

FILED

SEP 23 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:

P. Dirk Nansen,
Lawyer (WSBA #9142)

Public No. 13#00015

HEARING, FINDINGS OF FACT;
CONCLUSIONS AND SANCTION
RECOMMENDATION

I. HEARING

1.1 DATE: The hearing before the undersigned Disciplinary Hearing Officer, Donald W. Carter, took place on August 19, 2013. The hearing was continued on an open status until August 23, 2013 to allow the Respondent and the Association to file memorandums of law on the issue of proportionality.

1.2 APPEARANCES: The Washington State Bar Association (hereafter Association) was represented by Senior Disciplinary Counsel, Marsha Matsumoto. The Respondent, Peter Dirk Nansen, appeared and represented himself, Pro Se.

HEARING, FINDINGS OF FACT;
CONCLUSIONS AND SANCTION
RECOMMENDATION - 1

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2 1.3 TESTIMONY/EVIDENCE: Testimony in person was given by the Grievant,
3 Ruth Ellerine Shields, Attorney James Dolan, and the Respondent Nansen.
4 Testimony by declaration was received from Anne Johnson of the Whatcom
5 Educational Association and from Christine Gray of the Washington State Bar
6 Association. Association's Exhibits 1-37, 111, 186, 196, and 198 were admitted
7 into evidence. Respondent did not propose any exhibits for admission, and did
8 not object to the admission of the Association's exhibits.
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11 1.4 PURPOSE: This hearing was held in accordance with ELC 10.13 et seq. for
12 the purpose of determining whether or not Respondent Nansen had violated the
13 provisions of Professional Conduct as alleged in Association's Formal
14 Complaint dated May 13, 2013, and if those allegations were proven by a clear
15 preponderance of the evidence that Respondent had violated one or more of the
16 Rules of Professional Conduct, to determine the appropriate sanctions under the
17 American Bar Association (ABA) Guidelines to assess against Respondent
18 Nansen.
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21 **II. FORMAL COMPLAINT**

22 2.1 The Association's Formal Complaint dated May 13, 2013 alleged five counts of
23 RPC violations against the Respondent. Specifically the counts charged were:

24 Count 1: By failing to deposit into his trust account Ruth Ellerine Shield's
25 check #1071 dated April 14, 2009 in the amount of \$10,000 for
26 the purpose designated on the check's memo line as an
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1 “Advance” Respondent Nansen violated RPC 1.15A(c).

2 Count 2: By using the funds from the check #1071 received on April 14,
3 2009 from Ruth Ellerine Shields for his own benefit without
4 authorization or entitlement to do so Respondent Nansen violated
5 RPC 1.15A(b) and/or RPC 8.4 (c).

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7 Count 3: By failing to refund advanced fees he had not (and has not)
8 earned to Ruth Ellerine Shield, Respondent Nansen violated RPC
9 1.15(A)(F) and/or 1.16(d).

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11 Count 4: By entering into a business transaction with Ruth Ellerine Shields
12 without: (1) fully disclosing all of the information about the
13 transaction to ensure that the transaction was fair and reasonable
14 to Mrs. Shields Respondent violated RPC 1.8(a)(1); (2) Advising
15 Mrs. Shields in writing the desirability of seeking the advice of
16 independent counsel, and/or providing her a reasonable
17 opportunity to seek such independent legal counsel before
18 entering into the business transaction Respondent violated RPC
19 1.8(a)(2); and/or (3) Receiving a signed, written informed
20 consent from Mrs. Shields, to the essential terms and conditions
21 of the transaction, the Respondent’s role in the transaction and
22 when the Respondent was representing the client in the
23 transaction Respondent violated RPC 1.8(a)(3). (The Association
24 plead Count 4 as an alternative in the event the Hearing Officer
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1 did not find that based upon the clear preponderance of the
2 evidence, that Respondent Nansen violated Counts 1, 2, and/or 3
3 as alleged.)

4 Count 5: By communicating directly with Ruth Ellerine Shields after he
5 was requested not to do so by her attorney, James Dolan,
6 Respondent violated RPC 4.2.
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8 **III. FINDINGS OF FACT**

- 9 3.1 Ruth Ellerine Shields and her husband were at one time dairy farmers in
10 Washington, owning approximately 160 acres in Whatcom County, Washington.
11
12 3.2 In 1995, after the death of her husband, Ruth Ellerine Shields transferred the
13 farm property to the “Ellerine Shields Family Limited Partnership”, and
14 executed an “Agreement of Limited Partnership”. Mrs. Shields, (hereafter
15 Ellerine Shields), was the general partner, and her daughter, Sara Marie Shields-
16 Priddy, was the sole limited partner. Sara Marie Shields-Priddy was the only
17 child of Ellerine Shields and her late husband.
18
19 3.3 Sara Marie Shields-Priddy died from Hanta Virus, leaving her husband, Kirk
20 Priddy, and two minor children as her heirs.
21
22 3.4 The neighbors of Ellerine Shields and her brother became concerned that Kirk
23 Shields-Priddy would try to take advantage of 81 year-old Ellerine Shields. In
24 the past, Mrs. Shields had helped her daughter and Kirk Shields-Priddy with a
25 down payment on a house and with the monthly payments on the debt secured
26 by that house. There was concern about whether or not Kirk Shields-Priddy
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1 would continue to try to take financial advantage of his former mother-in-law,
2 and/or try to take over the control of the Ellerine Shields Family Limited
3 Partnership.

4 3.5 In 2007, with the assistance of her neighbors and brother, Ellerine Shields hired
5 James Dolan, a Mt. Vernon attorney whose practice was primarily in the field of
6 elder law. The intended goal to be achieved by Attorney Dolan was to protect
7 Mrs. Shields and her interest in the Ellerine Shields Family Limited Partnership
8 from her former son-in-law and to prevent her from being taken advantage of by
9 Kirk Shields-Priddy.
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12 3.6 Around the time she hired Attorney Dolan, Mrs. Shields moved from her farm
13 into an assisted living facility in Lynden, Washington.

