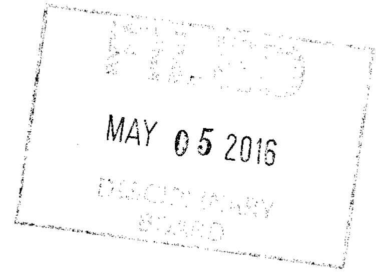

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **CARLLENE M. PLACIDE,** **Lawyer (WSBA No. 28824)**	**Public No. 13#00097** **HEARING OFFICER'S AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

The matter was heard on October 26, 27, 28 and 29, 2015. Respondent Carllene M. Placide represented herself, and the Washington State Bar Association Office of Disciplinary Counsel was represented by M. Craig Bray and Erica Temple.

I. FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence, except when a specific finding indicates otherwise:

1. The First Amended Formal Complaint, a copy of which is attached hereto, charged Respondent Carllene M. Placide ("Respondent") with misconduct as set forth therein.

2. Respondent was admitted to the practice of law in Washington on March 10, 1999.

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3. Prior to November 2006 Respondent was an attorney with the Seattle firm now known as Foster Pepper PLLC.

Facts related to Respondent's conduct while at Dorsey Whitney

4. From November 2006 to November 2011, Respondent was a non-equity partner in the Seattle Office of the law firm of Dorsey & Whitney, LLP ("Dorsey").

5. Respondent's practice at Dorsey emphasized labor and employment, and immigration law on behalf of businesses.

6. As reflected in Exhibit 109, during the time Respondent was a Dorsey partner, the firm's policies required that, with limited exceptions not relevant here, "all compensation received by any Dorsey partner, associate, or other attorney for professional services is the property of the firm."

7. It was further Dorsey's policy that (a) if an attorney received a check for legal services "that is the property of the firm" and the check was made payable to an individual, it should be endorsed immediately to the order of Dorsey and delivered to Dorsey's finance department; and (b) if an attorney received cash for legal services that "is the property of the firm," the cash should be delivered immediately to the finance department.

8. A clear preponderance of the evidence, including but not limited to Respondent's denials of having received such fees, shows that Respondent was aware of Dorsey's policy that all fees received for providing legal services should be turned over to the firm.

9. For several years prior to November 2011, while a "non-equity partner" at Dorsey, Respondent represented individual immigration clients who hired her personally, and who paid her directly, without disclosing those representations to Dorsey.

10. Clients for whom Respondent performed legal services without opening a file for them at her law firm, and whose fees Respondent retained personally, will generally be referred to as "outside clients."

11. The preponderance of evidence at the hearing was that Respondent's outside clients understood that they were hiring Respondent personally, and intended for their payments to belong to Respondent personally and not Dorsey.

12. While there was some circumstantial evidence of possible client confusion, there was no substantial evidence that outside clients from whom Respondent received fees while a Dorsey non-equity partner intended that their payments go to Dorsey instead of to Respondent, personally.

13. The sole outside client who had paid Respondent for legal services, who testified at the hearing, when asked "Were you hiring in your mind Ms. Placide personally or as a Dorsey & Whitney lawyer?" responded that, "In my mind I saw her more of a personal lawyer that came through references of Dorsey & Whitney."

14. Respondent's legal work on immigration matters at Dorsey was ordinarily on behalf of corporate clients.

15. The outside clients for whom Respondent performed services were often individuals, and not the type of immigration client that Dorsey would ordinarily seek or represent as a paying client. But Respondent also performed legal work on a number of occasions on behalf of outside clients that were business entities such as corporations, and there was no evidence that Dorsey would have considered those clients undesirable or declined to represent them as paying clients.

16. Respondent generally attempted to perform a kind of "conflicts check" when she accepted engagements on behalf of outside clients while at Dorsey, by reviewing the names of firm clients that were available to Dorsey attorneys in the firm's electronic systems. That information failed to include all names in Dorsey's conflicts check system, and was wholly inadequate to identify potential conflicts of interest that could be created by Respondent's representation of outside clients.

17. The evidence showed that Respondent on more than one occasion met with outside clients at Dorsey's offices. There was no evidence how frequently that was done.

18. Respondent often used a personal e-mail address in communicating with outside clients, but she also frequently used her Dorsey e-mail address for both sending, and receiving, communications with her outside clients. When Respondent used her Dorsey e-mail account in communicating with outside clients, her name at the bottom usually identified her as "Partner," followed by Dorsey's name, address and telephone/fax numbers

19. Respondent often used personal letterhead for her communications on behalf of outside clients. But Respondent also, on many occasions, used Dorsey letterhead when communicating with immigration authorities on behalf of outside clients, in which she identified herself as a Dorsey attorney and the client as a Dorsey client. Immigration authorities on a number of occasions responded with letters directed to Respondent as a Dorsey attorney, at Dorsey's office address.

20. Respondent performed services for outside clients exclusively on a flat fee, or fixed fee, basis.

21. There was no evidence that Respondent represented outside clients without entering into some form of written engagement letter or agreement.

22. Respondent's engagement letters or agreements with outside clients failed to include the language required by RPC 1.5(f)(2) in order for an attorney to treat flat fees or fixed fees as earned upon receipt, rather than being required to deposit them into a trust account.

23. Respondent did not have an IOLTA account, and retained, or deposited into a personal bank account, all payments she received from outside clients.

