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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE

MARJA STARCZEWSKI

LAWYER DISCIPLINE (WSBA #26111)

BRIEF OF APPELLANT

Appeal from the Disciplinary
Board of the Washington State
Bar Association # 10#00086

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 ORIGINAL

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MOTION TO REMAND (RAP 10.4(d)).

Marja Starczewski, petitioning attorney, moves this Court to remand for new hearing, based upon lack of due process, as well as lack of any investigation by the WSBA¹. This motion is permitted under RAP 10.4(d).

Due process is required in disciplinary proceedings. *Disciplinary Bd. v. Johnston*, 99 Wash.2d 466, 474, 663 P.2d 457 (1983) ("A professional license revocation proceeding has been determined to be 'quasi-criminal' in nature and, accordingly, entitled to the protections of due process."). The essence of due process is notice and the opportunity to be heard. *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). *See also In re Marriage of McLean*, 132 Wash.2d 301, 308, 937 P.2d 602 (1997); *State v. Rogers*, 127 Wash.2d 270, 898 P.2d 294 (1995). *Nguyen v. MQAC*, 144 Wn.2d 516, 29 P.3d 689, (2001).

In this case, the *notice* requirement was not met, because the WSBA changed the nature of the proceedings, the nature of the charges, as well as

¹ Justice Johnson had questioned the WSBA's failure to investigate a case, and WSBA assertions that they did not know whether or not an attorney's assertions were true, at oral argument *in re Conteh*, which can be viewed on TVW, at the following link; http://www.tvw.org/index.php?option=com_tvwplayer&eventID=2012020005A

hiring Special Counsel and Hearing Officer who had personal interest, and/or personal knowledge of the “new” charges and proceedings of which Responding attorney had no advance notice.

This case commenced as an automobile accident personal-injury case, that Responding attorney lost, in 2007. The WSBA grievance was about the personal-injury case, and a letter from counsel to the client. Therefore, when Special Disciplinary attorney Graffe and Hearing Officer Thorner were assigned to this case by the WSBA, Responding attorney had no reason to object.

However, on the last day of the hearing, Special Disciplinary Counsel Graffe brought in a different case, not listed in the charges, in which he (John Graffe) had been personally involved. (RP Vol 3, p. 461, 462) Other attorneys from Mr. Graffe’s office were also involved (RP Vol 3, 491)². This was a medical malpractice case, and the Hearing Officer disclosed that he was a medical malpractice defense attorney, as was John Graffe, and he (the Hearing Officer) had been previously familiar with the malpractice case, having read about it in his Defense association journals. (RP Vol 3, p. 484).

Mr. Graffe cited to a decision which was overturned, and remanded to a different judge, on appeal, RP vol 3, 463, Exhibit R-72). Mr. Graffe

² Mr. Carrington, a member of the Disciplinary Board, had also represented opposing parties in the Medical Malpractice case – but Mr. Carrington recused himself.

also brought up other cases in which attorney Starczewski's name had been on the file, and sanctions were awarded by the court – however Mr. Graffe did not attempt to prove what actions, if any, attorney Starczewski had actually taken in these cases, nor was there any similarity between the cases brought in on the last day of hearing, and the case charged by the WSBA. Mr. Graffe stated, he was not trying to re-litigate any of these issues, RP Vol 3, pl 491.

At a telephone pre-hearing conference, the WSBA counsel had threatened, that if Ms. Starczewski brings in “character evidence”, then the WSBA would bring in evidence of other cases. Not wishing to open up any issues that were not in the Charging document, Ms. Starczewski did not bring “character evidence” witnesses. The WSBA nonetheless did bring in other cases, contrary to scheduling orders entered prior to the final hearing date. Scheduling orders are in the Appendix, at AP 4, Ap 5, and Ap6. New matters were admitted by order at Ap 7, Starczewski's rebuttal exhibits were not admitted – Ap 8. Starczewski's Petition for Interim Review, Ap 9 and 10, was denied summarily, Ap 11.

Responding attorney objected to these ambush tactics, and the WSBA denied to hear her objection. See Doc 063, Petition for Interim Review, and order denying the same, Doc 064.1. (Ap 9, 10, and 11).

WSBA's President had also represented the litigants who were adverse to Responding attorney, in the Stolz case (RP. Vol 3, p. 520, 524).

The Hearing Officer specifically considered all the cases that WSBA Special Counsel Graffe had brought in without notice (RP Vol 3, p. 574). (Orders at Ap. 8 and 9).

Before the Disciplinary Board, the WSBA (by different Disciplinary Counsel) argued that none of these late-brought-in cases mattered. (RP Vol 4, p. 27, lines 20 - 24). With no findings by the Board, it is unknown which argument by the WSBA the Board accepted.

No investigation; disallowing all current clients. The WSBA made no investigation of the case, and refused to permit Responding attorney to bring in any current clients to testify before the Hearing Officer. Ms. Starczewski had provided her entire file in the subject case, together with discs containing her electronic computer files, and even print-outs of the file names, to permit examination of when the computer files were created. WSBA did not review the discs, did not review the print-outs, and instead shifted the burden of proof onto Ms. Starczewski to defend herself against allegations. (See e.g. Appendix 15).

Responding attorney had provided a client list to the WSBA, (see e.g. Ap 16, email of November, 2010, to which there was no response) however, the WSBA did not interview a single client, and did not permit

current clients to be brought to the hearing, stating that current clients were not relevant to the proceedings, despite the fact that the client list provided to the WSBA indicated, which current clients were in need of representation and would not be able to get alternate counsel in case Ms. Starczewski's license was suspended. This is a complete failure of investigation by the WSBA.

Finally, Responding attorney moves for remand for "re-sentencing" because the length of suspension was determined based upon an arbitrary starting point of 21 months, rather than 6 months. RP Vol 3, p. 565 "starting at the halfway point" between 6 months and 36 months, rather than starting at 6 months.

Respondent had also asked the Board to limit the amount of costs, to take into consideration the "restitution" amounts, which Respondent already had no way to pay. The costs were decided by the WSBA, without submittal to the Hearing Officer or Board at the time of considering the "restitution" amounts. The "restitution" and costs amounts will make it impossible for Respondent to be readmitted after a suspension, as failure to pay is grounds for further discipline.

Respectfully submitted this September 18, 2012,

s/ Marja Starczewski
Marja Starczewski, WSBA 26111

A. Assignments of Error:

1. **The WSBA and Hearing Officer erred** in using the ELC 10.13(c) letter to bring in issues, documents and exhibits not previously disclosed, and not filed or noticed in accordance with the hearing Officer's pre-hearing scheduling order or pre-hearing conference decisions.
2. **The WSBA and Hearing Officer erred** in making "findings" upon facts not relevant to the counts charged in the WSBA Statement of Charges.
3. **The WSBA erred** in arguing different theories before the Disciplinary Board, than what the WSBA argued to the Hearing Officer. With no findings by the Board, it is impossible to know which arguments of the WSBA the Board accepted.
4. **The WSBA erred** in imposing costs in excess of \$4,000, without placing the issue of costs before the Hearing Officer or Board for review. The "Costs" are in addition to the WSBA order of "restitution", of \$15,000, and should have been considered in setting the Restitution amount. Likewise, the WSBA failed to consider the Restitution amount in setting the cost amount, and in both instances failed to consider Ms. Starczewski's ability to pay. The order on "Costs" is subject to review under RAP 2.4(g).

5. **The WSBA and Hearing Officer erred** in imposing “restitution”, under circumstances where no client funds were involved and no prior court had ordered any amount due to the client. This “restitution” decision was without any precedent in WSBA or this Court’s decisions.

6. **The WSBA Disciplinary Board erred** in summarily affirming findings of the WSBA, as signed without prior notice by the Hearing Officer. (Appendix 3).

7. **The WSBA Disciplinary Board erred** in increasing the amount of sanction from that suggested by the Hearing Officer, without findings.

8. **The WSBA Hearing Officer erred** in setting the sanction amount arbitrarily, without considering any lesser degree of sanction, and without considering proportionality of discipline for other similar offences.

9. **The Hearing Officer erred** in making the following findings, in his Sanctions Recommendation (second order, attached in Appendix 2, per RAP 10.4(c)).

Finding 4. “Respondent’s conduct was knowing.” – not supported by the evidence, where the court had indicated a second Show Cause hearing would be scheduled, but instead issued an ex parte order of dismissal.

Finding 9. Not supported by evidence.

Finding 11, not supported by evidence (WSBA misunderstood Martin Hoyer's testimony).

Finding 12. Presumptive sanction is reprimand, for negligent conduct.

Finding 13. Finding of deception is not supported, and contrary to other findings.

Finding 14. Not supported by evidence.

Finding 15. Not supported by evidence and contrary to other findings.

Finding 16. Presumptive sanction is reprimand, for negligent conduct, if any.

Finding 19. Presumptive sanction is reprimand, for negligent conduct.

Finding 21. Not supported by evidence. Lack of communication was caused by client's unwillingness to communicate or cooperate, and the order of dismissal was actually provided.

Finding 22. No "pattern of misconduct", as no "similar conduct" is found, as required in *In Disciplinary Proceeding Against Burtch*, 162 Wn.2d 873, 175 P.3d 1070 (2008)

Finding 23. There is no specific listing of what is considered “multiple offenses”

Finding 24. Respondent must be allowed to represent herself, as pro se, and to argue her case, without being accused of refusal to acknowledge wrongful nature of conduct.

Finding 26. Any finding as to restitution is not appropriate, as there is no prior WSBA decision on restitution in similar circumstances.

Finding 27. Mitigating factors. Other mitigating factors should have been considered. The WSBA argued to limit mitigating factors to those listed in ABA standards.

Findings 29, 30, There is no precedent for an order of restitution in these circumstances. There is no evidence Mr. Singh would have at any time accepted a settlement of \$20,000.

Finding 32.. Respondent testified that she had offered to waive her portion of the contingent fee, not that she “would have waived” it.

Finding 36. The finding of 24 months comes from an entirely arbitrary suspension length argued by Mr. Graffe. No effort was made to compare to any other disciplinary actions. This suspension is clearly excessive.

10. Error as to Practice Monitor. Attorney Anthony M. Urie offered to be a Monitor, in lieu of suspension, so that Ms. Starcewski

would be able continue to assist Mr. Urie in his practice. Without the availability of Mr. Urie, Ms. Starczewski will be unable to afford a (paid) Practice Monitor.

11. The Hearing Officer erred in signing the WSBA's proposed findings on July 1, just one day after receipt and filing of the proposed Findings by the WSBA on June 30th, with no prior opportunity for the Respondent to object to the proposed findings.

12. The WSBA erred in its findings, which were then signed by the Hearing Officer without prior notice or opportunity for comment. The factual errors asserted in the WSBA findings of July 1, 2011 re as follows; (Findings attached at Appendix 1 per RAP 10).

Finding 3 (no evidence of swerving, or even negligence, by Reeser).

Finding 12 (not relevant, as no finding that the fee sharing agreement with Mr. Bharti, in Finding 4, obligated Respondent to file the suit at any earlier time).

Findings 13, 14, 15. Not relevant to charges.

Finding 17. Not supported by the evidence.

Finding 27, not supported by the evidence (the WSBA misunderstood the testimony of Martin Hoyer on this subject).

Finding 28. Not relevant, as Mr. Singh had alternate counsel.

Finding 29. Not relevant or supported by substantial evidence (a prior letter alerted the insurance company that Mr. Singh's bottom line was \$37,000, and no lower).

Finding 30. Not supported by any evidence, as Mr. Singh never testified he would have accepted \$20,000, and the insurance company never testified they would have met Mr. Singh's \$37,000 demand.

Finding 31, misstates the record, the time frame was approximately one month, when Respondent was in trial in Seattle, and unable to return home. Ms. Kyte testified she did NOT email Respondent, and did not call Respondent's cell phone (which would have been available to Respondent while at trial in Seattle).

Finding 32, not relevant, as Ms. Kyte's communications were limited to Respondent's home phone number, while Respondent was at trial 150 miles away from home.

Finding 33, not supported by the evidence, as Ms. De La Fuente was eventually served.

Finding 37. Not relevant, as there is no evidence respondent was aware of the show cause order at that time.

Finding 38. Not relevant, as there is no evidence respondent was aware of the show cause order at that time.

Finding 42. Respondent did in fact pay the \$250.

Finding 43. Not relevant, as the Confirmation of Joinder could not legally be filed at that time, until 60 days passed and a default was taken against a recently-served party.

Finding 44. Not relevant, as there is no evidence respondent was aware of the hearing date at that time.

Finding 51. Incomplete, , as fails to note that the trial court had promised a second show cause hearing, at the March 7, 2008 hearing.

Finding 54. Not relevant, as the Confirmation of Joinder could not legally be filed at that time, until 60 days passed and a default was taken against a recently-served party.

Finding 55. Not relevant, as there was no requirement, or provision, for interim filings of indications of efforts to comply.

Finding 56. Incomplete, as fails to note that the trial court had promised a second show cause hearing, at the March 7, 2008 hearing.

Finding 61. Based on improper evidence of lack of records – where no similar records of other communications had existed, either.

Finding 62. Overbroad, and not supported by specific evidence. The file overall does show substantial efforts taken on the case, and no precedent of “failure to communicate” has ever been found, where a client has never contacted the attorney.

Finding 64. Not supported by any evidence. Also, the actual order or dismissal was attached to that letter, as acknowledged by Mr. Singh.

Finding 65. Misrepresents one sentence in the July, 2009 letter.

Finding 66. Assumes Finding 65, and Misrepresents one sentence in the July, 2009 letter

Finding 67, Assumes Finding 65, and Misrepresents one sentence in the July, 2009 letter.

Finding 69. Not supported by any evidence, and contradicts finding 57 and 72 that Mr. Singh did receive the order of dismissal.

Finding 70. Not supported by any evidence, and contradicts finding 57 and 72 that Mr. Singh did receive the order of dismissal.

Finding 71. Fails to account for opposing counsel's recollection, that her argument was convincing.

Finding 72. Not relevant, as Mr. Singh had alternate counsel who spoke his native language, and was not unfamiliar with court proceedings.

Finding 73. Not relevant, does not support a finding of misconduct.

Finding 74. Not relevant, as no indication that any potential remedies would have been successful, given the trial Judge's prior indication that a second show cause hearing would be ordered, and his ex parte dismissal instead.

B. Issues Pertaining to Assignments of Error:

1. Whether the case should be reversed and remanded, due to due process failures? This includes, lack of notice, lack of opportunity to defend, failure to permit rebuttal witnesses, failures to allow current clients to testify.) (Assignments of Error #1, 2, 3,4, 7, 11).

2. Where there is no precedent for the discipline imposed, can restitution be ordered? (Assignments of Error # 4, 5, 9).

3. Must the burden of proof remain on the WSBA at all times, by a clear preponderance of the evidence, as to each and every fact in the Findings? This includes findings as to Mental State, for which there was *no* evidence presented by WSBA). (Assignments of Error # 2, 9, 11, 12).

4. Is the sanction of two years suspension and two years practice monitor, too harsh? Must there be proportionality in the sanction, including whether reprimand or suspension is appropriate, and length of suspension, if any? (Respondent argued that reprimand was appropriate sanction). (Assignments of Error # 1, 2, 3, 6, 7, 8, 9, 10).

5. Can a sanction of “restitution” and a finding of indifference to making restitution, be made in the absence of any loss of client funds, and absence of any court order or judgment³ awarding funds to the client?

³ The WSBA failed to inform the client, Mr. Singh, to file a malpractice action against the Respondent, even though the Statute of Limitations did

There is no precedent from WSBA or this Court for such “restitution” in disciplinary proceedings. (Assignments of Error # 5, 6, 9).

6. Can “Restitution” and “costs” be imposed, without considering the impact on the Responding attorney, or her ability to pay, or considering the cumulative amount of both items? (Assignments of Error # 4, 6).

C. Statement of the Case.

This is a disciplinary proceeding, that was bifurcated for hearing. Appendix 4). The hearing regarding fault-finding lasted 1½ day, and the findings as proposed by the WSBA had been instantly entered,⁴ without any prior announcement of any decision by the Hearing Officer, and without any prior opportunity for any rebuttal from the Responding attorney. This was contrary to the Hearing Officer’s schedule, at Appendix 5).

not expire until just a few days prior to the WSBA hearing. RP. Pg 20. A court judgment in Mr. Singh’s favor would have been grounds for restitution. Without such a judgment, however, there is no precedent for an award of restitution as an end run around the requirements for any finding of legal malpractice.

⁴ The Proposed Findings were emailed by the WSBA on June 30, 2011, the same Findings were signed by the Hearing Officer and filed on July 1, 2011.

Subsequent to entry of the WSBA's proposed findings, the Hearing Officer did allow briefing to object to those findings, (but he had already signed, and filed, the Findings). In the WSBA's response in support of its Findings, the WSBA relied upon the findings, themselves, and upon a mistaken recitation of one witness's (Martin Hoyer) testimony, materially altered from what the witness stated on the record. This testimony will be set forth in the Argument, below.

Thereafter, a "sanctions" hearing was scheduled, which lasted one full day.

Prior to the sanctions hearing, the hearing officer signed multiple orders requiring the parties to present their witness, witness summaries, exhibits, in advance of the hearing. This was done. However, shortly prior to the hearing, the WSBA presented a demand for documents under ELC 10.13(c), which greatly increased the scope of the sanctions hearing, beyond the case at issue. (See Petition for Interim Review, Appendix 9 and 10).

The original WSBA complaint was about a single client, from 2006 / 2007.

However, by way of the Demand for Documents, the WSBA then brought in unrelated cases, although there has been no indication of any other instance of either lack of diligence, violation of duty to keep the

client informed, and no attempt to show any other instance of dishonesty / deception. Therefore, any other orders by other trial courts would not be relevant, and no showing of relevance was ever made. (See Motion to Remand, above).

Mr. Singh had an Alternate Attorney at All Times.

The charges here are in regards to one client, Mr. Singh. None of the Findings discuss the fact that Mr. Singh at all times had alternate counsel, Mr. Bharti, who, according to Mr. Singh, spoke Mr. Singh's native language. There was no indication that Mr. Bharti was at any time unavailable. **RP, pg 105. The client had signed a contract only with Mr. Bharti. RP. pg. 118, Mr. Bharti and the client spoke the same native language. RP, pg. 119, 120)**

Mr. Singh had signed a fee contract with Mr. Bharti (Exhibit R-1), as well as a release of information form (Exhibit R-2), at a different date, , **RP, pg. 122**, but Mr. Singh refused to sign any release for Ms. Starczewski to obtain any medical records **RP, pg 254, 255.**

Mr. Singh was aware that Mr. Bharti was his attorney – and that Mr. Bharti would be paid fees out of any settlement, well after Respondent had commenced settlement negotiations on his behalf. **RP. pg 128, 129.**

Mr. Singh had successfully negotiated a lower fee, with Mr. Bharti, in signing the contract (Exhibit R-1) **RP pg 138.**

Lack of Communication from Client.

Unlike any case that the WSBA has ever cited as precedent, in this case, the client never called Respondent, never visited Respondent's office, never mailed anything to Respondent, and had no email access and therefore never contacted Respondent by email or web site. RP, pg 138, 139. At RP, pg 138, Mr. Singh admits, he never called Mr. Bharti at all in 2007, or in 2008. Mr. Singh had also never corresponded with Respondent, and had never visited Respondent's office. RP, pgs 124, 125, 126.

