

FILED

DEC 10 2012

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

DAVID ROBERT KENNEDY,
Lawyer (Bar No. 30727).

Proceeding No. 12#00074

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 December 10, 2012.

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

1. The Formal Complaint charged David Robert Kennedy 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 Formal Complaint is admitted and established.

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

4. By failing to diligently pursue the probate matter beyond the initial filing and
failing to realize that the wrong pleadings had been filed and the wrong order issued,

tlw

1 Respondent violated RPC 1.1 and RPC 1.3.

2 5. By closing his practice without notice to his clients and failing to notify his clients
3 of his withdrawal, Respondent violated RPC 1.3 and RPC 1.4.

4 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
5 **REGARDING RECOMMENDED SANCTION**

6 6. Respondent acted knowingly in failing to diligently pursue the probate matter, in
7 failing to notify his clients of his withdrawal, and in closing his practice without notice to his
8 clients.

9 7. Respondent acted negligently in failing to realize that the wrong pleadings had
10 been filed and the wrong order issued.

11 8. Ms. Price and Ms. Thompson suffered actual injury, and suffered potentially
12 serious injury, by Respondent's failures to competently and timely resolve the probate of their
13 mother's estate and by his abandonment of their legal representation.

14 9. The following standards of the American Bar Association's Standards for
15 Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) presumptively
16 apply in this case:

17 4.41 **Disbarment** is generally appropriate when:

- 18 (a) a lawyer abandons the practice and causes serious or potentially
19 serious injury to a client; or
20 (b) a lawyer knowingly fails to perform services for a client and
21 causes serious or potentially serious injury to a client.

22 4.53 **Reprimand** is generally appropriate when a lawyer:

- 23 (a) demonstrates failure to understand relevant legal doctrines or
24 procedures and causes injury or potential injury to a client; or
25 (b) is negligent in determining whether he or she is competent to
26 handle a legal matter and causes injury or potential injury to a
27 client.

28 10. Where there are multiple ethical violations, the "ultimate sanction imposed should
29 at least be consistent with the sanction for the most serious instance of misconduct among a

1
2 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
3 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

4 11. The following aggravating factor set forth in Section 9.22 of the ABA Standards
5 applies in this case:

- 6 (i) substantial experience in the practice of law [Respondent had been
7 licensed to practice for 11 years when the acts underlying this grievance
8 occurred].

9 12. The following mitigating factors set forth in Section 9.32 of the ABA Standards
10 apply to this case:

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

12 13. On balance, the aggravating and mitigating factors do not warrant deviation from
13 the presumptive sanction of disbarment.

14 RECOMMENDATION

15 14. Based on the ABA Standards and the applicable aggravating and mitigating
16 factors, the Hearing Officer recommends that Respondent David Robert Kennedy be disbarred.

17 DATED this 10th day of December, 2012.

18
19 Nadine Darlene Scott
20 Nadine Darlene Scott,
Hearing Officer

21 CERTIFICATE OF SERVICE

22 I certify that I caused a copy of the FOF COL & HO'S Recommendation
23 to be delivered to the Office of Disciplinary Counsel and to be mailed
to Dana Kennedy, Respondent/Respondent's Counsel
at 212 Pocketteller Ave Everett, WA 98201, by Certified first class mail
24 postage prepaid on the 10th day of December, 2012

[Signature]
Clerk/Counsel to the Disciplinary Board