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FILED

MAY 31 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KENNETH BROMLEY RICE,
Lawyer (Bar No. 4973).

Proceeding No. 13#00012

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held a default hearing on May 29, 2013.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, Bar File (BF) 2 (attached), charged Kenneth Bromley Rice with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the Formal Complaint are admitted and established as follows:

4. By failing to keep Mr. Steelman and Mr. Geppert reasonably informed about the

1 status of their matter, by failing to comply with their reasonable requests for information, and by
2 ceasing communication with them during the representation, Respondent violated RPC 1.4(b)
3 (Count 1).

4 5. By failing to provide Mr. Steelman and Mr. Geppert with their file after he was
5 terminated, Respondent violated RPC 1.16(d) (Count 2).

6 6. By failing to promptly provide Mr. Steelman and Mr. Geppert a written accounting
7 on request, Respondent violated RPC 1.15A(e) (Count 3).

8 7. By failing to respond promptly to disciplinary counsel's requests for information
9 concerning the grievance in this matter, by failing to appear at his deposition, by failing to
10 provide requested documents, and by failing respond to requests for an interview, Respondent
11 violated RPC 8.4(l) (though violation of ELC 5.3(e)) (Count 4).

12 8. By misrepresenting to disciplinary counsel that he was unable to attend the
13 February 24, 2012, deposition due to inclement weather conditions, Respondent violated RPC
14 8.4(c) (Count 5).

15 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
16 **REGARDING RECOMMENDED SANCTION**

17 9. Respondent acted negligently with respect to Count 1.

18 10. Respondent acted knowingly with respect to Counts 2-5.

19 11. As a result of Respondent's lack of communication, Mr. Steelman and Mr. Geppert
20 suffered at least potential injury to their legal interests because they were unable to reach their
21 lawyer and move forward with their matter.

22 12. As a result of Respondent withholding their client file, Mr. Steelman and Mr.
23 Geppert suffered injury because it was more expensive and risky to continue the litigation and
24 they were prevented from responding fully to subpoenas from opposing counsel.

1 13. As a result of Respondent's failure to provide an accounting, Mr. Steelman and
2 Mr. Geppert suffered injury because they were denied information to which they were entitled
3 and were unable to determine how their funds had been handled and whether they were entitled
4 to a refund of any unearned fees from Respondent.

5 14. As a result of Respondent's failure to cooperate with the investigation and false
6 statement to the Association, the disciplinary system and Respondent's clients suffered injury
7 because the Association was unable to fully investigate the fee, billing, and trust account issues
8 raised by the grievance.

9 15. The presumptive sanction for the violations charged in Counts 1 is reprimand
10 under ABA Standards 4.43:

11 4.43 **Reprimand** is generally appropriate when a lawyer is negligent and does
12 not act with reasonable diligence in representing a client, and causes injury or
potential injury to a client.

13 16. The presumptive sanction for Counts 2 and 4 is suspension under ABA Standard
14 7.2:

15 7.2 **Suspension** is generally appropriate when a lawyer knowingly engages in
16 conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.

17 17. The presumptive sanction for Count 3 is suspension under ABA Standard 4.12:

18 4.12 **Suspension** is generally appropriate when a lawyer knows or should know
19 that he is dealing improperly with client property and causes injury or potential
injury to a client.

20 18. The presumptive sanction for Count 5 is reprimand under ABA Standard 5.13:

21 5.13 **Reprimand** is generally appropriate when a lawyer knowingly engages in
22 any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and
that adversely reflects on the lawyer's fitness to practice law.

23 19. In the case of multiple ethical violations, the "ultimate sanction imposed should at
24 least be consistent with the sanction for the most serious instance of misconduct among a

1 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
2 846 P.2d 1330 (1993) (quotation omitted).

