

FILED
MAR 27 2018
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

APRIL BOUTILLETTE BRINKMAN,
Lawyer (Bar No. 36760).

Proceeding No. 17#00092

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

The undersigned Hearing Officer held a default hearing on March 6, 2018, under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

On March 9, 2018, the Hearing Officer provided counsel for ODC an unsigned copy of his Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation via email.

The Hearing Officer then delivered a signed copy of those Findings of Fact, etc., to the Disciplinary Court Clerk on March 14, 2018, without providing ODC the opportunity to seek modification or correction as contemplated by ELC 10.16.

On March 16, 2018, and again on March 21, 2018, with the Hearing Officer's permission, ODC submitted additional written briefing seeking modifications and corrections to the Hearing Officer's Findings of Fact, etc. The Hearing Officer deems ODC's March 16, 2018

1 request and subsequent briefing to be a timely motion to modify or correct under ELC 10.16(c),
2 which need not be served on Respondent because this is a default proceeding.

3 After reviewing the ODC's March 16, 2018 request and supplemental briefing, the
4 Hearing Officer concludes that his original Findings of Fact, etc., should be modified in part,
5 which resulted in no change to the Hearing Officer's recommended sanctions. Set forth below
6 are the Hearing Officer's Findings of Fact, etc. as modified.

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

- 9 1. The Formal Complaint in the matter charged April Boutillette Brinkman with
10 misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.
11 2. An Order of Default was entered in this matter on or around February 14, 2018.
12 3. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in
13 the Formal Complaint is admitted and established.
14 4. Under ELC 10.6(a)(4), the Hearing Officer holds that Respondent has committed
15 each of the violations charged in the Formal Complaint,

16 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
17 **REGARDING RECOMMENDED SANCTION**

- 18 5. *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") (1991 ed. &
19 Feb. 1992 Supp.) Section 7.0 applies to the violations at issue in this case:

20 **7.0 Violations of Duties Owed as a Professional**

21 Absent aggravating or mitigating circumstances, upon application of the factors set
22 out in Standard 3.0, the following sanctions are generally appropriate in cases
23 involving false or misleading communication about the lawyer or the lawyer's
24 services, . . . [or] unreasonable or improper fees. . . .

25 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional 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.

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2 7.2 Suspension is generally appropriate when a lawyer knowingly 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.

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4 7.3 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.

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6 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
instance of negligence that is a violation of a duty owed as a professional, and causes
little or no actual or potential injury to a client, the public, or the legal system.

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8 **COUNTS 1 (Dickenson) and 5 (Rogin):**
Failure to Respond to Lawful Demand for Information

9 6. Duty violated. Respondent committed each of the violations identified in
10 Counts 1 and 5:

11 (i) "By knowingly failing to respond to a lawful demand for information from a
12 disciplinary authority . . . Respondent violated RPC 8.1(b)" [*knowingly fail*
to respond to lawful demand for information from a disciplinary authority];

13 (ii) "By knowingly failing to respond to a lawful demand for information from
14 a disciplinary authority. . . Respondent violated . . . RPC 8.4(l)" [*violating*
duty imposed by ELCs in connection with a disciplinary matter].

15 (iii) "[B]y violating a duty imposed by ELC 5.3¹ . . . Respondent violated RPC
16 8.1(b);

17 (iv) "[B]y violating a duty imposed by ELC 5.3 . . . Respondent violated . . .
18 RPC 8.4(l).

19 6.1. The two separate RPC violations alleged in Count 1 in the **Dickenson** case are
both based on the same acts.

20 6.2. The two separate RPC violations alleged in Count 5 in the **Rogin** case are

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22 ¹ The "duty imposed by ELC 5.3" cited in Counts 1 and 5 must be construed to mean specifically the
23 "duty to respond to respond to a lawful demand for information." All other acts of wrongdoing alleged
24 in the Formal Complaint (Respondent's failure to refund \$475 for unearned fees; falsely representing
as the bases for the violations alleged in Counts 2-3,

1 likewise both based on the same acts in that matter.

