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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ALAN F. HALL,
Lawyer (Bar No. 1505).

Proceeding No. 10#00084

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on February 25 and 26, 2013. Respondent Alan F. Hall appeared at the hearing with his lawyer, Stephen Smith of Hawley, Troxell, Ennis & Hawley, LLP. Special Disciplinary Counsel, Rebecca Roe of Schroeter, Goldmark & Bender appeared for the Washington State Bar Association (the Association).

PROCEDURAL HISTORY

A Formal Complaint was filed in this matter on September 17, 2010. A hearing commenced on August 2, 2011. Respondent represented himself, Pro Se. On August 4, 2011, the third day of hearing, Respondent asserted that he was not competent to continue to represent himself in the proceedings because of mental incapacity. On August 4, 2011, these proceedings

1 were deferred. On August 31, 2011, Respondent appeared with counsel. Stephen C. Smith. This
2 matter was eventually reset for February 25, 2013. The parties agreed that this hearing officer
3 would continue to preside over the proceedings.

4 FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

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

7 Count 1 - By making himself the alternate trustee for the Stephen Keen Trust, as
8 well as giving himself powers as the alternate power of attorney and health care representative
9 for Mrs. Keen without fully explaining the legal effects of these roles to Stephen Keen or to Mrs.
10 Keen, and/or without fully explaining the reasonably foreseeable ways that his role in their estate
11 plan conflicted with his own interests and how the conflict could have adverse effects on their
12 interests, Respondent violated RPC 1.4(b) and/or RPC 1.7(a)(2) and/or RPC 1.8(a).

13 Count 2 - By charging a \$2,000 "quarterly flat fee" for managing the trust before he had
14 become trustee for the trust and/or by charging Stephen Keen for drafting letters to himself and/or
15 by charging an hourly rate for performing trustee duties for which he was already charging a flat
16 fee, Respondent violated RPC 1.5 and/or RPC 8.4(c).

17 Count 3 - By refusing to return original estate planning documents after repeated requests
18 by his clients, Respondent violated RPC 1.15A(f) and RPC 1.16(d).

19 Count 4 - By threatening Ms. Clausen if she did not withdraw the grievance filed against
20 him, and/or by threatening to file a lawsuit against Ms. Clausen and Stephen Keen for providing
21 information to the Association, Respondent violated RPC 8.4(d).

22 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
23 Officer makes the following:

FINDINGS OF FACT

1
2 1. Respondent was admitted to the practice of law in the State of Washington on May
3 3, 1974.

4 2. In 2005, Respondent was reprimanded based on his failure to communicate with a
5 client, failure to provide competent representation, failure to act with diligence, asserting a
6 frivolous claim for fees, charging unreasonable fees, and failure to supervise a legal intern.

7 3. In the late 1990s, the Respondent began focusing his practice on elder law and
8 estate planning. This focus included an knowledge and understanding of special needs trust
9 planning.

10 4. In 2007, Respondent decided to become a financial adviser and stockbroker. He
11 took and passed several extensive Financial Industry Regulatory Authority (“FINRA”) courses
12 and exams. He then worked as a stock broker for Ameriprise for six months. He was terminated
13 from Ameriprise because of failure to produce. He then returned to private practice as a lawyer.
14 Ex. R-135, 8/2/2011 Transcript, pp. 101-102; 112-113.

15 5. On July 29, 2008, Stephen Keen (“Stephen”) and his mother Margaret Keen (“Mrs.
16 Keen”) (collectively “the Keens”) hired Respondent to help with their estate planning.
17 Respondent charged \$3,000 of which \$1,500 was paid July 31, 2008 and the remainder September
18 11, 2008. Exhibit 19.

19 6. At the time the Keens hired Respondent, Mrs. Keen was 91 years old and Stephen
20 Keen was 65 years old. Both were physically disabled but mentally competent. Neither Stephen
21 nor Mrs. Keen had any prior relationship with Respondent. Stephen held the power of attorney
22 for Mrs. Keen with her other son, James, as her alternate attorney in fact.