14 3.7 On Mrs. Shields' behalf and for her protection, James Dolan filed a "Petition for
15 Order of Protection of a Vulnerable Adult Order to Compel Prevention of Waste
16 on behalf of Ellerine Shields" in Whatcom County (Exhibit 196).
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18 3.8 The basis of the petition for the protection order centered on the allegation that
19 Ellerine Shields was a vulnerable adult under the statute. According to the
20 neighbors, Mrs. Shields possessed some emotional or mental health
21 vulnerabilities, which over a period of time had allowed the son-in-law and
22 daughter to "borrow" approximately \$132,000. There also had been a diagnosis
23 that Mrs. Shields in the past had suffered major depressive episodes as well as
24 evidencing an adjustment order and anxious moods (Exhibit 196).
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1 3.9 As a result of the petition, a finding was made by the court that Ruth Ellerine
2 Shields was (and continues to be) a vulnerable adult under RCW 74.34.020(B)
3 (Exhibit 34). Certain restraints were ordered against Kirk Shields-Priddy which
4 were extended by orders of the Court to protect Ruth Ellerine Shields from
5 being manipulated emotionally and financially (Exhibit 35, 198).
6

7 3.10 James Dolan contacted the Respondent, P. Dirk Nansen, an attorney admitted to
8 practice law in the state of Washington on May 25, 1979, to help deal with
9 matters involving the family limited partnership and disputes involving various
10 properties. This was an area of practice in which Mr. Dolan was not
11 experienced.
12

13 3.11 Dirk Nansen knew that Ellerine Shields was over 80 years of age, and living in
14 an assisted living facility. Respondent met with her at the facility. He also
15 knew that an order declaring Ellerine Shields a vulnerable adult had been
16 entered in Whatcom County Superior Court with the intent to protect Mrs.
17 Shields from being taken advantage of by her son-in-law.
18

19 3.12 From 2007 when he was first retained through July 2009 when he was
20 terminated, Respondent Dirk Nansen and Ellerine Shields never entered into a
21 written fee agreement. No confirming letter regarding the initial terms of the
22 formation of lawyer/client relationship was sent to Mrs. Shields by Respondent.
23 Nothing was reduced to writing to define the duties for which Respondent
24 Nansen was hired.
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1 3.13 During his representation of Mrs. Shields, Respondent Nansen sent bills for
2 legal services rendered to Mrs. Shields on a regular basis. Before the June 2009
3 bill, discussed below, Respondent Nansen sent the following bills to Ellerine
4 Shields.
5

Billed Amount	Billing Dates
\$ 2,662.50	1/25/2008
\$ 1,221.00	4/2/2008
\$ 2,867.50	4/28/2008
\$ 3,311.50	4/28/2008
\$ 528.00	6/16/2008
\$ 3,300.00	7/9/2008
\$ 2,814.00	7/30/2008
\$ 2,653.00	11/24/2008

15
16 \$ 19,357.50

17
18 In turn, Ellerine Shields promptly paid all of the bills which she received. From
19 the records admitted it appears monies were paid by check to Respondent
20 Nansen for which no bills were produced. The dates of the payments of these
21 bills predated April 14, 2009. The payments to Mr. Nansen were on the
22 following dates:
23

Payment Amount	Payment Date
\$ 2,000.00	7/27/2007
\$ 2,662.00	1/28/2008
\$ 1,221.00	4/3/2008

1	\$ 2,867.50	4/29/2008
2	\$ 4,311.50	5/29/2008
3	\$ 2,653.00	6/24/2008
4	\$ 3,300.00	7/10/2008
5	\$ 2,814.00	7/30/2008
6	\$ 528.00	11/24/2008
7	\$ 400.00	1/19/2009
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9	\$ 22,757.00	

By a bill dated April 28, 2008 (actually sent May 28, 2008) Mr. Nansen billed Mrs. Shields for services rendered in the amount of \$3,311.50 (Exhibit 4). On May 29, 2008 Ellerine Shields paid to Respondent Nansen the sum of \$4,311.50, an overpayment of \$1,000. It appears Respondent Nansen did not refund the \$1,000 overpayment; did not credit the overpayment to Mrs. Shields' account, and did not place the \$1,000 into his trust account. There was no credit for the \$1,000 overpayment on the following month's bill when he billed \$2,653 (Exhibit 23, Exhibit 5). Based on the exhibits produced after Mrs. Shields' payment of \$2,653 on June 24, 2008 it would seem that she should have had created a total credit balance of \$1,244. It does not appear the sum of \$1,244 has been properly credited to the account of Mrs. Shields nor does it appear to have been held in a trust account at any time for her benefit.

3.14 Prior to April 2009 Ellerine Shields had promptly paid every bill from Respondent Nansen, when received. Respondent's periodic billings included all

1 of his recorded charges relate to the sale of the farm property and his
2 negotiations with potential purchasers, reviewing documents, etc.

3 3.15 When the farm property was put on the market for sale, an initial offer of \$1.3
4 million from the raspberry grower leasing the farm was received. Ellerine
5 Shields unequivocally testified that this offer was never acceptable to her and
6 she would not have sold the property for that amount. This position was
7 supported by her prior correspondence (Exhibit 18). Mrs. Shields was credible
8 in her recitation of the facts which also was consistent with the correspondence
9 of Mrs. Shields and Attorney Dolan.
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12 3.16 Respondent Nansen claims that Mrs. Shields would have accepted the \$1.3
13 million, but for his discouraging her from accepting that offer. The
14 Respondent's testimony was not credible on that issue, viewing the letter of June
15 17, 2009 written by James Dolan (Exhibit 12) and Mrs. Shields' letter of March
16 27, 2010 (Exhibit 18).
17

18 3.17 After the terms of the sale had been negotiated, the Respondent, Dirk Nansen,
19 met with Ellerine Shields on April 14, 2009 to obtain her signature on the
20 earnest money agreement for the purchase and sale of the property for \$2.3
21 million (Exhibit 186). Respondent Nansen met with Ellerine Shields for
22 approximately 40 minutes at the apartment in the assisted living facility where
23 Mrs. Shields was then living on April 14. Mrs. Shields was an 83 year-old
24 vulnerable adult.
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1 3.18 At their April 14, 2009 meeting, Respondent Dirk Nansen told Ellerrine Shields
2 that he had three years of accumulated, unpaid real estate taxes on parcels of
3 land he owned in Okanogan County, Washington and needed \$10,000 to pay
4 those delinquencies.

