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FILED

FEB 15 2013

DISCIPLINARY BOARD

**BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION**

In Re:) PUBLIC NO. 12 #00087
)
DENNIS KEITH PFLUG,) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND HEARING OFFICER'S
Respondent Lawyer WSBA No. 11930) 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 February 12, 2013.

I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. The Formal Complaint (Proceeding No. 12#00087) filed on October 18, 2012 charged Respondent Dennis Keith Pflug with six counts of misconduct as set forth therein.

2. An Order of Default was entered and filed on January 14, 2013.

3. The Washington State Bar Association received no communications and/ or contacts from Respondent Pflug after entry of the default order and Respondent Pflug did not appear at the default hearing.

4. Disciplinary Counsel, Kevin Banks, appeared at the default hearing and offered the Formal Complaint and other exhibits as evidence.

5. Pursuant to ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established. The violations charged in the Formal

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATIONS- 1

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1 Complaint and facts are found and established as follows:

2 **COUNT 1**

3
4 **I.A. Violation of RPC 1.1 and RPC 1.3:** RPC 1.1 requires a lawyer to provide competent
5 representation. Competent representation requires thoroughness and the preparation
6 reasonably necessary for the representation. RPC 1.3 requires a lawyer to act with reasonable
7 diligence and promptness in representing a client. By failing to make the necessary inquiry to
8 permit suit against the actual owner of the vehicle (Enterprise of Washington) and by failing to
9 ensure that the Robinsons, driver and/or renter of the vehicle, were timely served with the
10 summons and complaint, Respondent negligently violated RPC 1.1 and RPC 1.3 by a clear
11 preponderance of the evidence.

12 **I.B 1. Presumptive sanction: Violation of RPC 1.1 violates ABA Standard 4.53.**

13 Pursuant to 4.53(a):

14 Reprimand is generally appropriate when a lawyer demonstrates failure to understand
15 relevant legal doctrines or procedures and causes injury or potential injury to a client.

16 **2. Presumptive sanction: Violation of RPC 1.3 violates ABA Standard 4.43.**

17 Pursuant to 4.43:

18 Reprimand is generally appropriate when a lawyer is negligent and does not act
19 with reasonable diligence in representing a client, and causes injury or potential
20 injury to a client.

21 **I.C. Potential or Actual Injury due to Violation of RPC 1.1 and 1.3:**

22 Respondent's conduct caused actual injury in that the grievant, Mr. Erickson, did not
23 receive competent and diligent representation. Due to Respondent's failures, Mr. Erickson's
24 case against Enterprise of Washington and against the Robinsons was barred by the statute of
25 limitations and his case against them was dismissed on summary judgment due to Respondent's
failures.

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COUNT 2

2.A. Violation of RPC 1.4(b): RPC 1.4 (b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding his representation. By failing to immediately advise Mr. Erickson that his case had been dismissed on summary judgment, and by then withholding that information from him for approximately five years, Respondent knowingly violated RPC 1.4(b) by a clear preponderance of the evidence.

2.B. Presumptive sanction: Violation of RPC 1.4(b) violates ABA Standard 4.42.

Pursuant to 4.42 (a):

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

2.C. Potential or Actual Injury due to Violation of RPC 1.4(b)

Mr. Erickson was injured in that he was deprived of the opportunity to seek new counsel for the purpose potentially remedying Respondent's negligence.

COUNT 3

3.A. Violation of RPC 8.4 (c): Pursuant to RPC 8.4(c), it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The Respondent failed to advise Mr. Erickson that his case had been dismissed by summary judgment on or about May 6, 2006. Instead, he sent written correspondence leading Mr. Erickson to believe his case was being actively pursued.

Five years after the dismissal, and after Mr. Erickson had been suspended from the practice of law, the Respondent continued to deceive Mr. Erickson into believing his case was still being actively pursued by meeting with Mr. Erickson on July 12, 2011, securing a medical release from him on that date, and indicating he would have a settlement for him within a month. The Respondent knowingly deceived violated RPC 8.4(c) by a clear preponderance of the

1 evidence.

2 **3.B. Presumptive sanction: Violation of RPC 8.4(c) violates ABA Standard 4.62.**

3 Pursuant to 4.62:

4 Suspension is generally appropriate when a lawyer knowingly deceives a client, and
5 causes injury or potential injury to the client.

6 Here, the Respondent could not have intended to benefit himself financially from his
7 deception as the client's case had been dismissed and no award was possible. His deception
8 and charade was to avoid disclosing his legal errors that resulted in the dismissal on summary
9 judgment, and thereby benefiting himself by preserving his legal image.

10 **3.C. Potential or Actual Injury due to Violation of RPC 8.4(c)**

11 Mr. Erickson was injured in that his trust was violated, and he was forced to spend his
12 own time in contacting the insurance company to discern the status of his claim.

