

FILED

May 17, 2021

Disciplinary
Board

Docket # 112

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

DONNA L. JOHNSTON,

Lawyer (Bar No. 23630).

Proceeding No. 19#00069

ODC File Nos. 18-01949, 20-00679

STIPULATION TO NINE-MONTH
SUSPENSION

Following settlement conference conducted
under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to Nine-Month Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Henry Cruz, Respondent's Counsel Anne I. Seidel and Respondent lawyer Donna L. Johnston.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases,

1 the Supreme Court. Respondent further understands that a hearing and appeal could result in an
2 outcome that is more favorable or less favorable. Respondent chooses to resolve this proceeding
3 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
4 time and expense attendant to further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on June 7, 1994.

7 II. STIPULATED FACTS

8 Audreena Averhart Grievance (Proceeding No. 19#00069, ODC File No. 18-1949)

9 2. In February 2017, Respondent was appointed to act as Audreena Averhart's public
10 defender in SeaTac Municipal Court Case Number Y1706620A.

11 3. At all relevant times, Averhart's primary residence was in Hawaii, although Averhart
12 frequently stayed with Averhart's grandmother in Granite Falls, Washington.

13 4. Respondent met with Averhart briefly on or about March 6, 2017.

14 5. On May 1, 2017, Respondent and Averhart appeared at a hearing in the case.

15 6. The hearing was continued to June 5, 2017 at Respondent's request.

16 7. Respondent appeared at the June 5, 2017 hearing, but Averhart did not.

17 8. The court later reset Averhart's criminal matter for a pre-trial hearing on September
18 19, 2017. Both Respondent and Averhart were notified of the September 19, 2017 hearing date.

19 9. Neither Respondent nor Averhart appeared at the September 19, 2017 hearing.

20 10. On the morning of the September 19, 2017 hearing, Respondent notified the court that
21 she was sick and could not attend the hearing.

22 11. Due to Averhart's non-appearance, the pre-trial hearing was later rescheduled for
23 December 14, 2017 in front of Judge Robert Hamilton.

1 12. Respondent received notice of the December 14, 2017 hearing.

2 13. Averhart's mother states that she told Respondent that Averhart did not want the
3 December 14th hearing to be postponed because Averhart was flying to Seattle from Hawaii at
4 great expense.

5 14. Averhart traveled from Hawaii and appeared at the December 14, 2017 hearing.

6 15. Respondent did not appear at the December 14, 2017 hearing.

7 16. Respondent called the court and represented that Respondent was not present because
8 Respondent was held up in family court.

9 17. This statement that she was held up in family court was false. In fact, Respondent was
10 unable to attend court due to a medical condition that she was embarrassed to reveal.

11 18. At the December 14, 2017 hearing, the court advised Averhart that an agreement to
12 resolve the case could not be reached that day because Respondent was not present. Although
13 new counsel was appointed on December 18, 2017, as discussed below, the case was not resolved
14 until May 3, 2018 after three more pretrial hearings were held.

15 19. After attempting to reach Respondent multiple times and waiting additional time, the
16 court continued the matter to the morning of December 18, 2017. The court gave Averhart the
17 name of another lawyer, Matt Rusnak.

18 20. Over the weekend, Averhart contacted Rusnak and Rusnak agreed to take the case.

19 21. Thereafter, on or about December 16, 2017, Averhart sent Respondent a text asking
20 Respondent to withdraw and turn over the client file to Rusnak.

21 22. Respondent replied, "I am sorry that my being held up in family court caused problems
22 on Thursday and of course will do as you wish. However just want you to know that I have
23 completely prepared your case for trial and am ready to go to trial Monday morning if that is what

1 | you want.”

2 | 23. Respondent’s representation that Respondent had been held up in family court was
3 | false.

4 | 24. Both Rusnak and Respondent appeared in court on December 18, 2017.

5 | 25. Judge Hamilton removed Respondent from the case and appointed Rusnak.

6 | 26. At the hearing on December 18, 2017, after Judge Hamilton told Respondent that he
7 | had no choice but to replace her, Respondent told Judge Hamilton that the reason Respondent did
8 | not appear at the December 14, 2017 hearing was because Respondent “just wasn’t able to get
9 | out of court.”

10 | 27. This statement to the tribunal was false.

11 | **Troy Neal Grievance (ODC File No. 20-00679)**

12 | 28. In 2015, shortly before the statute of limitations ran, Troy Neal hired Respondent for
13 | a personal injury matter.