“Q. Did you ever come to my office in Lynnwood for any reason? A. No.
(Transcript, 128)

Mr. Singh had Respondent's cell phone number, as stated at the hearing;

Q [Starczewski]. Okay. So we met one time at the court? A [Mr. SINGH]. Yes.

Q. Do you remember which court that was?

A. That in Kent.

...

Q. Do you remember how we communicated that day so you would know which floor of the Kent courthouse I was on? *Did we communicate by cell phone?*

A. Yes.”

(RP, pg 116). (emphasis added)

Attorney Anthony Urie testified, that Respondent has the same cell phone number still to this day, and that Respondent does pick up her cell phone at all hours, day or night, weekend, etc. **(RP, pg 193)**

Offer of Proof as to Reassignment of Cases by Bharti.

Not having any communication from the client, Mr. Singh, Respondent had no reason to believe that Mr. Singh was relying exclusively upon her for resolution of the case. Respondent had made an offer of proof that lead counsel, Bharti, would reassign cases, or parts of cases, without informing co-counsel.

MS. STARCZEWSKI: My offer of proof is that in this other case where Mr. Urie was hired by Mr. Bharti, in this case, to actually handle litigation or --I mean, he'd have to testify what the terms of the agreement were -- another lawyer appeared as attorney of record. Mr. Bharti then hired a completely different attorney to take over the case, negotiate a settlement and dismissal, didn't tell Mr. Urie, didn't tell the counsel of record at all. And basically that's sort of what's to be expected when you're working on a case for Mr. Bharti. It happened to me several times. Cases just get taken away, reassigned. So the fact that you might be counsel of record on a case doesn't mean you're in charge, doesn't mean you're going to remain in charge, and certainly doesn't mean that you have any say in how things are being handled in the case."

(RP, pg 204).

While rejecting the offer of proof, the Hearing Officer did state it may be considered as a mitigating factor;

HEARING OFFICER: All right. The offer of proof at this time is rejected. It is not relevant to the issues before me at this juncture. It may be admissible and it may be relevant --

provided we get to the second phase of this hearing -- as a mitigating factor. But that will depend on what the evidence is from the Bar Association in regard to the issues that would be addressed in the event we get to phase two of this 8 proceeding.” (RP, pgs 204, 205).

However, the Hearing Officer did not then consider this mitigating factor.

Singh case, Hearing, Show Cause Order, Efforts to Serve, and Efforts to Comply with Court Order.

On May 20, 2011, the WSBA provided notice, that they have obtained and would offer into evidence a recording of a court hearing in the underlying case. (Doc 30). This was the first time Respondent Attorney had had a chance to hear the tape of that hearing. In that tape (which was transcribed as part of the hearing herein), it becomes clear that the court had indicated that another Show Cause hearing would be ordered.

“ Judge Erlick had said verbally -- and I just heard it again on the tape -- there's going to be another Order to Show Cause. I will set it for another -- to me that means -- an Order to Show Cause to me means there's going to be another hearing. That's what I anticipated. I mean, I understood Judge Erlick was going to hold my feet to the fire and order me to get things done within a certain amount of time. . . .”

(RP, pages 293, 294).

There are no findings whatsoever regarding the promised Show Cause order, or the fact that instead of issuing another show cause order as promised, the court instead issued an ex parte order of dismissal.

Respondent testified as to efforts made to comply with the court order.
RP, pgs 294, 295.

The actual transcript of the court hearing is at pages 79 and 80 of the transcript;

JUDGE ERLICK: What's going to happen is there is going to be another Order to Show Cause if -- we'll set it for another -- I -- I'm going to put on here that the defendant has to be served or service arrangements on the remaining defendants must be done within the next 20 days."
(RP, pg. 80).

ARGUMENT:

Standard of Review.

This court exercises plenary authority in matters of attorney discipline. *In re Disciplinary Proceeding Against Carmick*, 146 Wash.2d 582, 593, 48 P.3d 311 (2002). Ordinarily, this Court would give considerable weight to the hearing officer's findings of fact, especially with regard to the credibility of witnesses, and would uphold those findings so long as they are supported by "substantial evidence." *In re Disciplinary Proceeding Against Guarnero*, 152 Wash.2d 51, 58, 93 P.3d 166 (2004) (citing ELC 11.12(b)).[3]

However, in this case, the Findings were not made by the Hearing Officer, but were made by the WSBA, and the hearing officer signed off

on them immediately, the next day, without opportunity for Respondent to comment. Therefore, this Court should not afford such weight to the Hearing Officer's findings.

The WSBA has the ultimate " burden of establishing an act of misconduct by a clear preponderance of the evidence." *In re Disciplinary Proceeding Against Allotta*, 109 Wash.2d 787, 792, 748 P.2d 628 (1988). " ' Clear preponderance' is an intermediate standard of proof ... requiring greater certainty than ' simple preponderance' but not to the extent required under ' beyond [a] reasonable doubt.' " *Id.*

Thus, a clear preponderance of all the facts proved would have to support each and every finding of fact, and/or misconduct.

This Court reviews conclusions of law de novo. Each conclusion must be supported by the factual findings. *Guarnero*, 152 Wash.2d at 59, 93 P.3d 166 (citing ELC 11.12(b)).

Ordinarily, this Court would give " ' serious consideration' " to the Board's recommended sanction and generally affirm it " ' unless [the] court can articulate a specific reason to reject the recommendation.' " *Guarnero*, 152 Wash.2d at 59, 93 P.3d 166. However, in this case, the Board made no findings whatsoever, and merely increased the sanction, without findings. This court should therefore review all conclusions de novo.

Collateral Matters Used – See Motion at Pg 1 of Brief.

In a disciplinary action, certain due process requirements must be met, including:

- a) notice of the charge and the nature and cause of the accusation in writing;
- b) notice, by name, of the person or persons who brought the complaint;
- c) the right to appear and defend in person or by counsel;
- d) the right to testify in his own behalf;
- e) the opportunity to confront witnesses face to face;
- f) the right to subpoena witnesses in his own behalf;
- g) the right to prepare and present a defense;
- h) a hearing within a reasonable time;
- i) the right to appeal.

A judge accused of misconduct is entitled to no less procedural due process than one accused of crime. A judge is entitled to the same procedural due process protection when facing disqualification as a lawyer facing disbarment.”

In re Deming, 108 Wn.2d 82, 119-20, 736 P.2d 639 (1987).

The WSBA’s addition of other matters, not contained in the Charging documents, and the Hearing Officer’s disallowance of any rebuttal evidence or witnesses, (Appendix 7 and 8) as well as the WSBA’s use of documents with no evidence whatsoever of actual involvement of the Responding attorney in these collateral matters, deprived the Responding attorney of the above-enumerated rights, including (a), (b), (e), (f), (g).

Findings Entered as Proposed by WSBA, Without Opportunity to Respond.

The WSBA's proposed Findings were signed by the Hearing Officer and entered without sufficient due process, without any opportunity to rebut the proposed findings.

Where Findings are originally proposed by the WSBA, without a prior announcement of the Hearing Officer's decision, if any, the ELC Taskforce saw that as a problem;

ELC DRAFTING TASK FORCE Meeting Agenda

May 19, 2011

Fine-Bulmer Memo (p. 1048)

Mr. Fine summarized the "aura of unfairness" that some members of the Task Force perceived in the hearing officer asking for proposed findings without first giving a tentative ruling. Mr. Beitel offered ODC's proposed amendments (p. 1070). Mr. Beitel said that ODC had no objection in principle, but wanted to preserve the right to present argument in the form of proposed findings. Mr. Nappi concurred with the ODC amendments, but proposed a clarifying amendment. Mr. Bulmer proposed striking "at any time" from the first sentence; Mr. Beitel accepted the proposal as a friendly amendment. Mr. Bulmer moved adoption of ODC's proposal as amended. With none opposed, the proposed language was adopted as amended.

In this case, we have the additional impropriety, that the findings were actually signed, entered, and filed, without any opportunity for rebuttal.

The action of the Secretary in accepting and making as his own the findings which had been prepared by the active prosecutors for the Government, after an ex parte discussion with them and without affording any reasonable opportunity to the respondents

in the proceedings to know the claims thus presented and to contest them, was more than an irregularity in procedure; it was a vital defect.” (Headnote 5) *Morgan v. US*, 304 US 1, 18 (1937)

This has been found to be inappropriate by certain other courts, whose opinions have persuasive reasoning, that should be followed here;

“ . . .the trial judge actively discouraged the husband from filing a proposed final judgment. However, the trial judge accepted and used the proposed final judgment submitted by the wife's attorney.

. . . the trial judge did not permit the husband an opportunity to submit his own proposed final judgment or to object to the wife's proposed final judgment. . . . **there was an appearance that the trial judge did not independently make factual findings and legal conclusions, i.e., an appearance of impropriety.** In *Ross v. Botha*, 867 So.2d 567 (Fla. 4th DCA 2003), . . . In *Ross*, the Fourth District offered the following admonitions: (1) a trial judge should never request a proposed final judgment from only one party without making certain that the other side has an opportunity to comment or object; and (2) the practice of a trial judge adopting verbatim a proposed final judgment without making any modifications, additions or deletions, and without making any comments on the record prior to entry of the final judgment is frowned upon. *Ross*, 867 So.2d at 571-72.

We understand and appreciate the fact that a trial judge in these often complex and multi-issue dissolution cases can benefit from proposed findings and conclusions prepared by the parties. Such proposals can serve as a starting point and reminder of the facts and issues that should be considered and weighed by the judge in his or her own evaluation. However, such submissions cannot substitute for a thoughtful and independent analysis of the facts, issues, and law by the trial judge. When the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case. This is especially true when the judge has made no findings or conclusions on the record

that would form the basis for the party's proposed final judgment. This type of proceeding is fair to neither the parties involved in a particular case nor our judicial system.

Therefore, we agree with the conclusions reached by the First District in Shannon, the Fifth District in Hanson, and the Fourth District in Ross. While a trial judge may request a proposed final judgment from either or both parties, the opposing party must be given an opportunity to comment or object prior to entry of an order by the court. Moreover, the better practice would be for the trial judge to make some pronouncements on the record of his or her findings and conclusions in order to give guidance for preparation of the proposed final judgment.”

Perlow v. Berg-Perlow, 29 Fla. L. Weekly S130, 875 So.2d 383, 387 - 389 (Fla. 2004). (Emphasis added).

Improper use of ELC 10.13(c) Demand for Documents.

The Hearing Officer has misplaced the burden of proving misconduct, and has completely prevented the Respondent from putting in rebuttal evidence. (See order denying admission of submitted rebuttal exhibits, Appendix 8).

The WSBA had issued a Rule 10.13⁵ Demand for Documents shortly prior to the Sanctions hearing, however, instead of seeking documents appropriate for the hearing, the WSBA was in effect reopening discovery. There had been a scheduling order in this matter, and

⁵ ELC 10.13 (c) “Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.”

discovery was over. Respondent had provided everything sought by the WSBA, there had been no need for any deposition, any subpoenas, or any enforcement of discovery, as Respondent had provided her entire client file, together with her electronic files, together with screen print-outs showing when electronic files were created.

On the eve of the sanctions hearing itself, the WSBA should not be able to use the Demand for Documents as to seek new information, to put new exhibits into the record, not previously provided in accordance with scheduling orders. This is a tactic of surprise, ambush, and the trial schedule means nothing, since Respondent was left with no opportunity to prepare, and more importantly, no opportunity to rebut any argument that the WSBA may chose to make based upon whatever exhibits may come out of their Demand for Documents.

The Bar misuses Rule 10.13, orders,

In recognition of the problems with Rule 10.13, the rule will be changed. Two changes have been proposed by the taskforce on ELC's, just reviewed by the Board of Governors, one of which would eliminate the problem caused here.

Although the Supreme Court has not opined on the propriety of using ELC 10.13 to enter new evidence beyond the scheduling order, the

Supreme Court has indicated that the WSBA first should show that evidence could not have been obtained in the normal course of investigation, before using extraordinary measures after a hearing has been set. *In re Disciplinary Proceeding Against Scannell*, 239 P.3d 332 (2010)

The ELC rules provide for an orderly form of discovery and investigation. See ELC 10.11.

In this case, Respondent has been fully cooperative with the WSBA investigation – they did not have to ask for anything repeatedly, they did not have to take any depositions, they did not have to issue subpoenas or take enforcement measures – Respondent’s files were entirely open to the WSBA for their investigation.

Respondent was deprived of all opportunity to rebut anything, as the order forecloses any witnesses, even though the exhibits that may have to be rebutted are not yet in evidence. The prior Scheduling Order of the Hearing Officer, which provided a schedule for submitting evidence by each party, to be followed by rebuttal evidence and rebuttal witnesses, is therefore being completely ignored.

On the other hand, if the WSBA is trying to show some sort of pattern, then my proposed rebuttal evidence, including commendations from the WSBA for participation in Bar Examiners, and Pro Bono service,

would be relevant. Many of the rebuttal exhibits have been refused by the Hearing Officer.

" [T]he right to practice law, once acquired, is a valuable right, and ... an attorney cannot be deprived of that right except by the judgment of a court of competent jurisdiction, after notice and full opportunity to be heard in his own defense." *In re Discipline of Metzenbaum*, 22 Wash.2d 75, 79, 154 P.2d 602 (1944). In *Metzenbaum*, we held that a disbarment trial should have been continued at defendant attorney's request so that " he [would] not be deprived of his rights by a court of law without giving him full opportunity to present his defense" and " hear the testimony given against him by witnesses." *Id.* at 81, 154 P.2d 602.

In re Disciplinary Proceeding Against Sanai, 167 Wn.2d 740, 225 P.3d 203 (2009)

Restitution; (1) No Precedent for Restitution without Prior Loss of Client Funds or Judgment, (2) No Evidence That Mr. Singh Would Have Accepted \$20k Offer

There are three problems with the "restitution" order; (1) that there is no precedent for an order of restitution (or for a finding of indifference to restitution), without any prior loss of client funds, fees paid by the client, or at least a judgment or court order requiring payment to the client, (2) that the \$15,000 was not supported by any evidence, as Mr. Singh would not have accepted the \$20,000 settlement offer, and (3) that the WSBA determined an award of "costs" to itself in the amount of nearly \$4,500, in addition to "restitution" without considering ability to pay, and without

having the Hearing Officer or the Board consider both amounts with reference to Respondent's ability to pay.

(1) Respondent had provided lists of all WSBA and Supreme Court cases involving restitution, and not one of them allowed restitution in a case of mere legal malpractice, that had not gone to trial on the malpractice issue prior to the attorney discipline action. At **Appendix 17**, is a copy of the initial email, where Respondent sent the WSBA counsel all cases involving restitution. The WSBA was unable to come up with a single precedent, where restitution was ordered, unless "client funds went missing, or where clients overpaid or had to hire other counsel for more money, or where a Court ordered restitution." (**Ap. 17**).

(2) Although the WSBA had full opportunity to ask Mr. Singh, point-blank, if he would have accepted the \$20,000 offer, the WSBA failed to ask, and failed to meet its burden on that issue. The closest that the WSBA came to asking Mr. Singh about the \$20,000 offer is at pages 109 and 113 of Volume 1 of the hearing transcript, where Mr. Singh said that amount would have been helpful to his family.

Mr. Singh was never asked if he would have accepted merely \$20,000 at any time. Rather, Mr. Singh testified he wanted substantially more to settle his case. Mr. Singh had received a copy of the settlement letter, and

had been instrumental in setting the demand amount, at \$42,000 (RP pg 43 and 55).

Respondent had informed opposing counsel, that Mr. Singh's demand would not go below \$37,000;

Q [Starczewski] But in reading this letter where it says, We are filing a lawsuit unless there is an offer around the ball park of \$37,000, we will not bid ourselves below what our client is willing to settle for, does that lead you to believe that I would be making other offers below 37,000? A. I do not know what Plaintiffs' counsel's intent would have been, but I would have anticipated prosecution of the case. . . . Exhibit No. R-34."

(RP, pg 173, 173).

Counsel for WSBA did not argue before the Hearing Officer that Mr. Singh would have agreed to take \$20,000. Instead, the WSBA argued, that the case would have "inevitably" settled for \$20,000 implying to the Hearing Officer that Respondent would have accepted the \$20,000 offer without her client's consent. That is false. Since the client did not agree to settlement at less than \$37,000, by his own testimony, Respondent was powerless to settle the case for \$20,000;

"A lawyer shall abide by a client's decision whether to settle a matter."

The proscription is phrased in mandatory terms. Although not defined by the RPCs, "abide" is generally understood to mean "to await submissively; accept without question or objection ...

to submit to." See, Webster's Third International Dictionary (1986). Thus, RPC 1.2(a) requires a lawyer to "accept without question" a client's decision to accept or reject a settlement offer. Moreover, as a legal matter, courts also affirm a client's unfettered right to accept or reject a settlement offer. See, *Bernard v. Moretti*, 518 N.E.2d 599, 601 (Ohio App. 1987) (a client does not breach a contingent fee agreement by refusing to accept a settlement offer even if the refusal was foolish; it is solely within the client's discretion to accept or reject a settlement offer); *Goldman v. Home Mutual Ins. Co.*, 126 N.W.2d 1, 5 (Wis. 1964) ("Claim belongs to the client and not the attorney; the client has the right to compromise or even abandon his claim if he sees fit to do so"); *Giles v. Russell*, 567 P.2d 845, 850 (Kan. 1977) (" . . .neither a valid contingent fee contract nor an attorney's lien can interfere with a client's right to settle"); but see, *Hagans, Brown & Gibbs v. First National Bank of Anchorage*, 783 P.2d 1164, 1167 (Alaska 1989) ("Should the client fail to exercise control over the litigation in a manner consistent with the reasonable expectations of the parties, the client may become liable to his attorney")." **WSBA Ethics Opinion 191**

WSBA Counsel made a different argument to the Board, arguing instead that Mr. Singh's daughter's letter indicated the family would have accepted the \$20,000 offer. That was not argued before the Hearing Officer, and Mr. Singh's daughter did not testify. Mr. Singh's daughter had written on many subjects that did not coincide with Mr. Singh's own testimony, such as her (the daughter's) complaint that Respondent had taken down her Internet site, while Mr. Singh had no access to the internet, and had never visited Respondent's internet site. The daughter's letter cannot be taken as evidence of what Mr. Singh would have done.

(3) the Costs, (at Appendix 12, 13, and 14), should have been set by the Hearing Officer and/or Board, in conjunction with the “restitution” if any, and should have taken into consideration the Respondent’s ability to pay. As it is, the awards taken together clearly are setting the Respondent up for failure, as any failure to pay is grounds for further discipline, and would prevent Respondent from obtaining reinstatement of her license after any suspension.

Burden of Proof.

Respondent attorney should not have had to disprove any of the WSBA’s allegations. Respondent had the obligation to testify, as she was forced to do so by the WSBA, but Respondent had no burden of proof. It was therefore error for the WSBA and the Hearing Officer, and even the board, to require Respondent to come up with evidence in her own defense.

Absence of a document is not evidence.

