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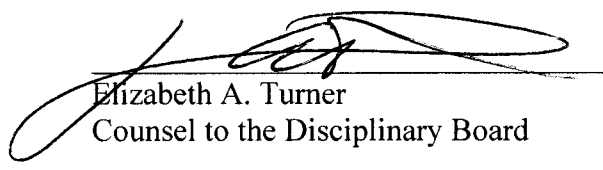
DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

Notice of Reprimand

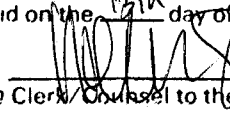
Lawyer Tom Youngjohn, WSBA No. 24170, has been ordered Reprimanded by the following attached documents: Findings of Fact, Conclusions of Law and Recommendations, filed 3/12/2013; Amended Findings of Fact, Conclusions of Law and Recommendations, filed 3/26/2013; Disciplinary Board Order Modifying Hearing Officer's Decision, filed 7/31/2013; and Washington Supreme Court Order, filed 12/13/2013.

WASHINGTON STATE BAR ASSOCIATION

  
Elizabeth A. Turner  
Counsel to the Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Notice of Reprimand  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Tom Youngjohn, Respondent/ Respondent's Counsel  
at [redacted] by Certified first class mail  
postage prepaid on the 12th day of January, 2014

WYB/S. 2/10/14 #2  
Federal Reg. WA 98003  
  
Clerk/Counsel to the Disciplinary Board

061

FILED

MAR 12 2013

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In Re Tom Youngjohn

Respondent (#24170)

Proceeding No ~~123000~~ <sup>A.S.</sup> 12 # 000108

FINDINGS OF FACT, CONCLUSIONS  
OF LAW  
AND RECOMMENDATIONS

FORMAL COMPLAINT

On September 11, 2012, Respondent was charged by formal complaint with four counts of violating the Washington Rules of Professional Conduct. On January 11, 2013, an Amended Complaint was filed adding an additional count.

Prior to the hearing, Respondent moved to dismiss, in part, on the grounds that Congress had preempted the field of disciplining and sanctioning immigration lawyers. The motion was denied and the disciplinary hearing was held on February 19, 2013.



031

1  
2  
3 **FINDINGS AND CONCLUSIONS**  
4

5 **COUNTS 1 AND 2**

6 On August 17, 2009, Steven Hewett executed a fee agreement prepared by  
7 Respondent which is Exhibit A-1. The agreement was to represent Mr. Hewett in a  
8 removal proceeding before the U S Immigration Court in Seattle. The agreement  
9 was labeled in part as a "Flat Fee Retainer Agreement." It provided for an  
10 attorney's fee of \$3,500 which was defined as a "nonrefundable attorney's fee."  
11 The agreement also provided that if there was a dispute about the fee, it would be  
12 resolved by the courts or appropriate administrative bodies. The agreement noted  
13 that it was a legally enforceable contract which Mr. Hewett could "have reviewed by  
14 independent legal counsel of my choice prior to signing."  
15

16 The fee was to be paid in installments. Respondent did not deposit any of the  
17 payments in his trust account. Respondent violated RPC 1.15A(c)(2) as alleged in  
18 Count 1 by failing to deposit in his trust account legal fees that were paid in  
19 advance.  
20

21 Respondent violated RPC 1.5(f)(2) as alleged in Count 2. RPC1.5(f)(2) requires  
22 that certain information must be included in a flat fee agreement which was not  
23 included in Exhibit A1 including (a) notification that the fee is the lawyers  
24 immediately on receipt and will not be placed in the lawyer's trust account, (b) that  
25 the client retains the right to terminate the client-lawyer relationship and (c) that the



1 client may be entitled to a refund if the agreed upon services are not completed.  
2 This rule contains a suggested, but not mandatory, form to use for a written flat fee  
3 agreement which includes the statement that the client "may or may not" have the  
4 right to a refund if the services are not completed. At the times noted later when  
5 there was a likelihood that Respondent would withdraw before the services for Mr.  
6 Hewett were concluded, Respondent understood that Mr. Hewett would be entitled  
7 to a refund if his services were not completed.  
8

9 Respondent ultimately favorably completed the agreed upon services which  
10 resulted in Mr. Hewett's removal proceedings being terminated.  
11

12 **COUNT 3 AND 4**  
13

14 In September 2009, Respondent appeared on behalf of Mr. Hewett in an  
15 immigration proceeding. He filed a number of motions on his behalf which were  
16 denied, including two motions to terminate the removal proceeding. The second  
17 motion was denied on February 23, 2010. Thereafter, Mr. Hewett asked  
18 Respondent to file a third motion to terminate the removal proceedings.  
19 Respondent was opposed to filing the third motion. Mr. Hewett offered to pay  
20 Respondent an additional \$500 if he would file the motion. Respondent declined  
21 the additional payment, but did file and present the third motion. The motion was  
22 denied on November 10, 2010.  
23

24 The Immigration Court scheduled the next hearing in Mr. Hewett's case for January  
25 12, 2012, fourteen months after the third motion was denied.



