

**FILED**

MAY 21 2013

**DISCIPLINARY BOARD**

BEFORE THE DISCIPLINARY BOARD OF THE  
WASHINGTON STATE BAR ASSOCIATION

In Re: ) PUBLIC NO. 12 #00099  
)  
MARIANNE MEEKER, ) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND HEARING OFFICER'S  
Respondent Lawyer WSBA No. 29674 ) 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 May 2, 2013.

**I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

1. The Formal Complaint (Proceeding No. 12#00099) filed on January 10, 2013 charged Respondent Marianne Meeker with six counts of misconduct as set forth therein.

2. An Order of Default was entered and filed on March 8, 2013.

3. The Washington State Bar Association received no communications and/ or contacts from Respondent Meeker after entry of the default order and Respondent Meeker did not appear at the default hearing.

4. Disciplinary Counsel, Kevin Banks, appeared at the default hearing and offered the Formal Complaint and other exhibits as evidence.

5. Pursuant to ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established. The violations charged in the Formal

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDATIONS- 1

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1 Complaint and facts are found and established as follows:

2 **COUNT 1**

3 **I.A. No violation of RPC 1.4(a)(2) or RPC1.4(a)(3). Violation of RPC 1.4(a)(4) and RPC 1.4(b).**

4 **1) No violation of RPC 1.4(a)(2)**

5 RPC 1.4(a)(2) requires a lawyer to reasonably consult with the client about the means  
6 by which the client's objectives are to be accomplished.

7 In this case, Respondent's clients, the Constantinos, had purchased a piece of real  
8 property. A cloud fell on the title and, independently, the Constantinos fell behind in their  
9 mortgage payments. The Constantino's wished to secure a clear title in order to sell the real  
10 property in order to recoup money to pay off the debt incurred when initially purchasing an  
11 interest in the real property. The Respondent had represented the Constantinos on several  
12 matters between 2007 and 2009.

13 It is found that on June 14, 2010, Respondent proposed to clear the title through a  
14 quiet title action and that through March 11, 2011; his clients understood that this was the means  
15 by which the client's objective would be accomplished. There is insufficient evidence to  
16 establish a violation of RPC 1.4(a)(2) by a clear preponderance of the evidence.

17 **2) No violation of RPC 1.4(a)(3)**

18 RPC 1.4(a)(3) requires a lawyer to keep the client reasonably informed about the  
19 status of the matter. It is unknown when the Constantinos<sup>1</sup> actually paid their retainer and/ or  
20 when an agreement was reached for the Respondent to handle the proposed quiet title action.  
21 However, it is found that the Respondent had assumed responsibility for the work at least as of  
22 November 8, 2010, when his client inquired into the status. Apart from the need to serve  
23 process, there is no evidence regarding the steps that are required for a quiet title action or the

24 <sup>1</sup> The Constantinos retainer was paid by Clifford Strong on behalf of the Constantinos. Clifford Strong also  
25 handled many communications on behalf of the Constantinos. In these Findings of Fact and Conclusions,  
communications by Clifford Strong are found to be made by the Constantinos as he was acting on their  
behalf.

1 time necessary to complete a quiet title action. It is found there is insufficient evidence to find a  
2 violation of RPC 1.4(a)(3) by a clear preponderance of the evidence as the Respondent  
3 periodically provided general updates regarding the status in response to client inquiries.

4 **3) Violation of PRC 1.4(a)(4)**

5 RPC 1.4(a)(4) requires a lawyer to promptly comply with reasonable requests for  
6 information. It is found that starting on February 8, 2011, the Constantinos made multiple and  
7 frequent requests for information by telephone and through email communications. On February  
8 21, 2011 they requested a contact as soon as possible. On February 28, 2011, they requested  
9 the documents the Respondent had prepared for the quiet title action, a meeting for March 2,  
10 2011, and a response regarding Respondent's intent to comply with their requests.

11 It is found that Respondent was non responsive. On March 3, 2011, Respondent  
12 advised of an intent to secure relief for his clients in a manner different than previously promised  
13 and further promised to provide an update later that day.