3 20. The following aggravating factors set forth in Section 9.22 of the ABA Standards
4 apply in this case:

5 (a) prior disciplinary offenses:

- 6 • two-year suspension in 1988 for engaging in conduct involving dishonesty,
7 engaging in conduct prejudicial to the administration of justice, engaging in
8 conduct adversely reflecting on fitness to practice, creating or using false
9 evidence, and failing to protect his client’s interests on suspension;
- 60-day suspension in 1985 for neglecting a client matter, making
10 misrepresentations to a client, and failing to cooperate with a disciplinary
11 investigation;
- censure in 1989 for representing clients with conflicting interest; and
- censure in 1985 for failing to cooperate with a disciplinary investigation;

10 (d) multiple offenses;

11 (e) bad faith obstruction of the disciplinary proceeding by intentionally
12 failing to comply with rules or orders of the disciplinary agency [failure
13 to file answer to formal complaint as required by ELC 10.5(a)]¹; and

14 (i) substantial experience in the practice of law [Respondent was admitted in
15 1973].

16 21. No mitigating factors exist. Although Respondent’s prior discipline is more than
17 20 years old, it is not remote under existing case law because some of it is for misconduct
18 similar to that at issue here. See In re Disciplinary Proceeding Against Van Camp, 171 Wn.2d
19 781, 813, 257 P.3d 599 (2011); In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d
20 64, 92, 101 P.3d 88 (2004).

21 22. On balance, the aggravating and mitigating factors do not provide cause to deviate
22 from the presumptive sanction of suspension.

23 23. Given the multiple counts warranting suspension, the harm to the grievants and the
24 disciplinary systems from Respondent’s failure to cooperate, and the fact that Respondent has

¹ ELC 10.5(a) provides: “Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6.” See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer’s “total nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process”).


1 | been sanction for similar misconduct in the past, a lengthy suspension is warranted.

2 | **RECOMMENDATION**

3 | 24. Based on the ABA Standards and the applicable aggravating and mitigating
4 | factors, the Hearing Officer recommends that Respondent Kenneth Bromley Rice be suspended
5 | for two years.

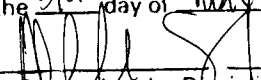
6 | 25. In addition to the above sanction, upon reinstatement to active practice,
7 | Respondent should be subject to probation under ELC 13.8 for a period of two years. During
8 | the period of probation he should be required to use written fee agreements, keep
9 | contemporaneous time records, provide clients with billing statements showing itemized time
10 | entries, maintain a check register, and provide evidence of compliance with these terms to a
11 | probation monitor on a quarterly basis.

12 | DATED this 29th day of May, 2013.

13 |
14 | 
15 | James S. Craven, Bar No. 1056
16 | Hearing Officer

17 | **CERTIFICATE OF SERVICE**

18 | I certify that I caused a copy of the FOF, COL and HO's Recommendation
19 | to be delivered to the Office of Disciplinary Counsel and to be mailed
20 | to Kenneth Rice Respondent/Respondent's Counsel
21 | at 999 W. Cope Blvd #105 Kennewick, WA 98501, by Certified first class mail,
22 | postage prepaid on the 21st day of MAY, 2013

23 | 
24 | Clerk/Counsel to the Disciplinary Board

FILED

FEB 28 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KENNETH BROMLEY RICE,

Lawyer (Bar No. 4973).

Proceeding No. 13#00012

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent Kenneth Bromley Rice was admitted to the practice of law in the State of Washington on May 2, 1973.

FACTS REGARDING COUNTS 1-3 (Steelman and Geppert Representation)

2. In August 2010, Mark Steelman and his business partner, Ben Geppert, hired Respondent to represent them in a contract dispute with other members/owners of EnergX, LLC.

3. Work progressed to the clients' satisfaction until approximately January 2011, at

1 which point Respondent stopped communicating with them.

2 4. The clients repeatedly called Respondent, sent emails, and left notes at his office, to
3 no avail.