2 7. Respondent's mental state. Respondent acted knowingly, as alleged in the
3 Formal Complaint, in failing to respond to ODC's requests for responses and documents in both
4 the Dickenson matter, and the Rogin matter.

5 8. Potential or actual injury caused. Respondent's failure to cooperate with the
6 grievance investigations caused actual harm to the public and the legal system by (1) imposing
7 an additional work burden on the Office of Disciplinary Counsel, (2) preventing the ODC from
8 fully investigating these grievances, (3) reflecting poorly on the profession, and (4) diminishing
9 public confidence in the legal system.

10 9. Presumptive sanction (Dickenson). While the Formal Complaint alleges two
11 separate RPC violations based on Respondent's failure to cooperate in Dickenson, the Hearing
12 Officer finds that Respondent committed a single act of failing to cooperate with a lawful
13 disciplinary proceeding. The presumptive sanction for each of the two RPC violations identified
14 in Count 1 is suspension under *ABA Standard 7.2*, so the presumptive sanction for
15 Respondent's failure to respond to a lawful demand for information from a disciplinary
16 authority in Dickenson is suspension.

17 10. Presumptive sanction (Rogin). While the Formal Complaint alleges two separate
18 RPC violations based on Respondent's failure to cooperate in Rogin, the Hearing Officer finds
19 that Respondent committed a single act (failing to cooperate with a lawful disciplinary
20 proceeding). The presumptive sanction for each of the two RPC violations identified in Count 5
21 is suspension under *ABA Standard 7.2*, so the presumptive sanction for Respondent's failure to
22 respond to a lawful demand for information from a disciplinary authority in Rogin is
23 suspension.

COUNT 2 (Dickenson):

False Statement of Material Fact in Lawyer Disciplinary Matter

11. Duty violated. By making a false statement of fact in connection with a lawyer disciplinary matter, Respondent violated RPC 8.1(a), 8.4(c), 8.4(d), and 8.4(l) (by violating ELC 5.3).

13. Respondent's mental state. Respondent acted intentionally in providing ODC with false and misleading information with the intent to benefit herself in the Dickenson matter.

14. Injury or potential injury. Since this is a default proceeding, ODC's allegation that Respondent's intentional dishonesty caused serious or potentially serious injury to the public and the legal system is established.

15. Presumptive sanction. As with Counts 1 and 4, the four separate RPC violations alleged in Count 2 in are all based on the same act (knowingly making a single false statement in connection with a disciplinary proceeding), and the Hearing Officer recommends that Respondent be sanctioned for one count of making that false statement.

The presumptive sanction for each intentional violation alleged in Count 2 is disbarment under *ABA Standard 7.1*, so the presumptive sanction for a single act of making a false statement of material fact in connection with a disciplinary proceeding is disbarment.

COUNT 3 (Dickenson):

Failure to Refund Unearned Advance Fee Payment

16. Duty violated. By failing to refund the unearned portion of her client's advance fee payment, Respondent violated RPC 1.15A(f) and RPC 1.16(d).

17. Respondent's mental state. Respondent acted knowingly when she failed to refund the unearned portion of her fee to Mr. Dickenson.

18. Injury or potential injury. Respondent caused actual injury to Mr. Dickinson by

1 depriving him of funds to which he is entitled.

2 19. The two separate RPC violations alleged in Count 3 in are both based on the
3 same act, the Hearing Officer recommends that Respondent be sanctioned for one count of
4 failing to return the unearned portion of an advance fee to her client.

5 20. The presumptive sanction for both of the RPC violations alleged in Count 3 is
6 suspension under *ABA Standard 7.2*.

7 **COUNT 4 (Rogin):**
8 **Failure to Surrender Papers and Property to which Client is Entitled.**

9 21. Duty violated. By failing to surrender papers and property to which Ms. Rogin
10 was entitled, Respondent violated RPC 1.15A(f) and RPC 1.16(d).

