice, and (f) indifference to making restitution. The last point is his failure to refund unearned fees and requiring a client to sue on one instance.

The STANDARDS set forth 13 possible mitigating factors, IN RE YATES, SUPRA at 452-53. Possibly 7 of those factors are present. The hearing officer did not find a dishonest or selfish motive in Burtch's conduct. To some degree **Burtch** displayed a cooperative attitude but we give it little weight because it came when he was faced with dire consequences. The only evidence of character and reputation came from a retired Superior Court Judge before whom **Burtch** had practiced extensively. Judge Kirkwood described **Burtch** as prepared, a very good advocate with a very heavy work

load, and as having a good reputation in the legal community.

As to interim rehabilitation, **Burtch** professed to having learned valuable lessons from these proceedings and to have changed his practices and procedures in recognition of the problems he had encountered. **Burtch** exhibits some remorse, but understandably justifies his conduct where he differs with the clients' recollection. He recognizes much of his difficulty stems from his failure to communicate with his clients and his lack of written memorandum of his agreements with his clients.

The major and decisive mitigating factor stems from personal and emotional problems which may have led to a degree of mental impairment. A dispute with a former partner led to a 1983 judgment against **Burtch** in excess of $100,000. Financial disaster ensued. **Burtch** was unable to supersede the judgment while it was on appeal. Bank accounts were garnished, execution issued against his books

and equipment, he lost his home and office building. Depression naturally set in for **Burtch** and his wife who had been his long time bookkeeper. They separated. His long-time secretary left. He and his wife filed a Chapter 11 proceeding. He and his wife have reconciled, she is back in his office. The judgment has been resolved. **Burtch** expresses a belief that the problems which led to this series of events are resolved and that he can practice properly as he had done without client complaint for over 25 years.

We find that these personal and emotional mitigating facts justify more leniency than we otherwise would be inclined to grant. Yet we cannot ignore the harm to the clients, the profession, and the administration of justice. The reasons for the violations of the Rules of Professional Conduct may explain those violations but they do not excuse them. The hearing officer recommended a reprimand. We believe that is not adequate. The Disciplinary Board imposed a 90-day suspension. While the record fully justifies that length of suspension, we conclude that the same purpose can be accomplished with a lesser period of

suspension. **Burtch** will still suffer the economic loss of suspension, but in a lesser amount; he must comply with the appropriate provisions of RLD 8 and other applicable rules; he will be subjected to the loss of reputation inherent in any suspension.

In view of the doubts the hearing officer expressed in his oral decision and reflected in the findings, we conclude that a period of probationary supervision is warranted.

Therefore, it is ordered: (1) Jack L. **Burtch** is suspended from the practice of law for a period of 45 days. (2) **Burtch** is placed on probation for a period of 2 years pursuant to RLD 5.2. The conditions of probation are: (a) **Burtch** must not engage in conduct similar to that detailed in this opinion in the future. (b) The Disciplinary Board shall appoint a lawyer to supervise this probation pursuant to RLD 5.2(a); however, that supervisor shall not be a former law partner of **Burtch** as he suggested. (c) The supervisor shall conduct regular and frequent reviews not less than monthly, and file regular reports with the Bar Association, not less than quarterly, of Burtch's legal activities. The reviews shall be conducted with **Burtch** present. (d) The supervisor shall immediately report to the Bar Association if it appears that **Burtch** is again neglecting his clients' affairs or failing to account to his clients for his fees, or if it appears that **Burtch** is in violation of any applicable rules regulating a lawyer's conduct. (3) Upon reinstatement, **Burtch** shall submit to an evaluation by the Lawyer's Assistance Program to determine whether any counseling or treatment is required in order to avoid repetition of his past misconduct.

Burtch has not challenged costs assessed below; the award is affirmed. Costs herein await compliance with RLD 5.7(f).

CONCURRING JUDGES: Callow, C.J., Utter, Dolliver, Dore, Pearson, Andersen, and Durham, JJ., and Hamilton, J. Pro Tem., concur.

Lawriter Corporation. All rights reserved.

The Casemaker Online database is a compilation exclusively owned by Lawriter Corporation. The database is provided for use under the terms, notices and conditions as expressly stated under the online end user license agreement to which all users assent in order to access the database.

3. ***Esau***

In re ***Esau,*** WSBA Review No. 00#00146 (reported in *Wash. St. Bar News,* Dec. 2000) (7 pages not including this cover page):

(a) Stipulation to Reprimand (dated January 10, 2000; 6 pages, including 2 versions of the signature page, the earliest of which was dated December 2, 1999)

(b) Order on Stipulation to Reprimand (mistitled "Order on Stipulation to Two Admonitions) (dated January 12, 2000; 1 page)

FILED
JAN 10 2000
DISCIPLINARY BOARD

RECEIVED
JAN 06 2000
LELAND G. RIPLEY

RECEIVED
DEC 03 1999
LELAND G. RIPLEY

BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

In re GREGORY D. ESAU, Lawyer.	Bar No. 22404 STIPULATION TO REPRIMAND

Pursuant to Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation for Discipline is entered into by the Washington State Bar Association (WSBA), through disciplinary counsel, Marsha A. Matsumoto, respondent lawyer, Gregory D. Esau, and respondent's counsel, Leland G. Ripley.

ADMISSION TO PRACTICE

1. Respondent was admitted to the practice of law in the State of Washington on January 22, 1993.

2. Respondent was admitted to the practice of law in the State of California on December 12, 1983.

3. At all times material to this Stipulation, Respondent practiced in King County, Washington.

STIPULATED FACTS

4. On or about July 2, 1996, Kurt Schlegel retained Respondent to represent him in a dissolution.

5. Mr. Schlegel and Respondent signed a fee agreement on July 2, 1996. Paragraph 4 of the agreement provided:

Advance fee deposit. An initial advance fee deposit of $1,700 shall be paid concurrently with the signing of this Agreement and before work is begun on Client's matter. This advance fee deposit will be applied against fees for services to be rendered and costs to be advanced as they are incurred.

4. Pursuant to the fee agreement, Mr. Schlegel paid Respondent $1,700 on July 2, 1996.

5. At the time Mr. Schlegel retained Respondent, Respondent had been in solo practice for approximately two years, but did not have a trust account. Respondent deposited Mr. Schlegel's $1,700 into his general bank account.

6. Respondent prepared preliminary pleadings on Mr. Schlegel's behalf.

7. Respondent informed Mr. Schlegel that he was going on a three to four week vacation in July and would not be able to do further work on Mr. Schlegel's case until his return.

8. Unwilling to wait, Mr. Schlegel wrote a July 18, 1996 letter discharging Respondent and requesting a refund of the remainder of his $1,700. Respondent did not respond.

9. On August 20, 1996, Mr. Schlegel wrote to Respondent again, requesting a refund and an accounting. Respondent did not respond.

10. On October 10, 1996, Mr. Schlegel wrote to Respondent a third time, requesting a refund. Respondent did not respond.

11. Mr. Schlegel filed suit against Respondent in King County District Court for the return of his advance fee deposit. On January 23, 1997, Mr. Schlegel obtained an uncontested judgment against Respondent in the amount of $1,751. On or about March 5, 1997, Respondent paid Mr. Schlegel $1,751 in satisfaction of the judgment.

12. Respondent opened a trust account for his solo practice in 1998.

STIPULATION TO MISCONDUCT

13. Respondent's conduct in failing to deposit Mr. Schlegel's advance fee payment into a trust account, failing to provide Mr. Schlegel with an accounting of his funds as requested, and failing to timely refund unearned advance fees upon discharge violated the following Rules of

Professional Conduct (RPC): RPC 1.14(a), RPC 1.14(b)(3), RPC 1.14(b)(4), and RPC 1.15, and subjects Respondent to discipline pursuant to RLD 1.1(i).

PRIOR DISCIPLINE

14. Respondent has no record of prior discipline. However, in July 1999, a Review Committee ordered that an Admonition should be issued for Respondent's conduct in an unrelated matter. Service of the Admonition on Respondent is pending at the time of this Stipulation.

APPLICATION OF ABA STANDARDS

15. The following American Bar Association Standards for Imposing Lawyer Sanctions (1986) are applicable to this case:

> **4.1 Failure to Preserve the Client's Property**
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:
>
> 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
>
> 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

16. The following aggravating factors under ABA Standard 9.2 are applicable to this case:

> (i) substantial experience in the practice of law (for the first eleven years of his career, Respondent practiced real estate law with a law firm and development company. In approximately 1994, Respondent opened a solo practice.)

17. The following mitigating factors under ABA Standard 9.3 are applicable to this case:

(b) absence of a dishonest or selfish motive;

(c) personal or emotional problems (as detailed in a separate document submitted to the Disciplinary Board);

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings (as demonstrated by Respondent's willingness to enter into this Stipulation);

(j) interim rehabilitation (as detailed in a separate document submitted to the Disciplinary Board).

STIPULATED DISCIPLINE

18. The parties stipulate that the discipline to be imposed for Respondent's misconduct as described in this document is Reprimand.

COSTS AND EXPENSES

19. It is stipulated and agreed that Respondent shall pay attorney's fees and administrative costs of $500. These costs and expenses shall be paid pursuant to RLD 5.7(h).

VOLUNTARY AGREEMENT

20. Respondent states that prior to entering into this Stipulation he has either consulted, or had an opportunity to consult, independent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation voluntarily, and that no promises or threats have been made by the Association, nor by any representative thereof, to induce the Respondent to enter into this Stipulation except as provided herein.

LIMITATIONS

21. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

22. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Association as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

23. Pursuant to Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have all material investigation documents available to it for review, including but not limited to all correspondence from the grievant and all written responses of the respondent lawyer. Pursuant to RLD 11.1(c)(6), all documents which form the record before the Board for its review shall become public information upon approval of the Stipulation by the Board, pursuant to RLD 11.1(c)(6), unless disclosure is restricted by order or rule of law.

24. If this Stipulation is approved by the Disciplinary Board, it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

25. If this Stipulation is not approved by the Disciplinary Board, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation to Reprimand as set forth above.

DATED this 10 day of Jan, ~~1999~~ 2000.

Gregory D. Esau, WSBA No. 22404
Respondent

Leland G. Ripley, WSBA No. 6266
Respondent's Counsel

Marsha A. Matsumoto, WSBA No. 15831
Disciplinary Counsel

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

22. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Association as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

23. Pursuant to Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have all material investigation documents available to it for review, including but not limited to all correspondence from the grievant and all written responses of the respondent lawyer. Pursuant to RLD 11.1(c)(6), all documents which form the record before the Board for its review shall become public information upon approval of the Stipulation by the Board, pursuant to RLD 11.1(d)(6), unless disclosure is restricted by order or rule of law.

24. If this Stipulation is approved by the Disciplinary Board, it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

25. If this Stipulation is not approved by the Disciplinary Board, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation to Reprimand as set forth above.

DATED this 2nd day of December, 1999.

Gregory D. Edlu, WSBA No. 22404
Respondent

Leland G. Ripley, WSBA No. 6266
Respondent's Counsel

Marsha A. Matsumoto, WSBA No. 15853
Disciplinary Counsel

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

FILED

JAN 1 2000

BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re GREGORY D. ESAU, Lawyer.	Bar No. 22404 ORDER ON STIPULATION TO TWO ADMONITIONS

This matter came before the Disciplinary Board at its January 20, 2000 meeting. Upon review of the December 2, 1999 Stipulation to Reprimand and supporting documentation, IT IS ORDERED that the December 2, 1999 Stipulation to Reprimand is approved and pursuant to RLD 11.1(g) the documents designated as confidential in the Report to the Disciplinary Board shall remain confidential. These confidential documents include Documents 2, 3, 9, and 12.

The vote on this matter was unanimous.

Those voting were S. Smith, Lamb, Brandon, Dullanty, Cullen, Sturwold, D. Smith, Hayton, Bonnell, Kilpatrick and Goetz

DATED this 12th day of January, 2000

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order on Stipulation to be delivered to the Office of Disciplinary Counsel and to be mailed to Leland Ripley, ~~Respondent~~/Respondent's Counsel, 2442 NW Market, PMB #409, Seattle, WA 98107 by ~~Certified~~/first class mail, prepaid on the 14th day of January, 2000

Julie Shankland
Clerk/Counsel to the Disciplinary Board

Richard B. Kilpatrick, Chairperson
Disciplinary Board

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

4. ***Funk***

In re ***Funk*** (Bar No. 14349; no review number found) (14 pages not including this cover page):

(a) Order of Suspension (dated December 30, 1994)

(b) Disciplinary Board Order on Hearing Officer's Recommendation (dated September 16, 1994; 2 pages)

(c) Concurring Opinion of Norman McAdory (dated October 6, 1994; 1 page)

(d) Dissenting Opinion of Leonard M. Cockrill (dated October 20, 1994; 1 page)

(e) Dissenting Opinions of Theodore Spearman and Victoria L. Vreeland (dated November 14, 1994; 1 page)

(f) Dissenting Opinion of Kathryn Culpepper (dated November 16, 1994; 1 page)

(g) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated August 2, 1994; 7 pages)

RECEIVED
JAN 03 1995
WSBA
LEGAL DEPT.

THE SUPREME COURT OF WASHINGTON

FILED
SUPREME COURT
STATE OF WASHINGTON
DEC 30 P 3:05
C. J. MERRITT
CLERK

IN RE:	BAR NO. 14349
BERNICE FUNK,	ORDER OF SUSPENSION
AN ATTORNEY AT LAW.	

On December 12, 1994, the Washington State Bar Association Disciplinary Board filed an Order on the Hearing Officer's Recommendation in the disciplinary matter of Bernice Funk. The order recommended Bernice Funk be suspended from the practice of law for a period of six months. Bernice Funk did not appeal that decision. The Supreme Court did review the Disciplinary Board order and all accompanying documents filed in this matter.

Therefore, it is hereby

ORDERED:

Bernice Funk is suspended from the practice of law in the State of Washington effective immediately.

DATED at Olympia, Washington, this 30th day of December, 1994.

CHIEF JUSTICE

265/866

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss.

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

Dated this 30th day of Dec, 1994

By

SEAL OF THE SUPREME COURT
STATE OF WASHINGTON

RECEIVED
SEP 16 1994
WSBA
LEGAL DEPT.

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re BERNICE FUNK, Lawyer.	Bar No. 14349 DISCIPLINARY BOARD ORDER ON HEARING OFFICER'S RECOMMENDATION

THIS MATTER came before Disciplinary Board at its September 16, 1994 meeting. Upon review of the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation and Record in this matter,

____ IT IS ORDERED that the Hearing Officer's Recommendation is approved,

or

X IT IS ORDERED that the Hearing Officer's Recommendation is modified as follows: based upon the ABA Standards and the applicable aggravating and mitigating factors, the Disciplinary Board recommends that Respondent Funk be suspended for a period of six months. The Board found insufficient mitigating factors to justify recommending less than 6 months.

The vote on this matter was 8-5. Those voting in the majority were Althauser, Bailey, Becker, Chalker, Delay, Felver, Hart and Rosellini. Those voting in the minority were Spearman, Vreeland, Culpepper, Cockrill and McAdory.

IT IS FURTHER ORDERED that the mitigating factor listed on page 5, line 21, of the Hearing Officer's Findings of Fact & Conclusions of Law, "(a) Absence of any dishonest or selfish motive," be deleted.

The vote on this matter was 10-3. Those voting in the majority were Althauser, Bailey, Becker, Chalker, Delay, Felver, Hart, Rosellini, Culpepper &

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, Washington 98121
(206) 727-8207

13

McAdory. Those voting in the minority were Spearman, Vreeland & Cockrill.

DATED this 16 day of September, 1994.

Leonard M. Cockrill, Chairperson
Disciplinary Board

CERTIFICATE OF SERVICE

I CERTIFY THAT I MAILED A COPY
OF THE FOREGOING Order TO
D. Baker AT 20 West Lake Ave N
FOR RECIPIENT AT Seattle 98109
CERTIFIED/FIRST CLASS MAIL/FACSIMILE
ON THE 21 DAY OF Nov, 1994.

STATE BAR COUNSEL

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, Washington 98121
(206) 727-8207

RECEIVED

OCT 12 1994

WASHINGTON STATE BAR ASSOCIATION
LEGAL DEPT.

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re BERNICE FUNK, Lawyer.	Bar No. 14349 CONCURRING OPINION

Having reconsidered the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation as well as the other materials submitted, I withdraw my previous dissent and concur with the Disciplinary Board's majority opinion recommending that Respondent Funk be suspended for a period of six months.

DATED this 6 day of October, 1994.

Norman E. McAdory
Citizen Member

I CERTIFY THAT I MAILED A COPY OF THE FOREGOING Concurring Opinion TO D. Bulson, RESPONDENT/COUNSEL FOR RESPONDENT AT 20 West Lake Ave N Seattle CERTIFIED/FIRST CLASS MAIL, POSTAGE PREPAID, ON THE 24 DAY OF Nov, 19 94.

STATE BAR COUNSEL

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

74

OCT 24 1994

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In Re BERNICE FUNK, Lawyer.	Bar No. 14349 DISSENTING OPINION OF LEONARD M. COCKRILL

This matter was considered by the Disciplinary Board at its September 16, 1994 meeting. The Hearing Officer, after making Findings, recommended a four-month suspension. The majority of the Board disagreed with the Hearing Officer's Finding that there was an absence of any dishonest or selfish motive which the Hearing Officer considered to be a mitigating factor under the ABA Guidelines. The vote on that issue was 10 to 3, and I dissented from the majority because of my belief that under the state of this record, such a conclusion must be based primarily upon the Hearing Officer's subjective evaluation of the appearance and demeanor of the Respondent Lawyer. It is my opinion that the Board in such matters should defer to the Finding of the Hearing Officer who was in a position to make the evaluation while a Board member is not.

I dissented from the decision to change the recommended suspension from four months to six months for the same reason. The Hearing Officer's decision was based upon his conviction that the Respondent Lawyer's demonstrated character, reputation, remorse and rehabilitation warranted the four months rather than a longer suspension. Not being in a position to personally observe the remorse of the Respondent Lawyer, I accept the Hearing Officer's evaluation in that regard and would have approved his recommended four-month suspension.

DATED this 20th day of October, 1994.

Respectfully submitted,

LEONARD M. COCKRILL

I CERTIFY THAT I MAILED A COPY OF THE FOREGOING dissent TO R. Balmer RESPONDENT/COUNSEL FOR RESPONDENT AT address of record CERTIFIED/FIRST CLASS, POSTAGE PREPAID, ON THE 21 DAY OF Nov, 1994

STATE BAR COUNSEL

RECEIVED
NOV 15 1994
WSBA
LEGAL DEPT.

**BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION**

In re BERNICE FUNK, Lawyer.	Bar No.14349 DISSENTING OPINIONS OF THEODORE SPEARMAN AND VICTORIA L. VREELAND

THIS MATTER came before Disciplinary Board at its September 16, 1994 meeting. The undersigned members of the Disciplinary Board hereby join in Leonard M. Cockrill's dissenting opinion that was filed on October 24, 1994.

Dated this 14th day of November, 1994.

Victoria L. Vreeland

Victoria L. Vreeland

Dated this 10th day of November, 1994.

Theodore Spearman

Theodore Spearman

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, Washington 98121

RECEIVED
NOV 17 1994
WSBA
LEGAL DEPT.

**BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION**

In re BERNICE FUNK, Lawyer.	Bar No. 14349 DISSENTING OPINION OF KATHRYN CULPEPPER

THIS MATTER came before Disciplinary Board at its September 16, 1994 meeting. I dissented from the majority's decision to change the recommended suspension from four months to six months. I join in Mr. Cockrill's dissenting opinion that the Disciplinary Board should defer to the Hearing Officer's recommendation for a four month suspension for the reason that the Hearing Officer was in a better position than the Board to evaluate the Respondent Lawyer's demonstrated character, reputation, remorse and rehabilitation.

Dated this 16th day of November, 1994.

Kathryn Culpepper
Kathryn Culpepper

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, Washington 98121
(206) 727-8207

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

RECEIVED
AUG 03 1994
WSBA
LEGAL DEPT.

In re BERNICE FUNK, Lawyer.	Bar No. 14349 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION

Pursuant to Rule 4.10 of the Rules for Lawyer Discipline ("RLD"), the undersigned hearing officer held the hearing on August 1, 1994. The hearing was held pursuant to procedures stipulated to by the parties. Respondent attorney appeared at the hearing with her counsel, Kurt M. Bulmer. Maria Regimbal, Disciplinary Counsel, appeared for the Washington State Bar Association ("WSBA").

FORMAL COMPLAINT AND AMENDED FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged respondent Funk with the following counts of misconduct:

Count 1 - Respondent Funk, August 1991, removed $1,533.76 of the Fidlers' funds from her trust account, which she knew to be in dispute in violation of RPC 1.14(a)(2) (requiring a lawyer to maintain disputed client funds in trust), and RPC 8.4(c) (dishonesty).

Count 2 - Respondent Funk, December 1991, removed $1,192.60 of the Fidler's funds from her trust account, which she knew to be in dispute, in violation of RPC 1.14(a)(2) (requiring a lawyer to maintain disputed client funds in trust), and RPC 8.4(c) (dishonesty).

Count 3 - Respondent Funk, January 1992, removed $341.16 of the Fidler's funds, which she knew to be in dispute from her trust account in violation of RPC 1.14(a)(2) (requiring a lawyer to maintain disputed client funds in trust), and RPC 8.4(c) (dishonesty).

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

The parties conducted a hearing on August 1, 1994, based on a stipulated procedure. Based upon the pleadings in the case, the testimony and evidence and exhibits entered at the hearing, the hearing officer makes the following:

FINDINGS OF FACT

1. Respondent Funk was admitted to the practice of law in the state of Washington on November 1,1984. At all times material to the allegations made in the Formal Complaint, Respondent Funk practiced law in King and Kitsap Counties, Washington.

2. In July 1990, respondent Funk undertook representation of Dawn and Karl Fidler, with respect to making a claim for defects in the house which the Fidlers had recently purchased. Ms. Funk was an acquaintance of the Fidlers through their mutual friend Wes Cade.

3. Ms. Funk undertook an investigation and she intervened on behalf of the Fidlers behalf in a Kitsap County Abatement Action pending against the seller with regard to the defects and initiated a lawsuit for fraud/deceit, negligent misrepresentation, unfair business practice, breach of warranty of marketable title and other allegations, on the Fidlers' behalf, Kitsap County, plaintiff and Karl Fidler and non-Fidler, husband and wife, intervenor/plaintiffs v. Ted J. Wurtz and Barbara Wurtz, husband and wife, and The Estate of Ted Wurtz, Jr., Spot Realty, Inc., Norwest Mortgage Closing Services, Inc., and Timothy Francis Botkin, and Jane Doe Botkin, husband and wife, defendants, Kitsap County Cause No. 90-2-01439-1.

4. The representation was complex and involved multiple parties.

5. Early in the representation, respondent Funk presented the Fidlers with a $75 per hour plus costs written fee agreement, but a signed copy cannot be located.

6. During the representation the clients made the following payments to respondent Funk totalling $700:

August 10, 1990 $ 300

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

August 29, 1990 $ 200

November 13, 1990 $ 200

7. On September 1990, the Fidlers tendered to Ms. Funk $3,067.52 which represented two months mortgage payments to establish to the lender that they were willing and able to make their mortgage. These funds were deposited into Ms. Funk's IOLTA trust account. The mortgager had refused these payments.

8. As of December 1990, the Fidlers became dissatisfied with Ms. Funk's representation of them, and retained lawyer Ken Fielding to represent them.

9. At that time, respondent Funk was holding $3,067.52 in her IOLTA trust account, which had been provided to her by the Fidlers in September 1990, and represented the mortgage payments on the disputed property.

10. As of January 1991, respondent Funk requested of the Fidlers that these funds $3,067.52, be applied to her outstanding fees and cost bill of $4,491.17..

11. Between January and April 1991, there were conversations and correspondence between respondent, the Fidlers and their counsel, regarding the disputed fees.

12. The Fidlers, through Mr. Fielding, in February 1991, offered to settle the dispute by payment to Ms. Funk of one-half the funds she held, approximately $1,500, with return to them of the balance.

13. The parties did not reach agreement and thereafter a period of time passed without communication.

14. Respondent Funk heard nothing more from the Fidlers of their lawyer, Ken Fielding, until February 1992.

15. On August 20, 1991, respondent Funk issued a check from the IOLTA trust account to herself for $1,533.76 which represented one-half of the funds held by her on the Fidler account. She did not advise the Fidlers of this action.

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

16. On December 20, 1991, respondent Funk issued a check from her IOLTA trust account in the amount of $1,092.60 to Stephen Pappas, lawyer for John and Michele Lewis. In November 1991, the Association had issued respondent Funk an Admonition under RLD 5.5A, relating to the Lewis' grievance of allege neglect of Landlord-tenant claim. Following issuance of the Admonition, Mr. Pappas, on behalf of the Lewis, made a claim against respondent Funk, and respondent Funk issued the check of $1,092.66 to Mr. Pappas to satisfy Lewis' claim. In her recordkeeping, respondent Funk charged those funds ($1,092.66) against the Fidler monies held by her in her trust account.

17. On January 13, 1992, respondent Funk issued a check from her IOLTA trust account in the amount of $341.16 to herself, which represented the balance of the Fidler funds which had been held in trust by her.

18. In February 1992, the Fidlers, through Mr. Fielding, demanded an accounting and the entire sum of $3,067.52 which they believed was held by respondent Funk in her trust account. The Fidlers made no offer of payment for the outstanding lawyers' fees and costs. In a telephone conversation, Ms. Funk advised the Fidlers and Mr. Fielding, that the funds were in trust. This was not true.

19. In March 1992, the Fidlers settled their lawsuit relating to the house through Mr. Fielding.

20. The Fidlers filed a grievance with the Association in May 1992 and Mr. Fielding caused a civil lawsuit to be served upon respondent Funk in King County Superior Court, Karl Fidler and Dawn Fidler, husband and wife v. Bernice Funk, King County Superior Court Cause No. 92-2-12601-0.

21. On May 29, 1992, respondent Funk deposited a $3,067.52 into her IOLTA trust account and credited this sum to the Fidlers.

22. On June 2, 1992, a Default Judgment was entered in Fidler v. Funk. On that date respondent Funk offered to settle with the Fidlers by payment of $3,702.66

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

which represented the full sum held by her in dispute ($3,067.52) plus interest at the rate of 12% from the receipt of the funds (September 1990) to June 1992. This settlement was accepted by the Fidlers.

23. Respondent Funk issued checks to the Fidlers, one from her IOLTA account ($3,067.52) and the second ($635.13), from her general account which represented the interest. The funds were accepted and releases were executed by the Fidlers.

24. The following aggravating factors contained in Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions are applicable in this case:

(a) Prior disciplinary offense: On November 8, 1991, Respondent Funk received an Admonition for failing to use reasonable diligence and promptness in representing a client (RPC 1.3), failing to keep a client informed about the status of a matter (RPC 1.4(a)), failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions (RPC 1.4(b)), and failing to take steps to the extent reasonably pracicable to protect the client's interest before withdrawing (RPC 1.15(d)).

(b) Multiple offenses: Although this incident involves representation of a single client relating to a single matter, the Respondent did issue three checks from her trust account while the question of her attorney's fees was in dispute.

The following mitigating factors, which are set forth in Section 9.32 of the ABA Standards, are applicable to this case:

(a) Absence of any dishonest or selfish motive;

(b) Timely good faith effort to make restitution to to rectify the consequences of misconduct;

(c) Full and free disclosure to disciplinary bord and cooperative attitude toward the proceedings;

(d) Inexperience in handling client funds in a trust account;

(e) Excellent character and reputation;

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

(f) Interim rehabilitation, in that the Respondent has taken a CLE course on management of trust accounts, and, it seems clear, is not likely to repeat the actions which led to this complaint;

(g) Remorse.

CONCLUSIONS OF LAW

Respondent's conduct in regards to the grievance of Karl and Dawn Fidler violates RLD 1.1(i), through violations of RPC 1.14(a)(2) and RPC 8.4(a). Counts 1, 2 and 3 are established, although a violation of RPC 8.4(c) has not been established.

SANCTION RECOMMENDED

The following ABA Standards for Imposing Lawyer Sanctions are applicable in this case:

2.3 Suspension. The commentary to this standard states, inter alia, ". . . the Standards draw a distinction between suspensions for six months or less and suspensions for more than six months. Standard 6.4 states that a lawyer who has been suspended for six months or less should be reinstated automatically (i.e., without establishing rehabilitation)."

The commentary also states ". . . While the Standards for Lawyer Discipline currently provide for suspensions of less than six months, short-term suspensions with automatic reinstatement are not an effective means of protecting the public. If a lawyer's misconduct is serious enough to warrant a suspension from practice, the lawyer should not be reinstated until rehabilitation can be established. While it may be possible in some cases for a lawyer to show rehabilitation in less than six months, it is preferable to suspend a lawyer for at least six months in order to insure effective demonstration of rehabilitation. . ."

