

**FILED**  
SEP 27 2016  
DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
  
DANA KRISTIN FOSSEDAL,  
  
Lawyer (WSBA No.28392)

Proceeding No. 13#00059  
  
DISCIPLINARY BOARD ORDER  
MODIFYING HEARING OFFICER'S  
DECISION

On September 9, 2016, the Disciplinary Board considered the Office of Disciplinary Counsel's Appeal of Hearing Officer Keith Scully's Findings of Fact and Conclusions of Law recommending a three-year suspension following a hearing.

The Board reviews the hearing officer's finding of fact for substantial evidence. The Board reviews conclusions of law and sanction recommendations de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board. ELC 11.12(b).

Having reviewed the materials submitted, heard oral argument, and considered the applicable case law and court rules;

**IT IS HEREBY ORDERED THAT** the Hearing Officer's decision, attached as Exhibit A to this Order, is modified as detailed below<sup>1</sup>:

**Paragraph 65**

The Board modified the introductory paragraph and subsections (h) and (i). The remaining subsections of hearing officer paragraph 65 are adopted.

---

<sup>1</sup> The vote on this matter was 11-0. Those voting were: Andeen, Berger, Bloomfield, Carney, Cottrell, Davis, Denton, Fisher, Myers, Silverman and Startzel.

074

Introductory Paragraph

The Hearing Officer has considered the following mitigating<sup>2</sup> factors set forth in Section 9.32 of the ABA Standards and finds as follows:

Subsection (h)

(h) Physical disability. This factor applies because of Ms. Fossedal's significant pain. It must be considered in conjunction with factor (i) because the combination of the pain and medications taken to manage it mitigate Ms. Fossedal's misconduct. Standing either alone or in combination with factor (i), this factor is insufficient to establish an extraordinary mitigator as required to depart from the presumptive sanction of disbarment.<sup>3</sup>

Subsection (i)

(i) Mental disability or chemical dependency including alcoholism or drug abuse when:

- (a) There is medical evidence that the respondent is affected by a chemical dependency or mental disability;
- (b) The chemical dependency or mental disability caused the misconduct;
- (c) The respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
- (d) The recovery arrested the misconduct and recurrence of that misconduct is unlikely.

This factor is not present because element (b) is not met.

Recommendation<sup>4</sup>

Based on the ABA Standards and the applicable aggravating and mitigating factors, the Board recommends that the Court order the presumptive sanction of disbarment.

---

<sup>2</sup> This sentence contains a typographical error. The original Paragraph 65 referred to aggravating factors instead of mitigating factors.

<sup>3</sup> The Hearing Officer's original decision found that the mitigating factors of physical disability and chemical dependency, either alone or in combination, justified reducing the presumptive sanction of disbarment.

<sup>4</sup> This paragraph replaces paragraph 66 in the hearing officer's decision.

Neither the aggravating nor the mitigating factors justify a departure from the presumptive sanction in this matter. Should reinstatement be sought, the Board recommends that the Court require Respondent to pay all court ordered restitution to Mr. Schoof prior to reinstatement after disbarment. Additionally, pursuant to APR 25.1(d), Respondent must repay all amounts paid out by the Lawyer's Fund for Client Protection prior to reinstatement after disbarment.

Dated this 27th day of September 2016.

*Stephanie Bloomfield*  
Stephanie Bloomfield  
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the RD Order Modifying His Decision to be delivered to the Office of Disciplinary Counsel and to be mailed to Mrs MacPherson Respondent/Respondent's Counsel at 14615 1st Ave NW Rainier Ridge, WA 98110 Certified first class mail postage prepaid on the 27th day of Sept., 2016.

*[Signature]*  
Clerk/Counsel to the Disciplinary Board