11 22. The two separate RPC violations alleged in Count 4 are both based on a single
12 act, and the Hearing Officer recommends that Respondent be sanctioned for one count of failing
13 to return her client's files upon termination of the representation.

14 23. Respondent's mental state. As alleged in the Formal Complaint, Respondent
15 acted knowingly by failing to provide Ms. Rogin with a complete copy of her client file.

16 24. Injury or potential injury. Respondent caused injury to Ms. Rogin by depriving
17 her of records and information to which she is entitled.

18 25. The presumptive sanction for Respondent's failure to surrender papers and
19 property is suspension under *ABA Standard 7.1*.

20 26. **Summary of presumptive sanctions.** The Hearing Officer concludes that the
21 conduct for which Respondent should be sanctioned, and the presumptive sanction for each
22 violation, is as follows:

Violation	Presumptive Sanction
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Count 1.	Suspension
Count 2.	Disbarment
Count 3.	Suspension
Count 4.	Suspension
Count 5.	Suspension

AGGRAVATING AND MITIGATING FACTORS

27. The following aggravating factors set forth in Section 9.22 of the *ABA Standards* apply in this case:

- a. prior disciplinary offenses [suspended for six months on December 22, 2017 for violating RPC 3.5(d), RPC 8.4(d) and RPC 8.4(k)];
- b. dishonest or selfish motive;
- d. multiple offenses;
- i. substantial experience in the practice of law [admitted in 2005]; and
- j. indifference to making restitution.

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

29. No mitigating factors under *ABA Standards* 9.32 apply.

30. The aggravating and mitigating factors do not provide cause to deviate from the presumptive sanction of disbarment.


31. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations. *In re Disciplinary Proceeding Against Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting *ABA Standards* at 6). In this case, the presumptive sanction for the most serious of Respondent's

1 violations is disbarment.

2 **RECOMMENDATION**

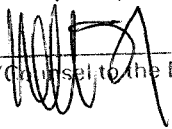
3 Based on the *ABA Standards* and the applicable aggravating and mitigating factors, the
4 Hearing Officer recommends that Respondent April Bouillette Brinkman be disbarred, and pay
5 restitution in the amount of \$475 plus interest at a rate of 6% per annum beginning March 1,
6 2017 to Erich Dickenson.

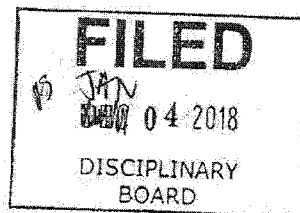
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8 DATED this 26 day of March, 2018.

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10 
11 Carl Jerome Carlson
Hearing Officer

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13 **CERTIFICATE OF SERVICE**

14 I certify that I caused a copy of the FOI, COI & HO's Recommendation
15 to be delivered to the Office of Disciplinary Counsel and to be mailed
16 to April Brinkman Respondent's Counsel
at 2521 N Lombard St Portland, OR 97208 certified/first class mail
postage prepaid on the 29th day of March, 2018

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18 Clerk/Counsel to the Disciplinary Board
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
APRIL BOUTILLETTE BRINKMAN,
Lawyer (Bar No. 36760).

Proceeding No. 17#00092
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 April Boutillette Brinkman was admitted to the practice of law in the State of Washington on November 10, 2005.
2. Respondent was suspended for six months on December 22, 2017.

FACTS REGARDING COUNTS 1-3 [Erich Dickenson Grievance]

3. On February 3, 2017, Erich Dickenson hired Respondent to assist him with a family

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1 | law matter.

2 | 4. Mr. Dickenson paid Respondent \$1,500 towards what was to be a \$7,500 flat fee.

3 | 5. On February 9, 2017, Respondent sent Mr. Dickenson a Temporary Order Fee
4 | Agreement after learning that his case had not yet progressed through temporary orders.

5 | 6. On February 9, 2017, Mr. Dickenson terminated Respondent by email.

6 | 7. Respondent acknowledged the termination minutes later and indicated she would
7 | "refund him minus work we already have done."

8 | 8. On March 22, 2017, Mr. Dickenson filed a grievance with ODC because Respondent
9 | had failed to refund him any portion of his fees.

