

FILED

NOV 21 2011

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**MARJA M. STARCZEWSKI,**

Lawyer (Bar No. 26111).

Proceeding No. 10#00086

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RE: SANCTIONS AND  
RECOMMENDATION

The undersigned Hearing Officer held a hearing on sanctions on October 13, 2011 in accordance with Rule 10.15(b)(2) of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Marja M. Starczewski appeared at the hearing. Special Disciplinary Counsel John C. Graffe appeared for the Washington State Bar Association (the Association).

**I. ANALYSIS**

**A. Presumptive Sanction Under the ABA Standards**

1. A presumptive sanction must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484, 501, 69 P.2d 844 (2003).

2. The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are

1 presumptively applicable in this case:

2 *Count 1*

3 3. ABA Standard 4.4 applies to a lawyer's failure to act with reasonable diligence in  
4 representing a client:

5 4.42 **Suspension** is generally appropriate when:

- 6 (a) a lawyer knowingly fails to perform services for a client and  
7 causes injury or potential injury to a client, or  
8 (b) a lawyer engages in a pattern of neglect and causes injury or  
9 potential injury to a client.

10 4. Respondent's conduct was knowing.

11 5. There was injury to Mr. Singh, whose claim was dismissed after the statute of  
12 limitation had run.

13 6. The presumptive sanction for Count 1 is suspension under ABA Standards 4.42(a).

14 *Count 2*

15 7. ABA Standard 4.42(a) also applies to Count 2.

16 8. Respondent's conduct was knowing.

17 9. There was injury to Mr. Singh, who never received current, complete and accurate  
18 information from the Respondent during the course of the auto accident litigation because the  
19 information was never communicated to him on a timely basis.

20 10. Because he never received timely communication from the Respondent, Mr. Singh  
21 did not have the opportunity to request that the trial court reconsider the dismissal of the case,  
22 to take action through another attorney, or to file an appeal in an effort to set aside the  
23 dismissal and reinstate the lawsuit.

24 11. In addition, because Respondent never told Mr. Singh about the settlement offer,  
Mr. Singh never had the opportunity to accept or reject the \$20,000 offer of settlement.

1 12. The presumptive sanction for Count 2 is suspension under ABA Standard 4.42(a).

2 *Count 3*

3 13. ABA Standard 4.62 applies to Count 3:

4 4.62 **Suspension** is generally appropriate when a lawyer knowingly  
5 deceives a client, and causes injury or potential injury to the client.

6 14. Respondent's conduct was knowing.

7 15. There was injury to Mr. Singh who was not informed as to the true cause of the  
8 dismissal and so was not able to take informed action.

9 16. The presumptive sanction for Count 3 is suspension under ABA Standard 4.62.

10 17. When multiple ethical violations are found, the "ultimate sanction imposed should  
11 at least be consistent with the sanction for the most serious instance of misconduct among a  
12 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).]

13 18. "A period of six months is generally the accepted minimum term of suspension."  
14 In re Cohen, 149 Wn.2d 323, 339, 67 P.3d 1086 (2003).

15 19. The appropriate presumptive sanction for Counts 1-3 is suspension.

16 **B. Aggravating and Mitigating Factors**

17 20. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
18 are applicable in this case.

19 21. Dishonest or selfish motive. ABA Standard 9.22(b). Respondent failed to  
20 communicate and made misrepresentations to Mr. Singh to conceal her own misconduct.  
21 Findings of Fact and Conclusions of Law As To RPC Violations filed July 5, 2011 (FFCL), ¶¶  
22 62 and 69.

23 22. Pattern of misconduct. ABA Standard 9.22(c). Respondent received a reprimand  
24 in 2010 for filing frivolous claims in a 2006 lawsuit. The grievance underlying that

1 Reprimand was not filed until 2009. Respondent's misconduct in Mr. Singh's case occurred  
2 primarily in 2007 and 2008. Respondent therefore did not know that she would be under  
3 investigation by the Association at the time of her actions in Mr. Singh's case, and her  
4 reprimand is therefore not a "prior disciplinary offense" under ABA Standard 9.22(a). In re  
5 Disciplinary Proceeding Against Brothers, 149 Wn.2d 575, 586, 70 P.3d 940 (2003).  
6 However, the conduct underlying the reprimand as well as the evidence of her disregard of  
7 repeated warnings from judicial officers and disciplinary counsel about her professional  
8 obligations in other cases are indicative a pattern of misconduct and justify the application of  
9 this aggravating factor. In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 889,  
10 175 P.3d 1070 (2008).

11 23. Multiple offenses. ABA Standard 9.22(d).

12 24. Refusal to acknowledge wrongful nature of conduct. ABA Standard 9.22(g).

13 Throughout this hearing Respondent has attempted to blame Mr. Singh and other persons for  
14 her failure to communicate with him regarding important events in his case, arguing that he  
15 had a duty to keep in contact with her. While she has admitted that the dismissal of Mr.  
16 Singh's case was due to her own inaction, she testified that because she was to receive only 40  
17 percent of the contingency fee, she had only 40 percent of the responsibility for the case.  
18 Respondent has evidenced a complete failure to acknowledge that she has did not meet her  
19 professional obligations and responsibilities as an officer of the court and as an attorney at law  
20 representing a client.

21 25. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent  
22 was admitted to practice in October 1996.

23 26. Indifference to making restitution. ABA Standard 9.22(j). Respondent has made  
24

1 no attempt to make restitution to Mr. Singh. In addition, she never told Mr. Singh that he had  
2 a potential claim against her or that he could seek redress through her professional liability  
3 coverage.