5
6 3.19 April 14, 2009 Respondent had a balance of \$58.85 in his personal account at
7 Whatcom Educational Credit Union (WECU). This credit union account was
8 Respondent's personal account and was not a trust account maintained under the
9 requirements of IOLTA. On April 2, 2009 Respondent Nansen had written a
10 \$2,000 check when his WECU account balance was \$974.63, resulting in an
11 overdraft of \$1,025.37, which overdraft was resolved before his April 14
12 meeting with Mrs. Shields.
13

14 3.20 Although the farm sale had not yet closed and the purchase and sale agreement
15 was just being signed on that day, Respondent Nansen asked Mrs. Shields
16 multiple times for \$10,000 to pay his delinquent tax bills.
17

18 3.21 Mrs. Shields testified that she was concerned about giving Respondent the
19 money from her account because she felt she needed to reserve money for
20 paying the insurance premium which would come due in August.
21

22 3.22 Respondent Nansen claims he told Mrs. Shields that the \$10,000 was for a
23 "bonus" a fact that was denied by Mrs. Shields. The claim he told her the
24 \$10,000 was a "bonus" is not credible viewing the totality of the evidence. Mrs.
25 Shields states that Respondent told her that it was for an "advance" against his
26 future billings, and Mrs. Shields wrote the word "advance" on the check
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1 (Exhibit 9). The “bonus” payment claim by Respondent Nansen is also
2 inconsistent with his admission in his answer “At the suggestion of Shields,
3 Respondent agreed to represent Shields in the future at no additional charge ...”.

4 3.23 On June 2, 2009, attorney James Dolan and Respondent Nansen met and
5 discussed the \$10,000 Respondent Nansen had received from Ellerine Shields.
6 Dolan inquired whether or not Respondent Nansen had a fee agreement with
7 Mrs. Shields, and was told by Respondent that he (Nansen) had a written fee
8 agreement. Attorney Dolan later followed up the meeting with Mrs. Shields
9 who informed Dolan that she did not have a written fee agreement with
10 Respondent.
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13 3.24 Also at the June 2, 2009 meeting, Respondent Nansen told Attorney Dolan that
14 Mrs. Shields had called him on June 1, and had discussed with him issues
15 pertaining to the family partnership. When Mr. Dolan met with Mrs. Shields
16 after his meeting with Respondent, Mrs. Shields informed him that it was
17 Respondent Nansen who had called her on June 1. Respondent Nansen
18 attempted to get Mrs. Shields to continue the limited partnership despite a
19 telephone conference on May 19 between Dolan and Respondent. In an email to
20 Respondent dated May 20 Dolan confirmed with Respondent Nansen that “Mrs.
21 Shields does not wish to continue the partnership for the rest of her life” (Exhibit
22 10). This was also pointed out in Attorney Dolan’s letter of June 17, 2009
23 (Exhibit 12).
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27 3.25 At the meeting of June 2 Dolan asked Respondent Nansen if he had requested
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1 that Mrs. Shields pay \$10,000 in addition to the fees she had already paid to him
2 for his services. In response Nansen stated that he accepted a \$10,000 "bonus"
3 from Mrs. Shields for work in assisting her with the sale of the family limited
4 partnership (FLP) farm property. Dolan asked Respondent Nansen whether the
5 Shields' money had been placed into a client IOLTA account and was told that
6 in fact Respondent had not done so.
7

8 3.26 In the follow-up meeting with Mrs. Shields, Attorney Dolan was provided notes
9 which confirmed Ms. Shields' understanding that the \$10,000 payment was an
10 "advance" for legal work to be done by Respondent Nansen (Exhibit 12). Those
11 notes, the letter of June 17, 2009 and Dolan's testimony provide additional
12 credible evidence that this was an advance of fees and not the claimed "bonus".
13

14 3.27 On June 2, 2009, the same day Respondent Nansen had met with attorney Dolan
15 and misrepresented the existence of a written fee agreement with Mrs. Shields,
16 he sent a letter to Mrs. Shields billing her \$3,867. 50 for previously unbilled
17 legal work done in January, March, April, May and June of 2009. In that billing
18 statement Respondent Nansen wrote that Mrs. Shields did not need to pay
19 anything because he, Respondent Nansen had deducted the amount of the bill,
20 (\$3,867.50) from Mrs. Shields' \$10,000 advance and stated in writing "there is a
21 current balance of "\$6,132.50 still in your account" (Exhibit 11). This gives
22 additional credence to the \$10,000 check being an "advance" of fees and not the
23 "bonus" as claimed by Respondent. To reiterate Respondent's claim the
24 \$10,000 was a "bonus" as opposed to an advance of fees is simply not credible.
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1 3.28 Nansen's bill of June 2009 goes on to assert "This statement reflects your
2 agreement to make a payment of \$10,000 as a bonus for negotiating the sale of
3 your farm property ... with the agreement on my part that the amount to also
4 apply as payment of hourly fees for future work done at the usual rate of \$225
5 *(Emphasis added)* (for a total of 44.4 hours) (Exhibit 11).

6
7 3.29 Mrs. Shields stated that she did not want to give the \$10,000 to Respondent and
8 regretted it afterwards.

9 3.30 The Respondent Nansen's real estate taxes were due to be paid to the Okanagan
10 Treasurer on or before April 30 to prevent his properties from going into tax
11 foreclosure. At no time did he ever suggest to Mrs. Shields that she had time to
12 think over the transaction and its potential consequences. Although, Respondent
13 was well aware that Ms. Shields continued to be represented by James Dolan; he
14 never suggested that she contact Dolan or another legal counsel for advice on
15 the appropriateness of his receiving the \$10,000 advance to pay his overdue
16 taxes. The Respondent also never advised her of his conflicts of interest by his
17 requesting the advance, nor did he provide Mrs. Shields with any information
18 regarding his ethical duties to maintain the advanced fees in a trust account to be
19 drawn down only on submitting bills.