I believe that this case is the exception which proves the rule. Respondent Funk has demonstrated excellent character, reputation and remorse, and has also demonstrated that she is rehabilitated to the degree that it is most unlikely that there

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

will ever be a repetition of this situation. Under the circumstances, I have concluded that a suspension of more than sixty days, but less than six months, is warranted.

RECOMMENDATION

Based upon the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent Funk be Suspended for a period of four months.

DATED this 2nd day of August, 1994.

Thomas J. Greenan
Hearing Officer

WASHINGTON STATE BAR ASSOCIATION
500 Westin Bldg., 2001 6th Ave.
Seattle, WA 98121-2599
(206) 727-8207

5. *George*

In re ***George,*** WSBA Review No. 00#00039 (reported in *Wash. St. Bar News,* Dec. 2001) (18 pages not including this cover page):

(a) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated October 16, 2000; 5 pages)

(b) Stipulation to Facts and Misconduct (dated September 6, 2000; 11 pages including 5-page exhibit)

(c) Letter from WSBA President regarding censure (dated December 4, 2000; 1 page)

(d) Notice of Disciplinary Action (dated December 13, 2000; 1 page)

FILED

2000

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **DENISE C. GEORGE,** Lawyer WSBA # 10749	Public No. 00#00039 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION

Pursuant to Rule 4.10 of the Rules for Lawyer Discipline ("RLD"), the undersigned hearing officer held the hearing on September 27, 2000. Respondent DENISE C. GEORGE appeared pro se, and Disciplinary Counsel C. ELIZABETH WILLIAMS appeared for the Washington State Bar Association (WSBA).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Respondent with the following counts of misconduct:

Count I – By failing to communicate with Ms. Sheri Zeller Hines, Respondent failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of RPC 1.4(a).

Count II – By failing to seek an order requiring Blake Hines to submit to counseling, and by failing to have the Court decide the issue of child support, Respondent failed to act with reasonable diligence, in violation of RPC 1.3.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

Count III – By agreeing to a change of custody for Blake Hines without Ms. Zeller Hines' consent, Respondent failed to abide by her client's decisions concerning the objectives of representation in violation of RPC 1.2 (a).

Based upon the pleadings in the case, the Stipulation to Facts and Misconduct filed on September 13, 2000, and testimony entered at the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. The Hearing Officer adopts the Stipulated Facts set forth in the parties' Stipulation to Facts and Misconduct, filed on September 13, 2000, as having been established by a clear preponderance of the evidence. The Stipulation to Facts and Misconduct is attached as Exhibit A and incorporated herein by reference. The Hearing Officer also makes the following selective and supplemental findings of fact:
2. Respondent Denise C. George has a record of prior discipline as set forth in the Stipulation to Facts and Misconduct, including a 1994 Reprimand for failing to provide diligent representation and failing to communicate with three separate clients.
3. In the matter before this hearing officer, Ms. George failed to keep a client (Sheri Zeller Hines) informed as to case status and failed to carry out or discuss with her client the instructions that Ms. Zeller Hines gave to Ms. George, most notably in two areas:
    a. In allowing entry of an order changing custody of Blake Hines (Ms. Zeller Hines' daughter); and
    b. In not quickly bringing and pursuing an action to collect past child support.
4. The following aggravating factors contained in Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions are applicable in this case:

    (a) Prior disciplinary offenses (as set forth in the Stipulation to Facts and Misconduct); and

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

(i) Substantial experience in the practice of law (Ms. George has been licensed to practice law since May 1980).

5. The following mitigating factors, which are set forth in Section 9.32 of the ABA Standards, are applicable to this case:

(a) Absence of a dishonest or selfish motive;

(c) Personal or emotional problems (Ms. George testified to a series of personal problems, including financial problems with her law partnership and the breakup of her marriage, that caused her great concern during the period she represented Ms. Zeller Hines);

(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(l) Remorse.

6. When the aggravating and mitigating factors are balanced, the Hearing Officer finds no reason to deviate from the presumptive sanction.

CONCLUSIONS OF LAW

7. By failing to communicate with Ms. Zeller Hines, Respondent failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a).

8. By failing to seek an order requiring Blake Hines to submit to counseling, and by failing to have the Court decide the issue of child support, Respondent failed to act with reasonable diligence, in violation of RPC 1.3.

9. By allowing Mr. Marc Rozen to sign the Modification Order changing custody for Blake Hines without Ms. Zeller Hines' clear consent, Respondent failed to abide by her client's decisions concerning the objectives of representation, in violation of RPC 1.2(a).

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

SANCTION ANALYSIS

10. The following ABA Standards for Imposing Lawyer Sanctions are presumptively applicable in this case:

> 4.6 ***Lack of Candor***
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:
>
> 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.
>
> 4.4 ***Lack of Diligence***
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:
>
> 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

11. Based on the ABA Standards, the presumptive sanction for Ms. George's misconduct is censure.

12. Respondent's mental state was that of negligence. Although Ms. Zeller Hines may not have prevailed on the counseling, custody, and child support issues even if Respondent diligently performed and communicated, Ms. Zeller Hines was injured by Respondent's lack of diligence and failure to communicate, and believed that she had not had her "day in court."

13. Applying the aggravating and mitigating factors, which do not warrant deviation from the presumptive sanction, the Hearing Officer finds that the appropriate sanction recommendation is censure.

RECOMMENDATION

Based upon the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent Denise C. George be censured.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

The Hearing Officer also recommends that Respondent seek evaluation and treatment for depression in the future, if needed.

DATED this 16 day of October, 2000.

Kathleen C. Field
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW . . . to be delivered to the Office of Disciplinary Counsel and to be mailed to DENISE C GLEDHILL, Respondent/~~Respondent's Counsel~~ at 1118 ½ FINNEGAN WAY #1A, BELLINGHAM WA 98225-4852 by ~~Certified~~/first class mail, postage prepaid on the 1ST day of NOVEMBER, 2000

ASST Clerk/Counsel to the Disciplinary Board

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

FILED

SEP 13 2000

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **DENISE C. GEORGE,** Lawyer. Bar No. 10749	Bar No. 00#00039 STIPULATION TO FACTS AND MISCONDUCT

The following Stipulation to Facts and Misconduct is entered into by the Washington State Bar Association, through Disciplinary Counsel C. Elizabeth Williams and Respondent Denise C. George, for purposes of the disciplinary hearing set for September 27, 2000 before Hearing Officer Kathleen Field.

ADMISSION TO PRACTICE

1. Respondent Denise C. George was admitted to the practice of law in the State of Washington on May 12, 1980. At all times material to this Stipulation, Respondent practiced in Whatcom County, Washington.

PRIOR DISCIPLINE

2. In January 1994, Respondent Denise C. George stipulated to a reprimand for failure to communicate with three clients and for failure to complete legal work for three clients. The Disciplinary Board approved the Stipulation on January 21, 1994. Attached hereto as Exhibit A is a true and correct copy of the reprimand.

3. See Confidential Exhibit B.

STIPULATED FACTS

4. The statement set forth below is a compromise statement entered into by the parties for the purposes of this disciplinary proceeding only. Both parties recognize that if this case went to

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

011

hearing, the hearing officer would have to resolve certain credibility and evidentiary issues, identified below, and that such resolution could favor either the Association or the Respondent.

5. Sheri Zeller Hines and Dr. James Hines were divorced on or about January 6, 1989, when the Whatcom County Superior Court entered a Decree of Dissolution of Marriage. This Decree awarded Ms. Zeller Hines custody of the two minor daughters of the marriage and provided Ms. Zeller Hines child support in the amount of three thousand dollars ($3000.00) per month.

6. Daughter Blake Loel Hines lived with Ms. Zeller Hines in Tucson, Arizona until on or about December 31, 1994. On or about December 31, 1994, sixteen year old Blake Hines left Tucson, Arizona to temporarily reside with Dr. Hines in Bellingham, Washington.

7. At the time Blake Hines left Tucson to live with Dr. Hines, Dr. Hines had not made the December 1994 child support payment as required by the Decree of Dissolution of Marriage. Dr. Hines suggested to Ms. Zeller Hines that she agree to a modification of the child custody and child support provisions of the Decree of Dissolution of Marriage. Specifically, Dr. Hines asked Ms. Zeller Hines to sign a proposed parenting plan that would have transferred custody of Blake Hines to Dr. Hines and would have terminated Dr. Hines' child support obligation with respect to Blake Hines.

8. Ms. Zeller Hines refused to sign Dr. Hines' proposed parenting plan. Following Ms. Zeller Hines' refusal to sign the proposed parenting plan, Dr. Hines filed for a modification of custody and a modification of his child support obligations in the Whatcom County Superior Court on January 11, 1995.

9. Ms. Zeller Hines was served with the documents filed by Dr. Hines in the Whatcom County Superior Court in late January 1995. Shortly thereafter, Ms. Zeller Hines consulted with Respondent Denise C. George.

10. The initial consultation between Ms. Zeller Hines and Respondent took place by telephone on or about January 25, 1995. During this initial consultation, Ms. Zeller Hines hired Respondent to assist her in attempting to get Dr. Hines' action for modification of custody and child support in the Whatcom County Superior Court dismissed on the basis that any dispute over custody

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

and/or child support should have been filed in Arizona because Blake Hines was a resident of Arizona.

11. On February 2, 1995, Respondent entered her appearance as Ms. Zeller Hines' lawyer in the action entitled *In re Marriage of James L. Hines and Sherrill S. Hines* and the matter was continued.

12. Ms. Zeller Hines met with Respondent on or about March 14, 1995. During this meeting, Ms. Zeller Hines told Respondent that she did not want to give up legal custody of Blake Hines and asked Respondent to assist her in collecting unpaid child support and in obtaining counseling for Blake.

13. There was no further contact between Ms. Zeller Hines and Respondent until June 1995, when Ms. Zeller Hines contacted Respondent by telephone to tell her that Blake Hines had visited Ms. Zeller Hines in Tucson.

14. Between the June 1995 telephone conversation and September 1995, Ms. Zeller Hines attempted to contact Respondent by telephone on two occasions. Respondent did not take or return the phone calls from Ms. Zeller Hines.

15. On or about September 20, 1995, Ms. Zeller Hines wrote Respondent a letter. After inquiring about the status of the back child support matter and the custody matter, Ms. Zeller Hines wrote:

> I owe you no money. Are you still representing me? If not, refer me to another Bellingham attorney. If so, please respond by letter as to what the status of my case is.
>
> I am in serious financial distress due to Jim's lack of child support, as I indicated to you previously. He promised at least six months' support but owes nine now.

16. Respondent did not respond to Ms. Zeller Hines' September 20, 1995 letter.

17. On or about October 19, 1995, Respondent filed a Note for Motion Docket indicating that there would be a hearing on a motion for support arrearage at 1:30 p.m. on November 1, 1995. Respondent did not file a motion for support arrearage, however, and there was no hearing on a motion for support arrearage at 1:30 p.m. on November 1, 1995.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

18. Respondent filed another Note for Motion Docket on December 7, 1995, indicating that there would be a hearing on December 13, 1995.

19. On or about December 11, 1995, the lawyer for Dr. Hines filed a Motion to Determine Adequacy of Child Custody Modification Petition and a Note for Motion Docket in an attempt to get the modification petition he filed in January 1995 before the Court for hearing and decision. The Note indicated that the matter was scheduled for a hearing on January 10, 1996.

20. At the December 13, 1995 hearing, the matter was set over until January 10, 1996.

21. On or about January 5, 1996, Respondent filed a Motion to Establish Support Arrearages that sought to establish Dr. Hines' child support arrearage for the period December 1994 through December 1995. Also, Respondent filed a signed declaration from Ms. Zeller Hines and another Note for Motion Docket reflecting that the arrearage motion was scheduled for hearing at 1:30 p.m. on January 10, 1996.

22. At the hearing on January 10, 1996, the court scheduled both the Motion to Determine Adequacy of Child Custody Modification Petition and the Motion to Establish Support Arrearages for a trial (fact-finding hearing).

23. There was a telephone call between Ms. Zeller Hines and attorney Marc Rozen in Respondent's office on January 16, 1996. According to Mr. Rozen's notes, Ms. Zeller Hines told Mr. Rozen that she was not interested in custody of Blake Hines, that she wanted Blake Hines to submit to counseling, and that she needed the back child support. Ms. Zeller Hines states that she told Mr. Rozen that she did not want to relinquish legal custody of Blake Hines.

24. On March 5, 1996, the Court entered a Modification Order signed by attorney Marc Rozen that indicated it was based in part on "an agreement of the parties" and that: (a) changed residential placement of Blake Hines to Dr. Hines, and (b) "reserved" the issue of the child support arrearage for determination at a later date.

25. Ms. Zeller Hines did not receive a copy of this order, and Respondent has no proof that a copy was provided to Ms. Zeller-Hines.

26. On April 1, 1996, Ms. Zeller Hines wrote Respondent another letter. In this letter, Ms. Zeller Hines again affirmed that she would not agree to give up custody of Blake Hines. The

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

letter also took issue with Respondent's failure to try to get Blake Hines to submit to counseling. Further, the letter expressed Ms. Zeller Hines' hope that Respondent could assist her in getting the back child support since she was having a difficult time financially. Finally, the letter stated:

> I would appreciate some form of correspondence telling me what you feel you have done for me or what you expect to do for me in terms of what services I requested you perform for me. The delays in this case, and I suspect Blake's father was instrumental in arranging the delays, were certainly not to my daughter's and my benefit, and they continue not to be.

27. Respondent did not respond to Ms. Zeller Hines. Further, Respondent took no other action to get the child support issue resolved.

28. Blake Hines turned eighteen on April 15, 1996.

29. Thereafter, Ms. Zeller Hines made telephone calls to Respondent. These calls were not returned.

30. On March 31, 1997, Ms. Zeller Hines wrote Respondent another letter. After getting no response, Ms. Zeller Hines filed the grievance giving rise to this matter.

31. After the grievance was filed, Respondent prepared a letter to Ms. Zeller Hines. This June 24, 1997 letter stated in part:

> I wanted to send you a personal note to say how sorry I am for the misunderstanding that has apparently resulted from a lack of adequate communication on the part of my office. My understanding was that you did not wish to pursue this further.

STIPULATION TO MISCONDUCT

32. By failing to communicate with Ms. Zeller Hines, Respondent failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a) and is subject to discipline under RLD 1.1(i).

33. By failing to seek an order requiring Blake Hines to submit to counseling, and by failing to have the Court decide the issue of child support, Respondent failed to act with reasonable diligence in violation of RPC 1.3 and is subject to discipline under RLD 1.1(i).

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

34. By allowing Mr. Rozen to sign the Modification Order changing custody for Blake Hines without Ms. Zeller Hines' clear consent, Respondent failed to abide by her client's decisions concerning the objectives of representation in violation of RPC 1.2(a) and is subject to discipline under RLD 1.1(i).

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation to Facts and Misconduct as set forth above.

Dated this 6th day of September, 2000

C. Elizabeth Williams, WSBA #21689
Disciplinary Counsel

Denise C. George, WSBA #10749
Respondent

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

EXHIBIT A

BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

RECEIVED
MAR 28 1994
WSBA
LEGAL DEPT.

In re DENISE C. GEORGE, Lawyer.	)	BAR NO. 10749 REPRIMAND

You have been directed to appear before the Board of Governors of the Washington State Bar Association, pursuant to the Rules for Lawyer Discipline promulgated by the Supreme Court of the State of Washington, to receive this FORMAL REPRIMAND.

You represented Ms. McSorley in a dissolution action. The dissolution was final in November, 1990. Between September, 1990 and May, 1991, Ms. McSorley made a number of telephone calls to your office, requesting that you complete the Qualified Domestic Relations Order ("QDRO"). You did not return some of the calls. You did not file the QDRO for your client.

In July, 1991, Ms. McSorley filed the QDRO without your assistance. Ms. McSorley's financial advisor estimated her damages from the delay range from $2,058 to $5,568 as a result of decrease in value of the stock in her ex-husband's retirement account. Ms. McSorley filed a lawsuit against you on November 19, 1991. You stipulated to entry of an $8,000 judgment against you. You paid $5,500 on the judgment, which Ms. McSorley accepted as a satisfaction of the judgment.

You also represented Ms. Roberts in a dissolution action. The dissolution was final in August, 1987. From October 31, 1988 to January 7, 1991, Ms. Roberts wrote thirteen letters to you requesting the status of preparation of the QDRO, indicating she was concerned about the QDRO because her ex-husband had the option of drawing a percentage of his pension at age 55. You did not respond

011 Ar
15

to some of the letters and telephone calls from Ms. Roberts. You sent a QDRO to Mr. Roberts' employer, but the employer did not accept it. Ms. Roberts completed the QDRO without your assistance in December, 1991.

On June 19, 1991, a third client, Ms. Hackler, met with you in your offices, and retained you to represent her in a paternity suit. You advised Ms. Hackler that you would send a letter to the alleged father by the end of the week. Ms. Hackler waited one month and, when she did not receive anything from you, she began to call your offices, asking for a copy of the promised letter. By February 3, 1992, Ms. Hackler had not received either the letter or any billing for your services. You did not send the letter, although you had prepared a draft.

Your failure to communicate with Ms. McSorley, Ms. Roberts and Ms. Hackler regarding their cases violated RLD 1.1(i), through violation of RPC 1.4(a), in that you did not keep your clients reasonably informed about the status of their cases and did not promptly comply with reasonable requests for information.

Your failure to complete and file the QDROs for both Ms. McSorley and Ms. Roberts, despite your assurances you would do so, violated RLD 1.1(i), through violation of RPC 1.3, because you did not act with reasonable diligence and promptness in representing your clients. Your failure to send the letter for Ms. Hackler violated RLD 1.1(i), through violation of RPC 1.3, because you did not act with reasonable diligence and promptness in representing your client.

Your actions merit a Formal Reprimand, as they bring discredit upon yourself and the legal profession and show a disregard for the high traditions of honor expected from a member of this profession.

NOW, THEREFORE, YOU ARE HEREBY REPRIMANDED by the Board of Governors of the Washington State Bar Association for this misconduct. This Reprimand will be made a part of your permanent record with the Washington State Bar Association, and will be considered along with other evidence in regard

WASHINGTON STATE BAR ASSOCIATION
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121
(206) 727-8200

to any future grievances against you.

Your privilege to practice law in the State of Washington is based upon the finding that you are a person of good moral character, and upon your commitment to abide by the rules governing the conduct of members of the Bar. The Board of Governors expects all of your future conduct as a lawyer to be consistent with that finding as to your character, and with a continuing commitment on your part to the letter and spirit of those rules.

DATED this 25th day of ~~February~~ March, 1994.

By _____
Paul L. Stritmatter
President, Board of Governors

CERTIFICATE OF SERVICE

I CERTIFY THAT I MAILED A COPY OF THE FOREGOING Reprimand TO Denise George AT HIS/HER LAST KNOWN POST OFFICE ADDRESS, TO WIT: 1405 No. Forest St. Bellingham, Wa. 98225 CERTIFIED AND BY FIRST CLASS MAIL, POSTAGE PREPAID, ON THE 30th DAY OF March, 19 94

_____
STATE BAR COUNSEL

WASHINGTON STATE BAR ASSOCIATION
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121
(206) 727-8200

Document # 011 Att (Ex. B)

is a Confidential Document which shall remain under seal and is not available for public review. Please see the Notice of Protective Order on this file's cover for further information.

FILED
DEC 04 2000
DISCIPLINARY BOARD

WSBA
WASHINGTON STATE BAR ASSOCIATION

December 4, 2000

Jan Eric Peterson
President

Denise C. George
Attorney at Law
1118 ½ Finnegan Way
Bellingham, WA 98225

Re: Denise C. George – Washington State Bar Association Censure

Dear Ms. George:

Pursuant to Rule 5.5(a) of the Washington Rules for Lawyer Discipline, you are being censured by the Washington State Bar Association. This Censure is based upon the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation for censure, filed with the Disciplinary Board on November 1, 2000, after the hearing held on September 27, 2000. You are being censured for failing to communicate with your client, Ms. Sheri Zeller Hines; for failing to act with reasonable diligence on her behalf; and for failing to abide by her decisions concerning the objectives of representation.

By failing to keep Ms. Zeller Hines reasonably informed about the status of her matter, you violated Rule of Professional Conduct (RPC) 1.4(a), which requires lawyers to promptly comply with reasonable requests for information. By failing to seek an order requiring Blake Hines to submit to counseling, and by failing to have the Court decide the issue of child support, you violated RPC 1.3, which requires lawyers to act with reasonable diligence and promptness in representing a client. By allowing Mr. Marc Rozen to sign the Modification Order changing custody for Blake Hines without Ms. Zeller Hines' clear consent, you violated RPC 1.2 (a), which requires a lawyer to abide by the client's decisions concerning the objectives of representation. Your violation of RPC 1.4(a), RPC 1.3, and RPC 1.2(a) merits this LETTER OF CENSURE.

YOU ARE HEREBY CENSURED by the Washington State Bar Association. Your actions discredit both you and the legal profession. Your privilege to practice law in the State of Washington is based on your commitment to abide by the rules governing a lawyer's conduct, and the Washington State Bar Association expects your future professional conduct to include a continuing commitment to the letter and spirit of those rules.

WASHINGTON STATE BAR ASSOCIATION

By: _____
Jan Eric Peterson, President

CERTIFICATE OF SERVICE

I CERTIFY THAT I CAUSED A COPY OF THE FOREGOING Letter of Censure TO BE MAILED TO Denise C. George, RESPONDENT/COUNSEL FOR RESPONDENT AT 1118 ½ Finnegan Way Bham, WA 98225

CERTIFIED/FIRST CLASS MAIL, POSTAGE PREPAID, ON THE 4th DAY OF December

DISCIPLINARY COUNSEL

FILED

DEC 12 2000

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re DENISE C. GEORGE, Lawyer. Bar No. 10749	Review No. 00#00039 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Denise C. George received a Censure, dated December 4, 2000.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 13th day of December, 2000.

Julie A. Shankland

Julie A. Shankland, WSBA # 20172
Clerk/Counsel to Disciplinary Board

Attachments: Discipline Decision
Censure

cc:
- (X) Presiding Judge, County of Whatcom
- (X) Supreme Court of Washington
- (X) U.S. District Court, W.D. Washington
- (X) U.S. District Court, E.D. Washington
- (X) U.S. Court of Appeals, Ninth Circuit

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

6. ***Guthrie***

In re ***Guthrie***, WSBA Review No. 02#00036 (reported in *Wash. St. Bar News,* Dec. 2003) (12 pages not including this cover page):

(a) Stipulation to Discipline (dated March 21, 2002; 7 pages)

(b) Order on Stipulation to Reprimand (dated May 8, 2002; 2 pages)

(c) Reprimand (dated October 19, 2002; 2 pages)

(d) Notice of Disciplinary Action (dated December 12, 2002; 1 page)

FILED

JAN 11 2002

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re CATHY L. GUTHRIE, Lawyer Bar No. 21774	Public No. _____ STIPULATION TO REPRIMAND

Under Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation to Reprimand is entered into by the Washington State Bar Association, through disciplinary counsel, Randy Beitel and Jean K. McElroy, respondent lawyer, Cathie L. Guthrie, and counsel, Kurt M. Bulmer. This stipulation is part of the WSBA Special Settlement Project.

ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on August 19, 1992.

STIPULATED FACTS

2. Respondent represented Janna Frohm in a dissolution. Ms. Frohm terminated the representation on November 28, 2000. Respondent asked Ms. Frohm at that time to begin making $200 monthly payments on her outstanding balance but Ms. Frohm did not do so.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

3. Respondent filed an attorney's lien in December 2000 for $1,712.28, plus interest at 12%.

4. The Decree of Dissolution required Ms. Frohm's ex-husband to pay $2,500 in spousal maintenance to his lawyer's trust account. In recognition of Respondent's attorney lien, the Decree required the lawyer to forward the $2,500 to Respondent in a check jointly payable to Respondent and Ms. Frohm.

5. In anticipation of the settlement check, on April 4, 2001, Ms. Frohm wrote to Respondent, indicating that she felt she was entitled to the spousal maintenance funds, and offering to make payments to Respondent on the outstanding balance of $2,418.03.

6. On April 13, 2001, Respondent received the $2,500 check. She had not yet responded to the April 4, 2001 letter.

7. On April 17, 2001, Respondent wrote to Ms. Frohm that the check had been received but that she was not willing to accept payments from Ms. Frohm for the outstanding balance. Respondent stated that she would wait until April 27, 2001 for Ms. Frohm to present Respondent with "a legal basis for your claim."

8. On April 25, 2001, Respondent received a letter from Ms. Frohm stating that she protested various portions of Respondent's charges and that it would be inappropriate for Respondent to negotiate the check as Ms. Frohm's signature would be required to do so.

9. Ms. Frohm offered to settle the dispute over Respondent's bill by allowing Respondent to keep $315 of the spousal maintenance funds. Respondent did not accept this offer.

10. On or about May 11, 2001, Respondent caused the $2,500 check to be deposited in her trust account with only her rubber stamp "for deposit only" endorsement. Respondent did so after consulting with the WSBA Professional Responsibility Counsel who informed her that RPC 1.14(a) requires that funds belonging in part to a client and in part to a lawyer "must be deposited" to a trust account.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

11. Respondent now understands that regardless of RPC 1.14, she cannot deposit funds without sufficient endorsement.

12. In the future, if a client refuses to endorse a check jointly payable to Respondent and the client, Respondent will seek to resolve the dispute, including offering to have the funds deposited in another lawyer's trust account while the dispute is pending or signing an agreement that if the funds are deposited in her trust account, she will not remove the funds without the client's consent. She will also offer to use the WSBA Fee Arbitration or Mediation programs to resolve fee disputes that she is unable to resolve promptly through informal methods.

13. On or about May 14, 2001, Respondent disbursed $81.97 of these funds to Ms. Frohm.

14. On or about May 24, 2001, Respondent disbursed the remainder of $2,418.03 to herself: $1,877.23, in satisfaction of the December 2000 attorney's lien and $540.80 in payment of the remainder of the outstanding fee balance.

15. Ms. Frohm did not authorize the disbursal, nor did Respondent foreclose on the attorney's lien or otherwise reduce her fee claim to judgment.

16. Respondent removed the funds based on an erroneous belief that the notice given by her attorney's lien and her fee agreement entitled her to the funds.

17. Respondent acknowledges that established Washington law prohibits taking funds based solely on an asserted lien. Rather, the lienholder must first obtain a judgment.

18. Respondent acknowledges that although the fee agreement authorized payment of charges for costs and fees out of cost and fee advances made by the client, it did not waive the client's rights under the attorney lien statute, RCW 60.40.

19. Respondent has redeposited the $2,418.02 and will seek to resolve the dispute over the funds with Ms. Frohm. Respondent will offer to participate in and pay the full $150 fee for either the WSBA Fee Arbitration or Mediation program if Ms. Frohm wishes to do so. If Ms. Frohm does not agree to participate in either of those programs,

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

and Respondent and Ms. Frohm are unable to resolve the dispute informally, Respondent will pursue a judicial foreclosure on her lien.

STIPULATION TO MISCONDUCT

20. By removing $2,418.02 of the funds in her trust account without her client's authorization, Respondent violated RPC 1.14(a) and is subject to discipline pursuant to RLD 1.1(i).

PRIOR DISCIPLINE

21. Respondent has no prior discipline.

APPLICATION OF ABA STANDARDS

22. The following American Bar Association Standards for Imposing Lawyer Sanctions (1991 & Feb. 1992 Supp.) apply to this case:

> 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

23. The presumptive sanction is reprimand.

24. The following aggravating factor applies:

(b) selfish motive.

25. The following mitigating factors apply:

(a) absence of a prior disciplinary record;
(l) remorse.

26. In addition, Respondent's agreement to stipulate to discipline as part of this Special Settlement Project is given great weight as a mitigating factor, due to the contribution the timing of the stipulation makes to the efficient and effective operation of the lawyer discipline system.

STIPULATED DISCIPLINE

27. The parties stipulate that Respondent will receive a reprimand.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

RESTITUTION

28. Respondent has redeposited the disputed funds in her trust account, and will seek to resolve the dispute over the funds as discussed in paragraph 20 above.

COSTS AND EXPENSES

29. The Association agrees to waive all costs and fees to which it is entitled under RLD 5.7(h).

VOLUNTARY AGREEMENT

30. Respondent states that prior to entering into this Stipulation she has consulted independent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation voluntarily, and that no promises or threats have been made by the Association, nor by any representative thereof, to induce the Respondent to enter into this Stipulation except as provided herein.

LIMITATIONS

31. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

32. This Stipulation is part of the WSBA Special Settlement project, designed to reduce the backlog of pending formal proceedings by appropriately allocating resources among cases and promptly resolving matters without the time and expense of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As such, the resolution stipulated to herein may be different from what would be sought or obtained as part of a stipulation outside of this Special Settlement Project or at a hearing in this matter. Approval of this stipulation will not constitute precedent in determining the appropriate sanction to be imposed in other cases; but if approved, this stipulation will be

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

admissible in subsequent proceedings against Respondent to the same extent as any other approved stipulation.