24. Respondent did not turn any of the payments she received from outside clients over to Dorsey.

25. In November 2011, Dorsey learned that Respondent was representing some clients without providing the fee payments to Dorsey.

26. On November 8, 2011 Dorsey's Regional Office Administrator and one of its partners met with Respondent at Dorsey's Seattle office ("the November 8 meeting"). Respondent was not advised prior to the meeting that its purpose was to question her about her representation of outside clients.

27. When asked in the November 8 meeting if she had represented clients outside of her capacity as a Dorsey attorney and without opening a Dorsey client file for them, Respondent repeatedly and falsely denied having done so.

28. In the November 8 meeting, Respondent initially denied having represented clients outside of her firm practice. Several times when presented with an e-mail or other document evidencing contact with a specific outside client, Respondent acknowledged having represented that specific client, gave an excuse for having neglected or forgotten to mention it, and denied any representation of other outside clients.

29. When asked if she had received payments from outside clients, Respondent repeatedly and falsely denied having done so.

30. Several times after denying having personally received fees, when presented with emails or other documentation evidencing that she had received a specific payment, Respondent then acknowledged having received that payment, but claimed it was an exceptional occasion which she had forgotten, or for which she had an excuse. This process was repeated several times.

31. When asked how much she had received in total from outside clients, Respondent truthfully said she could not say exactly how much, because she did not have any records with her.

32. When pressed for estimates of how much she had received in fees from outside clients, Respondent acknowledged that it was "at least $5,000."

33. Respondent had in fact received more than $56,700 from outside clients, and while the acknowledgment that it was "at least $5,000" was literally true, by understating the order of magnitude of the fees she had received from outside clients Respondent's response was intentionally and materially misleading.

34. Notwithstanding that she sometimes conducted e-mail communications on her Dorsey email account, received communications related to outside clients at her Dorsey office, and left occasional documents related to an outside client in her Dorsey office, all of which were susceptible of being discovered by Dorsey, Respondent attempted to conceal, and did conceal, her representation of outside clients from Dorsey.

35. Respondent also attempted to conceal the fact of, and then the scope of, her representation of outside clients, in her November 8, 2011 meeting with Dorsey representatives.

36. On or around November 14, 2011, Dorsey advised Respondent that her partnership with Dorsey was terminated.

37. Respondent and Dorsey on December 9, 2011, executed a Separation Agreement and Mutual Release (the "Separation Agreement"), with an attached Exhibit A listing those outside clients from whom Respondent acknowledged having received fees, and the amounts received from each, in the total amount of $56,700.

38. The list of payments Respondent acknowledged having received from outside clients in Exhibit A consisted only of payments for which Dorsey had documentary evidence, usually in the form of emails, of the payment.

39. Respondent had received materially more than $56,700 from outside clients as of November 22, 2011. For example, Respondent received $450 from Client P.S. on or around October 22, 2011, and an additional $2,050 from Client P.S. nearly a week later, on or around October 28, 2011. Respondent represented in Exhibit A that she had received the $450 from client P.S., while failing to disclose the more-recent, and larger, $2,050 payment received just 11 days before the November 8, 2011 meeting.

40. The actual amount of fees Respondent received from outside clients while a Dorsey partner was not established by the evidence.

41. By knowingly understating the amount of fees she had received from outside clients in her Separation Agreement with Dorsey, Respondent intentionally mislead Dorsey as to the amounts she had received.

42. Respondent agreed in the Separation Agreement to pay Dorsey $50,923 on or before December 30, 2012, which represented $56,700 in fees Respondent acknowledged having received from outside clients, plus certain benefits due or paid to Respondent and minus November partnership income that had been paid to her.

43. In a letter dated November 12, 2012, before the deadline for Respondent paying the amount due under the Separation Agreement, Dorsey filed an ethics complaint against Respondent with the Washington State Bar Association based on Respondent's representation of outside clients and related matters.

44. At some point after Dorsey filed its ethics complaint against Respondent, Dorsey agreed with Respondent that she did not have to pay the amount agreed to in the Separation Agreement until after the ethics complaint had been resolved.

45. Respondent had not, as of the time of the hearing in this matter, paid any amounts due to Dorsey under the Separation Agreement.

Client A

46. Prior to January 2011 Respondent received a flat fee of $7,000 from an outside client, Client A, which Respondent had deposited into a personal account, and not a trust account.

47. In January 2011 Client A asked Respondent for a refund of $3,825 of that $7,000 flat fee, advising that he needed the refund by January 21, 2011.

48. Respondent agreed to client A's request to refund, and refunded $1,910 of the requested amount before January 21, 2011. But Respondent did not, or was unable to, pay the balance of the refund to the client until on or around February 2, 2011.

Client P.S.

49. Respondent agreed to represent outside Client P. S. on an immigration matter for a $2,500 flat fee. This is the same Client P.S. referred to above, who had paid Respondent personally $450 on or around October 22, 2011, and $2,050 on or around October 28, 2011.

50. Respondent's work on Client P.S.'s case was not completed at the time Dorsey terminated her partnership November 14, 2011. Dorsey attorneys other than Respondent completed the work on behalf of Client P.S.

51. Respondent around June 2012 contacted Client P.S., and learned that his work had been completed by Dorsey attorneys. Respondent then asked Client P.S. if she should return his fee. Client P.S. responded that since the work had been completed by Dorsey attorneys Respondent should give his fee to Dorsey.