1  
2 Mr. Hewett's work permit expired in November, 2010 and he was unable to work  
3 thereafter until his immigration matter was successfully completed.  
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5 On November 19, 2010, Mr. Hewett's fiancée, Rebecca Taylor, sent an email to  
6 Respondent asserting that the third motion to terminate had been denied because Mr.  
7 Hewett missed a court date and that Respondent failed to notify Mr. Hewett of that  
8 hearing date. This was incorrect. A court date had not been missed. Respondent  
9 became angry about the accusation and lost his professional demeanor which  
10 adversely influenced his behavior from this point forward. Respondent emailed Mr.  
11 Hewett stating that he would like to immediately withdraw from the case and inviting  
12 Mr. Hewett to obtain another attorney.  
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15 Immigration Court.  
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18 asserted that Respondent's early withdrawal was "renegeing on our agreement and  
19 therefore I would be interested in how and in what format you intend to compensate  
20 me." Respondent replied that "If you sign off on a request to the Immigration Judge to  
21 discharge me, and if the judge grants the request, I'd be willing to give you  
22 \$500....You are not satisfied with my representation, and I would be happy to pay you  
23 \$500 to withdraw from your case. I am very tired of having you tell me how to run your  
24 case."  
25



1 On December 2, 2010 Mr. Hewett wrote Respondent that "without prejudice" he had  
2 his permission to move to withdraw and "Time is of the essence" so Respondent  
3 should "address this matter in a timely fashion." Mr. Hewett also asked for a copy of  
4 his file. Mr. Hewett used the words "without prejudice" to indicate he would have no  
5 "hard feelings" towards Respondent.

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7 On December 17, Respondent wrote to Mr. Hewett asserting that it would be a  
8 mistake to fire him without having another attorney appear on his behalf. He enclosed  
9 a copy of his file and reiterated his \$500 offer. The letter concluded with the following:  
10 "If you do fire me, you would be firing me with prejudice. I wouldn't be entering any  
11 new Notices of Appearance." Respondent also advised Mr. Hewett "I would not fire me  
12 until you have at least been able to show the file to another immigration attorney." It is  
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14 not reappear if Mr. Hewett asked him to at a later date or that Mr. Hewett would be  
15 precluded from contesting the amount of the fee refund. Mr. Hewett did not believe  
16 that "with prejudice" would mean he was giving up any rights.

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18 On December 28, Mr. Hewett replied and again asked Respondent to file a motion to  
19 withdraw. He stated that he had contacted another attorney who could not be retained  
20 until Respondent withdraws. The letter stated that Mr. Hewett had been advised that a  
21 "withdrawal with or without prejudice is irrelevant and has no bearing on a motion to  
22 the court." Mr. Hewett did not and does not now have a clear understanding of what  
23 was meant by "with prejudice" or "without prejudice."



1 On January 4, 2011, Respondent wrote to Mr. Hewett. The last portion of the letter  
2 included what Respondent captioned a "REFUND IN FULL." which was to be signed  
3 by Mr. Hewett. The proposed agreement included the language "I, Steve Hewett,  
4 would rather receive \$500 from Tom Youngjohn as a 'refund in full' than to have him  
5 continue to represent me before the Immigration Judge." The proposed agreement  
6 went on to provide that Respondent would make two future payments to Mr. Hewett  
7 totaling \$500, less the \$36 cost of copying the file. The first payment was to be made  
8 after Respondent was allowed to withdraw and the second after proof Mr. Hewett had  
9 a new attorney. The second check was to be marked "refund in full." Mr. Hewett did  
10 not sign the proposed agreement.

11  
12 Mr. Hewett filed this grievance on February 28, 2011.

13  
14 Respondent filed his motion to withdraw on March 6, 2011, a week after this grievance  
15 was filed. The hearing on the motion to withdraw was held on June 11, 2011. At the  
16 hearing, the judge advised Respondent and Mr. Hewett to go back out and discuss the  
17 matter of withdrawal. Respondent then offered to represent Respondent if Mr. Hewett  
18 would apologize. Mr. Hewett did not believe he had anything to apologize for but said  
19 "I apologize." Respondent then agreed to continue the representation. The hearing  
20 resumed, and the Immigration Judge agreed to adjust Mr. Hewett's status if certain  
21 documents were provided. The next and final hearing was then scheduled for  
22 September 28, 2011.