10 | 9. On March 28, 2017, ODC sent Respondent an initial request for a response to Mr.
11 | Dickenson's grievance. Respondent provided a brief response.

12 | 10. On May 12, 2017, ODC sent Respondent a request for additional information,
13 | requesting a complete copy of the client file, and asking five specific questions.

14 | 11. On May 24, 2017, Respondent provided a one page document entitled "Billing for
15 | Erich Dickenson".

16 | 12. The document indicated that Respondent performed \$1,025 worth of work on Mr.
17 | Dickenson's case, with a \$475 refund due to Mr. Dickenson.

18 | 13. The document also showed Respondent charging .10 HR of her \$350 hourly fee for
19 | "confirmation of billing/mailing along w/ refund to Mr. Erich Dickenson" on March 27, 2017.

20 | 14. On June 23, 2017, ODC sent Respondent a letter again requesting that she provide
21 | the client file, along with answers to the five questions in the May 12, 2017 request for
22 | additional information. The letter required that she respond on or before July 6, 2017.

23 | 15. On July 5, 2017, Respondent emailed ODC a response to the May 12, 2017 letter.

1 16. Respondent stated that she refunded Mr. Dickenson a portion of the \$1,500 he had
2 paid.

3 17. This statement was false.

4 18. Mr. Dickenson did not receive any refund whatsoever.

5 19. On July 25, 2017, ODC requested an additional response to Mr. Dickenson's
6 grievance, specifically asking Respondent about the refund she claimed to have provided to
7 him.

8 20. The July 25, 2017 letter to Respondent's address of record on file with WSBA was
9 returned as "not deliverable as addressed." Investigation revealed that Respondent's address of
10 record on file with the Association belongs to a Starbucks in Portland, Oregon.

11 21. On August 1, 2017, ODC emailed Respondent a copy of the July 25, 2017 request
12 for an additional response to an email address she used to communicate with ODC as recently
13 as July 5, 2017.

14 22. ODC's August 1, 2017 email reminded Respondent to update her address of record
15 with the WSBA as required by Rule 13(b) of the Admission to Practice Rules (APR).

16 23. The email to Respondent was not returned as undeliverable.

17 24. Respondent did not respond to the email, and did not update her address with
18 WSBA.

19 25. On September 1, 2017, ODC sent a letter to Respondent's address of record and
20 email address of record, requesting a response within ten days. Both were returned
21 undeliverable.

22 26. On October 19, 2017, ODC emailed Respondent another copy of the request for
23 additional response, and a copy of the September 1, 2017 letter to the email address she had

1 used to communicate with ODC in July 2017. ODC reminded Respondent to update her
2 address and email address with the WSBA.

3 27. The email to Respondent was not returned undeliverable.

4 28. Respondent did not respond to ODC's request for additional information.

5 29. Respondent did not update her address as required by APR 13(b).

6 30. Respondent acted intentionally when she provided ODC with false and misleading
7 information in her July 5, 2017 email, and her actions caused serious or potentially serious
8 injury to the public and the legal system.

9 31. Respondent's intentional conduct seriously adversely reflects on her fitness to
10 practice.

11 32. Respondent acted knowingly when she failed to respond to ODC's request for
12 additional information.

13 33. Respondent's conduct caused actual harm by preventing ODC from fully
14 investigating Mr. Dickenson's grievance.

15 34. Respondent's failure to cooperate also reflects poorly on the profession and
16 diminishes public confidence in the legal system.

17 35. Respondent acted knowingly when she failed to refund the unearned portion of her
18 fee to Mr. Dickenson.

19 36. As of the date of this formal complaint, Mr. Dickenson has not received any portion
20 of the \$475 Respondent indicated was owed to Mr. Dickenson.

21 37. Respondent's conduct caused actual harm because Mr. Dickenson has been deprived
22 the use of funds to which he is entitled.

