

FILED

May 1, 2023

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

FRANK SHIGAIHISA HOMSHER,

Lawyer (Bar No. 26935).

Proceeding No. 23#00025

ODC File Nos. 22-01061 and 22-01723

Resignation Form of Frank Shigaihisa
Homsher (ELC 9.3(b))

I, Frank Shigaihisa Homsher, declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.

2. I was admitted to practice law in the State of Washington on June 23, 1997.

3. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

4. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in Disciplinary Counsel's statement, but rather than defend against the allegations, I wish to

1 permanently resign from membership in the Association.

2 5. I consent to entry of an order under ELC 13.9(e) assessing expenses of \$1,500 in
3 this matter.

4 6. I agree to pay restitution of \$2,736.94 to Debra Butters and \$2,000 to Denise Jenkins.

5 7. I agree to pay any additional costs or restitution that may be ordered by a Review
6 Committee under ELC 9.3(g).

7 8. I understand that my resignation is permanent and that any future application by me
8 for reinstatement as a member of the Association is currently barred. If the Washington Supreme
9 Court changes this rule or an application is otherwise permitted in the future, it will be treated as
10 an application by one who has been disbarred for ethical misconduct. If I file an application, I
11 will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or
12 instances of alleged misconduct on which this resignation was based.

13 9. I agree to (a) notify all other states and jurisdictions in which I am admitted of this
14 resignation in lieu of discipline; (b) seek to resign permanently from the practice of law in those
15 other states and jurisdictions; and (c) provide Disciplinary Counsel with copies of this notification
16 and any response(s). I acknowledge that this resignation could be treated as a disbarment by all
17 other jurisdictions.

18 10. I agree to (a) notify all other professional licensing agencies in any jurisdiction from
19 which I have a professional license that is predicated on my admission to practice law of this
20 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)
21 provide disciplinary counsel with copies of any of these notifications and any responses.

22 11. I agree that when applying for any employment, I will disclose the resignation in
23 lieu of discipline in response to any question regarding disciplinary action or the status of my

1 license to practice law.

2 12. I understand that my resignation becomes effective on Disciplinary Counsel's
3 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) Disciplinary
4 Counsel must do so promptly following receipt of this document.

5 13. When my resignation becomes effective, I agree to be subject to all restrictions that
6 apply to a disbarred lawyer.

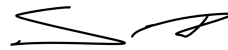
7 14. Upon filing of my resignation, I agree to comply with the same duties as a disbarred
8 lawyer under ELC 14.1 through ELC 14.4.

9 15. I understand that, after my resignation becomes effective, it is permanent. I will
10 never be eligible to apply and will not be considered for admission or reinstatement to the practice
11 of law nor will I be eligible for admission for any limited practice of law.

12 16. I certify under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct.

14
15 Mill Creek, WA 98012 5/1/2023

16 Date and Place



17 Frank Shigaihis Homsher
18 Bar No. 26935

19 ENDORSED BY:



20 Henry Cruz, Disciplinary Counsel
21 Bar No. 38799

1 EXHIBIT A

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8 DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

9
10 In re

11 **FRANK SHIGAIHISA HOMSHER,**

12 Lawyer (Bar No. 26935).

Proceeding No. 23#00025

ODC File Nos. 22-01061 and 22-01723

13 STATEMENT OF ALLEGED
14 MISCONDUCT UNDER ELC 9.3(b)(1)

15 The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the
16 Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

17 **I. ADMISSION TO PRACTICE**

18 1. Respondent Frank Shigaihisa Homsher was admitted to the practice of law in the
19 State of Washington on June 23, 1997.

20 **II. ALLEGED FACTS**

21 **Debra Butters Grievance (ODC File No. 22-01061)**

22 2. In October 2021, Respondent agreed to represent Debra Butters in a complaint for
23 property damages.

1 3. On January 4, 2022, Respondent filed the complaint for damages on behalf of
2 Butters, naming Wenke Yang and Kelly Yu, EcoTree Northwest PLLC (EcoTree), and Jia Yuan
3 as defendants (Butters v. Yang et al., Snohomish County Superior Court Case No. 22-2-00117-
4 31).

5 4. Respondent alleged three causes of action in the complaint: (1) timber trespass; (2)
6 nuisance; and (3) intentional infliction of emotional distress.

7 5. On February 28, 2022, Respondent was served interrogatories, requests for
8 production, and requests for admission (discovery requests) by Yang and Yu's lawyers.

9 6. Butters had 30 days from the date of service to respond to the discovery requests.

10 7. On February 28, 2022, Respondent asked Respondent's paralegal, C.C, to assist
11 Butters in responding to the discovery requests.