52. Respondent had not as of the time of the hearing in this matter given any of Client P.S.'s $2,500 fee to Dorsey.

53. Respondent testified she did not turn those funds over to Dorsey because she believed Client P.S.'s $2,500 fee to be covered by her Separation Agreement with Dorsey.

54. Respondent's stated belief that she was excused by the Separation Agreement from turning Client P.S.'s entire $2,500 fee over to Dorsey was not reasonable, and therefore was not credible, because Respondent had affirmatively misrepresented in the agreement that she received only $450 from Client P.S.

55. It was not reasonable for Respondent to believe that Dorsey, by agreeing to defer payment of the $450 fee from Client P.S. that she had disclosed in the Settlement Agreement, also agreed to defer her obligation to turn over to the firm the $2,050 she had not disclosed in the Settlement Agreement.

Facts related to Respondent's conduct while at Ogletree, Deakins

56. Prior to November 2011, while she was a partner with Dorsey, Respondent had contacts with representatives of the law firm of Ogletree, Deakins, Nash, Smoak & Stewart

("Ogletree") about potentially leaving Dorsey and becoming employed by, or a shareholder with, Ogletree.

57. There was no evidence that Dorsey was aware of Respondent's contacts with Ogletree.

58. There was no evidence that Dorsey terminated Respondent for any reason other than her representation of outside clients and lack of candor when confronted about it.

59. After she was terminated by Dorsey, Respondent falsely told Ogletree representatives that Dorsey had terminated her because Dorsey had learned of her discussions about moving to Ogletree.

60. Ogletree in a letter dated December 5, 2011 offered Respondent employment as a shareholder with the firm.

61. Respondent accepted Ogletree's offer, and on or about December 15, 2011 began working as a shareholder at Ogletree.

62. There was no evidence that Ogletree had a written policy prohibiting shareholders from representing clients in legal matters outside of the firm, or personally retaining the fees generated by work for outside clients.

63. Despite the absence of a written policy, Ogletree intended and expected its shareholders to provide legal services exclusively for Ogletree clients, and to turn over to the firm all fees generated by providing legal services to any clients.

64. Respondent knew Ogletree expected and intended that upon becoming an Ogletree shareholder, she would perform legal services exclusively for Ogletree clients, and turn over to the firm all fees generated by her providing legal services to any clients.

65. Evidence that Respondent knew Ogletree expected, and intended, that she would perform legal services exclusively on behalf of Ogletree clients included: (1) Respondent had been an attorney for 12 years, including employment as a partner or shareholder with two other large law firms before Ogletree; (2) the Hearing Officer can take judicial notice that, absent express agreement otherwise, it is the custom for law firms to require their partners and shareholders to perform legal services exclusively for firm clients; (3) Respondent had just been terminated by a law firm specifically for representing undisclosed outside clients; (4) when Respondent undertook to represent outside clients while at Ogletree, she did not inquire whether Ogletree permitted that practice; (5) Respondent made statements to Ogletree representatives, both before and after Ogletree confronted her about representing outside clients, demonstrating she was aware that representing undisclosed outside clients was improper and not permitted; and (6) when asked by Ogletree whether she was representing or receiving fees from outside clients, Respondent repeatedly denied having done so.

66. While she was an Ogletree shareholder, Respondent performed legal services for at least 7 or 8 outside clients, from whom she received fees that she retained personally, without opening a file for them at Ogletree or disclosing the representations to Ogletree.

67. Respondent acknowledged that she had personally received a minimum of $10,000 from outside clients for legal services while she was an Ogletree shareholder.

68. There was no evidence of how much more than $10,000 Respondent had personally received from outside clients for her legal services while she was an Ogletree shareholder.

69. Respondent used both a personal e-mail account and her Ogletree email account in communicating with outside clients and with third parties about outside clients' matters.

Those emails sometimes identified Respondent as an Ogletree attorney, and provided the firm's address and contact information.

70. There was no substantial evidence presented that Respondent used Ogletree letterhead in communicating with clients or third parties.

71. Respondent used Ogletree resources to a limited extent in representing outside clients, such as her business telephone, Ogletree's Federal Express account, her Ogletree e-mail account, and Ogletree office space in which she did work on behalf of, and met with, outside clients.

72. Respondent did not perform a conflicts check when she undertook the representation of outside clients at Ogletree.

73. There was no direct evidence, and little circumstantial evidence, that any of Respondent's outside clients believed they were hiring Ogletree rather than Respondent personally, or intended that any of the fees they paid Respondent go to, or belong to, Ogletree.

74. None of Respondent's engagement letters with outside clients while she was an Ogletree shareholder were offered in evidence or testified to, and there is no evidence whether or not those letters contained the language required by RPC 1.5(f)(2).

75. Respondent did not discuss with her outside clients, either at Dorsey or Ogletree, whether their fees would or would not be placed in a trust account; where the funds would be deposited; the fact that their flat fee arrangement did not alter the client's right to terminate the client-lawyer relationship; or that they could be entitled to a refund of a portion of the fee if the representation was not completed.

76. Respondent did not maintain a trust account to hold outside clients' payments while she was an Ogletree attorney.

77. Respondent deposited the funds she received from outside clients into her personal bank accounts, and intended to retain those funds personally, without disclosing them to Ogletree.