23 7. The Respondent has been a member of the Academy of Special Needs Trust

1 Attorneys and the National Alliance of Mental Illness.

2 8. Margaret Keen had two sons, Stephen and James Keen. Stephen was to solely
3 benefit from Mrs. Keen's estate plan.

4 9. Respondent drafted an estate plan for Mrs. Keen that included a Special Needs
5 Trust (the "Trust"), a Will, a new Durable Power of Attorney and Living Will. A Special Needs
6 Trust was drafted to protect government benefits for Stephen if he received the value of Mrs.
7 Keen's estate which was estimated to be about \$400,000. Mrs. Keen was named the Trustee of
8 the Trust. The Trust named Respondent as the successor trustee.

9 10. The Trust provided that Respondent was to be compensated at a rate of \$8,000 per
10 year or 2% of the trust corpus, whichever was greater. The Respondent calculated that amount
11 based upon his estimate of Mrs. Keen's estate. The Respondent used percentages he learned from
12 a conversation with an attorney at a CLE presentation.

13 11. The Trust also provided that as Trustee, Respondent could hire himself to work as
14 attorney and pay himself his hourly rate in addition to his trustee's fees. R-104. Both this and
15 the compensation provision were drafted into the Trust by the Respondent himself.

16 12. The Trust was named as beneficiary in Mrs. Keen's will.

17 13. Stephen was the sole beneficiary of the Trust.

18 14. At the time that the Special Needs Trust documents were executed on October 28,
19 2008, Respondent was aware that Mrs. Keen's health was deteriorating and that she had limited
20 ability to function as trustee of the Trust. Ex. 32. Respondent was also aware the majority of the
21 trust would be funded after Mrs. Keen's death when he would become the successor Trustee.

22 15. Respondent provided the complex, legal, estate planning documents to the Keens
23 for their review, approximately two months before they were signed. This was at a time when

1 Mrs. Keen was having difficulty reading. Transcript pp. 31-32.

2 16. The day the documents were executed, the Respondent was aware of Mrs. Keen's
3 reading difficulties. In recognition of Mrs. Keen's condition the Respondent explained some
4 provisions in the documents, and the concepts behind them. He did not read the documents to
5 Mrs. Keen "word-for-word." Transcript p. 32:1-6.

6 17. The Respondent instructed Mrs. Keen to initial all pages of the documents, and
7 then execute the signature page.

8 18. Respondent did not explain the compensation provisions of the Trust in a manner
9 that could be reasonably understood by the Keens. Respondent did not explain to the Keens that
10 there were lower-cost options for successor Trustees than himself. There is no document showing
11 that the Keens were so advised. Respondent was anxious to become Trustee.

12 19. Respondent did not advise the Keens in writing of their right or the desirability of
13 seeking the advice of independent legal counsel prior to naming himself as successor trustee of
14 the Trust.

15 20. Respondent did not obtain the Keens' informed written consent to the essential
16 terms regarding his power to appoint himself as successor trustee of the Trust, including whether
17 the Respondent was representing himself or the Keens in granting himself the power to appoint
18 himself as successor trustee of the Trust.

19 21. Respondent's conduct in not adequately explaining the effect of placing himself
20 in the role of successor trustee was knowing, and for the purpose of benefiting himself.

21 22. The Keens were confused as to Respondent's role in their estate plan, did not
22 understand that Respondent was appointed as alternate trustee, and did not understand the effect
23 of that appointment.

1 23. On October 28, 2008, Margaret Keen also signed a Living Will appointing Stephen
2 as Mrs. Keen's health care representative and providing that if Stephen should be unavailable or
3 unable to act, Respondent would serve as Mrs. Keen's health care representative. Respondent
4 also prepared, and Mrs. Keen also signed on October 28, 2008, a Durable Power of Attorney.
5 Stephen was appointed as Mrs. Keen's agent. Respondent provided he would be Mrs. Keen's
6 alternate agent under the Durable Power of Attorney if Stephen was unable to serve. R-106, R-
7 107.

