

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**FRANK J. PROHASKA,**  
Lawyer (Bar No. 27589).

Proceeding No. 16#00065

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

The undersigned Hearing Officer held a default hearing on March 13, 2017 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 (Bar File No. 4) charged Frank J. Prohaska with misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.

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 Formal Complaint is admitted and established as follows:

4. Count 1: By failing to act with reasonable diligence and promptness in

520

1 representing Hector Pagan-Serrano, Respondent violated RPC 1.3.

2 5. Count 2: By failing to respond to Mr. Pagan-Serrano's grievance and by failing to  
3 appear for his deposition, Respondent violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f),  
4 ELC 5.3(g), and ELC 5.5(d)).

5 6. Count 3: By failing to act with reasonable diligence and promptness in  
6 representing Yiao-Jean Yen, Respondent violated RPC 1.3.

7 7. Count 4: By failing to keep Ms. Yen reasonably informed about the status of her  
8 matter, failing to promptly comply with Ms. Yen's reasonable requests for information, and  
9 failing to explain the matter to the extent reasonably necessary for Ms. Yen to make informed  
10 decisions regarding the representation, Respondent violated RPC 1.4(a) and RPC 1.4(b).

11 8. Count 5: By engaging in conduct involving dishonesty, fraud, deceit, or  
12 misrepresentation, Respondent violated RPC 8.4(c).

13 9. Count 6: By failing to provide a written response to Ms. Yen's grievance,  
14 Respondent violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f), ELC 5.3(g), and ELC  
15 5.5(d)).

16 10. Count 7: By failing to act with reasonable diligence and promptness and failing to  
17 make reasonable efforts to expedite the litigation, Respondent violated RPC 1.3 and RPC 3.2.

18 11. Count 8: By willfully violating court orders directing him to file receipts and  
19 appear for the show-cause hearing, Respondent violated RPC 8.4(d) and RPC 8.4(j).

20 12. Count 9: By failing to respond to Judge Harthcock's grievance, Respondent  
21 violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f), ELC 5.3(g), and ELC 5.5(d)).

22 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
23 **REGARDING RECOMMENDED SANCTION**

24 13. Respondent acted knowingly with regard to all counts.

1 14. Respondent's conduct caused injury or potential injury to Mr. Pagan-Serrano, Ms.  
2 Yen, the minor children in the insurance settlement case, and the legal system.

3 15. Restitution of \$250 is appropriate in this case because Respondent failed to refund  
4 a \$250 filing fee to Mr. Pagan-Serrano.

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

8 4.4 ***Lack of Diligence*** [Counts 1, 3, 4, 7]

9 4.42 Suspension is generally appropriate when:

- 10 (a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client; or  
11 (b) a lawyer engages in a pattern of neglect and causes injury or  
potential injury to a client.

12 4.6 ***Lack of Candor*** [Count 5]

13 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a  
client, and causes injury or potential injury to the client.

14 6.2 ***Abuse of the Legal Process*** [Count 8]

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

17 7.0 ***Violations of Duties Owed as a Professional*** [Counts 2, 6, 9]

18 7.2 Suspension is generally appropriate when a lawyer knowingly 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.

19 8.0 ***Prior Discipline Orders***<sup>1</sup>

20 8.2 Suspension is generally appropriate when a lawyer has been reprimanded  
for the same or similar misconduct and engages in further similar acts of  
misconduct that cause injury or potential injury to a client, the public, the  
21 legal system, or the profession.

22 17. Where, as in this case, the Hearing Officer finds multiple ethical violations, the

23 \_\_\_\_\_  
24 <sup>1</sup> Respondent received a reprimand in 2015 for violations of RPC 1.3, 1.4, and 3.2, among others.

1 “ultimate sanction imposed should at least be consistent with the sanction for the most serious  
2 instance of misconduct among a number of violations.” In re Disciplinary Proceeding Against  
3 Peterson, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). In this  
4 case, the presumptive sanction is suspension.

