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DISCIPLINARY BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

EDWARD J. CALLOW,
Lawyer (Bar No. 41966).

Proceeding No. 12#00125

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),
the undersigned Hearing Officer held a default hearing on July 2, 2013.

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

1. The Formal Complaint, a copy of which is attached hereto as Appendix A, charged
Respondent Edward J. Callow (Respondent) 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 for the purpose of imposing discipline.

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 for the purpose of imposing
discipline as follows:

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1 **COUNT 1**

2 1. By converting Deborah McCormack's (McCormack's) settlement funds,
3 Respondent violated RPC 1.15A(b), RPC 8.4(c), and RPC 8.4(b) [by committing the crime of
4 theft in the first degree (RCW 9A.56.030)].

5 **COUNT 2**

6 2. By failing to maintain McCormack's settlement funds in a trust account,
7 Respondent violated RPC 1.15A(c)(1).

8 **COUNT 3**

9 3. By using McCormack's funds for the benefit of another client, Respondent
10 violated RPC 1.15A(h)(8).

11 **COUNT 4**

12 4. By failing to deliver to McCormack funds that she was entitled to receive,
13 Respondent violated RPC 1.15A(f) and RPC 1.16(d).

14 **COUNT 5**

15 5. By making false representations to McCormack regarding the amount and
16 distribution of her settlement, Respondent violated RPC 8.4(c), RPC 1.15A(d), and RPC 1.4(a)
17 and (b).

18 **COUNT 6**

19 6. By failing to provide McCormack with a complete and accurate accounting after
20 disbursing her settlement funds or at any other time, Respondent violated RPC 1.15A(e).

21 **COUNT 7**

22 7. By contacting McCormack to solicit professional employment when a significant
23 motive was his own pecuniary gain, Respondent violated RPC 7.3(a).

1 **COUNT 8**

2 8. By failing to maintain complete and accurate trust account records, Respondent
3 violated RPC 1.15A(h)(2) and RPC 1.15B.

4 **COUNT 9**

5 9. By failing to reconcile his trust account check register to the bank statements and
6 by failing to reconcile his trust account check register to a combined total of client ledgers,
7 Respondent violated RPC 1.15A(h)(6).

8 **COUNT 10**

9 10. By making false statements under oath at his deposition, Respondent violated RPC
10 8.4(c), RPC 8.4(d), RPC 8.4(l), ELC 5.3(e), and RPC 8.4(b) [by committing the crime of false
11 swearing (RCW 9A.72.040)].

12 **COUNT 11**

13 11. By submitting the fabricated \$525,000 settlement statement to the Association
14 during a grievance investigation, Respondent violated RPC 8.4(c), RPC 8.4(d), RPC 8.4(l), and
15 ELC 5.3(e).

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

18 **Count 1**

19 12. Respondent acted knowingly and intentionally in converting and committing theft
20 of McCormack's settlement funds.

21 13. Respondent's conduct caused actual injury by depriving McCormack of funds that
22 she was entitled to receive. Respondent's conduct also seriously adversely reflects on his
23 fitness to practice law.

24 14. 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 to Count 1:

3 5.11 Disbarment is generally appropriate when:

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

9 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
10 client property and causes injury or potential injury to a client.

11 15. The presumptive sanction is disbarment.

12 **Count 2**

13 16. Respondent acted knowingly and intentionally in failing to properly disburse and
14 account for McCormack’s settlement funds placed into his trust account.

15 17. Respondent’s conduct caused actual injury in that McCormack’s funds were not
16 safeguarded, and McCormack’s ability to recover her funds from Respondent has been
17 compromised.

18 18. The following standards of the American Bar Association’s Standards for
19 Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) presumptively
20 applies to Count 2:

21 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

22 19. The presumptive sanction is disbarment.

23 **Count 3**

24 20. Respondent knowingly used McCormack’s funds to pay expenses for another

1 client.

2 21. Respondent's conduct caused actual injury by depleting McCormack's settlement
3 funds without authorization, and by depriving her of the money that she was entitled to receive.

4 22. The following standard of the American Bar Association's Standards for Imposing
5 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to

6 Count 3:

7 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
8 client property and causes injury or potential injury to a client.

9 23. The presumptive sanction is disbarment.

10 **Count 4**

11 24. Respondent acted knowingly and intentionally in failing to deliver funds to
12 McCormack that she was entitled to receive.

13 25. Respondent's conduct caused actual injury to McCormack by depriving her of a
14 substantial amount of money that she was entitled to receive in compensation for an accident
15 that left her permanently disabled.

16 26. The following standard of the American Bar Association's Standards for Imposing
17 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to

18 Count 4:

19 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
20 client property and causes injury or potential injury to a client.

21 27. The presumptive sanction is disbarment.

22 **Count 5**

23 28. Respondent acted knowingly, with the intent to benefit himself or another, in
24 falsely representing to McCormack the amount of her settlement and the manner in which her

1 settlement was distributed.

2 29. There was actual serious injury in that Respondent deceived McCormack into
3 believing that her settlement was \$250,000, rather than \$500,000, thus preventing her receiving
4 approximately half of the settlement Respondent negotiated for her.

5 30. The following standard of the American Bar Association's Standards for Imposing
6 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to
7 Count 5:

8 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a
9 client with the intent to benefit the lawyer or another, and causes serious
injury or potential serious injury to a client.

10 31. The presumptive sanction is disbarment.

11 **Count 6**

12 32. Respondent knowingly failed to provide McCormack with a complete and accurate
13 accounting of her settlement funds.

14 33. Respondent's conduct caused actual injury in that McCormack was denied
15 accurate information about the amount of her settlement and was denied information that would
16 have revealed Respondent's conversion of her funds.

