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MAR 29 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

PHILLIP ALAN ZAJDEL,
Lawyer (Bar No. 29165).

Proceeding No. 12#00055

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 March 20, 2013.

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

1. The Amended Formal Complaint filed in this matter charged Respondent Phillip Alan Zajdel 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 Amended Formal Complaint is admitted and established. The Amended Formal Complaint is attached as Appendix A and incorporated by reference.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the Amended Formal Complaint are admitted and established as follows:
4. Count 1 – By failing to enclose the filing fee with Mr. Masri's visa application, to

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1 respond to the USCIS Request for Evidence, and to otherwise diligently represent Mr. Masri,
2 Respondent violated RPC 1.3.

3 5. Count 2 – By failing to communicate with Mr. Masri about his case and to respond
4 to reasonable requests for information from him, Respondent violated RPC 1.4(a).

5 6. Count 3 – By failing to return Mr. Masri's original documents and turn over his
6 client file, Respondent violated RPC 1.16(d).

7 7. Count 4 – By failing to provide a response to Mr. Masri's grievance, failing to
8 appear at deposition, and failing to promptly provide Mr. Masri's file and his trust account
9 records to the Association, Respondent violated ELC 5.3(e) and RPC 8.4(l).

10 8. Count 5 – By failing to perform any work on Mr. Yang's case, Respondent
11 violated RPC 1.3.

12 9. Count 6 – By failing to communicate with Mr. Yang about his case and to respond
13 to reasonable requests for information from him, Respondent violated RPC 1.4(a).

14 10. Count 7 – By converting Mr. Yang's funds to his own use, Respondent violated
15 RPC 1.15A(a), RPC 1.15A(b), and RPC 8.4(c).

16 11. Count 8 – By failing to provide a response to Mr. Yang's grievance after the
17 Association requested one, Respondent violated ELC 5.3(e) and RPC 8.4(l).

18 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
19 **REGARDING RECOMMENDED SANCTION**

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

23 ABA Standard 4.41(b) applies to the misconduct found in Counts 1, 2, 5, and 6. The
24 presumptive sanction for those counts is disbarment.

1 ABA Standard 7.2 applies to the misconduct found in Counts 3, 4, and 8. The
2 presumptive sanction is suspension.

3 ABA Standard 4.11 applies to the misconduct found in Count 7. The presumptive
4 sanction is disbarment.

5 13. Where there are multiple ethical violations, the “ultimate sanction imposed should
6 at least be consistent with the sanction for the most serious instance of misconduct among a
7 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
8 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

9 14. The ultimate presumptive sanction in this matter is disbarment.

10 15. The following aggravating factors set forth in Section 9.22 of the ABA Standards
11 apply in this case:

- 12 (b) dishonest or selfish motive;
13 (d) multiple offenses;
14 (e) bad faith obstruction of the disciplinary proceeding by intentionally
15 failing to comply with rules or orders of the disciplinary agency
16 [failure to file answer to formal complaint as required by ELC
17 10.5(a); avoidance of personal service of the Amended Formal
18 Complaint as set out in the Declaration of Attempted Service that is
19 attached as Appendix B]¹; and
20 (i) substantial experience in the practice of law [Respondent was
21 admitted to practice in 1999].

22 16. The following mitigating factor set forth in Section 9.32 of the ABA Standards
23 applies to this case:

- 24 (a) absence of a prior disciplinary record.

17. The aggravating factors outweigh the mitigating factor. Analysis of the

¹ 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 aggravating and mitigating factors does not provide cause to deviate below the presumptive
2 sanction of disbarment.

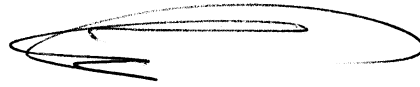
3 18. Respondent's conduct financially injured both Messrs. Masri and Yang. While
4 Respondent initially filed Mr. Masri's visa application, he did no other meaningful work of
5 value for Mr. Masri in return for the fee he was paid and failed to return property belonging to
6 Mr. Masri, causing him difficulty in proceeding with another lawyer. Respondent did no work
7 in return for Mr. Yang's fee, yet failed to refund that fee despite requests.

