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FILED

DEC 19 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KATHRYN B. ABELE,
Lawyer (Bar No. 32763).

Proceeding No. 12#00072

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on November 12-15, 2013. Respondent Kathryn B. Abele appeared at the hearing and was represented by Sam Franklin and Natalie Cain. Special Disciplinary Counsel Colin Folawn appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Amended Formal Complaint filed by Disciplinary Counsel charged Ms. Abele with the following counts of misconduct:

Count I - Engaging in the behavior that resulted in the court finding her in contempt, in violation of RPC 3.4(c), 3.5(d), 8.4(d), and/or RPC 8.4(j).

Count II - Knowingly making a false and/or misleading statement to an officer of the

1 Seattle Police Department, in violation of RPC 8.4(b) (by violating RCW 9A.76.175), RPC
2 8.4(c) and/or 8.4(d).

3 Count III - Misrepresenting to the court clerk that Michelle King did not wish to pursue
4 the petition for anti-harassment against her clients, in violation of RPC 8.4(c) and/or 8.4(d).

5 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
6 Officer makes the following:

7 FINDINGS OF FACT

8 1. Respondent was admitted to the practice of law in the State of Washington on
9 November 4, 2002.

10 2. Respondent has not previously been disciplined.

11 3. Respondent is a solo practitioner, and her practice is focused exclusively in the area
12 of family law.

13 4. Respondent represented the father, Frank Jonathan Miller, in *In re the De Facto*
14 *Parentage and Custody of Mason Miller*, Snohomish County Superior Court Cause Number 09-
15 3-02834-8. Janal Marie Rich represented the de facto father. Richard Llewelyn Jones
16 represented the mother.

17 5. During pretrial matters, Respondent would slam objects and make loud comments
18 when Judge Farris ruled against her.

19 6. During the trial, which took place in 2011, Respondent was disruptive during court
20 proceedings, including blurting out remarks about testifying witnesses and other counsel,
21 interrupting opposing counsel and the judge. These comments were not of a private nature made
22 to her client, but rather so that the judge and the other lawyers would hear them. Respondent's
23 pattern of conduct made it difficult for the attorneys representing other parties to examine
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1 witnesses.

2 7. Respondent repeatedly was admonished by the judge to stop interrupting other
3 counsel, but Respondent did not comply, doing this behavior even more. When warned by the
4 judge about making loud statements that interrupted the proceedings, Respondent would falsely
5 say, "I did not say anything." Respondent would refer to the judge's decisions as wrong and
6 stupid in front of court staff.

7 8. Judge Farris observed that Respondent was able to exercise complete control over
8 the volume of her speech, getting loud or soft at will. Respondent was able to say things to her
9 client in a soft tone that Judge Farris could not hear. Respondent got loud because she was
10 angry, not because she did not know that she was being loud.

11 9. During the time this matter was pending, Respondent was abusive to Ms. Rich's staff
12 over the phone. Ms. Rich implemented an office-wide policy of screening Ms. Abele's
13 telephone calls, having them put through to her voicemail,

14 10. In post-trial proceedings, Respondent generally exhibited good conduct until the end
15 of an August hearing that preceded the presentation hearing of September 28, 2011. At the
16 preceding hearing, after Judge Farris would not sign Respondent's proposed findings,
17 Respondent became angry, saying words to the effect of, "We have to take a break now."

18 11. After the judge left the bench, it is undisputed that Respondent made a loud
19 screaming noise that could be heard in other rooms of the courthouse. There was conflicting
20 testimony on the cause of this and it remains unclear. Judge Farris herself was not present in her
21 courtroom at the time and did not find the Respondent in contempt for this scream.

22 12. On September 28, 2011, a two-hour hearing was held to resolve the final parenting
23 plan in *In re the De Facto Parentage and Custody of Mason Miller*. Ms. Rich was present. Mr.
24

1 Jones attended the hearing by phone. When Respondent interrupted the court, Judge Farris
2 asked Respondent not to. When Respondent persisted, Judge Farris stated on the record her
3 impressions of the scream Respondent made after the end of the August hearing. At this point,
4 Respondent interrupted at a high volume, further disrupting the proceeding.

5 13. A member of the Snohomish County Superior Court bench since March, 1994, Judge
6 Farris was concerned about Respondent's pattern of behavior and hoped that a warning would
7 prevent further transgressions. Respondent's interruptions prevented the judge from
8 accomplishing this or making the necessary changes in the parenting plan.