8 24. Respondent did not communicate adequate information and explanation to Mrs.
9 Keen, or Stephen as her attorney in fact, about the material risk involved in appointing himself to
10 these various roles.

11 25. The Respondent did not explain to the Keens that there were reasonable
12 alternatives available to them, other than having him function in these roles. These include
13 professional guardianship agencies, which are more skilled and less expensive at providing these
14 services.

15 26. Although Respondent drafted waivers purporting to waive the conflict of interest
16 in this matter, the waivers were inadequate to waive the conflicts of interest inherent in having
17 Respondent appointed as trustee of a trust that he had drafted.

18 27. Respondent also drafted a Will for Mrs. Keen that appointed Stephen as the
19 executor, but named Respondent as successor executor if Stephen failed to serve for any reason.
20 R-121. Respondent was permitted to hire himself to deal with any issues arising under the Will
21 or Trust. The Will also directed that upon her death, Mrs. Keen's entire estate be paid into the
22 Trust. This document was not signed by Mrs. Keen until February 6, 2009. Ex. R-121.

23 28. On or about December 28, 2008, Respondent wrote a "Memorandum to Trustee
24

1 Explaining Special Needs Trust,” addressed from himself and to himself, stating “You have been
2 appointed Trustee of the Special Needs Trust established by the Settlor for the benefit of Stephen
3 Keen.” This memorandum set out the duties of the trustee, the mechanics of establishing the Trust
4 and stated that the trustee was to be paid \$2,000 per quarter for administering the Trust.

5 29. Respondent billed Stephen \$185 for the preparation of this memorandum.
6 Respondent did not convey a copy of this memorandum to Mrs. Keen or to Stephen. Respondent’s
7 testimony that this was a document that he had sent to Mrs. Keen and later addressed to himself
8 without changing the date is not credible.

9 30. On or about December 29, 2008, Respondent billed a \$2,000 quarterly trustee’s
10 fee for acting as trustee for the Trust. In fact, on December 28, 2008, Respondent was not trustee
11 of the Trust. This amount was paid December 29, 2008 by Stephen Keen.

12 31. At the time Respondent charged the \$2,000 quarterly trustee’s fee, he knew that
13 he was not yet trustee of the Trust. Ex. 19, 20.

14 32. Sometime in December 2008, Respondent funded the Special Needs Trust by
15 depositing into the Trust \$49.00. At no time did the Trust corpus ever exceed \$49.00.

16 33. If the Respondent were to have been paid 2% of the value of the trust corpus rather
17 than the quarterly \$2,000, for services, the Respondent would have received approximately \$0.25.
18 That the Respondent received \$2,000 rather than 2% of the existing trust corpus, was mandated
19 by the compensation provision the Respondent drafted into the Trust.

20 34. The services the Respondent claims to have performed as trustee were of a type
21 and nature more appropriate to the estate planning process (for which he was already
22 compensated), than the administration of a trust containing \$49.00. Transcript pp. 142-143; 153:1-
23 8, 19-24.

1 35. On or about January 7, 2009, Mrs. Keen signed a document titled "Declination to
2 Serve as Trustee of the Stephen Keen Special Needs Trust" ("Declination".) The Declination
3 appointed Respondent as successor trustee. The Declination gave Respondent "sole, absolute,
4 and unfettered" discretion to make distributions under the Trust. Ex. 27.

5 36. Respondent had Stephen Keen separately pay for the services of CareForce. He
6 also testified had there been a significant amount of money in the Trust, he would have had a
7 stockbroker invest the money. Respondent would have continued to charge \$2,000 per quarter
8 for unknown services.

9 37. In March 2009, Stephen asked his ex-wife, Linda Orf, to come to Washington to
10 help him move to an assisted living facility. Mr. Keen and Ms. Orf had been married and
11 divorced, but remained friends. Stephen relied on Ms. Orf to help him to organize his affairs.
12 Transcript pp. 228-229.

13 38. In March 2009, Stephen hired lawyer Jamie Clausen to draft new powers of
14 attorney and Wills for both himself and Mrs. Keen. The Keens were referred to Ms. Clausen by
15 Victoria DeVine who worked with a professional elder care group.