23  
24 Count 3 alleges a violation of RPC 1.16(a)(3) which, except as stated in RPC 1.16(c),  
25 obligates a lawyer to withdraw from a matter if a lawyer is discharged by the client.



1 Part (c) provides that "A lawyer must comply with applicable law requiring notice to or  
2 permission of a tribunal when terminating a representation." The only way for  
3 Respondent to withdraw from the immigration proceeding was to move to do so and  
4 obtain permission from the court to withdraw.

5  
6 Mr. Hewitt unequivocally asked Respondent to withdraw on December 2. Respondent  
7 did not file the motion to withdraw for approximately 3 months. Respondent's delay  
8 may have been occasioned, in part, by his belief that it would be in Mr. Hewitt's best  
9 interests to get an immigration lawyer to substitute rather than having Respondent  
10 move to withdraw. However, that decision was properly Mr. Hewitt's to make.

11 RPC1.2(a) Respondent was also going through personal bankruptcy at this time.  
12 Respondent testified that he may have delayed his withdrawal because he did not  
13 have money for Mr. Hewitt's fee refund.

14  
15 The delay in filing the motion to withdraw violated RPC1.16 (a)(3). Respondent's  
16 conduct of coupling his withdrawal with an agreement on the amount of his fee refund  
17 also violated RPC 8.4 (d) as conduct prejudicial to the administration of justice.

18 Respondent was under an obligation to promptly move to withdraw whether or not Mr.  
19 Hewitt agreed to the amount of his fee refund.

20  
21 Respondent violated RPC1.8 (h)(2) as alleged in Count 4 by asking Mr. Hewitt to  
22 sign and agree to the "REFUND IN FULL" included in Respondent's letter of January  
23 4, 2011. This rule requires that where there is a proposed agreement between a  
24 lawyer and his client that either (1) the client must consult another lawyer about the  
25 matter or (2) the lawyer, in writing, must advise the client of the desirability of seeking,





1 and be given a reasonable opportunity to seek, the advice of another lawyer.  
2 Respondent did not include this cautionary advice verbally or in writing. Respondent  
3 testified that, while ordinarily he abides by this rule, he may not have done so here as  
4 he knew Mr. Hewett had consulted another lawyer. However, if Mr. Hewett already had  
5 representation on the matter, there should have been no direct communication with  
6 Mr. Hewett. See RPC 4.2.

7  
8  
9 **COUNT 5**

10 Respondent, while waiting with Mr. Hewett for the September 28, 2011 hearing to  
11 commence, asked Mr. Hewett to sign Exhibit A28. This document had been previously  
12 prepared by Respondent. The document was addressed to the Office of Disciplinary  
13 Counsel and asked for withdrawal of Mr. Hewett's grievance against Mr. Youngjohn.  
14 The document included the following language: "Because I want to withdraw this  
15 grievance voluntarily, I am signing and dating this letter, asking that you allow me to  
16 withdraw the grievance which I earlier filed against Tom Youngjohn. I want Tom  
17 Youngjohn to continue to be my attorney. Tom wrote this letter for me to sign and date,  
18 and I do so voluntarily."

19  
20 Mr. Hewett refused to sign the document. Mr. Hewett then went into the hearing  
21 where he was represented by Respondent. The Immigration Court ruled in favor of Mr.  
22 Hewett that the removal proceeding should be dismissed. After the successful hearing,  
23 Mr. Hewett signed Exhibit A 28 which Respondent then sent to the Office of  
24 Disciplinary Counsel.  
25



1 There is nothing in the many detailed provisions of the Code of Professional  
2 Responsibility or in the Rules for Enforcement of Lawyer Conduct that state that a  
3 lawyer who is the subject of a grievance should not ask the grievant to withdraw the  
4 grievance. If the intent of the rules was to block the lawyer from asking the grievant to  
5 withdraw a grievance, the rules should have so provided. Thus, the request to  
6 withdraw the grievance and the obtaining of the written withdrawal, standing alone, is  
7 not a violation of any of the Rules of Professional Conduct.

8  
9 The WSBA argues that, in this case, Respondent's actions in seeking and obtaining a  
10 written request for withdrawal of the grievance violated RPC 8.4 (d) as conduct  
11 prejudicial to the administration of justice. The WSBA asserts that the request  
12 immediately before the hearing was prejudicial because it implied to Mr. Hewett that  
13 Respondent would not fully advocate for Mr. Hewett at the hearing. I find that there is  
14 no credible proof, let alone proof by the preponderance of the evidence, that  
15 Respondent so intended or that Mr. Hewett believed he had to sign the waiver in order  
16 to get Mr. Lovejohns full assistance at the hearing. There is also no evidence that  
17 Respondent failed to provide his best efforts at the hearing.