4 27. The following mitigating factors set forth in Section 9.32 of the ABA Standards  
5 are applicable to this case.

6 28. Personal problems. ABA Standard 9.32(c). Respondent testified as to her  
7 difficult financial circumstances during the time that she committed the misconduct. However  
8 such personal problems do not justify her conduct in handling Mr. Singh's case and are given  
9 minimal weight as a mitigating factor.

10 **C. Restitution**

11 29. The Associations' recommendation that Respondent be required to pay restitution  
12 in the amount of \$15,000 is reasonable and appropriate.

13 30. Respondent failed to communicate a \$20,000 settlement offer to Mr. Singh. The  
14 evidence that Mr. Singh would have settled the case if Respondent had explained her  
15 assessment of the case to him is credible.

16 31. There were approximately \$5,000 in liens and/or unpaid bills that would have  
17 reduced the \$20,000 settlement amount.

18 32. Respondent testified that she would have waived her portion of the contingency  
19 fee, but argues that Mr. Bharti would still have received 60 percent of the fee and that this  
20 would have reduced Mr. Singh's net recovery. However, it is improbable that Mr. Bharti  
21 would have been entitled to any compensation from Mr. Singh's settlement because of his  
22 lack of participation in the lawsuit.

23 33. Respondent is directed to pay restitution to Mr. Singh in the amount of \$15,000.  
24

1 **D. Practice Monitor**

2 34. Respondent suggests, and the Association agrees, that a practice monitor be named  
3 to monitor Respondent's practice.

4 35. It is appropriate that a practice monitor be appointed to monitor the Respondent's  
5 practice at the conclusion of her suspension to help insure that Respondent properly meets her  
6 duties and responsibilities to clients.

7 **II. RECOMMENDATION**

8 36. Based on the ABA Standards and the applicable aggravating and mitigating  
9 factors, the Hearing Officer recommends that Respondent be suspended for twenty-four (24)  
10 months.

11 37. Respondent must pay Mr. Singh \$15,000, together with statutory interest from the  
12 date of this document until paid in full, in restitution prior to reinstatement in accordance with  
13 ELC 13.7(b).

14 38. Respondent's practice should be monitored by a practice monitor for a period of  
15 eighteen (18) months following reinstatement.

16 39. Respondent must propose to disciplinary counsel, in writing, the name of a practice  
17 monitor not less than sixty (60) days prior to her reinstatement to the practice of law. The  
18 monitor must be a WSBA member who has no record of public discipline and no public  
19 disciplinary proceedings pending. If Respondent and disciplinary counsel are unable to agree  
20 on a practice monitor, Respondent and/or disciplinary counsel may ask the Chair of the  
21 Disciplinary Board to resolve the dispute.

22 40. The practice monitor shall be in place prior to Respondent's reinstatement.

23 41. Respondent must meet in person at least once a month with her practice monitor.  
24


1 At each meeting, the monitor should discuss with Respondent each of Respondent's client  
2 matters, the status of each client's case, and Respondent's intended course of action.

3 42. The monitor should give disciplinary counsel reports as to Respondent's  
4 performance on a quarterly basis, or as otherwise requested by disciplinary counsel.

5 43. If the monitor believes that Respondent is not complying with any of her ethical  
6 duties under the RPC, the monitor should promptly report that to the disciplinary counsel.

7 44. Respondent is responsible for paying any fees and expenses charged by the  
8 practice monitor for supervision.

9 Dated this 18<sup>th</sup> day of November, 2011.

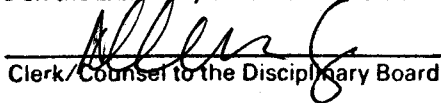
10  
11 

12 David A. Thorner, WSBA No. 4783  
13 Hearing Officer

14 CERTIFICATE OF SERVICE

15 I certify that I caused a copy of the PDF, COL re: Sanctions & Recommendation  
16 to be delivered to the Office of Disciplinary Counsel and to be mailed  
17 to Maria Szarzenski, Respondent/Respondent's Counsel  
18 at 10001 Ave. S #26, Mercer, WA 98001, by Certified first class mail,  
19 postage prepaid on the 21<sup>st</sup> day of November, 2011.

20 SDC:  
21 John Graffu  
22 925 W. Ave. #2000  
23 Seattle, WA 98104

24   
Clerk/Counsel to the Disciplinary Board

1  
2  
3 **Certificate of Service**

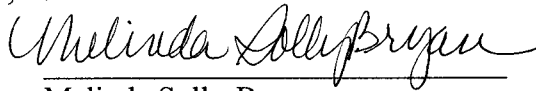
4 I certify that I caused a copy of the foregoing Proposed Findings of Fact and Conclusions Re: Sanctions dated November 18, 2011 to be mailed to:

5 Marja M. Starczewski VIA Certified Mail, postage prepaid  
6 10 Cove Ave S # 28  
Wenatchee, WA 98801-2578

7 Ms. Francesca D'Angelo VIA Regular Mail, postage prepaid  
8 Disciplinary Counsel  
9 Washington State Bar Association  
1325 - 4<sup>th</sup> Avenue, Ste. 600  
Seattle, WA 98101-2539

10 Mr. John C. Graffe VIA Regular Mail, postage prepaid  
11 Johnson, Graffe, Keay, Moniz & Wick, LLP  
925 Fourth Ave., Suite 2300  
12 Seattle, WA 98104-1157

13 Dated this 18th day of November, 2011.

14   
15 Melinda Solly-Bryan