There is no evidence that contacts or correspondence with clients were routinely kept track of by Respondent, after losing her law practice, her office and her staff. Therefore, if there is no record of correspondence – no letter of enclosure, or no memo of a meeting or phone call, that is not evidence. Evidence Rule, ER 803;

ER 803 (6) Records of Regularly Conducted Activity.
(Reserved. See RCW 5.45.)

(7) Absence of Entry in Records Kept in Accordance With RCW 5.45. Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

In this case, the only records of client contact were written instructions to staff (prior to Respondent's losing her law practice, specifically for training, and not a regularly conducted activity), and Respondent's phone call to Martin Hoyer immediately after a significant conversation with Mr. Singh about the \$20,000 settlement offer.

There is no evidence that records were "regularly made and preserved" of correspondence with Mr. Singh. In fact, Mr. Singh admitted to several conversations about which there is not any other sort of record. This is evidence that there were other conversations, which were simply not documented.

Therefore, the fact that there may not be a record of a particular conversation or a letter of enclosure, is not even admissible under ER 803, and is not evidence that the conversation did not take place, or that a document was not sent.

The WSBA cannot meet the “clear preponderance” of the evidence standard through merely a lack of documentation, when such documentation was simply not routinely kept after Respondent lost her office and staff.

Evidence of Communications with Client as to \$20,000 offer.

The \$20,000 offer was communicated to Mr. Singh, and Respondent had merely forgotten about that offer, after putting it into her paper-file, in storage. Respondent’s life was turned upside-down when Respondent lost her law firm, and went broke. Obviously Respondent’s memory of the events so many years ago is not good. Respondent did not recall the \$20,000 offer, until she found it in her “hard copy” paper file. Mr. Singh’s phone number was in that same paper file, in Mr. Bharti’s notes (See Exhibit R-48)⁶.

Respondent found the original offer in her paper file, not available to Respondent when she was writing to Mr. Singh in June, 2009, or responding to the Bar in 2010. Respondent had the paper files, when she was making copies of the entire file for the Bar.

⁶ The WSBA has obtained an order redacting all phone numbers and social security numbers from the filed exhibits – it does not appear from the WSBA’s proposed order the Mr. Singh’s phone number appears on anything else in my files, just on Mr. Bharti’s notes). Respondent would have obtained her paper-file from storage to dig out Mr. Singh’s phone number upon receipt of a \$20,000 settlement offer, which explained why the offer was then placed in that paper-file.

Respondent's former office manager, (now her husband) remembered that \$20,000 offer, and remembered Respondent's telephone call to him with Mr. Singh's reaction.

Mr. Hoyer remembered the settlement offer of \$20,000, remembered respondent's telephone call to him, after Respondent had hung up from telling Mr. Singh about the \$20,000 offer, and that Mr. Singh had instructed Respondent that he "did not want that amount and not to contact him until he got 45";

Q. Do you remember any discussions with me about settlement amounts?

A. The last settlement amount I remember was 20,000 -- in the neighborhood of 20 some odd thousand dollars. And I remember discussing it with you and you telling me that he did not -- Mr. Singh did not want that amount and not to contact him until he got 45 -- or until you got 40 -- I think it was -- 45 grand was what he wanted. *I know he was extremely upset that we couldn't get him -- that we couldn't get him his -- oh, reimbursement for loss of the taxi -- use of the taxi.*

HEARING OFFICER: Mr. Hoyer, when you mentioned the amount, was the amount \$20,000; is that what you said?

THE WITNESS; It was -- I can't remember if it was 20 or 22, but it was in the 20s.

RP, pg 238.

"Q. (By Ms. Starczewski) Yes. When did I tell you?

A.[HOYER] You told me that he had turned down the offer and that he didn't want any contact until you got the \$40,000 amount he wanted -- not to bother him. That's what -- that's what you told me. And I pretty much said, well, screw him then, whatever. I wasn't with the office at that time, though."
(RP, pg 240).

The WSBA misrepresents Mr. Hoyer's above testimony, as indicating that "Respondent told him [Hoyer] not to contact Singh with the offer because it was too low. TR 238 (WSBA brief to Board, page 17). However, this is contrary to Mr. Hoyer's clarification, when he was questioned by WSBA counsel. Mr. Hoyer explained very clearly that the WSBA counsel misunderstood his testimony;

Q. [WSBA Counsel Graffe] Okay. So by late September 2007 you wouldn't have any reason to interact with your wife's clients?

A. (Hoyer] None, none at all.

Q. Did I hear you correctly that there was a point in time when there was some settlement offer made and you were instructed to not communicate that to Mr. Singh?

A. No, you were wrong -- you misunderstood that.

Q. Okay. I didn't hear you correctly."

(RP, pages 243, 244, emphasis added)

Therefore the correct interpretation of Mr. Hoyer's testimony is that Mr. *Singh* told Respondent not to contact *Singh*, until Respondent got the \$40,000 amount that *Singh* wanted, and that *Singh* did not want *Respondent* to bother *Singh*. The word "him" always refers to Mr. Singh, and only Respondent (certainly not Mr. Hoyer) was told (by Mr. Singh) not to contact (Mr. Singh).

This is not a question of credibility determinations – the WSBA clearly found Mr. Hoyer to be credible, and credited his testimony in the WSBA findings. The problem is, the WSBA misunderstood Mr. Hoyer's

words, and persists in its misunderstanding to this day, despite Mr. Hoyer's own clarification during the hearing.

Mr. Hoyer also remembered the two prior settlement offers, of around \$9,000 and 15,000, because he had still been personally dealing with the file at the time of the first offer.

A. I know there was one previous. I didn't remember what it was. There were several before that.

Q. So do you remember more than one offer before that?

A. I remember another offer that came in when they wouldn't reimburse -- because I had talked to the adjuster about the reimbursement of the taxi -- and that was before the 15 grand and -- I mean, it was -- it was low. It was nine or 10,000.

RP, pg 239.

Evidence of Communications with Client as to Sanctions and Dismissal, Prior to June.

There is significant evidence of communications with the client, were there was simply insufficient written record made of the communication.

Q. I'll represent to you, Mr. Singh, that at some point in the spring of 2008 there were sanctions imposed or a fine imposed by the judge because certain deadlines had not been met on your case.

At that time did she tell you about that?

A. [BY MR. SINGH] No.

Q. When did you first find out that sanctions had been imposed in your case?

A. When I received a Letter of Dismissal of that case.
RP, Vol 1, pg 106

Afterwards, Mr. Singh goes on to claim that this occurred in June, 2009, and not before that, however, the final order of dismissal, which Respondent mailed to him with her June letter, *did not mention sanctions*. Since Mr. Singh recalls learning about the sanctions, *at the same time as receiving the copy* of the Dismissal, obviously he had been informed of the sanctions at some other time, (a prior time when he learned about the dismissal) and not with the June. 2009 correspondence.

There were other communications with Respondent's office, and Respondent, that Mr. Singh admitted he had, but did not recall in detail (and of which there is no record in Respondent's files);

21 in my office?

22 A. [BY MR. SINGH] I don't remember now, a long
time ago. Somebody

23 phone, I do not remember all the time because -- maybe

24 somebody called, I don't remember that.

Transcript, Pg. 125

A. [BY MR. SINGH] I don't -- I -- I don't know. I don't
remember

that all. I have only met to that guy I -- when I was there at
office, other on phone when we -- somebody phone me or -- I
don't remember.

Q. Okay. So it is possible that there were phone calls, you just
don't remember?

A. Phone calls?

Q. Yes.

A. I -- can you repeat again?

Q. Is it possible that some male employee, some from my

office might have called you but you just
man, don't remember?

A. It possible, but I -- I don't remember that.

Transcript, Pg 126

Q. How did you get documents from me?

A. [BY MR. SINGH] Just by mail.

Q. I mailed things to you?

A. Yes.

Transcript, Pg. 137

For example, there is Mr. Singh's claim in his daughter's written Complaint to the Bar, that Respondent had suggested to him that he should file bankruptcy (Exhibit 18) (Respondent does not recall telling him that), but clearly there had been other communications with the Respondent, with no written record.

Mr. Singh clearly knew about the outcome of the case. His purpose in filing the Bar complaint was to get the Bar to see if Respondent's insurance would cover his complaint (*see bottom line of his complaint*). The Bar, however, made no inquiry of Respondent's prior insurance company, and the WSBA allowed the Statute of Limitations to lapse, just prior to the WSBA hearing, without informing Mr. Singh of the Statute.

Misrepresentation must be willful,

Misrepresentation cannot be the subject of discipline if it is merely negligent or even reckless. There is no discipline for negligent

misrepresentation. Not even for reckless misrepresentation. To prove misrepresentation by the letter enclosing the court's final order, the Bar would have had to prove that Respondent specifically recalled, right then sitting at her computer over a year after the fact, that the second hearing promised by the Judge had not occurred, and the Bar would have to prove that Respondent recalled at that time that the final order had been entered by the Judge over a year earlier *ex parte*, without a hearing, and that Respondent recalled that there had been one hearing, not two, even though it was over a year later, and that Respondent had some reason, some purpose, and willfully misrepresented the very order that Respondent was enclosing in that same letter. All this has to be proven by a "clear preponderance" of the evidence, not merely a preponderance standard, but an intermediate standard between preponderance and beyond a reasonable doubt.

The Bar's accusation / charge of misrepresentation was based upon the Bar's original misperception, that the final order had *not* in fact been enclosed with the letter to the client. During his questioning of Respondent, Bar counsel specifically underscored that Respondent was claiming "purportedly" to have enclosed the final order. Contrary to the Bar's charges, Mr. Singh admitted that he had in fact received the final order, together with the letter at issue. Mr. Singh also admitted that he had

in fact been informed of the sanctions – at the same time as receiving the final order (so that was a different occasion, prior to the June, 2009 letter, and enclosed order, which did not discuss sanctions). In response to the June, 2009 letter, Mr. Singh did not ask for clarification, did not contact his lawyer, Mr. Bharti, and instead had his daughter draft a complaint to the Bar. There is no indication that Mr. Singh was misled.

To prove misrepresentation, you must look at what Respondent had available at that time, when she was writing the letter. Respondent did not have her “hard copy” files. She had her computer files, and possibly the court docket. Looking at the docket, you cannot see that there was only one hearing. (But if Respondent had looked at the docket, she probably would have saved it to her computer file – so Respondent provided her entire computer file, on disc, to permit the WSBA to investigate, whether Respondent had looked at the docket).

Looking at Respondent’s file of court orders (See Appendix 17, showing court orders downloaded directly from Court Web Site, in 2008), there are obviously duplicate copies of orders that were downloaded and placed in the file in 2008, which may account for some confusion if Respondent was looking at the files in 2009. There is no indication which orders Respondent had looked at as she was writing the letter.

The evidence shows that Respondent relied upon the brief by defense counsel (arguments that defense counsel testified she had thought were persuasive at the time she made them), and the final order, and Respondent's memory of being before the judge (but without Respondent's notes, which were in the "hard copy" files in storage, and not scanned into the computer). So what was it that Respondent knew, that was actually in Respondent's head, that Respondent then willfully misrepresented?

Misrepresentation, resulting in a 6-month suspension, was found in *re Poole*, where Mr. Poole had created, and then back-dated an invoice, forcing his computer software to do so. To avoid such a charge, the Respondent herein provided her computer file, on disc, and copies of the files showing dates they were created.

In attorney Poole's case, the actual documents were not provided, just the newly created and back-dated invoice. *In re Poole*, 156 Wn.2d 196, 125 P.3d 954 (2006). In this case, Respondent provided the actual order.

In re Kimbrough, the attorney received four reprimands for misrepresentation, as stated in the WSBA summary;

“• Negligently failing to provide the opposing party's counsel with a signed settlement and release agreement, and failing to

finalize a settlement with the opposing party before the case was dismissed;

- Negligently failing to keep his client reasonably apprised of the status of the case, including that it had been dismissed without prejudice and before the settlement was finalized;

- Negligently misleading his client into believing that the settlement had been finalized when it had not; and
- Negligently failing to timely respond to the grievance subsequently filed by the client with the Bar Association.

In re Kimbrough, WSBA summary, 2007.

In re Ferguson, Ms. Ferguson received a 90-day suspension for misrepresentation, for misleading the ex parte Commissioner, that a payment had not been made; “did not inform the court of her clients’ intention to file for bankruptcy or that the mortgage company had recently required all mortgage payments to be made with certified funds, which might account for the delay in the mortgage company’s processing of checks.” In this case, the information was provided to the Client, in the form of the actual Court Order, which was self-explanatory.

If Respondent had intended to misrepresent something, why would she go through so much effort to give the Bar all her files, including electronic files, including screen shots indicating when things were created? None of these things were requested by the WSBA. What evidence is there of an intent to misrepresent? Recall, Mr. Singh had not made any claim at all against Respondent prior to his complaint to the WSBA. Over a year after the dismissal, he did not call Respondent one

single time, even though he had Respondent's cell phone number. Respondent had absolutely no motivation to misrepresent anything, only to explain what was wrong with the underlying case.

The type of evidence required to prove an attorney's mental state is set forth in *re Poole*;

Substantial evidence supports the hearing officer's finding that Poole acted 'knowingly' and 'intentionally' in violating RPC 3.4(b) and 8.4(c). Poole's principal counterargument that he also sent Matson an invoice in May 2001 does not mitigate the undisputed fact, and his own repeated testimony, that he created a false document and sent it to his former client and opposing counsel without explanation. See Ex. 49 at 72; TR at 130, 572-73. When Poole created the May 28 invoice in October he was not simply acting carelessly, but rather he purposefully created a new document and assigned it a false date. As the hearing officer determined, he did so with the intent to mislead Mr. Lee. FOF 60(h), 61. Poole's failure to qualify the authenticity of the invoice at the time he provided it, or in his subsequent conversation with Lee until confronted on the subject, support the conclusion that Poole acted with the intent to deceive. As such, the hearing officer found, and the record supports her conclusion, that Poole was consciously aware that he was providing Matson's attorney with fabricated evidence and acted with the conscious objective or purpose to deceive Lee and Matson as to the genuineness of the invoice. See FOF 58, 60(b), 60(g), 60(h), 61. Cf. *Dynan*, 152 Wash. 2d at 618, 98 P.3d 444 (attorney 'consciously aware' providing court with untrue evidence)." *Poole*, 156 Wn.2d, at 221.

There is simply no such evidence here. There is no evidence that Respondent was acting other than, at most, carelessly. Respondent was asked to recall, what had happened over a year earlier, without her file in front of her. Respondent wrote a quick letter, and enclosed the latest order

she could find in her computer records. Mr. Singh was not deceived. Upon receiving the letter of 2009 and its enclosed copy of the actual court order, Mr. Singh proceeded to file a complaint with the Bar, and asked the Bar to check into Respondent's insurance (last line of Singh's complaint).

Nature of Show Cause Calendar.

Because the Hearing Officer is not familiar with the King County Noncompliance Calendar, Respondent had obtained a copy of the King County Bar Association's Newsletter "The Bar bulletin", article from May, 2000 regarding the noncompliance calendar. As shown in the Bar Bulletin article, the noncompliance calendar's sanctions are routine. In 2000 the amount of sanctions was apparently lower than in 2007, but it is obvious from the article, that attorneys were sanctioned multiple times for failing to comply with the Joinder form requirements. Respondent's experience in King County would have been more akin to the process described in the article, which was written in 2000, prior to my moving out to Lynnwood (Snohomish County), and prior to Respondent's moving out to East Wenatchee and Wenatchee.

The hearing officer had come from Yakima, and the WSBA special counsel was from Pierce County, which may have different rules for their case confirmation calendars, if any.

Since sanctioning attorneys under the Noncompliance Calendar was routine, Respondent should not be additionally sanctioned by the Bar. Respondent paid the sanctions, and no further sanctions should be levied against me for the same conduct.

Furthermore, the dismissal of the case, without a show-cause order, was NOT routine. The expected process was on show-cause, and attorneys could expect more than one instance of sanctions, in ever-increasing amounts. Therefore, the Judge's sudden dismissal was unexpected and not foreseeable.

Respondent's Pro Se arguments should not be used against her, as an indication of failure to accept responsibility.

Since Respondent must appear pro se (not being able, financially, to hire counsel), Respondent must be allowed to make arguments that are not then used against her as "evidence". Argument should be treated as though it were made by counsel, and not as though it were some admission, or some failure to accept responsibility, by the Respondent.

No Pattern of Misconduct.

There was no finding of *similar* prior wrongful conduct, and therefore the finding of a "pattern of misconduct" is in error, as seen from the very case cited by the WSBA;

"ELC 10.15(b)(1)(A) states that evidence of prior acts, although not admissible to prove character or impeach

respondent's credibility, may be admitted for other purposes. Here the other purposes for admission were to show that Mr. Burtch has a pattern of misconduct, an aggravating factor, and to show evidence of his mental state, knowledge or intent, when he committed the misconduct. Mr. Burtch's prior disciplinary proceedings *involved similar conduct to that at issue in this proceeding*, demonstrating that he, at a minimum, had knowledge his actions were ethical violations which could lead to sanctions as they had in the past.”

In Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 889, 175 P.3d 1070 (2008) (emphasis added).

Attorney Burtch’s prior misconduct had all related to the same type of wrongdoing – overbilling his clients, refusing to pay “restitution” (refund of fees charged) when ordered to do so by the WSBA Board. There was no vague accusation that some un-related, irrelevant and non-similar conduct was a “pattern of misconduct” in *Burtch*.

The issue of compliance with the RPCs was not before an of the courts whose decisions were presented by the WSBA at the sanctions hearing. Cf. *In re Disciplinary Proceeding Against Whitney*, 155 Wash.2d 451, 464, 120 P.3d 550 (2005) (declining to apply a factual finding made in a superior court matter because the issue of whether the lawyer violated the RPCs was not an issue Before the superior court). Therefore, any trial court order awarding fines, penalties, sanctions, etc would need to be fully adjudicated to determine whether any conduct by Respondent was involved, and whether RPCs were violated.

Although decisions regarding evidence are usually discretionary decisions, in this case, the Hearing Officer has not presented reasons for his decisions, and they are an abuse of discretion;

In exercising discretion . . . the hearing officer may consider the necessity of prompt disposition of the litigation; " the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation ...; any conditions imposed in the continuances previously granted; and any other matters that have a material bearing" on the exercise of the discretion vested in the hearing officer. *Trummel v. Mitchell*, 156 Wash.2d 653, 670-71, 131 P.3d 305 (2006). A hearing officer abuses her discretion when her decision is " ' manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' " *State v. Downing*, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004) (quoting *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971))." *In re Disciplinary Proceeding Against Sanai*, 167 Wn.2d 740, 225 P.3d 203 (2009)

Proportionality of Sanction.

During the hearing, Respondent at times referred to other sanctions' cases, in an effort to make an argument that the sanctions sought by the WSBA are not proportional to sanctions issued in similar cases, with similar apparent fact patterns. The WSBA's counsel's response was that "we do not know" the facts of those other cases. This is a strange argument indeed, given the fact that the proceedings were occurring in the WSBA offices, and the files of all disciplinary actions would have been available.

