DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re **MICHAEL OLUFEMI EWETUGA,** Lawyer (Bar No. 37596).	Proceeding No. 23#00006 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION

The undersigned Hearing Officer held the hearing on July 31, 2023, under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Michael Olufemi Ewetuga did not appear at the hearing. Disciplinary Counsel Nate Blanchard appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Michael Olufemi Ewetuga with the following counts of misconduct:

Count 1: By engaging in a sexual relationship with a client during representation, Respondent violated RPC 1.8(j)(1).

Count 2: By failing to state and/or explain the change in the rate or basis of Respondent's fee, Respondent violated RPC 1.4(b) and/or RPC 1.5(b).

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

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in the State of Washington on June 26, 2006. Ex. A-117, ¶ 1.

2. Sometime between 2016 and 2017, Marvalee Davidson met Respondent for the first time. Transcript of Disciplinary Proceeding ("TR"), 18:14-22, 19:23-20:02.

3. Davidson hired Respondent to assist Davidson with her legal residency status in the United States. TR 18:14-17.

4. This representation concluded sometime before 2018. See TR 20:16-24.

5. After the representation on the immigration matter concluded, Respondent maintained a social friendship with Davidson and Davidson's then-spouse, Porscha Sullivan. TR 19:03-20.

6. The social friendship between Respondent and Davidson was not romantic and did not involve sexual intercourse or any other contact for the purpose of sexual gratification. TR 19:21-20:15; Exs. A-118, ¶¶ 2-3, A-119.

7. On December 31, 2017, Davidson and Sullivan were involved in a motor vehicle accident in which the vehicle they were riding in was hit by another vehicle. TR 20:16-21, 22:01-13.

8. On January 2, 2018, Davidson and Sullivan hired Respondent for legal representation regarding the motor vehicle accident. TR 20:25-21:25, 22:14-23:03; Ex. A-117, ¶ 3.

9. On the same day, Davidson signed a contingent fee agreement, agreeing to pay Respondent 33.33% of any gross recovery if the case settled or 40% of any gross recovery if a lawsuit was filed. TR 21:18-20, 23:17-24:08; Ex. A-117, ¶ 4.

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10. In November 2019, Respondent filed a lawsuit on behalf of Davidson against the at-fault driver. Ex. A-117, ¶ 6.

11. The motor vehicle accident matter did not proceed to trial and instead settled. TR 24:09-24.

12. Sometime in early 2021, Davidson separated from Sullivan. TR 18:08-11.

13. In August 2021, Respondent and Davidson discussed entering into a sexual relationship. TR 31:13-32:03.

14. On September 2, 2021, Davidson's lawsuit settled for $55,000. Ex. A-104.

15. On September 2, 2021, Davidson signed a document titled Settlement Agreement and Release of all Claims regarding the motor vehicle accident. TR 25:15-26:04; Ex. A-104.

16. Respondent held Davidson's settlement funds in Respondent's trust account. Ex. A-117, ¶ 10.

17. Respondent did not disburse any proceeds from the Settlement Agreement because Respondent was continuing to negotiate a reduction to a subrogation lien held by the U.S. Department of Veterans Affairs. TR 26:05-18.

18. Respondent continued to represent Davidson in negotiating a lien reduction with Veteran's affairs. TR 26:05-18.

19. On October 10, 2021, Respondent and Davidson engaged in sexual intercourse for the first time. TR 32:08-19, 32:25-33:02; Exs. A-118, ¶ 8, A-119.

20. The sexual relationship between Respondent and Davidson was consensual. TR 33:03-06.

21. On November 2, 2021, Respondent sent a text message to Davidson stating "Hey you. It's been a nightmare trying to get in touch with the VA. If you settle as is you'll get $11,067.68.

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Do you want to continue to wait or settle?" TR 33:20-34:02, 35:13-18; Ex. A-106.