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23 3.31 After Respondent Nansen left her home, Mrs. Shields regretted that she had not
24 phoned Attorney Dolan before giving Respondent the check for \$10,000.

25 3.32 After receiving the \$10,000 check dated April 14, 2009, Respondent Nansen
26 deposited the monies into his personal account at Whatcom Educational Credit
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1 Union, later disbursing those monies to the Okanogan Treasurer to save his real
2 property from foreclosure for delinquent taxes.

3 3.33 At no time was there ever a written or oral modification of any prior oral
4 agreement regarding \$10,000 additional attorney fees between Respondent and
5 Mrs. Shields. There was no written agreement between the Respondent and
6 Mrs. Shields, regarding the payment of a “bonus” upon the sale of the property.
7 In fact, there is nothing in writing before the delivery of the \$10,000 check
8 except for the word “advance” on the check’s memo line. Although Respondent
9 Nansen claims the sum was a “bonus” resulting from the farm sale, the delivery
10 of the check occurred almost two months in advance of the closing on June 2,
11 2009 (Exhibit 11). The payment being made from Mrs. Shields account before
12 the closing of the sale also creates a significant credibility issue with
13 Respondent’s claim this was a “bonus” earned as a result of the sale.
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17 3.34 Respondent Nansen has asserted throughout this proceeding that the \$10,000
18 payment of April 14, 2009 was not for “legal work” but that instead these
19 monies were for the work he performed over and above normal lawyer tasks.
20 However, he does not deny that he was paid for all the time he billed related to
21 purchaser contracts and negotiations and meetings leading up to the sale of Mrs.
22 Shields’ property.
23

24 3.35 In a letter dated June 17, 2009 following their meeting on June 2, 2009, attorney
25 Dolan wrote to Respondent that he was “especially concerned that you have
26 acted in this manner with the knowledge that Ms. Shields is a vulnerable adult
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1 who had previously been financially exploited by others in whom she had placed
2 her trust". He then made the following request to the respondent:

- 3 (1) You will no longer communicate with Mrs. Shields without prior approval
4 by me and all communications to Mrs. Shields will be copied to me.
5
6 (2) You will provide me with a copy of the fee agreement between you and Mrs.
7 Shields.
8
9 (3) You will refund to Mrs. Shields the balance "still in her account" of
10 \$6,132.50, plus \$1,057.50 representing the 2.2 hours billed for the May 12,
11 2009 meeting with you and Mrs. Shields, John Logan and Drew Ferron and
12 the 2.5 hours billed for the drafting of the Management Trust document for a
13 total refund of \$7,190. If Ms. Shields agrees to and executes that
14 Management Trust, she will pay you \$562.50 for 2.5 hours at \$225.
15
16 (4) You will remove your property from Ms. Shield's barn (Exhibit 12).

17 3.36 Earlier in their attorney/client relationship Respondent Nansen and Mrs. Shields
18 reached an agreement that he would be allowed to store some vehicles and other
19 property in the dairy barn on her property in exchange for the payment of \$216
20 per month. Respondent Nansen never paid any monies to Mrs. Shields for using
21 her barn as a storage facility. At the hearing, Respondent Nansen claimed that
22 agreement was that, in exchange for the use of the storage facility, he would
23 reduce his monthly billing by the equivalent of 1.5 hour per month. Respondent
24 Nansen's bills never reflected a reduction of 1.5 hours in exchange for storage.
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27 3.37 After receiving Attorney Dolan's letter of June 17, Respondent replaced in an
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1 undated letter that “I initially purposed to Ellerine that she pay me a bonus flat
2 fee of \$10,000 in exchange for the successful negotiation of the settlement with
3 Kirk on clearing the title to her property and getting the sale price up to \$2.3
4 million”. Respondent Nansen then goes on to state “She agreed to the idea there
5 was some merit to my proposal but insisted that if she did so, rather than a flat
6 fee for that accomplishment, I would not bill any additional for effectively that
7 much of my time in future work. I agreed to that”. He then went on to state that
8 “I agree that I should have had a written agreement at that time (Emphasis
9 added) (Exhibit 13). Again, the claim of a “bonus flat fee” is contracted by
10 Respondent’s restating that upon receipt of the “advance” check he would not
11 bill her further.
12

14 3.38 Mrs. Shields terminated the attorney-client relationship with Respondent Nansen
15 in July 2009.

17 3.39 On August 26, 2009 after he had been terminated Respondent Nansen wrote
18 directly to Ellerine Shields, despite having been advised by her attorney, James
19 Dolan, two months earlier not to communicate directly to her. Ignoring the
20 specific instructions of Attorney Dolan in the June 17, 2009 letter (Exhibit 17),
21 Respondent wrote a letter promising to refund her advanced attorney fees as
22 requested. However he once again pushed a previously rejected investment
23 scheme, writing that other clients had invested with the proposed scheme and
24 “one of those accounts, similar to yours at about \$2 million, earned over
25 \$120,000 since June 1 and more than \$710,000 since the first of the year. No
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1 permission of James Dolan had been requested before Respondent sent the letter
2 and no copy was provided by Respondent to Attorney Dolan (Exhibit 14).

3 3.40 On November 16, 2009 Attorney James Dolan once again wrote to Respondent
4 Nansen once again pointing out that he previously requested that "You no longer
5 communicate with Mrs. Shields without copying me on any correspondence and
6 without my prior approval, that you provide me with a copy of the fee
7 agreement you claim to have with Mrs. Shields, and that you refund \$7,190 in
8 unearned fees to Mrs. Shields and that you remove your personal property from
9 Mrs. Shields barn". Attorney Dolan confirmed that as of November 16, 2009
10 none of these requests had been complied with, although Respondent Nansen
11 promised by his August 26, 2009 letter to remove the personal property "within
12 the next week", and that the Respondent had promised to refund the unearned
13 fees (Exhibit 15).

