

FILED

SEP 26 2013

DISCIPLINARY BOARD

BEFORE THE DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

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In re:)	Proceeding No. 12#00051
)	
MATTHEW F. PFEFER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND
Lawyer (Bar No. 31166))	HEARING OFFICER'S
)	RECOMMENDATION

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was held before the undersigned Hearing Officer September 16-18, 2013. Disciplinary counsel Debra Slater appeared for the Association, and Respondent appeared personally pro se.

I. FORMAL COMPLAINT

The Respondent was charged by Formal Complaint dated October 10, 2012, with three counts of violation of the Rules of Professional Conduct.

COUNT 1

By failing to prosecute Ortiz's case, by failing to comply with the dates and/or deadlines set forth in the May 18, 2010 Order Amending Case Schedule, and/or the

DbD

1 deadlines in the February 8, 2011 Order Requiring Completion of Joint Confirmation of
2 Trial Readiness, and/or failing to meet with and prepare Ortiz and her daughter and
3 plaintiff's witnesses for the March 21, 2011 trial, Respondent violated RPC 1.3 and/or
4 RPC 3.2.

5 **COUNT 2**

6 By failing to consult with Ortiz regarding defendant's offer to settle the case,
7 failing to consult with Ortiz and/or her daughter about her daughter's case, and failing to
8 advise her that her case had been dismissed, Respondent violated RPC 1.2(a) and/or
9 RPC 1.4.

10 **COUNT 3**

11 By making his withdrawal effective immediately, Respondent violated
12 RPC 1.16(b) and/or RPC 1.16(c) and/or RPC 1.16(d).

13 **II. HEARING**

14 At the hearing September 16, 2013, the Association moved to dismiss the
15 allegation in Count 3 that the conduct violated RPC 1.16(b). That motion was granted
16 and the allegation relating to RPC 1.16(b) was dismissed with prejudice.

17 Before the opening statements, Respondent made a request that Robert Caruso be
18 allowed to appear as co-counsel. Mr. Caruso had not previously appeared in the matter,
19 and was listed by Respondent as a witness. The Association objected, and the Hearing
20 Officer ruled that Mr. Caruso could appear as attorney for Mr. Pfefer, but that if he did so
21 he would not be allowed to testify as a witness. Respondent Pfefer chose to have

1 Mr. Caruso appear as a witness, not as co-counsel.

2 During the 3-day hearing, witnesses were sworn and presented testimony, and
3 exhibits were admitted into evidence. Having considered the evidence and argument of
4 counsel, the Hearing Officer makes the following findings of fact, conclusions of law,
5 and recommendation.

6 III. FINDINGS OF FACT

7 The following facts were proven by a clear preponderance of the evidence.
8 ELC 10.4(b).

9 1. Respondent Matthew Pfefer was admitted to the practice of law in the
10 State of Washington on June 14, 2001.

11 2. On or about February 16, 2006, Ana Ortiz ("Ortiz"), and her domestic
12 partner, Felipe Segura ("Segura"), and their minor daughter were injured when their car
13 was struck by a car driven by James Hajek ("Hajek") when he attempted and illegal
14 U-turn.

15 3. In or around August 2007, Ortiz hired Respondent to represent her and her
16 daughter.

17 4. Segura settled his claim and was not a client of Respondent.

18 5. Ortiz's primary language is Spanish, and while she had some capacity to
19 read and understand English, she was not comfortable communicating in English.

20 6. Anne Miller was an acquaintance and former employer of Ortiz. Anne
21 Miller had provided assistance from time to time to Robert Caruso, Respondent's partner.

1 She served papers, located witnesses, provided transportation, and otherwise occasionally
2 assisted Caruso's practice when he had cases in King County. Anne Miller referred Ortiz
3 to Caruso.

4 7. Caruso was scheduled for cancer surgery and told Anne Miller that
5 Respondent Pfefer would be handling her case. Ms. Miller agreed to be a go-between,
6 translating and assisting with service of papers and communicating with Ortiz.

7 8. On February 10, 2009, Respondent filed a complaint against Hajek, on
8 behalf of Ortiz and her minor daughter, in King County Superior Court.

9 9. Presiding Judge Bruce Hilyer issued a comprehensive case schedule
10 setting a trial date of July 26, 2010.

11 10. The case was assigned to Superior Court Judge Cheryl Carey.

12 11. Lawyer Patrice Cole filed an appearance on behalf of Hajek.

13 12. On April 19, 2010, Respondent filed a Motion to Continue Trial.

14 13. On May 18, 2010, Judge Carey entered an agreed order continuing the
15 trial to March 21, 2011.

16 14. On May 18, 2010, Judge Carey also entered an agreed order amending
17 case schedule, which set dates and deadlines for the case.

18 15. On February 8, 2011, Judge Carey entered an order requiring the parties to
19 complete and return a Joint Confirmation of Trial readiness by February 28, 2011.