13
14 **COUNT 4**

15 **4.A. Violation of RPC 1.16 (d):** Upon termination of representation, RPC 1.16(d) requires a
16 lawyer to take steps to the extent reasonably practicable to protect a client's interests, such as
17 surrendering papers and property to which the client is entitled. By knowingly failing to provide
18 Mr. Erickson with a copy of his file despite Mr. Erickson's request after termination of services,
19 the Respondent knowingly violated RPC 1.16(d) by a clear preponderance of the evidence.

20 **4.B. Presumptive sanction: Violation of RPC 1.16(d) violates ABA Standard 7.2.**

21 Pursuant to 7.2:

22 Suspension is generally appropriate when a lawyer knowingly engages in conduct
23 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.

24 **4.C. Potential or Actual Injury due to Violation of RPC 1.16(d).**

25 Mr. Erickson was injured in that his file was withheld from him and he was deprived of

1 information regarding the status and/ or extent of the work performed on his case. He was
2 further deprived of the ability to seek meaningful consultation regarding potential remedies for
3 his damages claim.

4
5 **COUNT 5**

6 **5.A. Violation of RPC 1.16 (a)(1), RPC 5.5(a), RPC 5.8(a), RPC 8.4(j), and ELC 14.2:**

7 RPC 1.16(a)(1) prohibits a lawyer from representing a client if the representation will
8 result in violation of the Rules of Professional Conduct or other law. Likewise, RPC 5.5(a)
9 prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal
10 profession in that jurisdiction. RPC 5.8 prohibits a lawyer from engaging in the practice of law
11 while suspended from the practice of law for any cause. RPC 8.4(j) prohibits a lawyer from
12 willfully disobeying or violating a court order directing him or her to do or cease doing an act,
13 which he or she ought in good faith to do or forbear. RPC 8.4(l) prohibits a lawyer from violating
14 a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in
15 connection with a disciplinary matter, including but not limited to the duties catalogued at ELC
16 1.5. Finally, ELC 14.2 also prohibits a suspended lawyer from practicing law after the effective
17 date of suspension and requires a lawyer to take whatever steps necessary to avoid any
18 reasonable likelihood that anyone will rely on him or her as a lawyer authorized to practice law.

19 On February 22, 2011, the Supreme Court of Washington suspended the Respondent
20 from the practice of law effective March 1, 2011.¹

21 On or about July 12, 2011, Respondent met with Mr. Erickson but did not advise him of
22 his suspension. Instead, he asked Mr. Erickson to sign a medical release authorizing "The Law

23 _____
24 ¹ Respondent's March 1, 2011 suspension resulted, in part, from the Respondent's failure to file suit against drivers
25 who potentially had liability for his client's personal injuries/damages sustained as a result of a motor vehicle
accident, failing to explain legal options to his client, and his failure to cooperate with the association's investigation.

1 Office of Dennis K. Pflug” to secure information from his medical providers. On that same day,
2 he also led Mr. Erickson to believe that he would secure a settlement on the motor vehicle/
3 damages matter within the next month.

4 Respondent knowingly and intentionally continued to practice law while he was
5 suspended. His conduct violated RPC 1.16(a)(1), RPC 5.5(a), RPC 5.8(a), RPC 8.4(j), RPC
6 8.4(l), and ELC 14.2 by a clear preponderance of the evidence.

7 **5.B. Presumptive sanction: Violation of RPC 1.16(a)(1), RPC 5.5(a), RPC 5.8(a),
8 RPC 8.4(j), RPC 8.4(l), and ELC 14.2 violates ABA Standard 8.1.**

9 Pursuant to 8.1

10 Disbarment is generally appropriate when a lawyer:

- 11 (a) intentionally or knowingly violates the terms of a prior disciplinary order
12 and such violation causes injury or potential injury to a client, the public,
13 the legal system, or the profession; or
- 14 (b) has been suspended for the same or similar misconduct, and intentionally
15 or knowingly engages in further similar acts of misconduct that cause
16 injury or potential injury to a client, the public, the legal system, or the
17 profession.

18 **5.C. Potential or Actual Injury due to Violation of RPC 1.16(a)(1), RPC 5.5(a), RPC 5.8(a),
19 RPC 8.4(j), RPC 8.4(l), and ELC 14.2 .**

20 By misleading Mr. Erickson and concocting a fairly elaborate charade to deceive him
21 about the status and activity on his case, in particular while being suspended and unauthorized
22 to practice law, he violated Mr. Erickson’s trust, causing him injury. In doing so, his actions also
23 reflected poorly on the legal profession, and placed the legal profession into disrepute in the
24 eyes of the public, harming the legal profession as a whole.