33. Under RLD 4.14(b)(3), this Stipulation is not binding upon the Bar Association or the respondent as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

34. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have available to it for consideration all documents that the parties agree to submit to the Disciplinary Board, and all public documents. Under RLD 11.1(c)(6), all documents that form the record before the Board for its review become public information upon approval of the Stipulation by the Board, unless disclosure is restricted by order or rule of law.

35. If this Stipulation is approved by the Disciplinary Board, it will be followed by the disciplinary action agreed to in this Stipulation. All notices required in the Rules for Lawyer Discipline will be made.

36. If this Stipulation is not approved by the Disciplinary Board, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action.

//

//

//

//

//

//

//

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation to Discipline as set forth above.

Cathy L. Guthrie, WSBA No. 21774
Respondent

Dated: 3/21/02

Kurt M. Bulmer, WSBA No. 5559
Respondent

Dated: 3/21/02

Randy Beitel, WSBA No. 7177
Disciplinary Counsel

Dated: 3/25/02

Jean McElroy, WSBA No. 13533
Managing Disciplinary Counsel
Anne I. Seidel, WSBA No. 22742
Senior Disciplinary Counsel

Dated: 3/25/02

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

FILED

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

CATHY L. GUTHRIE.

Lawyer

WSBA No. 21774

Public No. _____

ORDER ON STIPULATION TO REPRIMAND

This matter came before the Disciplinary Board at its May 03. 2002 meeting.

On review of the March 25. 2002 Stipulation to Reprimand.

Y IT IS ORDERED that the March 25. 2002 Stipulation to Reprimand is approved. or

___ IT IS ORDERED that the March 25, 2002 Stipulation to Reprimand is rejected because

_____

_____

The vote on this matter was unanimous

Those voting in the majority were Weatherhead, Haynes, Delaney, Leper, Schapp, Wilson, Burke, Cullen, Horne, Robson, Baumgardner, Bonnell

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

Those ~~voting in the minority~~ were _____

_____

Unanimously recused

DATED this 8 day of May, 2002.

David Cullen
Chair, Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the order on stipulation to reprimand to be delivered to the Office of Disciplinary Counsel and to be mailed to CATHY L GUTHRIE, Respondent/~~Respondent's Counsel~~ at P.O. BOX 5519, EVERETT, WA, by Certified/~~first class mail~~, postage prepaid on the 15TH day of MAY 2002.

Clerk/~~Counsel~~ to the Disciplinary Board

7099 3220 0002 7354 6379

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

FILED
DEC 12 2002
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **CATHY L. GUTHRIE,** Lawyer WSBA No. 21774	Public No. 02#00036 REPRIMAND

You have been directed to appear before the Board of Governors of the Washington State Bar Association, pursuant to the Rules for Lawyer Discipline promulgated by the Supreme Court of the State of Washington, to receive this FORMAL REPRIMAND.

In April 2001 you deposited into your trust account a former client's settlement funds which were forwarded to you because you had filed an attorney's lien against the settlement. Although your former client disputed your entitlement to those funds, you disbursed the funds to yourself without establishing your entitlement to the funds by either foreclosing on your attorney's lien, reducing your claim for fees to judgment, or resolving the dispute with the former client.

Your conduct in removing the disputed funds from your trust account without first resolving the dispute and establishing your entitlement to the funds violated Rule of Professional Conduct 1.14(a).

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

003

These actions merit a Formal Reprimand. Your actions discredit you and the legal profession and show a disregard for the high traditions of honor expected from a member of the Association.

NOW, THEREFORE, YOU ARE HEREBY REPRIMANDED by the Board of Governors of the Washington State Bar Association for this misconduct. This Reprimand will be made a part of your permanent record with the Association, and will be considered along with other evidence regarding any future grievances against you.

Your privilege to practice law in the State of Washington is based on the finding that you are a person of good moral character, and on your commitment to abide by the rules governing the conduct of members of the Association. The Board of Governors expects all your future conduct as a lawyer to be consistent with that finding as to your character, and with a continuing commitment on your part to the letter and spirit of those rules.

DATED this 4th day of October, 2002.

WASHINGTON STATE BAR ASSOCIATION

J. Richard Manning, President

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re CATHY L. GUTHRIE, Lawyer Bar No. 21774	Review No. 02#00036 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Cathy L. Guthrie received a Formal Reprimand, dated October 18, 2002.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 12th day of December, 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Reprimand

cc: (X) Presiding Judge, County of Snohomish
(X) Supreme Court of Washington
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
( ) Other courts:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

7. ***Jones***

In re ***Jones***, WSBA Review No. 94#00207 (reported in *Wash. St. Bar News,* June 1999) (10 pages not including this cover page):

(a) Stipulation to Reprimand (dated January 29, 1999; 7 pages)

(b) Order on Stipulation to Reprimand (dated March 19, 1999; 1 page)

(c) Reprimand (dated September 9, 1999; 2 pages)

FILED

MAR 25 1999

DISCIPLINARY BOARD

BEFORE THE DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re MICHAEL E. JONES, Lawyer.	Bar No. 331 STIPULATION TO REPRIMAND

Pursuant to Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation for Discipline is entered into by the Washington State Bar Association, through disciplinary counsel, Douglas J. Ende, and respondent lawyer, Michael E. Jones.

ADMISSION TO PRACTICE

1. Respondent was admitted to the practice of law in the State of Washington on October 12, 1971.

STIPULATED FACTS

2. Margo Vincent was involved in a traffic accident on August 14, 1989 (hereinafter the "August 1989 accident") and later in a second traffic accident on February 7, 1990 (hereinafter the "February 1990 accident").

3. Seeking compensation for her injuries, on February 26, 1990, Ms. Vincent hired lawyer Michael E. Jones to represent her in connection with both accidents. Ms. Vincent entered into a written contingent fee agreement with Mr. Jones and his law firm, Jones, Ross, Luke, Casteel & Mallory, P.S. Mr. Jones recommended that no legal action be taken on the second accident until settlement of the claim for the first accident was finalized.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

4. The paralegal assigned by Mr. Jones to handle Ms. Vincent's files, Vinda Sund, assumed primary responsibility for the file and dealt with day-to-day matters as they arose.

5. On June 14, 1991, Mr. Jones filed suit on behalf of Ms. Vincent seeking damages for injuries arising from the August 1989 accident.

6. The August 1989 matter was settled to Ms. Vincent's satisfaction in February 1992.

7. Mr. Jones thereafter contacted the insurance company for the at-fault driver in the February 1990 accident, tendering a $60,000 demand in March of 1992.

8. The insurance company extended a settlement offer in July 1992, but Mr. Jones rejected the offer and no follow-up demand was made.

9. In approximately February 1992, Ms. Sund left Mr. Jones' law office for another job. Shortly after Ms. Sund's departure, Ms. Vincent stopped receiving responses to her written and telephonic requests for information about her case.

10. In November 1992, the insurer's claim representative wrote to Mr. Jones inquiring about any new information on Ms. Vincent's injury. She also asked Mr. Jones if he intended to file suit on Ms. Vincent's claims or if he was going to negotiate a settlement prior to filing. Mr. Jones did not respond to this letter.

11. On January 18, 1993, Ms. Vincent arrived at Mr. Jones' office without an appointment. When confronted by her, Mr. Jones apologized for not responding to Ms. Vincent's requests for information on the status of her case. He explained that his paralegal had quit and that he had a heavy caseload. Ms. Vincent specifically questioned Mr. Jones about the statute of limitations. Mr. Jones assured Ms. Vincent that everything was under control.

12. Mr. Jones failed to commence the action prior to expiration of the 3-year statute of limitations.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

13. Upon learning that no lawsuit had been commenced within the applicable limitations period, the insurance company for the at-fault driver closed the claim file.

14. From April through October 1993, Ms. Vincent repeatedly asked Mr. Jones for information on the status of her case, both by telephone messages and by letters. Mr. Jones did not respond.

15. In November 1993, Ms. Vincent contacted another lawyer, Sally Hyde. This lawyer made a written request that Mr. Jones deliver Ms. Vincent's file. She followed up with a telephone call to Mr. Jones. Mr. Jones did not respond to these efforts.

16. After checking with the Snohomish County Superior Court Clerk's office, Ms. Hyde informed Ms. Vincent that no lawsuit had been filed by Mr. Jones relating to the February 1990 accident.

17. On April 6, 1994, Ms. Vincent hired lawyer John Wheeler to commence a malpractice lawsuit against Mr. Jones.

18. Despite written requests sent by Mr. Wheeler dated May 2, 1994, and May 25, 1994, Mr. Jones failed to deliver Ms. Vincent's file.

19. Ms. Vincent's complaint alleging, inter alia, professional malpractice, was filed on December 7, 1994.

20. On February 2, 1996, the parties entered into a stipulated order establishing the defendant's liability and reserving the issue of damages for trial.

21. On December 9, 1996, following a mediation, the parties entered into a settlement agreement pursuant to which Ms. Vincent received $27,500.00, most of which was paid by Mr. Jones' insurance carrier.

22. Mr. Jones deeply regrets his failure to file Ms. Vincent's lawsuit within the applicable statute of limitations. His oversight stemmed from an excessive dependence on the assistance of a paralegal and a failure to assume adequate responsibility for the matter once the paralegal stopped working at his office. Because a draft complaint had been prepared, Mr. Jones mistakenly believed that a lawsuit had been filed. Mr. Jones' failure candidly and promptly to discuss the matter with Ms. Vincent stemmed from his embarrassment about the mistake.

STIPULATION TO MISCONDUCT

23. By failing to respond to his client's inquiries regarding the status of her case and to communicate material facts to her, Mr. Jones violated Rule 1.4 (duty to communicate) of the Rules of Professional Conduct ("RPC").

24. By failing to actively pursue settlement or to file a complaint and perfect service within the three year statute of limitations to preserve Ms. Vincent's claim, Mr. Jones violated RPC 1.1 (duty of competence) and RPC 1.3 (duty to act with reasonable diligence).

PRIOR DISCIPLINE

25. Mr. Jones has no prior discipline.

APPLICATION OF ABA STANDARDS

26. The following American Bar Association Standards for Imposing Lawyer Sanctions (1986) are applicable to this case:

> 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
>
> 4.53 Reprimand is generally appropriate when a lawyer:
> (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
> (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

27. The following aggravating factors under ABA Standard 9.22 apply here:

9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (two noncooperation depositions owing to Mr. Jones' failure to respond to Bar Association requests in writing);
9.22(h) vulnerability of victim;
9.22(i) substantial experience in the practice of law (21 years at time of misconduct).

28. The following mitigating factors under ABA Standard 9.22 apply here:

9.32(a) absence of a prior disciplinary record;
9.32(b) absence of a dishonest or selfish motive;
9.32(l) remorse.

29. It appears that Ms. Vincent has been fully compensated by the 1996 settlement of her malpractice claim. Mr. Jones' lack of candor with Ms. Vincent and his noncooperation with the Bar Association appear to have been genuinely motivated by his embarrassment about the matter rather than any bad faith effort to conceal his misconduct or to avoid discipline, and he has expressed seemingly sincere remorse. On balance, neither the aggravating or mitigating circumstances justify a departure from the presumptively applicable sanction of reprimand. Under similar circumstances, the Disciplinary Board approved a stipulation to reprimand in *In re Julian Joseph Nuxoll*, Bar No. 3506 (Order on Stipulation to Reprimand filed Dec. 4, 1996).

STIPULATED DISCIPLINE

30. The parties stipulate that respondent will receive a reprimand under RLD 5.5(b).

COSTS AND EXPENSES

31. It is stipulated and agreed that respondent shall pay $750 in attorney's fees and administrative costs related to the disciplinary proceeding pursuant to RLD 5.7(h), and $382.40 in

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue · Fourth Floor
Seattle, WA 98121-2330

attorney's fees and costs (which includes service of process and reporter charges) related to the December 18, 1998 noncooperation deposition pursuant to RLD 2.8(b)(2). Respondent's total liability for attorney's fees, expenses, and costs shall be $1,132.40.

LIMITATIONS

32. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

33. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Bar Association as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

34. Pursuant to Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have all material investigation documents available to it for review, including but not limited to all correspondence from the grievant and all written responses of the respondent lawyer. Pursuant to RLD 11.1(c)(6), all documents which form the record before the Board for its review shall become public information upon approval of the Stipulation by the Board, unless disclosure is restricted by order or rule of law.

35. If this Stipulation is approved by the Disciplinary Board, it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

36. If this Stipulation is not approved by the Disciplinary Board, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation for Discipline as set forth above.

DATED this 29th day of January, 1999.

Michael E. Jones, WSBA No. 331
Respondent Lawyer

DATED this 5th day of February, 1999

Douglas J. Ende, WSBA No. 17141
Disciplinary Counsel

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue Fourth Floor
Seattle, WA 98121-2330

RECEIVED

MAR 25 1999

WSBA OFFICE OF DISCIPLINARY COUNSEL

FILED

MAR 22 1999

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re MICHAEL E. JONES, Lawyer	Bar No. [illegible] ORDER ON STIPULATION TO REPRIMAND

This matter came before the Disciplinary Board at its March 19, 1999 meeting. Upon review of the February 5, 1999 Stipulation to Reprimand and supporting documentation.

✓ IT IS ORDERED that the February 5, 1999 Stipulation to Reprimand is approved, or

____ IT IS ORDERED that the February 5, 1999 Stipulation to Reprimand is rejected because

The vote on this matter was 9-2.

Those voting in the majority were Lamb, Bartlett, Drevelow, Weatherhead, Gatz, Henderson, Dille, Walker, Wiggins.

Those voting in the minority were Steinwold, Smith

DATED this 19 day of March, 1999

Charles K Wiggins

Charles K. Wiggins, Chairperson
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the order on stipulation to reprimand to be delivered to the Office of Disciplinary Counsel and to be mailed to Michael E. Jones, Respondent/~~Respondent's Counsel~~ JES at 5803 232nd St SW Mountlake Terrace WA 98043-4637, by Certified/~~first class mail~~, JNS postage prepaid on the 22nd day of March, 1999

Julie Shankland
Clerk/Counsel to the Disciplinary Board

P112225479

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

BEFORE THE
BOARD OF GOVERNORS
OF THE
WASHINGTON STATE BAR ASSOCIATION

FILED
SEP 24 1999
DISCIPLINARY BOARD

In re

MICHAEL E. JONES,

Lawyer

Bar No. 331

REPRIMAND

You have been directed to appear before the Board of Governors of the Washington State Bar Association, pursuant to the Rules for Lawyer Discipline promulgated by the Supreme Court of the State of Washington, to receive this FORMAL REPRIMAND.

You were hired in February 1990 by a client who sought to recover damages for an injury she had received in an automobile accident. You delegated the matter to a paralegal. After the paralegal left your employment, you failed to assume adequate responsibility for the matter. You failed to respond to an inquiry from the insurance company for the at-fault driver relating to settlement of the case. You failed to respond to your client's repeated telephonic and written requests for information. When unexpectedly confronted by your client at your office, you told her everything was under control. You did not file a lawsuit on behalf of your client prior to the expiration of the three-year statute of limitations. As a result, your client's claim against the at-fault driver became legally barred.

By failing to file a lawsuit on the client's behalf or to conclude a settlement prior to the expiration of the statute of limitations, you violated Rule of Professional Conduct 1.1, which requires a lawyer to provide competent representation, and Rule of Professional Conduct 1.3, which requires a lawyer to act with reasonable diligence and promptness. By failing to respond to your client's requests for information about the status of the case, you violated Rule of Professional

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

Conduct 1.4(a), which requires a lawyer to keep a client reasonably informed and to promptly comply with a client's reasonable requests for information.

Your actions merit a formal Reprimand. Your actions bring discredit upon yourself and the legal profession and show a disregard for the high traditions of honor expected from a member of this profession.

You are, therefore, reprimanded by the Board of Governors of the Washington State Bar Association for this misconduct. This Reprimand will be made a part of your permanent record with the Washington State Bar Association, and will be considered along with other evidence in regard to any future complaint against you.

Your privilege to practice law in the State of Washington is based upon the finding that you are a person of good moral character and upon your commitment to abide by the rules governing the conduct of members of the Bar. The Board of Governors expects all of your future conduct as a lawyer to be consistent with that finding as to your character and with a continuing commitment on your part to the letter and spirit of those rules.

DATED this 9 day of September, 1999.

WASHINGTON STATE BAR ASSOCIATION

M. Wayne Blair, President

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

8. ***Kram***

In re ***Kram,*** WSBA Review No. 02#00061 (reported in *Wash. St. Bar News,* Feb. 2003) (5 pages not including this cover page):

(a) Admonition (dated May 31, 2002; 2 pages)

(b) Finding and Order of Review Committee IV (dated May 31, 2002, 1 page)

(c) Notice (dated May 31, 2002; 1 page)

(d) Notice of Disciplinary Action (dated July 23, 2002; 1 page)

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

JUN 03 2002

In re

PETER KRAM,

Lawyer

Bar No. 7436

ADMONITION

Pursuant to Rule 5.5A of the Rules of Lawyer Discipline, a Review Committee of the Disciplinary Board issues the following admonition:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in the state of Washington.

FACTS

2. You represented Ms. Goodall in an Equal Employment Opportunity Commission complaint against her employer.
3. The client asked you to file an appeal of the EEOC's final decision.
4. You drafted the notice of appeal, but did not file it in a timely manner. You also failed to timely file the client's civil lawsuit in federal court.
5. Your client lost the opportunity to contest EEOC's decision.

MISCONDUCT

6. Your failure to timely file the client's notice of appeal and federal lawsuit violated RPC 1.3.

ADMONITION

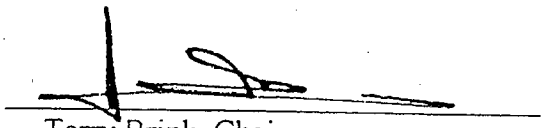
YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in subsequent discipline or disability proceedings involving you.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

002

You may protest the issuance of this Admonition by filing a written notice of protest with the Association-Attention: Counsel to the Disciplinary Board, within 30 days of the service of this Admonition upon you. Upon receipt of a timely protest, this Admonition shall be rescinded, and the grievance by shall be deemed ordered to hearing.

Dated this 31st day of May, 2002



Terry Brink, Chairperson
Review Committee IV

CERTIFICATE OF SERVICE

I certify that I caused a copy of the [illegible]
to be delivered to the Office of Disciplinary Counsel and to be mailed
to [illegible], Respondent/~~Respondent's Counsel~~
at [illegible], by Certified/first-class mail,
postage prepaid on the [illegible] day of [illegible]

[illegible]
Clerk/~~Counsel~~ to the Disciplinary Board

[illegible]

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

WASHINGTON STATE BAR ASSOCIATION
Terry Brink (Chair), Ronald Schaps, Evelyn Yenson
FINDING AND ORDER OF REVIEW COMMITTEE IV

W.S.B.A FILE NO. 99-00087

LAWYER: PETER KRAM **Grievant: Sun Goodall**

Having reviewed the materials regarding the above captioned grievance, Review Committee I of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rule 2.4(d) of the Rules for Lawyer Discipline:

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
( ) and consolidated with other grievances against this lawyer.

( ) There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under either the Rules of Professional Conduct or the Rules for Lawyer Discipline. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.

(X) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (RLD 5.5A.)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to RLD 5.6 cautioning the lawyer regarding

_____

_____

( ) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____

_____

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

( ) IT IS ORDERED under RLD 2.8(b)(2) that respondent lawyer pay $ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.

( ) and IT IS ORDERED_____

_____

Dated this 31ST day of MAY 2002

The vote was 3-0

Terry Brink, Chairperson of Review Committee IV

001

WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD

2101 Fourth Avenue - Fourth Floor · Seattle, Washington 98121-2330
Telephone: (206) 727-8280 · Fax: (206) 727-8320

DAVID CULLEN
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

☐ **Dismissal**

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed, however, you may choose to file a request for review. **If you do not mail or deliver a written request for review within 45 days of mailing of this notice of the Review Committee's order dismissing a grievance, the dismissal will be final.** See the attached order. The request for review of a Review Committee's order dismissing a grievance should be mailed or delivered to the Disciplinary Counsel in charge of the case or to the Office of Disciplinary Counsel, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. The Chairperson of the Disciplinary Board will consider the request for review and can either uphold the decision of the Review Committee or order its consideration by the full Disciplinary Board. Under Rule 2.3(f)(6) of the Rules for Lawyer Discipline, **the decision of the Chairperson of the Disciplinary Board is not appealable.**

☐ **Advisory Letter**

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

☐ **Admonition**

If the Review Committee determined that there was sufficient misconduct under the Rules for Lawyer Discipline to warrant the issuance of an Admonition under Rule 5.5A of the Rules for Lawyer Discipline, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is disciplinary action for the purposes of rules 11.1 and 11.2 of the Rules for Lawyer Discipline, and is public information. RLD 5.5A(f).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

☐ **Order to Hearing or for Further Investigation**

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

Date: May 31, 2002 **File Number: 99-00087**

Mailed To: PETER KRAM, Sun Goodall

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re PETER KRAM, Lawyer. Bar No. 7436	Review No. 02#00061 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Peter Kram received an Admonition, effective July 5, 2002.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 23rd day of July, 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Admonition

cc: (X) Presiding Judge, County of Pierce
(X) Supreme Court of Washington
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
( ) Other Courts:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

9. ***Lux***

In re ***Lux,*** WSBA Review No. 02#00066 (reported in *Wash. St. Bar News,* July 2003) (15 pages not including this cover page):

(a) Stipulation to Suspension (dated August 6, 2002; 12 pages)

(b) Order Approving Stipulation to 60-Day Suspension (dated October 2, 2002; 1 page)

(c) Washington Supreme Court Order Approving Stipulation Day Suspension (dated December 17, 2002; 1 page)

(d) Notice of Disciplinary Action (dated December 24, 2002; 1 page)

2002

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Bar No. 24581
DAVID M. LUX, Lawyer.	STIPULATION TO SUSPENSION

Under Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation to suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel, Anthony L. Butler, and respondent lawyer, David M. Lux.

I. ADMISSION TO PRACTICE

Respondent was admitted to practice law in the State of Washington on January 24, 1995, and at all times relevant to this stipulation practiced in Thurston County, Washington.

II. STIPULATED FACTS

Facts Common to the Walter Olsen, Karen Young, and Jean Cotton Matters

1. In December 2000, Respondent went to Europe with his girlfriend, Zooey Sowell, and returned to Olympia in early January 2001 despondent after breaking up with Ms. Sowell.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

2. In March 2001, Respondent was unable to function to maintain his law practice and set about to close his office. He arranged for lawyer Jennie Patton to take over many of his bankruptcy cases.

3. Between April 30 and May 7, 2001, Respondent was jailed for violating a domestic no-contact order.

4. Between May 8 and 23, 2001, Respondent was on electronic home monitoring.

5. From May 23 to June 29, 2001, Respondent was put back in jail.

Walter Olsen Matter

6. Mr. Olsen hired Respondent on September 18, 2000, to process a Chapter 13 bankruptcy.

7. On September 18, 2000, signed a fee agreement and paid Respondent a flat attorney's fee of ~~$564~~ $500.00 (flat), which in the fee agreement Respondent characterized as nonrefundable.

8. Shortly after September 28, 2000, Respondent sent Mr. Olsen some bankruptcy forms to complete, but when Mr. Olsen telephoned Respondent for advice on completing the forms, Respondent did not return his telephone calls.

9. Respondent did not expedite Mr. Olsen's bankruptcy case.

10. In March 2001, Mr. Olsen hired another lawyer to process and file the bankruptcy.

11. By letter dated March 26, 2001 addressed to Mr. Olsen, Respondent informed Mr. Olsen that lawyer Jennie Patton had taken over Mr. Olsen's bankruptcy case. Mr. Olsen telephoned Ms. Patton about his case. Ms. Patton informed Mr. Olsen that she received the bankruptcy case file from Respondent, but not the ~~$564~~ $500.00 fee payment.

12. By letter dated April 2, 2001, addressed to Respondent, Mr. Olsen informed Respondent that he had retained another lawyer, not Ms. Patton, and demanded a refund of the ~~$564~~ $500.00.

13. Respondent did not refund all or part of the attorney's fees Mr. Olsen paid.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

14. Debra Hayward, a paralegal who worked for Respondent from June 2000 to May 2001, stated that Respondent informed her that he received a telephone call from Disciplinary Counsel concerning the Olsen bankruptcy. Respondent instructed Ms. Hayward that if Disciplinary Counsel asked her any questions about the Olsen bankruptcy, she was to inform Disciplinary Counsel that Mr. Olsen did not complete the questionnaire in time and that Respondent did not have the necessary information to complete the case.

15. Ms. Hayward states that what Respondent instructed her to tell Disciplinary Counsel was not true because everything was in the file for the Olsen case. She states that Respondent did not process Mr. Olsen's bankruptcy case because Respondent was not in the office and was neglecting all of his cases, including the Olsen case.

Karen Young Matter

16. Karen Young hired Respondent in October 2000 to handle a Chapter 7 bankruptcy.

17. On November 7, 2000, Ms. Young signed a fee agreement under which she agreed to pay Respondent a flat, non-refundable attorney's fee of $600 by means of a group of post-dated checks.

18. Ms. Young paid Respondent the $600 attorney's fee.

19. Respondent advised Ms. Young that before he filed her bankruptcy he would get in touch with her creditors to forestall their dunning activities against her.

20. Respondent did not get in touch with Ms. Young's creditors.

21. Between October 2000 and late December 2000, Respondent did not act to process Ms. Young's bankruptcy case.

22. Ms. Young telephoned Respondent's office several times in December 2000 to inquire about her case.

23. Respondent never returned her telephone calls.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

24. In January 2001, Ms. Young was incarcerated. She provided Respondent a copy of a Power of Attorney, authorizing Ms. Young's mother, to conduct Ms. Young's business affairs, including working with Respondent on the bankruptcy matter.

25. In January 2001, Respondent telephoned Karen Young's mother and pressured her to authorize him to delay filing the petition until fall 2001.

26. In March 2001, Ms. Young wrote to Respondent asking about the status of her bankruptcy matter. Respondent did not respond.

27. Respondent did not act to file Ms. Young's bankruptcy petition.

28. By letter dated April 25, 2001, Ms. Young fired Respondent and demanded that he refund the $600. When Respondent did not respond, Ms. Young wrote him again on May 29, June 20, and July 10, 2001, demanding a refund.

29. Respondent never responded to Ms. Young, and did not refund any part of the attorney's fee she paid.

Jean Cotton Matter

30. In January 2001, Respondent represented Kelly Beach, the respondent party in a child custody proceeding in Grays Harbor County Superior Court, case #95-5-162-6, a sealed file. Lawyer Jean Cotton represented Mr. Healy, the petitioner.

31. On January 18, 2001, Ms. Beach, the petitioner, Ms. Cotton, and Respondent met at Respondent's office to conduct a settlement conference and resolved their dispute.

32. Ms. Beach fired Respondent following the January 18, 2001 meeting.

33. Respondent never disclosed to Ms. Cotton that on January 18, 2001, Ms. Beach fired him.

34. Respondent did not act to withdraw from representing Ms. Beach

35. Ms. Cotton drafted final documents and sent them to Respondent.

36. Respondent did not respond.

37. In late January 2001, Ms. Cotton telephoned Respondent, who informed her that he believed that Ms. Beach had second thoughts about settling the dispute. Ms. Cotton

responded stating that she and Respondent should set the custody proceeding for trial and that she would schedule Ms. Beach's deposition for February 8, 2001. Ms. Cotton heard nothing more from Respondent.

38. By court order dated September 10, 2001, the court authorized Ms. Cotton to inform Ms. Beach about the status and circumstances concerning Respondent. At a status hearing on October 1, 2001, Ms. Beach appeared and responded to the custody matter pro-se. Shortly after the hearing, Ms. Beach and the petitioner settled their custody dispute.

III. STIPULATION TO MISCONDUCT

39. Respondent's lack of diligence in representing Mr. Olsen and Ms. Young violated Rules of Professional Conduct ("RPC") 1.3 (duty of diligence to clients) and subjects him to discipline pursuant to RLD 1.1(i).

40. Respondent's failure to communicate with Mr. Olsen and Ms. Young violated RPC 1.4 (duty to communicate with clients) and subjects him to discipline pursuant to RLD 1.1(i).

41. Respondent's failure to expedite Ms. Beach's custody matter violated RPC 3.2 (duty to expedite litigation) and subjects him to discipline pursuant to RLD 1.1(i).

42. Respondent's failure to withdraw from representing Ms. Beach once she fired him violated RPC 1.15(a), and subjects him to discipline pursuant to RLD 1.1(i).

43. Respondent's failure to refund attorney's fees to Mr. Olsen and Ms. Young, having not performed the services paid for, violated RPC 1.5(a) and RPC 1.15(d), and subjects him to discipline pursuant RLD 1.1(i).

