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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ERICA NICOLE DAVIS,
Lawyer (Bar No. 30035).

Proceeding No. 17#00032

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

The undersigned Hearing Officer held a default hearing by written submissions under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

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

1. The Formal Complaint (Bar File No. 2) charged Erica Nicole Davis (Respondent) with misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision and incorporated by reference.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations charged in the Formal Complaint is admitted and established as follows:

4. Count 1 – by failing to diligently pursue her client's divorce matter, Respondent

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1 violated RPC 1.3 (diligence) and RPC 3.2 (expediting litigation);

2 5. Count 2 – by failing to keep her client informed about the status of her case and
3 failing to respond to the client’s reasonable requests for information about her case, Respondent
4 violated RPC 1.4(a) (communication);

5 6. Count 3 – by not refunding any unearned portion of the fee the client paid,
6 Respondent violated RPC 1.5(a) (fees);

7 7. Count 4 – by failing to turn over the signed divorce paperwork and funds paid in
8 advance to cover costs, Respondent violated RPC 1.16(d); and

9 8. Count 5 – by failing to respond to ODC's requests for a response to the grievance
10 and to appear and produce documents as required by ODC's subpoena duces tecum, Respondent
11 violated RPC 8.1(b) and RPC 8.4(l) (by violating ELC 5.3(f), 5.3(g), and/or 5.5(d)).

12 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
13 **REGARDING RECOMMENDED SANCTION**

14 1. Based on the established facts, Respondent acted negligently in failing to diligently
15 pursue the client’s matter and acted knowingly in failing to respond to her client’s requests for
16 information after the client asked whether her case had been filed, failing to refund advance
17 costs, failing to refund unearned fees, failing to turn over the signed divorce paperwork that she
18 never filed, and failing to respond or cooperate with the disciplinary investigation.

19 2. Respondent’s misconduct injured her client by delaying the client’s case and
20 depriving the client of use of the unearned and unspent funds to which the client was entitled.

21 3. Respondent’s failure to cooperate with the disciplinary investigation injured the
22 discipline system, which depends on lawyer cooperation in order to function.

23 4. The following standards of the American Bar Association’s Standards for
24 Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) apply in this

1 case:

2 ABA Standard 4.12 states that suspension is generally appropriate when a lawyer knows
3 or should know that she is dealing improperly with client property and causes injury to a client.
4 This Standard applies to Respondent's failure to refund unspent advance costs and unearned
5 attorney fees, and her failure to turn over the divorce paperwork to which the client was entitled.

6 ABA Standard 4.43 states that reprimand is generally appropriate when a lawyer is
7 negligent and does not act with reasonable diligence in representing a client and injures the
8 client. This Standard applies to Respondent's failure to diligently file the client's dissolution
9 matter and to have the client's husband served.

10 ABA Standard 7.2 states that suspension is generally appropriate when a lawyer
11 knowingly engages in conduct that is a violation of a duty owed as a professional and causes
12 injury to a client, the public, or the legal system. This Standard applies to Respondent's failure
13 to communicate with her client and failure to cooperate with the disciplinary investigation.

14 The presumptive sanction for Count 1 is reprimand. The presumptive sanction for
15 Counts 2, 3, 4, and 5 is suspension.

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

- 18 (d) multiple offenses;
- 19 (i) substantial experience in the practice of law [Ms. Davis was admitted to
practice law in Washington in 2000]; and
- 20 (j) indifference to making restitution.

21 6. It is an additional aggravating factor that Respondent failed to file an answer to the
22 Formal Complaint as required by ELC 10.5(a).

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

1 (a) absence of a prior disciplinary record.

2 8. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846
3 P.2d 1330 (1993), the “ultimate sanction imposed should at least be consistent with the sanction
4 for the most serious instance of misconduct among a number of violations.”

5 9. “A six-month suspension is the accepted minimum term of suspension. This
6 minimum term suspension is warranted when ‘there are either no aggravating factors and at
7 least some mitigating factors, or where the mitigating factors clearly outweigh any aggravating
8 factors.’” In re Disciplinary Proceeding Against Abele, 184 Wn.2d 1, 28, 358 P.3d 371(2015)
9 (citations omitted). Here, the aggravating factors outweigh the single mitigating factor and the
10 minimum suspension is inappropriate.