5 18. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
6 apply in this case:

- 7 (a) prior disciplinary offenses [Mr. Prohaska received a reprimand in  
8 February 2015 and a suspension in December 2016]<sup>2</sup>;
- 8 (c) pattern of misconduct;
- 9 (d) multiple offenses;
- 9 (i) substantial experience in the practice of law [Mr. Prohaska was admitted  
10 to practice in 1997].

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

13 20. None of the mitigating factors set forth in Section 9.32 of the ABA Standards  
14 apply to this case.

### 15 RECOMMENDATION


16 21. Based on the ABA Standards and the applicable aggravating and mitigating  
17 factors, the Hearing Officer recommends that Respondent Frank J. Prohaska be disbarred and be  
18 ordered to pay restitution to Hector Pagan-Serrano in the amount of \$250, plus interest at 12%  
19 per annum calculated from January 1, 2011.

20 \\  
21 \\  
22

23 <sup>2</sup> The misconduct leading to Respondent’s February 2015 reprimand preceded the misconduct in this  
24 case and Respondent was under investigation for the prior misconduct at the time most, if not all, of the  
misconduct in this case occurred. Thus, this aggravating factor is appropriate. See In re Disciplinary  
Proceeding Against Lopez, 153 Wn.2d 570, 594, 106 P.3d 221 (2005).

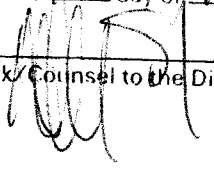
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

DATED this 25 day of March, 2017.

  
Linda Diane O'Dell  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF, COL State's Rec. Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Frank P. [unclear] / Respondent's Counsel  
at 1014th NW 43000 Seattle, WA 98107, by Certified first class mail  
postage prepaid on the 20th day of March, 2017

  
Clerk/Counsel to the Disciplinary Board

**FILED**  
OCT 26 2016  
DISCIPLINARY  
BOARD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re	Proceeding No. 16#00065
<b>FRANK J. PROHASKA,</b>	FORMAL COMPLAINT
Lawyer (Bar No. 27589).	

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 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 COUNTS 1 - 2 (Hector Pagan-Serrano grievance)**

1. Hector Pagan-Serrano hired Respondent to file a lawsuit against his former employer.

004

1           2.    On or about October 14, 2013, Mr. Pagan-Serrano emailed Respondent to inquire  
2 about the status of the case and remind him that the statute of limitations was about to run.

3           3.    On or about October 15, 2013, Respondent emailed Mr. Pagan-Serrano and  
4 indicated he had been busy but would "update [Mr. Pagan-Serrano] soon."

5           4.    On or about November 14 and 15, 2013, Mr. Pagan-Serrano sent two emails to  
6 Respondent to again inquire about the status of the case and remind him that the statute of  
7 limitations was about to run.

8           5.    On or about November 16, 2013, Respondent emailed Mr. Pagan-Serrano and  
9 stated he would file the lawsuit as soon as possible to "protect the statute."

10          6.    Respondent did not file a lawsuit for Mr. Pagan-Serrano.

11          7.    Respondent acted knowingly in failing to file the lawsuit.

12          8.    Respondent's conduct caused injury to Mr. Pagan-Serrano, who lost his ability to  
13 bring his lawsuit when the statute of limitations ran.

14          9.    On May 28, 2015, Mr. Pagan-Serrano filed his grievance against Respondent.

15          10.   On June 1, 2015, ODC sent Respondent a copy of the grievance and requested that  
16 he provide a written response within thirty days. Respondent did not respond.

17          11.   On July 8, 2015, ODC sent Respondent a letter under ELC 5.3(h) requiring that he  
18 provide a written response to the grievance by July 21, 2015, stating that failing to respond to a  
19 grievance is grounds for discipline, and stating that ODC would issue a subpoena for his  
20 deposition if he did not provide a written response.