9 14. Sheralyn Barton was the court reporter that day. Unbeknownst to Respondent, a
10 backup system in Ms. Barton's court reporting equipment audio-recorded the proceedings.
11 Respondent did not learn of this until part way through her deposition in these disciplinary
12 proceedings.

13 15. Once Respondent began screaming at the hearing on September 28, 2011, Judge
14 Farris asked for security to be called. Respondent turned to face the courtroom door, began to
15 walk, and yelled, "I'm going to jail, I'm going to jail!" Respondent repeatedly placed her hands
16 above her head, crossed at the wrists or with her wrists close so as to reflect being handcuffed.
17 Respondent dramatically rocked her hands around, making occasional upward body thrusts with
18 a motion and speed similar to calisthenics. Respondent's later testimony was not credible that
19 she placed her hands in a prayerful position and said the words, "I'm going to jail," in the form
20 of a question,

21 16. While the court was still in session, Respondent abruptly exited the courtroom,
22 causing the proceedings to come to a halt. The court then took a recess. Respondent re-entered
23 the courtroom, told Ms. Rich that she was abstaining from further proceedings and then left
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1 | again.

2 | 17. Security was asked to locate Respondent and bring her back to the courtroom. When
3 | approached by Marshal Miles, Respondent was angry and stated that she would not do so.
4 | Notwithstanding her words, Respondent voluntarily returned to the courtroom. Marshals Miles
5 | and Hayes followed her in.

6 | 18. When the hearing reconvened, Respondent continued to talk in a loud voice,
7 | interrupting the court multiple times, despite being requested to stop. Marshal Miles saw furtive
8 | looks of concern on the faces of court staff, but did not take further action at that time.
9 | Respondent yelled loudly to demonstrate what it sounded like when she really yells. Respondent
10 | continued to display loud, disrespectful conduct, interrupting the judge, waving her arms around
11 | in a histrionic and defiant manner. She defiantly invited being taken away in handcuffs.

12 | 19. An order was entered finding Respondent in contempt of court for her conduct on
13 | September 28, 2011. Respondent was ordered to purge her contempt by contacting the Lawyers'
14 | Assistance Program (LAP). While Respondent stated that she would not do this, she in fact did
15 | comply with this order of Judge Farris in a timely manner.

16 | 20. Judge Farris's discipline of the Respondent in her courtroom was triggered by the
17 | accumulation and continuation of prior problems during the trial of the same matter, primarily
18 | Respondent's loud running commentary that disrupted the proceedings. Judge Farris never had
19 | seen this kind of conduct from a lawyer before. In her nearly 20 years on the bench, Judge
20 | Farris only has held two lawyers in contempt. Respondent's was the only one that remained
21 | until it was purged by her contacting the LAP.

22 | 21. Respondent's conduct made the court staff ill at ease, unsure what to expect from
23 | her. Court reporter Sheralyn Barton never had seen this kind of conduct in an attorney before.
24 |

1 22. Respondent has represented many times that she has a hearing disability. However,
2 throughout the trial and subsequent proceedings, Respondent demonstrated the ability to
3 deliberately modulate the volume of her voice. She presented no medical evidence to support
4 her claim of a hearing disability. She was observed during these disciplinary proceedings
5 communicating with her counsel in low voices that could not be heard by others. Respondent
6 had the ability to control the volume of her voice at the September 28, 2011, hearing and her
7 testimony to the contrary is not credible.

8 23. Respondent's conduct adversely affected the proceedings before Judge Farris,
9 requiring recess, security, and extensive colloquy that would not have otherwise been necessary.
10 Her behavior was not necessitated in any way by the conduct of the court. Judge Farris spoke to
11 the Respondent in a calm, low-key manner, trying to secure her compliance with basic decorum.

12 24. After the hearing, Respondent exited the courtroom and yelled, "that bitch!"

13 25. Ms. Rich, who had been present for the entirety of the hearing, requested an escort
14 from one of the marshals, shaken by Respondent's conduct at this hearing.

15 26. Directly after the September 28th hearing, Respondent went to the Snohomish
16 County Bar Association office, continuing to behave in an agitated, unprofessional manner,
17 swearing at one of the marshals at one point.

18 27. Respondent timely purged the contempt by contacting the Lawyers' Assistance
19 Program.