14 It is found that on March 3, 2011 the Constantinos requested an update, and on March  
15 10, 2011 they requested a written comprehensive report explaining what had been done on the  
16 quiet title action and why quiet title had not been accomplished.

17 Except to indicate that she was unable to serve the Defendant, it is found that the  
18 Respondent was non responsive. Although the Constantinos made multiple requests with  
19 increased urgency over a short period of time, it is unknown what steps are required for a quiet  
20 title action, the time necessary to complete the work, and / or when the real property went into  
21 foreclosure. There is insufficient evidence to find that the Respondent knew or should have  
22 known that time was of the essence. There was no evidence that the Respondent had been  
23 negligent on his client's cases during prior representation from 2007 through 2009. In this  
24 context, it is found that the Respondent's failure to act with reasonable diligence was not  
25

1 knowing and a pattern of negligence was not established by a clear preponderance of the  
2 evidence.

3 By failing to promptly comply with reasonable requests for information in 2011, the  
4 Respondent negligently violated RPC 1.4(a)(4) by a clear preponderance of the evidence.

5 **4) Violation of RPC 1.4(b)**

6 RPC 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to  
7 permit the client to make informed decisions regarding the representation. The Respondent  
8 provided periodic information regarding difficulties with service of process. However, it is found  
9 he did not advise them of the potential impact of the service deficiencies on his overall ability to  
10 quiet title. Likewise, when he re-determined the means to quiet title, he did not explain the basis  
11 for his decision or the probable effectiveness of that new means. Despite his client's March 10,  
12 2011 written demand for comprehensive information, he still failed to consult with his clients, to  
13 inform them, and/ or to ensure that they were comfortable with his new strategy.

14 It is found that Respondent negligently violated RPC 1.4(b) by a clear preponderance  
15 of the evidence.

16 **1.B. Presumptive sanction:**

17 **1) Violation of RPC 1.4(a)(4) violates ABA Standard 4.43**

18 Pursuant to 4.43:

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

22 **2) Violation of RPC 1.4(b) violates ABA Standard 4.53(b)**

23 Reprimand is generally appropriate when a lawyer:

- 24 (b) is negligent in determining whether he or she is competent to handle a  
25 legal matter and causes injury or potential injury to a client.

/

1 **1.C. Potential or Actual Injury due to Violation of RPC 1.4(a)(4) and RPC 1.4(b)**

2 By failing to comply with reasonable requests for information, and by failing to explain the  
3 matter to the extent reasonably necessary to enable the Constantinos to make informed  
4 decisions regarding representation, the Constantinos were injured. They were deprived of the  
5 ability to evaluate their case and /or to take other effective steps, including securing new  
6 counsel, which may have facilitated a sale of the property and/ or avoided foreclosure.

7 **COUNT 2**

8 **2.A. Violation of RPC 1.3**

9 RPC 1.3 requires a lawyer to act with reasonable diligence and promptness in  
10 representing a client. Here, despite prompting from the client, the Respondent delayed in filing  
11 a quiet title action.

12 Respondent initially acted negligently in failing to diligently pursue the Constantino's quiet  
13 title action. Later, when faced with obstacles to the necessary service of process, Respondent  
14 did not seek alternatives but instead, abandoned the work. When the Respondent stopped  
15 working on her client's case, her conduct became knowing.

16 It is found that Respondent knowingly violated RPC 1.3 by a clear preponderance of the  
17 evidence.

18 **2.B. Presumptive sanction: Violation of RPC 1.3 violates ABA Standard 4.42**

19 Suspension is generally appropriate when:

- 20 (a) a lawyer knowingly fails to perform services for a client and causes injury  
21 or potential injury to a client.

22 **2.C. Potential or Actual Injury due to Violation of RPC 1.3**

23 Although it is unknown whether or not the Constantinos could have avoided  
24 foreclosure had the Respondent quieted title, the Respondent's failure to act promptly  
25 and his subsequent abandonment of the case left the Constantinos without counsel

1 during a period when time may have been of the essence. The failure to file an action  
2 either injured the client's interests or had the potential to injure the client's interests.