78. In June 2012 the Ogletree attorney with oversight responsibilities for Ogletree's Seattle office, Jathan Janove, met with Respondent in Seattle to discuss a lack of production by Respondent and other issues. Ogletree was not aware at that time that Respondent was representing outside clients. Mr. Janove also interviewed a paralegal in the Seattle office, who told him that about 30 percent of her (the paralegal's) time was spent helping people in the community with their immigration status and immigration papers. When Mr. Janove reported this to Respondent, she agreed with him that the paralegal's representation of clients outside of the firm was a problem, and was totally unacceptable.

79. On or about November 29, 2012, Respondent advised Ogletree personnel that Dorsey had filed an ethics complaint against her with the Washington State Bar Association, and provided a copy of Dorsey's complaint to Ogletree.

80. On or around December 2, 2012 Ogletree's in-house General Counsel, Christopher Mixon, who had reviewed the Dorsey complaint, conducted a telephone interview with Respondent to discuss the Dorsey ethics complaint.

81. Respondent lied repeatedly to Mr. Mixon in the December 2, 2012 telephone interview, falsely stating that Dorsey representatives had approved her conduct in representing outside clients, and that Dorsey terminated her because it learned she was in discussions with Ogletree.

82. Respondent in the telephone interview with Mr. Mixon also said she believed the Dorsey Seattle office was financially struggling and had filed the ethics complaint in an effort to

better position it to compete against her and Ogletree for business. There was no reasonable basis for such a belief. Respondent knew she was terminated for other reasons, and this statement was knowingly false.

83. At Ogletree's request Respondent provided Mr. Mixon a copy of her Dorsey Separation Agreement.

84. After seeing the Dorsey Separation Agreement, Ogletree reviewed Respondent's Ogletree e-mails, which disclosed that Respondent had performed legal services for at least 7 or 8 outside clients.

85. On January 9, 2013, Mr. Mixon, and a member of Ogletree's Board of Directors, Charles Baldwin, met with Respondent in Seattle's Ogletree offices to discuss Respondent's representation of outside clients ("the January 9, meeting"). They did not disclose in advance that that was the purpose of the meeting.

86. Respondent lied repeatedly to Ogletree's representatives in the January 9 meeting.

87. Respondent repeated falsely in the January 9 meeting that Dorsey had authorized her to represent outside clients, and had terminated her because it learned of her contacts with Ogletree.

88. Respondent acknowledged in the January 9 meeting that she knew she was prohibited from representing outside clients at Ogletree.

89. Respondent in the January 9 meeting initially denied entirely that she had represented any outside clients while at Ogletree.

90. As the meeting continued, Respondent said that she had done some outside work for a family member which was just a continuation of work she had begun at Dorsey, but falsely stated that that was the only work she had done for an outside client.

91. As the January 9 meeting continued, when the Ogletree representatives showed Respondent emails that proved she had represented a particular outside client, Respondent acknowledged that representation, explained that it was an isolated incident, and denied that there were others. That process repeated itself several time, with Respondent acknowledging her representation of individual outside clients and receiving fees from those clients, one at a time, only when confronted with documents evidencing the representation.

92. On or about January 13, 2013, Respondent and Ogletree executed a Settlement Agreement and General Release ("Ogletree Settlement Agreement"). While Respondent felt pressured by Ogletree's representatives to sign the Settlement Agreement, Respondent voluntarily signed it.

93. In the Ogletree Settlement Agreement, Respondent promised to pay to Ogletree the larger of an amount equal to the sum of all payments she received from the outside clients during the period she was employed at Ogletree, or $15,000, payable at the rate of $3,000 per month commencing 21 days after the date of the Agreement.

94. As of the time of the hearing in this matter, Respondent had made none of the agreed-upon payments to Ogletree.

95. Respondent adamantly denied throughout the hearing that she had done anything wrong by representing outside clients while a Dorsey partner or Ogletree shareholder. Respondent testified that because she did the work she was hired to do at Dorsey and Ogletree, she believed she was free to do what she wished on her "own" time.

96. Respondent was not a credible witness. For example, Respondent testified that she was unaware of Dorsey's policies about representing outside clients or turning all fees for legal services over to the firm; that Dorsey personnel had authorized her to represent outside clients; and that she believed she was permitted to engage in representation outside clients at Ogletree. That testimony was not credible in light of Respondent's efforts to conceal those representations from both firms, her denials of having done so when questioned about it by both firms, and virtually all of the surrounding circumstances.

97. Respondent, who represented herself at the hearing, frequently included false or misleading assertions in the form of questions she posed to witnesses, in effect testifying herself, while not under oath, to such facts, such as:

- To a Dorsey witness:

> "Do you recall at the end of the [November 8, 2011 meeting] . . . *you . . . said, 'These non-firm clients, it's not -- it's not a big deal; but the fact that you're planning to leave and take members of the firm, that's where your partners don't trust you.'* Do you recall that?"

The evidence was overwhelming that Dorsey did not know of Respondent's contacts with Ogletree when it terminated her. Respondent's representation that the witness had made such a statement was false.

- To a Dorsey witness:

> "Would it surprise you to know that this file [for outside client A.S.] was opened *after you and I met in your office about the ability to represent individuals outside the firm*?"

The evidence was overwhelming that no Dorsey personnel had authorized Respondent to represent outside clients. Respondent's representation that there had been such a meeting was false.

