

FILED

Sep 22, 2022

Disciplinary
Board

Docket # 021

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TARIK POLOVINA,
Lawyer (Bar No. 52816).

Proceeding No. 22#00021

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

The undersigned Hearing Officer held a default hearing on August 22, 2022, under Rule 10.6 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Based on the pleadings in the case and the declarations and exhibits¹ filed in this matter, the Hearing Officer makes the following:

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

1. The Formal Complaint (Bar File No. 2) charged Tarik Polovina with misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.

¹ On September 6, 2022, the Office of Disciplinary Counsel (ODC) filed the following declarations with exhibits attached thereto:

- Declaration of Henry Cruz with Exhibits A-L (Bar File No. 17);
- Declaration of Douglas Burke with Exhibits A-R (Bar File No. 18);
- Declaration of Sean L. Hyde with Exhibits A-B (Bar File No. 19).

1 2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in
2 the Formal Complaint is admitted and established.

3 3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations
4 charged in the Formal Complaint is admitted and established as follows:

5 COUNT 1: By failing to respond to the State's pleadings in the parentage matter or to the
6 State's requests for information, by failing to appear at the summary judgment hearing,
7 and by failing to file the motion for an emergency hearing, Respondent violated RPC 1.3
8 and RPC 3.2.

9 COUNT 2: By failing to communicate with Burke regarding the status of the parentage
10 matter, by failing to inform Burke about the State's pleadings, the State's requests for
11 information, and the summary judgment hearing in the parentage matter, and by providing
12 false information to Burke about the reason for the court's child support order, Respondent
13 violated RPC 1.4(a), RPC 1.4(b), and RPC 8.4(c).

14 COUNT 3: By providing false information to Hyde, Respondent violated RPC 8.4(c).

15 COUNT 4: By falsely communicating to Burke about the services Respondent performed
16 and the hours Respondent billed, Respondent violated RPC 1.4 and RPC 8.4(c).

17 COUNT 5: By charging Burke a fee for work not performed, Respondent violated RPC
18 1.5(a) and RPC 8.4(c).

19 COUNT 6: By failing to respond to ODC's request for a response to the grievance, and
20 by failing to attend the deposition, as required by ELC 5.3(g) and ELC 5.5(d), Respondent
21 violated RPC 8.4(d).

22
**FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING RECOMMENDED SANCTION**

23 4. Respondent's misconduct in the parentage matter was knowing.

24 5. Respondent's misconduct in the parentage matter caused actual injury to the client,
Burke, who lost their day in court, was kept in the dark and deceived by Respondent, was ordered
to pay an amount of child support that Burke cannot afford, and paid for legal services that were
never provided.

6. Respondent's misconduct in the parentage matter also caused potential injury to
Burke, who may have been ordered to pay a higher child support obligation than would have been

1 required had Burke's income and other obligations been taken into consideration in the parentage
2 matter and may have been put at risk of enforcement proceedings over nonpayment of child
3 support, including jail time.

4 7. Respondent's misconduct in the parentage matter caused injury to the legal system.

5 8. Respondent's misrepresentation to Hyde was knowing and adversely reflects on
6 Respondent's fitness to practice law.

7 9. In failing to cooperate in ODC's investigation by failing to promptly respond to
8 ODC's request for response and by failing to appear for a non-cooperation deposition, Respondent
9 acted knowingly

10 10. Respondent's failure to cooperate in ODC's investigation caused injury to the public
11 and to the legal system. ODC was prevented from fully investigating the grievance. Respondent's
12 misconduct reflects poorly on the profession and diminishes public confidence in the legal system.

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

16 **ABA Standard 4.4 - Lack of Diligence**

17 4.41 Disbarment is generally appropriate when:

18 (a) a lawyer abandons the practice and causes serious or potentially serious injury
19 to a client; or (b) a lawyer knowingly fails to perform services for a client and
causes serious or potentially serious injury to a client; or (c) a lawyer engages in a
pattern of neglect with respect to client matters and causes serious or potentially
serious injury to a client.

20 4.42 Suspension is generally appropriate when: (a) a lawyer knowingly fails to
21 perform services for a client and causes injury or potential injury to a client,
or (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

22 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes injury or potential
injury to a client.

23 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
24 with reasonable diligence in representing a client, and causes little or no actual or

1 potential injury to a client.

2 **ABA Standard 4.6 - Lack of Candor**

3 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client
4 with the intent to benefit the lawyer or another, and causes serious injury or
5 potential serious injury to a client.

6 4.62 **Suspension is generally appropriate when a lawyer knowingly deceives a
7 client, and causes injury or potential injury to the client.**

8 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a
9 client with accurate or complete information, and causes injury or potential injury
10 to the client.

11 4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence in failing to provide a client with accurate or complete information,
13 and causes little or no actual or potential injury to the client.

14 **ABA Standard 5.1 - Failure to Maintain Personal Integrity**

15 5.11 Disbarment is generally appropriate when:

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

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

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal
conduct which does not contain the elements listed in Standard 5.11 and that
seriously adversely reflects on the lawyer's fitness to practice.

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

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct
that reflects adversely on the lawyer's fitness to practice law.

ABA Standard 7.0 - Violations of Duties Owed as a Professional

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.

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.**

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.

1 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
2 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.