We will, however, adopt the Board's recommendation on a sanction unless we can articulate a specific reason to depart from the Board's recommendation and we are persuaded that the sanction is inappropriate after consideration of one or more of the following factors:

1. The purposes of attorney discipline (sanction must protect the public and deter other attorneys from similar misconduct);
2. The proportionality of the sanction to the misconduct (sanction must not depart significantly from sanctions imposed in similar cases);
3. The effect of the sanction on the attorney (sanction must not be clearly excessive);
4. The record developed by the hearing panel (sanction must be fairly supported by the record and must not be based upon considerations not supported by the record); and
5. The extent of agreement among the members of the Board (sanction supported by unanimous recommendation will not be rejected in the absence of clear reasons).

In re Discipline of Johnson, 114 Wash.2d 737, 752, 790 P.2d 1227 (1990) (summarizing *Noble*, 100 Wash.2d at 95-96, 667 P.2d 608).”

Matter of Disciplinary Proceeding Against Haskell, 136 Wn.2d 300, 962 P.2d 813 (1998).

The *Haskell* case is particularly telling, because the Supreme Court lowered the recommended penalty as too extreme and lowered the penalty from disbarment to a two-year suspension.

In this case, there is nothing in the WSBA's Findings that acknowledges that the 2-year suspension is in effect just short of disbarment. There is no finding of proportionality, no determination of the effect of the sanction on the Respondent, and no discussion of the purposes of attorney discipline. Other cases, cited above, called for

reprimand, or 90-day suspension, or 6-month suspension, with more evidence of intentional misrepresentation.

Misapprehension as to Practice Monitor.

The Hearing Officer was very favorably impressed with attorney Anthony Urie, who had offered to be a Practice Monitor, if necessary;

1 I also am going to recommend that following
2 reinstatement -- let me back up -- that restitution be
3 made prior to reinstatement. Following reinstatement,
4 assuming restitution is paid, I believe that it is
5 appropriate and essentially is a joint recommendation of
6 the Respondent and the Bar Association that a practice
7 monitor be named. _
8 It would be wonderful and very appropriate
9 and helpful to Respondent if Mr. Urie, who did testify in
10 this proceeding, who impressed me with his demeanor and
11 his candor and his commitment as a highly professional
12 lawyer, would serve in that role based upon his knowledge
13 of and support for the Respondent and their excellent
14 relationship, which is unchallenged and uncontroverted.
15 But we cannot require Mr. Urie to do that,
16 and circumstances may change between now and the time
17 that
18 Respondent is eligible to return to practice, assuming
19 that my recommendation is upheld by the appellate bodies
20 of the Disciplinary Board and/or the Washington State
21 Supreme Court. But I believe that a practice monitor
22 would be appropriate.

(Transcript of Sanctions Hearing, pg 578)

.However, Mr. Urie's offer to be a practice monitor was made in lieu of any suspension, as Mr. Urie needs Respondent's assistance on a continuing basis in his own law practice. Mr. Urie travels to Alaska and California for his business, and relies upon Respondent to keep himself

and his clients advised in his absence. The WSBA has provided no authority allowing it to require a practice monitor, in contravention to the terms of the offer made by Mr. Urie.

Mitigating Factors Not Considered.

Other mitigating factors should have been considered. There was testimony that Respondent relied on her office staff, and lost her office, her law practice, as well as her office staff. This was not considered in the findings. Other mitigating exhibits, such as WSBA commendations, were not mentioned.

The Hearing Officer specifically stated that association with Mr. Bharti would be considered as a mitigating factor, and then failed to do so.

The Hearing Officer thanked Responding attorney for her cooperation (RP Vol 3, p. 495.) However, no credit was given to Respondent for cooperation, over and above what was requested by the Bar, including providing all electronic computer files, and dates of file creation (not even looked at by WSBA).

Lack of communication and/or cooperation from the client should also be a mitigating factor. As stated before the Board;

MR. LOMBARDI: If Mr. Singh had, in fact, told her, "Don't call me with any offer below a certain amount," she's not required to communicate the offer to the client; correct?

MR. BRAY: I would agree with that.

There's a comment in [RPC] 1.4 that seems to say that; but Mr. Singh doesn't corroborate in his testimony that he told her never to call him. He just says there wasn't any particular contact." (RP Vol 4, pl 19).

Remand is Necessary Due to Lack of Findings

Detailed findings are required for this Court to know whether either the Hearing Officer or the Disciplinary Board applied the proper burden of proof, or the proper standards for discipline.

“For an adequate appellate review ... this court should have, from the trial court ... findings of fact (supplemented, if need be, by a memorandum decision or oral opinion) which show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact that penetrates beneath the generality of ultimate conclusions, together with a knowledge of the standards applicable to the determination of those facts.”
Groff v. Dept. of Labor, 65 Wn.2d 35, 40, 395 P.2d 633 (1964).

In this case, there are no findings at all by the Disciplinary Board, and the Hearing Officer did not make initial findings of guilt. The initial findings, made by the WSBA and signed immediately by the Hearing Officer, do not set forth the burden of proof, and the findings on Ms. Starczewski's mental state do not follow the standard of "clear preponderance" of the evidence, and are not based upon substantial evidence as to mental state.

E. Conclusion, Relief Sought.

Responding attorney Starczewski requests the relief sought in the motion, at the beginning of this brief, or, in the alternative, imposition of lesser sanctions, such as reprimand.

The findings objected to above should be reversed, and based upon only those findings of misconduct which were properly charged, the relevant sanction should be one of Reprimand.

In the alternative, Mr. Urie is available to act as practice monitor for a reasonable time, provided no suspension is imposed, as a suspension will disrupt Mr. Urie's own practice.

The restitution order should be vacated, as unprecedented, and Respondent should be allowed not to pay costs, or to pay reduced costs, if any, due to her financial status.

Respectfully submitted this September 18, 2012.

s/ Marja Starczewski
Marja Starczewski, WSBA 26111
Responding Attorney, pro se.

Certificate of Service on WSBA;

I, Marja Starczewski, hereby certify that on this 18th of September, 2012, I emailed a true copy of this Brief to the WSBA

disciplinary counsel, as well as mailing a copy to both, WSBA and the Supreme Court;

Signed under penalty of perjury, under the laws of the State of Washington, at Wenatchee, Washington, on Sept. 18, 2012;

s/ Marja Starczewski

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JUL 05 2011

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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,

Lawyer (Bar No. 26111).

Proceeding No. 10#00086

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AS TO RPC VIOLATIONS

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on May 24-25, 2011. Respondent Marja M. Starczewski appeared personally pro se at the hearing. Special Disciplinary Counsel John C. Graffe and Disciplinary Counsel Francesca D'Angelo appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

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

Count I – Failing to act with reasonable diligence and promptness in representing Mr. Singh and failing to make reasonable efforts to expedite the litigation in Mr. Singh's case, in violation of Rule 1.3 of the Rules of Professional Conduct (RPC) and RPC 3.2.

1 communicated to Mr. Singh and which he rejected.

2 9. On May 3, 2007, Respondent filed suit in King County Superior Court against Mr.
3 Reeser, Walters & Wolf, and Ms. De La Fuente alleging personal injury and lost wages.

4 10. Respondent named Mr. Singh and his brother, Surinder Khangura, as plaintiffs in
5 the suit.

6 11. This lawsuit was filed on the last day before the statute of limitations expired.

7 12. At that point, Respondent had represented Mr. Singh for seventeen months.

8 13. On the same day that Respondent filed the lawsuit, Respondent had Mr. Khangura
9 sign a contingent fee agreement, employing her to represent him on a lost wages claim arising
10 from the damages to the taxi that he shared with Mr. Singh.

11 14. Respondent testified that Mr. Singh and Mr. Khangura's wage claims overlapped.

12 15. However, Respondent did not inform or explain the potential conflicts to Mr.
13 Singh or obtain Mr. Singh's or Mr. Khangura's informed consent to the representation.

14 16. Respondent was the only attorney of record for Mr. Singh in the lawsuit.

15 17. Mr. Singh believed that Respondent was his attorney, and his belief was reasonable
16 under the circumstances.

17 18. On May 3, 2007, the court issued a scheduling order, setting the trial date for
18 October 20, 2008.

19 19. The scheduling order provided a deadline of October 11, 2007, for filing a
20 Confirmation of Joinder.

21 20. Under King County Local Superior Court Rule 4.2, the plaintiff is responsible for
22 filing a Confirmation of Joinder. The attorney for a plaintiff is to sign the Confirmation of
23 Joinder.

1 21. Respondent knew about the deadlines imposed by the case scheduling order and
2 her responsibilities to meet those deadlines.

3 22. Respondent's testimony that she did not believe that she had the responsibility to
4 take action under the case scheduling order is not credible.

5 23. On or about June 15, 2007, Respondent moved to East Wenatchee.

6 24. Respondent testified that she was having financial difficulties at this time.
7 Respondent did not convey these difficulties to Mr. Singh or explain to him how these
8 difficulties would affect her handling of the case.

9 25. Attorney Julia Kyte appeared for the Reeser defendants and Walters & Wolf.

10 26. On September 29, 2007, Ms. Kyte made Respondent an offer of \$20,000 to settle
11 the matter.

12 27. Respondent did not communicate this offer to Mr. Singh.

13 28. Respondent did not properly explain the matter to Mr. Singh to enable him to make
14 informed decisions regarding the offer.

15 29. Respondent did not respond to Ms. Kyte's offer.

16 30. There was substantial injury to Mr. Singh who lost the opportunity to settle the
17 matter for \$20,000.

18 31. Over the next several months, Ms. Kyte called and emailed Respondent multiple
19 times.

20 32. Respondent did not respond to Ms. Kyte's communications.

21 33. Respondent did not serve Ms. De La Fuente with the Complaint.

22 34. Respondent did not file the Confirmation of Joinder by October 11, 2007 as
23 required by the court's scheduling order.
24

1 35. On November 6, 2007, the court issued an order to show cause for non-compliance
2 with the May 3, 2007 scheduling order.

3 36. The show cause order required Mr. Singh or Respondent to appear on December 6,
4 2007 and show cause why the case should not be dismissed for lack of compliance with court
5 rules and why sanctions of at least \$250 should not be ordered.

6 37. Respondent did not inform Mr. Singh about the show cause order or that the case
7 could be dismissed.

8 38. Respondent did not appear at the December 6, 2007 show cause hearing.

9 39. The court entered an order continuing the show cause hearing to January 17, 2008
10 and provided that the hearing would be stricken if the Confirmation of Joinder was filed seven
11 days before the next hearing date.

12 40. The court ordered Respondent to pay \$250 to defense counsel no later than
13 December 27, 2007.

14 41. Respondent did not inform Mr. Singh that the court had continued the show cause
15 hearing.

16 42. Respondent did not inform Mr. Singh that the court had ordered payment of \$250
17 in sanctions to defense counsel.

18 43. Respondent did not file the Confirmation of Joinder.

19 44. Respondent did not appear at the January 17, 2008 hearing.

20 45. On January 17, 2008, the court dismissed Mr. Singh's lawsuit because Respondent
21 had failed to comply with the case scheduling order.

22 46. Respondent did not inform Mr. Singh that his lawsuit had been dismissed.

23 47. On February 19, 2008, Respondent filed a motion to vacate the court's dismissal of
24

1 Mr. Singh's lawsuit.

2 48. Respondent did not inform Mr. Singh that she had filed a motion to vacate the
3 court's dismissal of the lawsuit.

4 49. On March 7, 2008, the court heard argument on the motion to vacate.

5 50. The court vacated the order of dismissal, conditioned on payment of the
6 outstanding \$250 in sanctions to defense counsel within 10 days of the order.

7 51. The order also required that defendant Ms. De La Fuente be served within 20 days
8 of the date of the order, that a Confirmation of Joinder be filed no later than April 30, 2008, and
9 that the parties comply with all of the pretrial deadlines set in the original case scheduling order.

10 52. Respondent did not inform Mr. Singh about the March 7, 2008 order.

11 53. Respondent paid the \$250 in sanctions to defense counsel on March 10, 2008.

12 54. Respondent did not file a Confirmation of Joinder.

13 55. In fact, Respondent filed nothing with the court to reflect any action taken on her
14 part to comply with the court's March 7, 2008 order.

15 56. On May 9, 2008, the court dismissed the case again, citing Respondent's failure to
16 file the Confirmation of Joinder.

17 57. Respondent received notice of this dismissal.

18 58. By May 9, 2008, the statute of limitations had run on Mr. Singh's case.

19 59. Respondent did not timely inform Mr. Singh that the case had been dismissed or
20 the reason for the dismissal.

21 60. Respondent did not advise Mr. Singh of his options for setting aside the dismissal
22 or appealing the decision within the applicable time frame for taking such action.

23 61. Respondent's testimony to the contrary is not credible, given her failure to
24

1 specifically recall any action taken to advise her client of the dismissal and the lack of any
2 supporting evidence in her client file.

3 62. Throughout the representation, Respondent knowingly failed to communicate with
4 Mr. Singh and she did so in an effort to conceal her failure to act diligently.

5 63. Mr. Singh was harmed in that his case was dismissed after the statute of limitations
6 had expired. As a result, Mr. Singh unable to exercise his options for setting aside or appealing
7 the dismissal within the relevant time frames.

8 64. Respondent did not inform Mr. Singh that his case had been dismissed until on or
9 about July 2009 when Mr. Singh contacted her for an update.

10 65. In July 2009, Respondent wrote to Mr. Singh and told him that the court had
11 dismissed his case because defense counsel had convinced the court that the accident had been
12 caused by an emergency on the road and was not anyone's fault.

13 66. This statement was false.

14 67. Respondent knew the statement was false.

15 68. In her July 2009 letter to Mr. Singh, Respondent excerpted portions of opposing
16 counsel's March 3, 2008 Response to the Motion to Vacate, which argued that the defendants
17 were not negligent under the emergency doctrine.

18 69. The inclusion of opposing counsel's argument in her letter was a knowing effort to
19 mislead Mr. Singh as to the reasons for the dismissal and to further conceal her misconduct.

20 70. Respondent did not tell Mr. Singh that the court had dismissed his action due to her
21 failure to comply with its March 7, 2008 order.

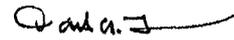
22 71. Respondent's testimony that the judge's expression and demeanor at the March 7,
23 2008 hearing convinced her that Mr. Singh's case did not have merit was not credible.
24

1 misrepresentations to Mr. Singh regarding the reason why the court had dismissed his case,
2 Respondent violated RPC 8.4(c) (duty to avoid dishonesty/deception).

3 SANCTION HEARING

4 78. Given the Hearing Officer's findings that the Respondent committed violations of
5 the RPC, the Hearing Officer hereby orders a sanction hearing to be held at the offices of the
6 Washington State Bar Association to determine the appropriate sanction under the ABA
7 Standards.

8 Dated this 1st day of July, 2011.

9
10 

11 David A. Thorner, WSBA No. 4783
12 Hearing Officer
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24

THORNER, KENNEDY & GANO P.S.

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MICHAEL J. THORNER
MEGAN K. MURPHY

*ALSO ADMITTED IN IDAHO

JOHN K. JOHNSEN
(1948-1993)

BRUCE P. HANSON
(1922-2006)

TELEPHONE (509) 575-1400

FAX (509) 453-6874

OUR FILE NUMBER

July 1, 2011

Via email allisons@wsba.org and US Mail

Ms. Allison Sato

Clerk to the Disciplinary Board
Washington State Bar Association
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

In re: Marja Starczewski, WSBA #26111
Proceeding No. 06#00087

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DISCIPLINARY BOARD

Dear Ms. Sato:

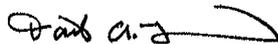
Enclosed for filing please find the original Findings of Fact and Conclusions of Law as to RPC Violations in the above matter.

My legal assistant Melinda Solly-Bryan will be contacting Mr. Graffe, Ms. D'Angelo and Ms. Starczewski to schedule a date for the sanction hearing herein.

If you have any questions, please contact me.

Thank you for your consideration.

Very truly yours,



David A. Thorner
DAT:msb

Enclosure

cc: Ms. Francesca D'Angelo, (via email and regular mail w/encl.)
Mr. John Graffe, (via email and regular mail w/encl.)
Ms. Marja Starczewski, (via email and regular mail w/encl.)
Mr. Joseph Nappi, Jr., Chief Hearing Officer (via email and regular mail w/encl.)

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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,

Lawyer (Bar No. 26111).

Proceeding No. 10#00086

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE: SANCTIONS AND
RECOMMENDATION

The undersigned Hearing Officer held a hearing on sanctions on October 13, 2011 in accordance with Rule 10.15(b)(2) of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Marja M. Starczewski appeared at the hearing. Special Disciplinary Counsel John C. Graffe appeared for the Washington State Bar Association (the Association).

I. ANALYSIS

A. Presumptive Sanction Under the ABA Standards

1. A presumptive sanction must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484, 501, 69 P.2d 844 (2003).

2. The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are



078

1 presumptively applicable in this case:

2 *Count 1*

3 3. ABA Standard 4.4 applies to a lawyer's failure to act with reasonable diligence in
4 representing a client:

5 4.42 **Suspension** is generally appropriate when:

- 6 (a) a lawyer knowingly fails to perform services for a client and
7 causes injury or potential injury to a client, or
8 (b) a lawyer engages in a pattern of neglect and causes injury or
9 potential injury to a client.

10 4. Respondent's conduct was knowing.

11 5. There was injury to Mr. Singh, whose claim was dismissed after the statute of
12 limitation had run.

13 6. The presumptive sanction for Count 1 is suspension under ABA Standards 4.42(a).

14 *Count 2*

15 7. ABA Standard 4.42(a) also applies to Count 2.

16 8. Respondent's conduct was knowing.

17 9. There was injury to Mr. Singh, who never received current, complete and accurate
18 information from the Respondent during the course of the auto accident litigation because the
19 information was never communicated to him on a timely basis.

20 10. Because he never received timely communication from the Respondent, Mr. Singh
21 did not have the opportunity to request that the trial court reconsider the dismissal of the case,
22 to take action through another attorney, or to file an appeal in an effort to set aside the
23 dismissal and reinstate the lawsuit.

24 11. In addition, because Respondent never told Mr. Singh about the settlement offer,
 Mr. Singh never had the opportunity to accept or reject the \$20,000 offer of settlement.

1 12. The presumptive sanction for Count 2 is suspension under ABA Standard 4.42(a).

2 *Count 3*

3 13. ABA Standard 4.62 applies to Count 3:

4 4.62 **Suspension** is generally appropriate when a lawyer knowingly
5 deceives a client, and causes injury or potential injury to the client.

6 14. Respondent's conduct was knowing.

7 15. There was injury to Mr. Singh who was not informed as to the true cause of the
8 dismissal and so was not able to take informed action.

9 16. The presumptive sanction for Count 3 is suspension under ABA Standard 4.62.

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

13 18. "A period of six months is generally the accepted minimum term of suspension."
14 In re Cohen, 149 Wn.2d 323, 339, 67 P.3d 1086 (2003).

15 19. The appropriate presumptive sanction for Counts 1-3 is suspension.

16 **B. Aggravating and Mitigating Factors**

17 20. The following aggravating factors set forth in Section 9.22 of the ABA Standards
18 are applicable in this case.

19 21. Dishonest or selfish motive. ABA Standard 9.22(b). Respondent failed to
20 communicate and made misrepresentations to Mr. Singh to conceal her own misconduct.
21 Findings of Fact and Conclusions of Law As To RPC Violations filed July 5, 2011 (FFCL), ¶¶
22 62 and 69.