- To a Dorsey witness:

> "Do you recall that during the initial opening of our discussion you mentioned that the firm is aware of my search for another firm, that I was looking to move my practice and take—potentially take the Seattle labor and employment group with me?

All the surrounding circumstances and testimony of other witnesses contradicts Respondent's suggestion that Dorsey thought she was actively searching for another firm at the time of this interview. Dorsey clearly initiated the interview with Respondent because it had discovered she was representing outside clients.

- To an Ogletree witness:

> "Do you recall, Mr. Baldwin, that I called the [January 9, 2013] meeting, that I repeatedly would ask you to come visit us in the Seattle office to discuss the office plans for expansion and the support we needed from Ogletree Deakins?

The evidence was clear that the January 9, 2013 meeting was prompted by Ogletree's receipt of a copy of Dorsey's complaint to the Washington State Bar Association and subsequent investigation of Respondent's emails which disclosed work for non-firm clients, and was not called by Respondent. The foregoing are just examples of what was a repeated practice by Respondent of making false representations in the course of her questions posed to witnesses at the hearing.

98. Respondent refused to acknowledge that the reason Dorsey terminated her was because she had represented undisclosed outside clients and personally retained the fees for that work. Instead, Respondent insisted that Dorsey terminated her, and even *said* that it was terminating her, because she was discussing employment with Ogletree,

99. Respondent refused to acknowledge that the reason Ogletree terminated her was because she had represented undisclosed outside clients and personally retained the fees for that work, or had lied to Ogletree. Instead, Respondent claimed that her work for outside clients was just an excuse for Ogletree to justify the termination, testifying that the reason for the

termination was because Ogletree was "a southern old all white boy sort of firm," and her termination "was really premised on an ulterior racist, discriminatory -- whatever you want to classify it" attitude.

100. Respondent testified that she had no remorse for her conduct at Dorsey or Ogletree, and that her only remorse was for spending so much time working for the firms and outside clients at the expense of time with her family.

II. CONCLUSIONS OF LAW

Counts 1 and 6: Theft[1]

1. Respondent's agreements with Dorsey and Ogletree obliged her to perform legal services for compensation exclusively for those law firms' clients while she was a partner or shareholder with each firm.

2. Respondent, as a Partner with Dorsey and shareholder with Ogletree also owed fiduciary duties to each of those firms and her co-partners or shareholders, including the duty to turn over to her firm and her partners all compensation she received for performing legal services.

3. Respondent's fiduciary duties to Dorsey and Ogletree arose only because of her contractual relationship as a partner or shareholder of those firms.

4. Dorsey and Ogletree did not by virtue of their partnership or shareholder agreements, or Respondent's fiduciary duties to them, become the legal owners of Respondent's ability to perform legal services. They became the owners of the *contractual right* to require

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[1] **Count 1**: "By unlawfully appropriating funds belonging to Dorsey, Respondent violated RPC 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or RCW 9A.56.060)"

Count 6: "By unlawfully appropriating funds belonging to Ogletree, Respondent violated RPC 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or 9A.56.060), and/or violated . . . RPC 8.4(i)."

Respondent to provide legal services exclusively for firm clients, and the right to receive all fees generated by Respondent's legal services.

5. Respondent's legal services were her own property interest. While Respondent contracted with Dorsey, and Ogletree, respectively, to perform legal services exclusively for the benefit of those firms, they did not thereby become the owners of her services. For example, Dorsey and Ogletree could not have sold Respondent's legal services to a third party and compelled her to work for that third party, as they could if they were the owners of those services.

6. The crime of theft is defined as wrongfully obtaining or exerting unauthorized control over "the property or services of another." RCW 9A.56.020(1):

> "Theft" means:
>
> (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof. . .;
>
> (b) By color or aid of deception to obtain control over the property or services of another or the value thereof. . . ; or
>
> (c) To appropriate lost or misdelivered property or services of another, or the value thereof. . . .

7. It is the Hearing Officer's conclusion that "property or services of another," as used in defining the crime of theft, cannot be intended to cover property or services to which another is contractually entitled but which has not yet been delivered to them.

8. Respondent's legal services did not become the "property of another" as that term is used in RCW 9A.56.020, simply because she contracted to perform legal services exclusively for Dorsey or Ogletree clients.

9. When Respondent provided her legal services to outside clients, she was exerting control over her own services, not the "services of another."

10. Respondent's conduct in performing services for outside clients breached her contractual and fiduciary duties to her respective law firms, but did not constitute the theft of her services.

11. Respondent had a contractual obligation and fiduciary duty to turn over to Dorsey and Ogletree all fees she received for performing her legal services while she was a partner or shareholder with those firms.

12. While Respondent's e-mails to clients and others sometimes identified Respondent as a partner of Dorsey or shareholder of Ogletree, and there was correspondence to third parties but not directly to any clients on Dorsey firm letterhead, the preponderance of the evidence at the hearing was that the outside clients for whom Respondent provided legal services intended to hire Respondent personally, rather than the law firm of which she was a partner or shareholder.

13. The preponderance of the evidence was also that the outside clients from whom Respondent received legal fees intended to pay their fees directly to Respondent, and not to Respondent's law firm, with one exception created by special circumstances, discussed further below.