44. Respondent's instructing his paralegal to lie to Disciplinary Counsel about the status of the Olsen matter violated RPC 8.4(c), and subjects him to discipline pursuant to RLD 1.1(i).

45. Respondent denies allegations against him of instructing his paralegal to lie to Disciplinary Counsel, and of failing to withdraw and refund attorney's fees, but wishes to stipulate to a 60-day suspension without affirmatively admitting those allegations rather

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

than proceed through a public hearing. Respondent agrees that if this matter were to proceed to a public hearing, there is a substantial likelihood that the Bar Association would be able to prove by a clear preponderance of the evidence, the facts and misconduct set forth above.

IV. PRIOR DISCIPLINE

46. Respondent has no record of prior discipline.

V. APPLICATION OF ABA STANDARDS

47. The following American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case:

ABA Standard Concerning Lack of Diligence and Communication with a Client:

4.4 Lack of Diligence

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

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

ABA Standard Concerning Dishonesty and Misrepresentation:

5.1 Failure to Maintain Personal Integrity

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty,

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 Disbarment is generally appropriate when:

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

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

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

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

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

ABA Standard Concerning Failure to Expedite Litigation:

6.2 Abuse of the Legal Process

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

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

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

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

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

ABA Standard Concerning Termination of Representation and Unreasonable Fees:

7.0 Violations of Duties Owed to the Profession

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

false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

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

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

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed to the profession, and causes little or no actual or potential injury to a client, the public, or the legal system.

48. Respondent David M. Lux's mental state was knowledge with respect to his instructing his paralegal to lie to Disciplinary Counsel, and at least negligent with respect to his lack of diligence. The presumptive sanction is suspension.

49. The following aggravating factors apply:

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses; and

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

50. The following mitigating factors apply:

(a) absence of prior disciplinary record;

(c) personal or emotional problems (see below);

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and

(f) inexperience in the practice of law (admitted in 1995).

51. Concerning mitigating factors 9.32(c), Respondent has reported that after breaking up with his girlfriend during a European vacation in late December 2000, he

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

returned to Olympia, Washington emotionally unstable. Starting in January 2001 and continuing through summer 2001, his mental instability substantially rendered him unable to follow through on behalf of his clients. From January 2001, through mid-May 2001, he underwent mental-health counseling once or twice per week with Karen Ahrens, M.A. During the period of counseling, Ms. Ahrens prescribed an anti-depressant, Serzone, and later prescribed Wellbutrin. Respondent also reports that after he violated a no-contact order in late April 2001, he underwent mandatory mental health treatment, and while incarcerated for violating the no-contact order, he was evaluated at Western State Hospital for eight days in June 2001. It appears that in late summer, early fall 2001, Ms. Solwell died alone in a head-on collision with another automobile in Seattle, and that Respondent was not involved in the accident. Respondent states that he is not now undergoing any mental health counseling, but he remains concerned about his past behavior and mental condition.

VI. STIPULATED DISCIPLINE

52. Respondent David M. Lux stipulates to a 60-day disciplinary suspension under RLD 5.1(b).

53. Respondent recognizes that the status of his mental health during his suspension may be considered to determine whether he is eligible to be reinstated once his period of suspension concludes. Respondent agrees that before applying for reinstatement to practice law, he will execute all necessary releases to allow the Association full access to his health and mental-health records during the period of his suspension to enable the Association to determine his fitness to practice law and eligibility for reinstatement.

54. As a further condition of reinstatement, it is agreed that Respondent shall, at his own expense 30 days or more before requesting reinstatement, undergo an independent mental-health evaluation by a licensed clinical psychologist or psychiatrist, whom the WSBA Office of Disciplinary Counsel shall select. The examiner's report, which shall be provided to disciplinary counsel, shall be used by disciplinary counsel to determine

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

whether Respondent is psychologically fit to resume the practice of law. The examiner's report shall address the following matters:

a. Whether Respondent has recovered from his mental condition.

b. Whether Respondent's recovery is demonstrated by a meaningful and sustained period of successful rehabilitation.

c. Whether the recovery is such that the misconduct identified in this stipulation is unlikely to occur.

d. Whether Respondent's condition has been sufficiently stabilized such that he has regained professional competence and is currently fit to practice law.

e. The report shall recommend a course of probationary treatment to be followed by Respondent upon reinstatement, designed to ensure that Respondent maintains professional competence and fitness to practice law and to ensure that he behaviors leading to the misconduct identified in this stipulation do not occur.

Respondent will pay all costs of this examination and will execute all necessary releases to allow disciplinary counsel and the independent examiner to access all of Respondent's health and treatment records and reports. If disciplinary counsel rejects the independent examiner's report as not establishing fitness to resume the practice of law, Respondent shall have the right to seek review of that determination by the Disciplinary Board.

55. It is stipulated that, immediately following the 60-day suspension, Respondent shall be on probation for a period of two years.

56. During the period of probation, and at Respondent's expense, Respondent shall enter any probationary treatment plan recommended in the report of the independent mental health evaluator selected in accordance with paragraph 54. At Respondent's expense, the treatment provider shall make semi-annual reports to WSBA Office of Disciplinary Counsel of Respondent's participation and progress in treatment.

57. Respondent agrees that upon the request of disciplinary counsel he will execute any necessary releases to allow disciplinary counsel to access all of Respondent's health and treatment records to monitor Respondent's compliance with this stipulation during and

after the probationary period. Respondent shall authorize and direct his treatment provider to notify the WSBA Office of Disciplinary Counsel should Respondent fail to participate in the scheduled course of treatment or if, in the opinion of the treatment provider, Respondent's condition is such that Respondent is no longer professionally competent or fit to practice law, or if Respondent's condition is such that he is at substantial risk of engaging in an act of professional misconduct.

58. Respondent shall bear all costs of compliance with the foregoing probation provisions, and failure to comply with any such terms or conditions of probation may subject Respondent to disciplinary action pursuant to RLD 4.14(e) and RLD 1.1(m).

VII. RESTITUTION

59. Respondent agrees to pay Walter Olsen restitution in the amount of $564, payable within thirty (30) days of final approval of this stipulation.

60. Respondent agrees to pay Karen Young restitution in the amount of $600, payable within thirty (30) days of final approval of this stipulation.

61. Reinstatement from suspension is conditioned on payment of restitution.

VIII. COSTS AND EXPENSES

62. Respondent shall pay attorney fees and administrative costs of $1,000 in accordance with RLD 5.7(h).

IX. VOLUNTARY AGREEMENT

63. Respondent states that prior to entering into this Stipulation he had an opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation voluntarily, and that no promises or threats have been made by the Association, nor by any representative thereof, to induce the Respondent to enter into this Stipulation except as provided herein.

X. LIMITATIONS

64. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

65. Under RLD 4.14(b)(3), this Stipulation is not binding upon the Association or the respondent as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

66. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have available to it for consideration all documents that the parties agree to submit to the Disciplinary Board, and all public documents. Under RLD 11.1(c)(6), all documents that form the record before the Board for its review become public information upon approval of the Stipulation by the Board, unless disclosure is restricted by order or rule of law.

67. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will be followed by the disciplinary action agreed to in this Stipulation. All notices required in the Rules for Lawyer Discipline will be made.

68. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation to Discipline as set forth above.

David M. Lux, WSBA No. 24581
Respondent

Dated: 8-16-02

Anthony L. Butler, WSBA No. 13444
Disciplinary Counsel

Dated: 8/29/02

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

FILED

OCT 03 2002

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Public No.
DAVID M. LUX, Lawyer WSBA No. 24581	ORDER APPROVING STIPULATION TO 60-DAY SUSPENSION

This matter came before the Disciplinary Board at its September 27, 2002 meeting.

On review of the August 16, 2002 Stipulation to 60-Day Suspension,

IT IS ORDERED that the August 16, 2002 Stipulation to 60-Day Suspension is unanimously approved and under RLD 11.1(g) the documents designated as confidential in the Stipulation and/or report to the Disciplinary Board remain confidential.

The vote on this matter was unanimous.

Those voting were: Smith, Brink, Horne, Wilson, Robson, Cullen, Baumgardner, Dullanty, Leeper, Fearing, Bonnell and Schaps.

DATED this 2 day of October 2002.

David Cullen
Chair, Disciplinary Board

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

THE SUPREME COURT OF WASHINGTON

RECEIVED
2002

IN RE:	)	BAR NO. 24581
DAVID M. LUX,	)	ORDER APPROVING STIPULATION TO SUSPENSION
ATTORNEY AT LAW.	)	

This matter came before the Court on the Washington State Bar Association Disciplinary Board's Order Approving Stipulation to 60-Day Suspension pursuant to ELC 9.1(c), entered into by David M. Lux and WSBA Disciplinary Counsel on August 20, 2002. The Court having reviewed the Order and the Stipulation and a majority of the Court having determined that the Stipulation to Suspension should be approved. Now, therefore, it is

ORDERED:

David M. Lux is suspended from the practice of law for 60 days with conditional reinstatement. As stipulated and agreed David M. Lux shall pay Walter Olsen restitution in the amount of $500. Mr. Lux shall also pay Karen Young restitution in the amount of $600. Both payments shall be made within thirty (30) days from the date of this order. Mr. Lux shall pay attorney fees and administrative costs of $1,000 in accordance with ELC 13.9(i).

DATED at Olympia, Washington this 17th day of December, 2002.

For the Court

CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2002 DEC 17 P 3:08
BY C.J. MERRITT
CLERK

127/697

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re DAVID M. LUX, Lawyer. Bar No. 24581	Review No. 02#00066 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

David M. Lux was suspended for 60 days, beginning December 17, 2002.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 24th day of December, 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision

cc: (X) Presiding Judge, County of King
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
( ) Other Courts:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

10. ***Malone***

In re ***Malone,*** WSBA Review No. 02#00004 (reported in *Wash. St. Bar News,* Dec. 2002) (4 pages not including this cover page):

(a) Admonition (dated January 25, 2002; 2 pages)

(b) Finding and Order of Review Committee IV (dated January 25, 2002, 1 page)

(c) Notice of Disciplinary Action (dated March 12, 2002; 1 page)

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

FRANK A. MALONE,

Lawyer

Bar No. 15121

ADMONITION

Pursuant to Rule 5.5A of the Rules of Lawyer Discipline, a Review Committee of the Disciplinary Board issues the following Admonition:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in the state of Washington.

FACTS

2. In 1999, a client retained Joseph Cooney Legal Service to represent his son in a criminal matter. The client paid a $5,000 non-refundable fee for a motion for review of guilty plea.
3. This case was assigned to lawyer Tracy Collins, the only lawyer at the Joseph Cooney Firm that regularly represented criminal defendants. Mr. Collins did approximately six to ten hours of work on the case.
4. At the end of 1999, Mr. Collins left the firm. You gave Mr. Collins the client file, but kept the non-refundable fee.
5. The client asked that you refund the fee several times, and when you refused, he contacted the Bar Association.
6. After the Bar Association's recommendation that you receive an admonition if you returned all of the money to the client or that the matter be ordered to hearing if you did not, you contacted the client. You returned $2,500, half of the original fee, in exchange for a release of claims from the client.

MISCONDUCT

8. Your conduct in failing to deposit the disputed funds in trust and to promptly take steps to resolve the dispute violated RPC 1.14(a)(2).

ADMONITION

YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in subsequent discipline or disability proceedings involving you.

You may protest the issuance of this Admonition by filing a written notice of protest with the Association-Attention: Clerk/Counsel to the Disciplinary Board, within 30 days of the service of this Admonition upon you. Upon receipt of a timely protest, this Admonition shall be rescinded, and the grievance by shall be deemed ordered to hearing.

Dated this 25th day of January, 2002

Terry Brink, Chairperson
Review Committee IV

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ADMONITION to be delivered to the Office of Disciplinary Counsel and to be mailed to FRANK A. MALONE, Respondent/~~Respondent's Counsel~~ at 920 W. GARLAND AVE, SPOKANE, by Certified/~~first class mail~~, WA 99205 postage prepaid on the 28TH day of JANUARY 2002

Clerk/~~Counsel~~ to the Disciplinary Board

7099 3220 0000 [illegible]

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION
Terry Brink (Chair), Ronald Schaps, ~~Evelyn Vanson~~ Debi Robson
FINDING AND ORDER OF REVIEW COMMITTEE IV

W.S.B.A FILE NO. 00-01263

LAWYER: FRANK A. MALONE Grievant: George Rochek

Having reviewed the materials regarding the above captioned grievance, Review Committee IV of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rule 2.4(d) of the Rules for Lawyer Discipline:

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
( ) and consolidated with other grievances against this lawyer.

( ) There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under either the Rules of Professional Conduct or the Rules for Lawyer Discipline. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.

(X) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (RLD 5.5A.)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to RLD 5.6 cautioning the lawyer regarding

_____

_____

( ) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____

_____

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

( ) _____

_____

( ) and IT IS ORDERED

_____

Dated this 25TH day of JANUARY 2002

The vote was 3-0

Terry Brink, Chairperson
Review Committee IV

Ex 1

FILED

MAR 1 · 2002

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re FRANCIS A. MALONE, Lawyer. Bar No. 15121	Review No. 02#00004 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Francis A. Malone received an Admonition, effective March 3, 2002.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 12th day of March, 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Admonition

cc: (X) Presiding Judge, County of Spokane
(X) Supreme Court of Washington
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
( ) Other Courts:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

11. ***McLees***

In re ***McLees,*** WSBA Public No. 00#00066 (reported in *Wash. St. Bar News,* July 2001) (10 pages not including this cover page):

(a) Stipulation to Reprimand (dated October 5, 2000; 6 pages)

(b) Order on Stipulation to Reprimand (dated November 17, 2000; 1 page)

(c) Reprimand (dated February 9, 2001; 3 pages)

FILED
NOV 2 2000
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Bar No. **2785**
JAMES R. MCLEES,	STIPULATION TO REPRIMAND
Lawyer.	

Pursuant to Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation for Discipline is entered into by the Washington State Bar Association, through Special Disciplinary Counsel G. Val Tollefson, Respondent lawyer James R. McLees, and Respondent's counsel Kurt M. Bulmer.

ADMISSION TO PRACTICE

1. Respondent James R. McLees was admitted to the practice of law in the State of Washington on February 20, 1962.

STIPULATED FACTS

2. In July 1996, Patricia Morman retained Respondent to represent her in a claim against her insurance agent for misrepresentation of coverage.

3. Several years earlier, she had purchased (or thought that she had purchased) certain medical insurance from State Farm insurance agent. She made a claim on the policy in January 1994, and was told that she did not have the coverage she thought she had.

4. Respondent incorrectly determined that a six-year statute of limitations for breach of contract applied.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

5. Between July 1996 and August 1997, Mr. McLees failed to respond to numerous telephone calls from Ms. Morman and her husband regarding the status of the case.

6. Respondent never filed a complaint on Ms. Morman's behalf.

7. In August 1997, Ms. Morman terminated Respondent and hired another lawyer.

8. Ms. Morman's new lawyer determined that the statute of limitations on her claim against the insurance agent was three years, for it arose not from the insurance contract itself but from the insurance agent's alleged negligence.

9. The three-year statute of limitations expired during the time the Respondent was handling Ms. Morman's case.

10. Respondent suffered various health problems during the time that he represented Mrs. Morman. He failed to advise her that his health precluded him from attending to her case.

STIPULATION TO MISCONDUCT

11. Respondent's failure to ascertain the correct statute of limitations applicable to Ms. Morman's action against her insurance agent violated the following Rules of Professional Conduct: RPC 1.1 (duty to perform competently) and/or 1.3 (duty to perform diligently), and subjects him to discipline pursuant to RLD 1.1(i)

12. Respondent's failure to pursue Ms. Morman's claims against her insurance agent violated the following Rules of Professional Conduct: RPC 1.3 (duty to perform diligently) and/or 3.2 (duty to expedite litigation), and subjects him to discipline pursuant to RLD 1.1(i).

13. Respondent's failure to communicate with Ms. Morman regarding the status of the case and/or the fact that his medical condition interfered with his ability to attend to her case violated the following Rules of Professional Conduct: RPC 1.2 (duty to consult) and/or 1.4 (duty to keep client informed), and subjects him to discipline pursuant to RLD 1.1(i).

PRIOR DISCIPLINE

14. Respondent has no record of prior discipline.

//

//

APPLICATION OF ABA STANDARDS

15. The following American Bar Association Standards for Imposing Lawyer Sanctions (1986) are applicable to this case:

4.4 ***Lack of Diligence***

4.41 Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

4.5 ***Lack of Competence***

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

16. Respondent acted negligently in that he failed to appreciate the relevant legal doctrine and his own inability to attend properly to Ms. Morman's case. Ms. Morman suffered actual injury in that she is now barred form pursuing her claim against her insurance agent.

17. The presumptive sanction is a Reprimand.

18. Under ABA *Standards* Section 9.22, the following aggravating factors are present:

(d) multiple offenses;

(i) substantial experience in the practice of law [admitted 1962; began practicing in 1981].

19. Under ABA *Standards* Section 9.32, the following mitigating factors are present:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(h) physical or mental disability or impairment [medical condition].

20. The parties agree that the aggravating and mitigating factors do not provide cause to deviate from the presumptive sanction.

STIPULATED DISCIPLINE

21. Respondent stipulates to receive a Reprimand.

RESTITUTION

22. Pursuant to ABA *Standards* Section 2.8(a), Respondent shall pay to Patrick Morman as restitution $3,000 (representing the estimated value of the claim she lost against her insurance

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330

agent), plus interest accrued thereon from January 1997 at a rate of 7 percent per annum. Respondent will pay such restitution at the rate of $200/month from the date of approval of this Stipulation. Respondent has deposited the first payment of the restitution into a trust account held by Respondent's counsel Kurt M. Bulmer .

23. If the Disciplinary Board approves the Stipulation, Mr. Bulmer will pay the restitution to Ms. Morman. In the event that this Stipulation is not approved by the Disciplinary Board, the restitution paid by Respondent shall be returned to Respondent.

COSTS AND EXPENSES

24. It is stipulated and agreed that Respondent shall pay attorney's fees and administrative costs of $750. These costs and expenses shall be paid pursuant to RLD 5.7(h).

VOLUNTARY AGREEMENT

25. Respondent states that prior to entering into this Stipulation he has either consulted, or had an opportunity to consult, independent legal counsel regarding this Stipulation, that he is entering into this Stipulation voluntarily, and that no promises or threats have been made by the Association, nor by any representative thereof, to induce the him to enter into this Stipulation, except as provided herein.

LIMITATIONS

26. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

27. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Bar Association as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

28. Pursuant to Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have all material investigation documents available to it for review, including but not

limited to all correspondence from the grievant and all written responses of the respondent lawyer. Pursuant to RLD 11.1(c)(6), all documents which form the record before the Board for its review shall become public information upon approval of the Stipulation by the Board, pursuant to RLD 11.1(c)(6), unless disclosure is restricted by order or rule of law.

29. If this Stipulation is approved by the Disciplinary Board it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

30. If this Stipulation is not approved by the Disciplinary Board, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation for Discipline as set forth above.

James R. McLees, WSBA No. 2785
Respondent

Date: 10/5/00

Kurt M. Bulmer, WSBA No. 5559
Counsel for Respondent

Date: 10/5/00

Val Tollefson WSBA No. 5379
Special Disciplinary Counsel

Date: 10/9/00

FILED

2000

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES MCLEES,
Lawyer
WSBA # 2785

Public No. 97017[illegible]

ORDER ON STIPULATION
TO REPRIMAND

This matter came before the Disciplinary Board at its November 17, 2000, meeting.

Upon review of the October 5, 2000, Stipulation to Reprimand,

IT IS ORDERED that the October 5, 2000, Stipulation to Reprimand is approved.

The vote on this matter was 11-0

Those voting in the majority were: Weatherhead, Hayton, S. Smith, D. Smith, Johnson, Brink, Klein, Brandon, Sturwold, Cullen, Bonnell.

DATED this 17th of November, 2000

Stephen C. Smith, Chairman
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ORDER ON STIPULATION TO REPRIMAND to be delivered to the Office of Disciplinary Counsel and to be mailed to KURT BULMER, ~~Respondent~~/Respondent's Counsel at 201 WESTLAKE AVE N SEATTLE WA 98109, by ~~Certified~~/~~first class mail~~, postage prepaid on the 20TH day of NOVEMBER, 2000.

* VAL TOLLEFSON
ATTORNEY AT LAW
999 3RD AVE, STE 4400
SEATTLE, WA 98104-4022

ASST Clerk/Counsel to the Disciplinary Board

FILED

APR 0 5 2001

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

James R. McLees,
Lawyer
WSBA # 2785

Public No. 00#00066

REPRIMAND

You have been directed to appear before the Board of Governors of the Washington State Bar Association, pursuant to the Rules for Lawyer Discipline promulgated by the Supreme Court of the State of Washington, to receive this FORMAL REPRIMAND.

In July 1996, a client retained you to represent her in a claim against her insurance adjuster for misrepresentation of coverage. You incorrectly determined that a six-year statute of limitations for breach of contract applied, when in fact the correct statute of limitations was three years. Between July 1996 and August 1997, you failed to respond to numerous telephone calls from your client and her husband regarding the status of the case, and failed to advise your client that your health problems prevented you from attending to her case. You never filed a complaint on your client's behalf.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

In August 1997, your client terminated you and hired another lawyer. By that time, the statute of limitations had expired.

Your failure to ascertain the correct statute of limitations applicable to your client's action against her insurance agent violated your duties to perform competently and diligently, and violated Rules of Professional Conduct 1.1 and 1.3.

Your failure to timely pursue your client's claims against her insurance agent violated your duties to perform diligently and to expedite litigation consistent with your client's interests, and violated Rules of Professional Conduct 1.3 and 3.2.

Your failure to respond to your client's reasonable inquiries regarding the status of her case, and your failure to advise her that your medical condition interfered with your ability to attend to her case, violated your duties to communicate with and consult your client, and violated Rules of Professional Conduct 1.2 and 1.4.

These actions merit a Formal Reprimand. Your actions bring discredit upon yourself and the legal profession and show a disregard for the high traditions of honor expected from a member of this profession.

NOW, THEREFORE, YOU ARE HEREBY REPRIMANDED by the Board of Governors of the Washington State Bar Association for this misconduct. This Reprimand will be made a part of your permanent record with the Washington State Bar Association, and will be considered along with other evidence in regard to any future complaints against you.

Your privilege to practice law in the State of Washington is based upon the finding that you are a person of good moral character, and upon your commitment to abide by the rules governing the conduct of members of the Bar. The Board of Governors expects all

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

of your future conduct as a lawyer to be consistent with that finding as to your character, and with a continuing commitment on your part to the letter and spirit of those rules.

DATED this 9th day of February, 2001.

WASHINGTON STATE BAR ASSOCIATION

Jan Eric Peterson, President

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

12. ***Means***

In re ***Means***, WSBA Review No. 01#00087 (reported in *Wash. St. Bar News,* Oct. 2002) (4 pages not including this cover page):

(a) Admonition (dated August 10, 2001; 2 pages)

(b) Finding and Order of Review Committee II (dated August 10, 2001, 1 page)

(c) Notice of Disciplinary Action (dated March 11, 2002; 1 page)

FILED

AUG 13 2001

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

BRENDA J. MEANS,

Lawyer

Bar No. 26180

ADMONITION

Pursuant to Rule 5.5A of the Rules of Lawyer Discipline, the following Admonition is issued by a Review Committee of the Disciplinary Board:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in Snohomish County, Washington.

FACTS

2. In July 2000, you agreed to represent the wife in a marriage dissolution.
3. The client canceled the initial meeting, but sent in the $1500 payment.
4. You deposited the payment and indicate that it was to be a nonrefundable retainer. The client does not recall receiving a copy of your fee agreement.
5. A few weeks later, the client advised you that she no longer wanted to dissolve her marriage. She asked that you refund her fees. The date that the client actually requested a refund is disputed.
6. In November 2000, when the client had not received her refund, the client filed a small claims suit against you.
7. On the day set for the hearing, the client found a check for $1500 taped to her front door.
8. You did not respond to WSBA's written request for information about this grievance. You also failed to attend your deposition on the scheduled date. You did appear for the reschedule deposition, arriving two hours late.

MISCONDUCT

9. By delaying refunding the client's unearned money, your conduct violated RPC 1.15 and 1.5.

10. By failing to comply with disciplinary counsel's requests for information regarding this grievance, your conduct violated RLD 2.8.

ADMONITION

YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in subsequent discipline or disability proceedings involving you.

You may protest the issuance of this Admonition by filing a written notice of protest with the Association-Attention: Clerk/Counsel to the Disciplinary Board, within 30 days of the service of this Admonition upon you. Upon receipt of a timely protest, this Admonition shall be rescinded, and the grievance by shall be deemed ordered to hearing.

Dated this 10th day of August, 2001

F.J. Dullanty, Chairperson
Review Committee II

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To: Brenda J. Means

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

Postmark Here

08-13-01 JK

Name (Please Print Clearly) (To be completed by mailer)
Brenda J. Means
Street, Apt. No.; or PO Box No.
PO Box 13134
City, State, ZIP+4
Bothell, WA 98082

PS Form 3800, July 1999 See Reverse for Instructions

7099 3400 0000 7356 6164

WASHINGTON STATE BAR ASSOCIATION
F. J. Dullanty (Chair), James Horne, Stephen Brandon
FINDING AND ORDER OF REVIEW COMMITTEE II

FILED

W.S.B.A FILE NO. 00-02174

LAWYER: Brenda J. Means Grievant: Bob Giuliano

Having reviewed the materials regarding the above captioned grievance, Review Committee II of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rule 2.4(d) of the Rules for Lawyer Discipline:

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
( ) and consolidated with other grievances against this lawyer.

( ) There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under either the Rules of Professional Conduct or the Rules for Lawyer Discipline. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.

(X) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (RLD 5.5A.)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to RLD 5.6 cautioning the lawyer regarding

( ) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

(X) It is ORDERED that WSBA's May 31, 2001 letter to Respondent and portions of Respondent's April 30, 2001 letter and enclosures to WSBA (Bates stamp 9, 44) are non-public documents, and will be held confidential except as necessary to conduct disciplinary proceedings or to keep a grievant advised of the status of a matter. This Protective Order is issued under the authority granted by RLD 11.1(g).

( ) and IT IS ORDERED

Dated this 11 day of August 2001

The vote was 3 - 0

F. J. Dullanty, Chairperson
Review Committee II

001

FILED

MAR 2002

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re BRENDA MEANS, Lawyer. Bar No. 26180	Review No. 01#00087 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Brenda Means received an Admonition, effective September 13, 2001.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 11th day of March , 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Admonition

cc: (X) Presiding Judge, County of King and Snohomish
(X) Supreme Court of Washington
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
(X) Other Courts: Tribal Court

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

13. ***Poole***

In re ***Poole,*** WSBA Review No. 02#00077 (reported in *Wash. St. Bar News,* July 2004) (26 pages not including this cover page):

(a) Hearing Officer's Modified Findings of Fact, Conclusions of Law, and Recommendation (dated August 12, 2003; 23 pages including certificate of service)

(b) Notice of Disciplinary Action (dated November 4, 2003; 1 page)

(c) Reprimand (dated February 27, 2004; 2 pages)

BEFORE THE
DSICIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re JEFFREY G. POOLE, Lawyer (WSBA Bar No. 15578).	Public File No. 02#00077 HEARING OFFICER'S MODIFIED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), this matter came before Hearing Officer J. Donald Curran for an initial disciplinary hearing on March 26, 27 and 28, 2003 at Seattle, Washington. Disciplinary Counsel Christine Gray represented the Washington State Bar Association. The hearing was continued to July 7, 2003 to allow Respondent to obtain health care records and reports and to permit the WSBA to depose Respondent and his health care provider regarding Respondent's mental and emotional state during times relevant to these proceedings. Senior Disciplinary Counsel Randy V. Beitel has represented the Washington State Bar Association as lead counsel since April 23, 2003. Respondent Jeffrey G. Poole attended the hearings and was represented by Kurt M. Bulmer. With the valuable assistance of both counsel, the Hearing Officer issued a Protective Order dated May 27, 2003 in

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

which it was directed (1) that those portions of the hearing in which the Respondent testified as to mental disability and personal or emotional problems will be sealed; (2) that all materials produced pursuant to the Order shall be designated "confidential" and thus subject to the terms of the Protective Order; and (3) that testimony taken pursuant to the Order in deposition or in hearing shall be confidential and subject to the terms of the Protective Order. The terms of that Protective Order are hereby made applicable to Supplemental Findings of Fact, Sanction Analysis and Recommendation.

At the joint request of counsel, I am issuing these Modified Findings of Fact, Conclusions of Law and Recommendation.

FORMAL COMPLAINT

The Formal Complaint charged Jeffrey G. Poole, hereafter referred to as "Respondent," with the following acts of misconduct:

Count 1: By failing to place $500 paid by client Joyce Dearden for costs (for Mr. Unrue's testimony) in his trust account until it was disbursed to Mr. Unrue, Respondent violated RPC 1.14(a), and is subject to discipline under RLD 1.1(i).