12 8. C.C. never contacted Butters about the discovery requests.

13 9. Respondent never followed-up with C.C. on the discovery requests.

14 10. Butters did not respond to the discovery requests.

15 11. On April 10, 2022, Respondent told Butters that Respondent was about to request
16 discovery from the defendants.

17 12. Respondent never drafted any discovery requests in the Butters matter.

18 13. On April 27, 2022, Respondent received a request for a case status update from
19 Butters.

20 14. Respondent told Butters that Respondent would send Butters an update later.

21 15. Respondent never sent Butters the requested update.

22 16. On May 3, 2022, Homsher received a settlement offer from EcoTree's lawyer. The
23 offer also stated that if no response was received by May 6, 2022, EcoTree would be filing a

1 motion for summary judgment.

2 17. Respondent never informed Butters about the settlement offer.

3 18. Respondent did not respond to the settlement offer by May 6, 2022.

4 19. On May 6, 2022, and again on May 23, 2022, Respondent told Butters that
5 Respondent would check on the status of serving Yuan the summons and complaint.

6 20. Respondent never looked into the status of serving Yuan the summons and
7 complaint.

8 21. Yuan was never served the summons and complaint.

9 22. On May 18, 2022, Yang and Yu filed a partial motion for summary judgment,
10 seeking to dismiss the timber trespass and intentional infliction of emotional distress claims. Yang
11 and Yu's motion stated that Butters failed to respond to Yang and Yu's requests for admission,
12 and therefore had admitted to facts conclusively establishing no timber trespass.

13 23. On May 31, 2022, EcoTree filed a motion for summary judgment on all claims.
14 EcoTree's motion stated that Butters did not respond to Yang and Yu's requests for admission,
15 and therefore had admitted to critical facts that precluded EcoTree's liability.

16 24. Respondent did not respond to either motion for summary judgment, contrary to
17 Butters's wishes.

18 25. Respondent failed to appear for two calls with Butters to discuss the motions for
19 summary judgment.

20 26. On June 5, 2022, Respondent spoke with Butters about the motions for summary
21 judgment. Respondent told Butters that a report attached to Yu and Yang's summary judgment
22 motion appeared to preclude two of Butters's claims.

23 27. Later on June 5, 2022, after Respondent's call with Butters, Respondent told both

1 Yang and Yu's and EcoTree's lawyers that Butters agreed to dismiss the claims each sought to
2 dismiss with prejudice.

3 28. Butters never agreed to dismiss any claims. Butters continued to communicate to
4 Respondent that Butters wanted to pursue the claims.

5 29. On June 5, 2022, after Respondent's communications with the defendants' lawyers,
6 Respondent told Butters that "I have concluded that the only viable claim left in your case is the
7 nuisance claim against Yang and Yu" and that Butters must dismiss the other claims. Respondent
8 did not disclose to Butters that Respondent had already agreed to dismiss the other claims.

9 30. On June 6 and 7, 2022, Respondent signed the stipulated orders of dismissal, which
10 were with prejudice.

11 31. On June 10, 2022, the court entered the dismissal orders.

12 32. Respondent never informed Butters of the dismissal orders.

13 33. Respondent never provided a copy of the dismissal orders to Butters.

14 34. Butters was not aware of the dismissal orders until after the termination of
15 Respondent's representation.

16 35. On June 17, 2022, Respondent agreed with Yang and Yu's lawyers that discovery
17 responses regarding the nuisance claim would be provided within two weeks.

18 36. Respondent never provided any responses to the discovery requests.

19 37. Respondent never informed Butters of the deadline to respond to the discovery
20 requests.

21 38. On June 28, 2022, Respondent withdrew from the matter.

22 39. On July 6, 2022, Butters requested via email a refund of \$2,736.94 and informed
23 Respondent that Butters would file a bar grievance against Respondent if Respondent did not pay

1 the refund by July 13, 2022.

2 40. On July 7, 2022, in an effort to discourage Butters from filing a bar grievance,
3 Respondent told Butters that “it is illegal to threaten an attorney with reporting to the bar,” that
4 Butters’s threat “constitutes extortion under WA law,” and that Respondent would send Butters’s
5 email to the police if Butters proceeded and make sure Butters was “prosecuted.”

6 41. On July 13, 2022, again in an attempt to prevent Butters from filing a bar grievance,
7 Respondent told Butters that Respondent would forward Butters’s email to the police as it is
8 extortion and would also sue Butters for defamation.

9 42. On July 28, 2022, Yang and Yu filed a motion for summary judgment to dismiss the
10 nuisance claim based, in part, on Butters’s failure to respond to their February 28, 2022 requests
11 for admissions which, as a result, were deemed admitted.