21          12.   Respondent did not provide a response to the grievance by July 21, 2015.

22          13.   On July 24, 2015, ODC issued a subpoena duces tecum requiring Respondent to  
23 appear for a deposition on August 13, 2015 and to produce certain documents related to his

1 representation of Mr. Pagan-Serrano.

2 14. ODC attempted to personally serve Respondent at his business and home addresses  
3 on file with the Association, but the attempts were unsuccessful.

4 15. On September 30, 2015, ODC issued another subpoena duces tecum requiring  
5 Respondent to appear for a deposition on October 22, 2015.

6 16. Under ELC 4.1(b)(3)(B), the subpoena duces tecum was served on Respondent by  
7 certified mail at his business address on file with the Association and at a confidential address in  
8 Narberth, Pennsylvania.

9 17. On or about October 5, 2015, Respondent signed a return receipt for the subpoena  
10 duces tecum sent by certified mail to the Narberth, Pennsylvania address.

11 18. Respondent did not appear for his deposition on October 22, 2015, did not produce  
12 documents required by the subpoena duces tecum, and did not otherwise respond to the  
13 grievance.

14 19. On November 5, 2015, ODC filed a Petition for Respondent's Interim Suspension  
15 under ELC 7.2(a)(3).

16 20. On November 17, 2015, the Washington Supreme Court issued an order for  
17 Respondent to appear before the court on January 19, 2016 and show cause why the petition  
18 should not be granted.

19 21. Respondent was served with the Court's Order on November 23, 2015, but did not  
20 file a response.

21 22. On January 20, 2016, the Court issued an order granting ODC's motion and  
22 suspending Respondent pending his compliance with ODC's requests or subpoena in connection  
23 with the grievance investigation.



1 23. Respondent did not subsequently comply with ODC's requests or subpoena.

2 24. Respondent acted knowingly in failing to appear for his deposition, failing to  
3 produce documents required by the subpoena duces tecum, and failing to respond to the  
4 grievance.

5 25. Respondent's conduct impeded the investigation into Mr. Pagan-Serrano's  
6 grievance and caused injury to the legal system and to ODC, which had to expend additional  
7 time and resources attempting to obtain his response.

8 **COUNT 1**

9 26. By failing to act with reasonable diligence and promptness in representing Mr.  
10 Pagan-Serrano, Respondent violated RPC 1.3.

11 **COUNT 2**

12 27. By failing to respond to Mr. Pagan-Serrano's grievance and/or by failing to appear  
13 for his deposition, Respondent violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f), ELC  
14 5.3(g), and/or ELC 5.5(d)).

15 **FACTS REGARDING COUNTS 3 - 6 (Yiao-Jean Yen grievance)**

16 28. On August 5, 2010, Yiao-Jean Yen was involved in a vehicle collision.

17 29. Ms. Yen hired Respondent to file a lawsuit against the at-fault driver.

18 30. The three-year statute of limitations for Ms. Yen's claim ran on August 5, 2013.

19 31. Respondent filed a complaint for damages on August 9, 2013.

20 32. In the complaint, Respondent listed the date of the collision as August 12, 2010.

21 33. Respondent acted negligently in failing to ascertain the correct date of Ms. Yen's  
22 vehicle collision and in failing to file her case within the statute of limitations.

23 34. On or about May 22, 2014, the defendants filed a motion to compel discovery.

1           35. On or about June 5, 2014, the court ordered the plaintiffs to serve and file answers  
2 to interrogatories and requests for production.

3           36. The order stated that an order of dismissal would be entered without further notice  
4 if the plaintiffs failed to produce discovery responses within 10 days.

5           37. The order further required plaintiffs to pay \$750 in attorney's fees/sanctions and  
6 stated that if it was not paid, an order of dismissal would be entered upon 10 days' notice to  
7 plaintiffs.