Count 2: By failing to follow, until December 2001, Ms. Dearden's July 2001 instruction to pay Mr. Unrue, Respondent violated RPC 1.14(b)(4) and is subject to discipline under RLD 1.1(i).

Count 3: On one or more occasions during the audit period, by disbursing funds of one client (without authorization) on behalf of another client, Respondent violated RPC 1.14(a) and is subject to discipline under RLD 1.1(i).

Count 4: During all or part of the audit period, by failing to maintain complete records regarding client funds in his possession, Respondent violated RPC 1.14(b)(3) and is subject to discipline under RLD 1.1(i).

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

Count 5: On one or more occasions during the audit period, by holding funds of an inactive client in his trust account, Respondent violated RPC 1.14(b)(4) and is subject to discipline under RLD 1.1(i).

Count 6: On one or more occasions during the audit period, by commingling the Respondent's own funds with those of his clients in the trust account, Respondent violated RPC 1.14(a) and is subject to discipline under RLD 1.1(i).

Count 7: On one or more occasions during the audit period, by failing to wait for deposited items to clear the banking system prior to disbursing funds from the trust account, Respondent violated RPC 1.14(a) and is subject to discipline under RLD 1.1(i).

After hearing testimony, admitting evidence, and considering closing arguments of counsel, the following facts were proven by a clear preponderance of the evidence (ELC 10.14(b)) unless otherwise noted.

FINDINGS OF FACT

COUNTS 1 AND 2

1. In August, 2001, Dearden retained an expert (Unrue, d/b/a Roofing Technical Services) to inspect her recently-installed roof for defective workmanship. The expert's fee was $115.00 per hour with a two-hour minimum for consulting, and a $1,000.00 retainer for legal services with a four-hour minimum. The expert issued a report, and his fees were paid by Dearden directly. Dearden then employed Respondent to make a claim against Hillside Roofing, the roof installer. The Respondent retained the expert Unrue and, by letter dated November 29, 2000, stated:

> This letter is to confirm the authorization from my office for you to prepare and testify telephonically in the arbitration between Mrs. Dearden and Hillside Roofing. Your rate is $125 per hour. Please send the bill to my office. (Exhibit 23)

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

The expert testified for about 20-25 minutes telephonically and sent an invoice to the Respondent dated November 30, 2000 for $500.00 at the rate of $125.00 for legal preparation and testimony (Exhibit 24). In an itemized $7,665.27 invoice (Exhibit 25) to the client for fees and costs dated December 20, 2000, Respondent included the expert's charge with this entry:

11/30/00	Expenses – Roofing Technical Services, Inv. 638	$500.00

The client (Dearden) objected to several of Respondent's charges (never the expert's $500.00), and Respondent issued a revised bill dated February 15, 2001 for $4,979.45 (Exhibit 28), which again included the expert's $500.00 charge. The client paid $4,979.45 to Respondent on March 6, 2001 (Exhibit 30), all of which was deposited to and remained in his general account, including the $500.00 expert witness fee.

2. During the week of May 7, 2001, the expert telephoned Respondent and was assured payment would be made. When not paid, the expert's assistant faxed a message to Respondent reminding him of the telephone conversation (Exhibit 38).

3. During the early part of June, 2001, having not received payment, the expert telephoned Respondent and, for the first time, the reasonableness of the $500.00 was challenged. In a June 15, 2001 fax to the Respondent, the expert stated:

> To say that my testimony in this case involved only a 20 minute phone call is in error. I had to dig out the file and review my report and documentation. I reviewed my appointment book and note two prior telecons with you in reviewing points of this case. As you are well aware, this all takes time. I did not bill individually for each item, knowing that I charge the 4 hr. minimum to cover just such things. If I have not made this clear in my CV, then I apologize however this does not set aside the fact that nothing has been paid to date on a bill that is 6-7 months past due. I find this especially onerous in view of your response to me on the phone the week of

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

> May 7, 2001 in which you assured me that not only would you pay the bill, you would do me the courtesy of calling me that afternoon to confirm your action! Your speedy remittance will be appreciated. Please call me if you have any question and to let me know when I can expect payment. (Exhibit 32)

4. In late June or early July 2001, the expert contacted the client and was informed she had paid $500.00 on March 6, 2001 directly to Respondent for the expert's witness fee. The expert then faxed Respondent, informing him of what the client had said, and again demanded payment (Exhibit 31).

5. On July 6, 2001, Respondent wrote the client (Dearden):

> We sent you a bill some time ago regarding Mr. Unrue and have not received a response. I understood that his services would be at $125.00 per hour and that you had already paid him. In any event he has sent us a bill for his testimony at the arbitration in the amount of $500.00. I believe I had forwarded it to you. Since you had hired him I request that you call him to work this matter out and then make payment directly to him if you wish. (Exhibit 33)

Prior to July 6, 2001, the Respondent had not sent the expert's bill to the client. The client responded by a letter addressed to the Respondent dated July 10, 2001 (Exhibit 34):

> Your July 6, 2001 letter is totally incorrect. Please refer to your billing dated December 20, 2000 third page second line. You billed $500.00 for Expenses-Roofing Technical Services, Inv. 638. . . .
>
> Finally on February 15, 2001 you sent corrected billing for $4979.45, and as requested on February 28, 2001 a follow up letter stating payment of the $4979.45 Would [sic] leave me with a [sic] account paid in full, and that there would be no more charges Until [sic] I had a meeting with you. Note we have had no meeting!!

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

> Based on your promise I sent you payment of $4979.4 on March 6, 2001. That Payment [sic] was for your December 20, 2000 invoice corrected, so the $500.00 due Roofing Technical Services, Inv. 638 was paid to you. I do not owe the $500.00 Since [sic] I already paid it to you. You should pay Mr. Dick Unrue the $500.00.

6. Not receiving payment, the expert (Unrue) filed a grievance with the Washington State Bar Association on or about October 18, 2001, a copy of which was sent by the grievant to the Respondent.

7. On December 19, 2001, the Respondent advised the expert:

> Please find enclosed check number 1621 in the amount of $500.00 in full satisfaction of your invoice 638. Please also find enclosed check number 4389 in the amount of $47.34 in full satisfaction of interest for your invoice 638. I would like to apologize for the confusion and the ensuing delay. Thank you for your patience.

At no time did the Respondent place the client's $500.00 into the attorney's trust account. In failing to deposit the $500.00 expert witness fee into his trust account, and in failing to pay the $500.00 to the witness after the client's instruction of July 10, 2001, the Respondent was negligent and failed to act with reasonable diligence and promptness. He owed the client a duty to account for the $500.00 upon receipt and to promptly follow her directive regarding payment to the witness. In failing to do either, he violated the standard of care that a reasonable lawyer would exercise in the situation. The payment was eventually made to the witness plus Respondent's payment of interest for its delay. The client and the expert witness suffered stress and aggravation by the Respondent's actions.

8. Respondent's testimony that he instructed his staff not to post the expert's bill to the client's ledger is inconsistent, unsupported by objective evidence, and unpersuasive. Similarly lacking in credibility is the Respondent's testimony that he told the client the expert's fee was excessive and that he told his staff, after receiving the client's letter of July 6, 2001, to pay the bill. The

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

Respondent's records were in a state of disarray, such that his recollection is vague and unsubstantiated.

FINDINGS OF FACT

COUNTS 3-7

9. In 2002, the WSBA audited the Respondent's trust account for the period of August 1996 through January 2002. During this time, Respondent had a system whereby he would manually initial approval on individual client ledgers of deposits and disbursements (Exhibit 2).

10. The audit, based on "reconstructed" records Respondent and his staff prepared, disclosed that Respondent:

A. Maintained a manual check register which did not contain a running balance, nor was it reconciled to the client ledgers; in approximately 1999, the check register was computerized but again not reconciled to the client ledgers.

B. Had adequate manual deposit books.

C. Maintained manual client ledgers, some of which were incomplete and inaccurate involving mathematical errors and missing transactions.

D. Did not always reconcile his bank statements to the client ledgers.

E. Retained thousands of dollars in earned fees in trust which should have been withdrawn.

F. Disbursed funds prior to the time the deposit had cleared the banking system.

11. Without ascertaining when the bank would recognize collected funds on deposit, the Respondent deposited funds and issued trust checks which were negotiated as follows:

DISBURSAL (DATE CHECK/AMOUNT)	DISBURSAL (DATE CHECK NEGOTIATED)	DEPOSIT (DATE/AMOUNT)	CLIENT
9/11/97 to Poole & Assoc. $1,353.27	9/11/97	9/12/97	Linder

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

4/22/98 to Poole & Assoc. $6,631.70	4/22/98	4/22/98 $20,096.07	Lisa Washington
10/10/98 to Sutor & Co. $2,500	10/14/98	10/28/98 $2,500	Francel
6/28/00 to Poole & Assoc. $38,000	6/28/00	6/28/00 $100,000	Fernando
1/6/00 to Poole & Assoc. $4,924.83	1/6/00	1/6/00 $11,500	Access Roofing
7/16/01 to Poole & Assoc. $7,437.50	7/16/01	7/16/01 $8,500	Courtright
2/19/99 to Poole & Assoc. $6,660.00	2/19/99	2/19/99 $20,000	Esquival

12. A $750.27 check dated November 18, 1996 to client Saxon was returned NSF. The check was again presented on November 27, 1996 and paid, thus creating a negative balance of $750.27. Respondent immediately deposited $750.27 which brought the balance to zero. The account was still short $139.00 (Exhibit 40, Attachment D, Page 1).

13. On April 15, 1997, Respondent's trust account went into overdraft when checks 1095 for $300, 1096 for $1,470 and 1097 for $1,464.60 were paid by the bank, resulting in a negative bank balance of $272.25 which caused Respondent to transfer $272.25 into trust, thereby bringing the bank balance to zero. At that time, Respondent's trust account had a shortage of $2,543.18.

14. On September 10, 1997, three disbursements on client Mercer's ledger (Exhibit 2) revealed a negative balance. Respondent testified that the client owed funds listed under client "Mir" on the ledger sheets. The two ledgers were not merged and even if merged, a negative balance existed.

15. On September 11, 1997, Respondent wrote a $1,353.27 check payable to Poole & Associates regarding client Linder which was negotiated the same day (Exhibit 7). The client ledger indicates Linder had only $186.40 on deposit. The next day, September 12th, a deposit was made on behalf of Linder. Respondent made the entries to the ledger.

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

16. At a time when client Brakeguard had only $51.98 on deposit, Respondent issued a trust check (no. 1218) dated October 22, 1997 to Alaska Airlines in the sum of $261 and initialed his approval of the transaction on the ledger (Exhibit 2). The client ledger indicates a negative balance of $1,313.47 which persisted until January 2002, when it was corrected.

17. On March 4, 1998, Respondent wrote a check (no. 1287) to Huppin, Ewing on behalf of client Brakeguard in the amount of $100. Brakeguard had insufficient funds to cover the $100 disbursal. Respondent failed to enter that transaction on his trust ledger.

18. On March 23, 1998, Respondent issued a check to his law firm in the sum of $75 on behalf of client Taylor and made the entry to the client ledger at a time when there were insufficient funds on deposit to cover the disbursal.

19. On October 1, 1998, Respondent signed a check (no. 1348) to Linda Montgomery Investigations on behalf of client Hall in the amount of $1,000. Respondent entered that transaction on the client ledger, which showed the client had insufficient funds to cover the entire disbursement.

20. At a time when client Francel had a zero balance in trust, on October 10, 1998 Respondent wrote a $2,500 check to Suitor & Co. and made an entry on the client ledger sheet but did not do the math, which would have indicated a negative balance. A deposit to cover the check was made on October 15, 1998 (Exhibit 8), but by that time the $2,500 check had been negotiated through the banking system.

21. On May 7, 1999, Respondent wrote a counter check for $1,000 to cash from his trust account on the client Middleton account and gave the check to Frank Middleton. Respondent failed to enter that transaction into his trust account records.

22. On June 23, 1999, Respondent wrote a check (no. 1424) in the amount of $4,500 to his own law firm for earned fees on behalf of client Washington

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

Enterprises at a time when there was an insufficient balance to cover the disbursal and there existed no client ledger (Exhibit 2).

23. At time when client Peterson did not have any funds in trust, Respondent issued a check on July 23, 1999 to his law firm for earned fees in the sum of $500 without making any entry on the client ledger (Exhibit 2). Respondent testified that a $500 deposit under client C. B. Ellis was a transfer of his own funds to cover the $500 check, but his records are inconclusive to support that assertion, and his testimony is unpersuasive.

24. At a time when client Matson had no funds in trust, Respondent issued a check to opposing counsel on April 7, 2000 in the sum of $200 which was a personal obligation of Respondent's. The transaction was not entered on any trust account records, nor did Respondent make any deposit of his own funds to cover the disbursal.

25. On February 15, 2001, Respondent signed a $4,500 check payable to client GM Ventures. At the time, the client had no funds in trust due to a depositing error of Respondent's staff, and thus no client trust ledger was created. When the error was discovered, it was corrected.

26. In June, 2001, Respondent represented Washington Enterprises Unlimited, Inc. against a claim being brought by Lease & Industrial Collectors, Inc. (Rod Larson, President) in which, pursuant to a written settlement agreement, Respondent's client was to pay the sum of $11,958.51 before July 30, 2001. After receiving the settlement funds from his client on August 17, 2001, Respondent issued from his trust account a check (no. 1424) for $11,958.51 to Lease & Industrial Collectors but did not record it on the client ledger. On August 27, 2001, the $11,958.51 settlement check was dishonored for insufficient funds in the attorney's trust account. On September 6, 2001, Respondent gave opposing counsel a cashier's check for $11,958.51, using trust funds of other clients who had made deposits after August 27, 2001 plus an additional $370.00 to cover attorney's fees.

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

27. The WSBA 1996-2002 audit disclosed shortages in the trust account, excluding the Evelyn Poole and MingTree matters, totalling $21,823.05, summarized (Exhibit 40) as follows:

DATE	AMOUNT OF SHORTAGE
November 18, 1996	($139.00)
December 31, 1996	($3,523.73)
April 1, 1997	($2,660.73)
April 15, 1997	($2,543.18)
June 30, 1997	($648.48)
December 31, 1997	($3,554.58)
June 30, 1998	($786.89)
December 31, 1998	($3,441.75)
June 30, 1999	($5,242.52)
December 31, 1999	($6,849.30)
June 30, 2000	($12,638.97)
July 6, 2000	($12,638.97)
September 18, 2000	($12,659.17)
December 31, 2000	($13,170.57)
June 30, 2001	($32,390.52)
August 27, 2001	($20,212.05)
December 31, 2001	($21,823.05)

28. During its case in chief, the WSBA called Respondent to the witness stand. After a question was put to him, he would often falter before responding, while looking at a file. His answers were often hesitant, uncertain, rambling and unresponsive to the questions asked. More than once, the Hearing Officer directed Respondent to answer the question, but he often had difficulty doing so. His nervousness was obvious, and he was stressed. Respondent's overall demeanor was courteous, sincere, helpful, and devoid of any deliberate evasiveness, hostility or lack of cooperation.

29. The Respondent knew, or should have known, that each of the above-stated findings of fact regarding the administration of his trust account were in violation of his ethical responsibilities specified in RPC 1.14. The Respondent knew, or should have known, that the manner in which he operated and managed

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

his trust account resulted in dealing improperly with client property and was due to a combination of lack of diligence, culpable ignorance, unjustified reliance upon subordinates, failure to closely supervise their performance, preoccupation with a heavy case load, tolerating slipshod recordkeeping, and failing to have an organized system to continuously track all activity. He was consciously aware of the numerous errors and omissions in the trust account spanning approximately 4.5 years. His testimony that some dated trust checks were not delivered is not buttressed with any corroborative proof, is the product of an uncertain memory, is not credible, and was, in significant areas, discredited on cross-examination. His mishandling of the trust account was not intentional, dishonest, or motivated by selfishness, but it cannot be attributed to mere negligence.

30. See Supplemental Findings of Fact, Sanction Analysis and Recommendation filed under seal.

31. See Supplemental Findings of Fact, Sanction Analysis and Recommendation filed under seal.

32. At no time did any mental, physical or emotional condition materially impair the Respondent's ability to represent clients.

33. No one suffered any loss as a result of Respondent's mismanagement of his trust account. However, there was potential injury to the owners of the funds.

From the foregoing Findings of Fact, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

1. The Formal Complaint was filed on September 11, 2002 and was ordered to hearing by Order dated November 26, 2002. The Rules for Enforcement of Lawyer Conduct were adopted on October 1, 2002 and, although the misconduct with which the Respondent is charged occurred prior to that date, the parties and

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main; Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

Hearing Officer have utilized the ELCs. Applying the ELCs is feasible and does not work an injustice. ELC 16.1.

2. By failing to place the $500.00 paid by the client for the expert's fees into his trust account until it was disbursed to the expert, Respondent violated RPC 1.14(a) which provides:

> All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable interest-bearing trust accounts. . . .

3. By failing to follow, until December 2001, the client's instruction to pay the expert, Respondent violated RPC 1.14(b)(4) which provides:

> A lawyer shall . . . promptly pay or deliver to the client as requested by a client the funds, securities or other properties in possession of the lawyer which the client is entitled to receive.

4. By disbursing funds of one client (without authorization) on behalf of another client, Respondent violated RPC 1.14(a), *supra*.

5. By failing to maintain complete records regarding client funds in his possession, Respondent violated RPC 1.14(b)(3) which provides:

> Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them.

6. By holding funds of an inactive client in his trust account, Respondent violated RPC 1.14(b)(4), *supra*.

7. By comingling the Respondent's own funds with those of his clients in the trust account, Respondent violated RPC 1.14(a), *supra*.

8. By failing to wait for deposited items to clear the banking system prior to disbursing funds from the trust account, Respondent violated RPC 1.14(a), *supra*.

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

SANCTION ANALYSIS

1. In imposing a sanction after a finding of lawyer misconduct, the following factors should be considered per American Bar Association *Standards for Imposing Lawyer Sanctions*:

A. **The duty violated.** The Respondent's misconduct is two-pronged: (1) Negligently failing to deposit the Dearden $500 expert fee into the trust account and failing to timely disburse it per the client's instructions, and (2) improperly dealing with clients' property in his trust account.

Regarding violations of duties owed to clients, ABA *Standard* 4.0 provides:

> 4.4 ***Lack of Diligence***
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client: . . .
>
> 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
>
> 4.1 ***Failure to Preserve the Client's Property***
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property: . . .

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

> 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. . . .

While the term "complete records" used in RPC 1.14 is not defined, it does, at a minimum, obligate a lawyer to have accurate, complete and readable logs with entries of deposits, disbursements and running balances, all of which must not be out of balance. Respondent did not comply with this requirement and therefore was unable to render at all times an appropriate account to the owner of the funds. This quotation from *McKean, supra,* (at page 863) is pertinent:

> RPC 1.14 provides the minimum requirements for a lawyer's fiduciary responsibility when handling clients' funds and property. *See generally* RPC 1.14; *see also* RPC Preliminary Statement. For example, RPC 1.14 requires a lawyer, inter alia, to deposit clients' funds in a trust account, separate from the lawyer's own funds. RPC 1.14(a). The rule also requires a lawyer to provide the client with documentation for the receipt of the funds and to "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them . . . ." RPC 1.14(b)(1), (3).
>
> RPC 1.14, however, also encompasses a duty of care beyond these minimum standards. As several commentators on professional responsibility have recognized, "'[a]n attorney who accepts the responsibility of a fiduciary nature is held to the high standards of the legal professional whether or not he acts in his

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

capacity of an attorney.'" ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT, 230-31 (Center for Professional Responsibility, American Bar Association, 4th ed. 1999) (discussing model rule 1.15 and quoting *Ridge v. State Bar*, 47 Ca. 3d 952, 766 P.2d 569, 574, 254 Cal Rptr. 803 (1989)). "Lawyers sometimes forget that the dangers of commingling are not merely that the lawyer will squander the money 'borrowed' from a trust account and not be able to restore it, but that the commingled funds might be subject to attachment by a lawyer's creditors, thus preempting the lawyer's ability to do so." GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT §19.4 (3d ed. 2001 & Supp. 2002). "Commingling and, to a lesser extent, conversion frequently result from bad bookkeeping rather than an intent to take the money." ABA/BNA LAWYER'S MANUAL ON PROFESSIONAL CONDUCT 45:303 (2002).

RPC 1.14 thus requires more than merely keeping track of or not stealing client funds. A lawyer's duty to be honest and use good professional judgment is a higher standard than merely not breaking the law. *Cf. Seventh Elect Church in Israel v. Rogers*, 102 Wn.2d 527, 534, 688 P.2d 506 (1984) (the ethics rule of attorney-client confidentiality is a higher standard than the statutory attorney-client privilege). "Lawyers are held to higher standards of moral conduct than are other citizens." *In re Disciplinary Proceeding*

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

> *Against Krogh*, 85 Wn.2d 462, 488, 536 P.2d 578 (1975). A lawyer's ethical duties are not merely toward his clients. A lawyer's obligation "to protect . . . property . . . and to exhibit the highest standards of honesty and integrity" extends to the public as well as to the lawyer's clients. *In re Disciplinary Proceeding Against McGough*, 115 Wn.2d 1, 11, 793 P.2d 430 (1990).
>
> We hold that RPC 1.14 encompasses the extreme care, caution, and good judgment required of a lawyer when handling a client's property. A lawyer has the highest fiduciary duty to steward his client's funds with the utmost care, transparency, and prudence. Although the duty not to self-deal client funds is explicitly addressed elsewhere in the Rules of Professional Conduct, RPC 1.14 implicitly includes the duty not to use a lawyer's trust account as a personal bank.

B. **The lawyer's mental state.** See Supplemental Findings of Fact, Sanction Analysis and Recommendation filed under seal.

C. **The potential or actual injury caused by the lawyer's conduct.** In this case, there are no "victims" in the sense that an owner of funds suffered a financial loss. However, there is potential harm to clients, the public, the legal system, and the profession; in addition, stress and aggravation were imposed on client Dearden and expert Unrue.

D. **The existence of aggravating or mitigating factors.**

(1) The following aggravating factors contained in Section 9.22 are applicable: There was a pattern of misconduct involving (1) using one person's money to pay another; (2) slipshold records; (3) retaining funds of an inactive client; (4) comingling own funds with those of others; (5) disbursing deposited funds before the deposits are collected; and (6) cavalierly treating client

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

Dearden's $500 payment and ignoring instructions to pay it to the expert. These multiple offenses spanned 4.5 years during which Respondent testified that he treated his trust account just like he would treat a household account—add all deposits and subtract all disbursements, and if there is a positive balance, everything is okay. The maintenance of the trust account records was inconsistent, untimely, inaccurate, and in a word, sloppy. The mismanagement of the trust account is due to the Respondent's culpable ignorance and unjustified reliance upon the performance of subordinates who were insufficiently instructed and undermonitored. The Respondent did not take the time to educate himself as to what is required in managing an attorney's trust account or to closely observe the performance of subordinates in regard thereto. This indifferent attitude resulted in loose recordkeeping and allowed a 1996 shortage of $139 to mushroom into $21,823.05 as of December 31, 2001.

(2) The following mitigating factors contained in Section 9.32 of the *ABA Standards for Imposing Lawyer Sanctions* are applicable in this case:

(a) Absence of a prior disciplinary record. The Respondent has no prior disciplinary record.

(b) Absence of a dishonest or selfish motive. There is no persuasive evidence from which a reasonable inference can be drawn, that Respondent's mishandling of the trust account was intentional, dishonest or motivated by selfishness.

(c) Personal or emotional problems. See Supplemental Findings of Fact, Sanction Analysis and Recommendation filed under seal.

(d) Timely good faith effort to make restitution or to rectify consequences of misconduct. Respondent paid the fee to the expert (Unrue) plus interest. Whenever Respondent was informed that trust checks were being returned for insufficient funds or other deficiencies in the account, he would, in

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

good faith, take steps to remedy the errors, including the hiring of staff believed to have experience in bookkeeping.

(e) Full and free disclosure to Disciplinary Board or cooperative attitude toward proceedings. There is innuendo that Respondent did not make full and free disclosure to the WSBA of his trust account records. However, there is insufficient proof that Respondent failed in that regard. With the expectation they would promptly be given to the WSBA, the Respondent did timely deliver records and information to his counsel which evidences a willingness to be forthright and displays a cooperative attitude. Any delay in obtaining records or conducting Respondent's discovery deposition is due to scheduling conflicts and not any obstinacy. Likewise, difficulties in obtaining health records and the psychiatric report during the 101-day recess were not due to lack of effort by the Respondent.

(f) Inexperience in the practice of law. For the first years of his professional life, Respondent was an associate and then a partner in a firm with several attorneys. He had little to do with a trust account. He then formed a two-person firm for a few years His partner at that time took hands-on responsibility for the trust account, and Respondent had little to do with it. In 1991, he established his law firm known as Poole & Associates, P.C., of which he has always been the sole owner. In transitioning from the two-person firm to his own, Respondent transferred many client trust records which were error-ridden and sloppy, and those practices were perpetuated under his care. Respondent has no accounting or bookkeeping experience and, until the WSBA audit, thought reconciliation of a trust account involved nothing more than balancing disbursements with income.

(g) Imposition of other penalties or sanctions. The Respondent credibly testified that his mismanagement of the trust account has cost him approximately $23,000 in expenses as of March 28, 2003, much professional disgrace, personal stress, and anxiety. The expenses have substantially increased

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

due to his obtaining and presenting expert testimony in the continued hearing of July 9, 2003.

(h) Remorse. The Respondent sincerely and unconditionally is regretful for the manner in which he dealt with client Dearden's $500 and the delay in obeying her instructions to remit it to the expert. With similar regret, the Respondent acknowledges that he has, at all times, had the ultimate duty and responsibility to assure that the trust account is properly maintained; that he cannot and does not attempt to diminish that responsibility by blaming subordinates whose disappointing performance he had a continuous duty to supervise; he has a pride in the legal profession and is remorseful that his misconduct has tarnished it in the eyes of those potentially damaged by his errors and omissions. Relevant to his remorse is the Respondent's testimony that, since being informed of the grievances against him and the WSBA audit, he had taken the time and made the effort to inform himself that, whether one uses a manual or automated accounting system, the minimum information produced must document (a) the balance in the trust account at all times by having a checkbook register for both deposits and checks showing (1) date received or issues, (2) payor/payee, (3) the applicable client/matter, (4) the amount of the deposit or check, and (5) the running balance in the account; (b) the transactions affecting each client balance; and (c) the exact ownership of all funds in the trust account. The Respondent understands that the account balance on the bank statement must be reconciled to the account balance shown in the checkbook register, and if there is a difference, it must be investigated immediately and corrected either in the records or by the bank. The Respondent also now understands that the individual client balances total to the reconciled checkbook register must balance, and if there is an error, it must be corrected immediately. Finally and importantly, the Respondent appreciates that earned fees must be withdrawn from the trust account within a reasonable time, and that failure to do so is a comingling of client money with the lawyer's, mixing the two places the client's funds in jeopardy of garnishment or attachment by creditors of the

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

lawyer. Respondent also appreciates that inactive client funds in trust must be promptly returned.

E. **Proportionality** of the sanction to the misconduct – a comparison of the recommended sanction with the sanctions imposed in similar cases. *Discipline of Kuvara,* 149 Wn.2d 237, 258; *Discipline of Kagele,* ____ Wn.2d ____ (July 17, 2003).

Discipline of McKean, 148 Wn.2d 849 (2003) at page 860 states:

> The hearing examiner further found bookkeeping irregularities, which compounded the violation of RPC 1.14:
>
> > The posting of deposits and disbursements within the trust account was inaccurate. Credits and debits within sub-accounts were riddled with errors. There is no proof that the trust account had a negative bank balance (as distinguished from a ledger balance) or that a client failed to receive his or her funds.*** The noted deficiencies evidence that the maintenance of the trust account was slipshod and erratic. The deficiencies were not deliberate but rather the result of poor trust account procedures and lack of oversight, for which Respondent accepts responsibility.

Those findings mirror Mr. Poole's violations (although he did have negative bank balances) and resulted in a six-month suspension following by six months of

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

probation. However, McKean's conduct was more egregious in that he entered into a business arrangement with a client to shield the client from creditors, he financed the business of the client with funds borrowed from his lawyer's trust account, he used his lawyer's trust account for his own purposes, and he did not have any personal or emotional problems. The Respondent's transgressions are more narrow. To impose a suspension would be disproportionate to the severity of the Respondent's offenses. A reprimand with its publication in the *Bar News* fits the offenses and sends a message to other attorneys that trust account violations will be treated seriously.

RECOMMENDATION

1. The mitigating factors clearly outweigh the aggravating factors, and I therefore recommend that Respondent be given a single reprimand for all seven counts of misconduct.

2. I also recommend that the Respondent be placed on probation for a two-year period. At the beginning of the two-year term of probation, Respondent will cooperate with a trust account audit by the Washington State Bar Association, to cover the period January 1, 2002 to the present. Thereafter, he will cooperate with up to two additional follow-up WSBA audits at nine-month intervals, to cover those subsequent time periods. Respondent will bear the costs of these probationary audits.

