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DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**MATTHEW W. BUTLER,**  
Lawyer (Bar No. 27993).

Proceeding No. 12#00013

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on February 5, 2013.

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

1. The Formal Complaint, attached, charged Matthew W. Butler 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 violations charged in the Formal Complaint are admitted and established as follows:
4. By failing to promptly file the ex parte motion for a restraining order, by advising

*DB*

1 Ms. Adams that it was appropriate for her to leave the home with the children, by failing to  
2 appear at the September 3, 2010 hearing noted by opposing counsel, and by failing to timely  
3 move for reconsideration of the September 3, 2010 orders, Respondent violated RPC 1.1, RPC  
4 1.2(a), and RPC 1.3.

5 5. By failing to keep Ms. Adams informed about matters pertinent to her case, thereby  
6 precluding her from making informed decisions about the representation, Respondent violated  
7 RPC 1.4(a) and RPC 1.4(b).

8 6. By removing Ms. Adams's fees from his trust account without providing a billing  
9 statement or notice to her and by failing to provide Ms. Adams a written accounting,  
10 Respondent violated RPC 1.15A(e) and RPC 1.15A(h)(3).

11 7. By commingling his own funds and Ms. Adams's funds in the same account,  
12 Respondent violated RPC 1.15A(c) and RPC 1.15A(h)(1).

13 8. By failing to respond to the Association's requests for a response to the grievance  
14 the grievance and by failing to appear at a scheduled deposition, Respondent violated RPC  
15 8.4(I) and ELC 5.3(e).

16 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
17 **REGARDING RECOMMENDED SANCTION**

18 9. With respect to Counts 1 and 2, Respondent acted negligently.

19 10. With respect to Count 3-5, Respondent acted knowingly.

20 11. Ms. Adams suffered injury in the dissolution matter. Her position in the litigation  
21 was compromised from the outset of the case due to his failure to promptly obtain the necessary  
22 temporary orders, his misrepresentation to her about the existence of temporary orders, his  
23 failure to appear at the hearing noted by opposing counsel, and his failure to timely file for  
24 reconsideration of adverse orders.

1           12. Ms. Adams also suffered injury because her funds were not protected, she still has  
2 no information about how her funds were expended, her ability to obtain a prompt refund was  
3 delayed, and she was forced to come up with funds for a new lawyer before she received her  
4 refund.

5           13. The disciplinary system suffered injury because scarce resources were expended to  
6 obtain Respondent's response to the grievance.

7           14. The presumptive sanction for the violations charged in Counts 1 and 2 of the Formal  
8 Complaint is a reprimand under ABA Standards 4.43 and 4.53(a):

9           4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act  
10 with reasonable diligence in representing a client, and causes injury or potential injury to  
a client.

11           4.53 Reprimand is generally appropriate when a lawyer:  
12           (a) demonstrates failure to understand relevant legal doctrines or procedures  
and causes injury or potential injury to a client.

13           15. The presumptive sanction for the violations charged in Counts 3 and 4 of the Formal  
14 Complaint is a suspension under ABA Standard 4.12:

15           4.12 Suspension is generally appropriate when a lawyer knows or should know that he  
16 is dealing improperly with client property and causes injury or potential injury to a  
client.

17           16. The presumptive sanction for the violation charged in Count 5 of the Formal  
18 Complaint is suspension under ABA Standard Section 7.2:

19           7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
20 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.

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

23           (d) multiple offenses;

- 1 (e) bad faith obstruction of the disciplinary proceeding by intentionally  
2 failing to comply with rules or orders of the disciplinary agency [failure  
3 to file answer to formal complaint as required by ELC 10.5(a)]<sup>1</sup>; and  
4 (i) substantial experience in the practice of law [Respondent was admitted in  
5 1998].

6 18. The following mitigating factors set forth in Section 9.32 of the ABA Standards  
7 apply to this case:

- 8 (a) absence of a prior disciplinary record;  
9 (d) timely good faith effort to make restitution or to rectify consequences of  
10 misconduct [partial restitution].

11 19. Where there are multiple ethical violations, the “ultimate sanction imposed should at  
12 least be consistent with the sanction for the most serious instance of misconduct among a  
13 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,  
14 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

15 20. The length of a suspension is based on the aggravating and mitigating factors.  
16 Halverson, 140 Wn.2d at 493. A six month suspension is “the presumptive starting point when  
17 suspending an attorney.” In re Disciplinary Proceeding Against Conteh, 175 Wn.2d 134, 154,  
18 284 P.3d 724 (2012) (quotation omitted). On balance, the aggravating and mitigating factors do  
19 not provide cause to deviate from the presumptive sanction of suspension or the presumptive  
20 starting point of six months.