22. Respondent did not tell Davidson that the $11,067.68 figure was the result of any reductions to Respondent's attorney fee. TR 36:23-37:09.

23. After receiving this text message, Davidson met with Respondent in person. TR 35:19-36:15.

24. Davidson explained to Respondent that Davidson wanted to receive approximately $12,500 to cover the cost of new windows in Davidson's home. TR 35:19-36:15.

25. Davidson asked Respondent whether Respondent could reduce Respondent's fee so that Davidson's proceeds would be closer to $12,500. TR 36:03-09, 36:23-37:09,

26. On November 9, 2021, Respondent texted Davidson the following: "awesome. So I can bump you up to $11,685.68. Hopefully VA would contact us after we send them a check to reduce their claim." TR 37:25-06; Ex. A-107, pg. 2.

27. Davidson believed that the difference between $11,067.68 and $11,685.68 was the result of Respondent reducing Respondent's attorney fee. TR 36:23-37:09, 38:07-19.

28. Davidson accepted Respondent's offer of $11,685.68 and elected to not negotiate further with the U.S. Department of Veterans Affairs. TR 39:03-14.

29. Davidson believed that the minimum amount of proceeds Davidson would recover was $11,685.68, with a possibility of a higher recovery from the U.S. Department of Veterans Affairs reducing their subrogation lien. TR 40:23-41:06

30. On December 1, 2021, Davidson believed that Respondent had lied to Davidson and that Respondent was engaged in sexual relations with other women. TR 46:07-15.

31. Davidson confronted Respondent about Davidson's belief, which led to an altercation after which Davidson slapped Respondent. TR 46:07-15, Exs. A-117, ¶¶ 47, 48.

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32. Respondent told Davidson that "she would regret that." Ex. A-117, ¶ 48.

33. On December 1, 2021, Davidson ended the sexual relationship with Respondent. TR 39:19-22, 40:20-22; Ex. A-108, pg. 2.

34. Davidson did not terminate the lawyer-client relationship. TR 40:23-25.

35. On December 1, 2021, Davidson sent a text message to Respondent reading, in part, "Putting my feelings aside on 9 Nov 2021 we came to as [sic] agreement on $11,685.68 where are we with that? The sooner we are done the better for both of us I believe." TR 41:19-42:09; Ex. A-108. pgs. 4-5.

36. Respondent did not respond to this text message. Ex. A-108, pgs. 4-6.

37. On December 13, 2021, Respondent emailed Davidson a document titled "Distribution Authorization." TR 43:06-18; Exs. A-109, pg. 1, A-110.

38. The distribution authorization stated that Davidson would receive only $8,651.80. Ex. 110.

39. On December 13, 2021, at 3:19 p.m., Davidson replied to Respondent, "Why does this one only say $8,000 when we agreed on $11,000?" TR 43:19-24, 44:18-21; Ex. A-109, pg. 1.

40. On December 13, 2021, at 3:26 p.m., Respondent replied to Davidson, "That was me being generous. This is the actual breakdown." Ex. A-109, pg. 1.

41. After further emails between Respondent and Davidson, on December 15, 2021, Respondent emailed Davidson stating, in part, as follows:

> What I promised to give you was a gift, not entitlement and it is a gift I can no longer give you because of your actions on the 1st of December.
>
> If, by the end of next week at most, and I am giving you up to next week so that you may consult an attorney of your choice, the following will follow:
>
> I will inform your providers and creditors that I no longer represent you, which would likely lead to them taking away the reduction previously extended to you

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on the understanding that you will pay them promptly on resolving your case.

On my part, I will withdraw my offer to reduce my fee and will demand the full 40% of the settlement.

I will also demand a full refund of costs expended in your case.

Since I can't control the actions of your providers and creditors, I cannot predict that they will not back out of the negotiated agreement which will certainly lead to reduction of your portion of the settlement.

Perhaps then you will have a clear understanding and appreciation of what I've done for you.

TR 45:12-46:06; Ex. A-109, pgs. 2-3.