3 **Count 3**

4 **3.A. Violation of RPC 1.5 (f)(2)**

5 RPC 1.5(f)(2) permits a lawyer to charge a flat fee for his or her services so long as,  
6 amongst other things, the agreement is in writing and signed by the client, and so long as it  
7 contains all other information required by RPC 1.5(f)(2) and so long as those terms are in written  
8 in a manner easily understood by the client.

9 In this case, it is found that the Respondent transmitted the terms for the proposed  
10 agreement to her client in writing via email. It is found that the terms for the agreement were  
11 either incomplete and/ or not written in a manner easily understood by the client. The client  
12 understood the work would be performed for the flat fee of \$1000.00 and, in fact, paid that  
13 amount to demonstrate acceptance of the terms. After representation had commenced, the  
14 Respondent understood the agreement differently and indicated a need to discuss "numbers"  
15 and costs for service of process." It is found that the Respondent negligently failed to secure the  
16 written signature of the client on the flat fee agreement and negligently failed to include required  
17 language in a manner easily understood by the client, thereby violating RPC 1.5(f)(2) by a clear  
18 preponderance of the evidence.

19 **3.B. Presumptive sanction: Violation of RPC 1.5 (f)(2) violates ABA Standard 7.3**

20 Reprimand is generally appropriate when a lawyer negligently engages in  
21 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.

22 **3.C. Potential or Actual Injury due to Violation of RPC 1.5(f)(2)**

23 The Constantinos were injured in that they were not informed of their rights pursuant to  
24 RPC 1.5 (f)(2). Further, it is possible that failure to provide terms in a manner easily understood  
25 by the client may have contributed to a misunderstanding regarding the terms of the flat fee

1 agreement. That, in turn, may have led to the Respondent's decision to abandon work on their  
2 case; which ultimately caused injury or potential injury to the Constantinos.

3 **COUNT 4**

4 **4.A. Violation of RPC 1.16 (d)**

5 Upon termination of representation, RPC 1.16(d) requires a lawyer to surrender papers  
6 and property to which the client is entitled and to refund any advance payment of fees that have  
7 not been earned. It is found that the Respondent knowingly failed to complete the work  
8 necessary to quiet title and knowingly failed to refund all or part of her advance flat fee.  
9 Respondent also failed to produce the client's file in response to the Association's May 10, 2011  
10 request and subsequent requests as well. Respondent knowingly violated RPC 1.16(d) by a  
11 clear preponderance of the evidence.

12 **4.B. Presumptive sanction: Violation of RPC 1.16(d) violates ABA Standard 7.2**

13 Suspension is generally appropriate when a lawyer knowingly engages in  
14 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.

15 **4.C. Potential or Actual Injury due to Violation of RPC 1.16(d)**

16 The Constantinos were injured in that their file was withheld from them and they were  
17 deprived of information regarding the status of the quiet title action and/ or the extent of the work  
18 performed on their case. They were further deprived of the ability to seek meaningful  
19 consultation regarding potential relief. Finally, the Constantinos were injured in that they received  
20 no benefit from Respondent's representation and lost the use of the fee paid to Respondent that  
21 might have been used to pay another lawyer.

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23 /  
24 /  
25 /

**Count 5**

**5.A. Violation of RPC 8.4(l)**

RPC 8.4(l) prohibits a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter, including but not limited to the duties catalogued at ELC 1.5. This includes the requirement at ELC 5.3(e) that a lawyer furnish a prompt response to inquiries or requests about matters under investigation.

The Respondent failed to provide a prompt response to the Association's letters dated March 18, 2011, and April 21, 2011 (4/21 returned unclaimed), the Associations May 15, 2011 subpoena and deposition set for June 7, 2011, and their letters dated July 24, 2011 and August 8, 2011. On June 30, 2011, the Respondent provided an untimely one-page response to the grievance but never produced any of the requested documents. The Association sought an interim suspension from the Supreme Court as a result of Respondent's refusal to cooperate with the investigation.

It is found that the Respondent knowingly violated RPC 8.4(l) by a clear preponderance of the evidence.

**5.B. Presumptive sanction: Violation of RPC 8.4(l) violates ABA Standard 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.