20 28. Respondent's conduct on September 28, 2011, was intentional. She decided to not
21 obey the tribunal. She walked out of the courtroom during the proceedings. She repeatedly
22 interrupted the judge during the hearing on or about September 28, 2011. In addition, the audio
23 recording (Exhibit A-2) and the testimony of witnesses demonstrate that Respondent
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1 deliberately modulated the volume of her voice for effect. In addition to her voice, Respondent
2 made disruptive physical gestures during the hearing.

3 29. Respondent's conduct on September 28, 2011, caused injury to the legal proceeding
4 because it disrupted—rather forced the abrupt halt of—the proceeding itself. Respondent's
5 conduct also caused potential injury to Respondent's client, because she left the courtroom and
6 thereby potentially subjected her client to a lack of representation during ongoing proceedings
7 for the entry of final orders. Respondent's conduct inside the courtroom fell below the minimum
8 standards of professionalism expected of attorneys. Nothing occurred during the hearing that
9 justified this behavior.

10 30. On or about May 16, 2011, Respondent was representing a client at the King County
11 Courthouse. King County Sheriff's Court Marshal Samuel Copeland was dispatched to Room
12 W-278 for standby backup. Upon arriving, the bailiff pointed out the Respondent as a subject of
13 concern. Marshal Copeland observed at the back of the courtroom for about ten minutes. The
14 Respondent went in and out several times. When he heard a loud, agitated female voice in the
15 hallway, Marshal Copeland went out to investigate. He encountered Respondent and asked her
16 to quiet down. Respondent was angry at this, believing it infringed on her prerogatives as an
17 attorney.

18 31. Marshal Copeland told Respondent that she would be asked to leave if she continued
19 to be loud and disruptive. Marshal Copeland then decided to stop the exchange and leave the
20 area, in order to de-escalate the situation.

21 32. While Marshal Copeland was on his way to the 4th Avenue security checkpoint,
22 Respondent re-engaged him by the central elevator bank and yelled at him. Among other things,
23 Respondent said words to the effect of, "someone should fart in your face!" Marshal Copeland
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1 disengaged a second time from Respondent and walked down to the security checkpoint, where
2 Marshal Greg Webb was present. Marshal Webb had never met Respondent before. Respondent
3 then followed Marshal Copeland, over to where Marshal Webb was seated.

4 33. Respondent, seeing the stripes on Marshal Webb's uniform, believed that he was
5 Marshal Copeland's superior. When Respondent approached Marshal Webb, she was animated,
6 loud, and aggressive. Respondent conveyed that she was upset with Marshal Copeland. After
7 listening to Respondent for a short time, Marshal Webb told Respondent to go about her
8 business. Respondent told Marshal Webb that he had to speak with her, and he responded that
9 he did not have to.

10 34. During this conversation, Marshal Webb was seated with his back against the
11 hallway wall, and Marshal Copeland was facing him, standing about one foot away from
12 Marshal Webb. Marshal Webb is about 6'2" tall. The seat of the stool was about 30" from the
13 floor. The front of the podium was not touching the hallway wall and was about 1-2 inches
14 away.

15 35. Following Marshal Webb's statement to Respondent that she should go about her
16 business, despite the fact that there was ample room (about six to eight feet) in the hallway to
17 walk around them, Respondent deliberately pushed between them. Just before doing so,
18 Respondent yelled, "Are you going to get out of my way?"

19 36. Respondent's choice of aggressively coming in between the narrow space between
20 Marshall Webb and Marshall Copeland caused Respondent to brush Marshal Copeland's body
21 and Marshal Webb's knee. When Respondent's body pushed Marshal Copeland, she caused him
22 to move.

23 37. Immediately thereafter, Respondent turned counterclockwise to face Marshal
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1 Copeland. She then pointed at Marshal Webb and yelled at him, falsely accusing him of trying
2 to trip her.

3 38. Marshal Webb did not extend his leg or try to trip Respondent. Respondent did not
4 stumble or fall.

5 39. Respondent knew that Marshal Webb did not trip her, but was angry at him for
6 failing to take action on her complaints against Marshal Copeland after their interaction in the
7 hallway outside W-278.

8 40. The surveillance video from the courthouse (Exhibit A-6) does not support
9 Respondent's claim that she was tripped. Respondent's version of the incident is not credible.
10 Respondent's interactions and behavior with Marshal Copeland and Marshal Webb
11 demonstrates that Respondent was the aggressor, moving into them when there was ample room
12 to take another route in the hallway.

13 41. Soon thereafter, Respondent called 911 using her mobile phone. Seattle Police
14 Officer Ritter arrived, and Respondent reported that Marshal Webb intentionally tripped her.
15 This statement was false and misleading.