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17 3.41 An answer to Dolan's letter of November 16, 2009 was sent by Respondent
18 Nansen stating that he would repay Mrs. Shields as soon as he was able to do so
19 because "I do have some prospect of generating a significant fee in the near
20 future that will allow me to do that (repay Mrs. Shields) and I will pay her that
21 amount as soon as it happens or as I can otherwise" (*Emphasis added*) (Exhibit
22 16).

23
24 3.42 On March 8, 2010 Respondent Nansen once again wrote to Mrs. Shields without
25 copying Attorney Dolan and without obtaining his prior permission to contact
26 Mrs. Shields, as Dolan requested. Unquestionably, Respondent Nansen was
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1 aware that Dolan continued to represent Ellerine Shields. In an attempt to
2 justify his violation of the Rules of Professional Conduct Respondent argues that
3 he did not know if Attorney Dolan continued to represent Mrs. Shields. This
4 assertion is also without any credibility. Unfortunately it is consistent with the
5 lack of credence in his testimony throughout this proceeding.
6

7 3.43 In a letter to Mrs. Shields drafted March 8, 2010, Respondent Nansen stated, “I
8 have been working on a transaction involving the sale of a farm property which
9 would result in a significant fee to me and would allow me to repay you the
10 amount of have agreed to pay to you” (*Emphasis added*) (Exhibit 17). Nansen
11 testified at the hearing that the type of transaction involving the Shields’s farm
12 was a single isolated incident in arguing he should be excused for not having a
13 written fee agreement.
14

15 3.44 By depositing the fees advanced by Mrs. Shields into his personal account and
16 not a trust account, the Respondent failed to hold and/or segregate the advance
17 fees for her benefit separate from his own funds.
18

19 3.45 The Respondent took possession and converted the \$10,000 fees paid by Mrs.
20 Shields as an “advance” before they were earned.
21

22 3.46 At no time prior to April 14, 2009 or thereafter was there:

23 (1) a written fee agreement signed by Ellerine Shields making part of
24 Respondent Nansen’s compensation contingent on the outcome of the sales
25 negotiations or the resolution of the issues for which he was hired;

26 (2) a written fee agreement provided to Ellerine Shields which gave a reasonable
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1 and fair disclosure of the material elements of the Respondent's scope of
2 representation or of his billing practices;

3 (3) a written retainer agreement was signed by the client giving the Respondent
4 the \$10,000 outright wherein he would not be required by the RPC's to deposit
5 the funds into an IOLTA account;

6 (4) a written agreement for a "flat fee" was entered into by Mrs. Shields and
7 Respondent;

8 (5) a disclosure of the provisions of the RPC's was made to Mrs. Shields by
9 Respondent regarding the requirement that he (Respondent) deposit the fees
10 advanced into a trust account prior to her giving the Respondent \$10,000
11 advance.
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14 3.47 On February 2, 2009 Respondent Nansen signed a trust account declaration (EIC
15 15.5) and declared "That all funds and property of Washington clients, if any,
16 and all Washington trust accounts and records, if any, are maintained in
17 compliance with RPC 1.15A and B (Exhibit 32). At the hearing Respondent
18 Nansen testified "in general terms" that when he submitted the trust account
19 declaration dated February 2, 2009, he was familiar with the provisions of RPC
20 1.15A and B. Two months after signing the trust account declaration, when
21 Respondent met with Ellerine Shields and requested the \$10,000 check from
22 her, Respondent knew that he was required to comply with RPC 1.15A. Further,
23 Respondent knew that he was required to comply with RPC 11.5A when he
24 knowingly deposited the \$10,000 advance on fees into his personal account at
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1 Whatcom Educational Credit Union and not into an IOLTA trust account he
2 initiated under RPC 1.15A and RPC 1.15B.

3 3.48 After Respondent's representation of Ellerine Shields was terminated on July
4 2009, he has neither repaid nor refunded any of the money he received as an
5 advance on fees.
6

7 3.49 The Respondent, by converting the advanced fees to his own benefit, has caused
8 injury to Ellerine Shields by failing to protect her interest in those funds by
9 depositing them into his personal account. By his actions the Respondent has
10 deprived his client of her funds and her use of those funds.
11

12 3.50 The Respondent acted knowingly by his conversion of his client's funds and by
13 his failure to repay or return any portion of those funds. By those knowing acts
14 the Respondent Nansen has caused the actual harm to Mrs. Shields.
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16 3.51 Prior to this matter coming on before the Hearing Officer the Respondent
17 stipulated to prior reprimands which were approved on March 1, 2012. These
18 reprimands occurred under proceeding number 11#0061. The stipulation of
19 misconduct were that the Respondent violated RPC 4.3, RPC 4.2, RPC 1.5(f)(2),
20 RPC 1.15A(c)(1), and RPC 1.15A(c)(2), as well as RPC 1.15A(c)(1), RPC
21 1.15A(h)(3). In addition, the Respondent stipulated that he violated RPC 1.4(a),
22 RPC 1.4(b) and RPC 1.15A(e). The essence of the representations were: (1) The
23 Respondent had directly communicated with clients of another lawyer without
24 the lawyer's consent; (2) The Respondent had misrepresented his status in
25 providing legal representation; (3) The Respondent had deposited advance fees
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1 into a general account instead of his trust account; (4) The Respondent had
2 withdrawn earned fees without providing a billing statement to the client or
3 written notice of his intent to withdraw, and (5) The Respondent failed to
4 provide a complete and accurate accounting of the client's funds. These
5 violations are similar to the violations alleged in the Association's petition and
6 establish a pattern of behavior on Respondent's part (Exhibit 19).

7
8 3.52 Respondent Dirk P. Nansen converted the funds advanced as fees against future
9 billing by Ruth Ellerine Shields, for his own use and purpose which arose out of
10 pure selfish motive on the part of the Respondent.

