

FILED

SEP 19 2016

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

FRANK J. PROHASKA,

Lawyer (WSBA No.27589)

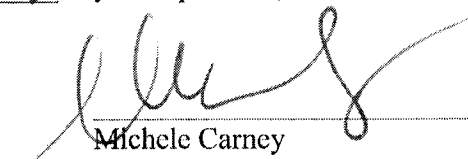
Proceeding No. 16#00039

DISCIPLINARY BOARD ORDER
DECLINING *SUA SPONTE* REVIEW AND
ADOPTING HEARING OFFICER'S
DECISION

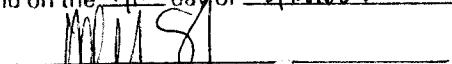
This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On September 15, 2016, the Clerk distributed the attached decision to the Board.

IT IS HEREBY ORDERED THAT the Board declines *sua sponte* review and adopts the Hearing Officer's decision¹.

Dated this 19 day of September, 2016.


Michele Carney
Disciplinary Board Vice Chair

I certify that I caused a copy of the DO Order Declining Sua Sponte Review to be delivered to the Office of Disciplinary Counsel and to be mailed to Frank Prohaska Respondent's Counsel at 1001 4th Ave #200 Seattle WA 98101 by Certified/first class mail, postage prepaid on the 19th day of September, 2016


Clerk/Counsel to the Disciplinary Board

¹ The vote on this matter was 13-0. The following Board members voted: Carney, Davis, Denton, Coy, Fischer, Startzel, Andeen, Berger, Cottrell, Smith, Myers, Egeler and Silverman. Bloomfield recused.

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AUG 04 2016
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In re

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Lawyer (Bar No. 27589).

Proceeding No. 16#00039

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND HEARING OFFICER'S
RECOMMENDATION

The undersigned Hearing Officer held a default hearing on August 4, 2016 under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint (BF 2), attached hereto, charged Frank J. Prohaska with misconduct as set forth therein.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations charged in the Bar File No. 2.00 is admitted and established as follows:
 - a. Respondent violated RPC 8.4(l) (by violating ELC 1.5, 13.9(i) and 13.9(j)) by failing

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1 to pay costs and expenses in connection with the 2015 Reprimand in Proceeding No.
2 14#00067.

3 b. Respondent violated RPC 8.4(*l*) (by violating ELC 1.5 and 13.7) by failing to make
4 restitution in connection with the 2015 Reprimand in Proceeding No. 14#00067.

5 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
6 **REGARDING RECOMMENDED SANCTION**

7 4. The following standards of the American Bar Association's Standards for
8 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) apply in this
9 case:

10 ABA Standard 6.2 Abuse of the Legal Process

11 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a
12 court order or rule with the intent to obtain a benefit for the lawyer or another,
13 and causes serious injury or potentially serious injury to a party or causes serious
14 or potentially serious interference with a legal proceeding.

15 6.22 Suspension is generally appropriate when a lawyer knows that he or she
16 is violating a court order or rule, and causes injury or potential injury to a client
17 or a party, or causes interference or potential interference with a legal
18 proceeding.

19 6.23 Reprimand is generally appropriate when a lawyer negligently fails to
20 comply with a court order or rule, and causes injury or potential injury to a client
21 or other party, or causes interference or potential interference with a legal
22 proceeding.

23 6.24 Admonition is generally appropriate when a lawyer engages in an
24 isolated instance of negligence in complying with a court order or rule, and
causes little or no actual or potential injury to a party, or causes little or no actual
or potential interference with a legal proceeding Standard 7.0 (violations of
duties owed as a professional).

ABA Standard 7.0 Violations of Duties Owed as a Professional

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

7.2 Suspension is generally appropriate when a lawyer knowingly engages in

1 conduct that is a violation of a duty owed as a professional and causes injury or
2 potential injury to a client, the public, or the legal system.

3 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
4 conduct that is a violation of a duty owed as a professional and causes injury or
5 potential injury to a client, the public, or the legal system.