18  
19 The WSBA also argues that Respondent's asking for and obtaining a withdrawal of the  
20 grievance violated RPC 8.4(d) as it was an attempt to interfere with the Association's  
21 disciplinary process. I do not find this to be persuasive. A respondent has the right to  
22 defend against a disciplinary complaint. That right should include the right to contact  
23 the grievant and seek the grievant's assistance in defending against the complaint. If  
24 asking for a withdrawal of a grievance is prohibited, the rules should so state. While  
25 Respondent's seeking and obtaining a withdrawal of the grievance was foolish, it did



1 not constitute conduct prejudicial to the administration of justice. I note also that the  
2 withdrawal of a complaint is not an aggravating or a mitigating factor under the ABA  
3 Standards. Standard 9.4 (c).

## 4 5 **SANCTION RECOMMENDATIONS**

6  
7 The American Bar Association Standards for Imposing Lawyer Sanctions governs my  
8 recommendations. The purpose of a disciplinary proceeding is to protect the public  
9 and the administration of justice from lawyers who have not, will not or are unlikely to  
10 properly discharge their professional duties. ABA Standard 1.1

11  
12 Generally, the factors to be considered in imposing sanctions are the duty violated, the  
13 lawyer's mental state and the potential or actual harm caused by the misconduct. The  
14 existence of aggravating or mitigating factors should also be considered.

15  
16 **Counts 1 and 2:** These Counts are factually connected. Respondent failed to include  
17 in his flat fee agreement the language required by RPC 1.5 (f) (2) which, if included,  
18 would have allowed him to personally take the advance fee deposits. As a result, the  
19 flat fee payments should have been deposited in Respondent's trust account as  
20 required by RPC 1.15A(c)(2). Respondent failed to do so.

21  
22 ABA standard 4.1, Failure to Preserve the Client's Property, is most applicable.  
23 Suspension is generally appropriate if a lawyer "knows or should know that he is  
24 dealing improperly with client property and causes injury or potential injury to a client."  
25 Reprimand is generally appropriate when a lawyer is negligent in dealing with client



1 property and causes actual or potential injury to a client. On the other hand,  
2 Admonition is appropriate under the same circumstances as defined for Reprimand  
3 where the conduct causes little or no actual or potential injury to the client.  
4 Respondent's error here was in failing to include the necessary language in his flat fee  
5 agreement. This did not cause any actual injury to Mr. Hewett as the services were  
6 completed successfully for the agreed upon fee. However, the fact that the fee  
7 payments were not placed in Respondent's trust account and, therefore, not available  
8 for a refund likely contributed to Respondent's delay in moving to withdraw. Taking all  
9 these factors and the purpose of disciplinary proceedings into account, an appropriate  
10 sanction for Count 1 is a Reprimand and for Count 2 is a Reprimand.

11  
12 **Count 3:** Standard 7.0 applies to Respondent's violation of his duty to promptly  
13 withdraw and to coupling his withdrawal with agreement on the amount of the fee to be  
14 refunded to Mr. Hewett. Standard 7.0 provides that suspension is normally appropriate  
15 when a lawyer knowingly engages in conduct which is a violation of a duty owed as a  
16 professional and causes actual or potential injury to a client. Respondent knew he had  
17 a duty to withdraw and failed to take steps to do so while insisting that Mr. Hewett  
18 agree to the amount of the refund Respondent would pay Mr. Hewett. The motion to  
19 withdraw was not filed until Respondent filed his Bar complaint. This caused Mr.  
20 Hewett injury by delaying or potentially delaying the time for disposition of his  
21 immigration matter and by lengthening the period of time his status was in limbo. This  
22 was aggravated by the fact Mr. Hewett was legally unable to work and earn an income  
23 until his immigration matter was concluded. An appropriate sanction under ABA  
24 Standard 7.0 is suspension.



1 **Count 4:** Respondent acted negligently in presenting Mr. Hewett with a "refund in full  
2 agreement" without giving him the cautionary warning to seek independent counsel.  
3 This did not cause any injury or potential injury to Mr. Hewett as he was, in any event,  
4 unwilling to sign the proposed agreement. Under Standard 7.3, reprimand is an  
5 appropriate sanction.

6  
7 **Aggravating and Mitigating Factors:** ABA Standard 9.22 and 9.32 set forth certain  
8 aggravating and mitigating factors to be considered in determining what sanctions to  
9 impose.

10  
11 I find that the only aggravating factors that have been proven by a preponderance of  
12 the evidence are refusal to acknowledge the wrongful nature of Respondent's conduct  
13 and substantial experience in the practice of law. Respondent has been in practice  
14 since 1994.

