

FILED
APR 25 2016
DISCIPLINARY BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SARAH WHITNEY,
Lawyer (Bar No. 35479).

Proceeding No. 16#00002

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

The undersigned Hearing Officer held a default hearing on April 20, 2016, 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 Sarah Whitney 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 each of the violations charged in the Formal Complaint is admitted and established as follows:

4. Count 1: By failing to act with reasonable diligence and promptness in

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1 representing her clients, Whitney violated RPC 1.3.

2 5. Count 2: By failing to reasonably consult with her clients, by failing to keep her
3 clients reasonably informed, and by failing to promptly comply with reasonable requests for
4 information, Whitney violated RPC 1.4.

5 6. Count 3: By failing to cooperate fully and promptly with a grievance investigation,
6 Whitney violated RPC 8.4(d) and 8.4(l).

7 7. Count 4: By testifying falsely in connection with a disciplinary matter, Whitney
8 violated RPC 8.1(a), 8.4(b) (by committing perjury and false swearing), 8.4(c), 8.4(d), and
9 8.4(l).

10 8. Count 5: By submitting false and misleading documents in connection with a
11 disciplinary matter, Whitney violated RPC 8.1(a), 8.4(c), 8.4(d), and 8.4(l).

12 9. Count 6: By failing to refund fees that were paid but not earned, Whitney violated
13 RPC 1.16(d).

14 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
15 **REGARDING RECOMMENDED SANCTION**

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

19 **4.4 Lack of Diligence** [Counts 1 and 2 – RPC 1.3 and RPC 1.4]

20 4.42 Suspension is generally appropriate when:

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

25 **5.1 Failure to Maintain Personal Integrity** [Count 4 – RPC 8.1(a), RPC 8.4(b), RPC
26 8.4(c), RPC 8.4(d), and RPC 8.4(l)]

27 5.11 Disbarment is generally appropriate when:

- 1 (a) a lawyer engages in serious criminal conduct, a necessary element of
2 which includes intentional interference with the administration of justice,
3 false swearing, misrepresentation, fraud, extortion, misappropriation, or
4 theft; or the sale, distribution or importation of controlled substances; or
5 the intentional killing of another; or an attempt or conspiracy or
6 solicitation of another to commit any of these offenses; or
7 (b) a lawyer engages in any other intentional conduct involving dishonesty,
8 fraud, deceit, or misrepresentation that seriously adversely reflects on the
9 lawyer's fitness to practice.

6 **7.0 Violations of Duties Owed as a Professional** [Counts 3, 5, and 6 – RPC 8.1(a), RPC
7 8.4(c), RPC 8.4(d), RPC 8.4(l), and RPC 1.16(d)]

8 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
9 conduct that is a violation of a duty owed as a professional with the intent to
10 obtain a benefit for the lawyer or another, and causes serious or potentially
11 serious injury to a client, the public, or the legal system.

12 11. For knowingly failing to perform services for the Johnstons causing at least
13 potential injury as alleged in Counts 1 and 2, the presumptive sanction is suspension under ABA
14 Standard 4.42.

15 12. For intentionally testifying falsely at her deposition, and submitting false and
16 misleading documents to ODC as alleged in Count 4, the presumptive sanction is disbarment
17 under ABA Standard 5.11. The Supreme Court has noted, "We have repeatedly concluded that
18 disbarment is the presumptive sanction for submitting forged documents to a tribunal or
19 testifying falsely under oath during disciplinary proceedings." In re Disciplinary Proceeding
20 against Rodriguez, 177 Wn.2d 872, 888 (2013)(citations omitted). See also In re Disciplinary
21 Proceeding Against Whitt, 149 Wn.2d 707, 720, (2003).

22 13. For knowingly failing to cooperate and supply requested documents or information
23 to ODC, and failing to return unearned fees as alleged in Counts 3, 5, and 6, the presumptive
24 sanction is disbarment under ABA Standard 7.1.

14. Where, as in this case, the Hearing Officer finds multiple ethical violations, the

1 “ultimate sanction imposed should at least be consistent with the sanction for the most serious
2 instance of misconduct among a number of violations.” In re Petersen, 120 Wn2d 833, 854
3 (1993). Accordingly, the presumptive sanction is disbarment.

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

- 6 (b) dishonest or selfish motive;
- 7 (d) multiple offenses;
- 8 (i) substantial experience in the practice of law [Whitney was admitted in
Washington State in 2004]; and
- 9 (j) indifference to making restitution.

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

11 17. The one mitigating factor set forth in Section 9.32 of the ABA Standards is:

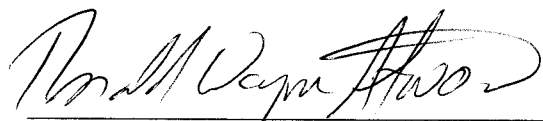
- 12 (a) absence of a prior disciplinary record.

13 18. Considering the aggravating factors and one mitigating factor, I find no basis to
14 depart from the presumptive sanction of disbarment for each count as set forth above.

15 RECOMMENDATION

16 19. Based on the ABA Standards and the applicable aggravating and mitigating
17 factors, the Hearing Officer recommends that Respondent Sarah Whitney be disbarred.
18 Whitney is required to pay restitution to the Johnstons in the amount of \$1,875. Reinstatement
19 should be conditioned on the payment of costs and restitution.

20
21 DATED this 20th day of April, 2016.

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24 Ronald Wayne Atwood
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the POA, LOI & HOA Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to [Signature], Respondent/Respondent's Counsel
at _____, by Certified/first class mail,
postage prepaid on the 29th day of April, 2016

[Signature]
Clerk/Counsel to the Disciplinary Board

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