23 22. Pattern of misconduct. ABA Standard 9.22(c). Respondent received a reprimand
24 in 2010 for filing frivolous claims in a 2006 lawsuit. The grievance underlying that

1 Reprimand was not filed until 2009. Respondent's misconduct in Mr. Singh's case occurred
2 primarily in 2007 and 2008. Respondent therefore did not know that she would be under
3 investigation by the Association at the time of her actions in Mr. Singh's case, and her
4 reprimand is therefore not a "prior disciplinary offense" under ABA Standard 9.22(a). In re
5 Disciplinary Proceeding Against Brothers, 149 Wn.2d 575, 586, 70 P.3d 940 (2003).
6 However, the conduct underlying the reprimand as well as the evidence of her disregard of
7 repeated warnings from judicial officers and disciplinary counsel about her professional
8 obligations in other cases are indicative a pattern of misconduct and justify the application of
9 this aggravating factor. In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 889,
10 175 P.3d 1070 (2008).

11 23. Multiple offenses. ABA Standard 9.22(d).

12 24. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g).

13 Throughout this hearing Respondent has attempted to blame Mr. Singh and other persons for
14 her failure to communicate with him regarding important events in his case, arguing that he
15 had a duty to keep in contact with her. While she has admitted that the dismissal of Mr.
16 Singh's case was due to her own inaction, she testified that because she was to receive only 40
17 percent of the contingency fee, she had only 40 percent of the responsibility for the case.
18 Respondent has evidenced a complete failure to acknowledge that she has did not meet her
19 professional obligations and responsibilities as an officer of the court and as an attorney at law
20 representing a client.

21 25. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent
22 was admitted to practice in October 1996.

23 26. Indifference to making restitution. ABA Standard 9.22(j). Respondent has made
24

1 no attempt to make restitution to Mr. Singh. In addition, she never told Mr. Singh that he had
2 a potential claim against her or that he could seek redress through her professional liability
3 coverage.

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

6 28. Personal problems. ABA Standard 9.32(c). Respondent testified as to her
7 difficult financial circumstances during the time that she committed the misconduct. However
8 such personal problems do not justify her conduct in handling Mr. Singh's case and are given
9 minimal weight as a mitigating factor.

10 **C. Restitution**

11 29. The Associations' recommendation that Respondent be required to pay restitution
12 in the amount of \$15,000 is reasonable and appropriate.

13 30. Respondent failed to communicate a \$20,000 settlement offer to Mr. Singh. The
14 evidence that Mr. Singh would have settled the case if Respondent had explained her
15 assessment of the case to him is credible.

16 31. There were approximately \$5,000 in liens and/or unpaid bills that would have
17 reduced the \$20,000 settlement amount.

18 32. Respondent testified that she would have waived her portion of the contingency
19 fee, but argues that Mr. Bharti would still have received 60 percent of the fee and that this
20 would have reduced Mr. Singh's net recovery. However, it is improbable that Mr. Bharti
21 would have been entitled to any compensation from Mr. Singh's settlement because of his
22 lack of participation in the lawsuit.

23 33. Respondent is directed to pay restitution to Mr. Singh in the amount of \$15,000.
24

1 **D. Practice Monitor**

2 34. Respondent suggests, and the Association agrees, that a practice monitor be named
3 to monitor Respondent's practice.

4 35. It is appropriate that a practice monitor be appointed to monitor the Respondent's
5 practice at the conclusion of her suspension to help insure that Respondent properly meets her
6 duties and responsibilities to clients.

7 **II. RECOMMENDATION**

8 36. Based on the ABA Standards and the applicable aggravating and mitigating
9 factors, the Hearing Officer recommends that Respondent be suspended for twenty-four (24)
10 months.

11 37. Respondent must pay Mr. Singh \$15,000, together with statutory interest from the
12 date of this document until paid in full, in restitution prior to reinstatement in accordance with
13 ELC 13.7(b).

14 38. Respondent's practice should be monitored by a practice monitor for a period of
15 eighteen (18) months following reinstatement.

16 39. Respondent must propose to disciplinary counsel, in writing, the name of a practice
17 monitor not less than sixty (60) days prior to her reinstatement to the practice of law. The
18 monitor must be a WSBA member who has no record of public discipline and no public
19 disciplinary proceedings pending. If Respondent and disciplinary counsel are unable to agree
20 on a practice monitor, Respondent and/or disciplinary counsel may ask the Chair of the
21 Disciplinary Board to resolve the dispute.

22 40. The practice monitor shall be in place prior to Respondent's reinstatement.

23 41. Respondent must meet in person at least once a month with her practice monitor.
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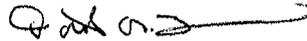
1 At each meeting, the monitor should discuss with Respondent each of Respondent's client
2 matters, the status of each client's case, and Respondent's intended course of action.

3 42. The monitor should give disciplinary counsel reports as to Respondent's
4 performance on a quarterly basis, or as otherwise requested by disciplinary counsel.

5 43. If the monitor believes that Respondent is not complying with any of her ethical
6 duties under the RPC, the monitor should promptly report that to the disciplinary counsel.

7 44. Respondent is responsible for paying any fees and expenses charged by the
8 practice monitor for supervision.

9 Dated this 18th day of November, 2011.

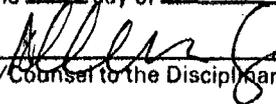
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12 David A. Thorner, WSBA No. 4783
13 Hearing Officer

14 CERTIFICATE OF SERVICE

15 I certify that I caused a copy of the FOI, COLLE: Sanctions & Recommendation
16 to be delivered to the Office of Disciplinary Counsel and to be mailed
to Maria Szarzynski, Respondent/ Respondent's Counsel
at 10000 Ave. S. #26, Burien, WA 98148, by Certified/first class mail,
17 postage prepaid on the 21st day of NOVEMBER, 2011

15 SDC:
16 John Graffe
925 4th Ave. #2000
17 Seattle, WA 98104

18 
19 Clerk/Counsel to the Disciplinary Board

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3 **Certificate of Service**

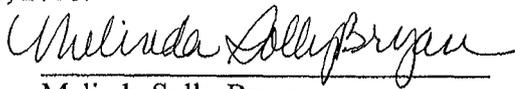
4 I certify that I caused a copy of the foregoing Proposed Findings of Fact and Conclusions Re: Sanctions dated November 18, 2011 to be mailed to:

5 Marja M. Starczewski VIA Certified Mail, postage prepaid
10 Cove Ave S # 28
6 Wenatchee, WA 98801-2578

7 Ms. Francesca D'Angelo VIA Regular Mail, postage prepaid
Disciplinary Counsel
8 Washington State Bar Association
1325 - 4th Avenue, Ste. 600
9 Seattle, WA 98101-2539

10 Mr. John C. Graffe VIA Regular Mail, postage prepaid
Johnson, Graffe, Keay, Moniz & Wick, LLP
11 925 Fourth Ave., Suite 2300
12 Seattle, WA 98104-1157

13 Dated this 18th day of November, 2011.

14 
15 Melinda Solly-Bryan
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FILED

MAY 09 2012

RECEIVED BY E-MAIL
BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

MARJA M. STADOCZEWSKY,

Lawyer (WSBA No. 36111)

Proceeding No. 10#00086

DISCIPLINARY BOARD ORDER
AMENDING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its May 4, 2012 meeting, on automatic review of Hearing Officer David A. Thomas's July 1, 2011 Findings of Fact and Conclusions of Law as to RPC Violations and November 13, 2011 Findings of Fact and Conclusions of Law Re: Sanctions and Recommendation, following a bifurcated hearing.

Having reviewed the materials submitted by the parties, heard oral argument, and considered the applicable case law and rules;

IT IS HEREBY ORDERED THAT the Hearing Officer's decision is adopted with the following amendment: The length of time for the practice monitor is increased from 18 months to 24 months following reinstatement.¹

Dated this 9th day of May, 2012.


Thomas A. Waite
Disciplinary Board Chair

¹ The vote on this matter was 11-1 with one recusal. Those voting in the majority were Brown, Butterworth, Coy, Evans, Harbinger, Kato, Lombardi, Nolland, Opurs, Trippett and Waite. Wilton would have approved the Hearing Officer's decision. Carrington recused from participation in this matter, was not present for deliberations and did not vote.

FILED

JAN 24 2011

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)	
)	Public File No. 10#00086
MARJA M. STARCZEWSKI)	
Lawyer)	
)	ORDER SETTING HEARING DATES
WSBA No. 26111)	AND ESTABLISHING PREHEARING
)	DEADLINES

This matter having come before the undersigned Hearing Officer by telephone conference call on January 21, 2011, with Respondent appearing Pro Se, and Francesca D'Angelo, counsel for the Association appearing. The parties stipulated to bifurcated hearings pursuant to ELC10.15.

IT IS ORDERED that the violation hearing is set and the parties must comply with prehearing deadlines as follows:

1. **Production of Respondent's relevant files and records.** Respondent shall produce all paper and electronic files and records that she has pertaining to her representation of Rajinder Singh in conjunction with a vehicular accident that occurred on May 5, 2004 in King County to counsel for the Association which shall either be delivered or mailed as confirmed by postmark no later than February 4, 2011. Delivery shall be to the Association office located at 1325 Fourth Avenue, 6th Floor, Seattle, WA 98101-2539.
2. **Witnesses.** A list of intended witnesses, including addresses and phone numbers, must be filed and served by the Association and Respondent by March 28, 2011.
3. **Discovery.** Discovery cut-off is April 11, 2011.

ORDER SETTING HEARING DATES
AND ESTABLISHING PREHEARING
DEADLINES-1

Ap. 4

DM-1

5. **Exhibits.** A list of proposed exhibits must be filed and served by May 2, 2011.

6. **Service of Exhibits/Summary.** Copies of proposed exhibits and a summary of the expected testimony of each witness must be served on the opposing counsel by May 9, 2011.

7. **Objections.** Objections to proposed exhibits, including grounds, must be exchanged by May 16, 2011.

8. **Briefs.** Any hearing brief must be served and filed by May 16, 2011. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the Hearing Officer before the hearing.

9. **Prehearing status conference.** The Hearing Officer will advise counsel whether a prehearing status conference will be scheduled and, if so, the date and time thereof which will be held by telephone.

10. **Violation hearing.** The violation hearing is set for Tuesday, May 24, 2011 at 9:00 a.m. P.D.T., and each day thereafter not to go beyond May 26, 2011, until recessed by the Hearing Officer, at the offices of the Washington State Bar Association, 1325-4th Avenue, Ste. 600, Seattle, Washington.

IT IS FURTHER ORDERED that should a sanction hearing be necessary, it will be held on Tuesday, June 28, 2011 at 9:00 a.m. P.D.T. at the said offices of the Washington State Bar Association.

DATED this 21st day of January, 2011



David A. Thorner, WSBA 47893
Hearing Officer

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,

Lawyer (Bar No. 26111)

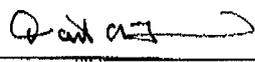
Proceeding No. 10#00086

POST- HEARING ORDER

A violation hearing was held in this matter on May 24 and 25, 2011 at the offices of the Washington State Bar Association. The hearing officer makes the following order regarding post-hearing deadlines:

1. The Association shall submit proposed Findings of Fact and Conclusions of Law by July 1, 2011.
2. The Respondent may submit proposed Findings of Fact and Conclusions of Law or objections to the Association's proposed Findings of Fact and Conclusions of Law by July 8, 2011.
3. The current sanction hearing date of Tuesday June 28, 2011 is stricken. A sanction hearing, if necessary, will be scheduled at a later date.

DATED this 26th day of May, 2011.



David A. Thorner, WSBA 4783
Hearing Officer

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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)	
)	Public File No. 10#00086
MARJA M. STARCZEWSKI,)	
)	
Lawyer (Bar No. 26111)	CONSOLIDATED ORDER ON
)	POST-VIOLATION HEARING MOTIONS

On the 25th day of August, 2011, a telephonic hearing was held in this case. Respondent Marja M. Starczewski appeared personally pro se. Special Disciplinary Counsel John C. Graffe and Disciplinary Counsel Francesca D'Angelo appeared for the Association. The Hearing Officer fully considered the Respondent's Motion to Re-Open Evidence for One Additional Exhibit, the Association's Motion to Redact Admitted Exhibits and for Protective Order, Respondent's Objection to WSBA Proposed Redaction of Singh Cell Phone Number on Exh R-48, Respondent's Amended Objections to Proposed Findings/Conclusions and annexed pages of the transcript of the Violation Hearing, the Association's Response to Respondent's Objections to the Hearing Officers Findings of Fact and Conclusions of Law, and Respondent's Reply and Support of Objections to Proposed Findings/Conclusions.

Accordingly, IT IS HEREBY ORDERED AS FOLLOWS:

- Respondent's Motion to Re-Open Evidence for Additional Exhibit, specifically the May 2000 article entitled "Primer on the Status Conference/Non-

CONSOLIDATION ORDER ON
POST-VIOLATION HEARING
MOTIONS-1

WASHINGTON STATE BAR ASSOCIATION
1325 4TH Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

Ap. 6

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1 Compliance Calendar” published in the May, 2000 issue of the King County Bar
2 Association Bar Bulletin, is hereby granted.

3 2. The Association’s Motion to Redact Admitted Exhibits is hereby granted.
4 Under ELC 3.2, the following hearing exhibits shall be redacted to protect private and
5 personal information: Association’s Exhibit Nos. A-2 and A-18, and Respondent’s Exhibit
6 Nos. R-2, R-7, R-39, R-46, and R-48. The Association is directed to redact all telephone
7 numbers and social security numbers from the aforementioned exhibits before filing them
8 with the Disciplinary Board.

9 3. The Association’s Motion for a Protective Order for the original exhibits is
10 granted. The Association shall file the original unredacted documents under seal.

11 4. Respondent’s Objection to Redaction of the Singh cell Phone number on
12 Exhibit No. R-48 is denied.

13 5. Respondent’s Amended Objections to Proposed Findings/Conclusions are
14 denied. The Findings of Fact and Conclusions of Law as to RPC violations entered on the
15 1st day of July, 2011 are hereby reaffirmed.

16 6. The Sanction Hearing is set for Thursday, October 13, 2011 at 9:00 a.m.
17 P.D.T., and if necessary, the next day Friday, October 14, 2011, until recessed by the
18 Hearing Officer at the offices of the Washington State Bar Association, 1325 – 4th Avenue,
19 Ste. 600, Seattle, WA.

20 7. The Association shall file and serve a disclosure of the sanctions to be
21 requested at the hearing by September 2, 2011.

22 8. Respondent shall file and serve her list of witnesses and proposed exhibits,
23 copies of all proposed exhibits, together with a brief providing the legal authorities that
24 Respondent intends to rely upon at the Sanction Hearing, by September 16, 2011.

25 9. The Association shall file and serve their list of witnesses and proposed
26 exhibits, copies of all proposed exhibits, together with a brief providing the legal authorities
27 that the Association intends to rely upon at the Sanction Hearing, by September 26, 2011.

28 10. Respondent shall file and serve any rebuttal information, including but not
29 limited to, additional witnesses and/or exhibits and briefing, by October 3, 2011.

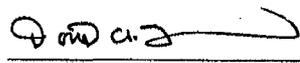
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11. Any objections that either party has to the other party's exhibits and/or witnesses shall be submitted in writing for resolution without oral argument. Such objections shall be filed and served within 4 (four) business days of receipt of the other party's disclosure information, and the adverse party shall file and serve their response in writing within 3 (three) business days of receiving the other party's written objections.

12. All briefing shall address the applicable ABA Standards for Imposing Lawyer Sanctions and the applicable reported case law in Washington State.

DATED at Yakima, Washington this 29th day of August, 2011.



David A. Thorner, WSBA 4783
Hearing Officer

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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)	
)	Public File No. 10#00086
MARJA M. STARCZEWSKI)	
Lawyer)	
)	PRE-SANCTION HEARING ORDER
WSBA No. 26111)	
)	

This Order is hereby entered pursuant to the Consolidated Order on Post-Violation Hearing Motions dated August 29, 2011. Subsequent thereto, the Hearing Officer has reviewed the Association's Disclosure of Sanctions to be Requested at Violation Hearing, Respondent's Brief for Sanctions Hearing, ELC 10.13(c) Demand for Documents, to Respondent, Association's Objections to Respondent's Exhibits, Response to Respondent's Brief Re Sanctions Hearing, Association's Designation of Exhibits for Sanction Hearing, Association's Designation of Witnesses for Sanction Hearing, and Respondent's Objection to Demand for Documents. Having reviewed the foregoing, and being otherwise fully advised in the premises,

IT IS FURTHER ORDERED AS FOLLOWS:

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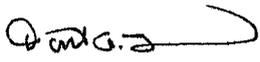
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1. Respondent shall make a good faith effort to recall and thereafter locate orders of trial courts, if any, where she has been an attorney of record where she was sanctioned or fined by a trial court. She is directed to bring any such documents and records to the Sanction Hearing scheduled for October 13, 2011.

2. In that Respondent has failed to provide a list of witnesses or proposed exhibits in compliance with the said Consolidated Order, Respondent shall be precluded from calling any witnesses, other than herself, or submit exhibits at the forthcoming Sanction Hearing.

DATED this 6th day of October, 2011



David A. Thorner, WSBA 47893
Hearing Officer

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DISCIPLINARY BOARD

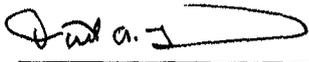
BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)
)
MARJA M. STARCZEWSKI) Public File No. 10#00086
)
Lawyer)
)
WSBA No. 26111) PRE-SANCTION HEARING ORDER
)

The Hearing Officer having received the Association's Objections to Respondent's
Rebuttal Exhibits dated October 6, 2011, on this date, and having reviewed the same, and
being otherwise fully advised in the premises; NOW, THEREFORE,

IT IS HEREBY ORDERED that the Association's Objections to Respondent's
Rebuttal Exhibits are hereby sustained and said Rebuttal Exhibits will not be admitted into
evidence at the Sanction Hearing scheduled to commence on October 13, 2011.

DATED this 10th day of October, 2011


David A. Thorner, WSBA 47893
Hearing Officer

dbl

BEFORE THE DISCIPLINARY BOARD _____
OF THE WASHINGTON STATE BAR ASSOCIATION RECEIVED BY E-MAIL

In re: Marja M. Starczewski Lawyer (Bar No 26111)	No 10 #00086 Respondent's Petition for Interim review of order on Rule 10.13 Demand for Documents, and Order Limiting Rebuttal Evidence.
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Petition for Interim review of order on Rule 10.13 Demand for Documents, and Order Limiting Rebuttal Evidence

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THE BAR MISUSES RULE 10.13, ORDERS, 7

RELEVANCE OF OTHER COURT ORDERS..... 10

LIKELIHOOD OF PREVAILING ON APPEAL..... 12

F. CONCLUSION, RELIEF SOUGHT:..... 15

Appendix:

1. Order of October 6, 2011
2. Order of October 10, 2011
3. Post-hearing Order – scheduling Findings due July 1, 2011 and rebuttal due July 8.
4. WSBA Letter June 30, 2011, enclosing proposed findings of fact and conclusions of law.
5. July 1, 2011 letter of the Hearing Officer, THorner, filing the Findings of Fact and Conclusions of Law.
6. Email from Respondent, enclosing the post-hearing order, and objecting to the early-filed and signed Findings.
7. ELC task Force Recommendations as to ELC 10.13(c).