16 42. An internal investigation was conducted because of Respondent's false report.
17 Marshal Webb received a letter stating that Respondent's charge was unsubstantiated.

18 43. Respondent offered telephonic testimony from a man named Rakesh Pai, who
19 claimed to have witnessed Marshal Webb trip Respondent. Contrary to the surveillance video,
20 Mr. Pai testified that Ms. Abele got tripped "a little bit" and held onto the metal detector post or
21 the security bar. The surveillance video demonstrates that the metal detector and security station
22 were several feet from where the incident occurred and that Respondent could not have held
23 onto them. Mr. Pai's testimony was not credible.

1 44. Respondent's conduct on May 16, 2011, was intentional. She knowingly gave a false
2 report to law enforcement personnel, falsely accusing Marshal Greg Webb of assault.
3 Respondent was not tripped, and she knew that she had not been tripped. In addition, the
4 surveillance video and testimony of witnesses demonstrates that Respondent deliberately sought
5 multiple exchanges with the Marshals in order to justify the filing of a complaint against one or
6 both of them.

7 45. Respondent's conduct on May 16, 2011, wasted law enforcement resources and
8 subjected Marshal Webb to an internal investigation that never should have taken place.

9 46. Respondent's conduct on May 16, 2011 also injured the image of the legal
10 profession. Respondent's conduct inside and outside of the courtroom was far afield from the
11 minimum standards of professionalism expected of attorneys. The image of the legal profession
12 is clearly damaged when lawyers are not truthful. Respondent's actions also adversely reflect on
13 her fitness to practice law.

14 47. Several aggravating factors apply in this matter. Respondent demonstrated a
15 dishonest or selfish motive by interrupting the judge, yelling in court, walking out of court, and
16 submitting a false police report. There are multiple offenses in this case. Respondent has
17 substantial experience in the practice of law (*i.e.*, between nine and ten years of practice at the
18 time of the misconduct). In addition, Respondent refused to acknowledge the wrongful nature of
19 conduct; Respondent's explanations of and excuses for her conduct were not credible.

20 48. One mitigating factor applies in this matter: Ms. Abele does not have a prior
21 disciplinary record. Respondent has the burden of proving mitigation. But Respondent did not
22 prove, with admissible evidence, any other basis for mitigation.

1 CONCLUSIONS OF LAW

2 Violations Analysis

3 The Hearing Officer finds that the Association proved the following:

4 49. Respondent engaged in the behavior that resulted in the court finding her in
5 contempt, in violation of RPC 3.4(c), 3.5(d), 8.4(d), and RPC 8.4(j). Count I is proven by a clear
6 preponderance of the evidence.

7 50. Respondent knowingly made a false and misleading statement to an officer of the
8 Seattle Police Department, in violation of RPC 8.4(b) (by violating RCW 9A.76.175), RPC
9 8.4(c), and 8.4(d). Count II is proven by a clear preponderance of the evidence.

10 51. Count III is dismissed. The Association did not prove by a clear preponderance of
11 the evidence that Ms. Abele engaged in conduct involving dishonesty, fraud, deceit, or
12 misrepresentation or engaged in conduct that is prejudicial to the administration of justice when
13 she communicated to court clerk Mary McHugh.

14 Sanction Analysis

15 52. A presumptive sanction must be determined for each ethical violation. In re
16 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
17 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
18 Feb. 1992 Supp.) are presumptively applicable in this case:

19 53. The presumptive ABA Standard for Count I is:

20 **6.2 Abuse of the Legal Process**

21 Absent aggravating or mitigating circumstances, upon application of the
22 factors set out in Standard 3.0, the following sanctions are generally appropriate
23 in cases involving failure to expedite litigation or bring a meritorious claim, or
24 failure to obey any obligation under the rules of a tribunal except for an open
refusal based on an assertion that no valid obligation exists:

1 6.21 **Disbarment** is generally appropriate when a lawyer knowingly
2 violates a court order or rule with the intent to obtain a benefit for the lawyer or
3 another, and causes serious injury or potentially serious injury to a party or causes
4 serious or potentially serious interference with a legal proceeding.

5 6.22 **Suspension is generally appropriate when a lawyer knows that
6 he or she is violating a court order or rule, and causes injury or potential
7 injury to a client or a party, or causes interference or potential interference
8 with a legal proceeding.**

9 6.23 **Reprimand** is generally appropriate when a lawyer negligently
10 fails to comply with a court order or rule, and causes injury or potential injury to a
11 client or other party, or causes interference or potential interference with a legal
12 proceeding.