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COUNT 1

38. By knowingly failing to respond to a lawful demand for information from a disciplinary authority, and/or by violating a duty imposed by ELC 5.3, Respondent violated RPC 8.1(b), and/or RPC 8.4(l).

COUNT 2

39. By making a false statement of fact in connection with a lawyer disciplinary matter, Respondent violated RPC 8.1(a), RPC 8.4(c), RPC 8.4(d), and RPC 8.4(l) (by violating a duty imposed by ELC 5.3).

COUNT 3

40. By failing to refund an advance payment of fee that was not earned or incurred, Respondent violated RPC 1.15A(f) and/or RPC 1.16(d).

FACTS REGARDING COUNTS 4 and 5 [Heather Rogin Grievance]

- 41. Heather Rogin hired Respondent to represent her with her dissolution.
- 42. Respondent withdrew immediately after the dissolution papers were signed.
- 43. After Respondent withdrew, Ms. Rogin requested her complete client file.
- 44. Respondent provided Ms. Rogin with copies of documents that were filed with the court, but failed to return other items, which included records that Ms. Rogin had provided.
- 45. On July 18, 2017, Ms. Rogin filed a grievance with ODC.
- 46. Ms. Rogin's grievance alleged that Respondent tried to change the terms of the fee agreement, failed to contact any witnesses or otherwise prepare for trial, and ultimately pressured her to sign a divorce settlement and parenting plan that were not in her best interests.
- 47. On July 24, 2017, ODC mailed a copy of the grievance and a request for a response to Respondent's address of record on file with the WSBA.

1 48. On August 2, 2017, the Post Office returned the mail as "not deliverable as
2 addressed/unable to forward."

3 49. An ODC investigator determined that Respondent's address of record belonged to a
4 Starbucks in Portland, Oregon.

5 50. On August 3, 2017, ODC emailed a copy of the grievance and a request for a
6 response to Respondent's email address of record on file with the WSBA -
7 brinkmanapril@yahoo.com. The email was immediately returned undeliverable.

8 51. On August 9, 2017, ODC emailed a copy of the grievance, the request for a
9 response, and copies of all returned mail to an email address Respondent had used to
10 communicate with ODC on July 5, 2017.

11 52. Respondent did not respond to ODC's request for a response.

12 53. On September 12, 2017, ODC sent Respondent a letter requesting a response to Ms.
13 Rogin's grievance within 10 days, and outlined the problems ODC had experienced reaching
14 her.

15 54. The letter was mailed to Respondent's address of record, emailed to her email
16 address of record, and emailed to the email address she used to communicate with ODC in July
17 2017.

18 55. All correspondence sent to Respondent's email and physical addresses of record
19 were returned undeliverable.

20 56. The email sent to the account Respondent used to correspond with ODC in July 2017
21 was not returned as undeliverable.

22 57. Respondent did not respond to Ms. Rogin's grievance.

23 58. Respondent acted knowingly when she failed to provide Ms. Rogin with a complete

1 | copy of her client file.

2 | 59. Respondent's conduct caused actual harm to Ms. Rogin because she was deprived of
3 | records and information to which she was entitled.

4 | 60. Respondent acted knowingly when she failed to promptly respond to requests for a
5 | response to Ms. Rogin's grievance.

6 | 61. Respondent's conduct caused actual harm by preventing ODC from fully
7 | investigating Ms. Rogin's grievance.

8 | 62. Respondent's failure to cooperate also reflects poorly on the profession and
9 | diminishes public confidence in the legal system.

10 | **COUNT 4**

11 | 63. By failing to surrender papers and property to which her client was entitled,
12 | Respondent violated RPC 1.15A(f) and/or RPC 1.16(d).


13 | **COUNT 5**

14 | 64. By knowingly failing to respond to a lawful demand for information from a
15 | disciplinary authority, and/or by violating a duty imposed by ELC 5.3, Respondent violated
16 | RPC 8.1(b), and/or RPC 8.4(f).

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

20 | Dated this 27th day of December, 2017.

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23 |


Kathy Jo Blake, Bar No. 29235
Managing Disciplinary Counsel