A. IDENTITY OF PETITIONER:

Petitioner, Marja Starczewski, respondent herein, seeks relief from two interlocutory orders of the Hearing Officer.

The Orders were dated October 6, 2011 and October 10, 2011, the hearing is tomorrow, October 13, 2011.

B. DECISION:

(1). Interlocutory Orders of the Hearing Officer, as follows;

Order of October 6, 2011, requiring bringing orders in unrelated cases, not relevant to the current proceedings, where I was “sanctioned or fined by a trial court”, yet precluding me from providing any rebuttal witnesses or exhibits to such orders;

1. Respondent shall make a good faith effort to recall and thereafter locate orders of trial courts, if any, where she has been an attorney of record Where she was sanctioned or fined by a trial court. She is directed to bring any such documents and records to the Sanction Hearing scheduled for October 13, 2011.

2. In that Respondent has failed to provide a list of witnesses or proposed exhibits in compliance with the said Consolidated Order, Respondent shall be precluded from calling any Witnesses, other than herself, or submit exhibits at the forthcoming Sanction Hearing.

(Order of October 6, 2011)

(2) Order of October 10, 2011, further limiting any rebuttal;

The Hearing Officer having received the Association’s Objections to Respondent’s Rebuttal Exhibits dated October 6, 2011, on this date, and having reviewed the same, and being otherwise fully advised in the premises; NOW,

THEREFORE,
IT IS HEREBY ORDERED that the Association's Objections to Respondent's Rebuttal Exhibits are hereby sustained and said Rebuttal Exhibits will not be admitted into evidence at the Sanction Hearing scheduled to commence on October 13, 2011

C. ISSUES PRESENTED FOR REVIEW:

1. Whether ELC 10.13(c) is being abused, when entirely new issues, unrelated documents, from unrelated cases, are being required at the hearing.
2. Whether the Respondent's due process rights are being violated, by not permitting any rebuttal at all to these new issues.
3. Whether the WSBA's burden to prove misconduct is being shifted to the Respondent.

D. STATEMENT OF THE CASE:

This is a disciplinary proceeding, that has been bifurcated for hearing. The hearing regarding fault-finding has already taken place, and the findings as proposed by the WSBA had been instantly entered,¹ without any prior announcement of any decision by the Hearing Officer, and without any prior opportunity for any rebuttal from the Respondent. Subsequent to entry of the WSBA's proposed findings, the Hearing

¹ The Proposed Findings were emailed by the WSBA on June 30, 2011, the same Findings were signed by the Hearing Officer and filed on July 1,

Officer did allow briefing to object to those findings, (but he had already signed, and filed, the Findings). In the WSBA's response in support of its Findings, the WSBA relied upon the findings, themselves, and upon a mistaken recitation of one witness's testimony from the record.

Now, the second portion of the hearing, which is the "sentencing" or disciplinary portion, is scheduled.

The original complaint was about a single client, from 2006 / 2007, and the conclusions were as follows;

“ . . .

72. Though she enclosed the May 9, 2008 order of dismissal with her letter to Mr. Singh, Respondent made no effort to explain the dismissal order to her client, who was not a fluent reader in English¹ and was unfamiliar with court proceedings.

73. Respondent's attachment of the Court's one paragraph order was insufficient to inform or explain to Mr. Singh what had happened in the case and Why the court had dismissed the action, particularly given Respondent's misrepresentations in the accompanying letter.

... .

CONCLUSIONS OF LAW

violations Analysis

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

75. Counts I is proven by a clear preponderance of the evidence. By failing to act with reasonable diligence and promptness in representing Mr. Singh and by failing to make reasonable efforts to expedite the litigation in Mr. Singh's case, Respondent violated RPC 1.3 (diligence) and RPC 3.2 (expediting litigation). ,

2011.

¹ Respondent does not speak Mr. Singh's native language. Mr. Singh's lead counsel, however, does speak his language.

76. Count II is proven by a clear preponderance of the evidence. By failing to keep Mr. Singh reasonably informed about the status of his case and by failing to explain the matter to the extent reasonably necessary to allow Mr. Singh to make informed decisions about the representation, Respondent violated RPC 1.4(a) (duty to keep the client reasonably informed and consult with client) and RPC 1.4(b) (duty to explain matter to the extent necessary to permit the client to make informed decisions).

77. Count III is proven by a clear preponderance of the evidence. By making misrepresentations to Mr. Singh regarding the reason Why the court had dismissed his case, Respondent violated RPC 8.4(c) (duty to avoid dishonesty/ deception).

SAN CTION HEARING

'78, Given the Hearing Officer's findings that the Respondent committed violations of the RPC, the Hearing Officer hereby orders a sanction hearing to be held at the offices of the Washington State Bar Association to determine the appropriate sanction under the ABA Standards."

There has been no attempt by the WSBA to show that any other case would be relevant to the above findings, There has been no indication of any other instance of either lack of diligence, violation of duty to keep the client informed (in this case, the client had another attorney, and I had been merely associated onto the case by the lead counsel), and no attempt to show any other instance of dishonesty / deception. Therefore, any other orders by other trial courts would not be relevant.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED:

Because there is little case law regarding interlocutory review by the Board, this Respondent will use the RAP rules regarding interlocutory

review by the Supreme Court, as an appropriate standard to determine if review is proper.

Review should be accepted under RAP 13.5, as follows:

Under Rule 13.5(b)(1) review may be accepted if the lower tribunal has committed an obvious error which would render further proceedings useless.

Under Rule 13.5(b)(2), review may be granted, if the lower tribunal has committed probable error, and the decision substantially alters the status quo, or substantially limits the freedom of a party to act.

Under Rule 13.5(b)(3), review may be granted, if the lower tribunal has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court (or in this case, the Board).

The Hearing Officer has misplaced the burden of proving misconduct, and has completely prevented the Respondent from putting in rebuttal evidence.

The WSBA issued a Rule 10.13¹ Demand for Documents, however, instead of seeking documents appropriate for hearing, the

¹ ELC 10.13

(c) Respondent Must Bring Requested Materials. Disciplinary counsel

WSBA is in effect reopening discovery. There had been a scheduling order in this matter, and discovery is over. I had provided everything sought by the WSBA, there had been no need for any deposition, any subpoenas, or any enforcement of discovery, as I had provided by entire client file, together with my electronic files, together with screen print-outs showing when electronic files were created.

Now, at the hearing itself, the WSBA should not be able to use the Demand for Documents as to seek new information, to put new exhibits into the record, not previously provided in accordance with scheduling orders. This is a tactic of surprise, ambush, and the trial schedule means nothing, since I have been left with no opportunity to prepare, and more importantly, no opportunity to rebut any argument that the WSBA may chose to make based upon whatever exhibits may come out of their Demand for Documents.

may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

The Bar misuses Rule 10.13, orders.

In recognition of the problems with Rule 10.13, the rule will be changed. Two changes have been proposed by the taskforce on ELC's, just reviewed by the Board of Governors, one of which would eliminate the problem caused here. I have attached the ELC Taskforce recommendations.

Although the Supreme Court has not opined on the propriety of using ELC 10.13 to enter new evidence beyond the scheduling order, the Supreme Court has indicated that the WSBA first should show that evidence could not have been obtained in the normal course of investigation, before using extraordinary measures after a hearing has been set;

As part of the investigation, disciplinary counsel has the right to issue subpoenas before filing a formal complaint. ELC 5.5. This was enough "good cause" to make disciplinary counsel's requests permissible before the hearing was set. The fact that disciplinary counsel could never acquire the requested documents was cause enough to allow a discovery request under ELC 10.11 once the hearing was set. In contrast, Scannell could point to no evidence for his assertion that disciplinary counsel's requests, which were facially relevant to ethical violations Scannell allegedly committed, were in fact a pretext and retaliatory.

In re Disciplinary Proceeding Against Scannell, 239 P.3d 332 (2010)

The ELC rules provide for an orderly form of discovery and investigation;

ELC 10.11

DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27–31 and 33 –35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Deposition Procedure.

(1) Subpoenas for depositions may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(2) For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(f) CR 16 Orders. The hearing officer may enter orders

under CR 16.

(g) Duty to Cooperate. A respondent lawyer who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer or panel may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

[Adopted effective October 1, 2002.]

In this case, I have been fully cooperative with the WSBA investigation – they did not have to ask for anything repeatedly, they did not have to take any depositions, they did not have to issue subpoenas or take enforcement measures – my files were entirely open to the WSBA for their investigation.

I have been left with no opportunity to rebut anything, as the order forecloses any witnesses, even though the exhibits that may have to be rebutted are not yet in evidence. The prior Scheduling Order of the Hearing Officer, which provided a schedule for submitting evidence by each party, to be followed by rebuttal evidence and rebuttal witnesses, is therefore being completely ignored.

On the other hand, if the WSBA is trying to show some sort of pattern, then my proposed rebuttal evidence, including commendations from the WSBA for participation in Bar Examiners, and Pro Bono service, would be relevant. These have been refused by the Hearing Officer.

" [T]he right to practice law, once acquired, is a valuable right, and ... an attorney cannot be deprived of that right except by the judgment of a court of competent [225 P.3d 207] jurisdiction, after notice and full opportunity to be heard in his own defense." *In re Discipline of Metzenbaum*, 22 Wash.2d 75, 79, 154 P.2d 602 (1944). In *Metzenbaum*, we held that a disbarment trial should have been continued at defendant attorney's request so that " he [would] not be deprived of his rights by a court of law without giving him full opportunity to present his defense" and " hear the testimony given against him by witnesses." *Id.* at 81, 154 P.2d 602.
In re Disciplinary Proceeding Against Sanai, 167 Wn.2d 740, 225 P.3d 203 (2009)

Relevance of Other Court Orders.

The court sanctions order in this case, was a sanction of \$250 for failure to timely file a Joint Status Report, and then dismissal while I was proceeding with service on one remaining defendant through the Long Arm Statute (requiring 60 days). There is no evidence of any similar orders in any other cases.

To be relevant, the evidence must be of "similar" misconduct;

"We routinely consider misconduct dating back many years as an aggravating factor where the misconduct is similar. See, e.g., *In re Disciplinary Proceeding Against VanDerbeek*, 153 Wash.2d 64, 92, 101 P.3d 88, (2004)."

In re Disciplinary Proceeding Against Van Camp, 171 Wn.2d 781, 257 P.3d 599 (2011).

There has been no showing by the WSBA that any prior relevant conduct existed, and the orders required by the Hearing Officer may include orders awarding CR 11 sanctions, which would not be relevant.

The issue of compliance with the RPCs was not before any prior Trial Courts. Cf. *In re Disciplinary Proceeding Against Whitney*, 155 Wash.2d 451, 464, 120 P.3d 550 (2005) (declining to apply a factual finding made in a superior court matter because the issue of whether the lawyer violated the RPCs was not an issue Before the superior court). Therefore, any trial court order awarding fines, penalties, sanctions, etc would need to be fully adjudicated to determine whether any conduct by me was involved, and whether RPCs were violated.

Although decisions regarding evidence are usually discretionary decisions, in this case, the Hearing Officer has not presented reasons for his decisions, and they are an abuse of discretion;

In exercising discretion . . . the hearing officer may consider the necessity of prompt disposition of the litigation; " the needs of the moving party; the possible prejudice to the adverse party; the prior history of the litigation ...; any conditions imposed in the continuances previously granted; and any other matters that have a material bearing" on the exercise of the discretion vested in the hearing officer. *Trummel v. Mitchell*, 156 Wash.2d 653, 670-71, 131 P.3d 305 (2006). A hearing officer abuses her discretion when her decision is " ' manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' " *State v. Downing*, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004)

(quoting State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971)).”
In re Disciplinary Proceeding Against Sanai, 167 Wn.2d 740, 225 P.3d 203 (2009)

Likelihood of Prevailing on Appeal.

Since the original Findings were entered without sufficient due process, I have a likelihood of prevailing in a final appeal.

Even where Findings are merely originally proposed by the WSBA, without a prior announcement of the Hearing Officer’s decision, if any, the ELC Taskforce saw that as a problem;

ELC DRAFTING TASK FORCE

Meeting Agenda

May 19, 2011

Fine-Bulmer Memo (p. 1048)

Mr. Fine summarized the “aura of unfairness” that some members of the Task Force perceived in the hearing officer asking for proposed findings without first giving a tentative ruling. Mr. Beitel offered ODC’s proposed amendments (p. 1070). Mr. Beitel said that ODC had no objection in principle, but wanted to preserve the right to present argument in the form of proposed findings. Mr. Nappi concurred with the ODC amendments, but proposed a clarifying amendment. Mr. Bulmer proposed striking “at any time” from the first sentence; Mr. Beitel accepted the proposal as a friendly amendment. Mr. Bulmer moved adoption of ODC’s proposal as amended. With none opposed, the proposed language was adopted as amended.

In this case, we have the additional impropriety, that the findings were actually signed, entered, and filed, without any opportunity for rebuttal.

This has been found to be inappropriate by certain other courts, whose opinions have persuasive reasoning, that should be followed here;

“ . . .the trial judge actively discouraged the husband from filing a proposed final judgment. However, the trial judge accepted and used the proposed final judgment submitted by the wife's attorney.

The First District in *Cole Taylor Bank v. Shannon*, 772 So.2d 546 (Fla. 1st DCA 2000), addressed a situation where the trial judge requested a proposed final judgment from only one party. In *Shannon*, the trial judge requested that only Shannon submit a proposed final judgment and subsequently adopted that judgment. *Id.* at 549. The First District approved the trial judge's actions, stating that reversal would be required only if the judgment (or a finding in the judgment) were inconsistent with an earlier pronouncement of the trial judge, if there were an appearance of impropriety, or if the record established that the final judgment did not reflect the trial judge's independent decision. *Id.* at 551. The First District went on to comment that *Cole Taylor Bank* had ample opportunity to object to Shannon's proposed final judgment or to submit its own proposed final judgment. *Id.* Unlike *Cole Taylor Bank*, the husband in this case was afforded no such opportunity.

...

While there is nothing in the record of this case to suggest that the trial judge met *ex parte* with the wife's counsel prior to submission of the proposed final judgment, the trial judge did not permit the husband an opportunity to submit his own proposed final judgment or to object to the wife's proposed final judgment. Furthermore, because the final judgment (twenty-five pages in length with six additional pages of financial exhibits incorporated by reference) was submitted by the wife's counsel and adopted verbatim without any additions, changes, or deletions so quickly thereafter (i.e., within two hours of its submission) without the trial judge having indicated on the record any findings of fact or conclusions of law, there was an appearance that the trial judge did not independently make factual findings and legal conclusions, i.e., an appearance of impropriety. In *Ross v.*

Botha, 867 So.2d 567 (Fla. 4th DCA 2003), the Fourth District has since acknowledged that such an appearance of impropriety cannot stand. In *Ross*, the Fourth District offered the following admonitions: (1) a trial judge should never request a proposed final judgment from only one party without making certain that the other side has an opportunity to comment or object; and (2) the practice of a trial judge adopting verbatim a proposed final judgment without making any modifications, additions or deletions, and without making any comments on the record prior to entry of the final judgment is frowned upon. *Ross*, 867 So.2d at 571-72.

We understand and appreciate the fact that a trial judge in these often complex and multi-issue dissolution cases can benefit from proposed findings and conclusions prepared by the parties. Such proposals can serve as a starting point and reminder of the facts and issues that should be considered and weighed by the judge in his or her own evaluation. However, such submissions cannot substitute for a thoughtful and independent analysis of the facts, issues, and law by the trial judge. When the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case. This is especially true when the judge has made no findings or conclusions on the record that would form the basis for the party's proposed final judgment. This type of proceeding is fair to neither the parties involved in a particular case nor our judicial system.

Therefore, we agree with the conclusions reached by the First District in *Shannon*, the Fifth District in *Hanson*, and the Fourth District in *Ross*. While a trial judge may request a proposed final judgment from either or both parties, the opposing party must be given an opportunity to comment or object prior to entry of an order by the court. Moreover, the better practice would be for the trial judge to make some pronouncements on the record of his or her findings and conclusions in order to give guidance for preparation of the proposed final judgment.”

Perlow v. Berg-Perlow, 29 Fla. L. Weekly S130, 875 So.2d 383, 387 - 389 (Fla. 2004).

F. Conclusion, Relief Sought:

Respondent seeks interim review, and revision of the orders of October 6th and October 10th.

Respectfully submitted this October 12, 2011

Marja Starczewski
WSBA # 26111



BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

RECEIVED BY E-MAIL

In re: Marja M. Starczewski Lawyer (Bar No 26111)	No 10 #00086 Respondent's Petition for Interim review of order on Rule 10.13 Demand for Documents, and Order Limiting Rebuttal Evidence.
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**Petition for Interim review of order on Rule 10.13 Demand for Documents, and
Order Limiting Rebuttal Evidence
Appendix:**

1. Order of October 6, 2011
2. Order of October 10, 2011
3. Post-hearing Order – scheduling Findings due July 1, 2011 and rebuttal due July 8.
4. WSBA Letter June 30, 2011, enclosing proposed findings of fact and conclusions of law.
5. July 1, 2011 letter of the Hearing Officer, Thorner, filing the Findings of Fact and Conclusions of Law.
6. Email from Respondent, enclosing the post-hearing order, and objecting to the early-filed and signed Findings.
7. ELC task Force Recommendations as to ELC 10.13(c)

Ap. 10

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)
)
MARJA M. STARCZEWSKI) Public File No. 10#00086
)
Lawyer)
)
WSBA No. 26111) PRE-SANCTION HEARING ORDER
)
)

This Order is hereby entered pursuant to the Consolidated Order on Post-Violation Hearing Motions dated August 29, 2011. Subsequent thereto, the Hearing Officer has reviewed the Association's Disclosure of Sanctions to be Requested at Violation Hearing, Respondent's Brief for Sanctions Hearing, ELC 10.13(c) Demand for Documents, to Respondent, Association's Objections to Respondent's Exhibits, Response to Respondent's Brief Re Sanctions Hearing, Association's Designation of Exhibits for Sanction Hearing, Association's Designation of Witnesses for Sanction Hearing, and Respondent's Objection to Demand for Documents. Having reviewed the foregoing, and being otherwise fully advised in the premises,

IT IS FURTHER ORDERED AS FOLLOWS:

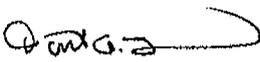
Exh 1

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1. Respondent shall make a good faith effort to recall and thereafter locate orders of trial courts, if any, where she has been an attorney of record where she was sanctioned or fined by a trial court. She is directed to bring any such documents and records to the Sanction Hearing scheduled for October 13, 2011.

2. In that Respondent has failed to provide a list of witnesses or proposed exhibits in compliance with the said Consolidated Order, Respondent shall be precluded from calling any witnesses, other than herself, or submit exhibits at the forthcoming Sanction Hearing.