25 **COUNT 6**

6.A. Violations of RPC 8.4(l), ELC 1.5, and ELC 5.3(e):

Pursuant to 8.4(l), a lawyer commits professional misconduct if he violates a duty in

1 connection with a disciplinary matter, including the duties set forth at ELC 1.5. Pursuant to ELC
2 5.3(e) a lawyer has a duty to furnish a prompt response to a request or inquiry for information.
3 Pursuant to ELC 5.3(f), a lawyer's failure to cooperate is grounds for discipline. On August 30,
4 2011, the Association sent Respondent a certified letter requesting a written response to Mr.
5 Erickson's grievance. As he did not respond, on January 6, 2012, the Association personally
6 served a subpoena on him requiring his appearance at a deposition on February 7, 2012. He
7 failed to appear at the February 7 deposition.

8 Respondent's failure to cooperate was knowing and intentional. His conduct violated
9 RPC 8.4 (l) by a clear preponderance of the evidence.

10 **6.B. Presumptive sanction: Violation of RPC 8.4(l) violates ABA Standard 7.2.**

11 Pursuant to 7.2

12 Suspension is generally appropriate when a lawyer knowingly engages in
13 conduct that is a violation of a duty owed as a professional and causes serious or
potentially serious injury to a client, the public, or the legal system.

14 **6.C. Potential or Actual Injury due to Violation of RPC 8.4(l).**

15 The Respondent's flagrant disregard for the requirements of the lawyer disciplinary
16 system reflects poorly on the legal profession, places it in disrepute, and injures the legal
17 profession and disciplinary system as a whole. The Office of Disciplinary Counsel was harmed
18 in that resources in the form of time and costs were unnecessarily expended in order to obtain
19 Respondent's cooperation. The Respondents failure to respond and provide Mr. Erickson with
20 an explanation and/ or apology for the deception and five year charade showed a disregard and
21 lack of respect for Mr. Erickson, thereby injuring Mr. Erickson.

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1 **II. MITIGATING AND AGGRAVATING FACTORS PERTAINING TO COUNTS 1-6**

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

4 9.22(a) prior disciplinary offenses:

5 The Supreme Court suspended Mr. Pflug on November 15, 2012 for 18 months. This
6 suspension followed a hearing on a grievance resulting from a probate matter.
7 Respondent gave notice of his intent not to appear at the hearing and, in fact, did not
8 appear. He was found to have lacked diligence, deceived a client and engaged in a
9 knowing conflict of interest.

10 The Supreme Court suspended Mr. Pflug on February 22, 2011, effective March 1, 2011
11 for 18-months. This suspension followed a default hearing on a grievance where
12 Respondent had represented his client in a case for damages resulting from a motor
13 vehicle accident. Respondent was found to have lacked diligence, failed to communicate
14 with his client, and failed to cooperate with the Association.

15 On April 11, 2003, the Washington State Bar Association issued a reprimand against Mr.
16 Pflug where Mr. Pflug stipulated to failing to competently and diligently represent his
17 clients and failing to communicate with his clients in a quiet title action.

18 9.22(b) dishonest or selfish motive:

19 Respondent knowingly deceived and misled his client to avoid disclosing his legal errors,
20 and thereby benefiting himself by preserving his legal image.

21 9.22(d) multiple offenses:

22 Respondent has 3 prior offenses, including 2 suspensions for the same type of
23 misconduct.

24 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to
25 comply with rules or orders of the disciplinary agency [failure to file answer to formal
complaint as required by ELC 10.5(a)]²;

 9.22(g) refusal to acknowledge wrongful nature of conduct; and

 9.22(i) substantial experience in the practice of law:

² 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").

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Mr. Pflug was admitted to practice law in Washington State on October 27, 1981.

No mitigating factors identified in ABA Standard 9.32 apply in this matter.

III. RECOMMENDATION

Where the Hearing Officer finds multiple ethical violations, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Here, the Association proved Count 5 by a clear preponderance of the evidence with regards to the Respondent's violation of RPC 1.16(a)(1), RPC 5.5(a), RPC 5.8(a), RPC 8.4(j), RPC 8.4(l), and ELC 14.2. The presumptive sanction for that violation is disbarment.

Based on the ABA standards and the applicable aggravating factors, the Hearing Officer recommends that Respondent Dennis Keith Pflug be disbarred.

DATED this 14th day of February, 2013.

Andrekeita Silva
Andrekeita Silva,
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the JOE, LOL & HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Dennis Pflug Respondent/Respondent's Counsel
at 1757 20th Ave SW Seattle WA 98146 by Certified first class mail,
postage prepaid on the 14th day of February, 2013

[Signature]
Clerk/Counsel to the Disciplinary Board