8           38. Respondent did not inform Ms. Yen about the discovery order or sanctions.

9           39. Respondent did not provide the discovery or pay the sanctions.

10          40. Respondent acted knowingly in failing to communicate with Ms. Yen about the  
11 discovery order and sanctions.

12          41. Respondent acted knowingly in failing to provide the discovery or pay the  
13 sanctions.

14          42. On or about June 24, 2014, the defendants filed a motion to dismiss.

15          43. On or about July 21, 2014, Respondent filed a voluntary dismissal of the lawsuit,  
16 which included a proposed order of dismissal with prejudice.

17          44. On or about July 21, 2014, the court signed Respondent's proposed order and  
18 dismissed the case with prejudice without ruling on the defendants' motion to dismiss.

19          45. Respondent did not inform Ms. Yen he was filing a voluntary dismissal.

20          46. Respondent did not inform Ms. Yen that the lawsuit had been dismissed.

21          47. Respondent acted knowingly in failing to inform Ms. Yen about the voluntary  
22 dismissal and the fact that the case had been dismissed.

23          48. Ms. Yen made several telephone calls to Respondent over the next year regarding

1 the status of her case, but Respondent did not return her calls.

2 49. Respondent acted knowingly in failing to return Ms. Yen's telephone calls.

3 50. Ms. Yen reached Respondent by telephone in or around July 2015.

4 51. During that July 2015 telephone call, Respondent told Ms. Yen that her case was  
5 still pending and that it would take only a few more months.

6 52. Respondent's statements to Ms. Yen were false and Respondent knew they were  
7 false at the time he made them.

8 53. Respondent's conduct caused injury to Ms. Yen, who was sanctioned for her  
9 failure to provide discovery and whose case was dismissed with prejudice without her  
10 knowledge or consent.

11 54. On September 1, 2015, Ms. Yen filed her grievance against Respondent.

12 55. On September 8, 2015, ODC sent Respondent a copy of Ms. Yen's grievance and  
13 requested he provide a written response within 30 days. Respondent did not respond.

14 56. On October 14, 2015, ODC sent Respondent a letter under ELC 5.3(h) requiring  
15 his response to Ms. Yen's grievance by October 27, 2015 and stating that failing to respond to a  
16 grievance is grounds for discipline.

17 57. On October 15, 2015, ODC re-sent the grievance and the October 14, 2015 letter to  
18 Respondent at a confidential address in Narberth, Pennsylvania.

19 58. Respondent did not respond.

20 59. Respondent acted knowingly in failing to respond to Ms. Yen's grievance.

21 60. Respondent's conduct impeded the investigation into Ms. Yen's grievance and  
22 caused injury to the legal system and to ODC, which had to expend additional time and  
23 resources attempting to obtain his response.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**COUNT 3**

61. By failing to act with reasonable diligence and promptness in representing Ms. Yen, Respondent violated RPC 1.3.

**COUNT 4**

62. By failing to keep Ms. Yen reasonably informed about the status of her matter, failing to promptly comply with Ms. Yen's reasonable requests for information, and/or failing to explain the matter to the extent reasonably necessary for Ms. Yen to make informed decisions regarding the representation, Respondent violated RPC 1.4(a) and/or RPC 1.4(b).

**COUNT 5**

63. By engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, Respondent violated RPC 8.4(c).

**COUNT 6**

64. By failing to provide a written response to Ms. Yen's grievance, Respondent violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f), ELC 5.3(g), and/or ELC 5.5(d)).

**FACTS REGARDING COUNTS 7 - 10 (Judge Harthcock grievance)**

65. Respondent represented State Farm Insurance Company in connection with an insurance settlement for two minor children.

66. On or about March 22, 2012, Respondent filed a petition requesting that the court approve State Farm's settlement offer for the minor children.