15  
16 The only mitigating factors proven by a preponderance of the evidence is the absence  
17 of a prior disciplinary record and personal financial problems.

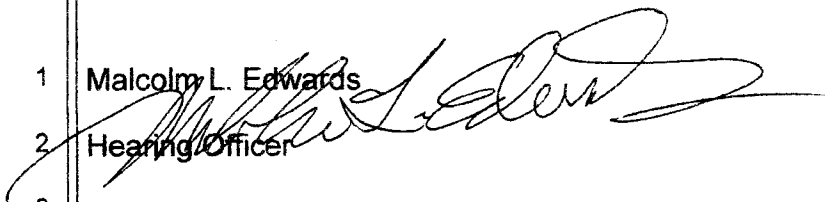
18  
19 **Conclusion:** The aggravating and mitigating factors are balanced and do not affect  
20 my recommendations. Respondent should be suspended for six months for violation of  
21 Count 3. He should be reprimanded for violation of each of Counts 1, 2 and 4.

22  
23  
24 Entered on March 11 2013



1 Malcolm L. Edwards

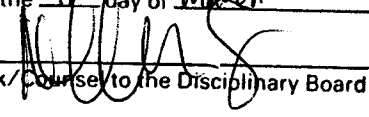
2 Hearing Officer



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CERTIFICATE OF SERVICE

I certify that I caused a copy of the FDR, LOL & Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Tom Youngman, Respondent/Respondent's Counsel  
at 12 S. 310th St Federal Way, WA 98003, by Certified/first class mail  
postage prepaid on the 17th day of MARCH, 2013

  
Clerk/Counsel to the Disciplinary Board



APR 11 2013

MAR 26 2013

A.S.

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

**In Re Tom Youngjohn  
Respondent (#24170)  
Proceeding No12#00068**

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATIONS**

**FORMAL COMPLAINT**

On September 11, 2012, Respondent was charged by formal complaint with four counts of violating the Washington Rules of Professional Conduct. On January 11, 2013, an Amended Complaint was filed adding an additional count.

Prior to the hearing, Respondent moved to dismiss, in part, on the grounds that Congress had preempted the field of disciplining and sanctioning immigration lawyers. The motion was denied and the disciplinary hearing was held on February 19, 2013.

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**FINDINGS AND CONCLUSIONS**

**COUNTS 1 AND 2**

(1) On August 17, 2009, Steven Hewett executed a fee agreement prepared by Respondent which is Exhibit A-1. The agreement was to represent Mr. Hewett in a removal proceeding before the U S Immigration Court in Seattle. The agreement was labeled in part as a "Flat Fee Retainer Agreement." It provided for an attorney's fee of \$3,500 which was defined as a "nonrefundable attorney's fee." The agreement also provided that if there was a dispute about the fee, it would be resolved by the courts or appropriate administrative bodies. The agreement noted that it was a legally enforceable contract which Mr. Hewett could "have reviewed by independent legal counsel of my choice prior to signing."

(2) The fee was to be paid in installments. Respondent did not deposit any of the payments in his trust account. Respondent violated RPC 1.15A(c)(2) as alleged in Count 1 by failing to deposit in his trust account legal fees that were paid in advance.

(3) Respondent violated RPC 1.5(f)(2) as alleged in Count 2. RPC1.5(f)(2) requires that certain information must be included in a flat fee agreement which was not included in Exhibit A1 including (a) notification that the fee is the lawyers immediately on receipt and will not be placed in the lawyer's trust account, (b)



1 that the client retains the right to terminate the client-lawyer relationship and (c)  
2 that the client may be entitled to a refund if the agreed upon services are not  
3 completed. This rule contains a suggested, but not mandatory, form to use for a  
4 written flat fee agreement which includes the statement that the client "may or  
5 may not" have the right to a refund if the services are not completed. At the  
6 times noted later when there was a likelihood that Respondent would withdraw  
7 before the services for Mr. Hewett were concluded,. Respondent was not aware  
8 that an RPC required him to include in his fee agreement the language required  
9 by RPC 1.5 (f) (2) and 1.5 A (c) (2) and at all times understood that Mr. Hewett  
10 would be entitled to a refund if Respondent's services were not completed.  
11 Respondent was negligent in modeling his fee agreement and using his retainer  
12 without understanding what was required by the Rules of Professional Conduct.

13  
14 (4) Respondent ultimately favorably completed the agreed upon services which  
15 resulted in Mr. Hewett's removal proceedings being terminated.

