

FILED

Jan 26, 2021

Disciplinary
Board

Docket # 001

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

FRED MICHAEL MISNER,
Lawyer (Bar No. 5742).

Proceeding No. 21#00005

ODC File No(s). 20-00799 & 20-00802

Resignation Form of Fred Michael Misner
(ELC 9.3(b))

I, Fred Michael Misner, declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.

2. I was admitted to practice law in the State of Washington on October 25, 1974.

3. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

4. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in Disciplinary Counsel's statement, but rather than defend against the allegations, I wish to

1 permanently resign from membership in the Association.

2 5. I agree to petition the court to resign as the personal representative of the Correll
3 estate by January 31, 2021.

4 6. I consent to entry of an order under ELC 13.9(e) assessing expenses of \$1,500 in
5 this matter.

6 7. I agree to pay restitution of \$203,228.68 to the Estate of Jean Marie Correll.

7 8. I agree to pay any additional costs or restitution that may be ordered by a Review
8 Committee under ELC 9.3(g).

9 9. I understand that my resignation is permanent and that any future application by me
10 for reinstatement as a member of the Association is currently barred. If the Washington Supreme
11 Court changes this rule or an application is otherwise permitted in the future, it will be treated as
12 an application by one who has been disbarred for ethical misconduct. If I file an application, I
13 will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or
14 instances of alleged misconduct on which this resignation was based.

15 10. I agree to (a) notify all other states and jurisdictions in which I am admitted of this
16 resignation in lieu of discipline; (b) seek to resign permanently from the practice of law in all
17 other states and jurisdictions in which I am admitted; and (c) provide Disciplinary Counsel with
18 copies of this notification and any response(s). I acknowledge that this resignation could be
19 treated as a disbarment by all other jurisdictions.

20 11. I agree to (a) notify all other professional licensing agencies in any jurisdiction from
21 which I have a professional license that is predicated on my admission to practice law of this
22 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)
23 provide disciplinary counsel with copies of any of these notifications and any responses.

1 12. I agree that when applying for any employment, I will disclose the resignation in
2 lieu of discipline in response to any question regarding disciplinary action or the status of my
3 license to practice law.

4 13. I understand that my resignation becomes effective on Disciplinary Counsel's
5 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) Disciplinary
6 Counsel must do so promptly following receipt of this document.

7 14. When my resignation becomes effective, I agree to be subject to all restrictions that
8 apply to a disbarred lawyer.

9 15. Upon filing of my resignation, I agree to comply with the same duties as a disbarred
10 lawyer under ELC 14.1 through ELC 14.4.

11 16. I understand that, after my resignation becomes effective, it is permanent. I will
12 never be eligible to apply and will not be considered for admission or reinstatement to the practice
13 of law nor will I be eligible for admission for any limited practice of law.

14 17. I certify under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 1-22-21 C 619 Harbor
Date and Place

Fred Michael Misner
Fred Michael Misner, Bar No. 5742

17
18 ENDORSED BY:

19 Sachia Stonefeld Powell
Sachia Stonefeld Powell, Disciplinary Counsel
20 Bar No. 21166

EXHIBIT A

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In re

FRED MICHAEL MISNER,

Lawyer (Bar No. 5742).

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STATEMENT OF ALLEGED
MISCONDUCT UNDER ELC 9.3(b)(1)

The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

I. ADMISSION TO PRACTICE

1. Respondent Fred Michael Misner was admitted to the practice of law in the State of Washington on October 25, 1974.

II. ALLEGED FACTS

Conflict of Interest / Theft of Funds

2. Misner is a beneficiary of, and the personal representative for, the estate of his aunt, Jean Marie Correll.

1 3. Correll's will specified that the beneficiaries were five individuals and five
2 charities, each to get 10% of the estate.

3 4. Misner calculated that each beneficiary should receive \$54,283.17, although he
4 can't explain how he reached that number. Misner mailed checks in that amount to four of the
5 individual beneficiaries, and none of the charity beneficiaries.