13 6.24 **Admonition** is generally appropriate when a lawyer engages in an
14 isolated instance of negligence in complying with a court order or rule, and causes
15 little or no actual or potential injury to a party, or causes little or no actual or
16 potential interference with a legal proceeding.

17 54. The presumptive ABA Standard for Count II is:

18 **5.1 Failure to Maintain Personal Integrity**

19 Absent aggravating or mitigating circumstances, upon application of the
20 factors set out in Standard 3.0, the following sanctions are generally appropriate
21 in cases involving commission of a criminal act that reflects adversely on the
22 lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in
23 cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

24 5.11 **Disbarment** is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element
of which includes intentional interference with the administration of justice, false
swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the
sale, distribution or importation of controlled substances; or the intentional killing
of another; or an attempt or conspiracy or solicitation of another to commit any of
these offenses; or

(b) a lawyer engages in any other intentional conduct involving
dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on
the lawyer's fitness to practice.

5.12 **Suspension is generally appropriate when a lawyer knowingly
engages in criminal conduct which does not contain the elements listed in
Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to
practice.**

1 5.13 **Reprimand** is generally appropriate when a lawyer knowingly
2 engages in any other conduct that involves dishonesty, fraud, deceit, or
3 misrepresentation and that adversely reflects on the lawyer's fitness to practice
4 law.

5 5.14 **Admonition** is generally appropriate when a lawyer engages in
6 any other conduct that reflects adversely on the lawyer's fitness to practice law.

7 55. When multiple ethical violations are found, the "ultimate sanction imposed should at
8 least be consistent with the sanction for the most serious instance of misconduct among a
9 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

10 56. Based on the Findings of Fact and Conclusions of Law and application of the ABA
11 Standards, the appropriate presumptive sanction is a suspension.

12 57. "A period of six months is generally the accepted minimum term of suspension." In
13 re Cohen, 149 Wn.2d 323, 67 P.3d 1086, 1094 (2003).

14 58. A six-month suspension is appropriate in a case where there are either no
15 aggravating factors and at least some mitigating factors, or where the mitigating factors clearly
16 outweigh any aggravating factors. In re Halverson, 140 Wn.2d 475, 497, 998 P.2d 833 (2000).

17 This is not the case here.

18 59. The following aggravating factors set forth in Section 9.22 of the ABA Standards are
19 applicable in this case:

- 20 (b) dishonest or selfish motive;
- 21 (g) refusal to acknowledge wrongful nature of conduct; and
- 22 (i) substantial experience in the practice of law [admitted 2002].

23 60. The following mitigating factors set forth in Section 9.32 of the ABA Standards are
24 applicable to this case:

- (a) absence of a prior disciplinary record;

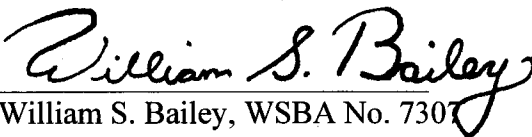
Recommendation

1 61. Based on the ABA Standards and the applicable aggravating and mitigating factors,
2 the Hearing Officer recommends that Respondent Kathryn B. Abele be suspended for a period
3 of twelve months.

4 62. Additionally, the Hearing Officer recommends that, as a condition precedent to
5 reinstatement, Respondent must undergo a fitness to practice evaluation and be deemed fit to
6 practice law, and she also must bear all costs relating to the fitness to practice evaluation.

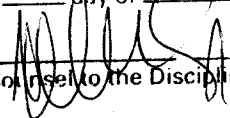
7 63. Additionally, the Hearing Officer recommends that Respondent must reimburse the
8 Association's costs incurred in this matter.

9 Dated this 18th day of December, 2013.

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11 
12 William S. Bailey, WSBA No. 7307
13 Hearing Officer

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17 CERTIFICATE OF SERVICE

18 I certify that I caused a copy of the FoF, CoL & HoR Recommendation
19 to be delivered to the Office of Disciplinary Counsel and to be mailed
20 to Sam Franklin & Natalie Cain Respondent/Respondent's Counsel
21 at 1011 1st St. #1000 Seattle WA 98101 by Certified/first class mail
22 postage prepaid on the 19th day of December, 2013

23
24 
Clerk/Counsel to the Disciplinary Board