20 16. The order required that settlement/mediation/ADR was to be
21 accomplished no later than February 22, 2011.

1 17. Respondent did not comply with any of the deadlines set forth in the
2 Court's February 8, 2011 Order Requiring Completion of Joint Confirmation of Trial
3 Readiness.

4 18. Respondent did not file the court-mandated Joint Confirmation of Trial
5 Readiness on or before its due date of February 28, 2011.

6 19. Respondent's testimony that he did not file because he was "confused"
7 was not credible.

8 20. Respondent was reminded by the office paralegal, Patty Schoenders,
9 numerous times in the weeks preceding February 28, 2011, that the Joint Confirmation of
10 Trial Readiness was due February 28, 2011. Respondent did not acknowledge those
11 reminders, which were given both by memo and verbally, in any way.

12 21. The Court's bailiff called Respondent to remind him that he needed to file
13 a Joint Confirmation of Trial Readiness, and notwithstanding those notices, Respondent
14 did not file.

15 22. Respondent met in person with Ortiz on one occasion to prepare her for
16 her deposition, but he did not thereafter meet with her or confer with his clients or with
17 witnesses to prepare them for their testimony at trial.

18 23. Respondent did not meet with or confer with Ortiz's treating physician,
19 Dr. Perez, before the trial to prepare him for his testimony.

20 24. On or about March 21, 2011, Judge Carey dismissed the case, without
21 prejudice and costs, because plaintiff failed to prosecute the case. The parties failed to

1 appear in person or by counsel for trial, failed to participate in mediation by
2 February 22, 2001, and otherwise failed to comply with the Order Requiring Completion
3 of the Joint Confirmation of Trial Readiness, even after plaintiff's counsel was prompted
4 with a phone call from the bailiff on February 28, 2011.

5 25. On March 24, 2011, in response to a letter from Respondent, Ms. Cole
6 made a settlement offer on Ortiz's case in the amount of \$6,580.006 *(sic)* (*Exhibit 528*).

7 26. Respondent did not communicate Ms. Cole's offer to Ortiz.

8 27. Respondent's testimony that he did not communicate the offer because he
9 thought it was "ineffective" given the dismissal of the case was not credible. The letter
10 containing the offer was dated after the date of the dismissal.

11 28. Respondent did not inform his clients that the case had been dismissed.

12 29. On March 31, 2011, Respondent filed a Motion for Reconsideration.

13 30. On April 15, 2011, Judge Carey entered an order setting a new trial date
14 for June 13, 2011.

15 31. Judge Carey also entered a new Order Requiring Completion of Joint
16 Confirmation of Trial Readiness, requiring that mediation/ADR occur on or before
17 May 16, 2011.

18 32. On May 5, 2011, Respondent filed a Notice of Withdrawal "effective
19 immediately."

20 33. Respondent testified that he filed the Notice of Withdrawal "effective
21 immediately" because he was instructed to do so by Robert Caruso, and that Mr. Caruso

1 had determined that there was a conflict of interest in continuing the representation
2 because of his concerns over discrepancies in Ms. Ortiz's deposition testimony and
3 statements by Ms. Miller. Respondent was aware of the inconsistencies well before
4 May 5, 2011, and did not see it as anything more than a trial strategy issue.

5 34. Respondent and Mr. Caruso at hearing claimed that Ms. Miller was the
6 source of inconsistent statements and that Ms. Miller was "a liar." Those concerns about
7 Ms. Miller were not communicated to their client, Ortiz, other than Ortiz listening to a
8 heated telephone conversation between Mr. Caruso, Respondent, and Ms. Miller.

9 35. Respondent informed Ortiz of his withdrawal by leaving a message with
10 Ms. Miller and mailing a copy of the Notice of Withdrawal by first class mail. He did
11 not discuss his reasons for withdrawing.

12 36. Respondent's Notice of Withdrawal did not comply with CR 71.

13 37. On or about May 11, 2011, Judge Carey received a letter from Ortiz
14 objecting to Respondent's withdrawal, and advising that she was attempting to secure
15 new counsel.

16 38. Judge Carey struck the objection because it had not been properly served.

17 39. On or about May 19, 2011, Judge Carey dismissed Ortiz's and her
18 daughter's case without prejudice.

19 40. Because the statute of limitations had run, Ortiz and her daughter were
20 precluded from pursuing their claims against Hajek.

21 41. Ortiz has retained counsel and is pursuing a claim for malpractice against

1 Respondent.

2 42. Respondent acknowledged that he made a mistake by not filing a request
3 to extend the timeline for MAR.

4 43. Respondent testified that he made a mistake in delaying to start the ADR
5 process until February 11, 2011.

6 44. Respondent acknowledged that he made a mistake in not filing a Joint
7 Statement of Trial Readiness and that, at a minimum, he should have contacted the court
8 to obtain an extension.