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17 **COUNT 3 AND 4**

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19 (5) In September 2009, Respondent appeared on behalf of Mr. Hewett in an  
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4 (17) Count 3 alleges a violation of RPC 1.16(a)(3) which, except as stated in RPC  
5 1.16(c), obligates a lawyer to withdraw from a matter if a lawyer is discharged by the  
6 client. Part (c) provides that "A lawyer must comply with applicable law requiring notice  
7 to or permission of a tribunal when terminating a representation." The only way for  
8 Respondent to withdraw from the immigration proceeding was to move to do so and  
9 obtain permission from the court to withdraw.

10  
11 (18) Mr. Hewitt unequivocally asked Respondent to withdraw on December 2.  
12 Respondent did not file the motion to withdraw for approximately 3 months.  
13 Respondent's delay may have been occasioned, in part, by his belief that it would be  
14 in Mr. Hewett's best interests to get an immigration lawyer to substitute rather than  
15 having Respondent move to withdraw. However, that decision was properly Mr.  
16 Hewett's to make. RPC1.2(a) Respondent was also going through personal  
17 bankruptcy at this time. Respondent testified that he may have delayed his withdrawal  
18 because he did not have money for Mr. Hewett's fee refund.

19  
20 (19) The delay in filing the motion to withdraw violated RPC1.16 (a)(3). Respondent's  
21 conduct of coupling his withdrawal with an agreement on the amount of his fee refund  
22 also violated RPC 8.4 (d) as conduct prejudicial to the administration of justice.  
23 Respondent was under an obligation to promptly move to withdraw whether or not Mr.  
24 Hewett agreed to the amount of his fee refund.

1 (20) Respondent violated RPC1.8 (h)(2) as alleged in Count 4 by asking Mr. Hewett to  
2 sign and agree to the "REFUND IN FULL" included in Respondent's letter of January  
3 4, 2011. This rule requires that where there is a proposed agreement between a  
4 lawyer and his client that either (1) the client must consult another lawyer about the  
5 matter or (2) the lawyer, in writing, must advise the client of the desirability of seeking,  
6 and be given a reasonable opportunity to seek, the advice of another lawyer.  
7 Respondent did not include this cautionary advice verbally or in writing. Respondent  
8 testified that, while ordinarily he abides by this rule, he may not have done so here as  
9 he knew Mr. Hewett had consulted another lawyer. However, if Mr. Hewett already had  
10 representation on the matter, there should have been no direct communication with  
11 Mr. Hewett. See RPC 4.2.

12  
13  
14 **COUNT 5**

15 (21) Respondent, while waiting with Mr. Hewett for the September 28, 2011 hearing to  
16 commence, asked Mr. Hewett to sign Exhibit A28. This document had been previously  
17 prepared by Respondent. The document was addressed to the Office of Disciplinary  
18 Counsel and asked for withdrawal of Mr. Hewett's grievance against Mr. Youngjohn.  
19 The document included the following language: "Because I want to withdraw this  
20 grievance voluntarily, I am signing and dating this letter, asking that you allow me to  
21 withdraw the grievance which I earlier filed against Tom Youngjohn. I want Tom  
22 Youngjohn to continue to be my attorney. Tom wrote this letter for me to sign and date,  
23 and I do so voluntarily."

24  
25 (22) Mr. Hewett refused to sign the document. Mr. Hewett then went into the hearing

1 where he was represented by Respondent. The Immigration Court ruled in favor of Mr.  
2 Hewett that the removal proceeding should be dismissed. After the successful hearing,  
3 Mr. Hewett signed Exhibit A 28 which Respondent then sent to the Office of  
4 Disciplinary Counsel.

5  
6 (23) There is nothing in the many detailed provisions of the Code of Professional  
7 Responsibility or in the Rules for Enforcement of Lawyer Conduct that state that a  
8 lawyer who is the subject of a grievance should not ask the grievant to withdraw the  
9 grievance. If the intent of the rules was to block the lawyer from asking the grievant to  
10 withdraw a grievance, the rules should have so provided. Thus, the request to  
11 withdraw the grievance and the obtaining of the written withdrawal, standing alone, is  
12 not a violation of any of the Rules of Professional Conduct.

13  
14 (24) The WSBA argues that, in this case, Respondent's actions in seeking and  
15 obtaining a written request for withdrawal of the grievance violated RPC 8.4 (d) as  
16 conduct prejudicial to the administration of justice. The WSBA asserts that the request  
17 immediately before the hearing was prejudicial because it implied to Mr. Hewett that  
18 Respondent would not fully advocate for Mr. Hewett at the hearing. I find that there is  
19 no credible proof, let alone proof by the preponderance of the evidence, that  
20 Respondent so intended or that Mr. Hewett believed he had to sign the waiver in order  
21 to get Mr. Lovejohns full assistance at the hearing. There is also no evidence that  
22 Respondent failed to provide his best efforts at the hearing.