4 5. On February 2, 2011, Mr. Geppert sent Respondent an email with the subject line
5 "termination of services." In that email he fired Respondent because of Respondent's lack of
6 responsiveness and asked for a return of \$10,000, which was the amount Mr. Geppert had sent
7 Respondent on January 10, 2011.

8 6. On February 10, 2011, Respondent emailed his clients stating that he had been out
9 with medical problems for the last week or so. He did not provide an explanation for his lack of
10 communication throughout January. He acknowledged receiving Mr. Geppert's email firing
11 him and forwarded documents received that day from opposing counsel.

12 7. Meanwhile, on or about February 8, 2011, Mr. Steelman and Mr. Geppert hired
13 lawyer Ken Miller to represent them in their dispute with EnergX.

14 8. Between February 2011 and August 2011, Mr. Miller called and/or wrote
15 Respondent repeatedly asking him to return his clients' file, provide an accounting, and return
16 unearned fees.

17 9. Although Respondent promised to do so, he never did.

18 10. Respondent's failure to return the file made it more expensive and risky for his
19 clients to continue the litigation and prevented them from responding fully to subpoenas from
20 opposing counsel.

21 11. Respondent never refunded any fees he received from Mr. Steelman and Mr.
22 Geppert, claiming that all fees were earned.

23 COUNT 1

24 12. By failing to keep Mr. Steelman and Mr. Geppert reasonably informed about the

1 status of their matter, by failing to comply with their reasonable requests for information, and/or
2 by ceasing communication with them during the representation, Respondent violated RPC
3 1.4(b).

4 **COUNT 2**

5 13. By failing to provide Mr. Steelman and Mr. Geppert with their file after he was
6 terminated, Respondent violated RPC 1.16(d).

7 **COUNT 3**

8 14. By failing to promptly provide Mr. Steelman and Mr. Geppert a written accounting
9 on request, Respondent violated RPC 1.15A(e).

10 **FACTS REGARDING COUNTS 4-5 (Failure to Cooperate)**

11 15. Mr. Steelman filed a grievance against Respondent on September 13, 2011.

12 16. On September 14, 2011, disciplinary counsel sent Respondent a letter to his business
13 address on file with Association asking him to respond to Mr. Steelman's grievance within two
14 weeks.

15 17. Respondent did not respond.

16 18. On October 18, 2011, disciplinary counsel sent Respondent a certified letter to his
17 business address on file with Association asking him to respond to Mr. Steelman's grievance by
18 October 31, 2011. The letter was returned as undeliverable.

19 19. On October 27, 2011, disciplinary counsel sent Respondent a certified letter to his
20 home address on file with Association asking him to respond to Mr. Steelman's grievance by
21 November 9, 2011.

22 20. Respondent signed the green card for the certified letter on November 29, 2011.

23 21. Respondent did not respond.

24 22. On November 15, 2011, disciplinary counsel issued a subpoena duces tecum

1 requiring Respondent to appear at a deposition on December 13, 2011, and to bring his
2 complete file and records for Mr. Steelman and Mr. Geppert.

3 23. Respondent was personally served with the subpoena on November 30, 2011.

4 24. On December 12, 2011, Respondent called disciplinary counsel to say that he never
5 received the grievance (although he acknowledged receiving the certified letter seeking his
6 response) and asked for an extension of time to respond to the grievance.

7 25. Disciplinary counsel sent him another copy of the grievance and agreed to extend the
8 time to respond until January 9, 2012.

9 26. Respondent did not respond by January 9, 2012.

10 27. On January 25, 2012, disciplinary counsel issued a new subpoena duces tecum
11 requiring Respondent to appear at a deposition on February 7, 2012 and bring his complete file
12 and records for Mr. Steelman and Mr. Geppert.

13 28. Respondent was personally served with the subpoena on January 30, 2012.

14 29. On February 3, 2012, Respondent faxed a letter to disciplinary counsel stating that
15 he had a conflict on February 7, 2012 and asking that the deposition be rescheduled to February
16 21-24 or March 5-9, 2012.