14 | 29. On May 12, 2015, Respondent filed a Complaint for Personal Injuries in King County
15 | District Court on Neal’s behalf against Xing Mui (Neal v. Mui, Case No. CV 155-03791).

16 | 30. A pretrial hearing in the civil matter was scheduled for May 16, 2016.

17 | 31. In May 2016, the parties agreed to settle the matter for \$2500.

18 | 32. On May 16, 2016, Sarah Johnson, counsel for Mui’s insurance carrier (Allstate), sent
19 | to Respondent by email settlement documents for Neal’s signature. Included with the settlement
20 | documents was a cover letter from Nicholas Martin, staff counsel for Allstate. In the letter, Martin
21 | stated that upon receipt of the signed documents, Martin would forward Respondent the
22 | settlement check.

23 | 33. Between 2016 and 2019, representatives from Allstate contacted Respondent on

1 multiple occasions, including on October 25, 2019, about the status of the settlement, but
2 Respondent either did not respond or failed to take steps to complete the settlement.

3 34. On February 6, 2019, Neal signed the settlement documents.

4 35. Between July 6, 2019 and April 30, 2020, Neal sent Respondent multiple texts.

5 36. Respondent did not communicate with Neal or respond to Neal's text messages.

6 37. Respondent's 99 year-old mother was ill and Respondent was dealing with her illness.

7 38. Respondent did not send the fully executed settlement documents to Allstate until June
8 26, 2020. She erroneously believed that a paralegal in a law office where she worked had sent
9 them to Allstate soon after the documents were signed. Respondent never followed-up with the
10 paralegal. When she learned quite some time later that it had not been taken care of, she was
11 unable to find the executed documents because they had been misfiled when she left that firm.
12 Respondent failed to inform Neal of all the reasons for the delay in sending the executed
13 settlement documents.

14 39. On June 30, 2020, Allstate mailed the \$2,500 settlement check to Respondent.

15 40. Respondent deposited the check into her trust account and waited for the check to
16 clear. On July 30, 2020, Respondent mailed the \$2,500 settlement check to Neal. Respondent did
17 not charge a fee for Respondent's services.

18 III. STIPULATION TO MISCONDUCT

19 41. By failing to appear at one or more of Averhart's court hearings, Respondent violated
20 RPC 1.3 and RPC 8.4(d).

21 42. By making misrepresentations to the court and to Averhart, Respondent violated RPC
22 3.3(a) and RPC 8.4(c).

23 43. By failing to communicate with Neal, Respondent violated RPC 1.4(a).

1 44. By failing to promptly finalize the settlement of the Neal matter, Respondent violated
2 RPC 1.3.

3 IV. PRIOR DISCIPLINE

4 45. In 2003, Respondent received a reprimand based on conduct involving lack of
5 communication and lack of diligence and competence in a litigation matter.

6 46. In 2006, Respondent received a reprimand for failing to communicate with a client.

7 V. APPLICATION OF ABA STANDARDS

8 47. The American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed.
9 & Feb. 1992 Supp.) that apply to this case are attached in Appendix A.

10 48. Respondent's conduct was knowing.

11 49. Respondent's conduct caused harm to Averhart, to Neal, and to the court.

12 50. The presumptive sanction is suspension under ABA Standards 4.42, 6.12, and 7.2.

13 51. The following aggravating factors apply under ABA Standard 9.22:

14 (a) prior disciplinary offenses;

15 (d) multiple offenses;

16 (i) substantial experience in the practice of law [Respondent was admitted to the New
17 Jersey bar in 1984 and to the Washington State Bar Association in 1994].

18 52. The following mitigating factor applies under ABA Standard 9.32:

19 (a) lack of dishonest or selfish motive (Neal matter and failure to appear at one or more
20 hearings in Averhart matter);

21 (c) personal or emotional problems (see confidential addendum, attached as Appendix B);

22 (g) character or reputation (see Appendix C, which reflects the opinion of the Judge before
23

1 whom Respondent regularly appears)¹;

2 (I) remorse.

3 53. On balance, the aggravating and mitigating factors do not require a departure from the
4 presumptive sanction.

5 VI. STIPULATED DISCIPLINE

6 54. The parties stipulate that Respondent shall receive a nine-month suspension.

7 VII. CONDITIONS OF REINSTATEMENT

8 55. Reinstatement from suspension is conditioned on payment of restitution, costs and
9 expenses, as provided below.