23  
24 (25) The WSBA also argues that Respondent's asking for and obtaining a withdrawal  
25 of the grievance violated RPC 8.4(d) as it was an attempt to interfere with the

1 Association's disciplinary process. I do not find this to be persuasive. A respondent  
2 has the right to defend against a disciplinary complaint. That right should include the  
3 right to contact the grievant and seek the grievant's assistance in defending against  
4 the complaint. If asking for a withdrawal of a grievance is prohibited, the rules should  
5 so state. While Respondent's seeking and obtaining a withdrawal of the grievance was  
6 foolish, it did not constitute conduct prejudicial to the administration of justice. I note  
7 also that the withdrawal of a complaint is not an aggravating or a mitigating factor  
8 under the ABA Standards. Standard 9.4 (c).

## 9 10 **SANCTION RECOMMENDATIONS**

11  
12 The American Bar Association Standards for Imposing Lawyer Sanctions governs my  
13 recommendations. The purpose of a disciplinary proceeding is to protect the public  
14 and the administration of justice from lawyers who have not, will not or are unlikely to  
15 properly discharge their professional duties. ABA Standard 1.1

16  
17 Generally, the factors to be considered in imposing sanctions are the duty violated, the  
18 lawyer's mental state and the potential or actual harm caused by the misconduct. The  
19 existence of aggravating or mitigating factors should also be considered.

20  
21 **Counts 1 and 2:** These Counts are factually connected. Respondent failed to include  
22 in his flat fee agreement the language required by RPC 1.5 (f) (2) which, if included,  
23 would have allowed him to personally take the advance fee deposits. As a result, the  
24 flat fee payments should have been deposited in Respondent's trust account as  
25 required by RPC 1.15A(c)(2). Respondent failed to do so.



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ABA standard 4.1, Failure to Preserve the Client's Property, is most applicable. Suspension is generally appropriate if a lawyer "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes actual or potential injury to a client. On the other hand, Admonition is appropriate under the same circumstances as defined for Reprimand where the conduct causes little or no actual or potential injury to the client. Respondent's error here was in failing to include the necessary language in his flat fee agreement. This did not cause any actual injury to Mr. Hewett as the services were completed successfully for the agreed upon fee. However, the fact that the fee payments were not placed in Respondent's trust account and, therefore, not available for a refund likely contributed to Respondent's delay in moving to withdraw. Taking all these factors and the purpose of disciplinary proceedings into account, an appropriate sanction for Count 1 is a Reprimand and for Count 2 is a Reprimand.

**Count 3:** Standard 7.0 applies to Respondent's violation of his duty to promptly withdraw and to coupling his withdrawal with agreement on the amount of the fee to be refunded to Mr. Hewett. Standard 7.0 provides that suspension is normally appropriate when a lawyer knowingly engages in conduct which is a violation of a duty owed as a professional and causes actual or potential injury to a client. Respondent knew he had a duty to withdraw and failed to take steps to do so while insisting that Mr. Hewett agree to the amount of the refund Respondent would pay Mr. Hewett. The motion to withdraw was not filed until Respondent filed his Bar complaint. This caused Mr.

1 Hewett injury by delaying or potentially delaying the time for disposition of his  
2 immigration matter and by lengthening the period of time his status was in limbo. This  
3 was aggravated by the fact Mr. Hewett was legally unable to work and earn an income  
4 until his immigration matter was concluded. An appropriate sanction under ABA  
5 Standard 7.0 is suspension.

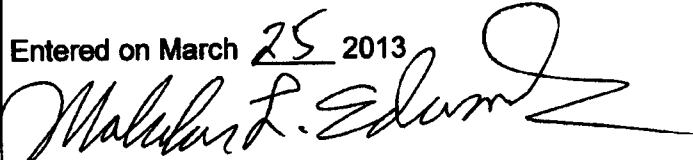
6  
7 **Count 4:** Respondent acted negligently in presenting Mr. Hewett with a "refund in full  
8 agreement" without giving him the cautionary warning to seek independent counsel.  
9 This did not cause any injury or potential injury to Mr. Hewett as he was, in any event,  
10 unwilling to sign the proposed agreement. Under Standard 7.3, reprimand is an  
11 appropriate sanction.

12  
13 **Aggravating and Mitigating Factors:** ABA Standard 9.22 and 9.32 set forth certain  
14 aggravating and mitigating factors to be considered in determining what sanctions to  
15 impose.