16 39. Ms. Clausen met with Stephen on March 20, 2009. He was upset because he
17 believed that his niece, Nancy Caputo, had been appointed as alternate trustee. Neither he nor his
18 mother believed they had authorized Mr. Hall to be successor trustee. Stephen Keen executed
19 new estate documents prepared by Ms. Clausen that changed alternate trustees, agents, etc. Ex.
20 10, 12.

21 40. Ms. Clausen met with Mrs. Keen on March 26, 2009. Margaret Keen was
22 disbelieving that Hall was named as the successor trustee and called Stephen to verify what Ms.
23 Clausen told her.

1 41. Mrs. Keen would not have named a stranger to perform these fiduciary roles. Mrs.
2 Keen believed that the Trust had named Nancy Caputo, and not Respondent, as alternate trustee.
3 The new Will that Ms. Clausen drafted left Mrs. Keen's assets to a new Special Needs Trust
4 ("New Trust") with new fiduciaries. On March 26, 2009, Mrs. Keen voluntarily executed the
5 new powers of attorney, the new Will and the new Special Needs Trust. Ex. 7, 8, 9, 36.

6 42. On April 7, 2009, Ms. Clausen sent Respondent a certified letter informing him
7 that all of the documents that he had drafted that were capable of being revoked had been revoked.
8 The letter told Respondent that the clients requested the return of all original documents so that
9 they could be destroyed. This letter was sufficient to terminate Respondent's services as the
10 Keen's lawyer.

11 43. Respondent refused to recognize that he had been terminated and refused to return
12 the original estate planning documents. Respondent conceded he acted improperly.

13 44. Stephen was particularly concerned about the original trust documents and the fact
14 he was billed \$2,000 per quarter for a trust that had minimal money in it.

15 45. On November 6, 2009, Stephen filed a grievance with the Association against
16 Respondent.

17 46. On February 21, 2010, Respondent submitted a bill to the Association, charging
18 Stephen Keen an additional \$4,373.25 for legal work at the rate of \$185 per hour and stating that
19 he would turn it over to collections if not paid. Respondent also stated that he believed that since
20 he was still trustee of the trust, he was entitled to \$2,000 per month since the creation of trust
21 which contained only \$49.00.

22 47. The charge of \$2,000 per quarter for administration of a nominally funded trust
23 was unreasonable. The additional legal work on the February 21, 2010 bill included hourly

1 charges for items that constituted a trustee's duties for which he was also charging a \$2,000
2 quarterly trust fee. These charges were unreasonable and unnecessary.

3 48. On February 23, 2010, at the Association's request, Respondent forwarded his
4 original file to the Association. Respondent refused to allow the original documents to be released
5 to the Keens. Respondent stated that he needed to keep the original documents because he
6 intended to file a lawsuit against Stephen for statements made to the Association in filing the
7 grievance and he believed that returning the documents to Stephen would result in the destruction
8 of evidence that he needed to prosecute this case.

9 49. On May 25, 2010, Respondent went to Ms. Clausen's home, which also served as
10 her office. Respondent threatened her, stating that if she did not withdraw the grievance that
11 Stephen had filed with the Association, "she would be sorry." He told her he would file a lawsuit
12 for damages against her.

13 50. During the meeting, Respondent became agitated and repeatedly called Ms.
14 Clausen an "idiot" and told her that she "had a lot to lose" because she had a new baby and a
15 young family and that if he "went down," she would "go down." Respondent did not leave Ms.
16 Clausen's home until she told him that she would call the police if he did not leave. Ms. Clausen
17 testified that the exchange was frightening and felt threatened by Respondent's behavior.
18 Transcript p. 200:12-19.

19 51. Respondent's testimony that he was calm during this encounter and that Ms.
20 Clausen "lost it" was not credible.

21 52. On the night of May 25, 2010, Respondent faxed Ms. Clausen a letter telling her
22 that he would file a lawsuit against her because he believed that she had a role in filing the
23 grievance with the Association. R-130.