10 VIII. CONDITIONS OF PROBATION

11 56. Respondent will be subject to probation for a period of two years beginning when
12 Respondent is reinstated to the practice of law and shall comply with the specific probation terms
13 set forth below. Respondent's compliance with these conditions will be monitored by the
14 Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator").
15 Failure to comply with a condition of probation listed herein may be grounds for further
16 disciplinary action under ELC 13.8(b).

17 57. Practice Monitor:

- 18 a) During the period of probation, Respondent's practice will be supervised by a practice
19 monitor. The practice monitor must be a WSBA member with no record of public
20 discipline and who is not the subject of a pending public disciplinary proceeding.
- 21 b) The role of the practice monitor is to consult with and provide guidance to Respondent
22 regarding case management, office management, and avoiding violations of the Rules
of Professional Conduct, and to provide reports and information to the Probation
Administrator regarding Respondent's compliance with the terms of probation and
the RPC. The practice monitor does not represent the Respondent.

23 _____
¹ Appendix C is redacted to omit references to another lawyer.

- 1 c) At the beginning of the probation period, the Probation Administrator will select a
2 lawyer to serve as practice monitor for the period of Respondent's probation.
- 3 i) Initial Challenge: If, within 15 days of the written notice of the selection of
4 a practice monitor, Respondent sends a written request to the Probation
5 Administrator that another practice monitor be selected, the Probation
6 Administrator will select another practice monitor. Respondent need not
7 identify any basis for this initial request.
- 8 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
9 practice monitor, Respondent believes there is good cause why that individual
10 should not serve as practice monitor, Respondent may, within 15 days of notice
11 of the selected practice monitor, send a written request to the Probation
12 Administrator asking that another practice monitor be selected. That request
13 must articulate good cause to support the request. If the Probation
14 Administrator agrees, another practice monitor will be selected. If the
15 Probation Administrator disagrees, the Office of Disciplinary Counsel will
16 submit its proposed selection for practice monitor to the Chair of the
17 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also
18 provide the Chair with the Respondent's written request that another practice
19 monitor be selected.
- 20 d) In the event the practice monitor is no longer able to perform their duties, the
21 Probation Administrator will select a new practice monitor at their discretion.
- 22 e) During the period of probation, Respondent must cooperate with the named practice
23 monitor. Respondent must meet with the practice monitor at least once per month.
24 Respondent must communicate with the practice monitor to schedule all required
meetings.
- f) The Respondent must bring to each meeting a current, complete written list of all
pending client legal matters being handled by the Respondent. The list must identify
the current status of each client matter and any problematic issues regarding each
client matter. The list may identify clients by using the client's initials or a number
rather than the client's name.
- g) At each meeting, the practice monitor will discuss with Respondent practice issues
that have arisen or are anticipated. In light of the conduct giving rise to the imposition
of probation, ODC recommends that the practice monitor and Respondent discuss:
whether Respondent is diligently making progress on each client matter, whether
Respondent is in communication with each client, whether Respondent has promptly
billed each client, whether Respondent's fee agreements are consistent with the RPC
and are understandable to the client, and whether Respondent needs to consider
withdrawing from any client matters. Meetings may be in person or by telephone at
the practice monitor's discretion. The practice monitor uses discretion in determining
the length of each meeting.

- 1 h) The practice monitor will provide the Probation Administrator with quarterly written
2 reports regarding Respondent's compliance with probation terms and the RPC. Each
3 report must include the date of each meeting with Respondent, a brief synopsis of the
4 discussion topics, and a brief description of any concerns the practice monitor has
5 regarding the Respondent's compliance with the RPC. The report must be signed by
6 the practice monitor. Each report is due within 30 days of the completion of the
7 quarter.
- 8 i) If the practice monitor believes that Respondent is not complying with any ethical
9 duties under the RPC or if Respondent fails to schedule or attend a monthly meeting,
10 the practice monitor will promptly communicate that to the Probation Administrator.
- 11 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
12 Association to defray the costs and expenses of administering the probation, as
13 follows:
- 14 i) \$250 due within 30 days of the start of the probation;
 - 15 ii) \$250 due within 6 months of the start of the probation period;
 - 16 iii) \$250 due within 12 months of the start of the probation period; and
 - 17 iv) \$250 due within 18 months of the start of the probation period.

18 58. All payments should be provided to the Probation Administrator for processing.

19 **IX. RESTITUTION**

20 59. Respondent shall pay restitution of \$400 to Neal, representing interest from the delay
21 in the settlement and delivery of Neal's settlement check, within 60 days of approval of this
22 stipulation. Reinstatement from suspension is conditioned on payment of restitution.