6 5. One of the checks to an individual beneficiary bounced. Misner eventually
7 replaced that check, but only after a grievance was filed more than two years later.

8 6. Misner's explanation for the bounced check was that he did not do "as thorough a
9 job with accounting" as he should have and he believed that there were sufficient funds in the
10 account to cover the check. He has no explanation for the delay in replacing the bounced check.

11 7. In total, Misner paid himself a total of \$257,511.85 from the estate.

12 8. Misner justified this amount, stating that Correll told him, approximately two
13 weeks after her discharge from the hospital to hospice care, that she had changed her mind
14 about the beneficiaries in her will and had decided that Misner should receive that percentage of
15 her estate (50%) that was previously bequeathed to the charities.

16 9. Misner did not seek legal advice about Correll's change of plans, nor did he
17 suggest that Correll contact a lawyer.

18 10. Misner did not tell the other family members/beneficiaries about the conversation
19 with Correll, either before or after her death.

20 11. There were no witnesses to Correll's statements, and no new will was executed.

21 12. Misner stated he did not create or maintain any type of ledger or log detailing
22 estate assets, costs, expenses or payments, despite the fact that there were several estate
23 accounts.

1 Failure to Act Diligently/Failure to Expedite Litigation

2 13. On November 28, 2017, Misner filed a Petition for Probate with the Snohomish
3 County Superior Court to open the probate of Correll's estate.

4 14. Two days later he filed several additional documents, including a copy of Correll's
5 death certificate and Last Will and Testament.

6 15. Misner has not filed anything more in the probate matter for over three years.

7 16. Misner has no explanation for his failure to prepare, or file with the court, an estate
8 asset inventory.

9 Trust Account Violations

10 17. With regard to his trust account, Misner has not complied with the requirements to
11 safeguard client property and maintain required trust account records.

12 18. Between at least March 31, 2020, through June 30, 2020, the check register for
13 Misner's trust account did not include the payor or payee for transactions.

14 19. Between at least March 31, 2020, through June 30, 2020, Misner's client ledgers
15 did not include the purpose of the transactions, the transaction dates, the check number for
16 disbursements, or the client ledger balance following each transaction.

17 20. Between at least March 31, 2020, through June 30, 2020, Misner did not reconcile
18 the trust account check register to the bank statements as often as the bank statements were
19 generated.

20 21. Between at least March 31, 2020, through June 30, 2020, Misner did not reconcile
21 the trust account check register balance to the sum of all the client ledgers.

1 **III. ALLEGED MISCONDUCT.**

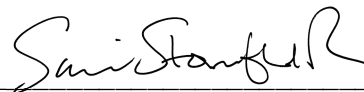
2 22. By taking more money from Correll's estate than he was entitled to under the
3 terms of the will, Misner violated RPC 1.15A(b)), and RPC 8.4(b) [RCW 9A.56.010 et seq.], (c)
4 and (d).

5 23. By serving as PR of Correll's estate and by failing to advise Correll to contact a
6 lawyer about any proposed change to the terms of her will where the proposed terms were not
7 fair and reasonable to the estate and/or the other beneficiaries, and were not transmitted in
8 writing, and Correll did not give informed consent in writing, Misner violated RPC 1.7(a)(2)
9 and RPC 1.8(a).

10 24. By failing to act diligently and failing to expedite litigation, Misner violated RPC
11 1.3 and RPC 3.2.

12 25. By failing to reconcile the trust account check register balance to the sum of all
13 client ledgers, failing to reconcile the trust account check register to the bank statements, and
14 failing to maintain required trust account records, Misner violated RPC 1.15A(h)(2), RPC
15 1.15A(h)(6), RPC 1.15B(a)(1), (2) and (8).

16
17 DATED this 15th day of January, 2021.

18 

19 _____
20 Sachia Stonefeld Powell, Bar No. 21166
21 Disciplinary Counsel