

**FILED**

Dec 17 2018

Disciplinary  
Board

Docket # 014

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**DAVID J. MCAULIFF,**  
Lawyer (Bar No. 40687).

Proceeding No. 18#00035

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

The undersigned Hearing Officer held a default hearing by written submission under Rule 10.6(b)(3) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

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

1. The Formal Complaint (Bar File No. 3) charged David J. McAuliff with misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.
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:

1           Count 1: By continuing to practice law after being suspended from the practice of law,  
2 Respondent violated RPC 5.5(a), RPC 5.8(a), RPC 8.4(j), and RPC 8.4(l) (by violating ELC 1.5  
3 and ELC 14.2).

4           Count 2: By making false and/or misleading representations to Mr. Gulickson and C.M.,  
5 Respondent violated RPC 1.4 and RPC 8.4(c).

6           Count 3: By failing to notify his clients that he was suspended and could no longer  
7 represent them, Respondent violated RPC 1.4 and RPC 8.4(l) (by violating ELC 1.5 and ELC  
8 14.1).

9           Count 4: By attempting to conceal his ongoing representation of C.M. from L&I,  
10 Respondent violated RPC 8.4(c).

11           Count 5: By failing to cooperate with ODC's investigation of Ms. Hatzialexiou's  
12 grievance, Respondent violated RPC 8.1(b) and RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f),  
13 ELC 5.3(g), and ELC 5.5(d)).

14           Count 6: By failing to cooperate with ODC's investigation of Mr. Gulickson's  
15 grievance, Respondent violated RPC 8.1(b) and RPC 8.4(l) (by violating ELC 1.5, ELC 5.3(f),  
16 ELC 5.3(g) and ELC 5.5(d)).

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

19           4.   Respondent acted knowingly and intentionally with respect to Counts 1, 2, and 4.  
20 BF 3 ¶¶ 26, 46-48.

21           5.   Respondent acted knowingly with respect to Counts 3, 5, and 6. Id. ¶¶ 25, 75.

22           6.   Respondent's conduct caused injury to his clients, the legal system, and the legal  
23 profession. Id. ¶¶ 28, 50, 76.

24           7.   The following standards of the American Bar Association's Standards for

1 Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) presumptively  
2 apply in this case:

3 **8.0 Prior Discipline Orders** [Count 1]

4 8.1 Disbarment is generally appropriate when a lawyer:

- 5 (a) intentionally or knowingly violates the terms of a prior disciplinary order  
6 and such violation causes injury or potential injury to a client, the public,  
7 the legal system, or the profession.

8 **4.6 Lack of Candor** [Count 2]

9 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a  
10 client, and causes injury or potential injury to the client.

11 **4.4 Lack of Diligence** [Count 3]

12 4.42 Suspension is generally appropriate when:

- 13 (a) a lawyer knowingly fails to perform services for a client and causes  
14 injury or potential injury to a client..

15 **5.1 Failure to Maintain Personal Integrity** [Count 4]

16 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in  
17 any other conduct that involves dishonesty, fraud, deceit, or  
18 misrepresentation and that adversely reflects on the lawyer’s fitness to  
19 practice law.

20 **7.0 Violations of Duties Owed as a Professional** [Counts 5 and 6]

21 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
22 conduct that is a violation of a duty owed as a professional and causes  
23 injury or potential injury to a client, the public, or the legal system.

24 8. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846

P.2d 1330 (1993), the “ultimate sanction imposed should at least be consistent with the sanction  
for the most serious instance of misconduct among a number of violations.”

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

- (a) prior disciplinary offenses [Respondent was ordered suspended in two  
separate disciplinary matters in 2016 and 2017];  
(b) dishonest or selfish motive;  
(c) a pattern of misconduct;  
(d) multiple offenses; and

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(i) substantial experience in the practice of law [Respondent was admitted to practice in California in 1995 and in Washington in 2008].

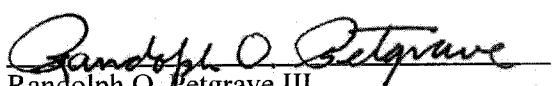
10. It is an additional aggravating factor that Respondent failed to file an answer to the Formal Complaint as required by ELC 10.5(a).

11. No mitigating factors set forth in Section 9.32 of the ABA Standards apply to this case.

**RECOMMENDATION**

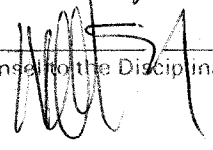
12. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent David J. McAuliff be DISBARRED.

DATED this 14th day of December, 2018.

  
Randolph O. Petgrave III  
Chief Hearing Officer

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the FOI, IRL & HOS Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to David McAuliff Respondent/Respondent's Counsel  
at 1725 1st Avenue, Seattle, WA 98101 certified/first class mail  
postage prepaid on the 17th day of Dec, 2018

  
Clerk/Counsel to the Disciplinary Board