23 **X. COSTS AND EXPENSES**

24 60. Respondent shall pay attorney fees and administrative costs of \$1,552 in accordance
with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs
are not paid within 60 days of approval of this stipulation. Reinstatement from suspension is
conditioned on payment of costs.

25 **XI. VOLUNTARY AGREEMENT**

26 61. Respondent states that prior to entering into this Stipulation Respondent has consulted

1 independent legal counsel regarding this Stipulation, that Respondent is entering into this
2 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
3 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
4 as provided herein.

5 62. Once fully executed, this stipulation is a contract governed by the legal principles
6 applicable to contracts, and may not be unilaterally revoked or modified by either party.

7 XII. LIMITATIONS

8 63. This Stipulation is a compromise agreement intended to resolve this matter in
9 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
10 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
11 and ODC acknowledge that the result after further proceedings in this matter might differ from
12 the result agreed to herein.

13 64. This Stipulation is not binding upon ODC or the respondent as a statement of all
14 existing facts relating to the professional conduct of the respondent lawyer, and any additional
15 existing facts may be proven in any subsequent disciplinary proceedings.

16 65. This Stipulation results from the consideration of various factors by both parties,
17 including the benefits to both by promptly resolving this matter without the time and expense of
18 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
19 such, approval of this Stipulation will not constitute precedent in determining the appropriate
20 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
21 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.


22 66. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on the
23 record agreed to by the parties. Under ELC 3.1(b), all documents that form the record before the

1 Board for its review become public information on approval of the Stipulation by the Board,
2 unless disclosure is restricted by order or rule of law.


3 67. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
4 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
5 Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition
6 to Washington, Respondent also is admitted to practice law in the following jurisdictions, whether
7 current status is active, inactive, or suspended: New Jersey and Pennsylvania.

8 68. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
9 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
10 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
11 proceeding, or in any civil or criminal action.


12 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
13 9-Month Suspension as set forth above.

14 
15 _____
16 Donna L. Johnston, Bar No. 23630
17 Respondent

Dated: 3/14/2021

18 
19 _____
20 Anne I. Seidel, Bar No. 22742
21 Counsel for Respondent

Dated: 3/15/21

22 
23 _____
24 Henry Cruz, Bar No.
Disciplinary Counsel

Dated: 03/15/2021

1 APPENDIX A

2 **4.4 Lack of Diligence**

3 Absent aggravating or mitigating circumstances, upon application of the factors set out in
4 Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act
5 with reasonable diligence and promptness in representing a client:

6 4.41 Disbarment is generally appropriate when:

- 7 (a) a lawyer abandons the practice and causes serious or potentially serious
8 injury to a client; or
- 9 (b) a lawyer knowingly fails to perform services for a client and causes serious
10 or potentially serious injury to a client; or
- 11 (c) a lawyer engages in a pattern of neglect with respect to client matters and
12 causes serious or potentially serious injury to a client.

13 **4.42 Suspension is generally appropriate when:**

- 14 (a) **a lawyer knowingly fails to perform services for a client and causes
15 injury or potential injury to a client, or**
- 16 (b) **a lawyer engages in a pattern of neglect and causes injury or potential
17 injury to a client.**

18 4.43 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 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
22 with reasonable diligence in representing a client, and causes little or no actual or
23 potential injury to a client.

24 **6.1 False Statements, Fraud, and Misrepresentation**

Absent aggravating or mitigating circumstances, upon application of the factors set out in
Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is
prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or
misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the
court, makes a false statement, submits a false document, or improperly withholds
material information, and causes serious or potentially serious injury to a party, or
causes a significant or potentially significant adverse effect on the legal
proceeding.

**6.12 Suspension is generally appropriate when a lawyer knows that false
statements or documents are being submitted to the court or that material
information is improperly being withheld, and takes no remedial action, and
causes injury or potential injury to a party to the legal proceeding, or causes
an adverse or potentially adverse effect on the legal proceeding.**

6.13 Reprimand is generally appropriate when a lawyer is negligent either in
determining whether statements or documents are false or in taking remedial
action when material information is being withheld, and causes injury or potential
injury to a party to the legal proceeding, or causes an adverse or potentially adverse
effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance

1 of neglect in determining whether submitted statements or documents are false or
2 in failing to disclose material information upon learning of its falsity, and causes
3 little or no actual or potential injury to a party, or causes little or no adverse or
potentially adverse effect on the legal proceeding.

