

FILED

AUG 17 2016

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
SARAH WHITNEY,

Lawyer (WSBA No. 35479)

Proceeding No. 16#00002

DISCIPLINARY BOARD ORDER
DECLINING *SUA SPONTE* REVIEW AND
ADOPTING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On June 2, 2016, the Clerk distributed the attached decision to the Board.

IT IS HEREBY ORDERED THAT the Board declines *sua sponte* review and adopts the Hearing Officer's decision¹.

Dated this 17th day of August, 2016.

Stephanie Bloomfield
DISCIPLINARY BOARD CHAIR

Disciplinary Board Chair

8903 Kay Peninsula Hwy N
Lakebay, WA 98349

I certify that I caused a copy of the ~~Board Order Declining Sua Sponte Review & Adopting HO's Decision~~ to be delivered to the Office of Disciplinary Counsel and to be mailed to Sarah Whitney Respondent/Respondent's Counsel at _____ by Certified/first class mail postage prepaid on the 17th day of August, 2016

Adopting HO's Decision

[Signature]
Clerk/Counsel to the Disciplinary Board

¹ The vote on this matter was 14-0. The following Board members voted: Bloomfield, Carney, Davis, Denton, Coy, Fischer, Startzel, Andeen, Berger, Cottrell, Smith, Myers, Egeler and Silverman.

0289

FILED
APR 25 2016
DISCIPLINARY BOARD

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

WJ

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
9 Washington State in 2004]; and
- 10 (j) indifference to making restitution.

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

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

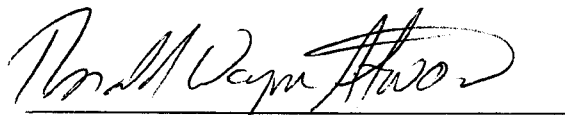
- 14 (a) absence of a prior disciplinary record.

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

17 RECOMMENDATION

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

22 DATED this 20th day of April, 2016.

23 

24 Ronald Wayne Atwood
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the NOTICE OF NON-RECOMMENDATION
to be delivered to the Office of Disciplinary Counsel and to be mailed
to WREN, Respondent/Respondent's Counsel
at _____, by Certified/first class mail,
postage prepaid on the 25th day of April, 2016

1
+

[Signature]
Clerk/Counsel to the Disciplinary Board

8903 Kay Peninsula Hwy N.
Lakeland, WA 98047

FILED
JAN 25 2015
DISCIPLINARY
COUNSEL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SARAH WHITNEY,
Lawyer (Bar No. 35479).

Proceeding No. 16#00002
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 Sarah Whitney was admitted to the practice of law in the State of Washington on November 8, 2004.

FACTS REGARDING COUNTS 1 THROUGH 4 [Paul Johnston Grievance]

2. On March 16, 2015, Paul Johnston and Heidi Johnston (the Johnstons) hired Whitney to expunge Paul Johnston's 1984 criminal conviction.

002

- 1 3. Whitney and the Johnstons signed a fee agreement.
- 2 4. Whitney received a \$625 fee from the Johnstons.
- 3 5. Whitney agreed to write a letter to the Washington State Patrol (WSP) seeking to
- 4 expunge the 1984 criminal conviction.
- 5 6. Whitney did not earn the \$625 fee she received from the Johnstons for the
- 6 expungement matter.
- 7 7. On April 1, 2015, Whitney and the Johnstons signed a second fee agreement.
- 8 8. Whitney received a \$1,875 fee to represent the Johnstons, who wanted to intervene
- 9 in pending dependency proceedings involving their great-grandchildren.
- 10 9. On or about April 16, 2015, Whitney accompanied the Johnstons to a dependency
- 11 hearing. Whitney did not formally appear for the Johnstons or try to intervene for them.
- 12 10. After the hearing, Paul Johnston asked Whitney when she would file the
- 13 intervention documents to try to get placement of their great-grandchildren.
- 14 11. Whitney told him that she would file the documents on April 27, 2015 or April 28,
- 15 2015.
- 16 12. Whitney failed to file the intervention documents.
- 17 13. Whitney did not earn the \$1,875 fee she received from the Johnstons for the
- 18 dependency matter.
- 19 14. On April 27, 2015, Paul Johnston called Whitney, but she did not answer.
- 20 Additional calls went unanswered.
- 21 15. On April 30, 2015, Paul Johnston sent Whitney a text message. Whitney did not
- 22 respond.
- 23 16. On May 6, 2015, Whitney told Paul Johnston that she had been sick and would call

1 as soon as she felt better. Whitney failed to call.

2 17. On May 28, 2015 and May 31, 2015, Paul Johnston emailed or texted Whitney to
3 request a refund and return of their documents, together with copies of both fee agreements.
4 Whitney did not respond.