42. On December 17, 2021, Davidson replied, stating, in part, as follows:

I firmly believe you are taking advantage of me. Just because our sexual relationship fell apart, which is your fault for being dishonest about your girlfriend. You took away my right to choose and lied in order to get me into your bed. I asked you directly and you lied to me twice right before sex . . ..

TR 46:07-15; Ex. A-109, pg. 3.

43. On December 17, 2021, Davidson believed Davidson had no choice but to sign the Distribution Authorization. TR 43:22-44:10, 47:19-17.

44. On December 17, 2021, Davidson signed the Distribution Authorization and emailed it to Respondent. TR 47:06-23; Ex. A-109.

45. On December 20, 2021, Respondent mailed Davidson a check for $8,651.80. TR 49:08-50:01, Exs. A-113, A-114.

46. On December 20, 2021, Respondent mailed checks to Davidson's subrogation lienholders. Ex. A-112.

47. ODC filed a Formal Complaint on February 15, 2023. Ex. A-115; Bar File ("BF"), 2.

48. Respondent answered on March 16, 2023, and filed an amended answer on April 6, 2023. Exs. A-116, A-117; BF 7, 9.

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49. In Respondent's answer, Respondent admitted the sexual conduct, but refused to acknowledge that the conduct was wrongful. Ex. A-117.

50. On March 22, 2023, Respondent participated in a scheduling conference with Disciplinary Counsel Nate Blanchard and Hearing Officer Randolph O. Petgrave III, during which the hearing was scheduled for July 31, 2023. BF 8.

51. On March 22, 2023, a scheduling order was issued as a result of that scheduling conference and filed in the Bar Record. BF 8.

52. The Clerk to the Disciplinary Board electronically served the scheduling order on Respondent at office5401@comcast.net. BF 8.

53. Respondent's email on file at the Washington State Bar Association is office5401@comcast.net. This is also the email through which Respondent communicated with ODC and the Hearing Officer during these proceedings. See BF 6.

54. Respondent was aware of the date of the hearing, having been present when the date was set, and subsequently being served the scheduling order at Respondent's email address on file with the Association.

55. The scheduling order also included filing and/or service deadlines for, *inter alia*, a preliminary witness list, a final witness list, proposed exhibits, and a hearing brief. BF 8.

56. Respondent did not file and serve a preliminary witness list or final witness list.

57. Respondent did not serve proposed exhibits.

58. Respondent did not serve a hearing brief.

59. At 9:14 a.m., on the morning of the scheduled disciplinary hearing, Respondent sent an email from office5401@proton.me to Disciplinary Counsel and the Hearing Officer to request a continuance. TR 9:05-14; Ex. 1.

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60. At 9:18 a.m., Disciplinary Counsel replied to Respondent's email from office5401@proton.me with a zoom link so that Respondent could appear and remotely participate in the hearing. Ex. 1.

61. Respondent did not reply to Disciplinary Counsel's email. Ex. 1.

62. Respondent did not appear for the hearing. TR 5:05-16.

63. Respondent's motion for continuance was denied. TR. 9:18-22.

64. The hearing then recessed. TR 12:21-22.

65. During the recess, Disciplinary Counsel emailed Respondent at office5401@comcast.net to inform Respondent that Respondent's motion was denied but that the hearing was currently in recess and Respondent could use the previously emailed zoom link to participate in the hearing. Ex. 1.

66. Disciplinary Counsel also made two phone calls to Respondent's phone number and left voicemails informing Respondent that Respondent's motion was denied, that the hearing would progress, and that Respondent could participate in the hearing remotely via the zoom link sent to Respondent. TR 13:18-14:04.

67. Respondent did not appear for the hearing. TR 14:03-06.

68. Respondent does not have prior disciplinary history in Washington State.

CONCLUSIONS OF LAW

Violations Analysis

The Hearing Officer finds that ODC proved the following by a clear preponderance of the evidence:

69. Count 1: By engaging in a sexual relationship with a client during representation, Respondent violated RPC 1.8(j)(1).