11 **RECOMMENDATION**

12 10. Based on the ABA Standards and the applicable aggravating and mitigating
13 factors, the Hearing Officer recommends that Respondent be suspended from the practice of law
14 for two years.

15 11. The Hearing Officer recommends that Respondent be ordered to pay restitution to
16 her client in the amount of \$915 (\$600 advance fee and \$315 filing fee), with interest accrued
17 since March 22, 2016 at the rate of 12 percent per annum. Reinstatement from suspension
18 should be conditioned on payment of the restitution.

19 12. The Hearing Officer also recommends that Respondent be subject to probation for
20 a period of two years beginning when Respondent is reinstated to the practice of law and that
21 she be required to comply with specific probation terms to include:

22 Practice Monitor

23 a) During the period of probation, Respondent's practice will be supervised by a
24 practice monitor. The practice monitor must be a WSBA member with no record of

1 public discipline and who is not the subject of a pending public disciplinary
2 proceeding.

- 3 b) The role of the practice monitor is to consult with and provide guidance to
4 Respondent regarding case management, office management, and avoiding
5 violations of the Rules of Professional Conduct, and to provide reports and
6 information to the Probation Administrator regarding Respondent's compliance with
7 the terms of probation and the RPC. The practice monitor does not represent the
8 Respondent.
- 9 c) At the beginning of the probation period, the Probation Administrator will select a
10 lawyer to serve as practice monitor for the period of Respondent's probation.
- 11 d) Initial Challenge: If, within 15 days of the written notice of the selection of a
12 practice monitor, Respondent sends a written request to the Probation Administrator
13 that another practice monitor be selected, the Probation Administrator will select
14 another practice monitor. Respondent need not identify any basis for this initial
15 request.
- 16 e) Subsequent Challenges: If, after selection of a second (or subsequent) practice
17 monitor, Respondent believes there is good cause why that individual should not
18 serve as practice monitor, Respondent may, within 15 days of notice of the selected
19 practice monitor, send a written request to the Probation Administrator asking that
20 another practice monitor be selected. That request must articulate good cause to
21 support the request. If the Probation Administrator agrees, another practice monitor
22 will be selected. If the Probation Administrator disagrees, the Office of
23 Disciplinary Counsel will submit its proposed selection for practice monitor to the
24 Chair of the Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and
will also provide the Chair with the Respondent's written request that another
practice monitor be selected.
- f) In the event the practice monitor is no longer able to perform his or her duties, the
Probation Administrator will select a new practice monitor at his or her discretion.
- g) During the period of probation, Respondent must cooperate with the named practice
monitor. Respondent must meet with the practice monitor at least once per month.
Respondent must communicate with the practice monitor to schedule all required
meetings.
- h) The Respondent must bring to each meeting a current, complete written list of all
pending client legal matters being handled by the Respondent. The list must
identify the current status of each client matter and any problematic issues regarding
each client matter. The list may identify clients by using the client's initials rather
than the client's name.
- i) At each meeting, the practice monitor will discuss with Respondent practice issues
that have arisen or are anticipated. In light of the conduct giving rise to the
imposition of probation, ODC recommends that the practice monitor and

1 Respondent discuss whether Respondent is diligently making progress on each
2 client matter, whether Respondent is in communication with each client, whether
3 Respondent has promptly billed each client, whether Respondent's fee agreements
4 are consistent with the RPC and are understandable to the client. Meetings may be
5 in person or by telephone at the practice monitor's discretion. The practice monitor
6 uses discretion in determining the length of each meeting.

- 7 j) The practice monitor will provide the Probation Administrator with quarterly
8 written reports regarding Respondent's compliance with probation terms and the
9 RPC. Each report must include the date of each meeting with Respondent, a brief
10 synopsis of the discussion topics, and a brief description of any concerns the
11 practice monitor has regarding the Respondent's compliance with the RPC. The
12 report must be signed by the practice monitor. Each report is due within 30 days of
13 the completion of the quarter.
- 14 k) If the practice monitor believes that Respondent is not complying with any of her
15 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
16 meeting, the practice monitor will promptly communicate that to the Probation
17 Administrator.
- 18 l) Respondent must make payments totaling \$1,000 to the Washington State Bar
19 Association to defray the costs and expenses of administering the probation, as
20 follows:
- 21 i) \$250 due within 30 days of the start of the probation;
 - 22 ii) \$250 due within 6 months of the start of the probation period;
 - 23 iii) \$250 due within 12 months of the start of the probation period; and
 - 24 iv) \$250 due within 18 months of the start of the probation period.
- m) All payments should be provided to the Probation Administrator for processing.