11
12 3.53 The Respondent Dirk Nansen failed to deposit and hold in a trust account the
13 advance legal fees paid to him by Ruth Ellerine Shields. Respondent deposited
14 the funds into his personal account for his own use and purpose and co-mingled
15 the clients advanced fees with his own monies.

16
17 3.54 The Respondent exhibited no real remorse during the proceeding and attempted
18 to justify his right to a "bonus" because he claimed to have done work over and
19 above standard legal services. His stated remorse is not in line with his asserted
20 defenses nor with the credible evidence that give rise to his defenses.

21
22 Based upon the foregoing Findings of Fact, which were made upon a clear
23 preponderance of the evidence, the following are made:

24 IV. CONCLUSIONS OF LAW

25 Findings of fact that by their nature are conclusions of law, are hereby
26 incorporated by this reference as if fully set forth.

1
2 4.1 As to **COUNT 1**, the Respondent violated RPC 1.15A(c) (1) by failing to hold
3 fees advanced by Ellerrine Shields separate from his own property. Instead of
4 depositing those advanced fees into an IOLTA account or a separate trust
5 account, the Respondent deposited the entire \$10,000 into a credit union account
6 which he used for his own personal use and specifically from which he paid
7 delinquent real estate taxes utilizing Mrs. Shields' funds.

8
9 Respondent Nansen attempts to distinguish this sum as a "bonus" for work done
10 on behalf of Mrs. Shields. Respondent Nansen further claims that he performed
11 duties for his client which were over and above "normal" duties performed by
12 lawyers. These two related arguments clearly fail. First, the check bore the
13 word "advance" on the line for designating its purpose. Mrs. Shields testified
14 that she wrote "advance" on the check as instructed by Respondent Nansen.
15 Further, by subsequent written correspondence and by his testimony,
16 Respondent acknowledges that these were fees paid in advance which were to be
17 credited off by future billings (Exhibit 11, 13, 14).

18
19 In comment [2] RPC 1.15(A) makes it clear that "client funds include but are
20 not limited to the following:

21
22 "Legal fees and costs that had been paid in advance".

23
24 The Respondent admitted that he was familiar with the terms of 1.15A. The
25 Respondent knowingly did not comply with the requirements of RPC 1.15A.

26
27 4.2 Addressing **COUNT 2** of the formal complaint, the Respondent knowingly
28

1 violated RPC 1.15A(c) which provides in part that "A lawyer must not ...
2 convert ... client ... property for the lawyer's own use". Once again, upon
3 receipt of Mrs. Shields advance fee payment of \$10,000, Respondent Nansen
4 placed it into his personal account at the credit union and wrote check in excess
5 of \$10,000 to the Okanogan County Clerk. Under the provisions of
6 RCP1.15A(H)(3) which provides "The lawyer may withdraw earned fees only
7 after giving reasonable notice to the client of the intent to do so, through a
8 billing statement or other document". (Emphasis added) No written notice of
9 the distribution occurred and the money was converted by Respondent Nansen
10 immediately by his deposit into his own account.
11

12
13 The fact that Respondent Nansen told Mrs. Shields about his delinquent tax
14 crisis and the fact that she gave him the check does not relieve him of his duties
15 to comply with the RPCs and specifically RPC 1.15A. Unquestionably, the
16 Respondent had a fiduciary duty to his client to comply with the ethical
17 standards set forth in that RPC and deposit the funds into a trust account. No
18 client can be expected to know the duties a lawyer owes to them under the
19 RPCs, and clearly the duty to comply with their requirements is placed upon the
20 lawyer. There can never be a defense that the lawyer is allowed to violate RPCs
21 because "the client knew" that the RPC would be violated, or that the client
22 "ok'd" the violation and therefore it was acceptable. This argument rings
23 hallow. The fiduciary duty owed by a lawyer to clients in the handling of their
24 property is not to be excused away and Respondent clearly failed in exercising
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1 that high duty owed to Mrs. Shields.

2 The Respondent was not entitled to use the funds from the fees advanced for his
3 own purposes, which he did before writing the letter of June 2, 2009 charging
4 off fees and costs from her account. The Respondent converted to his own use
5 Mrs. Shields advanced fees without entitlement to do so, and Respondent
6 violated RPC 1.15A(b) by his actions. By his actions Respondent also engaged
7 in conduct which involved dishonesty, fraud, deceit and misrepresentation by
8 violation of RPC 8.4(c).
9

10 4.3 As to **COUNT 3**, the Respondent violated RPC 1.15A(f) and RPC 1.16(d).
11 First, RPC 1.15A(f) states ... "A lawyer must promptly pay or deliver to the
12 client ... the property which the client ... is entitled to receive". When read in
13 conjunction with RPC 1.16(d) which provides "Upon termination of
14 representation, a lawyer shall take steps to the extent reasonable practicable to
15 protect a client's interest such as ... refunding any advance payment of fee or
16 expense that has not been earned or incurred." On June 17, 2009, James Dolan,
17 the attorney for Mrs. Shields, requested that Respondent Nansen refund Mrs.
18 Shields' money. Respondent agreed to refund the money and confirmed this in
19 no less than two letters to Mr. Dolan and two letters to his former client, Mrs.
20 Shields. More than four years have passed since the request for the refund of the
21 monies, and Respondent has not made even a negligible effort to refund money
22 to Mrs. Shields. By this failure to refund unearned fees, the Respondent violated
23 RPC 1.15(f) and RPC 1.16(d).
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2 4.4 As an alternative to Counts 1, 2 and 3, the association alleged COUNT 4.

3 Unquestionably, the Respondent violated RPC 1.18(a) which provides that "The
4 lawyer shall not enter into a business transaction with a client or knowingly
5 acquire an ownership, possessory, security, or other pecuniary interest adverse
6 to the client unless:

7
8 (1) the transaction and terms on which the lawyer acquires the interest are fair
9 and reasonable to the client and are fully disclosed and transmitted in writing
10 in a manner that can be reasonably understood by the client;

11
12 (2) the client is advised in writing of the desirability of seeking and is given a
13 reasonable opportunity to seek the advice of independent legal counsel on
14 the transaction; and

15
16 (3) the client gives informed consent, in a writing signed by the client, to the
17 essential terms of the transaction and the lawyer's role in the transaction,
18 including whether the lawyer is representing the client in the transaction.