**5.C. Potential or Actual Injury due to Violation of RPC 8.4(l)**

The Respondent's disregard for the requirements of the lawyer disciplinary system reflects poorly on the legal profession, places it in disrepute, and injures the legal profession and disciplinary system as a whole. The Office of Disciplinary Counsel was injured in that resources in the form of time and costs were unnecessarily expended in efforts to obtain Respondent's cooperation.



COUNT 6

6.A. Violation of RPC 8.1(a)

RPC 8.1(a) prohibits a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter. Pursuant to RPC 8.4(c), it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. It is found that during the investigation by alleging that that she had personally delivered a computer disk with the subpoenaed documents to someone at the WSBA front desk reception on the afternoon of Tuesday, July 19, 2011 when she had not done so on that date or any other time, the Respondent knowingly made a false statement and she knowingly engaged in conduct involving dishonesty and deceit. It is found that the Respondent violated RPC 8.1(a) and RPC 8.4(c) by a clear preponderance of the evidence.

6.B. Presumptive sanction: Violation of RPC 8.1(a) and 8.4(c) violates ABA Standard 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.

6.C. Potential or Actual Injury due to Violation of RPC 8.1(a) and 8.4(c)

The Respondent attempted to mislead the Association by falsely alleging she personally delivered requested information and/ or documents to the Washington State Bar. Although it is found that the false statement was knowing, the statement was also unsworn.

Although the Association expended resources to investigate Respondent's false claims, the attempt was foolish, transparent, and easily detected. There was no possibility that the Association would have relied on that false statement. The Respondent should have known that the Association would not abandon their request and that unless the documents were located, they would make another request.

It is found that the Association was injured as resources were unnecessarily spent to investigate Respondent's claim. The discipline system was injured because the system relies on

1 lawyers to provide truthful information to resolve disciplinary grievances.

2  
3 **II. MITIGATING AND AGGRAVATING FACTORS PERTAINING TO COUNTS 1-6**

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

6 9.22 (a) prior disciplinary offenses:

7 The Respondent received an admonition in 2010 for mishandling client funds;

8 9.22(b) dishonest or selfish motive:

9 9.22(d) multiple offenses:

10 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to  
11 comply with rules or orders of the disciplinary agency;

12 9.22(g) refusal to acknowledge wrongful nature of conduct:

13 9.22(i) substantial experience in the practice of law:

14 The Respondent was admitted to practice in 1999.

15 The following mitigating factors set forth in Section 9.32 of the ABA Standards apply to  
16 this case:

17 9.32 (c) personal or emotional problems: During part of the relevant time period,  
18 Respondent was dealing with the aftermath of her father's death from cancer.

19 The aggravating factors outweigh the mitigating factors.

20 **III. RECOMMENDATION**

21 Where multiple acts of misconduct are found, the "ultimate sanction imposed should at  
22 least be consistent with the sanction for the most serious instance of misconduct among a  
23 number of violations." In re Petersen, 120 Wn2d 833, 854 (1993). Here the Association proved  
24 Count 6 by a clear preponderance of the evidence with regards to the Respondent's violation of  
25 RPC 8.1(a) and RPC 8.4(c).

1 Based on the ABA Standards and the applicable aggravating and mitigating factors, the  
2 Hearing Officer recommends that Respondent Marianne Meeker be suspended for a period of 9  
3 months.

4 The Respondent further recommends that she pay restitution in the amount of \$1,000 to  
5 Clifford Strong, in addition to interest at the rate of 12% per annum effective as of March 18,  
6 2011, the date on which the Association sent a letter to Respondent forwarding the grievance.

7 Respondent's reinstatement to practice is contingent on full payment of all costs and  
8 restitution ordered.

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11  
12 DATED this 20th day of May, 2013.

13  
14 Andrekita Silva  
15 Andrekita Silva,  
16 Hearing Officer

17 CERTIFICATE OF SERVICE

18 I certify that I caused a copy of the FOI COL & HO's Recommendation  
19 to be delivered to the Office of Disciplinary Counsel and to be mailed  
20 to Marianne Meeker, Respondent/ Respondent's Counsel  
21 at 828 S. 24th Pl. Federal Way, WA 98003, by Certified first class mail,  
22 postage prepaid on the 21st day of MAY, 2013

23  
24  
25  
[Signature]  
Clerk/Counsel to the Disciplinary Board