4 **7.0 Violations of Duties Owed as a Professional**

5 Absent aggravating or mitigating circumstances, upon application of the factors set out in
6 Standard 3.0, the following sanctions are generally appropriate in cases involving false or
7 misleading communication about the lawyer or the lawyer's services, improper communication
8 of fields of practice, improper solicitation of professional employment from a prospective client,
9 unreasonable or improper fees, unauthorized practice of law, improper withdrawal from
10 representation, or failure to report professional misconduct.

11 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
12 that is a violation of a duty owed as a professional with the intent to obtain a benefit
13 for the lawyer or another, and causes serious or potentially serious injury to a
14 client, the public, or the legal system.

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
17 or potential injury to a client, the public, or the legal system.**

18 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
19 that is a violation of a duty owed as a professional and causes injury or potential
20 injury to a client, the public, or the legal system.

21 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
22 of negligence that is a violation of a duty owed as a professional, and causes little
23 or no actual or potential injury to a client, the public, or the legal system.

APPENDIX C

RONALD D. HESLOP

Attorney at Law

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Tacoma, Washington, 98464

Phone (253) 468-1229
rdhessy@comcast.net

January 8, 2021

I, Ronald Heslop, of full age, do make the following Declaration based upon personal knowledge and belief.

1.

I am the sitting judge of the Bonney Lake Municipal Court, a position I have held for 10 years.

2.

I have known Attorney Donna L. Johnston for 10 years.

3.

I first knew her as an associate attorney of the Law Office of Matthew Rusnak, who held a contract for Public Defense Services for Bonney Lake Municipal Court before it was awarded to Ms. Johnston's office.

4.

Before I became a judge, I had my own legal practice, which included the handling of some public defense contracts.

5.

I am therefore very aware of the responsibilities and difficulties of being a public defender in a high volume court.

6.

Ms. Johnston at first appeared before me working with another associate of Mr. Rusnak's Ms. Shari Brown.

7.

Ms. Brown and Ms. Johnston would work our afternoon calendars together, representing defendants on both review and pre-trial calendars.

8.

We averaged around 40 to 50 defendants in an afternoon and it was necessary for there to be two attorneys to complete the hearings in a timely manner.

9.

 Ms. Johnston handled both the morning and afternoon calendars by herself.

10.

I have read the complaint against Ms. Johnston and it does not sound like the work product I have observed from Ms. Johnston.

11.

In her representation of defendants in my court, I have observed her dedication and responsibility in service of her clients.

12.

She has the best interest of her clients at heart, and does not simply handle them in the way that

is most expeditious for herself.

13.

Unlike many public defenders, Ms. Johnston does not simply plead clients as a way of clearing

her case load.

14.

She takes time to get to know her clients and their circumstances before recommending a resolution.

15.

I have presided over several of her trials and she has always been prepared and professional in her behavior in the court.

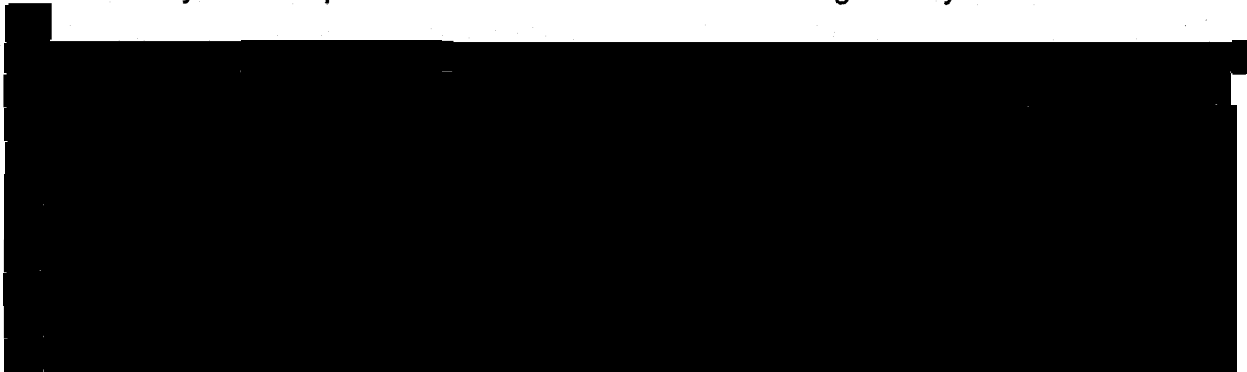
16.

In the years she has acted as public defender in the Bonney Lake Municipal Court, I have come to

rely on her judgment and professionalism.

17.

She has always been dependable and accountable in her dealing with my court.



Sincerely,


Ronald D. Heslop

Attorney at Law