19 In the instant matter, there was never a written fee agreement, and none of the
20 disclosures required by RPC 1.18A were given. During his representation the
21 Respondent billed Mrs. Shields at an hourly rate and she paid all of his bills in
22 full. In fact, she may have overpaid Respondent's bills. Despite being paid in
23 full for his efforts, the Respondent went to Mrs. Shields on April 14, 2009 and
24 asked for \$10,000, explaining he needed money to pay delinquent taxes to
25 prevent a foreclosure. Although the Respondent has attempted to claim this was
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1 a "bonus" for his services in regard to the sale (which would not close until June
2 2, 2009), no written agreement modifying the prior oral agreement was prepared
3 and there was no compliance with the provision RPC 1.18A. The Association
4 pled this Count as an alternative, and Respondent Nansen has been found to
5 have violated Counts 1, 2, and 3.
6

7 4.5 For COUNT 5 wherein the Association plead the Respondent violated RPC 4.2
8 which provides "In representing a client, a lawyer shall not communicate about
9 the subject of the representation with a person the lawyer knows to be
10 represented by another lawyer in the matter, unless the lawyer has the consent of
11 the other lawyer or is authorized to do so by law or a court order". It is well
12 established law that a lawyer acting on his own behalf is "representing a client".
13 Here, the Respondent clearly had been told by Mr. Dolan to not correspond with
14 Mrs. Shields, (Dolan's client), without prior approval by Dolan and under the
15 condition that all communications be copied to him. Despite this, Respondent
16 Nansen continued to write to Mrs. Shields without Dolan's prior approval and
17 without copying Dolan.
18

19
20 Mr. Nansen attempts to bypass the provisions of RPC 4.2 by arguing that Ms.
21 Shields contacted him. However, under Comment [3] to RPC 4.2 clearly states
22 "The rule applied even though the represented person initiates or consents to the
23 communication. A lawyer must immediately terminate communication with the
24 person if, after commencing communication, the lawyer learns that the person is
25 one with whom communication is not permitted by this rule". Even though
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1 Respondent had continuing contact with Attorney Dolan, and never received a
2 notice of withdrawal from Mr. Dolan, Respondent Nansen continued his
3 inappropriate contact with Mrs. Shields, and by that conduct violated RPC 4.2.

4 4.6 The following are the **AGGRAVATING FACTORS** found to exist by the
5 Respondent's actions, pleading, writings, and testimony by the clear
6 preponderance of the evidence:
7

8 A. Selfish Motive: The actions in obtaining the advanced fee of \$10,000 to
9 pay his personal delinquent taxes under the circumstances described in the
10 Findings of Fact clearly demonstrate a selfish motive on the part of the
11 Respondent, compounded by his failure to protect his client's property, or
12 make any attempt to refund the unearned advanced fees over a four year
13 period (Counts 1, 2, 3 and 5).
14

15 B. Refusal to Acknowledge Wrongful Nature of Conduct: Although the
16 Respondent gave lip service to being remorseful in his closing, his defense
17 of this grievance, coupled with his failure to repay any funds to Ruth
18 Ellerine Shields in the more than four years since he converted her \$10,000
19 advance fee speaks more accurately to his lack of remorse. The incredible
20 and fictionalized account given by Respondent, in direct opposition to the
21 credible version of events presented through the exhibits, the testimony of
22 James Dolan and the testimony of Mrs. Shields, one cannot reason away
23 misconduct. There can be no justification for breaches of the ethical
24 standards required of lawyers by arguing the client concurred with the
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wrongful act(s) (Counts 1, 2, 3, 4, 5).

C. Vulnerability of Victim: Ruth Ellerine Shields is a woman over 80 years of age. By the time Respondent Nansen began representing her she had been adjudged a vulnerable adult in need of protection. She had a history of being taken advantage of by her son-in-law. The Respondent approached her for the \$10,000 on the day she was executing the agreement to sell her property. Her primary attorney, James Dolan, was not present. No opportunity was given to Mrs. Shields to consult with her other counsel and Respondent failed to provide Mrs. Shields with any information so that she could make an informed decision (Applied to Counts 1, 2, 3, 4).

D. Substantial Experience in the Practice of Law: Respondent Nansen had been licensed to practice law in Washington State since May 1979. He was asked to assist in representing Mrs. Shields based upon his "expertise" in the area as his letterhead claims expertise in "Wealth Preservation Strategies, Estate and Charitable Giving." His letterhead further identifies Respondent as a "Member: Wealth Counsel LLC" (Counts 1, 2, 3, 4 and 5).

E. Multiple Offenses: Counts 1, 2 and 3 are essentially one act consisting of multiple violations of RPC 1.15A(c), (b), and (f). Count 4 was as indicated supra, and was plead as an alternative, but arises out of the same acts, of obtaining the \$10,000 advance fee from Ms. Shields. However, the pattern of misconduct by Respondent in violating RPC 4.2 by his contact and Mrs. Shields knowing she was represented by Mr. Dolan is a wholly separate

1 matter and therefore constitutes multiple offense violations.

2 F. Pattern of Misconduct: The two prior reprimands based upon stipulations
3 approved and signed by Respondent in 2012 were for similar violations
4 under RPC 1.15A for failure to properly handle client funds and RPC 4.2 for
5 improper communications with a represented party (Counts 1, 2, 3 and 5).
6

7 G. Those violations are strikingly similar to the ethical breaches by Respondent
8 which are the subject of all the counts (1, 2, 3, 4 and 5). This accounts for
9 the aggravating factors of prior disciplinary proceedings and a pattern of
10 misconduct.
11

12 H. Indifference to Making Restitution: Despite the passage of four years
13 Respondent has made not so much as a minimal effort to repay Ruth Ellering
14 Shields. In one of his letters he mentions the number of properties he
15 owned, (and presumably still owns) (Exhibit 17). No real credible effort was
16 made to repay the elderly Mrs. Shields (Counts 1, 2, 3 and 4)
17

18 4.7 Mitigating Circumstances

19 Lack of Prior Disciplinary Record: Respondent Nansen had not received any
20 prior disciplinary sanctions before April 14, 2009.
21

22 V. PRESUMPTIVE SANCTIONS
23 APPLICATION OF ABA STANDARDS

24 5.1 COUNTS 1, 2, AND 3. Respondent's conversion and failure to properly handle
25 clients property RPC 1.15A.