16  
17 I find that the only aggravating factors that have been proven by a preponderance of  
18 the evidence are refusal to acknowledge the wrongful nature of Respondent's conduct  
19 and substantial experience in the practice of law. Respondent has been in practice  
20 since 1994.

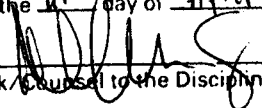
21  
22 The only mitigating factors proven by a preponderance of the evidence is the absence  
23 of a prior disciplinary record and personal financial problems.

1 **Conclusion:** The aggravating and mitigating factors are balanced and do not affect  
2 my recommendations. Respondent should be suspended for six months for violation of  
3 Count 3. He should be reprimanded for violation of each of Counts 1, 2 and 4.  
4  
5

6 Entered on March 25 2013  
7   
8 Malcolm L. Edwards  
9 Hearing Officer

12 CERTIFICATE OF SERVICE

13 I certify that I caused a copy of the Amended POF, COL & Recommendation (Reserve)  
14 to be delivered to the Office of Disciplinary Counsel and to be mailed  
15 to Tom Young, 1111 Federal Way, Apt 900 Respondent/Respondent's Counsel  
16 at 1015 S. 310th St. #2 Federal Way, WA 98003 by Certified first class mail  
17 postage prepaid on the 11th day of April, 2013

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Clerk/Counsel to the Disciplinary Board

FILED

JUL 31 2013

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

TOM YOUNGJOHN,  
Lawyer (WSBA No.)

Proceeding No. 12#00068

DISCIPLINARY BOARD ORDER  
MODIFYING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its July 12, 2013 meeting, on automatic review of Hearing Officer Malcolm L. Edward's March 25, 2013 decision recommending a 6-month suspension and reprimands, following a hearing.

The Board reviews the hearing officer's finding of fact for substantial evidence. The Board reviews conclusions of law and sanction recommendations de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board. ELC 11.12(b).

Having heard oral argument, reviewed the materials submitted, and considered the applicable case law and rules;

**IT IS HEREBY ORDERED THAT** the Hearing Officer's decision is adopted with the following modifications:<sup>1</sup>

The sanction for Count 3 is reduced to a reprimand based on ABA Standard 7.3.

The Hearing Officer's sanction analysis for Count 3 states:

Respondent knew he had a duty to withdraw and failed to take steps to do so while insisting that Mr. Hewitt agree to the amount

<sup>1</sup> The vote on this matter was 11-0. Those voting were: Bray, Broom, Butterworth, Carrington, Coy, Dremousis, Ivarinen, McInville, Meshier, Neiland and Ogura.

1 of the refund Respondent would pay Mr. Hewitt. The motion to  
2 withdraw was not filed until Respondent file his Bar complaint.  
3 This caused Mr. Hewitt injury by delaying or potentially delaying  
4 the time for disposition of his immigration matter and by  
5 lengthening the period of time his status was in limbo. This was  
6 aggravated by the fact Mr. Hewitt was legally unable to work and  
7 earn an income until his immigration matter was concluded.

8 Mr. Youngjohn did know that he needed to file a motion for withdrawal, and he did  
9 so—after a 3 month delay. The delay is the basis for the sanction. The Hearing Officer  
10 found that the delay was based on the fact that Respondent did not have the money to make  
11 an immediate refund to the client and that he believed the client should retain another  
12 immigration lawyer prior to his withdrawal motion. When he did file the motion, the  
13 immigration judge asked that Respondent and the client work out their communication  
14 issues. They did work out their issues and the case resolved favorably. The Board finds that  
15 the Hearing Officer's decision supports finding that Mr. Youngjohn was negligent in  
16 delaying filing a motion to withdraw from the client's case based on his own financial  
17 interests and his concern that the client should find new counsel first. The Board also notes  
that the Hearing Officer based his sanction analysis, in part, on RPC 8.4(d). The Formal  
Complaint only charged a violation of RPC 8.4(d) in Count 5. The Hearing Officer  
dismissed Count 5.

ABA Standard 7.3 applies to this Count. Reprimand is generally appropriate when a  
lawyer negligently engages in conduct that is a violation of a duty owed as a professional,  
and causes injury or potential injury to a client, the public, or the legal system. The Board  
recommends that the Court impose a reprimand.

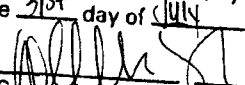
Dated this 31<sup>st</sup> day of July 2013.



Nancy Ivarinen  
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the DB Order Modifying HO's Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Tom Younk, John Respondent/Respondent's Counsel  
at 640 S. 310<sup>th</sup> St. Federal Way, WA 98003, by Certified/first class mail  
postage prepaid on the 31<sup>st</sup> day of July, 2013

  
Clerk/Counsel to the Disciplinary Board