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70. Count 2: By failing to state and/or explain the change in the rate or basis of Respondent's fee, Respondent violated RPC 1.4(b) and RPC 1.5(b).

Sanction Analysis

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

72. As to Count 1, ABA Standards 4.3 applies when a lawyer fails to avoid a conflict of interest (RPC 1.8(j)(1)).

73. ABA Standards 4.32 provides that "[s]uspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client."

74. Respondent knowingly created a conflict of interest with Respondent's client, Davidson, by engaging in a sexual relationship with the client during Respondent's representation of Davidson in the motor vehicle accident matter, where no consensual sexual relationship existed between them at the time the client-lawyer relationship commenced.

75. Davidson was injured by the loss of a conflict free lawyer-client relationship and was financially harmed by Respondent when Respondent unilaterally withdrew his agreement to reduce Respondent's attorney fees after the sexual relationship ended.

76. The presumptive sanction for Respondent's violation of RPC 1.8(j)(1) is suspension under ABA Standards 4.32.

77. As to Count 2, ABA Standards 4.4 applies when a lawyer fails to explain a matter to the extent reasonably necessary to permit the client to make informed decisions (RPC 1.4(b)), and

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ABA Standards 4.6 and 7.0 applies when a lawyer fails to explain changes in the basis or rate of a fee to a client (RPC 1.5(b)).

78. ABA Standards 4.42 provides that "[s]uspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client."

79. ABA Standards 4.62 provides that "[s]uspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client."

80. ABA Standards 7.2 provides that "[s]uspension 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."

81. Respondent acted knowingly when Respondent texted Davidson that Davidson would receive $11,067.68 in proceeds.

82. Respondent acted knowingly in agreeing to reduce Respondent's attorney fee so that Davidson would receive $11,685.68.

83. Respondent acted knowingly in changing Respondent's attorney fee so that Davidson would receive only $8,651.80.

84. Davidson relied on Respondent's stated settlement figure in forgoing additional negotiation with the U.S. Department of Veterans Affairs.

85. Davidson was injured when Respondent used Respondent's power as Davidson's lawyer to reduce Davidson's settlement proceeds from $11,685.68 to $8,651.80.

86. Davidson was further injured by Respondent retaining $3,033.88 in settlement proceeds that Davidson was entitled to recover.

87. The presumptive sanction for Respondent's violation of RPC 1.4(b) is suspension

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under ABA Standards 4.42, 4.62, and 7.2.

88. The presumptive sanction for Respondent's violation of RPC 1.5(b) is suspension under ABA Standards 4.42, 4.62, and 7.2.

89. When multiple ethical violations are found, 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 Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

90. Based on the Findings of Fact and Conclusions of Law and application of the ABA Standards, the appropriate presumptive sanction is suspension.

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

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

(b) selfish motive;
(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency [Respondent failed to comply with pre-trial deadlines and failed to attend the hearing, despite being notified of these dates];
(g) refusal to acknowledge wrongful nature of conduct; and
(i) substantial experience in the practice of law [licensed in Washington since 2006].

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

(a) absence of a prior disciplinary record.

Recommendation

94. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent Michael Olufemi Ewetuga be suspended from the practice of law in Washington State for six months. Respondent shall also undergo 24 months

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of probation and pay $3,033.88 in restitution to Davidson. Respondent's payment of restitution to Davidson is a required precondition to Respondent's return from suspension.

95. The conditions of probation are attached in Appendix A.

Dated this 14th day of September, 2023.

Randolph O. Petgrave III, Bar No. 26046
Hearing Officer

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APPENDIX A

1. Respondent shall be subject to probation for a period of 24 months beginning on the date Respondent is reinstated to the practice of law.