6 7.4 Admonition is generally appropriate when a lawyer engages in an
7 isolated instance of negligence that is a violation of a duty owed as a
8 professional, and causes little or no actual or potential injury to a client, the
9 public, or the legal system.

10 5. Respondent acted knowingly by failing to pay costs and expenses in connection
11 with the 2015 Reprimand in Proceeding No. 14#00067.

12 6. Respondent acted knowingly by failing to make restitution in connection with the
13 2015 Reprimand in Proceeding No. 14#00067.

14 7. Respondent caused injury to a client, the public and the legal system.

15 8. The presumptive sanction is suspension under ABA Standards 6.22 and 7.2.

16 9. The following aggravating factors set forth in Section 9.22 of the ABA Standards
17 apply in this case:

18 (a) prior disciplinary offense (Respondent received a reprimand in 2015 for
19 failing to act diligently on behalf of a client, failing to keep a client
20 reasonable informed about the status of a matter in a manner he could
21 understand, failing to deposit advance fees and costs into his trust
22 account, failing to refund unearned fees and costs to the client upon
23 termination and failing to provide your client with an accounting of funds
24 received and distributed)(ABA Standard 9.22(a));

(i) substantial experience in the practice of law (admitted in 1997) (ABA
Standard 9.22(i)).

10. It is an additional aggravating factor that Respondent failed to file an answer to the
Formal Complaint as required by ELC 10.5(a).

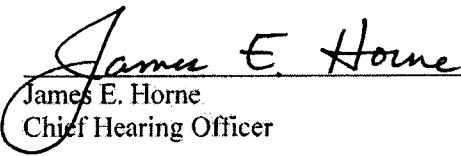
11. No mitigating factors under ABA Standard 9.32 apply.

1 12. The aggravating and mitigating factors do not provide cause to deviate from the
2 presumptive sanction.

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4 **RECOMMENDATION**

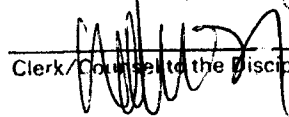
5 13. Based on the ABA Standards and the applicable aggravating and mitigating
6 factors, the Hearing Officer recommends that Respondent Frank J. Prohaska be suspended for
7 six months with reinstatement conditioned on payment of the costs and restitution ordered in
8 Proceeding No. 14#00067.

9 DATED this 4th day of August, 2016.

10 
11 James E. Horne
12 Chief Hearing Officer

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14 **CERTIFICATE OF SERVICE**

15 I certify that I caused a copy of the FOF, COL & HO'S Recommendation
16 to be delivered to the Office of Disciplinary Counsel and to be mailed
17 to FRANK PROHASKA Respondent/Respondent's Counsel
18 at 1001 4th Ave - 2100 Seattle WA 98101 by Certified/first class mail,
19 postage prepaid on the 4th day of August, 2016

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Clerk/Counsel to the Disciplinary Board

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
FRANK J. PROHASKA,
Lawyer (Bar No. 27589).

Proceeding No. 16#00039
FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent Frank J. Prohaska was admitted to the practice of law in the State of Washington on November 21, 1997.

FACTS REGARDING COUNT 1

2. On February 10, 2015, Respondent and ODC entered into a Stipulation to Reprimand in Proceeding No. 14#00067.

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1 3. On February 24, 2015, Hearing Officer Hardeep Rekhi entered an order approving
2 the Stipulation to Reprimand (2015 Reprimand).

3 4. The terms of the Stipulation required Respondent to pay \$500.00 in costs and
4 expenses to the Association.

5 5. On February 24, 2015, copies of the Stipulation to Reprimand and the Order on
6 Stipulation to Reprimand were mailed to Respondent at his address on file with the Association.

7 6. On February 25, 2015, Costs Administrator Tracy Sambrano sent a letter to
8 Respondent at his address on file with the Association reminding him of his obligation to pay
9 costs and expenses under the Stipulation to Reprimand and instructing him how to make
10 payment.

11 7. Respondent did not respond.