17 34. The following standard of the American Bar Association's Standards for Imposing
18 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to

19 Count 6:

20 4.12 Suspension is generally appropriate when a lawyer knows or should
21 know that he is dealing improperly with client property and causes injury
or potential injury to a client.

22 35. The presumptive sanction is suspension.

1 **Count 7**

2 36. Respondent acted knowingly, with the intent to benefit himself, in making an
3 unsolicited telephone call to McCormack to obtain professional employment as McCormack's
4 lawyer.

5 37. Respondent's conduct caused serious or potentially serious injury in that
6 McCormack was drawn into an attorney-client relationship with Respondent that allowed him to
7 commit fraud and theft and to convert McCormack's funds.

8 38. The following standard of the American Bar Association's Standards for Imposing
9 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to
10 Count 7:

11 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
12 conduct that is a violation of a duty owed as a professional with the intent
13 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.

14 39. The presumptive sanction is disbarment.

15 **Count 8**

16 40. Respondent acted knowingly in failing to maintain complete and accurate trust
17 account records.

18 41. Respondent's conduct caused actual or potential injury by compromising his
19 ability to ensure that all client funds were properly safeguarded.

20 42. The following standard of the American Bar Association's Standards for Imposing
21 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to

22 Count 8:

23 4.12 Suspension is generally appropriate when a lawyer knows or should
24 know that he is dealing improperly with client property and causes injury
 or potential injury to a client.

1 43. The presumptive sanction is suspension.

2 **Count 9**

3 44. Respondent acted knowingly in failing to reconcile his trust account check register
4 to the bank statements and in failing to reconcile his trust account check register to a combined
5 total of client ledgers.

6 45. Respondent's conduct caused actual or potential injury by compromising his
7 ability to ensure that all client funds were properly safeguarded.

8 46. The following standard of the American Bar Association's Standards for Imposing
9 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively applies to
10 Count 9:

11 4.12 Suspension is generally appropriate when a lawyer knows or should
12 know that he is dealing improperly with client property and causes injury
or potential injury to a client.

13 47. The presumptive sanction is suspension.

14 **Count 10**

15 48. Respondent acted knowingly and intentionally in providing false testimony during
16 his deposition in a grievance investigation.

17 49. Respondent's conduct caused serious or potentially serious injury to the public and
18 to the legal system by harming the integrity of the profession.

19 50. The following standards of the American Bar Association's Standards for
20 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively
21 apply to Count 10:

22 5.11 Disbarment is generally appropriate when:

23 (a) a lawyer engages in serious criminal conduct, a necessary element of
24 which includes intentional interference with the administration of justice,
false swearing, misrepresentation, fraud, extortion, misappropriation, or

1 theft; or the sale, distribution or importation of controlled substances; or
2 the intentional killing of another; or an attempt or conspiracy or
solicitation of another to commit any of these offenses; or

3 (b) a lawyer engages in any other intentional conduct involving dishonesty,
4 fraud, deceit, or misrepresentation that seriously adversely reflects on the
lawyer's fitness to practice.

5 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
6 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
7 potentially serious injury to a client, the public, or the legal system.

8 51. The presumptive sanction is disbarment.

9 **Count 11**

10 52. Respondent knowingly submitted a fabricated settlement statement to the
Association during a grievance investigation.

11 53. Respondent's conduct seriously adversely reflects on his fitness to practice law.

12 54. The following standards of the American Bar Association's Standards for
13 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively
14 apply to Count 11:

15 5.11 Disbarment is generally appropriate when:

16 (a) a lawyer engages in serious criminal conduct, a necessary element of
17 which includes intentional interference with the administration of justice,
false swearing, misrepresentation, fraud, extortion, misappropriation, or
18 theft; or the sale, distribution or importation of controlled substances; or
the intentional killing of another; or an attempt or conspiracy or
19 solicitation of another to commit any of these offenses; or

20 (b) a lawyer engages in any other intentional conduct involving dishonesty,
21 fraud, deceit, or misrepresentation that seriously adversely reflects on the
lawyer's fitness to practice.

22 55. The presumptive sanction is disbarment.

23 56. Where the Hearing Officer finds multiple ethical violations, the "ultimate sanction
24 imposed should at least be consistent with the sanction for the most serious instance of

1 misconduct among a number of violations; it might well be and generally should be greater than
2 the sanction for the most serious misconduct." In re Disciplinary Proceeding Against Petersen,
3 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

4 57. 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 (g) refusal to acknowledge wrongful nature of conduct; and
- 9 (j) indifference to making restitution.

10 58. The following mitigating factor set forth in Section 9.32 of the ABA Standards
11 applies to this case:

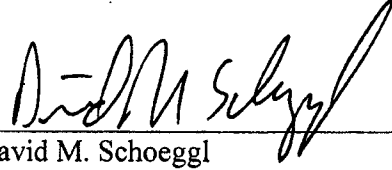
- 12 (a) absence of a prior disciplinary record.

13 59. On balance, the aggravating and mitigating factors support the presumptive
14 sanction of disbarment, and warrant a more severe sanction where the presumptive sanction is
15 less than disbarment.

16 **RECOMMENDATION**

17 60. Based on the ABA Standards and the applicable aggravating and mitigating
18 factors, the Hearing Officer recommends that Respondent Edward J. Callow be disbarred and be
19 ordered to pay \$333,000 in restitution to Deborah McCormack.

20 DATED this 2nd day of July 2013.

21 
22 David M. Schoeggl
23 Hearing Officer

24 **CERTIFICATE OF SERVICE**

I certify that I caused a copy of the FOF, COL & HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to KENNETH KIMM Respondent/Respondent's Counsel
at 701 STATE AVE SEATTLE WA 98101 by Certified/first class mail.
postage prepaid on the 2nd day of JULY, 2013