2. The conditions of probation are set forth below. Respondent's compliance with these conditions will be monitored by the Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

Practice Monitor

a) During the period of probation, Respondent's practice will be supervised by a practice monitor. The practice monitor must be a WSBA member with no record of public discipline and who is not the subject of a pending public disciplinary proceeding.

b) The role of the practice monitor is to consult with and provide guidance to Respondent regarding case management, office management, and avoiding violations of the Rules of Professional Conduct, and to provide reports and information to the Probation Administrator regarding Respondent's compliance with the terms of probation and the RPC. The practice monitor does not represent the Respondent.

c) At the beginning of the probation period, the Probation Administrator will select a lawyer to serve as practice monitor for the period of Respondent's probation.

   i) Initial Challenge: If, within 15 days of the written notice of the selection of a practice monitor, Respondent sends a written request to the Probation Administrator that another practice monitor be selected, the Probation Administrator will select another practice monitor. Respondent need not identify any basis for this initial request.

   ii) Subsequent Challenges: If, after selection of a second (or subsequent) practice monitor, Respondent believes there is good cause why that individual should not serve as practice monitor, Respondent may, within 15 days of notice of the selected practice monitor, send a written request to the Probation Administrator asking that another practice monitor be selected. That request must articulate good cause to support the request. If the Probation Administrator agrees, another practice monitor will be selected. If the Probation Administrator disagrees, the Office of Disciplinary Counsel will submit its proposed selection for practice monitor to the Chair of the Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also provide the Chair with the Respondent's written request that another practice monitor be selected.

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d) In the event the practice monitor is no longer able to perform the practice monitor's duties, the Probation Administrator will select a new practice monitor at the Probation Administrator's discretion.

e) During the period of probation, Respondent must cooperate with the named practice monitor. Respondent must meet with the practice monitor at least once per month. Respondent must communicate with the practice monitor to schedule all required meetings.

f) The Respondent must bring to each meeting a current, complete written list of all pending client legal matters being handled by the Respondent. The list must identify the current status of each client matter and any problematic issues regarding each client matter. The list may identify clients by using the client's initials rather than the client's name.

g) At each meeting, the practice monitor will discuss with Respondent practice issues that have arisen or are anticipated. In light of the conduct giving rise to the imposition of probation, ODC recommends that the practice monitor and Respondent discuss whether Respondent is diligently making progress on each client matter, whether Respondent is in communication with each client, whether Respondent has promptly billed each client, whether Respondent's fee agreements are consistent with the RPC and are understandable to the client, and whether Respondent needs to consider withdrawing from any client matters. Meetings may be in person or by telephone at the practice monitor's discretion. The practice monitor uses discretion in determining the length of each meeting.

h) The practice monitor will provide the Probation Administrator with quarterly written reports regarding Respondent's compliance with probation terms and the RPC. Each report must include the date of each meeting with Respondent, a brief synopsis of the discussion topics, and a brief description of any concerns the practice monitor has regarding the Respondent's compliance with the RPC. The report must be signed by the practice monitor. Each report is due within 30 days of the completion of the quarter.

i) If the practice monitor believes that Respondent is not complying with any of Respondent's ethical duties under the RPC or if Respondent fails to schedule or attend a monthly meeting, the practice monitor will promptly communicate that to the Probation Administrator.

j) Respondent must make payments totaling $1,000 to the Washington State Bar Association to defray the costs and expenses of administering the probation, as follows:

i) $250 due within 30 days of the start of the probation;

ii) $250 due within 6 months of the start of the probation period;

iii) $250 due within 12 months of the start of the probation period; and

iv) $250 due within 18 months of the start of the probation period.

All payments should be provided to the Probation Administrator for processing.

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I certify that I caused a copy of the FOF, COL and HO's Recommendation to be emailed to the Office of Disciplinary Counsel and to Respondent Michael Olufemi Ewetuga, at mikethelaw@proton.me, on the 15th day of September, 2023.

Clerk to the Disciplinary Board