Ethics School

- a) Respondent shall attend Ethics School in person or by webinar (approximately six
hours), or by obtaining the recorded product, and pay registration costs of \$150.
Respondent will receive all applicable approved CLE credits for time in attendance
at the Ethics School. Ethics School will be held at the WSBA's offices.
- b) Respondent shall not disclose the names or other identifying information of other
Ethics School attendees outside of Ethics School.
- c) Respondent shall contact the Ethics School Administrator, currently Thea Jennings,
at (206) 733-5985 or theaj@wsba.org, within 30 days of reinstatement to practice to
confirm enrollment in Ethics School and related logistics.

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d) The Ethics School administrator may respond to inquiries from the Probation Administrator regarding Respondent's compliance with these conditions.

DATED this 7th day of November, 2017.

Randolph O. Petgrave
Randolph O. Petgrave,
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOI, COL & HOS DECISION
to be delivered to the Office of Disciplinary Counsel and to be mailed
to enca bills, Respondent's / Respondent's Counsel.
by Certified / first class mail,
postage prepaid on the 7th day of Nov, 2017

2001 W Clearwater Ave #203
Kennewick, WA 99336
Clerk/Counsel to the Disciplinary Board

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ERICA NICOLE DAVIS,
Lawyer (Bar No. 30035).

Proceeding No. 17#00032
FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar 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 Erica Nicole Davis (Respondent) was admitted to the practice of law in the State of Washington on June 13, 2000.

FACTS REGARDING COUNTS 1 – 4

2. Kerry Welsh hired Respondent on December 30, 2015 to prepare documents necessary to file for divorce.

- 1 3. Ms. Welsh paid Respondent \$600 to prepare and file the paperwork.
- 2 4. Respondent told Ms. Welsh that texting was her preferred method of
3 communication.
- 4 5. On January 20, 2016, Respondent notified Ms. Welsh that the paperwork had been
5 prepared and was ready to be signed.
- 6 6. Ms. Welsh met with Respondent, signed the paperwork, and paid another \$315 to
7 cover the filing fees.
- 8 7. Respondent said she would file and serve the papers within a week and email
9 copies of the filed paperwork to Ms. Welsh.
- 10 8. Respondent knowingly failed to do those things.
- 11 9. Three weeks later Ms. Welsh texted Respondent and reasonably asked if the
12 process server was having trouble serving Ms. Welsh's husband.
- 13 10. Respondent replied that she had not yet sent the paperwork out for service.
- 14 11. Ms. Welsh texted and reasonably asked if Respondent had filed the paperwork.
- 15 12. Respondent knowingly failed to respond.
- 16 13. Ms. Welsh went to the county clerk's office and asked if a dissolution case had
17 been filed on her behalf.
- 18 14. Ms. Welsh learned that nothing had been filed.
- 19 15. Ms. Welsh sent Respondent additional texts and email messages asking
20 Respondent to return the filing fee funds.
- 21 16. Ms. Welsh asked Respondent to turn over the paperwork she had signed so she
22 could file it herself.
- 23 17. By doing this, Ms. Welsh effectively terminated the representation.

- 1 18. Respondent did not respond.
- 2 19. Respondent did not return any funds.
- 3 20. Respondent did not turn over the paperwork Ms. Welsh had signed.
- 4 21. Ms. Welsh attempted to sue Respondent in small claims court but the process
- 5 server could not locate Respondent.
- 6 22. The process server was advised that Respondent was no longer at the office she
- 7 had rented for her law office.
- 8 23. Ms. Welsh ultimately filed her dissolution case herself on March 22, 2016, with
- 9 the assistance of a courthouse facilitator.
- 10 24. Ms. Welsh was injured by Respondent's failure to diligently and timely pursue her
- 11 case and/or by Respondent's failure to return unearned and unspent funds to which Ms. Welsh
- 12 was entitled.

