

FILED
NOV 30 2015
DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
SCOTT A. WAAGE,
Lawyer (WSBA No. 36565)

Proceeding No. 15#00031
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 November 5, 2015, 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 30th day of November, 2015.

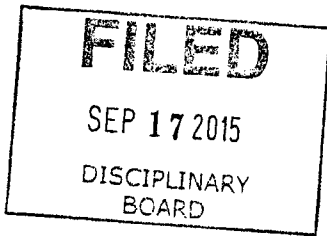
Stephanie Bloomfield
Stephanie Bloomfield
Disciplinary Board Chair Pro Tem

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order Declining Sua Sponte Review & Adopting Hearing Officer's Decision to be delivered to the Office of Disciplinary Counsel and to be mailed to Scott Waage, Respondent's Counsel at PO BOX 4104 Key West, FL 32941 by Certified/first class mail postage prepaid on the 30th day of November, 2015

¹ The vote on this matter was 4-0. The following Board members voted: Bloomfield, Carney, Davis, Denton, Coy, Fischer, Startzel, Andeen, Berger, Cottrell, Smith, Myers, Egeler and Silverman.

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SCOTT A. WAAGE,
Lawyer (Bar No. 36565).

Proceeding No. 15#00031
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND HEARING OFFICER'S
RECOMMENDATION

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This disciplinary proceeding is before the undersigned Hearing Officer upon written submission under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

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

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1. The Formal Complaint (Bar File No. 3) charged Scott A. Waage 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 the violations charged in the Formal Complaint (Bar File No. 3) are admitted and established as follows:
 4. **Count 1:** By promoting fraudulent tax schemes to Dr. and Mrs. G and falsely

1 representing to Dr. and Mrs. G that such schemes were legally valid and would reduce their
2 federal income taxes, and by representing Dr. and Mrs. G in establishing those schemes,
3 Respondent violated RPC 1.2(d), and RPC 8.4(c), and RPC 8.4(d).

4 5. **Count 2:** Count 2 has been voluntarily dismissed.

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

6 6. ABA Standards 5.1 is most applicable to violations of RPC 1.2(d) and RPC 8.4(c):

7 5.11 Disbarment is generally appropriate when:

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

13 7. Respondent acted intentionally in promoting fraudulent tax schemes to Dr. and
14 Mrs. G, in falsely representing to them that such schemes were legally valid and would reduce
15 their federal income taxes, and in assisting them in establishing and engaging in fraudulent tax
16 schemes.

17 8. Respondent's conduct seriously adversely reflects on his fitness to practice law.

18 9. Respondent's conduct caused serious injury to Dr. and Mrs. G. Respondent's
19 conduct resulted in IRS audits of many of his clients, including Dr. and Mrs. G. His conduct
20 resulted in Dr. and Mrs. G being assessed \$314,000 in additional taxes, interest, and penalties as
21 a result of the determination by the IRS that the pension plan Respondent established for them
22 was in violation of applicable law.

23 10. The presumptive sanction is disbarment.

24 11. ABA Standards 7.0 is most applicable to violations of RPC 8.4(d):

1 7.1 **Disbarment is generally appropriate when a lawyer knowingly**
2 **engages in conduct that is a violation of a duty owed as a professional**
3 **with the intent to obtain a benefit for the lawyer or another, and**
 causes serious or potentially serious injury to a client, the public, or
 the legal system.

4 12. Respondent acted intentionally in promoting fraudulent tax schemes to the public,
5 his clients, and Dr. and Mrs. G.

6 13. There was serious injury to Respondent's clients, the public, and the legal system.
7 Respondent's clients were audited by the IRS, the tax schemes Respondent had set up for them
8 were disallowed, and they were assessed additional tax, interest, and penalties. There was
9 serious injury to the public as there was lost tax revenue in excess of \$10,800,000 as a result of
10 Respondent's tax schemes. The legal system also suffered serious injury because the IRS was
11 forced to file a lawsuit against Respondent to stop him from promoting illegal and fraudulent
12 tax schemes, which burdened the legal system.

13 14. Respondent benefitted financially as a result of his actions. The seminars he
14 conducted attracted large audiences and generated many clients who paid substantial attorney
15 fees to Respondent. Dr. and Mrs. G alone paid Respondent \$114,979 in attorney fees for his
16 work implementing the tax scheme.

17 15. The presumptive sanction is disbarment.

18 16. The following aggravating factors identified in ABA Standard 9.22 apply:

- 19 (b) dishonest or selfish motive;
20 (d) multiple offenses;
 (i) substantial experience in the practice of law [Respondent was admitted in
21 California in 1993 and Washington in 2005];
 (j) indifference to making restitution.

22 17. The following mitigating factor identified in ABA Standard 9.32 applies:

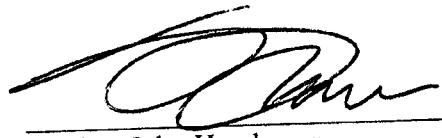
- 23 (a) absence of a prior disciplinary record.

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

3 **RECOMMENDATION**

4 19. Based on the ABA Standards and the applicable aggravating and mitigating
5 factors, the Hearing Officer recommends that Respondent Scott A. Waage be disbarred.

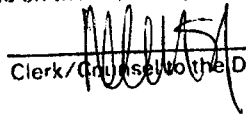
6 DATED this 14th day of September, 2015.

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8 Stephen John Henderson,
9 Hearing Officer

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15 **CERTIFICATE OF SERVICE**

16 I certify that I caused a copy of the PDF, LOL on HO's Recommendation
17 to be delivered to the Office of Disciplinary Counsel and to be mailed
18 to Scott Waage ~~Respondent~~ Respondent's Counsel
19 at PO Box 4104 Key West FL 32041 by Certified/first class mail,
20 postage prepaid on the 17th day of SEPTEMBER, 2015

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22 Clerk/Counsel to the Disciplinary Board