67. On or about March 23, 2012, Brad Mellotte was appointed settlement guardian ad litem for the minor children.

68. On or about May 10, 2012, Mr. Mellotte filed a report of settlement guardian ad litem recommending that the court approve State Farm's settlement offer and that the full net

1 settlement proceeds be deposited in a blocked bank or trust company account, or in a financial  
2 account for the benefit of each minor child subject to withdrawal only upon order of the court.

3 69. On or about June 22, 2012, the court issued an order approving State Farm's  
4 proposed settlement and ordering that settlement proceeds be deposited in a blocked bank or  
5 trust company account, or in a financial account for the benefit of each minor child subject to  
6 withdrawal only upon order of the court.

7 70. The order required Respondent to file receipts with the court showing payment of  
8 the settlement amounts into a blocked account.

9 71. State Farm disbursed the funds directly to the children's parents as their legal  
10 guardians.

11 72. Respondent did not ensure the settlement funds were placed in a blocked account.

12 73. Respondent did not file receipts with the court.

13 74. Respondent acted knowingly and willfully in violating the court's order requiring  
14 the settlement funds be placed in a block account and directing him to file receipts.

15 75. On or about January 8, 2015, Judge Harthcock wrote Respondent a letter indicating  
16 there was no receipt for blocked accounts in the court file, ordering Respondent to correct the  
17 problem within 30 days, and indicating that a failure to correct the problem would result in a  
18 show-cause hearing.

19 76. Respondent did not correct the problem or otherwise respond to Judge Harthcock's  
20 letter.

21 77. On or about June 4, 2015, the court filed a notice of hearing requiring Respondent  
22 to appear and show cause on June 26, 2015 why he had not filed receipts for the blocked  
23 accounts.

1           78. Respondent did not appear for the June 26, 2015 hearing.

2           79. Respondent acted knowingly and willfully in violating the court's orders directing  
3 him to file receipts showing the deposit of the settlement funds into a blocked account, to  
4 correct the problem regarding receipts, and to appear for the show-cause hearing.

5           80. Respondent's conduct caused potential injury to the children, whose funds were  
6 not secured in blocked accounts.

7           81. Respondent's conduct caused injury to the legal system because the court  
8 proceeding was delayed and the court had to expend additional time and resources to note and  
9 hold a show-cause hearing on the matter.

10          82. On February 4, 2016, Judge Harthcock filed her grievance against Respondent.

11          83. On February 10, 2016, ODC sent Respondent a copy of the grievance and  
12 requested that he provide a written response within thirty days. Respondent did not respond.

13          84. On March 15, 2016, ODC sent Respondent a letter under ELC 5.3(h) requiring that  
14 he provide a written response to the grievance by March 28, 2016 and stating that failing to  
15 respond to a grievance is grounds for discipline.

16          85. Respondent did not provide a response to the grievance by March 28, 2016.

17          86. On April 5, 2016, ODC re-sent the grievance and the March 15, 2016 letter to  
18 Respondent at a confidential address in Narberth, Pennsylvania.

19          87. Respondent did not respond.

20          88. Respondent acted knowingly in failing to respond to Judge Harthcock's grievance.

21          89. Respondent's conduct impeded the investigation into Judge Harthcock's grievance  
22 and caused injury to the legal system and to ODC, which had to expend additional time and  
23 resources attempting to obtain his response.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

COUNT 7

90. By failing to act with reasonable diligence and promptness and/or failing to make reasonable efforts to expedite the litigation, Respondent violated RPC 1.3 and/or RPC 3.2.

COUNT 8


91. By willfully violating court orders directing him to file receipts and appear for the show-cause hearing, Respondent violated RPC 8.4(d) and/or RPC 8.4(j).

COUNT 9

92. By failing to respond to Judge Harthcock's grievance, Respondent violated RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f), ELC 5.3(g), and/or ELC 5.5(d)).

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 26<sup>th</sup> day of October, 2016.

  
Benjamin J. Attanasio, Bar No. 43032  
Disciplinary Counsel