17 30. Disciplinary counsel rescheduled the deposition to February 24, 2012 at 9:00 a.m.

18 31. At approximately 5:07 p.m. on February 23, 2012, Mr. Rice left a voice mail
19 message for disciplinary counsel stating that he was at the Denver airport and asking that the
20 deposition be rescheduled to 10:00 on February 24, 2012.

21 32. At approximately 5:33 a.m. on February 24, 2012, Respondent sent disciplinary
22 counsel a letter by fax and email stating that "the weather here [in Kennewick] and in the Pass
23 will make it impossible to get to your offices by 9:00 a.m."

1 33. Respondent's claim that weather conditions made travel between Seattle and
2 Kennewick impossible was not true.

3 34. Respondent knew that his claim that weather conditions made travel between Seattle
4 and Kennewick impossible was not true.

5 35. Disciplinary counsel advised Respondent that he was not excused from the
6 deposition.

7 36. Respondent attached a written response to the grievance and other documents to the
8 email he sent disciplinary counsel on February 24, 2012.

9 37. In his response Respondent stated that he did not deposit any of the payments he
10 received from Mr. Steelman and Mr. Geppert into his trust account because all funds he
11 received from them were earned by the time he received them.

12 38. The response Respondent submitted on February 24, 2012 included billing
13 statements Respondent had sent to his clients.

14 39. According to the documents Respondent submitted, Mr. Steelman and Mr. Geppert
15 paid him a total of \$30,000.

16 40. According to the documents Respondent submitted, between August 16, 2010 and
17 January 17, 2011, he billed \$30,112.50 for 163.5 hours of work at a rate of \$175 per hour and
18 for costs, and wrote off the balance of \$112.50.

19 41. Respondent's billing statements did not itemize the charges based on the number of
20 hours and work performed on a given date but, instead, provided a summary description of the
21 work performed and the total hours worked during the entire billing cycle.

22 42. It was not possible to determine from the billing statements when during the billing
23 cycle the work was performed or whether the fees were earned at the time they were received.

24

1 43. In May and June 2012, the Association's investigator, Scott O'Neal, phoned
2 Respondent on several occasions requesting copies of his time keeping records and asking to set
3 up a telephone interview.

4 44. The time keeping records were needed to evaluate Respondent's claim that all fees
5 he received from Mr. Steelman and Mr. Geppert were earned when received.

6 45. Respondent did not respond to Mr. O'Neal's messages.

7 46. On June 11, 2012, disciplinary counsel sent Respondent a letter and email asking
8 that he contact Mr. O'Neal to arrange a telephone interview and produce the requested records.

9 47. Respondent responded with an email stating that he was caring for his wife, whom
10 he said was terminally ill, but that he checked his office phone regularly and would work with
11 Mr. O'Neal to provide the needed information.

12 48. Mr. O'Neal called and/or emailed Respondent monthly between June 2012 and
13 September 2012 to obtain the requested documents and set up a phone interview.

14 49. Respondent never responded.

15 50. Respondent's failure to provide the requested time keeping records has made it
16 impossible for disciplinary counsel to evaluate the billing, fee, and trust account issues raised by
17 this grievance.

18 **COUNT 4**

19 51. By failing to respond promptly to disciplinary counsel's requests for information
20 concerning the grievance in this matter, by failing to appear at his deposition, by failing to
21 provide requested documents, and/or by failing respond to requests for an interview,
22 Respondent violated RPC 8.4(*l*) (though violation of ELC 5.3(e)).

23 **COUNT 5**

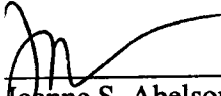
24 52. By misrepresenting to disciplinary counsel that he was unable to attend the February

1 24, 2012 deposition due to inclement weather conditions, Respondent violated RPC 8.4(c).

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

Dated this 28 day of February, 2013.



Joanne S. Abelson, Bar No. 24877
Senior Disciplinary Counsel