5 18. On June 1, 2015, Paul Johnston filed a grievance against Whitney.

6 19. On June 4, 2015, ODC mailed the grievance to Whitney requesting a response
7 within 30 days. Whitney did not respond.

8 20. On July 8, 2015, ODC sent Whitney a notice under ELC 5.3(h) requiring a
9 response within 10 days. Whitney did not respond.

10 21. On July 23, 2015, ODC issued a subpoena duces tecum and a deposition notice to
11 Whitney under ELC 5.3(h). The subpoena required Whitney to bring her complete file for the
12 Johnstons' matters and all related billing and financial records.

13 22. The subpoena duces tecum and deposition notice were personally served on July
14 30, 2015. Whitney's deposition was taken on August 27, 2015.

15 23. At her deposition and after, Whitney failed to produce any of the bank records
16 described in the subpoena duces tecum.

17 24. At her deposition, Whitney produced what purported to be a March 18, 2015 letter
18 to the WSP (the WSP letter).

19 25. Whitney testified that she sent the WSP letter to the WSP on March 18, 2015.

20 26. That testimony was false, and Whitney knew it was false.

21 27. The WSP letter was a fabrication.

22 28. At her deposition, Whitney produced a time sheet that included a March 18, 2015
23 entry for 0.3 hours for "Letter to Washington State Patrol."

1 29. The March 18, 2015 entry was a fabrication.

2 30. At her deposition, Whitney produced time sheets representing that she spent 4.5
3 hours researching issues for the dependency case.

4 31. Those entries were fabricated.

5 32. At her deposition and after, Whitney failed to produce any copies of her research
6 materials for the dependency case, which were among the documents described in the subpoena
7 duces tecum.

8 33. At her deposition, Whitney testified at that she would return at least half of the
9 \$625 fee she received from the Johnstons for seeking to expunge the 1984 criminal conviction.

10 34. At her deposition, Whitney testified at that she would return the \$1,875 she
11 received from the Johnstons for the dependency action.

12 35. After the deposition, ODC requested that Whitney provide a digital copy of the
13 WSP letter.

14 36. Whitney failed to respond.

15 37. After the deposition, ODC requested that Whitney provide copies of her research
16 materials for the dependency case.

17 38. Whitney agreed to provide copies of her research materials, but she failed to do so.

18 39. Whitney failed to return any of the funds that she agreed to return to the Johnstons.

19 40. Whitney failed to return any unearned fees to the Johnstons.

20 41. In failing to act with reasonable diligence and promptness in representing her
21 clients, and in failing to communicate with her clients, Whitney acted knowingly and caused
22 injury to her clients.

23 42. In failing to cooperate fully and promptly with a grievance investigation, Whitney

1 acted knowingly and caused injury to her clients, the public, and the legal system.

2 43. In testifying falsely in connection with a disciplinary matter, and in submitting
3 false and misleading documents in connection with a disciplinary matter, Whitney acted
4 intentionally. Her conduct caused serious or potentially serious injury to the legal system and
5 seriously adversely reflects on her fitness to practice law.

6 44. In failing to refund fees that were paid but not earned, Whitney acted with the
7 intent to benefit herself, and caused serious or potentially serious injury to her clients.

8 **COUNT 1**

9 45. By failing to act with reasonable diligence and promptness in representing her
10 clients, Whitney violated RPC 1.3.

11 **COUNT 2**

12 46. By failing to reasonably consult with her clients, by failing to keep her clients
13 reasonably informed, and by failing to promptly comply with reasonable requests for
14 information, Whitney violated RPC 1.4.

15 **COUNT 3**

16 47. By failing to cooperate fully and promptly with a grievance investigation, Whitney
17 violated RPC 8.4(d) and 8.4(l).

18 **COUNT 4**

19 48. By testifying falsely in connection with a disciplinary matter, Whitney violated
20 RPC 8.1(a), 8.4(b) (by committing perjury and false swearing), 8.4(c), 8.4(d), and 8.4(l).

21 **COUNT 5**

22 49. By submitting false and misleading documents in connection with a disciplinary
23 matter, Whitney violated RPC 8.1(a), 8.4(c), 8.4(d), and 8.4(l).

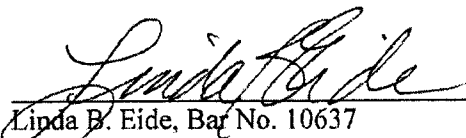
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

COUNT 6

50. By failing to refund fees that were paid but not earned, Whitney violated RPC 1.16(d).

THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

Dated this 25th day of January, 2016.


Linda B. Eide, Bar No. 10637
Managing Disciplinary Counsel