8 19. Respondent should be ordered to pay restitution to Mr. Masri of \$750.00 and to
9 Mr. Yang of \$1,500.00, plus interest at 12% per annum. Reinstatement should be conditioned
10 on full payment of restitution.

11 **RECOMMENDATION**

12 20. Based on the ABA Standards and the applicable aggravating and mitigating
13 factors, the Hearing Officer recommends that Respondent Phillip Alan Zajdel be disbarred and
14 ordered to pay restitution to Mr. Masri of \$750.00 and to Mr. Yang of \$1,500.00, plus interest at
15 12% per annum. The Hearing Officer recommends that reinstatement from disbarment be
16 conditioned on full payment of restitution.

17
18 DATED this 21st day of March, 2013.

19
20 
21 _____
22 Edward F. Shea, Jr.
23 Hearing Officer
24

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF of WJ & Ho's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Phillip Zaleski ~~Respondent~~ Respondent's Counsel
1200 NE 4th St #2200 Bellevue, WA 98004 by Certified first class mail,
postage prepaid on the 29th day of March, 2017

[Signature]
Clerk/Counsel to the Disciplinary Board

Also mailed to:
[Redacted]
[Redacted]

APPENDIX A

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In re

PHILLIP ALAN ZAJDEL,
Lawyer (Bar No. 29165).

Proceeding No. 12#00055

AMENDED 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 Phillip Alan Zajdel was admitted to the practice of law in the State of Washington on July 1, 1999.

FACTS REGARDING COUNTS 1 - 4

Raed Masri Grievance

2. In February 2011, Raed Masri hired Respondent to obtain an immigration visa for his wife so that she could enter the United States and be with him here.

3. At that time, Ms. Masri gave Respondent a packet of original documents needed to obtain his wife's visa and paid Respondent a \$750 flat fee.

DB1

- 1 4. Respondent filed Mr. Masri's visa application but failed to enclose the filing fee.
- 2 5. Respondent's failure to enclose the filing fee caused the application to be rejected.
- 3 6. Respondent did not notify Mr. Masri of the rejection.
- 4 7. Mr. Masri learned of the rejection directly from the U.S. Customs and Immigration
5 Service (USCIS) after failing to get an update on the visa application process from Respondent,
6 despite multiple attempts.
- 7 8. Mr. Masri was eventually able to contact Respondent, who then sent the filing fee
8 to USCIS, causing USCIS to reopen the application.
- 9 9. Thereafter, Mr. Masri made multiple attempts by telephone and email to reach
10 Respondent for an update on the progress of his visa application.
- 11 10. Respondent did not respond to these emails and calls from Mr. Masri.
- 12 11. Mr. Masri's attempts to obtain information from Respondent about the status of his
13 matter were reasonable.
- 14 12. USCIS sent a "Request for Evidence" to Respondent seeking more information
15 from Mr. Masri.
- 16 13. Respondent did not tell Mr. Masri about the Request for Evidence.
- 17 14. Respondent did not respond to the Request for Evidence or provide the requested
18 evidence to USCIS.
- 19 15. Mr. Masri learned directly from USCIS that a "Request for Evidence" had been
20 sent to Respondent.
- 21 16. Mr. Masri hired a new lawyer.
- 22 17. Mr. Masri's new lawyer attempted to contact Respondent and attempted to obtain
23 Mr. Masri's client file from Respondent.
- 24

- 1 18. Respondent did not respond to Mr. Masri's new lawyer's attempts at contact.
- 2 19. Respondent did not provide Mr. Masri's client file.
- 3 20. Respondent did not return Mr. Masri's original documents.
- 4 21. Respondent knowingly failed to diligently pursue Mr. Masri's visa application.
- 5 22. Respondent knowingly failed to communicate with Mr. Masri.
- 6 23. Respondent knowingly failed to turn over Ms. Masri's client file and/or to return
- 7 Mr. Masri's original documents.
- 8 24. Respondent's conduct caused serious injury to Mr. Masri, whose family
- 9 relationship was damaged by the long delay. Mr. Masri also had to expend additional funds to
- 10 pay his new lawyer.