14. Respondent's law firms owned the contractual right to be paid all of the fees Respondent received from outside clients, but as long as the outside clients intended to pay them to Respondent, and not the firms, the firms did not own the fees themselves before they were turned over to the firm.

15. Notwithstanding an attorney's contractual relationship with a firm, if a client agrees to engage the attorney personally outside of the attorney's relationship with her firm, and

pays fees to the attorney intending that the money belongs to the attorney, those fees are not "the property of" the law firm before being turned over to the firm.

16. Respondent's receipt and retention of fees for her legal services to outside clients breached her contractual obligations and fiduciary duties to Dorsey and Ogletree, but did not constitute the crime of theft by obtaining or exerting control over "the property of another."

17. With one exception, the evidence at hearing did not establish by a clear preponderance of the evidence that Respondent (1) had committed the crime of theft by providing her legal services to outside clients, or retaining the fees they paid for those services, or (2) violated RPC 8.4(b) or RPC 8.4(i).

18. The exception is $2,050 of the $2,500 fee that Client P.S. paid to Respondent. When Client P.S. told Respondent she should turn the $2,500 fee he had paid Respondent over to Dorsey because Dorsey had done the work for which that fee was paid, and Respondent failed to do so, Respondent wrongfully exerted unauthorized control over Dorsey's property or appropriated misdelivered property belonging to Dorsey in violation of RCW 9A.56.020(1)(a) and (c), thereby committing the crime of theft. But because Dorsey had agreed to defer receipt from Respondent of $450 of Client P.S.'s fee pending the outcome of Dorsey's grievance, Respondent's retention of that portion of the fee did not violate RCW 9A.56.020(1).

19. Respondent's theft of the $2,050 from Dorsey violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty and trustworthiness).

20. Respondent's theft of the $2,050 from Dorsey did not violate RPC 8.4(i) (committing an act involving moral turpitude or corruption).

Counts 1 and 6: Dishonesty, deceit, misrepresentation[2]

21. Respondent engaged in an ongoing pattern of misrepresentations, dishonesty and deceit by performing legal services for outside clients while she was a Dorsey partner, retaining the fees for those services, and concealing her receipt of those fees from Dorsey.

22. While the Hearing Officer has concluded that Respondent did not "unlawfully" appropriate "funds belonging to Ogletree," Respondent engaged in misrepresentations, dishonesty and deceit by performing legal services for outside clients while she was an Ogletree shareholder, retaining the fees for those services, and concealing her receipt of those fees from Ogletree.

23. Respondent's conduct involved dishonesty, deceit and misrepresentation, and violated RPC 8.4(c).

Counts 2 and 7: Misrepresentation[3]

24. By repeatedly and insistently lying to Dorsey representatives when asked about the extent of her legal services for outside clients, and the amount of fees she received for those services, Respondent engaged in conduct involving dishonesty, deceit and misrepresentation.

25. Respondent violated RPC 8.4(c) by misrepresenting the extent of her legal services for outside clients and the amount of fees she received for those services while a Dorsey partner.

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[2] **Count 1:** "By unlawfully appropriating funds belonging to Dorsey, Respondent violated . . . RPC 8.4(c)."
Count 6: "By unlawfully appropriating funds belonging to Ogletree, Respondent . . . violated RPC 8.4(c)"

[3] **Count 2:** "By misrepresenting the extent of her 'off-the-books' practice to Dorsey personnel Respondent violated RPC 8.4(c)"

Count 7: "By misrepresenting to Ogletree that she did not represent outside clients while employed at Ogletree and/or the number of outside clients she represented while at Ogletree, Respondent violated RPC 8.4(c)."

26. By repeatedly lying to Ogletree representatives in response to their questions about her activities in representing outside clients while employed at Ogletree, and by misrepresenting the number of outside clients she had performed services for, Respondent engaged in dishonest and deceitful conduct.

27. Respondent violated RPC 8.4(c) by misrepresenting to Ogletree representatives that she did not represent outside clients while employed at Ogletree, and the number of such outside clients.

Counts 3 and 8:[4] Trust account violations

28. Respondent violated RPC 1.15A(c)(2) by failing to deposit flat fees she received from clients into a trust account while she was a Dorsey partner, without entering into written fee agreements that complied with RPC 1.5(f)(2).

29. Respondent violated RPC 1.15A(c)(2) by failing to deposit flat fees she received from clients into a trust account while she was an Ogletree shareholder, without entering into written fee agreements that complied with RPC 1.5(f)(2).

Count 4[5]: Failure to return property

30. When Client P.S. told Respondent that Dorsey was entitled to the $2,500 flat fee he had paid her, and Respondent thereafter failed to deliver $2,050 of that fee to Dorsey, Respondent violated RPC 1.15A(f) by failing to deliver property to which a third party was entitled.

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[4] **Count 3:** "By failing to deposit advance flat fees in trust, as is required in the absence of a flat fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2)."

Count 8: "By failing to deposit advance flat fees in trust, as is required in the absence of a flat fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2)."

[5] **Count 4:** "By failing to return unearned portions of Mr. Singhal's fee on termination of representation and/or in failing to promptly return unearned portions of Client A's fee, Respondent violated RPC 1.15A(f) and/or RPC 1.16(d)."