21 21. Respondent shall pay restitution to Ms. Adams of \$1,975, plus interest at a rate of  
22 12% per annum beginning November 1, 2010. This amount reflects the fees paid to Respondent  
23 by Ms. Adams (\$3,500) minus Respondent’s refund to her (\$1,525).

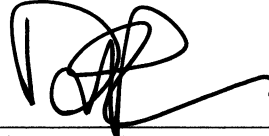
### 24 **RECOMMENDATION**

25 22. Based on the ABA Standards and the applicable aggravating and mitigating factors,

<sup>1</sup> ELC 10.5(a) provides: “Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6.” See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer’s “total nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process”).

1 the Hearing Officer recommends that Respondent Matthew W. Butler be suspended for six  
2 months and be ordered to pay Ms. Adams restitution of \$1,975, plus interest at a rate of 12% per  
3 annum beginning November 1, 2010.

4  
5 DATED this 5<sup>th</sup> day of FEBRUARY, 2013.

6 

7 \_\_\_\_\_  
8 David B. Condon, Bar No. 5578  
9 Hearing Officer

10  
11  
12 CERTIFICATE OF SERVICE

13 I certify that I caused a copy of the FOF, COL & HO's Recommendation  
14 to be delivered to the Office of Disciplinary Counsel and to be mailed  
15 to MATTHEW BUTLER Respondent/ Respondent's Counsel  
16 at PO BOX 81301 VANCOUVER, WA 98102, by Certified first class mail  
17 postage prepaid on the 4<sup>th</sup> day of FEBRUARY, 2013.

18 \_\_\_\_\_  
19 Clerk/Counsel to the Disciplinary Board

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21 Also Sent to:

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**DISCIPLINARY BOARD**

BEFORE THE  
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OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

MATTHEW W. BUTLER,  
Lawyer (Bar No. 27993).

Proceeding No. 12#00013

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), 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 Matthew W. Butler was admitted to the practice of law in the State of Washington on June 22, 1998.

**FACTS REGARDING COUNTS 1 AND 2**

2. In approximately August 2010, Amy Adams hired Respondent to obtain a dissolution of her marriage. Ms. Adams's objective was to leave her marriage but maintain custody of her children.

3. On August 6, 2010, Ms. Adams signed both the dissolution petition and a motion

1 for an ex parte restraining order. The motion, among other things, requested an order that the  
2 children reside with Ms. Adams until the hearing.

3 4. On August 6, 2012, Respondent filed the petition but did not file a citation noting  
4 the matter for hearing. He did not file the motion for the restraining order at that time.

5 5. Respondent did not tell Ms. Adams that he did not promptly file the motion for a  
6 restraining order.

7 6. Ms. Adams had instructed Respondent to file the restraining order papers  
8 immediately and believed that it had been done.

9 7. After Ms. Adams signed the papers, Respondent advised her that she could take  
10 the children and leave the family home.

11 8. On August 7, 2010, on Respondent's advice, Ms. Adams went to the family home  
12 to retrieve some belongings. An incident ensued in which her husband let the air out of her  
13 tires, and he and his father surrounded her car and would not let her leave. Both Ms. and Mr.  
14 Adams called 911, with Ms. Adams reporting her husband's efforts to restrain her and Mr.  
15 Adams reporting that Ms. Adams had kidnapped the children. Ms. Adams told the police that  
16 she had a restraining order and an order allowing her to take the children, which she thought  
17 was true based on the papers she had signed the day before and believed had been filed.

18 9. The next week, Mr. Adams hired counsel, who filed a notice of appearance.

19 10. On August 27, 2010, Mr. Adams's lawyer filed a motion for temporary orders  
20 granting Mr. Adams custody of the children. He also filed a citation setting a September 3,  
21 2010, hearing.

22 11. Respondent was served with the papers filed by Mr. Adams's lawyer.

23 12. Also on August 27, 2010, Respondent finally filed Ms. Adams's ex parte motion  
24

1 for a restraining order and obtained an ex parte restraining order. A hearing was set for  
2 September 10, 2010.