3. See Supplemental Findings of Fact, Sanction Analysis and Recommendation filed under seal.

Dated this 12th day of August, 2003.

J. Donald Curran
Hearing Officer

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

I hereby certify that on August 12, 2003, the original of this document was deposited in the United States mails, postage prepaid, to Disciplinary Board Clerk, Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, and that a true copy of the foregoing document was deposited in the United States mails, postage prepaid, to:

Christine Gray
Senior Disciplinary Counsel
2101 Fourth Ave., Fourth Fl.
Seattle, WA 98121-2330

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

J. Donald Curran

Delay, Curran, Thompson, Pontarolo & Walker, P.S.
ATTORNEYS AT LAW
601 West Main, Suite 1212
Spokane, Washington 99201-0684
(509) 455-9500

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JEFFREY G. POOLE,

Lawyer

Bar No. 15578

Review No. 02#00077

NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

Jeffrey G. Poole received a Reprimand with probation conditions pursuant to the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation dated August 12, 2003.

A copy of the disciplinary materials (see ELC 3.5) is enclosed. This notice is provided pursuant to the Washington Rules for Rules for Enforcement of Lawyer Conduct (ELC).

DATED this 4th day of November, 2003.

Amy Christensen
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Reprimand

cc: (X) Presiding Judge, County of King
(X) Supreme Court of Washington
(x) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted: --
( ) Other courts: --

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue, Suite 400
Seattle, WA 98121-2330
(206) 727-8207

FILED
MAR 1 1 2004
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re JEFFREY G. POOLE Lawyer (WSBA No. 15578).	Public No. 02#00077 REPRIMAND

Under the Rules for Enforcement of Lawyer Conduct promulgated by the Supreme Court of the State of Washington, you have been directed to appear before the Board of Governors of the Washington State Bar Association to receive this FORMAL REPRIMAND.

Between August 1996 and December 2001, your handling of your client trust account resulted in a shortage of client funds that should have been held in trust. The amount of the shortage varied, but went as high as $32,390.52 in June 2001. In addition, during that same time period, you failed to maintain complete records regarding client funds in trust, commingled your own funds with client funds in the trust account, disbursed funds of one client from the trust account on behalf of another client, held funds of inactive clients in trust, and failed to wait for items deposited to trust to clear the banking system prior to disbursing funds from the trust account. With regard to client Joyce Dearden, you failed to place $500 in advanced costs into

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

your trust account and failed promptly to follow your client's direction to pay those advanced costs to an expert witness.

Your conduct in mishandling client funds violated Rule 1.14 of the Rules of Professional Conduct, which sets forth the ethical requirements for a lawyer handling client funds.

These actions merit a Formal Reprimand. Your actions discredit you and the legal profession and show a disregard for the high traditions of honor expected from a member of the Association.

NOW, THEREFORE, YOU ARE HEREBY REPRIMANDED by the Board of Governors of the Washington State Bar Association for this misconduct. This Reprimand will be made a part of your permanent record with the Association, and will be considered along with other evidence regarding any future grievances against you.

Your privilege to practice law in the State of Washington is based on the finding that you are a person of good moral character, and on your commitment to abide by the rules governing the conduct of members of the Association. The Board of Governors expects all your future conduct as a lawyer to be consistent with that finding as to your character, and with a continuing commitment on your part to the letter and spirit of those rules.

Dated this 27th day of February, 2004.

WASHINGTON STATE BAR ASSOCIATION

David W. Savage, President

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

14. ***Salazar***

In re ***Salazar,*** WSBA Review No. 02#00022 (decided by Disciplinary Board Aug. 24, 2004; reported in *Wash. St. Bar News,* July 2005) (26 pages not including this cover page):

(a) Disciplinary Board Order Modifying Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation (dated August 24, 2004; 4 pages)

(b) Findings of Fact, Conclusions of Law and the Hearing Officer's Recommendation (dated March 23, 2003; 19 pages)

(c) Washington Supreme Court Order (30-Day Suspension) (dated February 8, 2005; 1 page)

(d) Washington Supreme Court Order denying motion for extension of effective date of suspension (dated February 11, 2005; 1 page)

(e) Notice of Suspension (dated February 23, 2005; 1 page)

FILED

AUG 24 2004

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **ANTONIO SALAZAR,** Lawyer WSBA No. 6273	Public No. 02#00022 DISCIPLINARY BOARD ORDER MODIFYING HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

THIS MATTER came before the Disciplinary Board at its July 25, 2003 meeting. On review of the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation and supporting documentation;

IT IS ORDERED that the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation are adopted with the following modifications:

Finding 21 is deleted.

Both parties agree that this Finding is not supported by the evidence.

Finding 39 is amended by the addition of the following footnote:

> Exhibit 1, the Video Deposition of Chris Miller contains an attachment labeled I-52. This attachment

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

056

is a copy of a February 12, 2001 letter from Mr. Salazar to the Immigration and Naturalization Service enclosing sealed transcripts for Ms. Akasaka. Mr. Salazar did submit the client's transcripts, but apparently the transcripts did not "show courses which might have a direct correlation to the duties of the proffered position."

Finding 46 is amended as follows:

> Respondent explained the meaning of "down payment", but not the difference between "down payment" and "retainer".

The hearing officer's finding is not supported by the record. In fact, the client testified that Mr. Salazar did explain the meaning of down payment, but not the difference between a retainer and a down payment.

Finding 49 is amended as follows:

> Other than the initial written receipt (exhibit 5), Respondent did not provide Mr. Aguilera with any verbal or written accounting of how the funds paid by Mr. Aguilera were used or for which of the three matters the funds were used. Mr. Aguilera testified that he did not ask Mr. Salazar for an accounting or for an explanation of how the funds were used. Mr. Aguilera was never told the basis of the fees nor the factors used to determine the fees. He was simply told the amounts for initial fees and that additional money would be needed in the future.

Conclusion 70 is amended as follows:

> Respondent's conduct in failing to expedite Ms. Akasaka's H-1B visa application violated RPC 1.3 requiring that a lawyer shall act with reasonable diligence and promptness in representing a client and subjects Respondent to discipline pursuant to RLD 1.1(i) [now ELC 1.1). Count 1 is proven. With respect to this conduct, Respondent acted negligently.

Conclusion 73: The Board deletes the conclusion that RPC 1.4 was violated. The Board believes that because RPC 1.5(b) directly addresses this misconduct, it is

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

not appropriate to find a violation of RPC 1.4 for the same conduct.

Conclusion 75 is amended to find that Mr. Salazar acted negligently.

ABA Standards paragraph 76 is amended as follows:

> Applying the ABA Standards, the following presumptive sanction is applicable to Respondent's conduct in representing Ms. Akasaka:
>
> 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

ABA Sanction paragraph 78 is amended as follows:

> Applying the ABA Standards, the following presumptive sanction is applicable to Respondent's failure to cooperate with the Association during the disciplinary investigation:
>
> 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public or the legal system.

Although Mr. Salazar did not cooperate promptly with requests and deadlines in the disciplinary investigation, he did ultimately provide the information.

Paragraphs 79(d) is deleted.

The Board finds that the misconduct established in this case does not form a pattern of neglect for purposes of ABA Standard 4.42(b), because only one instance of failure to exercise reasonable diligence was found. While Mr. Salzar's prior discipline should be considered as an aggravating factor pursuant to ABA Standard 9.22(a), this

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

factor should not be double-counted as also forming a pattern of neglect for purposes of ABA Standard 4.42(b).

Paragraph 82 is modified as follows:

> Respondent's behavior resulted in either potential or actual injury to Mr. Aguilera, Ms. Akasaka and the Association.

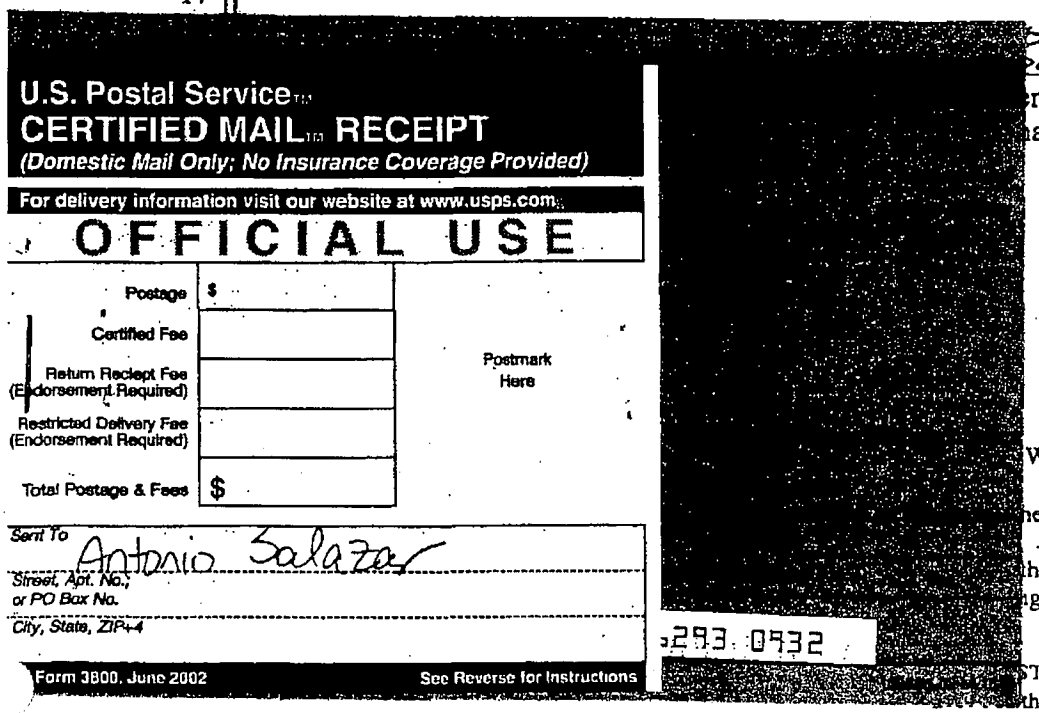
Paragraph 83 is modified as follows:

> Respondent has not learned from previous disciplinary actions and his problematic behavior towards his clients and the Association has not improved.

For the reasons set forth above, all references to a "pattern" of misconduct are deleted.

The Board finds that the presumptive sanction in this matter is reprimand. However, the aggravating factors require that the sanction be increased to a suspension. The Board unanimously[1] recommends a 30-day[2] suspension.

Dated this 24th day of August, 2004.



[illegible]r[3]
[illegible]air

[illegible] Wilson, Cullen, Leeper,

[illegible]e presumptive sanction in this

[illegible]his matter. However, prior to
[illegible]gardner did participate in this

[illegible]STATE BAR ASSOCIATION
[illegible]th Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

FILED

MAR 21 2003

DISCIPLINARY BOARD

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In re Antonio Salazar, WSBA No. 6273, An Attorney at Law.	FORMAL PROCEEDING NO. 02#00022 WSBA INVESTIGATION NO.: 01-01062 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND THE HEARING OFFICER'S RECOMMENDATION**

This matter came on for a hearing before the undersigned hearing officer on February 24, 2003 and February 25, 2003 pursuant to ELC 10.12 and ELC 10.13 of the Rules for Enforcement of Lawyer Conduct. The Association was represented by Disciplinary Counsel, Loren Armstrong. Respondent, Antonio Salazar, appeared and represented himself. The hearing officer has heard the testimony of witnesses and has considered the exhibits and arguments of counsel at the hearing.

There were six (6) counts alleged against Respondent Antonio Salazar. The individual counts will be addressed sequentially.

I. SUMMARY OF THE FORMAL COMPLAINT

On July 10, 2002, the Association filed a First Amended Formal Complaint charging Respondent with the following counts of misconduct:

Count 1 – Alleging the respondent failed to exercise reasonable diligence in representing Ms. Chiharu Akasaka and expediting her case in violation of RPC 1.3.

Count 2 – Alleging respondent failed to respond to Ms. Akasaka's reasonable requests for information regarding her case, and/or failed to provide Ms. Akasaka with the Immigration and

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

Naturalization Service (INS) Request for Evidence letter in a timely fashion, in violation of RPC 1.4.

Count 3 – Alleging respondent failed to exercise reasonable diligence in representing Mr. Fidel Aguilera and expediting his social security matter and/or his criminal matter in violation of RPC 1.3.

Count 4 – Alleging respondent failed to clearly communicate to the client the basis and/or rate of the fee and/or the factors involved in determining the charges for legal services in all of the matters before and/or within a reasonable time after commencing the representation in violation of RPC 1.5(b) and/or RPC 1.4.

Count 5 – Alleging respondent failed to refund unreasonable and/or unearned fees to Mr. Aguilera, and/or failed to account Mr. Aguilera regarding his fees in violation of RPC 1.5(a) and/or RPC 1.15(d).

Count 6 – Alleging respondent failed to respond promptly to the Association's requests for responses regarding the Akasaka grievance and/or the Aguilera grievance and/or the Gonzalez grievance, and/or the Sanghera grievance, and/or the Guzman-Soltero grievance in violation of RLD 2.8(a).

The Hearing Officer having considered the pleadings filed herein, and having heard the testimony of witnesses, and considered admitted exhibits and stipulations, now makes the following:

II. FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence:

1) Respondent Antonio Salazar was admitted to the practice of law in the State of Washington on November 6, 1975. At all times material to the allegations in the First Amended Formal Complaint, Respondent practiced law in Seattle, King County, Washington.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

FINDINGS OF FACTS RELATING TO RESPONDENT'S REPRESENTATION OF CHIHARU AKASAKA

2) On February 3, 2000 Ms. Chiharu Akasaka, a citizen of Japan, retained Respondent to assist her in obtaining an H-1B visa.

3) At the time of the first meeting, Ms. Akasaka had a J-1 visa and was working at the Westin Hotel in Seattle.

4) Ms. Akasaka's friend, Chris Miller, accompanied her to the meeting with Respondent.

5) Respondent explained to Ms. Akasaka that in order to obtain an H-1B visa they needed to establish that she was a professional within the definition of the immigration laws and that the job was a specialty occupation in the same area in which she was a professional.

6) Ms. Akasaka presented Respondent with an evaluation from the Foundation for International Services indicating that she had the equivalent of a Bachelor's degree in hospitality services from an accredited college in the United States. Based upon this evaluation, Respondent believed that she had met the professional criteria for the H-1B visa.

7) Ms. Akasaka gave Respondent a job description from the Westin Hotel and Respondent did not believe that it was sufficient to meet the H-1B criteria for a specialty occupation.

8) Respondent told Ms. Akasaka that they needed to "beef up" and improve the job description and that he would meet with representatives from the Westin to obtain the information needed to file the H-1B application.

9) Ms. Akasaka provided Respondent with an authorization to obtain any information from the Westin Hotel necessary to prepare and submit the visa application.

10) At the February 3, 2000 meeting, Ms. Akasaka gave Respondent a check for $730 for the Immigration and Naturalization Service (INS) filing fees and a check for $2,500 for Respondent's fee for preparing and filing the H-1B visa application.

11) At the February 3, 2000 meeting, Respondent emphasized the need to move quickly on the application and file it as soon as possible since there was a cap on the number of H-1B visas

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

that could be issued in any given fiscal year and most of the H-1B visas for the year 2000 were gone.

12) Ms. Akasaka informed Respondent that she and Mr. Miller would be traveling to Egypt and they provided Respondent with an email address to contact them if he needed anything for the application process while they were away.

13) Respondent did not ask Ms. Akasaka to sign any of the required INS paperwork prior to her departure for Egypt.

14) On February 8, 2000 Respondent met with Terry Falk from the Westin Hotel to discuss Ms. Akasaka's visa application. Mr. Falk asked Respondent to give him the application materials when they were completed so that their corporate counsel could review them prior to their submission to the INS. Respondent requested additional documents from the Westin Hotel which he received by fax the same day. (Exhibit 10).

15) Between February 9, 2000 and March 9, 2000, Ms. Akasaka and Mr. Miller traveled to Egypt.

16) Respondent did not attempt to contact Ms. Akasaka or Mr. Miller while they were in Egypt.

17) On March 10, 2000 Ms. Akasaka attempted to call Respondent but he was not available. She left a message with Respondent's receptionist asking Respondent to contact her. Respondent did not return her call.

18) On March 17, 2000 Ms. Akasaka attempted to call Respondent but he was not available. She left a message asking Respondent to contact her. Respondent did not return her call.

19) On March 20, 2000 Ms. Akasaka called and spoke with Respondent. Respondent indicated that he still needed to obtain a signature from human resources at the Westin Hotel.

20) On March 31, 2000 Respondent obtained the signature of Ms. Akasaka on the documents required for the H-1B visa application. (Exhibit 32). Respondent did not request or receive any additional documentation from Ms. Akasaka at this time.

21) On March 31, 2000 Respondent obtained the signature of the Westin Hotel's Human

Washington State Bar Association
2101 Fourth Avenue ~ Suite 400
Seattle, WA 98121-2330
(206) 727-8207

Resources Director on the documents required for the H-1B visa application. (Exhibit 32). Respondent also left an ETA 9035 form with the Westin for them to complete.

22) On or about March 31, 2000, Respondent gave the completed visa application paperwork to the Westin Hotel for their review and approval.

23) On April 27, 2000, Respondent submitted Ms. Akasaka's H-1B visa application to the INS.

24) On the visa application materials prepared by Respondent, the dates of intended employment for Ms. Akasaka were from 4/30/00 to 4/30/03. (Exhibit 32-11).

25) In May 2000 Ms. Akasaka's visa application was returned to Respondent with an INS H-1B Cap Reject Notice letter. The letter stated that on March 21, 2000 the INS gave notice that the statutory cap for H-1B visas had been reached for employment scheduled to begin prior to October 1, 2000. Since Ms. Akasaka's application was filed after March 21, 2000 and requested employment to begin prior to October 1, 2000, the application was rejected by the INS. The INS notice stated that the application could be resubmitted for employment beginning on or after October 1, 2000. (Exhibit 12).

26) Ms. Akasaka's J-1 visa expired on April 30, 2000 and she returned to Japan on June 5, 2000.

27) On August 30, 2000 Respondent resubmitted Ms. Akasaka's H-1B visa application to the INS and changed the employment start date to October 1, 2000. (Exhibit 13).

28) On September 13, 2000 Respondent sent a letter to Ms. Akasaka in Japan notifying her that her application had been received by the INS. (Exhibit 21).

29) On November 18, 2000, Ms. Akasaka returned to the United States from Japan on a tourist visa.

30) Around November 19, 2000 Ms. Akasaka sent a fax to Respondent informing him that she had returned to the United States and that she was staying with Mr. Miller.

31) On November 27, 2000, Respondent received an INS Request for Evidence Letter for Ms. Akasaka's visa application which stated: "The documentation submitted is not sufficient to

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

warrant favorable consideration of your petition/application." The next three pages of the letter listed the application's deficiencies and the additional documentation needed for favorable consideration. The letter stated that the additional information must be received by the INS by February 13, 2001. (Exhibits 1 & 2 Tab 2). Respondent did not send a copy of this letter to Ms. Akasaka or Mr. Miller and did not notify them that he had received the letter.

32) Upon returning to the United States Ms. Akasaka attempted to contact Respondent to learn the status of her visa application. She called Respondent's office nearly every week and made a total of six or seven calls before she finally reached him and scheduled a meeting on January 10, 2001.

33) On January 10, 2001 Ms. Akasaka and Mr. Miller met with Respondent. Respondent asked Ms. Akasaka to provide him with a new job description. At this meeting Respondent did not provide Ms. Akasaka with the INS Request for Evidence Letter nor did he notify her that he had received such a letter.

34) Ms. Akasaka provided Respondent with the requested job description within one week.

35) Between January 10, 2001 and February 6, 2001, Ms. Akasaka and Mr. Miller had several contacts with Respondent.

36) On February 6, 2001 Respondent called Mr. Miller and informed him that the new job description they had provided was not sufficient. Respondent also informed Mr. Miller that he had received an INS Request for Evidence Letter. Respondent faxed the INS letter to Mr. Miller. This was the first time that the Respondent had notified Mr. Miller or Ms. Akasaka about the INS letter. Prior to February 6, 2001, Mr. Miller and Ms. Akasaka were unaware of the additional documentation that INS had requested or that this documentation had to be submitted to the INS by February 13, 2001.

37) On February 10, 2001 Ms. Akasaka provided Respondent with another revised job description based on the information requested in the INS Request for Evidence Letter.

38) On February 12, 2001 Respondent submitted a response to the INS Request for Evidence

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

Letter. According to the transmittal letter, Respondent included two letters from Westin Hotel staff both dated February 7, 2001. (Exhibit 15).

39) On May 21, 2001 the INS denied Ms. Akasaka's H-1B visa application. The INS ruled that while the position was a specialty occupation, the evidence submitted did not establish that Ms. Akasaka had recognition of expertise in the specialty as required. The decision noted that some materials that had specifically been requested in the INS Request for Evidence Letter had not been provided with application:

> "No transcripts have been submitted to show the courses which might have a direct correlation to the duties of the proffered position, although the petitioner was asked to submit such transcripts." (Exhibit 16-3).
>
> "Although the petitioner was asked to submit several letters of work experience to establish the beneficiary has acquired the equivalent of the degree required by the specialty occupation through a combination of education, specialized training and/or progressively responsible work experience, no work experience letters have been submitted." (Exhibit 16-5).

40) On May 29, 2001 Respondent sent a letter to Mr. Miller notifying him that Ms. Akasaka's visa application was denied and that they had 30 days to appeal the decision. (Exhibit 17).

FINDINGS OF FACTS RELATING TO RESPONDENT'S REPRESENTATION OF FIDEL JOSE AGUILERA

41) Virtually all of the work done by Respondent is done on a flat fee basis and he typically does not keep track of the time spent on individual matters.

42) On January 22, 2000, Mr. Fidel Jose Aguilera met with Respondent and hired him to handle several different matters including a social security matter; a matter concerning his criminal conviction, criminal appeal, and possible suit against his former criminal attorneys; and a potential matter against his prison counselor.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

43) Both Mr. Aguilera and Respondent speak Spanish and Respondent communicated with Mr. Aguilera exclusively in Spanish.

44) Respondent memorialized the initial fee arrangement in writing and provided Mr. Aguilera with a copy of the memorandum. This was the only receipt or written accounting of fees paid that Respondent gave to Mr. Aguilera during the course of his representation.

45) The written fee memorandum provided the following in English:

> 1/22/00
>
> Received $50 for consultation and $250 for payment for down payment on social security matter.
>
> Charges are:
>
> $500 to investigate possibility of filing civil action in either state or federal court against prison counselor (re: false accusations, keeping him in prison longer than required)
>
> $500 to start social security matter (re: recoupment of past social security payments due)
>
> $1,500 for criminal investigation of conviction in Pierce County, and appeal
>
> $2,500 to start
>
> $250 paid
>
> $2,250 retainer.
>
> Plus $1,500 for ongoing retainer.
>
> ---
>
> $3,750
>
> Received $3,750 on 1/24/00 in 2 checks.

46) Respondent did not explain the meaning of the terms "down payment" and "retainer" for Mr. Aguilera.

47) On January 24, 2000 Mr. Aguilera made an initial payment of $3,750 to handle these matters.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

(Exhibit 5).

48) On June 22, 2000, Mr. Aguilera paid Respondent $1,000 in additional funds, and on November 7, 2000, he paid Respondent $1,100 in additional funds. (Exhibit 6). Respondent never told Mr. Aguilera for which matters these funds were needed. Respondent testified that these payments were for the O'Kane matter and the social security matter.

49) Other than the initial written receipt (Exhibit 5), Respondent did not provide Mr. Aguilera with any verbal or written accounting of how the funds paid by Mr. Aguilera were used or for which of the three matters the funds were used for. Mr. Aguilera was never told the basis of the fees nor the factors used to determine the fees. He was simply told the amounts for initial fees and that additional money would be needed in the future.

50) Mr. Aguilera did not have a clear understanding of the fee breakdown for the three matters for which Respondent was retained.

51) Although Mr. Aguilera was never informed by Respondent what the basis of the additional fees were, he paid Respondent without question because he trusted him.

52) Mr. Aguilera explained to Respondent that he wanted the social security matter taken care of "as soon as possible." Mr. Aguilera believed that he was entitled at least $36,000 in that matter.

53) On May 3, 2001 Respondent filed a Complaint for Declaratory Relief and for Damages against the Social Security Administration on behalf of Mr. Aguilera in federal district court.

54) Mr. Aguilera was unaware that Respondent had filed the social security case on his behalf. Mr. Aguilera was also confused when he received notice that Respondent was withdrawing from his social security matter as to which of the matters the Respondent was actually withdrawing from.

55) Respondent testified that Mr. Aguilera authorized him to file a lawsuit against Tim O'Kane regarding some restaurant equipment that was supposed to be stored by Mr. O'Kane as part of the property sale agreement with Mr. Aguilera. However, Mr. Aguilera denied that he ever

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

retained Respondent for that purpose.

56) Respondent testified that he spent more time on the O'Kane matter than on any other of Mr. Aguilera's matters. Respondent did file a complaint against Mr. O'Kane in December 2000 and filed numerous briefs, interrogatories and other documents with the court. A trial date was scheduled for June 10, 2002. Respondent filed a Notice of Withdrawal from the case on June 8, 2001.

57) Mr. Aguilera felt that Respondent was not performing the work that he was paid to do and so he told Respondent, "If you can't do the case, then give me back my money." Mr. Aguilera told Respondent that if he could not do the work then he would give it to another attorney.

58) In June 2001, after Mr. Aguilera informed Respondent that he had retained another lawyer to handle all of his matters he made an appointment to meet Respondent. Respondent testified that he did not want to meet with Mr. Aguilera so he had his associate, Adolfo Ojeda, meet with him.

59) Mr. Aguilera asked to have the money he paid to Respondent refunded. Mr. Ojeda told Mr. Aguilera that they would not refund any of his money and in fact he owed Respondent additional money for other work that they had done for him on other matters. Respondent testified that he had done some immigration work to help bring Mr. Aguilera's two daughters in from Cuba, that he had dealt with collection agencies on Mr. Aguilera's behalf, and that he handled a property quit claim deed for Mr. Aguilera's daughter. Respondent said that Mr. Aguilera was always coming in with little things that he wanted Respondent to do and they always "took care of him."

60) Respondent testified that he earned the fees that Mr. Aguilera paid "and more." Respondent told Mr. Aguilera that if he were to bill him for all the work that he had done for him that Mr. Aguilera would owe him additional money.

61) When Respondent refused to refund Mr. Aguilera's payments, Mr. Aguilera hired another attorney, Elliot Carlsen. In February 2003 Mr. Carlsen filed a claim against Respondent to

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

recover the money that Mr. Aguilera had paid him.

62) Respondent filed a counter claim against Mr. Aguilera for additional fees that Respondent claimed he was owed.

63) In February 2003 Respondent settled with Mr. Aguilera and refunded $4,000 of the fees that Mr. Aguilera had paid to Respondent. Respondent did not admit any wrongdoing as part of the settlement and stated that it made more business sense to settle than to spend his time fighting the claim.