DATED this 6th day of October, 2011



David A. Thorner, WSBA 47893
Hearing Officer

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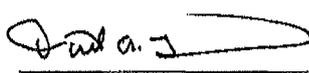
BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:)
MARJA M. STARCZEWSKI) Public File No. 10#00086
Lawyer)
WSBA No. 26111) PRE-SANCTION HEARING ORDER
)

The Hearing Officer having received the Association's Objections to Respondent's
Rebuttal Exhibits dated October 6, 2011, on this date, and having reviewed the same, and
being otherwise fully advised in the premises; NOW, THEREFORE,

IT IS HEREBY ORDERED that the Association's Objections to Respondent's
Rebuttal Exhibits are hereby sustained and said Rebuttal Exhibits will not be admitted into
evidence at the Sanction Hearing scheduled to commence on October 13, 2011.

DATED this 10th day of October, 2011


David A. Thorner, WSBA 47893
Hearing Officer

Exh 2

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,

Lawyer (Bar No. 26111)

Proceeding No. 10#00086

POST- HEARING ORDER.

A violation hearing was held in this matter on May 24 and 25, 2011 at the offices of the Washington State Bar Association. The hearing officer makes the following order regarding post-hearing deadlines:

1. The Association shall submit proposed Findings of Fact and Conclusions of Law by July 1, 2011.
2. The Respondent may submit proposed Findings of Fact and Conclusions of Law or objections to the Association's proposed Findings of Fact and Conclusions of Law by July 8, 2011.
3. The current sanction hearing date of Tuesday June 28, 2011 is stricken. A sanction hearing, if necessary, will be scheduled at a later date.

DATED this 26th day of May, 2011.

David A. Thorner, WSBA 4783
Hearing Officer



WSBA

OFFICE OF DISCIPLINARY COUNSEL

FILED

JUN 30 2011

DISCIPLINARY BOARD

Francesca D'Angelo
Disciplinary Counsel

direct line: (206) 727-8294

fax: (206) 727-8325

June 30, 2011

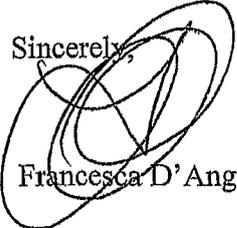
David A. Thorner
Hearing Officer
101 S 12th Ave
PO Box 1410
Yakima, WA 98907-1410

Re: In re Marja M. Starczewski
Public No. 10#00086

Dear Mr. Thorner:

Enclosed please find the Association's Proposed Findings of Fact and Conclusions of Law.

Sincerely,



Francesca D'Angelo

cc: Marja Starczewski via email and certified mail
John Graffe via email
Public file

Exh 4

THORNER, KENNEDY & GANO P.S.

ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
ESTABLISHED IN 1977

THE CHESTNUT LEGAL BUILDING
101 SOUTH TWELFTH AVENUE
MAILING ADDRESS: P.O. BOX 1410
YAKIMA, WASHINGTON 98907-1410

DAVID A. THORNER*
W. JAMES KENNEDY
WADE E. GANO
BRYAN G. EVENSON
SHAWN M. MURPHY
MICHAEL J. THORNER
MEGAN K. MURPHY

*ALSO ADMITTED IN IDAHO

JOHN K. JOHNSEN
(1946-1993)

BRUCE P. HANSON
(1922-2006)

TELEPHONE (509) 576-1400
FAX (509) 453-6874

OUR FILE NUMBER

July 1, 2011

Via email allisons@wsba.org and US Mail

Ms. Allison Sato
Clerk to the Disciplinary Board
Washington State Bar Association
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

In re: Marja Starczewski, WSBA #26111
Proceeding No. 06#00087

Dear Ms. Sato:

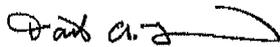
Enclosed for filing please find the original Findings of Fact and Conclusions of Law as to RPC Violations in the above matter.

My legal assistant Melinda Solly-Bryan will be contacting Mr. Graffe, Ms. D'Angelo and Ms. Starczewski to schedule a date for the sanction hearing herein.

If you have any questions, please contact me.

Thank you for your consideration.

Very truly yours,



David A. Thorner
DAT:msb

Enclosure

cc: Ms. Francesca D'Angelo, (via email and regular mail w/encl.)
Mr. John Graffe, (via email and regular mail w/encl.)
Ms. Marja Starczewski, (via email and regular mail w/encl.)
Mr. Joseph Nappi, Jr., Chief Hearing Officer (via email and regular mail w/encl.)

Exh 5



Marja Starczewski <marjalaw@gmail.com>

WSBA - Starczewski, Marja

Marja Starczewski <marjalaw@gmail.com>

Fri, Jul 1, 2011 at 4:19 PM

To: Melinda Solly-Bryan <melinda@tkglawfirm.com>

Cc: Allison Sato <Allisons@wsba.org>, Francesca D'Angelo <Francescad@wsba.org>, John Graffe <graffej@jgkmw.com>, Joe Nappi <jnappi@ewinganderson.com>

Per the attached prior "post-hearing order", I was to have until July 8th to object to proposed findings. What happened to that opportunity?

[Quoted text hidden]

--

Sincerely;

Marja Starczewski
Attorney
10 S. Cove Ave # 28
Wenatchee, WA 98801

(509) 884-6545

Fax: (206) 339-4517

Cell: (206) 227-7703



Post Hearing Order..5.26.11.pdf

42K

Exh 6

Memo

To: ELC Drafting Task Force
From: ODC
Date: May 1, 2011
RE: ODC Alternative Revision of ELC 10.13(c)

Proposal: Previously, the Task Force approved a recommendation to amend ELC 10.13(c) as follows:

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these rules. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

While seemingly innocuous, this change will actually result in major changes in the approach to disciplinary hearings. By limiting the provision to materials previously requested, the amount of prehearing discovery will substantially increase, leading to proceedings that are ever more expensive for both sides. We believe this issue should be given more consideration than the brief discussion had when the issue was brought up at the prior meeting.

We have listened to the concerns expressed about the provision being too harsh and too last-minute. We are proposing an alternative provision that extends the time for requesting the materials from 3 days to 20 days, and allows the respondent to seek relief from the hearing officer if the request is unreasonable. We also propose that noncompliance be a matter to be considered by the hearing officer rather grounds for a separate disciplinary proceeding.

Draft Rule Proposal:

ELC 10.13 DISCIPLINARY HEARING

....
(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least ~~three~~ twenty days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things. . ~~The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline~~ may result in the hearing officer drawing adverse inferences as to the failure to produce the materials. If requested no later than ten days prior to the hearing, respondent may seek relief from the hearing officer from compliance with the request based on the requested materials not being relevant to the issues of the hearing, the request being unduly burdensome, or any other basis for objection had the request been made as part of a discovery request.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Sep 18, 2012, 4:36 pm
BY RONALD R. CARPENTER
CLERK

FILED

RECEIVED BY E-MAIL

OCT 17 2011

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,

Lawyer (WSBA No. 26111)

Proceeding No. 10#00086

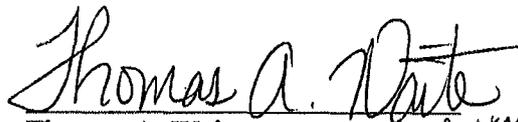
CHAIR ORDER DENYING BOARD
REVIEW OF RESPONDENT'S
PETITION FOR INTERIM REVIEW

This matter came before the Disciplinary Board Chair on the Respondent's October 12, 2011 Petition for Interim Review of Order on Rule 10.13 Demand for Documents, and Order Limiting Rebuttal Evidence.

Having considered the Motion with supporting documents, including the hearing officer's orders of October 6 and 10, 2011 Pre-Sanction Hearing Orders and the May 26, 2011 Post-Hearing Order; the applicable rules and caselaw;

IT IS ORDERED that interim review is not necessary or appropriate and will not serve the ends of justice. The hearing should proceed today.

Dated this 13th day of October, 2011


Thomas A. Waite
Disciplinary Board Chair

Ap 11

Disciplinary Board Chair Order Denying Board
Interim Review

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue - Suite 600
Seattle, WA 98101-2539
(206) 727-8207



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2
3 BEFORE THE DISCIPLINARY BOARD OF THE
4 WASHINGTON STATE BAR ASSOCIATION

5 NO. 10#00086.

6 In re

Objection to Cost Bill, and Alternative
Motion for Extension of Time for Costs

7 Marja Starczewski,

8 Lawyer (Bar No. 26111).

9
10 Marja Starczewski, Respondent herein, hereby objects to the cost bill filed by the
11 WSBA, of over \$4,000, on the grounds listed below. In the alternative, Respondent
12 requests more time to pay the costs assessed. Respondent has no funds with which to
13 pay these costs. Respondents' finances were an issue in the Hearing.

14 Grounds for Objection;

15
16 1. WSBA should not charge for "service" by certified mail, as the Respondent has
17 repeatedly requested Email and/or fax service of all documents. The WSBA persisting
18 on sending material by certified mail only results in delay of several days, particularly if
19 Respondent is in Seattle and not in Wenatchee to pick up mail.

20
21 2. The Hearing Officer and/or Board would have had discretion to lower the
22 amount of costs, however, WSBA made no request for costs until after the conclusion of
23 all proceedings before the Hearing Officer and Board.

24
25 3. When the Hearing Officer set a "restitution" amount of \$15,000, he had not
26 been informed by the WSBA that an additional \$4,000 in costs would be sought. If the
27 costs had been before the Hearing Officer, he may have taken that into consideration in

28 Ap. 12

1 setting the arbitrary and unprecedented "restitution" amount. Particularly as no
2 restitution had ever been ordered by the WSBA in similar circumstances.

3 4. Costs have not been set or decided by the Hearing Officer or the Board.
4

5 DATED this 31st day of May, 2012.
6

7 s/ Marja Starczewski
8 Marja Starczewski
9 WSBA # 26111
10 marjalaw@gmail.com
11 Fax: 206-339-4517
12 10 Cove Ave S. Apt 28
13 Wenatchee, WA 98801
14 (509) 884-6545
15 cell: (206) 227-7703
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FILED
JUN 07 2012
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MARJA M. STARCZEWSKI,
Lawyer (Bar No. 36111).

Public No. 10/00086

ASSOCIATION'S REPLY TO
RESPONDENT'S OBJECTION TO
ASSESSMENT OF COSTS AND
EXPENSES

The Washington State Bar Association (Association) filed a cost statement in this matter under Rule 13.9(d) of the Rules for Enforcement of Lawyer Conduct (RLELC) following a hearing and Disciplinary Board review that resulted in a recommendation that Respondent be suspended from the practice of law for two years. The Association sought assessment against Respondent of costs and expenses totaling \$4,467.78.

Respondent filed an "Objection to Cost Bill", and Alternative Motion for Extension of Time for Costs," raising two objections to assessment of costs in this matter:

1. the Association should not charge for certified mail services because she requested email services of documents; and
2. the Association acted improperly in not raising the issue of costs before the hearing officer and/or the Disciplinary Board.

Bar File (BF) 104. The Chair should assess the full amount sought by the Association.

Ap. 13

1 1. Respondent Was Charged for Personal Service of the Formal Complaint as Required
2 by the ELC, Not for Certified Mail Service.

3 The Association seeks assessment of \$225.50 to reimburse the costs of personal service
4 on Respondent, not for sending her pleadings by certified mail. Attached as Exhibit A is a copy
5 of an Affidavit of Service showing that the Association was billed \$222.50 by Seattle Legal
6 Messenger Services, LLC, for personal service of the Formal Complaint and Notice to Answer
7 on Respondent in Wenatchee, Washington. Respondent objects to being charged for service by
8 certified mail, but apparently misunderstands the source of this cost. BF 104 at 1.

9 Once a formal complaint is filed, the Association is required to personally serve it on the
10 respondent. ELC 10 3(5)(2). If the respondent is found in Washington, personal service is
11 accomplished in the manner required for personal service of a summons in a civil action in the
12 superior court, i.e., by delivering a copy to the defendant/respondent personally. ELC
13 4 1(3)(3)(A); Rule 4(d)(2) of the Superior Court Civil Rules (CR); RCW 4 28 020(15). That is
14 what happened here. In attempt to avoid the costs of personal service, the Association mailed
15 Respondent courtesy copies of the Formal Complaint, Notice to Answer, and an
16 Acknowledgment of Service on October 25, 2010, but Respondent did not return the
17 Acknowledgment. Had she done so, personal service would not have been necessary. A copy
18 of the Association's October 25, 2010 letter is attached as Exhibit B. The full cost of personal
19 service on Respondent should be assessed against her.

20 2. ELC 13 3(d) Controlled the Timing of When the Association Sought Assessment of
21 Costs and Expenses in this Matter.

22 Respondent objects to assessment of any costs on the ground that the issue should have
23 been raised before either the hearing officer or the full Disciplinary Board on review, or both,
24 because she claims they would have had discretion to lower the amount sought and the amount
sought may have affected the decision to order restitution to Respondent's client. BF 104 at 1-

1 2. Respondent is wrong. The ELC controlled the timing of the filing of the Association's
2 Statement of Costs and Expenses.

3 Under ELC 13.9, disciplinary counsel must file a statement of costs and expenses within
4 20 days of the filing and service of a notice of appeal from a Board decision. ELC 13.9(3)(1).
5 Here, Respondent filed her Notice of Appeal to Supreme Court on May 11, 2012, thereby
6 starting the 20 day clock. BF 101. The Association then filed its Statement of Costs and
7 Expenses on May 21, 2012, BF 103, 10 days later and in compliance with the rule. The rule
8 does not provide for prior consideration of the amount of costs and expenses to be assessed.
9 And further, prior to Respondent filing her notice of appeal, the amount of expenses to be
10 sought was uncertain because the rule provides for assessment of different amounts depending
11 on the procedural posture of the matter. ELC 13.9(6). Once Respondent filed a notice of appeal
12 from the Disciplinary Board's decision, the amount of expenses to be assessed became \$3,000.
13 ELC 13.9(5). Since Respondent had no right to have the hearing officer or the Board
14 consider the issue of costs prior to this, and since the Association complied with ELC 13.9, the
15 Chair should find that there was no impropriety and assess the full amount of costs and
16 expenses sought by the Association.

17 3. Disciplinary Counsel has Discretion in Whether to Enter into a Payment Plan

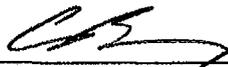
18 Respondent moves the Chair to grant her more time to pay costs. BF 104 at 1. This
19 request is premature. While the Chair is required to enter a cost order after this reply is filed,
20 ELC 13.9(2), the Supreme Court will be the body that reviews the Chair's decision and
21 ultimately assesses costs and expenses against Respondent if it imposes a disciplinary sanction.
22 ELC 13.9(1); ELC 13.9(5); In re Disciplinary Proceedings Against Vanderheek, 153 Wn.2d
23 64, 99 s. 32, 101 P.3d 88 (2004). In the event that happens, disciplinary counsel has discretion
24 to enter into a payment plan with Respondent if she is able to demonstrate inability to pay

1 assessed costs and expenses at that time. ELC 13 9(1)(3). Any adverse decision by disciplinary /
2 counsel regarding a payment plan may be reviewed by the Chair. ELC 13 9(1)(3)(B). But this
3 issue is not ripe for decision now. As a result, the Chair should either deny Respondent's
4 motion for more time or indicate that the motion is not now ripe for consideration.

5 4. Conclusion

6 The Chair should enter an order assessing costs and expenses against Respondent in the
7 amount of \$4,667.78. The Chair should either deny or refuse to consider Respondent's
8 premature motion for additional time to pay the costs and expenses.

9
10 Dated this 21st day of June, 2012.

11
12 
13 M. Craig Bray, Bar No. 20821
Disciplinary Counsel

14
15
16 Certificate of Service

17 I certify that I caused a copy of the foregoing Association's Reply to Respondent's
18 Objection to Assessment of Costs and Expenses dated April 9, 2012 to be mailed to Respondent
at 10 Court Ave. S., Apt. 28, Wenatchee, WA 98801, by certified mail, postage prepaid, on the
19 1st day of June, 2012.

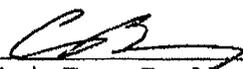
20 
21 M. Craig Bray, Bar No. 20821
Disciplinary Counsel

EXHIBIT A

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In Part:

Marja M. Starzewski,
Lawyer (Bar No. 26111).

WSBA File No. 10#00086

AFFIDAVIT OF SERVICE

State of Washington)
County of King S/S)

The undersigned, being first duly sworn, on oath deposes and says:

That the undersigned is now and at all times mentioned herein was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness therein.

That on November 7, 2010, at 7:38 PM, at the address of 10 Cope Avenue South, #22, Wenatchee, Washington, affiant duly served Formal Complaint and Notice to Answer and Notice of Default Procedure in the above entitled action upon Marja M. Starzewski by then and there personally delivering true and correct copies thereof into the hands of and leaving same with Marja M. Starzewski, (45, white, female, 5' 8", heavy set, brown hair) married lawyer.

		Each	Total
Service	1	\$15.00	\$15.00
Mileage/Trip	1	\$100.50	\$100.50
Affidavit	1	\$15.00	\$15.00
Miscellaneous		\$0.00	\$0.00
Miscellaneous		\$0.00	\$0.00
			\$230.50



K. Benzel
King County Process Server #0402730
Subscriber and sworn to me this
10th day of November, 2010

Peter A. Valente - Notary Public in and for the
State of Washington, residing at Seattle
Commission expires June 7, 2013

SEATTLE LEGAL MESSENGER SERVICE, LLC
711 5TH AVENUE NORTH SUITE 2000
SEATTLE, WA 98109
(206) 443-0225

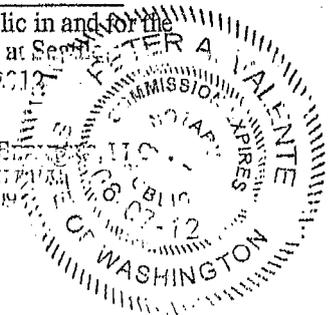


EXHIBIT B



WSEBA

OFFICE OF DISCIPLINARY COUNSEL

Francesca D'Angelo
Disciplinary Counsel

direct line: (206) 727-8224
fax: (206) 727-8225

October 25, 2010

Marja M. Starczewski
Law Office of Marja Starczewski PLLC
10 Olive Ave S # 28
Washelli, WA 98801 2573 United States

Re: In re Marja M. Starczewski
Public No. 10#00026

Dear Mr. Starczewski:

Enclosed are copies of the Formal Complaint and Notice to Answer and Notice of Default Procedure filed with the Association today. Also enclosed is an original Acknowledgment of Service.

We send these materials to you as a courtesy, to avoid the necessity for personal service. If you return the Acknowledgment of Service to this office within ten days of the date of this letter we will not send the pleadings out for service of process. The Acknowledgment includes a provision for waiver of the requirement of Rule 4.1 of the Rules for Enforcement of Lawyer Conduct (ELC) that all service by mail be by certified mail. If you waive the certified mail requirement, the costs of the disciplinary process will be less. If you do not waive the certified mail requirement, all service must be by certified mail.

The proceedings instituted by this Formal Complaint are governed by the ELC, and you should familiarize yourself with these rules, which may be found in any set of Washington court rules. Note that ELC 4.2 requires you to send originals of any documents for filing to the Bar Association, with copies to me and to the hearing officer. Original documents should be sent to the Clerk to the Disciplinary Board, with proof of service:

Allison Sato, Clerk to the Disciplinary Board
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101 2539

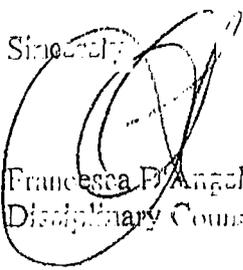
Marja M. Starczewski

October 25, 2010

Page 2

Sometimes the parties resolve the complaint without the necessity of a hearing, through stipulation under ELC 9.1. Please contact me if you wish to discuss a stipulation, or any other matter.