9 45. Respondent also admitted that he made a mistake and should have asked
10 for consolidation of a second case that he filed, arising out of a 2007 accident.

11 46. Respondent's failure to consider the consolidation when he was preparing
12 the second complaint was attributed to his father's untimely death at or about the time he
13 was preparing the pleadings.

14 **IV. CONCLUSIONS OF LAW**

15 Based on the foregoing findings of fact, the Hearing Officer makes the following
16 conclusions of law.

17 COUNT 1 By failing to comply with the dates and deadlines set forth in the
18 May 18, 2010 Order Amending Case Schedule and the deadlines in the February 8, 2011
19 Order Requiring Completion of Joint Confirmation of Trial Readiness and failing to meet
20 with and prepare Ortiz and her daughter and plaintiff's witnesses for the March 21, 2011
21 trial, Respondent violated RPC 1.3 and RPC 3.2,

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ABA Standard 4.42 provides:

Suspension is generally appropriate when:

- (a) A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) A lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

ABA Standard 4.43 provides:

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

Respondent acted knowingly in failing to inform Ortiz the settlement offer and failing to advise her that her case had been dismissed. The client was injured. The presumptive sanction on Count 2 is suspension.

COUNT 3 ABA Standard 7.0, Violations of Duties Owed as a Professional, applies to the allegations of Count 3. Among other duties, the standard includes "improper withdrawal from representation."

ABA Standard 7.2 provides:

Suspension is generally appropriate when a lawyer knowing 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.

ABA Standard 7.3 provides:

Reprimand is generally appropriate when a lawyer negligently 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.

1 Respondent acted knowingly when he withdrew "effective immediately." There
2 was injury to the client because she did not have an adequate opportunity to object and/or
3 to find substituting counsel before her case was dismissed, and the statute of limitations
4 had run. There was injury to the legal system because of the wasted efforts considering
5 pro se objections that were not properly served and the consumption of court time dealing
6 with an unrepresented plaintiff.

7 VI. AGGRAVATING OR MITIGATING FACTORS

8 Pursuant to the ABA Standard 9.22, the following aggravating factors apply:

- 9 • 9.22 (d) multiple offenses;
- 10 • 9.22 (j) indifference to making restitution

11 Pursuant to ABA Standards 9.32, the following mitigating factors apply:

- 12 • 9.32 (a) absence of a prior disciplinary record;
- 13 • 9.32 (b) absence of a dishonest or selfish motive;

14 VII. RESTITUTION

15 The Hearing Officer finds and concludes that Respondent should provide
16 restitution to Ortiz in the amount of the uncommunicated settlement offer, \$6,580.06.
17 The restitution should be paid as a condition of Respondent's reinstatement from
18 suspension hereinafter recommended. Any payment to Ortiz by malpractice carrier or
19 otherwise should be credited against the restitution ordered herein.
20

21 In closing, Respondent argued, among other things, that any restitution should be

1 reduced by the amount of contingent attorney fees that would have been due if the
2 settlement offer had been accepted, and further reduced by PIP payments (net of Mahler
3 deduction) and an unpaid balance due to a chiropractic service. The Hearing Officer
4 concludes there should be no deduction. Given the ethical misconduct found to exist in
5 this case, no attorney fees or costs are due Respondent, and no deduction is available to
6 Respondent because the Hearing Officer has no authority to order payments of PIP or
7 unpaid medical bills.

8 With respect to Count 1, the weight of aggravating and mitigating factors are
9 balanced, and the Hearing Officer recommends suspension for six months.

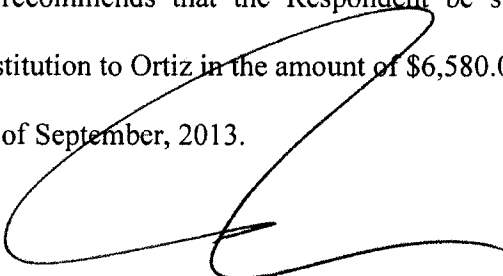
10 With respect to Count 2, the weight of aggravating and mitigating factors are
11 balanced, and the Hearing Officer recommends suspension for six months.

12 With respect to Count 3, the weight of aggravating and mitigating factors are
13 balanced, and the Hearing Officer recommends suspension for six months.

14 VII. RECOMMENDATION

15 The Hearing Officer recommends that the Respondent be suspended for six
16 months and required to pay restitution to Ortiz in the amount of \$6,580.06.

17 DATED this 26 day of September, 2013.

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20 _____
JAMES M. DANIELSON, WSBA #1629
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF COL & HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Nathan Peter ~~Respondent~~ Respondent's Counsel
at 1047 E. 4th St. #10 Spokane Valley, WA 99037 by certified first class mail
postage prepaid on the 20th day of September, 2017

[Signature]
Clerk/Counselor of the Disciplinary Board