1 53. The same day, Respondent sent Stephen a letter demanding that Stephen pay him
2 \$4,373.25 and threatened him with collection action if he did not pay. Respondent attached his
3 February 21, 2010 billing to this letter.

4 54. On May 26, 2010, the Association wrote to Respondent and informed him that Mr.
5 Keen was entitled to the return of his original documents, but that because there was an issue they
6 would retain the documents until the issue was resolved. The Association informed Respondent
7 that, under ELC 2.12, statements to the Association were absolutely privileged and that no lawsuit
8 could be brought against a grievant or witness for providing information to the Association.

9 55. Respondent continued to threaten suit against Stephen Keen, Ms. Clausen and Ms.
10 Orf for statements made to the Association. In his response to the Formal Complaint in this
11 matter, Respondent attempted to cross claim against Stephen for attorneys fees, costs, expenses
12 and damages for submitting a “perjured grievance.” BF 10. The Association moved to strike this
13 portion of Respondent’s response, and this motion was granted. BF 18.

14 56. On May 28, 2010, James Lassoie, the person who was appointed as “trust
15 protector” of the Trust that Respondent drafted, and thus was given the power to remove the
16 trustee, wrote to Respondent and removed him as trustee. The trust protector ordered Respondent
17 to provide the successor trustee all assets of the Trust, including the original Trust documents.
18 Respondent refused to provide the original documents or the assets of the trust to the new trustee.

19 57. Throughout this matter, Respondent has made baseless accusations against Ms.
20 Clausen and her motives in helping the Keens to change their estate plan and in assisting the
21 Association in investigating Stephen’s grievance. These allegations were made in bad faith and
22 in an attempt to intimidate the Keens and/or Ms. Clausen into withdrawing the grievance.
23 Respondent conceded that his actions after being informed of his termination as lawyer for the

1 Keens were due to pride.

2 58. Throughout this case, Respondent maintained that he is the trustee for the Trust,
3 despite the fact that he was removed as trustee by the revocation of the Trust on April 7, 2009 and
4 by trust protector. At the hearing, Respondent presented a document in which he resigned as
5 trustee under the Trust. This document, dated September 17, 2011, was signed 16 months after
6 Respondent was removed as trustee of the Trust and over two years after Respondent was notified
7 that the Keens had drafted new estate planning documents and wanted to terminate his
8 representation. To date, Respondent has not returned the \$49 in the trust as demanded by the
9 trustee.

10 CONCLUSIONS OF LAW

11 Violations Analysis

12 59. The Hearing Officer finds that the Association proved the following:

13 60. Count 1 – Respondent drafted a document naming himself the alternate trustee,
14 power of attorney and health care representative. He did not fully explain the legal effects of
15 these roles to Stephen Keen or to Mrs. Keen, including the foreseeable ways that his role in their
16 estate plan conflicted with his own interests and how the conflict could have adverse effects on
17 their interests, thus Respondent failed to inform Keens there were less expensive and more skilled
18 alternatives to him. Respondent violated RPC 1.4(b), RPC 1.7(a)(2), and RPC 1.8(a).

19 61. Count 2 - By charging a \$2,000 “quarterly flat fee” for managing the trust with a
20 corpus of only \$49, and before he had become trustee for the trust, by charging Stephen Keen for
21 drafting letters to himself, by charging an hourly rate for performing trustee duties for which he
22 was already charging a flat fee, and by billing for unnecessary services given the minimal amount
23 in the trust, Respondent charged an unreasonable fee in violation of RPC 1.5 and RPC 8.4(c).

1 62. Count 3 - By refusing to return original estate planning documents after being
2 discharged and after repeated requests by his clients, Respondent violated RPC 1.15A(f) and RPC
3 1.16(d).

4 63. Count 4 - By threatening Ms. Clausen if she did not withdraw the grievance filed
5 against him, and by threatening to file a lawsuit against Ms. Clausen and Stephen Keen for
6 providing information to the Association, Respondent violated RPC 8.4(d).