FINDINGS OF FACTS RELATING TO RESPONDENT'S COOPERATION WITH WASHINGTON STATE BAR ASSOCIATION DISCIPLINARY INVESTIGATIONS

64) Pursuant to Respondent's Answer to the Association's First Amended Formal Complaint, in which the Respondent admitted all factual allegations relating to Count 6, the parties stipulated to the facts as taken from the admitted paragraphs of the First Amended Formal Complaint. The facts are as follows:

65) Akasaka Grievance. On July 6, 2001, the Association sent Respondent a letter asking for Respondent's response to the Akasaka grievance. Respondent failed to respond. On August 13, 2001, the Association sent Respondent a "10-day" letter asking Respondent to respond to the grievance before August 27, 2001, and notifying Respondent that his failure "[t]o respond is, in itself, grounds for discipline." On September 4, 2001, Respondent provided the Association with a written response. On September 5, 2001, the Association asked Respondent to answer several additional, specific questions regarding the grievance. Respondent failed to respond. On October 15, 2001, the Association sent Respondent a "10-day" letter asking Respondent to respond to the September 5, 2001 request for additional response. On October 26, 2001, Respondent provided the Association with a written response to the September 5, 2001 request for additional information. (First Amended

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

Formal Complaint, ¶¶ 50-57)

66) Aguilera Grievance. On October 10, 2001, the Association sent Respondent a copy of Fidel Aguilera's grievance and requested his response. Respondent failed to respond. On November 14, 2001, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before November 27, 2001. Respondent failed to respond. On December 10, 2001, the Association issued a subpoena duces tecum for Respondent's attendance at a deposition scheduled for January 2, 2002. On December 10, 2002, ABC Messengers personally served Respondent with the subpoena duces tecum. In a letter dated December 31, 2001, Respondent responded. On January 2, 2002, Respondent appeared for his deposition. (First Amended Formal Complaint, ¶¶ 58-64)

67) Guadalupe Gonzalez Grievance. On October 9, 2001, the Association received a grievance from Guadalupe Gonzalez. On October 17, 2001, the Association sent Respondent a copy of the grievance and requested his response to the grievance. Respondent failed to respond. On November 20, 2001, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before December 3, 2001. Respondent failed to respond. On December 10, 2001, the Association issued a subpoena duces tecum for Respondent's attendance at a deposition scheduled for January 2, 2002. On December 10, 2002, ABC Messengers personally served Respondent with the subpoena duces tecum. In a letter dated December 31, 2001, Respondent notified the Association that he could not respond to Mr. Gonzalez's grievance until the Association identified Mr. Gonzalez's wife's name, which we did on January 2, 2002. On January 2, 2002, Respondent appeared for his deposition. On January 11, 2002, Respondent provided the Association with the client file and a written response. (First Amended Formal Complaint, ¶¶ 65-73)

68) Sanghera Grievance. On November 8, 2001, the Association received a grievance from Navtej Sanghera. On November 13, 2001, the Association sent Respondent a copy of the grievance and requested his response to the grievance. Respondent failed to respond. On

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

December 19, 2001, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before January 2, 2002. In a letter dated December 31, 2001, Respondent responded to the grievance. On January 28, 2002, the Association sent Respondent an additional request for response letter and asked him to provide us with his client file. Respondent failed to respond. On March 1, 2002, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before March 15, 2002. In a letter dated March 14, 2002, Respondent provided an additional written response, but he did not provide us with his client file. On March 20, 2002, the Association sent Respondent a letter via facsimile and first class mail and asked him to provide us with his client file before March 22, 2002. On March 21, 2002, Respondent provided us with his client file. (First Amended Formal Complaint, ¶¶ 74-84)

69) Guzman-Soltero Grievance. On December 7, 2001, the Association received a grievance from Jose Guzman-Soltero. On December 10, 2001, the Association sent Respondent a copy of the grievance and requested his response to the grievance. Respondent failed to respond. On January 22, 2002, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before February 4, 2002. In a letter dated February 4, 2002, Respondent responded to the grievance. On February 11, 2002, the Association sent Respondent an additional request for response letter. Respondent failed to respond. On March 12, 2002, the Association sent Respondent a "10-day" letter via certified mail to his business address of record and asked him to respond before March 25, 2002. In a letter dated March 25, 2002, Respondent provided an additional written response. (First Amended Formal Complaint, ¶¶ 85-93)

III. CONCLUSIONS OF LAW

COUNT 1

70) Respondent's conduct in failing to expedite Ms. Akasaka's H-1B visa application and/or

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

failing to submit a complete visa application as requested by INS, violated RPC 1.3 requiring that a lawyer shall act with reasonable diligence and promptness in representing a client and subjects Respondent to discipline pursuant to RLD 1.1(i) (now ELC 1.1). Count 1 is proven. With respect to this conduct, respondent acted negligently.

COUNT 2

71) Respondent's conduct in failing to respond to Ms. Akasaka's reasonable requests for information regarding her case, and/or in failing to provide Ms. Akasaka with the INS Request for Evidence letter in a timely fashion, violated RPC 1.4 requiring that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and subjects Respondent to discipline pursuant to RLD 1.1(i) (now ELC 1.1). Count 2 is proven. With respect to this conduct, respondent acted negligently.

COUNT 3

72) The Association has failed to prove the alleged violations of the Rules of Professional Conduct in Count 3.

COUNT 4

73) Respondent's conduct in failing to communicate to Mr. Aguilera the basis and/or rate of the fees and/or factors involved in determining the charges for legal services in all of the matters before and/or within a reasonable time after commencing the representation, violated RPC 1.4 requiring that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and/or violated RPC 1.5(b) requiring a lawyer who has not regularly represented a client or if the fee agreement is substantially different than that previously used by the parties, to communicate with the client, preferably in writing, before or within a reasonable time after commencing the representation, the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices, and subjects Respondent to discipline.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

pursuant to RLD 1.1(i) (now ELC 1.1). Count 4 is proven. With respect to this conduct, respondent acted negligently.

COUNT 5

74) Respondent's conduct in failing to account Mr. Aguilera regarding his fees violated RPC 1.5(a) requiring a lawyer's fees to be reasonable and subjects Respondent to discipline pursuant to RLD 1.1(i) (now ELC 1.1). Respondent's fees were not reasonable because he failed to provide the client with a fee agreement or confirming writing which demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices. RPC 1.5(a)(8). Count 5 is proven. With respect to this conduct, respondent acted negligently.

COUNT 6

75) Respondent's conduct in failing to respond promptly to the Association's requests for responses regarding the Akasaka grievance and/or the Aguilera grievance and/or the Gonzalez grievance, and/or the Sanghera grievance, and/or the Guzman-Soltero grievance, violated RLD 2.8(a) (now ELC 5.3(e)) requiring a lawyer to promptly respond to any inquiry or request made pursuant to the Rules of Lawyer Discipline for information relevant to grievances or matters under investigation concerning conduct of a lawyer and subjects Respondent to discipline pursuant to RLD 1.1(j) (now ELC 1.5). Count 6 is proven. With respect to this conduct, respondent acted knowingly.

IV. APPLICATION OF ABA STANDARDS

The Washington State Supreme Court requires the Hearing Officer to apply the American Bar Association's Standards for Imposing Lawyer Sanctions in all lawyer discipline cases. Applying the ABA Standards involves a two-step process. The first is to determine a presumptive sanction by considering (1) the ethical duty violated; (2) the lawyer's mental state; and (3) the extent of the actual or potential injury caused by the misconduct. The second is to consider any aggravating or mitigating factors which might alter the presumptive sanction.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

ABA PRESUMPTIVE SANCTIONS

76) **Counts 1 and 2**: Applying the ABA Standards, the following presumptive sanction is applicable to Respondent's conduct in representing Ms. Akasaka:

> 4.42(b) Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

77) **Counts 4 and 5:** Applying the ABA Standards, the following presumptive sanction is applicable to Respondent's conduct in representing Mr. Aguilera:

> 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
>
> And/or
>
> 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client.

78) **Count 6:** Applying the ABA Standards, the following presumptive sanction is applicable to Respondent's failure to cooperate with the Association during the investigation of disciplinary investigations:

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

AGGRAVATING AND MITIGATING FACTORS

79) The following aggravating factors contained in Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions are applicable in this case:

a. **Substantial Experience in the Practice of Law**: Respondent has been practicing law in Washington State since 1975.

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

b. **Prior Disciplinary Offenses:** Respondent has received: a 1990 stipulated letter of censure for failing to carry out a contract of employment and failing to keep a client reasonably informed about the status of a matter; a 1994 admonition for neglect of criminal appeal; a 1998 public admonition for failing to cooperate in eight separate Association investigations; a 1999 public admonition for failure to properly supervise support staff in calendaring immigration appeal; a 2001 censure for negligently failing to timely file an appellate brief in an application for asylum. (Exhibits 26-30).

c. **Multiple Offenses:** In this matter Respondent was found to have violated the provisions of the Rules of Professional Conduct (RPC) and Rules for Lawyer Discipline (RLD) in five separate counts involving two different clients and the Washington State Bar Association.

d. **Pattern of Misconduct:** Respondent's previous disciplinary actions and his treatment of the current action indicate a pattern of failing to abide by the disciplinary process rules, failing to respond to deadlines in a timely manner and failing to communicate and keep clients informed. Respondent has been disciplined in the past for not timely filing an appeal brief (Exhibit 26), failing to calendar a brief correctly and thus filing it late (Exhibit 27), failing to cooperate with disciplinary counsel in eight separate grievances (Exhibit 28), failing to file an appellate brief (Exhibit 29), and failure to act in a diligent manner on several client matters (Exhibit 30).

80) The following mitigating factors, which are set forth in Section 9.32 of the ABA Standards for Imposing Lawyer Sanctions are applicable in this case:

a. **Absence of a Dishonest or Selfish Motive**

b. **Remorse:** This factor applies only to Count 6.

81) The hearing officer finds that the aggravating factors outweigh the mitigating factors and on

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

balance these factors support a sanction of suspension.

82) Respondent's behavior resulted in actual injury to Mr. Aguilera, Ms. Akasaka and the Association.

83) The charges for which Respondent was found to have violated in this case demonstrate a consistent pattern of neglect of client matters, particularly in regards to time sensitive issues and in responding to requests for information from clients and the Association. Respondent has not learned from previous disciplinary actions and his problematic behavior towards his clients and the Association has not improved.

84) Considering the presumptive sanctions and weighing the aggravating and mitigating factors, the appropriate sanction is suspension.

V. RECOMMENDATION

85) Based upon the ABA Standards and the applicable aggravating and mitigating factors, the hearing officer recommends that the Respondent, Antonio Salazar, be suspended from the practice of law for a period of six months pursuant to ELC 13.1(a)(2) and then upon completion of the suspension that he be placed on probation pursuant to ELC 13.8 for a period of one year on the following conditions:

a. He complete at least thirty hours total of WSBA approved professional law office Continuing Legal Education and/or management counseling.

b. He institute a billing system that records all client payments and the matters that they were paid for.

c. He institute a system to record, catalogue and prioritize phone and email messages so that they may receive a prompt response.

d. He institute a system for incoming mail that ensures that requests from clients or the Association are identified and routed to the appropriate attorney for a prompt response and that clients are promptly notified of additional

Washington State Bar Association
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

documentation received related to their cases.

86) I recommend that Respondent's probation be supervised pursuant to ELC 13.8(a)(2).

DATED this 21 day of March, 2003.

ROBERT M. SCALES, WSBA #24164
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FINDINGS OF FACT + CONCLUSIONS OF LAW + HEARING OFFICER'S RECOMMENDATION to be delivered to the Office of Disciplinary Counsel and to be mailed to ANTONIO SALAZAR, Respondent/~~Respondent's Counsel~~ at 810 3RD AVE, STE 308 SEATTLE WA 98104 by Certified/first class mail, postage prepaid on the 25TH day of MARCH 2003.

Sally Sews
Clerk/~~Counsel~~ to the Disciplinary Board

7000 0520 0021 0788 8648

* SDC

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only: No Insurance Coverage Provided)

ANTONIO SALAZAR

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 3/25/03

Postmark Here

Recipient's Name (Please Print Clearly) (To be completed by mailer)
ANTONIO SALAZAR
Street, Apt. No.; or PO Box No.
810 3RD AVE, STE 308
City, State, ZIP+4
SEATTLE, WA 98104

PS Form 3800, February 2000 See Reverse for Instructions

7000 0520 0021 0788 8648

(Transfer from service label)

PS Form 3811, August 2001 Domestic Return Receipt

2ACPRI-03-Z-0985

SECTION ON DELIVERY

Agent
Addressee
(Printed Name) C. Date of Delivery 3/27
dress different from item 1? Yes
delivery address below: No

Mail Express Mail
ed Return Receipt for Merchandise
Mail C.O.D.
Delivery? (Extra Fee) Yes

THE SUPREME COURT OF WASHINGTON

IN RE:	RECEIVED	BAR NO. 6273
ANTONIO SALAZAR,	FEB 07	Supreme Court No. 200,216-1
ATTORNEY AT LAW.		ORDER

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

ORDERED:

Antonio Salazar is suspended from the practice of law for 30-days. Pursuant to ELC 13.2 the effective date of suspension is February 15, 2005.

DATED at Olympia, Washington, this 8th day of February, 2005.

For the Court

Jerry L. Alexander

CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2005 FEB -8 P 4:03
BY C.J. MERRITT
CLERK

461/300

006

THE SUPREME COURT OF WASHINGTON

RECEIVED
FEB 15 2005

In re:

ANTONIO SALAZAR

An Attorney at Law.

ORDER

WSBA No. 6273

Supreme Court No.
200,216-1

Chief Justice Alexander considered Antonio Salazar's motion for extension of the effective date of suspension and the Washington State Bar Association's response to the motion and has determined that the following order be entered;

Now, therefore, it is hereby

ORDERED:

That attorney Antonio Salazar's motion for extension of the effective date of suspension is denied.

DATED at Olympia, Washington this 11th day of February, 2005.

For the Court,

Gerry L Alexander
CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2005 FEB 11 P 2:19
BY C.J. MERRITT
CLERK

461/311

008

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re ANTONIO SALAZAR, Lawyer WSBA No. 6273	Review No. 02#00022 NOTICE OF SUSPENSION

PLEASE TAKE NOTICE that by Order of the Supreme Court entered the 8th day of February, 2005, lawyer Antonio Salazar was suspended from the practice of law in the State of Washington for a period of 30 days, effective February 15, 2005. For more information, you may access the WSBA website, www.wsba.org or contact Judith Berrett, Director of Member and Community Relations, at judithb@wsba.org or (206) 727-8212.

DATED this 23 day of February, 2005.

WASHINGTON STATE BAR ASSOCIATION

M. Janice Michels
Executive Director

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

15. ***Seago***

In re ***Seago,*** WSBA Review No. 00#00154 (reported in *Wash. St. Bar News,* Feb. 2001) (11 pages not including this cover page):

(a) Stipulation to Two Censures (dated October 15, 1999; 9 pages)

(b) Order on Stipulation to Discipline (dated January 12, 2000; 1 page)

(c) Letter from WSBA President regarding censure (undated; 1 page)

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Bar No. 22574
ALAN C. SEAGO,	STIPULATION TO TWO CENSURES
Lawyer.	

Pursuant to Rule 4.14 of the Rules for Lawyer Discipline (RLD), the following Stipulation to Two Censures is entered into by the Washington State Bar Association (hereafter referred to as the "Association"), through disciplinary counsel, Christine Gray, and Respondent lawyer, Alan C. Seago, who is *pro se* in this matter.

ADMISSION TO PRACTICE

1. Respondent Alan C. Seago was admitted to the practice of law in the State of Washington on August 7, 1993. At all material times hereto, Respondent practiced in Tacoma, Pierce County, Washington.

FACTS RELATED TO THE GRIEVANCES

Grievance of Nyla Door (9701144)

2. On July 19, 1995, Nyla Door retained Respondent, by written fee agreement, to represent her in a dissolution matter. That written agreement provided that Respondent would receive an hourly fee.

3. On July 26, 1995, the Respondent filed a Notice of Appearance in the Door dissolution matter.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

4. On January 10, 1996, Respondent filed, on Ms. Door's behalf, a motion for child support.

5. On July 26, 1996, Respondent filed, on Ms. Door's behalf, a motion for contempt for failure to pay child support. That motion was renewed by Respondent on August 15, 1996 and again on November 14, 1996.

6. On December 11, 1996, the Court issued an order of contempt.

7. Prior to April 17, 1997, Ms. Door had signed a settlement agreement for the decree of dissolution. At the time, she was anxious to be divorced as soon as possible. The settlement agreement provided for Ms. Door's husband to pay her a sum of $24,500. Approximately $10,000 of those funds were to come from a second mortgage. Ultimately Ms. Door's husband failed to obtain the second mortgage when the financing was disapproved. The Association's investigation, including interviews with the mortgage broker, reveals that, at the time the settlement agreement was reached, the Respondent had received assurances from the mortgage broker that the financing would be approved. Because the second mortgage was not approved, Ms. Door's ex-husband failed to pay Ms. Door approximately $10,000 owed to her.

8. On April 17, 1997, the Respondent agreed to certain changes in the settlement agreement that had already been signed by Ms. Door, without consulting with Ms. Door. The changes made without Ms. Door's approval included: (1) the judgment summary on the first page of the decree of dissolution removed the reference to Mr. Door's obligation to pay Ms. Door $24,500 (although that obligation to pay $24,500 still remained a part of the divorce decree), and (2) Ms. Door would have to pay shipping costs for shipping her personal property.

9. On May 1, 1997, the Respondent received a check in the amount of $14,314.51, on Ms. Door's behalf, as a part of the settlement proceeds. He deposited the check to his trust account, and distributed the proceeds as follows: $4,020 to Respondent for legal fees and expenses, and $10,294.51 to Ms. Door.

10. Respondent's business practices in running his solo practice were quite disorganized. Although Respondent did not provide Ms. Door with regular bills and did not keep detailed

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

contemporaneous time records, his calculation of hours spent on Ms. Door's representation appears to be reasonable. On April 30, 1997, Respondent provided Ms. Door with a bill for services setting forth the basis for the $4,020 in fees.

11. With regard to the Respondent's bills, Respondent's disorganized business practices resulted in a failure to credit Ms. Door with all the funds that she paid Respondent prior to May 1, 1997. Ms. Door started with $160 in credit from a prior case, and paid in July 1995 a $200 advance for which her account was credited. Because of the Respondent's disorganized recordkeeping, the Association is unable to determine with certainty, from Respondent's records, the exact number and amounts of Ms. Door's subsequent payments. Accordingly, the parties accept Ms. Door's account of the $1,005 in total subsequent payments that Respondent appears (the Association has not been provided with one of the bills that apparently was prepared on this matter) not to have credited on Ms. Door's account.

12. In late April and May 1997, Ms. Door repeatedly requested a copy of her final divorce decree. In June 1997, Ms. Door made repeated inquiries regarding the remaining amount due from her ex-husband. During May and June 1997, the Respondent did not respond to Ms. Door's inquiries.

Grievance of Walter Williams (9800957)

13. On October 5, 1995, Walter Williams retained Respondent, by written fee agreement, to represent him in a pending criminal matter (95-1-04525-3), for a flat fee of $2,000.

14. On October 5, 1995, the Respondent filed a Notice of Withdrawal and Consent to Substitution, entering his formal appearance as Mr. Williams' counsel of record.

15. On October 6, 1995, Mr. Williams entered a guilty plea to three felony counts: unlawful possession of a controlled substance with intent to deliver, unlawful possession of an imitation controlled substance with intent to distribute, and unlawful possession of a firearm in the first degree.

16. On June 26, 1996, Mr. Williams was sentenced on his case 95-1-04525-3 to a range of 67-89 months on the drug/firearms charges, to be served concurrently with his sentence on

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

another charge (96-1-02225-5). He was represented by Sybil Vitikainen on that other charge, and was sentenced on that other charge on the same day as his sentence on the controlled substance/firearms charges.

17. In January 1997, Mr. Williams, believing that his sentence had been calculated incorrectly, attempted more than once to contact the Respondent. The Respondent did not communicate with Mr. Williams.

18. Mr. Williams then contacted Ms. Vitikainen regarding his belief that his sentence had been incorrectly calculated. By letter dated January 27, 1997, Ms. Vitikainen informed the Respondent of her view that it was possible that Mr. Williams' offender score for sentencing on case 95-1-04525-3 (the one regarding which Respondent represented Mr. Williams) was incorrect, and enclosed a copy of a case that she believed to be pertinent. Ms. Vitikainen requested Respondent to contact Mr. Williams on this issue.

19. Although the Respondent spoke to Mr. Williams after receiving Ms. Vitikainen's letter, he did not advise Mr. Williams what action the Respondent did, or did not, intend to take on Mr. Williams' behalf. The Respondent did not take any legal action towards having Mr. Williams' sentence changed. The Respondent has indicated that he did not believe that Mr. Williams' sentence was incorrect.

20. As a result of Respondent's inaction, Ms. Vitikainen filed a motion on Mr. Williams' behalf. In June 1997, Ms. Vitikainen requested Respondent to appear in court for the hearing on the motion for a corrected sentence. Respondent did not appear at the hearing.

21. On August 20, 1997, the Court ordered a corrected sentence on Mr. Williams' sentence on the controlled substance/firearms charges (95-1-04525). At that time, Respondent remained counsel of record. On the corrected sentence, Mr. Williams received 54 months on the first count, 22 months on the second count, and 54 months on the third count, to be served concurrently with the other charge (96-1-02225-5). The net result of the corrected sentence was that Mr. Williams was to serve at least 13 fewer months in prison.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

STIPULATED MISCONDUCT

22. By failing to communicate adequately with Nyla Door regarding her bills, proposed changes in her dissolution settlement agreement and her final dissolution papers and with Walter Williams regarding a possible sentence correction, the Respondent violated RPC 1.4 and is subject to discipline pursuant to RLD 1.1(i).

23. By failing to act with diligence by not filing a motion for a corrected sentence on Walter Williams' behalf and/or by not appearing in court in connection with Walter Williams' attempt to have his sentence reduced, the Respondent violated RPC 1.3 and is subject to discipline pursuant to RLD 1.1(i).

24. By failing to keep accurate and complete records regarding Nyla Door's payments, the Respondent violated RPC 1.14(b) and is subject to discipline pursuant to RLD 1.1(i).

PRIOR DISCIPLINE

25. Respondent has no prior discipline.

APPLICATION OF ABA STANDARDS

26. The Washington Supreme Court requires application of *the American Bar Association Standards for Imposing Lawyer Sanctions* (1986) (the "*ABA Standards*") as a framework in determining the appropriate discipline in a case.

27. Respondent stipulates that the following ABA Standards are applicable to this case:

ABA Standards Section 4.4 (Lack of Diligence)

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

ABA Standards Section 4.6 (Lack of Candor)[1]

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a

[1] Although *ABA Standard 4.6* is not directly applicable in this case since it deals with fraud, deceit and misrepresentation, none of which are factors here. Nonetheless, *Standard 4.6* applies here by analogy. The commentary to *ABA Standard 4.43* (Lack of Diligence) also suggests, by analogy, that a reprimand is the presumptive sanction.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

client with accurate or complete information, and causes injury or potential injury to the client.

ABA Standards Section 4.1 (Failure to Preserve the Client's Property)

4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

Presumptive Sanction

28. Under the analysis of the *ABA Standards* Section 4.6, reprimand/censure is the presumptive standard for the lack of communication in the representations of Nyla Door and Walter Williams.[2] Respondent acted negligently, arising primarily from his disorganized business practices. Respondent's lack of communication caused harm or potential harm to Ms. Door with regard to her failure to ratify the last-minute changes in her settlement agreement, and caused potential harm to Mr. Williams.

29. Under the analysis of the *ABA Standards* Section 4.4, reprimand/censure is the presumptive standard for the lack of diligence in the Walter Williams matter. Respondent, believing that a motion for correction of sentence had no merit, negligently failed to file such a motion or to support Ms. Vitikainen's efforts to obtain such a correction. Because of Ms. Vitikainen's efforts, Mr. Williams suffered no actual harm. Nonetheless, there was the potential for harm to Mr. Williams.

30. Under the analysis of the *ABA Standards* Section 4.1, reprimand/censure is the presumptive standard for the failure to accurately reflect Nyla Door's payments toward her fees. Respondent acted negligently. His failure to keep accurate records resulted in an overpayment by Ms. Door.

[2] *ABA Standard 2.5* defines "[r]eprimand, also known as censure or public censure," as a "form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice." Both a censure and a reprimand within the meaning of the RLDs fall within this definition.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

Aggravating and Mitigating Factors

31. The aggravating factors from *ABA Standards* Section 9.22, which apply to this case are the following:

(c) multiple offenses;

32. The mitigating factors from *ABA Standards* Section 9.32, which apply to this case are the following:

(a) absence of prior disciplinary record;

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(l) remorse.

33. The sanction of reprimand/censure under *ABA Standards* Sections 4.4, 4.6 and 4.1, set forth in paragraph 27 above, is not materially affected by the aggravating and mitigating factors under *ABA Standards* Sections 9.22 and 9.32.

34. Respondent stipulates that, based on the *ABA Standards*, the presumptive standard is reprimand/censure.

35. The parties stipulate that, in light of the presumptive standard and both the aggravating and mitigating factors, the appropriate sanction to be imposed under Washington's system of lawyer discipline is two censures, one regarding Respondent's handling of the Door matter and one regarding the Respondent's handling of the Williams matter.

STIPULATED DISCIPLINE

36. Based upon the stipulated facts, the stipulated misconduct, and the *ABA Standards*, the parties stipulate that Respondent shall receive two censures, one regarding Respondent's handling of the Door matter and one regarding the Respondent's handling of the Williams matter.

RESTITUTION

37. It is stipulated and agreed that Respondent shall pay restitution of $1,005 to Nyla Door pursuant to RLD 5.3, within thirty days of final approval of this stipulation.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

COSTS AND EXPENSES

38. It is stipulated and agreed that Respondent shall pay attorney's fees and administrative costs of $300.00, pursuant to RLD 5.7, within thirty days of final approval of this stipulation.

VOLUNTARY AGREEMENT

39. Respondent Alan C. Seago states that prior to entering into this Stipulation he has either consulted, or had an opportunity to consult, independent legal counsel regarding this Stipulation, that Respondent Alan C. Seago is entering into this Stipulation voluntarily, and that no promises or threats have been made by the Association, nor by any representative thereof, to induce the Respondent to enter into this Stipulation except as provided herein.

LIMITATIONS

40. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources. Both the respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

41. Pursuant to RLD 4.14(b)(3), this Stipulation is not binding upon the Association as a statement of all existing facts relating to the professional conduct of the Respondent, and any additional existing facts may be proven in any subsequent disciplinary proceedings or proceedings for reinstatement.

42. Pursuant to Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have all material investigation documents available to it for review, including but not limited to all correspondence from the grievants and all written responses of the respondent lawyer. All documents which form the record before the Board for its review shall become public information upon approval of the Stipulation by the Board, pursuant to RLD 11.1(c)(6), unless disclosure is restricted by order or rule of law.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

43. If this Stipulation is approved by the Disciplinary Board, it shall be followed by the disciplinary action agreed to within this Stipulation. All notices required in the Rules for Lawyer Discipline shall be made.

44. If this Stipulation is not approved by the Disciplinary Board, this Stipulation shall be of no force or effect, and neither it nor the fact of its execution shall be admissible as evidence in the pending disciplinary proceedings, in any subsequent disciplinary proceedings, or in any civil or criminal action.

WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of this Stipulation for Discipline, as set forth above.

DATED this 15th day of October, 1999.

Alan C. Seago, WSBA No. 22574
Respondent

Christine Gray, WSBA No. 26684
WSBA Disciplinary Counsel

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

RECEIVED
JAN 14 2000
WSBA OFFICE OF
DISCIPLINARY COUNSEL

FILED
JAN 13 2000
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re ALAN C. SEAGO, Lawyer.	Bar No. 22574 ORDER ON STIPULATION TO DISCIPLINE

This matter came before the Disciplinary Board at its January 10, 2000 meeting. Upon review of the October 15, 1999 Stipulation to Two Censures and supporting documentation, IT IS ORDERED that the October 15, 1999 Stipulation to Two Censures is approved,

The vote on this matter was unanimous.

Those voting were Cullen, Dullanty, Brandon, Bonnell, Lamb, S. Smith, Kilpatrick, Goetz, Hayton, D. Smith and Sturwold.

DATED this 12th day of January, 2000.

Richard B. Kilpatrick, Chairperson
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the order on stipulation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Alan C Seago, Respondent/~~Respondent's Counsel~~
917 Pacific Ave - Ste 316, by Certified/~~first class mail~~,
Tacoma WA 98402 postage prepaid on the 14th day of January, 2000.

Julie Shankland
Clerk/Counsel to the Disciplinary Board
P112 227 288

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

WSBA

WASHINGTON STATE BAR ASSOCIATION

Alan C. Seago
1650 South 85th Street
Tacoma, WA 98444-3178

Re: Alan C. Seago – Washington State Bar Association Censure

Dear Mr. Seago:

Pursuant to Rule 5.5(a) of the Washington Rules for Lawyer Discipline, you are being censured by the Washington State Bar Association. This Censure is based upon the Stipulation to Two Censures, dated October 15, 1999, and the Disciplinary Board's Order on Stipulation to Two Censures, dated January 12, 2000. You are being censured for failing to communicate adequately with Walter Williams and for failing to act with diligence on Walter Williams' behalf.

By failing to communicate adequately with Walter Williams regarding a possible sentence correction, you violated Rule of Professional Conduct (RPC) 1.4, which requires lawyers to explain matters to clients to the extent reasonably necessary to permit the client to make informed decisions. By failing to act with diligence by not filing a motion for a corrected sentence on Walter Williams' behalf and/or by not appearing in court in connection with Walter Williams' attempt to have his sentence reduced, you violated RPC 1.3, which requires lawyers to act with diligence and promptness in representing clients. Your violation of RPC 1.4 and RPC 1.3 merits this LETTER OF CENSURE.

YOU ARE HEREBY CENSURED by the Washington State Bar Association. Your actions discredit both you and the legal profession. Your privilege to practice law in the State of Washington is based on your commitment to abide by the rules governing a lawyer's conduct, and the Washington State Bar Association expects your future professional conduct to include a continuing commitment to the letter and spirit of those rules.

WASHINGTON STATE BAR ASSOCIATION

By: _____
Richard Eymann, President

16. ***Seibly***

In re ***Seibly,*** WSBA Review No. 02#00071 (reported in *Wash. St. Bar News,* March 2003) (6 pages not including this cover page):

(a) Admonition (dated June 21, 2002; 3 pages including certificate of service)

(b) Finding and Order of Review Committee I (dated June 21, 2002; 1 page)

(c) Notice of Admonition (dated June 21, 2002; 1 page)

(d) Notice of Disciplinary Action (dated August 6, 2002; 1 page)

FILED

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

W. TIMOTHY SEIBLY,

Lawyer

Bar No. 19190

ADMONITION

Pursuant to Rule 5.5A of the Rules of Lawyer Discipline, a Review Committee of the Disciplinary Board issues the following admonition:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in the state of Washington.