11 **Non-cooperation**

12 25. On July 19, 2011, Mr. Masri filed a grievance against Respondent with the

13 Association.

14 26. On July 20, 2011, the Association forwarded Mr. Masri's grievance to Respondent

15 and requested a preliminary written response to the grievance within two weeks.

16 27. Respondent did not respond.

17 28. On August 23, 2011, the Association sent Respondent a certified letter advising

18 him that he must respond to Mr. Masri's grievance within 10 days, or be subject to a deposition.

19 29. Respondent received the Association's letter on August 24, 2011.

20 30. Respondent did not respond.

21 31. On September 21, 2011, due to his failure to cooperate with the grievance

22 investigation, the Association personally served Respondent with a subpoena duces tecum for a

23 deposition on October 20, 2011, requiring him to bring his client file and all financial records

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1 relating to his representation of Mr. Masri.

2 32. Respondent did not appear or produce the materials on October 20, 2011. To date,
3 he has not produced the materials.

4 33. On January 4, 2012, Respondent was personally served with the Association's
5 Petition for Interim Suspension for non-cooperation.

6 34. On January 17, 2012, Respondent was personally served with an Order to Show
7 Cause from the Washington Supreme Court. The order required Respondent to appear for an
8 interim suspension hearing on February 16, 2012.

9 35. Respondent knowingly failed to respond to the petition and failed to appear for the
10 hearing.

11 36. On February 21, 2012, the Supreme Court entered an order suspending Respondent
12 from the practice of law on an interim basis due to his failure to cooperate with the grievance
13 investigation.

14 37. Respondent caused injury to the disciplinary system by forcing it to expend limited
15 resources in seeking a response to the grievance.

16 **COUNT 1**

17 38. By failing to enclose the filing fee with Mr. Masri's visa application, to respond to
18 the USCIS Request for Evidence, and/or to otherwise diligently represent Mr. Masri,
19 Respondent violated RPC 1.3.

20 **COUNT 2**

21 39. By failing to communicate with Mr. Masri about his case and/or to respond to
22 reasonable requests for information from Mr. Masri, Respondent violated RPC 1.4(a).

23 **COUNT 3**

24 40. By failing to return Mr. Masri's original documents and/or to turn over Mr.

1 Masri's client file, Respondent violated RPC 1.16(d).

2 **COUNT 4**

3 41. By failing to provide a response to Mr. Masri's grievance, and/or failing to appear
4 at deposition, and/or failing to promptly provide Mr. Masri's file and his trust account records to
5 the Association, Respondent violated ELC 5.3(e) and RPC 8.4(l).

6 **FACTS REGARDING COUNTS 5 - 8**

7 **David Yang Grievance**

8 42. In November 2010, David Yang hired Respondent to obtain an immigration visa to
9 bring his wife to the United States.

10 43. At that time, Mr. Yang paid Respondent a \$1,500 flat fee.

11 44. In December 2010, Mr. Yang completed a visa application for his wife and gave it
12 to Respondent.

13 45. Respondent did not file the Yangs' visa application and did not provide any legal
14 services in return for the \$1,500 flat fee.

15 46. Between January and July 2011, Mr. Yang made multiple attempts to contact
16 Respondent by telephone and email and get an update on the status of the application as well as
17 an accounting of his \$1,500 fee.

18 47. Respondent did not respond to Mr. Yang's emails or telephone calls.

19 48. Mr. Yang's attempts to obtain information on the status of his matter were
20 reasonable.

21 49. Mr. Yang requested a refund.

22 50. Respondent did not provide a refund.

23 51. Respondent acted knowingly in failing to communicate with Mr. Yang, failing to
24 file the Yangs' visa application, and in failing to refund unearned fees.

1 52. Respondent's conduct caused serious injury to Mr. Yang, who lost \$1,500 and did
2 not obtain a visa for his wife or any services from Respondent.

3 **Non-cooperation**

4 53. On October 11, 2011, Mr. Yang filed a grievance against Respondent with the
5 Association.

6 54. On October 12, 2011, the Association forwarded Mr. Yang's grievance to
7 Respondent and requested that he provide a preliminary written response to the grievance.

8 55. Respondent did not respond.

9 56. On November 15, 2011, the Association sent Respondent a certified letter advising
10 him that he must provide the requested response within 10 days, or he be subject to a deposition.