Sincerely,



Francesca P. Angelo
Disciplinary Counsel

FILED

JUL 19 2012

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

MARIA M. STARCZEWSKI,
Lawyer (WSBA No. 26111).

Proceeding No. 12-00086

ORDER ASSESSING COSTS AND
EXPENSES

The Washington State Bar Association filed its Statement of Costs and Expenses in this matter on May 21, 2012, and the Clerk served the statement effective that day. Respondent Maria M. Starczewski filed objections to the Cost Statement and a motion for additional time to make payments on May 31, 2012, and the Association replied on June 6, 2012. The Chair has considered the records and pleadings in this matter. It is hereby ORDERED THAT:

It is appropriate to assess costs and expenses against Respondent at this time under Rule 13.5(c) of the Rules for Enforcement of Lawyer Conduct (ELC). Costs and expenses are assessed against Respondent in the amount of \$4,467.78.

Respondent's motion for additional time to pay costs and expenses is premature and is denied on that ground. Respondent may in the future seek, and if Respondent's circumstances remain unchanged and the assessment of costs becomes final, then Respondent is encouraged to seek to enter into a periodic payment plan with disciplinary counsel under ELC 13.5(c)(3).

Dated this 19th day of July, 2012.


Thomas A. White
Disciplinary Board Chairperson

Ap. 14

10/10

Orders



View



Doc 35 City motio... Mayor Quade.pdf



Quick Look



Action



Shared Folder

Name	Date Created
HEARINGSTRICKENINCOURTNONAPPEAR[1].pdf	Feb 2, 2008 7:54 PM
ORDEROFCONTINUANCESHOWCAUSE, copy 2.pdf	Feb 2, 2008 7:55 PM
ORDEROFCONTINUANCESHOWCAUSE[1].pdf	Feb 2, 2008 7:54 PM
ORDERTOSHOWCAUSEMISSINGCJ, copy 2[1].pdf	Feb 2, 2008 7:56 PM
ORDERTOSHOWCAUSEMISSINGCJ[1].pdf	Feb 2, 2008 7:54 PM
STATUSCONFERENCEHEARING[1].pdf	Feb 2, 2008 7:55 PM



Marja Starczewski <marjalaw@gmail.com>

Early Stipulation 10#00086

8 messages

Francesca D'Angelo <Francescad@wsba.org>
To: Marja Starczewski <marjalaw@gmail.com>

Thu, Nov 11, 2010 at 9:28 AM

Dear Ms. Starczewski:

Attached to this email is the Association's early stipulation offer.

Francesca D'Angelo

Disciplinary Counsel

Washington State Bar Association

1325 4th Avenue, Suite 600

Seattle, WA 90101-2539

(206) 727-8294



File 10#00086 Starczewski letter.pdf

61K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 10:48 AM

My clients cannot afford to have me suspended, and I cannot afford to be suspended. I would be unable to pay rent.

[Quoted text hidden]

--

Sincerely;

Marja Starczewski
Law Office of Marja Starczewski, PLLC
10 S. Cove Ave # 28
Wenatchee, WA 98801

(509) 884-6545
Fax: (206) 339-4517
Cell: (206) 227-7703

Ap. 16

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 11:02 AM

Meet one client - Michael Gillespie, a homeless man who has not worked since 2001, except perhaps a couple of part-time jobs. I'm trying to help him work through the SSI system. He has a partially diagnosed mental illness, and I'm the only lawyer he knows.

He does not get along with people, he tends to rant, yell, and get tossed out of his living situation or any professional office. But he is in near-daily contact with me, by mail, fax, or phone.

How will you find another attorney to help him out?

On Thu, Nov 11, 2010 at 9:28 AM, Francesca D'Angelo <Francescad@wsba.org> wrote:

[Quoted text hidden]

--

Sincerely;

Marja Starczewski
Law Office of Marja Starczewski, PLLC
10 S. Cove Ave # 28
Wenatchee, WA 98801

(509) 884-6545
Fax: (206) 339-4517
Cell: (206) 227-7703

2 attachments

 **Medical bracelet.pdf**
74K

 **To ALj Araki - subpoena request.doc**
69K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 11:09 AM

Meet another Client, Ahmed Egal, he is a community leader and activist for the Somali community in Kent. He occasionally calls me or emails me to help him write letters or for legal advise. I have gotten to know him, his large family, and the community over the years. Usually, after I help him out of a jam, he sends me a small check.

(Example attached).

Will you provide reduced fee legal services to the Kent Somali community? It's badly needed.

[Quoted text hidden]

2 attachments

 **thank you.pdf**
18K

 **Thanks and check for \$65.pdf**
91K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 11:16 AM

Meet another client, Sharif Sharif, who speaks no English. His car caught on fire. His son, who speaks English, cannot wind his way through the insurance system, so I'm helping them out. At tis time, it looks like their total expected recovery might be what the car dealer wrote on their receipt (dealer wrote it up for about \$1,500, while they recall paying over \$3,000). No proof of the higher payment. So far, there is no comment from the insurance company. Will you find a lawyer willing to try to get them enough to buy another car? (these cases always require reduced attorneys' fees, since if they pay an attorney, they cannot buy a car). Sharif Sharif's family drives up to see me, when they have legal questions. They all come up in person, due to the language barrier - the son translates. I don't usually charge them. Will you find them an attorney?

[Quoted text hidden]

2 attachments

 **Fire Dept Report re car fire Sharif 100065416.pdf**
20K

 **Sharif Sharif notes.doc**
30K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 11:24 AM

Meet two other clients, Lul Hussein and her husband, Mohamud Abdille. These are refugees, who speak some English. Due to an error by their insurance representative, they had insurance on a car that was out of commission, instead of on the car they were actually driving. Because of this, they are now threatened with suspension of their drivers licenses. After some research, I found a regulation that may preserve their licenses. So far, they have paid me \$200, towards a non-refundable retainer. They will not be able to afford another attorney to continue the process. Will you find them reduced-price representation? (Department of Licensing will provide the Somali interpreter for the hearing).

[Quoted text hidden]

3 attachments

 **DOL notice, received interview request re Abdille.pdf**
50K

 **DOL notice, received interview request.pdf**
50K

 **LUL Hussein - Letter from insurance commissioner.pdf**
28K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>

Thu, Nov 11, 2010 at 11:40 AM

Meet another client, Julita Gasior. She speaks good English, but really needs things explained in her native Polish to understand them. Luckily, I speak Polish. I have provided assistance and advice to the Seattle-Tacoma Polish community ever since I got my license.

Ms. Gasior's insurance claim for loss of jewelry was denied. I know her witnesses, and they are comfortable dealing with me. We have not yet decided, whether to file suit against Allstate, since in the meanwhile she had an L&I issue that came up. She filed several appeals on her own. After I helped the ALJ explain certain facts to her, she dropped her appeals, and the Department is reconsidering its closing of her case. She does not organize things well, so she is faxing me documents from time to time. I then explain things to her in Polish. The L&I issue will probably be protracted, as she is back at work (she cannot afford to be off work), even though in pain, but is also still treating. The Allstate claim will be three years old in June, next year. If Ms. Gasior decides to sue, which

law firm, with a Polish speaker, will help her? The Polish community has several official court interpreters (I know a few of them), but Ms. Gasior has suffered some personal affronts from the Polish community, and is not willing to trust many of them.

[Quoted text hidden]



Gasior claim to Allstate for theft.pdf

243K

Marja Starczewski <marjalaw@gmail.com>

Thu, Nov 11, 2010 at 11:51 AM

To: Francesca D'Angelo <Francescad@wsba.org>

Meet Michael Hartigan. Mr. Hartigan is a disabled veteran of the Coast Guard, who had lived in my parents' home for a number of years when I was a child. For all that time, Mr. Hartigan has been trying to get a two-year college degree, and has been unable to do so. Now, a crook named Mayberry (who has at least one Federal conviction), has used Mr. Hartigan's name in one or more real estate transactions.

Mike Hartigan calls me approximately every week, to chat at length, and also for legal advice. He needs someone to remind him, regularly, to not enter into more contracts with Mayberry. He also needs advice on what to do, or not do, every time a Mayberry contract appears to be about to blow up. He appears competent, but just does not make wise decisions. He would be very easily taken advantage of. Of course, he does not pay me anything.

[Quoted text hidden]



Property deeded to Hartigan, foreclosed.pdf

22K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>
Cc: melinda@tkglawfirm.com, John Graffe <graffej@jgkmw.com>

Mon, Oct 3, 2011 at 2:37 PM

Enclosed is my objection to the Request for Documents, as well as all disciplinary notices that involved Restitution. The WSBA ordered restitution only in cases where client funds went missing, or where clients overpaid or had to hire other counsel for more money, or where a Court ordered restitution.

On Fri, Sep 23, 2011 at 3:19 PM, Francesca D'Angelo <Francescad@wsba.org> wrote:
[Quoted text hidden]

[Quoted text hidden]

30 attachments

-  **OBJECTION TO DEMAND FOR DOCUMENTS.pdf**
58K
-  **In re Botimer, no restitution.pdf**
162K
-  **Discipline of Holland, restitution, closing office as mitigator.pdf**
125K
-  **Discipline of Neil, restitution to estate, reprimand.pdf**
145K
-  **Discipline of Boelter, restitution after threats to client.pdf**
146K
-  **Discipline of Brothers, restitution of 2nd atty fees and interest to Bar.pdf**
147K
-  **Discipline of Thomas, restitution for non-diligence, check retained.pdf**
146K
-  **Discipline of Sweet, Crim Court ordered Restitution.pdf**
148K
-  **Discipline of Cole, criminal court ordered restitution.pdf**
142K
-  **Discipline of Brunton, restitution funds taken from client account.pdf**
153K
-  **Discipline of Johnson, restitution for 2nd attorney fee paid.pdf**
144K
-  **Discipline of Jarvill, restitution of funds taken from estate.pdf**
144K
-  **Discipline of McKean, court ordered restitution, false loan docs.pdf**
145K
-  **Discipline of Ranes \$750 restitution agreed and not paid.pdf**
147K
-  **Discipline of McLendon, restituion after reinstatement - not paid.pdf**

Ap. 17

144K

-  **Discipline of Dedamm, restitution of funds taken.pdf**
143K
-  **Discipline of Trejo, restitution for fees paid and requested refunds refused.pdf**
147K
-  **Discipline of Wagenblast - assistant to pay restitution of client funds.pdf**
143K
-  **Discipline of Wilson - failure to pay restitution previously ordered.pdf**
142K
-  **Discipline of Beresford, restitution of funds recieved by Atty.pdf**
130K
-  **Discipline of Nguyen, restitution, refund of fees, proportional.pdf**
147K
-  **Discipline of Gelman, restitution to all clients - perhaps lost cases too**
146K
-  **Discipline of Hopt - paid \$750 refund fees as restitution.pdf**
145K
-  **Discipline of Adams, restitution for dismissed cases by court order.pdf**
143K
-  **Discipline of Corbin - court ordered restitution, of legal fees to 2nd atty.pdf**
154K
-  **Discipline of Ost - restitution of client funds, forged.pdf**
129K
-  **Discipline of Ryan, Restitution of client funds from Trust, gambled.pdf**
129K
-  **Discipline of Burtch, restitution is amount paid by client for sanctions.pdf**
156K
-  **Discipline of Sovinski, restitution of Trust Account money, twice.pdf**
163K
-  **Discipline of Unfred, restitution of Retainer Paid.pdf**
144K

Marja Starczewski <marjalaw@gmail.com>
To: Francesca D'Angelo <Francescad@wsba.org>
Cc: melinda@tkglawfirm.com, John Graffe <graffej@jgkmw.com>

Mon, Oct 3, 2011 at 3:22 PM

[Quoted text hidden]

9 attachments

-  **Reply re Sanctions briefing.pdf**
59K
-  **Supreme Court appeal, Dennis v Bharti.doc**
50K



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Washington State Bar Association

Welcome, Marja Starczewski [Log Out](#)

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Lawyer Directory » Discipline Notice Lawyer Profile

Discipline Notice - Sandra L Ferguson

WSBA Bar#: 27472 **Member Name:** Sandra L Ferguson
Action: Suspension **Effective Date:** 02/03/2011
RPC: 3.3 - Candor Toward the Tribunal
 3.4 - Fairness to Opposing Party and Counsel
 3.5 - (prior to 9/1/2006) Fairness to Opposing Party and Counsel
 8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation
 8.4 (d) - Conduct Prejudicial to the Administration of Justice

Discipline Notice: Sandra L. Ferguson (WSBA No. 27472, admitted 1997), of Seattle, was suspended for 90 days, effective February 3, 2011, by order of the Washington State Supreme Court following an appeal. For more information, see *In re Ferguson*, 170 Wn.2d 916, 246 P.3d 1236 (2011). This discipline was based on conduct involving failure to disclose relevant facts to the court, appearing ex parte without notice to the opposing party, and obtaining an ex parte order and other relief through deception and misrepresentation.

In spring 2005, Ms. Ferguson's brother and sister-in-law (Clients) were involved in litigation. Prior to Ms. Ferguson representing them, Clients had given the opposing party equity in a rental house as the down payment toward the purchase of a restaurant. The opposing party took possession of the house and agreed to make the mortgage payments on the house. By 2004, Clients claimed the opposing party was in default on the mortgage payments and, in February 2005, Clients filed a complaint seeking a writ of restitution to regain possession of the house from the opposing party.

On March 18, 2005, the superior court ordered that an additional hearing be scheduled to sort out the parties' rights, but in the interim the opposing party would need to bring the mortgage payments current by March 28. During the second hearing, on March 30, 2005, both sides argued over whether the mortgage payments had been made. The opposing side explained to the court that if Ms. Ferguson's clients were given temporary possession of the house, they would "file bankruptcy, immediately claim that they [had] equity in the house..." and then the bankruptcy court would deprive the superior court of jurisdiction and Ms. Ferguson's clients would be able to retain possession of the house permanently.

Around the time of these hearings, Clients were exploring the option of bankruptcy. They had been told by a bankruptcy attorney that gaining possession of the house prior to bankruptcy would enhance their financial and legal position significantly. The court consolidated the two matters, denied the writ of restitution, and ordered the case set for trial on the merits as soon as possible, deciding "more testimony and comments and study on it" was necessary to determine the rights of each party. The court found the opposing party was entitled to maintain possession of the house to preserve the status quo.

Ms. Ferguson stepped in as counsel for Clients after the March 30, 2005, hearing. On April 11, 2005, without notice to the opposing party, Ms. Ferguson appeared ex parte before the judge who ruled in the two earlier hearings. During these proceedings, Ms. Ferguson presented her pleadings and argued that the opposing party had violated the court's March 18 order and lied to the court at the March 30 hearing by failing to make the required mortgage payments, yet stating they had done so. Ms. Ferguson did not inform the court of her clients' intention to file for bankruptcy or that the mortgage company had recently required all mortgage payments to be made with certified funds, which might account for the delay in the mortgage company's processing of checks. The judge signed Ms. Ferguson's proposed order holding the opposing party in contempt and granting a writ of restitution for the possession of the house to Ms. Ferguson's clients as a remedy for the opposing party's contempt.

When counsel for the opposing party received notice of the ex parte hearing and order approximately two days after the hearing, he called the judge and scheduled a hearing for his motion to vacate the order. The afternoon before the hearing, Ms. Ferguson's clients filed for bankruptcy using funds provided by Ms. Ferguson. Ms. Ferguson appeared at the hearing on the motion to vacate with notice of the bankruptcy filing that deprived the superior court of jurisdiction. Ultimately, the opposing party's claim for the house was never heard. When the opposing party received an offer of purchase for the restaurant, the parties settled all claims with respect to both properties.

Ms. Ferguson's conduct violated former RPC 3.3(f), requiring a lawyer, in an ex parte proceeding, to inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision; former RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; former RPC 3.5(b), prohibiting a lawyer from communicating ex parte with a judge except as permitted by law; former RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and former RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Jonathan H. Burke represented the Bar Association at the hearing. M. Craig Bray represented the Bar Association on appeal. Kurt M. Bulmer represented Ms. Ferguson at the hearing. Shawn T. Newman represented Ms. Ferguson on appeal. Timothy J. Parker was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.

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Lawyer Directory » Discipline Notice Lawyer Profile

Discipline Notice - Charles A. Kimbrough

WSBA Bar#:	134	Member Name:	Charles A. Kimbrough
Action:	Reprimand	Effective Date:	01/10/2007
RPC:	1.3 - Diligence 1.4 - Communication 8.4 (c) - Dishonesty, Fraud, Deceit or Misrepresentation 8.4 (l) - Violate ELCs		

Discipline Notice: Charles A. Kimbrough (WSBA No. 134, admitted 1965), of Bellevue, was ordered to receive four reprimands on January 10, 2007, by order of the hearing officer. This discipline was based on conduct involving lack of diligence in a client matter, failure to communicate, misrepresentations to a client, and non-cooperation in a Bar Association investigation.

Between 1999 and 2005, Mr. Kimbrough engaged in the following conduct while representing a client in an employment discrimination matter:

- Negligently failing to provide the opposing party's counsel with a signed settlement and release agreement, and failing to finalize a settlement with the opposing party before the case was dismissed;
- Negligently failing to keep his client reasonably apprised of the status of the case, including that it had been dismissed without prejudice and before the settlement was finalized;
- Negligently misleading his client into believing that the settlement had been finalized when it had not; and
- Negligently failing to timely respond to the grievance subsequently filed by the client with the Bar Association.

Mr. Kimbrough's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here, ELC 5.3(e)).

Michael D. Hunsinger represented the Bar Association. Leland G. Ripley represented Mr. Kimbrough. William S. Bailey was the hearing officer.

The discipline search function may or may not reveal all disciplinary action relating to a lawyer. The discipline information accessed is a summary and not the official decision in the case. For more complete information, call 206-727-8207.

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To: Marja Starczewski; Allison Sato; Francesca D'Angelo; Craig Bray
Subject: RE: In re Starczewski, NO. 201,073-3 - Opening Brief, and appendixes thereto

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From: Marja Starczewski [<mailto:marjalaw@gmail.com>]
Sent: Tuesday, September 18, 2012 4:32 PM
To: OFFICE RECEPTIONIST, CLERK; Allison Sato; Francesca D'Angelo; Craig Bray
Subject: Re: In re Starczewski, NO. 201,073-3 - Opening Brief, and appendixes thereto

This brief is also being sent by Mail, today (an original and a copy to the Court, plus a copy to WSBA)

On Fri, Jul 20, 2012 at 3:26 PM, Marja Starczewski <marjalaw@gmail.com> wrote:
Please see attached motion for extension, re opening brief. Copies of this email, and attachment, are being sent to WSBA and its counsel

--
Sincerely;

Marja Starczewski
Attorney
10 S. Cove Ave # 28
Wenatchee, WA 98801

(509) 884-6545
Fax: (206) 339-4517
Cell: (206) 227-7703

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Sincerely;

Marja Starczewski
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