12 8. On May 15, 2015, Costs Administrator Tracy Sambrano sent a letter to Respondent
13 at his address on file with the Association expressing concern about Respondent's failure to pay
14 outstanding costs and expenses and interest in the amount of \$505.00. Ms. Sambrano informed
15 Respondent that his failure to pay costs and expenses as required by the ELC is a violation of
16 the RPC and may subject him to discipline.

17 9. Respondent did not respond.

18 10. Respondent has not made any payment toward his \$500.00 costs and expenses
19 obligation or the accrued interest.

20 **FACTS REGARDING COUNT 2**

21 11. The terms of the Stipulation to Reprimand also required Respondent to pay Ten
22 Wen Yang \$1,700.00 in restitution plus interest at a rate of 12% per annum from the date the
23 stipulation was final.

24 12. On February 25, 2015, Costs Administrator Tracy Sambrano sent a letter to

1 Respondent at his address on file with the Association reminding him of his obligation to pay
2 restitution under the Stipulation to Reprimand and instructing him how to make payment.

3 13. Respondent did not respond.

4 14. On May 15, 2015, Costs Administrator Tracy Sambrano sent a letter to Respondent
5 at his address on file with the Association expressing concern about Respondent's failure to pay
6 restitution and interest in the amount of \$1,717.00. Ms. Sambrano notified Respondent that his
7 restitution payment was past due and informed him that his failure to pay restitution as required
8 by the ELC is a violation of the RPC and may subject him to discipline.

9 15. Respondent did not respond.

10 16. Respondent has not made any payment toward his \$1,700 restitution obligation or
11 the accrued interest.

12 **FACTS REGARDING BOTH COUNTS 1 & 2**

13 17. On August 11, 2015, ODC sent a letter to Respondent at his address on file with
14 the Association notifying him that a grievance had been opened against him based on his failure
15 to pay costs and expenses and restitution. ODC requested that Respondent provide a written
16 response to the grievance.

17 18. On October 1, 2015, ODC emailed Respondent in an attempt to verify a current
18 mailing address and provide Respondent a copy of the August 11, 2015 letter.

19 19. The October 1, 2015 email also reminded Respondent of his obligation under APR
20 13 to notify the Executive Director of the Association of any change of mailing address within
21 10 days after the change.

22 20. Respondent did not respond to the October 1, 2015 email.

23 21. On November 2, 2015, ODC mailed a letter analyzing the results of the grievance
24 investigation (analysis letter) to Respondent at both his address of record and at 280 Haverford

1 Avenue, Apt. C4, Narberth, PA 19072, an address where Respondent had recently signed for
2 certified mail.

3 22. On December 28, 2015, ODC sent copies of the August 11, 2015 request for
4 response and the November 2, 2015 analysis letter via certified mail to Respondent at 280
5 Haverford Avenue, Apt. C4, Narberth, PA 19072.

6 23. Respondent signed a certified mail receipt for the materials on December 31, 2015.

7 24. On January 15, 2016, Respondent emailed ODC indicating he would have
8 payments sent out by the end of the week.

9 25. Respondent has not made any payment toward his costs and expenses.

10 26. Respondent has not made any payment toward his restitution.

11 27. Respondent has not had any contact with ODC on this matter since his January 15,
12 2016 email promising payment by the end of the week.

13 28. In committing the violations alleged below in Counts 1 and 2, Respondent acted
14 knowingly.

15 29. In committing the violations alleged below in Counts 1 and 2, Respondent caused
16 injury to a client, the public, and/or the legal system.

17 **COUNT 1**

18 30. By failing to pay costs and expenses in connection with the 2015 Reprimand,
19 Respondent violated RPC 8.4(l) (by violating ELC 1.5, 13.9(i) and/or 13.9(j)).

20 **COUNT 2**

21 31. By failing to make restitution in connection with the 2015 Reprimand, Respondent
22 violated RPC 8.4(l) (by violating ELC 1.5 and/or 13.7).

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THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

Dated this 15 day of April, 2016.

Ko Blake
Kathy Jo Blake, Bar No. 29235
Disciplinary Counsel