7 Sanction Analysis

8 64. A presumptive sanction must be determined for each ethical violation. *In re*
9 *Anschell*, 149 Wn.2d 484, 502, 69 P.3d 844 (2003). The following standards of the American
10 Bar Association’s Standards for Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. &
11 Feb. 1992 Supp.) are presumptively applicable in this case.

12 **Count I – Conflict**

13 **4.3 Failure to Avoid Conflicts of Interest**

14 ABA Standard 4.3 applies to Respondent’s conduct in engaging in a conflict of interest.

15 Absent aggravating or mitigating circumstances, upon application of the
16 factors set out in Standard 3.0, the following sanctions are generally appropriate
in cases involving conflicts of interest:

17 4.31 Disbarment is generally appropriate when a lawyer, without the informed
18 consent of client(s):

19 (a) engages in representation of a client knowing that the lawyer’s interests are
20 adverse to the client’s with the intent to benefit the lawyer or another, and
causes serious or potentially serious injury to the client; or

21 (b) simultaneously represents clients that the lawyer knows have adverse
22 interests with the intent to benefit the lawyer or another, and causes serious
or potentially serious injury to a client; or

23 (c) represents a client in a matter substantially related to a matter in which the
24 interests of a present or former client are materially adverse, and
knowingly uses information relating to the representation of a client with

1 the intent to benefit the lawyer or another and causes serious or potentially
2 serious injury to a client.

3 **4.32 Suspension is generally appropriate when a lawyer knows of a conflict
4 of interest and does not fully disclose to a client the possible effect of
5 that conflict, and causes injury or potential injury to a client.**

6 4.33 Reprimand is generally appropriate when a lawyer is negligent in
7 determining whether the representation of a client may be materially
8 affected by the lawyer's own interests, or whether the representation will
9 adversely affect another client, and causes injury or potential injury to a
10 client.

11 4.34 Admonition is generally appropriate when a lawyer engages in an isolated
12 instance of negligence in determining whether the representation of a client
13 may be materially affected by the lawyer's own interests, or whether the
14 representation will adversely affect another client, and causes little or no
15 actual or potential injury to a client.

16 65. Respondent knew that he had a conflict of interest in naming himself as the
17 alternate trustee of the special needs trust as well as other duties in the Keens estate planning
18 documents. He did not fully disclose the possible effect of that conflict including the fact that
19 there were other, cheaper options available to the Keens for a trustee, and that the terms of the
20 trust allowed him to charge an unreasonable fee of \$2,000 per quarter even if the trust was
21 nominally funded. The Keens were injured in that they did not fully understand the role that
22 Respondent had in their estate plan and the potential fees that would be incurred when there were
23 cheaper options available.

24 66. The presumptive sanction is suspension.

Count II – Unreasonable Fees

67. ABA Standard 7.0 applies to Respondent's misconduct in charging unreasonable fees.

7.0 Violations of Duties Owed as a Professional

Absent aggravating or mitigating circumstances, upon application of the factors
set out in Standard 3.0, the following sanctions are generally appropriate in cases
involving false or misleading communication about the lawyer or the lawyer's

1 services, improper communication of fields of practice, improper solicitation of
2 professional employment from a prospective client, **unreasonable or improper**
3 **fees**, unauthorized practice of law, improper withdrawal from representation, or
4 failure to report professional misconduct.

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

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

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

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

20 68. Respondent knew that the fees that he charged Mr. Keen were unreasonable given
21 that it was clearly excessive to charge \$2,000 per quarter to manage \$49.00. Aggravating the
22 matter is the fact that 1) the Respondent drafted the compensation provision knowing that he
23 would ultimately be the Trustee; and 2) the Respondent triggered the Trust himself by funding it
24 with \$49. Mr. Keen was injured in that he paid Respondent trustee fees before Respondent
became trustee of the trust, the duties Respondent performed at the time were more appropriate
to the estate planning process for which he had already been compensated. Finally, the
Respondent threatened to sue him for fees that Respondent asserted that he was owed even after
he was terminated from the case.

