

FILED

MAR 03 2011

BEFORE THE DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

**THOMAS F. MCGRATH, JR.**  
Lawyer (WSBA No. 1313)

Proceeding No. 09#00070

CORRECTED DISCIPLINARY BOARD  
ORDER MODIFYING HEARING  
OFFICER'S DECISION

This matter came before the Disciplinary Board at its January 7, 2011 meeting, on automatic review of Hearing Officer Timothy J. Parker's, July 20, 2010 decision recommending a three month suspension, following a hearing.

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

**IT IS HEREBY ORDERED THAT** the Hearing Officer's Findings of Fact and Conclusions of Law are adopted. The Board recommends increasing the sanction to an 18-month suspension.<sup>1</sup>

The Hearing Officer found that the presumptive sanction for count 1 was reprimand. He also found that the presumptive sanction for counts 3, 4, and 5 was suspension. He found four aggravating factors and one mitigating factor. Then, without any explanation, he recommended a one month suspension for each of the three suspension counts; and then added them together to recommend a three month suspension.

<sup>1</sup> The vote on this matter was unanimous. Those voting were: Bahn, Barnes, Butterworth, Handmacher, Ivarinen, Lombardi, Maier, Ogura, Stiles, Trippett, Waite and Wilson.

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1 The *ABA Standards* state that “[g]enerally, suspension should be for a period of time  
2 equal to or greater than 6 months. . .” *ABA Standards for Imposing Lawyer Sanctions* (1992) at  
3 page 10. If suspension is the presumptive sanction, the appropriate range is generally six  
4 months to three years, with the minimum sanction being appropriate only when the mitigating  
5 factors outweigh the aggravating factors. *In re Behrman*, 165 Wn.2d 414, 426, 197 P.3d 1177  
(2008).

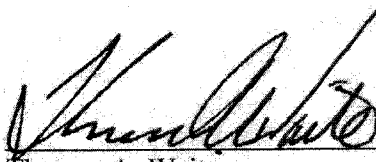
6 In this matter, there is no basis for recommending the minimum six-month suspension.  
7 Respondent’s ex-parte request that the judge freeze Ms. Ellison’s<sup>2</sup> assets because she is not a  
8 U.S. citizen is a serious violation of the RPCs. The fact that Respondent was the defendant’s  
9 husband, a corporate officer, had previously represented the corporation in business and  
10 litigation matters, and shared office space with the defendant distinguishes respondent’s conduct  
11 from a simple discovery issue. [Finding 7] Respondent had more knowledge than most lawyers  
12 about what documents his client possessed. Additionally, the hearing officer found four  
13 aggravating factors and one mitigating factor. The aggravating factors outweigh the mitigating  
14 factors. The serious nature of the misconduct, the multiple offenses and the prior discipline all  
15 support a suspension longer than the six-month minimum. The Board recommends that the  
16 Court impose an 18-month suspension.

17 This order corrects a typographical error in the original Board Order. This order is  
effective *nunc pro tunc* to February 7, 2011. The time for appeal runs from the date of the  
original order.

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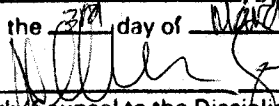
<sup>2</sup> The original Board Order contained a typographical error. It stated that Respondent requested that the judge freeze Ms. Maxwell’s assets. This order corrects that error. There are no other changes in the substance of the order.

1 Dated this 2<sup>nd</sup> day of March 2011.

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3 Thomas A. Waite  
4 Disciplinary Board Vice Chair

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8 **CERTIFICATE OF SERVICE**

9 I certify that I caused a copy of the corrected DB order Modifying HD's Decision  
10 to be delivered to the Office of Disciplinary Counsel and to be mailed  
11 to Kurt Bulmer Respondent/Respondent's Counsel  
12 at PO Box 116 #3 Seattle WA 98101 by Certified/first class mail,  
13 postage prepaid on the 2<sup>nd</sup> day of March, 2011

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19 Clerk/Counsel to the Disciplinary Board