FACTS

2. In 1997 you agreed to represent a client in removing a lis pendens from property owned by the client's son.
3. The client sold the property to his son, held the deed of trust and was due monthly payments from his son.
4. The son fell behind on his child support payments and DSHS levied two liens against the property. The client asked that title to the property be returned to him. The son signed a quit claim deed in favor of the client.
5. In August 1998, you filed a quiet title action on the property against DSHS. You filed a lis pendens with the lawsuit.
6. In 1999, you sent DSHS a check for the amount of the two liens. DSHS then informed you that it had levied an additional lien for $31,647.12.
7. In November 1999, you informed the client that you were closing your law office. You did not file a notice of withdrawal in this matter.

8. In December 1999, DSHS cashed the client's check but did not execute the release of lien.

9. In May 2000, the court dismissed the lawsuit for failure to prosecute. You did not inform the client that the case had been dismissed.

10. The client called you several times and was not able to contact you. He then contacted your father and retained new counsel, who also attempted to contact you. You did not respond to any of these contacts. You refunded the client's legal fees.

MISCONDUCT

11. Your failure to diligently represent your client violated RPC 1.3. Your failure to respond to your client's reasonable requests for information violated RPC 1.4. The Review Committee has elected to impose an admonition in lieu of ordering the matter to hearing for consideration of other, potentially more serious sanction, in view of your recent two-year suspension on other allegations.

ADMONITION

YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in subsequent discipline or disability proceedings involving you.

You may protest the issuance of this Admonition by filing a written notice of protest with the Association-Attention: Clerk to the Disciplinary Board, within 30 days of the service of this Admonition upon you. Upon receipt of a timely protest, this Admonition shall be rescinded, and the grievance by shall be deemed ordered to hearing.

Dated this 21st day of June, 2002

Leslie R. Weatherhead,
Review Committee III

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ADMONITION
to be delivered to the Office of Disciplinary Counsel and to be mailed
to TIMOTHY SEIBLY, Respondent/~~Respondent's Counsel~~
at 2435 VALLEYVIEW DR., by Certified/~~first class~~ mail,
postage prepaid on the 21ST day of JUNE 2002

Clerk/Counsel to the Disciplinary Board

7099 3220 0000 7355 9951

BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR ASSOCIATION

~~Stephen G. Smith (Chair)~~, Leslie R. Weatherhead, Debi Robson

FINDING AND ORDER OF REVIEW COMMITTEE I

FILED

JUN 21 2002

DISCIPLINARY BOARD

W.S.B.A FILE NO. 01-00440

LAWYER: W. TIMOTHY SEIBLY **Grievant: James D. Bettinger**

Having reviewed the materials regarding the above captioned grievance, Review Committee I of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rule 2.4(d) of the Rules for Lawyer Discipline:

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
( ) and consolidated with other grievances against this lawyer.

( ) There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under either the Rules of Professional Conduct or the Rules for Lawyer Discipline. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.

(✓) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (RLD 5.5A.)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to RLD 5.6 cautioning the lawyer regarding

_____

_____

( ) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: _____

_____

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

( ) IT IS ORDERED under RLD 1.8(b)(2) that respondent lawyer pay $ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.

( ) and IT IS ORDERED _____

_____

Dated this 21st day of June 2002

The vote was 2-0

~~Stephen G. Smith~~, Chairperson of Review Committee I
Acting

001

WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD
2101 Fourth Avenue - Fourth Floor · Seattle, Washington 98121-2330
Telephone: (206) 727-8280 · Fax: (206) 727-8320

DAVID CULLEN
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

☐ **Dismissal**

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed, however, you may choose to file a request for review. **If you do not mail or deliver a written request for review within 45 days of mailing of this notice of the Review Committee's order dismissing a grievance, the dismissal will be final.** See the attached order. The request for review of a Review Committee's order dismissing a grievance should be mailed or delivered to the Disciplinary Counsel in charge of the case or to the Office of Disciplinary Counsel, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. The Chairperson of the Disciplinary Board will consider the request for review and can either uphold the decision of the Review Committee or order its consideration by the full Disciplinary Board. Under Rule 2.3(f)(6) of the Rules for Lawyer Discipline, **the decision of the Chairperson of the Disciplinary Board is not appealable.**

☐ **Advisory Letter**

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

☒ **Admonition**

If the Review Committee determined that there was sufficient misconduct under the Rules for Lawyer Discipline to warrant the issuance of an Admonition under Rule 5.5A of the Rules for Lawyer Discipline, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is disciplinary action for the purposes of rules 11.1 and 11.2 of the Rules for Lawyer Discipline, and is public information. RLD 5.5A(f).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

☐ **Order to Hearing or for Further Investigation**

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

Date: June 21, 2002 **File Number: 01-00440**

Mailed To: W. Timothy Seibly, James L. Hettinger

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re W. TIMOTHY SEIBLY, Lawyer. Bar No. 19190	Review No. 02#00071 NOTICE OF DISCIPLINARY ACTION

PLEASE TAKE NOTICE that the above-named Washington State attorney has been the subject of disciplinary action as follows:

W. Timothy Seibly received an Admonition, effective July 24, 2002.

A copy of the disciplinary materials (see RLD 11.2) is enclosed. This notice is provided pursuant to the Washington Rules for Lawyer Discipline (RLD).

DATED this 6th day of August, 2002.

Laura Lewis
Clerk to the Disciplinary Board

Attachments: Discipline Decision
Admonition

cc: (X) Presiding Judge, County of Asotin
(X) Supreme Court of Washington
(X) U.S. District Court, W.D. Washington
(X) U.S. District Court, E.D. Washington
(X) U.S. Court of Appeals, Ninth Circuit
( ) Other jurisdictions where attorney admitted:
( ) Other Courts:

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Fourth Floor
Seattle, WA 98121-2330
(206) 727-8207

17. ***Stomsvik***

In re ***Stomsvik,*** WSBA Review/Public No. 05#00049 (reported in *Wash. St. Bar News,* March 2006) (3 pages not including this cover page):

Admonition (dated May 6, 2005; 3 pages)

FILED

MAY 09 2005

DISCIPLINARY BOARD

RECEIVED

MAY - 9 2005

W.S.B.A.

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Proceeding No.
LESLIE O. STOMSVIK,	ADMONITION
Lawyer (WSBA No.3071).	

Pursuant to Rule ELC 13.5(b), a Review Committee of the Disciplinary Board issues the following admonition:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you practiced in the state of Washington.

FACTS

2. On May 13, 2002, you agreed to represent a client on a child visitation matter.

3. The client signed a written fee arrangement and paid you a $500 "retainer". Your fee agreement did not state that the $500 was non refundable. Your fee agreement did not contain an explanation of how the fee would be calculated.

4. On May 15, 2002, the client told you to cease working on the matter because he had begun negotiations with the other parent.

5. After the matter was resolved, the client asked for a refund.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

002

6. You did not refund the client's money or provide him with an accounting.

7. You deposited the client's funds into your general account. You stated you believed the client's funds were paid as a non refundable retainer that was earned when received.

MISCONDUCT

8. By, charging an unreasonable fee, you violated Rule RPC 1.5(a) of the Rules of Professional Conduct (RPC).

9. By failing to explain the basis or rate of your fee, you violated Rule RPC 1.5(b) of the Rule of Professional Conduct.

10. By failing to deposit the client's funds into your trust account, you violated Rule RPC 1.14(a) of the Rules of Professional Conduct (RPC).

11. By failing to render an accounting to the client, you violated Rule RPC 1.14(b)(3) of the Rules of Professional Conduct.

ADMONITION

YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in subsequent discipline or disability proceedings involving you.

You may protest the issuance of this Admonition, pursuant to ELC 13.5 by filing a written notice of protest with the Association-Attention: Clerk to the Disciplinary Board, within 30 days of the service of this Admonition upon you. Upon receipt of a timely protest, this Admonition shall be rescinded, and the grievance by shall be deemed ordered to hearing.

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

Dated this 9th day of May, 2005.

Zachary Mosner, Chairperson
Review Committee IV

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Admonition to be delivered to the Office of Disciplinary Counsel and to be mailed to Leslie D. Stomsvik, Respondent/~~Respondent's Counsel~~ at 1335 51st St Tacoma, by Certified/~~first class mail~~, postage prepaid on the 9th day of May, 2005.

Clerk/~~Counsel~~ to the Disciplinary Board

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Leslie Stomsvik
1335 51st St.
Tacoma, Wa
98408

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) L. Stomsvik
C. Date of Delivery 5/11/5

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7014 5775

m Receipt 102595-02-M-1540

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

18. ***Unger***

In re ***Unger,*** WSBA Review No. 03#00007 (reported in *Wash. St. Bar News,* Oct. 2004) (17 pages not including this cover page):

(a) Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation (dated February 23, 2004; 14 pages including certificate of service)

(b) Admonition (dated April 6, 2004; 2 pages)

(c) Notice of Disciplinary Action (dated April 29, 2004; 1 page)

FILED
FEB 24 2004
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re: KAREN L. UNGER Lawyer WSBA No 11671	PUBLIC FILE NO. 03#00007 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on December 9 and 10, 2003 at the Bar Association offices and January 14, 2004 by telephone conference call. Respondent Karen Unger and counsel appeared at the hearing on December 9 and 10. Her counsel appeared for the January 14th conference call, which concluded the hearing. Disciplinary Counsel Linda B. Eide appeared for the Washington State Bar Association (the Association). Michael E. Schwartz appeared for the Respondent.

I. FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Unger with the following counts of misconduct:

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO.6849]

Count 1 alleged that Unger prepared a statement of gift, in violation of Rule of Professional Conduct (RPC 8.4(1) (disregard for the rule of law) and/or RPC 8.4(b) (criminal act [false statement to a public servant] reflecting adversely on the lawyer's honesty) and/or RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Count 2 alleged that she failed to report the negotiated value of the car on her 2001 business and occupation (B & 0) tax return in violation of RPC 8.4(c).

Count 3 alleged that Unger prepared the statement of gift in an attempt to avoid federal income tax and/or B&O tax and/or use tax in violation of RPC 8.4(c).

Count 4 alleged that Unger threatened to withdraw from Roe's defense unless he signed the statement of gift in violation of RPC 8.4(d) (conduct prejudicial to the administration of justice).

Count 5 alleged that she denied to disciplinary counsel that any documents existed reflecting the "gifting" of the car in violation of ELC 5.3(e) (duty to provide full responses and furnish copies of records) and/or RPC 8.4(c).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following:

II. FINDINGS OF FACT

Counts 1, 2 and 3

1. Respondent Karen Unger was admitted to the practice of law in the State of Washington on May 14, 198 1. She has no prior discipline.

2. In May 2001, Unger agreed to represent Franklin Roe in connection with pending felony child molestation charges in Kitsap County Superior Court.

3. On May 25, 2001, Ms. Unger and Mr. Roe executed a fee agreement which provided that Mr. Roe would pay a non-refundable fee in the amount of twenty

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

thousand dollars ($20,000.00) as follows: "Eleven thousand five hundred dollars will be satisfied by the transfer of title of 1991 BMW Automobile and the remaining eight thousand five hundred dollars ($8,500.00) will be paid in cash or money order of six thousand three hundred dollars ($6,300.00) and two checks totaling two thousand two hundred dollars ($2,200.00)." In the event of a trial, an additional two thousand dollars ($2,000.00) per day would be charged. Mr. Roe represented to Ms. Unger that the 1991 BMW automobile ("BMW") was worth more than $11,500.00.

4. On May 25, 2001, Mr. Roe signed over title to the 1991 BMW Convertible to Ms. Unger. In addition, he paid eight thousand five hundred dollars ($8,500.00) in cash or checks towards the balance on the fee agreement.

5. Unger picked up the BMW in Seattle and drove it towards her home in Port Angeles. She testified that while it appeared "beautiful" outside, it seemed "sick" inside. While driving, the car began missing and running badly. She asked her Port Angeles mechanic, Frank Chamberlain, to examine the car. He described it as "missing and not running good." He replaced the head gasket, but that did not solve the problem. Ultimately, he determined that the car needed a new or rebuilt engine. Unger could not afford to have it fixed right away. Unger never asked Mr. Chamberlain to evaluate whether it would be worthwhile to repair the car. Instead, she told him she wanted it fixed.

6. Mr. Chamberlain, testified that the BMW brought to him by Ms. Unger had "no value." This was based on his estimation of the vehicle's worth without a proper working engine. Mr. Chamberlain also testified that he eventually had to replace the engine. The Kelly Blue Book guide to value of the applicable year and model of a BMW requiring major engine repair showed no value.

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

7. Meanwhile, Ms. Unger needed to register the car in her name because the car's tabs were soon to expire. She did so on July 27, 2001 at the Kitsap County Auditor's office, located in the Kitsap County Courthouse.

8. Also on July 27, 2001, Ms. Unger appeared in Kitsap County Superior Court with Mr. Roe for his Alford plea hearing. The court set scheduling in his case for August 24, 2001, which was subsequently continued to September 24, 2001.

9. Ms. Unger, or a member of her staff, prepared a document for Mr. Roe's signature which transferred title of the BMW to her as a gift. Mr. Roe signed the document dated July 27, 2001, in the Kitsap County Jail where he was being held at the time. The purpose of using the gift document was based on the advice of a staff worker at the Kitsap County Auditor's Office (the Department of Revenue's designee), who advised Ms. Unger that because the vehicle was not running and had little to no value, the gift document would permit her to register the vehicle and would not require her to pay use tax. Although the document twice refers to the BMW as a 1971 model, when in fact it was a 1991 model, the incorrect model year was likely a typographical error. The statement is in the form of a declaration in that it includes a signature line and a place for the date and place signed. However, it does not include the language required for a declaration because it does not aver that it is signed "under penalty of perjury." Instead, it certifies that Roe gifted his "1971 BMW to Karen L. Unger."

10. Although the unsworn statements of Franklin Roe constitute hearsay, they are admissible on the basis that they would be considered as reliable by a reasonably prudent person in the conduct of their affairs. However, two witnesses, Mr. Roe's ex-wife and the prosecutor on his child molestation case, testified during the hearing that Mr. Roe had an extremely poor reputation for truth and veracity. Mr. Roe, who at the time of the hearing was in violation of the terms of his parole, could not be located and

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

did not testify. Mr. Roe's Alford plea in the child molestation prosecution, his denial of involvement with the youths, and his grooming of the youths for future assaults, strongly support a finding that Mr. Roe cannot be believed. Moreover, after his sentencing and incarceration, he became upset with Ms. Unger after she refused to release certain files to him. He was therefore upset with Ms. Unger and had a motive to strike out at her by any means available. His bar complaint more likely than not resulted from this animus. Mr. Roe's statements that Ms. Unger threatened to withdraw if he did not sign the gift document are not credible.

11. Although Mr. Roe did not make a "gift" of the car to Ms. Unger in the technical sense of the term requiring donative intent, the use of the gift statement was intended by Mr. Roe and Ms. Unger to document that the car had little to no value. Given the serious engine problem, it is highly unlikely that Mr. Roe was unaware that the BMW had little to no value. It is also likely that Mr. Roe intended to deceive Ms. Unger on the value of the BMW at the time they entered their fee agreement.

12. When Ms. Unger returned to the Auditor's office to transfer title, the Auditor's office employee noticed the difference in dates between the statement of gift and the title, and required Ms. Unger to prepare a Certificate of Fact attesting that the correct model year was 1991. However, the employee otherwise accepted the statement and did not assess use tax on the transaction. Unger has never paid use tax on the transfer.

13. Madeline Barton, who is a non-lawyer and a supervisor in the Department of Revenue, and testified as the Association's state tax law expert, testified that Department of Licensing employees, or, as in this case, county auditor office employees, act as agents of the Department of Revenue (DOR) in collecting the use tax due on private party automobile transfers. DOR accepts the taxpayer's avowed vehicle

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

value if it is not significantly less than the value shown in the DOR's database or a nationally recognized price guide such as the Kelly Blue Book or the NADA [National Association of Automobile Dealer's] guide. DOR requires that a taxpayer claiming a significantly lower value must present documentation to substantiate the claim, such as a repair estimate or a dealer's appraisal. The use tax is calculated by multiplying the value of the car times the use tax rate (which is the same as the retail sales tax rate) for the town where the car is registered. A 1991 BMW convertible had a Blue Book value of $11,400 in 2001, when the applicable tax rate for Port Angeles where the car was registered was 8.2%, for a use tax of $934.80. The Kitsap County Auditor employees who handled this title transfer did not require evidence that the BMW had no value.

14. The only evidence presented was that at the time of title transfer, the 1991 BMW had no value: according to the Kelly Blue Book, such a BMW in "poor" condition has both a private sale value of zero (-0-) and a trade-in value of zero (-0-).

15. Because Ms. Unger had reasonable grounds to believe that the vehicle had no value, she did not have an obligation to pay use tax on it. The Association's expert witness, Madeline Barton, testified that use tax is based on the value of a tangible item. Similarly, Ms. Barton also testified that B&O taxes are based on the amount of gross receipts. Although she testified that the value of the gross receipts in this instance was the negotiated value of the vehicle set forth in the fee agreement, that opinion is not credible given the fact that the vehicle had little to no value. When asked if the receipt by an attorney of counterfeit funds also constituted gross receipts, Ms. Barton answered that they did. That assertion is not a reasonable interpretation of the law. Ms. Unger, who is not a business lawyer or tax specialist, operated on the reasonable assumption that the BMW had no demonstrable value and therefore did not constitute a gross receipt.

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

16. However, Ms. Unger recognized that the BMW likely had value if she paid for needed expensive repairs. She asked her mechanic to repair it without asking him to evaluate if that would be cost effective. If anything, Ms. Unger was tardy in determining the eventual "repaired" value of the BMW. That tardiness resulted from her inability to afford the repair cost until January or February, 2002.

17. By July 31, 2001, Ms. Unger did not know the extent of the required repairs. Her mechanic had done some work on the vehicle. However, Mr. Chamberlain's invoice shows a "starting date" of August 18, 2001 for the additional repairs that eventually led to installation of a rebuilt engine in January or February 2002. Ms. Unger could not afford to replace the engine when Chamberlain first started to do such work in August 2001. Ms. Unger made an advance payment for the engine replacement on January 24, 2002, and finished paying in February, 2002.

18. On April 25, 2002, Unger traded in the BMW when she bought a different vehicle at Titus Will Toyota Sales Inc. The dealer allowed her $6,400 as the trade-in value of the BMW.

19. Ms. Unger did not report any income relating to the BMW on her federal income tax return for 2001.

20. Unger's CPA, Herb Sprute, prepared her federal income tax returns. He did so based only on the computer printout summaries of data that Unger provided to him. Ms. Unger, in turn, prepared the summaries based on her checkbook register. She did not record the BMW as income in her checkbook register and Mr. Sprute did not include it as income on her federal tax return.

21. Ms. Unger's CPA, Herb Sprute, testified that based on his analysis of the BMW transaction, Ms. Unger would not have to pay federal income tax until 2002. Under the "accession to wealth" income analysis, Ms. Unger did not realize any income

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

until she traded in the vehicle in the tax year 2002. According to Mr. Sprute, Ms. Unger showed no gain in tax year 2001. The Association's expert, tax attorney Kenneth Weil, differed not on the amount of taxes owed, rather only the timing. Mr. Weil testified that Ms. Unger should have reported income of $11,500.00 on her 2001 income tax return and then claimed a bad debt deduction. However, Mr. Weil conceded that such issues are routinely the subject of disagreements between tax experts.

22. After the Association filed its Formal Complaint against Ms. Unger on February 26, 2003, Ms. Unger reported the BMW as income. On March 6, 2003, she filed an amended B&O tax return for April, May and June 2002, which included the $6,400 trade-in value of the BMW.

23. On August 11, 2003, Mr. Sprute signed Ms. Unger's 2002 federal income tax return as tax preparer for her S Corporation. It did not include any income for the 1991 BMW. Mr. Sprute testified on December 10, 2003, that Ms. Unger had provided him a copy of her March 6, 2003 B&O tax return within the last month or so. He said he planned to amend her federal tax return.

Counts 4 and 5

Threats to Client and Failure to Cooperate

24. In his March 7, 2002 grievance, Roe told the Association "[Unger] later came to me and ordered me to sign a document 'gifting' this automobile to her. She explained that this was to escape taxation. I objected to her obviously illegal act, but she threatened to drop representation." This statement is not credible for several reasons: (1) Mr. Roe's reputation for untruthfulness; (2) Mr. Roe did not testify and his statement could not be tested under cross-examination; (3) Mr. Roe had deceived Ms. Unger on the value of the BMW; (4) the "gift" document was prepared on advice of the Kitsap

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

County Auditor's employee and was likely only intended to document that the car had no value rather than being a gift in the strict sense of the term.

25. On August 7, 2002, the Association forwarded an "Additional Request for Response to Grievance" to Unger asking specifically for additional information and any documents regarding the alleged "gifting" of the car.

26. On September 23, 2002, Unger responded by letter through her counsel Michael E. Schwartz.

> When Mr. Roe initially transferred possession of the 1991 BMW to Ms. Unger, he also signed the title and presented that document to her. As far as any correspondence or documentation related to a "gifting" of the automobile, no such paperwork exists. Although Mr. Roe claims that Ms. Unger came to him and forced him to sign a document gifting him the automobile, Ms. Unger disputes that claim.

27. On October 7, 2002, the Association's investigator received a written response from Roe to his further inquiries about the "gifting" of the car. He told the same story.

> Ms. Unger returned a few days later with a separate document for me to sign framing the vehicle as a "gift" to her. She unhesitatingly [sic] explained that she needed this document to avoid sales tax and federal income tax. When I hesitated signing, explaining my reluctance to sign a false document, she became irritated and threatened to quit the case, so I signed it. She did not give me a copy of the statement.

For the reasons stated in paragraph 24 above, this statement is not credible.

28. On November 7, 2003, the Association forwarded another letter to Unger reminding her that it had not received the additional documentation promised at the end of her September 23, 2002 response and seeking a written response to queries about how she treated the BMW for tax purposes. EX A12.

29. On November 19, 2002, Ms. Unger responded through counsel forwarding three pages documenting the trade-in value she received for the BMW in April 2002.

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

EX. A13. Counsel's letter objected to responding to disciplinary counsel's request for tax reporting documents from Ms. Unger, characterizing the request as an attempt to "rifle through the confidential financial files of an attorney..."

30. Meanwhile, the Association filed a Public Disclosure Act request with the Department of Licensing to obtain documentation regarding Unger's registration of the 1991 BMW in July 2001. The documentation received in response showed that Mr. Roe had signed a statement of gift on Ms. Unger's letterhead. It showed that Mr. Roe had signed over title on May 25, 2001. It showed that Ms. Unger completed a "Certificate of Fact" noting that the correct model year for the car was 1991 [not 1971].

31. By early December 2002, Unger had received a letter from the Association advising her of Disciplinary Counsel's conclusions and recommendation that a Review Committee of the Disciplinary Board order the case to hearing. As a result of that letter, Unger knew that the Association had obtained documents from the Department of Licensing including the statement of gift.

32. On December 19, 2002, Unger signed a sworn Declaration as requested by her lawyer and noted:

> I have no specific recollection as to how it came about that Mr. Roe "gifted" the car to me (I still cannot specifically recall preparing the document that is apparently on file with the Department of Licensing)....

She recalled "sharing" with Roe the information that she thought the car was "worth nothing" because it needed a new engine. Although it is somewhat surprising that Ms. Unger did not recall presenting the gift document to Mr. Roe, she testified that possibly someone in her office prepared the document, which could explain why she didn't remember it. Her lack of recollection of these details is consistent with other testimony showing a lack of attention to the business details of her law practice and an unfamiliarity with the process of transferring automobile titles. It was not proved by a

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

clear preponderance of the evidence that Ms. Unger's failure to recall or disclose the gift document was an intentional effort to deceive or cover up wrongdoing.

33. Unger experienced some financial problems during the time at issue. She wrote that she "could not afford to have [the BMW] fixed," and so it "sat at [her] mechanic's garage for nearly 6 months...." Her 2001 tax return was not prepared until March 2003 and her accounting records show that in 2001 she was making payments on taxes due for 1998 and later. She explained that her 1997 dissolution had complicated her finances and interfered with the timely filing of her tax returns.

III. CONCLUSIONS OF LAW

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

Count 1. Ms. Unger's preparation of and presentation of the gift document to the Kitsap County Auditor's office was based on advice received from an employee of that office, was intended to document that the car had no discernable value at the time, was not intended to deceive, and was not unlawful, deceptive or dishonest.

Count 1 is DISMISSED.

Count 2. Because the car had a value of zero (0) according to Ms. Unger's mechanic and pursuant to the Kelly Blue Book guide to value, and because tax specialists differ on whether Ms. Unger's acceptance of the car was a gross receipt requiring reporting on her 2001 B&O tax return, Ms. Unger's failure to report in 2001 did not violate RPC 8.4 under a clear preponderance standard.

Count 2 is DISMISSED.

Count 3. The statement of gift was not prepared with the intention to avoid taxes by mischaracterizing the transaction as a gift, but rather to document the fact that the car had no discernable value at the time of registration. Although Ms. Unger was

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

tardy in reporting the trade-in value on her 2002 B&O tax returns, such conduct does not violate RPC 8.4.

Count 3 is DISMISSED.

Count 4. It was not proved with a clear preponderance of evidence that Ms. Unger threatened to withdraw unless Mr. Roe signed the gift document.

Count 4 is DISMISSED.

Count 5. Ms. Unger did not keep a copy of the vehicle title transfer documents and therefore had nothing in her files to disclose to disciplinary counsel. She did not recall having prepared or handled the specific transfer documents, and therefore did not violate RPC 8.4(c). However, her objection through counsel by letter dated November 19, 2002 (Ex. A-13) to providing documents concerning her tax reporting, and her begrudging release of tax documents, constitute a violation of ELC 5.3 (e) (which requires a full and complete response to disciplinary counsel's inquiries), ELC 1.5, and RPC 8.4(l).

IV. PRESUMPTIVE SANCTION

Applying the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions, the following sanction is applicable to Respondent's conduct:

> Section 5.1 Failure to Maintain Personal Integrity.
> 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Count 5. The Hearing Officer concludes that an admonition is the presumptive standard for violation of ELC 5.3 (e) ELC 1.5, and RPC 8.4(l). There are no aggravating factors that apply. Mitigating factors 9.32 (a) (absence of a prior disciplinary record) and 9.32 (g) (character or reputation) apply; while 9.32 (e) (cooperative attitude toward proceedings) does not apply to mitigate.

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

V. RECOMMENDATION

The hearing officer recommends that Respondent be admonished for her conduct.

VI. MOTION DENIED

Respondent's Motion to Supplement the Record, to Compel Discovery, and Impose Sanctions on the Association, filed January 30, 2004 is denied.

Dated this 23 day of February, 2004.

Scott M. Ellerby, WSBA No. 16277
Hearing Officer

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served a true and correct copy of the within and foregoing Findings of Fact and Conclusions of Law on the following, in the manner indicated:

VIA FACSIMILE AND U.S. MAIL:

Linda Edie
WSBA Disciplinary Counsel
2101 Fourth Avenue, 4th Flr.
Seattle, WA 98121-2330

Michael E. Schwartz, Esq.
524 Tacoma Avenue South
Tacoma WA 98402

VIA LEGAL MESSENGER:

Clerk, Disciplinary Board
Washington State Bar Association
2101 Fourth Avenue, Suite 400
Seattle, Washington 98121-2330

DATED: February 23 2004.

Tricia Lenz
Tricia A. Lenz

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Findings of Fact, Conclusions of Law...
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Michael E. Schwartz, ~~Respondent~~/Respondent's Counsel
at 524 Tacoma Ave S, Tacoma WA, by ~~Certified~~/first class mail,
postage prepaid on the 25th day of February, 2004

Clerk/Counsel to the Disciplinary Board

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

02/23/04 MON 15:01 [TX/RX NO 6849]

FILED
APR 27 2004
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re KAREN UNGER, Lawyer (WSBA No. 11671).	Proceeding No. 03#00007 ADMONITION

Pursuant to Rule ELC 13.5(b), the Disciplinary Board Chair issues the following admonition following a hearing:

ADMISSION TO PRACTICE

1. At all times material to this complaint, you were licensed to practice in the state of Washington.

FACTS

2. On August 7, 2002, the Association requested that you provide documentation regarding a transaction with a client. You accepted title to an automobile in partial satisfaction of attorney's fees. The Association asked you to provide documentation of the title transfer, gifting and tax transactions.

3. In November and early December 2002, through counsel, you stated that you did not have any documentation of the gift transaction and you objected to producing tax

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue – Suite 400
Seattle, WA 98121-2330
(206) 727-8207

032