Count III- Failure to Return Originals

69. ABA Standard 4.1 applies to Respondent's conduct in failing to return original

1 | estate planning documents to the Keens after he had been terminated:

2 | ***4.1 Failure to Preserve the Client's Property***

3 | Absent aggravating or mitigating circumstances, upon application of the
4 | factors set out in 3.0, the following sanctions are generally appropriate in cases
5 | involving the failure to preserve client property:

6 | 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
7 | client property and causes injury or potential injury to a client.

8 | **4.12 Suspension is generally appropriate when a lawyer knows or should
9 | know that he is dealing improperly with client property and causes
10 | injury or potential injury to a client.**

11 | 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
12 | with client property and causes injury or potential injury to a client.

13 | 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing
14 | with client property and causes little or no actual or potential injury to a
15 | client.

16 | 70. Respondent knew that he was dealing inappropriately with client property when
17 | he refused to return the original estate planning documents and the money that was in the trust
18 | after Mr. Keen demanded that he do so through his new attorneys and through the trust protector
19 | of the Trust. The Keens were injured in that they were unable to obtain their original documents
20 | and suffered much stress and aggravation in not knowing whether Respondent would continue to
21 | attempt to bring more assets under control of the Trust, given the fact that he refused to recognize
22 | that he had been terminated as trustee and that the Keens had executed new estate planning
23 | documents.

24 | 71. The presumptive sanction is suspension.

Count IV – Prejudice in the Administration of Justice

72. ABA Standard 7.0 supra, is most applicable to Respondent's efforts to derail the
Association's investigation by threatening Ms. Clausen and Mr. Keen with a lawsuit if she did

1 not withdraw the grievance. Both Mr. Keen and Ms. Clausen were injured by the intimidating
2 effect of Respondent's threatening conduct. In addition, the disciplinary system was potentially
3 injured by Respondent's attempts to intimidate people who gave information to the Association
4 about his conduct.

5 73. The presumptive sanction for count 4 is suspension.

6 ***SANCTION***

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

10 75. Based on the Findings of Fact and Conclusions of Law and application of the ABA
11 Standards, the appropriate presumptive sanction is suspension.

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

14 77. The following aggravating factors set forth in Section 9.22 of the ABA Standards
15 are applicable in this case:

- 16 (a) prior disciplinary offenses.
17 (b) dishonest or selfish motive;
18 (d) multiple offenses;
19 (g) refusal to acknowledge wrongful nature of conduct;
20 (h) vulnerability of victims;
21 (i) substantial experience in the practice of law (Respondent was admitted to
22 practice in 1974);
23 (j) indifference to making restitution.

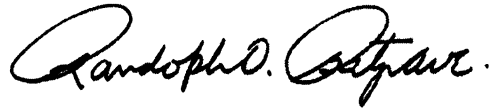
24 78. None of the mitigating factors set forth in Section 9.32 of the ABA Standards is
applicable to this case.

Recommendation

79. Based on the ABA Standards and the applicable aggravating and mitigating

1 factors, the Hearing Officer recommends that Respondent Alan F. Hall be suspended for a
2 minimum period of two years. Any reinstatement from suspension should be conditioned on a
3 fitness to practice examination.

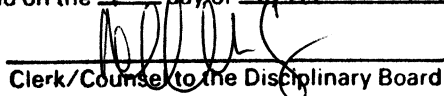
4 Dated this 31st day of March, 2013.

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6 

7 _____
8 Randolph O. Petgrave, WSBA No. 26046
9 Hearing Officer

10
11
12 **CERTIFICATE OF SERVICE**

13 I certify that I caused a copy of the FOF, COL & HD^{IC} Recommendation
14 to be delivered to the Office of Disciplinary Counsel and to be mailed
15 to STEPHEN SMITH, Respondent/Respondent's Counsel
16 at 277 MAIN ST. #1000 BOSTON MA 02102, by Certified/first class mail
17 postage prepaid on the 1st day of APRIL, 2013

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20 
21 Clerk/Counsel to the Disciplinary Board