26 The ABA Standard which is most applicable to Respondent Nansen's
27 conversion of the \$10,000 advance fee from Mrs. Shields and his failure to
28

1 return those funds is found at ABA Standards 4.1 which provides

2
3 **4.1 Failure to Preserve the Client's Property**

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

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

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

13 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes injury or potential injury to a client.

15 4.14 Admonition is generally appropriate when a lawyer is negligent in
16 dealing with client property and causes little or no actual or potential
17 injury to a client. (*Emphasis added*)

18 Under ABA Standards 4.11 the presumptive sanctions for Respondent's
19 violations as set forth in the formal complaint is disbarment.

20 5.2 Analyzing ABA Standard 4.11 to **COUNTS 1 AND 2**, Respondent Nansen
21 knowingly failed to deposit Mrs. Shields' \$10,000 advance into his trust
22 account, instead depositing those funds into his personal account at Whatcom
23 Educational Credit Union. He then converted the funds to his own use by
24 paying his delinquent taxes/assessments on real property in which he had
25 ownership interest. He was not entitled to do so and his conduct caused actual
26 harm to Ruth Ellerine Shields, who was deprived of her \$10,000 and her funds
27 were not protected in a trust account.

28 5.3 For **COUNT 3**, The Respondent knowingly failed to return any portion of Mrs.
29 Shields' funds to her in the intervening four years. By his actions Respondent

1 has denied the use and possession of her funds and this has resulted in actual
2 harm to Mrs. Shields. For the violation of the ethical conduct charged in Count
3 3, the presumptive sanction under ABA Standards 4.12 is suspension.

4 5.4 **COUNT 4.** This was pled as an alternative violation if the Hearing Officer did
5 not find violations of Counts 1, 2, and/or 3. Having found those violations and
6 having determined the appropriate sanctions. Under ABA Standards 4.11 and
7 4.12 "Absent Aggravating or Mitigating" circumstances, the sanction for
8 violation of Count 4 is not addressed.

9
10 For the Respondent Nansen's direct communication with Mrs. Shields without
11 the prior approval of attorney James Dolan the most appropriate sanction is
12 under ABA Standard 6.32 which provides:

13
14 **6.3 *Improper Communications with Individuals in the Legal System***
15 Absent aggravating or mitigating circumstances, upon application of the
16 factors set out in Standard 3.0, the following sanctions are generally
17 appropriate in cases involving attempts to influence a judge, juror,
18 prospective juror or other official by means prohibited by law:

19 **6.31** Disbarment is generally appropriate when a lawyer:

- 20 (a) intentionally tampers with a witness and causes serious or potentially
21 serious injury to a party, or causes significant or potentially significant
22 interference with the outcome of the legal proceeding; or
23 (b) makes an ex parte communication with a judge or juror with intent to
24 affect the outcome of the proceeding, and causes serious or potentially
25 serious injury to a party, or causes significant or potentially significant
26 interference with the outcome of the legal proceeding; or
27 (c) improperly communicates with someone in the legal system other than a
28 witness, judge, or juror with the intent to influence or affect the outcome
29 of the proceeding, and causes significant or potentially significant
interference with the outcome of the legal proceeding.

**6.32 Suspension is generally appropriate when a lawyer engages in
communication with an individual in the legal system when the
lawyer knows that such communication is improper, and causes
injury or potential injury to a party or causes interference or
potential interference with the outcome of the legal proceeding.**

1 Despite Attorney Dolan's written instruction contained in the June 17, 2009 and
2 November 16, 2009 letters, which Respondent acknowledged receipt of by
3 responding in writing to those letters, the Respondent communicated directly
4 with Mrs. Shields albeit the fact there was no actual injury, there was potential
5 injury caused by Respondent's attempted circumvention of Attorney Dolan and
6 his direct communication with Mrs. Shields.
7

8 VI. RECOMMENDATION

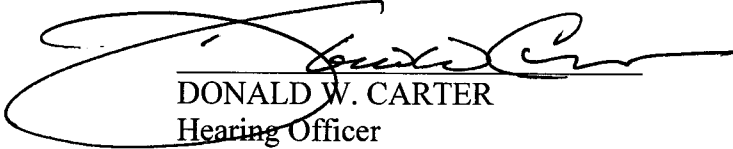
9 6.1 Based upon the ABA Standards, and the aggravating factors, disbarment is the
10 most appropriate sanction to assess against Respondent. Additionally, because
11 there are multiple violations, the disbarment sanction recommended is consistent
12 with the sanction for the most serious instance of misconduct among violations.
13 The only mitigating factor that there were no prior violations adds little weight
14 to the process of determining the sanction due to the aggravating factors cited at
15 paragraph 4.6 subparagraphs A-G, above.
16

17 To reiterate Counts 1-3 and 5 have been proven by a preponderance of the
18 evidence, as have the facts sustaining each aggravating factor.
19

20 VII. RESTITUTION

21 7.1 An order of restitution in the amount of \$10,000 should be entered in favor of
22 the Grievant, Ruth Ellerine Shields.
23

24 DATED this 19 day of September, 2013.

25
26 
27 DONALD W. CARTER
28 Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF, Colby Ho's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Peter NAKEN, Respondent/Respondent's Counsel
at _____, by Certified/first class mail
postage prepaid on the 23rd day of September, 2013

[Handwritten signature]

Clerk/Counsel to the Disciplinary Board

[Handwritten address]
3045 Ayres Heights Rd.
Bellingham, WA 98226