Count 5[6]: Charging unreasonable fee

31. While Respondent did offer to return the fee to Client P.S. and the client declined that offer (in favor of Respondent giving that fee to Dorsey), Respondent knew that the fee had not been earned by her and the offer to return it did not, alone, satisfy her obligation to not charge a reasonable fee.

32. By keeping $2,500 in legal fees paid to her by Client P.S. without performing the work she agreed to perform on his behalf, Respondent charged an unreasonable fee in violation of RPC 1.5(a).

III. PRESUMPTIVE SANCTIONS

Count 1: Theft From Dorsey

1. Respondent acted knowingly in committing the crime of theft by exerting unauthorized control over the $2,050 of Client P.S.'s fee which was not covered by Respondents Settlement Agreement with Dorsey, and by appropriating $2,050 of that fee which had been misdelivered to her.

2. Respondent caused Dorsey actual injury in the amount of $2,050.

3. Standard 5.1 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") applies to this count. Standards 5.11 and 5.12 apply when the conduct at issue constitutes a crime:

> 5.11 Disbarment is generally appropriate when:
>
> (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft . . . ; or

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[6] **Count 5:** "By keeping $2,500 in legal fees paid to her by Mr. Singhal without performing the work she agreed to perform on his behalf, Respondent charged an unreasonable fee in violation of RPC 1.5 (a)."

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

4. While Respondent's conduct did constitute theft, Respondent's failure to turn $2,050 of Client P.S.'s fee over to Dorsey cannot be characterized as "serious criminal conduct," so Standard 5.11(a) does not apply to this violation.

5. Standard 5.12 applies to Respondent's theft by retaining $2,050 of Client P.S.'s fee, making the presumptive sanction for that violation **suspension.**

Counts 1, 2, 6 and 7: Dishonesty, Deceit, Misrepresentation

6. Respondent acted knowingly in committing conduct involving dishonesty, deceit and misrepresentations alleged in Counts 1, 2, 6 and 7.

7. Respondent's violations of RPC 8.4(c) alleged in Counts 1 and 6, in the course of performing legal services for outside clients while she was a Dorsey partner and Ogletree shareholder, retaining the fees for those services, and concealing her receipt of those fees from Dorsey and Ogletree caused:

a. Actual injury to both Dorsey and Ogletree by

(1) depriving them of fees to which they were entitled by contract;

(2) requiring the firms to expend a substantial amount of attorney and staff time and resources toward investigating after the fact the scope and nature of Respondent's representations of outside clients, for which the firms were potentially liable; and

(3) requiring the firms to expend a substantial amount of uncompensated legal services in order to ensure that all outside clients for whom Respondent was performing legal services were properly concluded.

b. Actual injury to Ogletree by causing the firm to expend attorney time and expenses in hiring and establishing a Seattle office based on misrepresentations about the reasons she had been terminated by Dorsey;

c. Potential injury to Dorsey and Ogletree by exposing the firms to the risk of representing parties with conflicted interests, and the risk of being disqualified from existing representations due to conflicts with one of Respondent's outside clients; and

d. Potential injury to Dorsey and Ogletree clients by exposing them to the risk that their lawyers might have to withdraw from representing them if a conflict existed with one of Respondent's outside clients.

8. Respondent's violations of RPC 8.4(c) alleged in Counts 2 and 7, in misrepresenting the fact, extent and number of her outside client representations, caused Dorsey and Ogletree

> a. actual injury by concealing the extent of her breaches of contract and violations of fiduciary duties, thereby preventing the firms from recovering from her the amounts she actually owed to them for those breaches; and
>
> b. potential injury, in that if Respondent had succeeded in misleading them about her conduct, she would have continued to engage in such conduct causing additional actual and potential injuries described in ¶4(a)-(d), above.

9. Standard 5.1 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") applies to these counts:

> **5.1 *Failure to Maintain Personal Integrity.***
>
> 5.11 Disbarment is generally appropriate when:
>
> > (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or

> importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
>
> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

> 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
>
> 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
>
> 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

10. Respondent's conduct in representing outside clients at Dorsey and Ogletree and lying to Dorsey and Ogletree representatives about that conduct was not criminal, so either Standard 5.11(b) or 5.13 applies to Respondent's violations of RPC 8.4(c).

11. Respondent's ongoing pattern of dishonesty, deceit and misrepresentations was so extensive and consistent that it "seriously adversely reflects on the lawyer's fitness to practice."

12. Standard 5.11(b) applies to Respondent's violations of RPC 8.4(c) alleged in Counts 1, 2, 6 and 7, making the presumptive sanction for those violations **disbarment**.

Counts 3 and 8: Trust Account Violations

13. Respondent's conduct in failing to deposit client flat fee payments into a trust account, without providing the clients with the information and disclosures required by RPC 15(f)(2), was negligent.

14. Respondent's failure to deposit a flat fee into a trust account caused one client actual injury, when Respondent was unable to refund that client unearned fees within the time the client said the funds were needed.

15. Respondent's failures to deposit clients' flat fees into a trust account caused clients potential injury by exposing them to the risk that if their representation was not completed Respondent might be unable to timely refund the unearned portion of their fee, or might even have been unable to refund it at all.

16. Standard 4.1 of the ABA Standards applies to these counts:

> 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
>
> 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
>
> 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
>
> 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

17. Standard 4.13 applies to Respondent's violations of RPC 1.15A(c)(2) alleged in Counts 3 and 8. The presumptive sanction for Respondent's violations is a **reprimand**.