13 **COUNT 1**

14 25. By failing to diligently pursue Ms. Welsh's divorce matter, Respondent violated

15 RPC 1.3 (diligence) and/or RPC 3.2 (expediting litigation).

16 **COUNT 2**

17 26. By failing to keep Ms. Welsh informed about the status of her case and/or failing

18 to respond to Ms. Welsh's reasonable requests for information about her case, Respondent

19 violated RPC 1.4(a) (communication).

20 **COUNT 3**

21 27. By not refunding any unearned portion of the fee Ms. Welsh paid, Respondent

22 violated RPC 1.5(a) (fees).

23

1 **COUNT 4**

2 28. By failing to turn over the signed divorce paperwork and/or funds paid in advance
3 to cover costs, Respondent violated RPC 1.16(d).

4 **FACTS RELATED TO COUNT 5**

5 29. On May 10, 2016, ODC received Ms. Welsh's grievance against Respondent.

6 30. On May 12, 2016, ODC sent Respondent a letter addressed to her at her address of
7 record with the Washington State Bar Association (WSBA) directing her to file a written
8 response to the grievance within 30 days.

9 31. The letter was not returned.

10 32. Respondent did not respond.

11 33. On June 15, 2016, ODC sent Respondent a letter directing her to file a written
12 response by June 28, 2016.

13 34. In that letter, ODC informed Respondent that if she did not respond she may be
14 subpoenaed for a deposition and could be subject to interim suspension.

15 35. The letter was not returned.

16 36. Respondent did not respond.

17 37. On October 21, 2016, ODC issued a subpoena duces tecum requiring Respondent
18 to appear and produce documents at a November 15, 2016 deposition at the WSBA offices.

19 38. Attempts by the Benton County Sheriff's Office to personally serve Respondent
20 with the subpoena failed because she could not be found at either the office or home addresses
21 on file with the WSBA.

22 39. ODC eventually learned of a possible residential address for Respondent in
23 Yakima, WA.

1 40. On January 23, 2017, ODC issued a subpoena duces tecum requiring Respondent
2 to appear for a deposition on February 21, 2017 at the WSBA offices.

3 41. On January 25, 2017, a process server personally served Respondent with a copy
4 of the subpoena duces tecum by leaving it at the residential address in Yakima with a
5 responsible adult who confirmed that Respondent lived there.

6 42. On February 21, 2017, Respondent emailed ODC and confirmed she had received
7 the subpoena.

8 43. Respondent stated she had car trouble and asked for the deposition to be continued.

9 44. Respondent also said she was preparing her response to the grievance.

10 45. ODC responded to Respondent's email, granted her request for continuance, and
11 reset the deposition for February 28, 2017.

12 46. ODC informed Respondent that if it received a written response to the grievance
13 by noon on February 27, 2017, the deposition would be cancelled.

14 47. Respondent knowingly failed to provide a written response to the grievance.

15 48. Respondent did not contact ODC after her email of February 21, 2017.

16 49. Respondent knowingly failed to appear for the deposition on February 28, 2017.

17 50. On March 10, 2017, ODC filed a petition with the Washington Supreme Court for
18 Respondent's interim suspension due to her failure to cooperate with the disciplinary
19 investigation.

20 51. The Court entered an order directing Respondent to appear before the Court on
21 May 16, 2017 and show cause why the petition should not be granted.

22 52. The order to show cause was personally served on Respondent on March 20, 2017.

23 53. Respondent did not appear before the Court on May 16, 2017.

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54. On May 17, 2017, the Court granted ODC's petition for interim suspension.

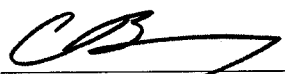
55. Respondent's failure to cooperate with the disciplinary investigation injured the discipline system.

COUNT 5

56. By failing to respond to ODC's requests for response to the grievance and/or to appear and produce documents as required by ODC's subpoena duces tecum, Respondent violated RPC 8.1(b) and/or RPC 8.4(l) (by violating ELC 5.3(f), 5.3(g), and/or 5.5(d)).

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 16th day of June, 2017.



M Craig Bray, Bar No. 20821
Disciplinary Counsel