3 13. Even though Mr. Adams was represented by counsel by that point, Respondent did  
4 not tell opposing counsel about the ex part motion.

5 14. Respondent did not appear at the September 3, 2010 hearing noted by opposing  
6 counsel.

7 15. At the September 3, 2010 hearing, the judge quashed the ex parte restraining order  
8 that Respondent had obtained, struck the September 10, 2010 hearing, and ordered that the  
9 children be returned to the father and reside temporarily with him.

10 16. Respondent did not timely file a motion for reconsideration.

11 17. At subsequent hearings, the court appointed a GAL but would not reconsider the  
12 temporary orders placing the children with Mr. Adams.

13 18. In early November 2010, Ms. Adams fired Respondent and hired new counsel.

14 19. In January 2012, following a trial, the court awarded custody of the children to Mr.  
15 Adams.

16 **COUNT 1**

17 20. By failing to promptly file the ex parte motion for a restraining order, by advising  
18 Ms. Adams that it was appropriate for her to leave the home with the children, by failing to  
19 appear at the September 3, 2010 hearing noted by opposing counsel, and/or by failing to timely  
20 move for reconsideration of the September 3, 2010 orders, Respondent violated RPC 1.1, RPC  
21 1.2(a) and/or RPC 1.3.

22 **COUNT 2**

23 21. By failing to keep Ms. Adams informed about matters pertinent to her case,  
24 thereby precluding her from making informed decisions about the representation, Respondent



1 | violated RPC 1.4(a) and/or RPC 1.4(b).

2 | **FACTS REGARDING COUNT 3 AND 4**

3 | 22. Ms. Adams paid Respondent \$3,500 by check dated September 17, 2010.

4 | 23. Respondent deposited the \$3,500 check into his trust account.

5 | 24. Respondent removed the funds from trust without providing billings or notice to  
6 | Ms. Adams.

7 | 25. The account into which Respondent deposited Ms. Adams's funds also contained  
8 | earned fees paid to Respondent for work performed and funds he collected on behalf of a  
9 | basketball team he managed.

10 | 26. In November 2010, after she fired Respondent and hired new counsel, Ms. Adams  
11 | requested a refund and an accounting.

12 | 27. On January 27, 2011, Respondent provided a refund of \$1,525 by way of a  
13 | cashier's check to Ms. Adams dated December 8, 2010.

14 | 28. Respondent did not provide an accounting or billing statement.

15 | **COUNT 3**

16 | 29. By removing Ms. Adams's fees from his trust account without providing a billing  
17 | statement or notice to her, and/or by failing to provide Ms. Adams a written accounting,  
18 | Respondent violated RPC 1.15A(e) and/or RPC 1.15A(h)(3).

19 | **COUNT 4**

20 | 30. By commingling his own funds and Ms. Adams's funds in the same account,  
21 | Respondent violated RPC 1.15A(c) and/or RPC 1.15A(h)(1)

22 | **FACTS REGARDING COUNT 5**

23 | 31. Disciplinary counsel sent Respondent a copy of Ms. Adams's grievance and  
24 | requested that he respond.

1 32. Respondent did not respond.

2 33. After being served with a subpoena for a deposition, Respondent appeared at the  
3 deposition and advised disciplinary counsel that he had not previously received the grievance.  
4 Disciplinary counsel gave Respondent a copy of the grievance at that time. Respondent stated  
5 that he wanted to consider hiring counsel, so the deposition was continued to a mutually agreed-  
6 upon date.

7 34. Respondent did not appear on the date to which the deposition was continued and  
8 did not contact disciplinary counsel or otherwise seek a continuance.

9 35. Disciplinary counsel filed a petition for respondent's interim suspension under  
10 ELC 7.3(a)(3).

11 36. The Supreme Court issued an order to show cause.

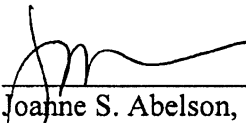
12 37. While the show cause hearing was pending, Respondent contacted disciplinary  
13 counsel and appeared at a deposition.

14 **COUNT 5**

15 38. By failing to respond to the Association's requests for a response to the grievance  
16 the grievance and/or by failing to appear at a scheduled deposition, Respondent violated RPC  
17 8.4(I) and ELC 5.3(e).

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

21 Dated this 20<sup>th</sup> day of November, 2012.

22   
23 \_\_\_\_\_  
24 Joanne S. Abelson, Bar No. 24877  
Senior Disciplinary Counsel