11 57. Respondent received the Association's letter on November 16, 2011.

12 58. Respondent did not provide a response to the Yang grievance.

13 59. Respondent caused injury to the discipline system by forcing it to expend
14 additional limited resources in seeking a response to the grievance.

15 **COUNT 5**

16 60. By failing to perform any work on Mr. Yang's case, Respondent violated RPC 1.3.

17 **COUNT 6**

18 61. By failing to communicate with Mr. Yang about his case and/or to respond to
19 reasonable requests for information, Respondent violated RPC 1.4(a).

20 **COUNT 7**


21 62. By converting and/or misappropriating Mr. Yang's funds, Respondent violated
22 RPC 1.15A(a), RPC 1.15A(b), and/or RPC 8.4(c).

COUNT 8

63. By failing to provide a response to Mr. Yang's grievance, Respondent violated ELC 5.3(e) and RPC 8.4(l).

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

Dated this 17th day of November, 2012.



Craig Bray, Bar No. 20821
Disciplinary Counsel

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APPENDIX B

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In re

PHILLIP ALAN ZAJDEL,
Lawyer (Bar No. 29165)

NO. 12#00055

DECLARATION OF ATTEMPTED SERVICE

State of Washington)
County of King S/S)

1. I am more than 18 years old. I have never been convicted of a felony or crime involving moral turpitude. Except where specified otherwise, I have personal knowledge of the matters stated below, and can testify to them if called upon to do so in any proceeding.

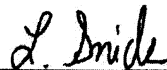
2. I am a process server for Seattle Legal, a company headquartered in Seattle, Washington, which, among other things, provides process service of legal documents in lawsuits. Seattle Legal's business address is 711 6th Avenue North, #100, Seattle, Washington, 98109. Seattle Legal provides services to many law firms in the Seattle area and also to clients outside the Seattle area.

3. On November 7, 2012, Seattle Legal was contacted for service of Amended Formal Complaint; Notice to Answer and Notice of Default Procedure; and Letter dated November 7, 2012 upon Phillip Alan Zajdel "Phillip" in the above entitled action.
4. The following attempts were made at the address of 17015 NE 190th Street, Woodinville, WA.
5. On November 13, 2012, at 6:15 PM, declarant attempted service and received no answer to persistent knocking upon the door. There were lights on and dogs were barking inside. There was a vehicle present with the plate AKF9440.
6. On November 14, 2012, at 6:59 PM, declarant attempted service and received no answer to persistent knocking upon the door. There were lights on and dogs were barking inside. There was a vehicle present with the plate AKF9440.
7. On November 17, 2012, at 1:31 PM, declarant attempted service and received no answer to persistent knocking upon the door. There was a light on in the kitchen and there was a child eating at the table. Dogs were barking inside and there was a vehicle present with the plate AKF9440. Declarant left a note on the door for Phillip with Seattle Legal's phone number and asked him to call regarding service of process.
8. On November 18, 2012, at 3:25 PM, declarant attempted service and received no answer to persistent knocking upon the door. The residence was

8. On November 18, 2012, at 3:25 PM, declarant attempted service and received no answer to persistent knocking upon the door. The residence was dark and quiet. The note was gone from the door. There was a vehicle present with the plate AKF9440.
9. On November 19, 2012, at 8:15 PM, declarant attempted service and received no answer to persistent knocking upon the door. Declarant walked around to the back of the house and saw a bald, white, male, who had a medium-heavy build, sitting in a back room working on a computer. Declarant knew this person to be Phillip based on the fact that declarant had served this same man before and at the time of that service, he identified himself as Phillip. Declarant received no answer after 45 minutes of persistent and aggressive knocking and banging on the windows and calling out Phillip's name. Declarant called Phillip on the phone, heard the phone ring inside and watched through the window as Phillip ignored the call. Declarant left a voicemail for Phillip and asked that he return the phone call and/or open the door and accept service of process. No return phone call was received from anyone who identified them-self as Phillip, nor did Phillip come and accept service. The TV and the lights were on, and two dogs were barking inside. There was a vehicle present with the plate AKF9440.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

Executed this 20th day of November, 2012, at Seattle, Washington.



L. Snider