Count 4: Failure to return property

18. Respondent's failure to deliver $2,050 of Client P.S's fee to Dorsey after Client P.S. told Respondent it should be given to Dorsey was knowing.

19. Respondent caused Dorsey actual injury in the amount of $2,050 by failing to follow Client P.S.'s instructions for the use of his funds.

20. Standard 4.1 of the ABA Standards, set forth above, is the closest Standard that applies to Respondent's violation of RPC 1.15A(f). Standard 4.1 does not apply exactly to the

facts of Count 4, because while Respondent knowingly dealt improperly with client funds, Respondent did not convert funds belonging to the client, and the client did not suffer injury; Respondent converted funds belonging to Dorsey, and it was Dorsey that suffered the injury.

21. Standard 4.11 does not apply because Respondent did not convert client funds.

22. Standard 4.12 (dealing improperly with client property) is the Standard that most closely reflects the nature of Respondent's violation of RPC 1.15A(f).

23. The presumptive sanction for Respondent's violation of RPC 1.15A(f) is **suspension.**

Count 5: Charging unreasonable fee

24. Respondent's retention of Client P.S.'s $2,500 fees without performing the work to earn those fees, thereby charging an unreasonable fee, was knowing.

25. Standard 7.0 of the ABA Standards, "Violations of Duties Owed as a Professional," applies to Respondent's violation of RPC 1.5(a) as charged in Count 5. That Standard provides, when the conduct is knowing:

> 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 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.

26. Standard 7.2 rather than 7.1 applies here, because Respondent's conduct in retaining Client P.S.'s fee cannot be characterized as causing "serious injury" to Dorsey.

27. The presumptive sanction for Respondent's violation of RPC 1.5(a) is **suspension.**

IV. AGGRAVATING AND MITIGATING FACTORS

1. The following aggravating factors set forth in Section 9.22 of the ABA Standards are present and apply in this case:

Dishonest or selfish motive. Respondent's conduct was dishonest, but dishonesty is inherent in many of the violations at issue so cannot be an "aggravating" factor.

Pattern of misconduct. Respondent's engaged in a consistent, ongoing, pattern of dishonesty in dealing with her partners and co-shareholders, which pattern continued during Respondent's representations during the hearing itself.

Multiple offenses. The multiplicity of offenses is self-evident in the above findings and conclusions.

False statements, or other deceptive practices during the disciplinary process. Respondent repeatedly made false representations of fact in presenting questions posed to witnesses at the hearing, while asking them to agree with her factual representations.

Refusal to acknowledge wrongful nature of conduct. Respondent acknowledged that she had failed to provide clients with the information required by the Rules of Professional Conduct as a condition to treating flat fees as earned on receipt, but otherwise adamantly denied that she did anything wrong in her representation of outside clients while she was a partner with Dorsey and a shareholder with Ogletree. Respondent refused to even acknowledge that Dorsey terminated her because of her representation of outside clients, or because of her lying to the firm, but instead insisted throughout the hearing that Dorsey fired her because it had learned that she was in discussions with Ogletree notwithstanding that all evidence was to the contrary. Respondent likewise refused to acknowledge that Ogletree terminated her because of her representation of outside clients, or dishonesty, and blamed her firing instead on racial or gender bias. (Respondent is a black female.)

Substantial experience in the practice of law. Respondent had been an attorney with large firms for roughly 10 years before the first violations alleged against her in this action.

Indifference to making restitution. While Dorsey had informally agreed to defer Respondent's payment of amounts she had agreed to in settlement with the firm, Respondent as of the time of the hearing had made no effort to pay Ogletree any of the amounts she had agreed to pay the firm.

2. The following mitigating factors apply in this case:

Absence of a prior disciplinary record. There was no evidence that Respondent, over the course of her 16 years as an attorney, had engaged in any form of misconduct prior to, or other than, the conduct at issue in this case.

Timely good faith effort to make restitution. Respondent had voluntarily offered to return the fee paid to her by Client P.S., although she undermined any credit this might warrant by then failing to turn those funds over to Dorsey. This factor applies to Count 5, only.

V. RECOMMENDED SANCTION

The Hearing Officer recommends that Respondent be disbarred.

When the gravamen of violation is dishonesty, deceit, and misrepresentation that does not rise to the level of a crime, the severity of the presumptive sanction turns on whether or not the conduct at issue "seriously adversely reflects on the lawyer's fitness to practice." While the dishonesty evidenced in this case did not involve misrepresentations to a court or a client, it did evidence a willingness to repeatedly and consistently lie to persons to whom Respondent owed fiduciary duties, on important matters. Respondent's dishonest conduct was consistent over at least three years, and occurred in different situations involving different people. The extent and consistency of the dishonest conduct reflects not an occasional lapse in Respondent's judgment or trustworthiness, but a regular course of behavior, evidencing a lack of the degree of honesty and integrity necessary to be an attorney.

Consequently the Hearing Officer concludes that Respondent should be disbarred from the practice of law.

May 3, 2016

Carl J. Carlson, WSBA # 7157
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the HO's Amended FOF, COL & Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to Carlene Plaede Respondent/Respondent's Counsel at 411 Univ. #1200 Seattle, WA 98101 by Certified/first class mail, postage prepaid on the 5th day of May, 2016

Clerk/Counsel to the Disciplinary Board