12 43. On August 1, 2022, after Butters told Respondent that Butters had filed a bar
13 grievance, Respondent offered a refund if Butters withdrew the bar grievance.

14 44. On August 4, 2022, Respondent told Butters that no refund would be provided if the
15 bar grievance was not withdrawn.

16 45. Butters did not accept Respondent’s offer.

17 46. On August 5, 2022, again trying to persuade Butters to withdraw the grievance,
18 Respondent told Butters that Butters “tried to extort money from me by threatening to file a
19 complaint with the bar” and that “I already have enough to sue you.”

20 47. On August 9, 2022, the court dismissed with prejudice all of Butters’s claims.

21 **Denise Jenkins Grievance (ODC File No. 22-01723)**

22 48. In February 2021, Respondent agreed to represent Denise Jenkins in vulnerable adult
23 protection order (VAPO) and guardianship matters for the benefit of Jenkins’s father, Ronnie

1 Hurst.

2 49. Respondent charged a flat fee of \$3,500 for representation in all matters, which
3 Jenkins paid in full.

4 50. On February 11, 2021, Respondent prepared and filed VAPO petitions against
5 George Aguayo and Richard Hurst (Hurst v. Aguayo, Snohomish County Superior Court Case
6 No. 21-2-00672-31 and Hurst v. Hurst, Snohomish County Superior Court Case No. 21-2-00673-
7 31).

8 51. Hearings on both VAPO petitions were scheduled for February 25, 2021.

9 52. Respondent and Jenkins failed to appear at both hearings.

10 53. The court dismissed both VAPO petitions for failure to prosecute.

11 54. On February 11, 2021, Respondent prepared and filed a petition for emergency
12 temporary guardianship (In re Guardianship of Ronnie Hurst, Snohomish County Superior Court
13 Case No. 21-4-00258-31).

14 55. On February 19, 2021, Respondent prepared and filed a petition for appointment of
15 guardian (In re Guardianship of Ronnie Hurst, Snohomish County Superior Court Case No. 21-
16 4-00308-31).

17 56. In the appointment of guardian matter, the court appointed a guardian ad litem, who
18 filed a notice of appearance in the matter.

19 57. Lawyers for Ronnie Hurst also entered appearances in the appointment of guardian
20 matter.

21 58. On August 5, 2021, Respondent withdrew from the emergency temporary
22 guardianship matter because, according to Respondent, Jenkins no longer wanted to pursue
23 guardianship.

1 59. Respondent failed to withdraw from the appointment of guardian matter.

2 **III. ALLEGED MISCONDUCT.**

3 60. By failing to timely communicate with Butters regarding the status of the property
4 damages matter, failing to advise Butters about the dismissal agreements and dismissal orders,
5 and providing false information to Butters about the work performed by Respondent in the matter,
6 Respondent violated RPC 1.4.

7 61. By providing false information to Butters about the work performed by Respondent
8 in the matter and misrepresenting to opposing counsel that Butters agreed to the stipulated
9 dismissal orders, Respondent violated RPC 8.4(c).

10 62. By agreeing to dismiss Butters's claims without consulting with Butters and against
11 Butters's decision to continue pursuing the claims, Respondent violated RPC 1.2 and RPC 1.4.

12 63. By failing to respond to opposing counsel's discovery requests, and by failing to
13 make reasonable efforts to serve Jia Yuan, Respondent violated RPC 1.3, RPC 3.2, RPC 3.4(d),
14 and RPC 8.4(d).

15 64. By failing to inform Butters about the deadline to respond to Yang and Yu's
16 discovery requests regarding the nuisance claim, Respondent violated RPC 1.16(d).

17 65. By failing to respond promptly to the opposing party's settlement offer and failing
18 to communicate the settlement offer to Butters, Respondent violated RPC 1.3, RPC 1.2(a), and
19 RPC 1.4.

20 66. By failing to supervise C.C. to ensure that the discovery responses in the Butters
21 matter were handled in a timely manner, Respondent violated RPC 5.3(b).

22 67. By offering Butters a refund contingent upon the withdrawal of the grievance against
23 Respondent and by making other statements to discourage Butters from filing a grievance,

1 Respondent violated RPC 8.4(d).

2 68. By failing to appear for hearings in both VAPO matters, Respondent violated RPC
3 1.3 and RPC 3.2.

4 69. By failing to withdraw from the guardianship matter, Respondent violated RPC
5 1.16(a).

6
7 DATED this 13th day of April, 2023.

8 

9 _____
10 Henry Cruz, Bar No. 38799
11 Disciplinary Counsel