3 12. ABA Standard 4.4 applies to Respondent's failure to reasonably communicate with
4 a client and failure to exercise reasonable diligence in representing a client, in violation of RPC
5 1.3, 1.4, and 3.2. The presumptive sanction for Counts 1 and 2 is suspension under ABA Standard
6 4.42.

7 13. ABA Standard 4.6 applies to Respondent's failure to communicate honestly with a
8 client, in violation of RPC 1.4 and 8.4(c). The presumptive sanction for Counts 2, 4, and 5 is
9 suspension under ABA Standards 4.62.

10 14. ABA Standard 5.1 applies to Respondent's other conduct involving dishonesty,
11 deceit, or misrepresentation, in violation of RPC 8.4(c). The presumptive sanction for Count 3 is
12 reprimand under ABA Standards 5.13.

13 15. ABA Standard 7.0 applies to Respondent's charging unreasonable fees and failure
14 to cooperate in a disciplinary investigation, in violation of RPC 1.5(a) and 8.4(l). The presumptive
15 sanction for Counts 5 and 6 is suspension under ABA Standards 7.2.

16 16. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846
17 P.2d 1330 (1993), the "ultimate sanction imposed should at least be consistent with the sanction
18 for the most serious instance of misconduct among a number of violations."

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

- 21 (b) dishonest or selfish motive; and
- 22 (d) multiple offenses.

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

1 19. The following mitigating factors set forth in Section 9.32 of the ABA Standards
2 apply to this case:

- 3 (a) absence of a prior disciplinary record; and
4 (f) inexperience in the practice of law (Respondent was admitted in 2017).

5 RECOMMENDATION

6 20. Based on the ABA Standards and the applicable aggravating and mitigating factors,
7 the Hearing Officer recommends that Respondent Tarik Polovina be SUSPENDED from the
8 practice of law for TWO YEARS.

9 21. The Hearing Officer further recommends that Respondent be subject to
10 PROBATION for a period of TWO YEARS beginning on the date Respondent is reinstated to
11 the practice of law.

12 22. The Hearing Officer recommends the following CONDITIONS OF
13 PROBATION. Respondent's compliance with these conditions will be monitored by the
14 Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator").
15 Failure to comply with a condition of probation listed herein may be grounds for further
16 disciplinary action under ELC 13.8(b).

17 Practice Monitor

- 18 a) During the period of probation, Respondent's practice will be supervised by a practice
19 monitor. The practice monitor must be a WSBA member with no record of public
20 discipline and who is not the subject of a pending public disciplinary proceeding.
21 b) The role of the practice monitor is to consult with and provide guidance to Respondent
22 regarding case management, office management, and avoiding violations of the Rules
23 of Professional Conduct, and to provide reports and information to the Probation
24 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.

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

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

- 18 d) In the event the practice monitor is no longer able to perform his or her duties, the
19 Probation Administrator will select a new practice monitor at his or her discretion.
- 20 e) During the period of probation, Respondent must cooperate with the named practice
21 monitor. Respondent must meet with the practice monitor at least once per month.
22 Respondent must communicate with the practice monitor to schedule all required
23 meetings.
- 24 f) 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, the Hearing Officer 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 and accurately billed each 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

1 regarding the Respondent's compliance with the RPC. The report must be signed by
2 the practice monitor. Each report is due within 30 days of the completion of the
quarter.

- 3 i) If the practice monitor believes that Respondent is not complying with any of their
4 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
5 Administrator.
- 6 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
7 follows:
- 8 i) \$250 due within 30 days of the start of the probation;
 - 9 ii) \$250 due within 6 months of the start of the probation period;
 - 10 iii) \$250 due within 12 months of the start of the probation period; and
 - 11 iv) \$250 due within 18 months of the start of the probation period.

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

13 CLEs

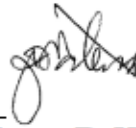
- 14 a) During the probationary period, Respondent shall complete a minimum of 10 credit
15 hours of continuing legal education courses, at Respondent's own expense, in the
16 areas of client communication, practice management, time management, caseload
17 management, and billing practices.
- 18 b) Respondent shall provide evidence of attendance at such courses to the Probation
Administrator no later than 30 days after the conclusion of the course. Proof of
attendance shall include the program brochure, evidence of payment, and a written
statement that includes the date and time of attendance.

19 Ethics School

- 20 a) Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
21 obtaining the recorded product, and to pay registration costs of \$150 plus applicable
22 sales tax. Respondent will receive all applicable approved CLE credits for time in
attendance at the Ethics School.
- 23 b) Attendance at Ethics School is in addition to and shall not fulfill any continuing legal
24 education (CLE) requirements set out in this order.
- c) Respondent shall contact the Ethics School Administrator, currently Chris Chang, at
(206) 727-8328 or chrisc@wsba.org, within 30 days of reinstatement to confirm
enrollment in Ethics School and related logistics.


- 1 d) Respondent shall complete the ethics school requirement within three months of
reinstatement.
- 2
- 3 e) Respondent shall provide evidence of completion of ethics school to the Probation
Administrator no later than 30 days after the conclusion of the course. Proof of
4 attendance shall include the program brochure, evidence of payment, and a written
statement that includes the date and time of attendance.
- 5 f) The Ethics School administrator may respond to inquiries from the Probation
Administrator regarding Respondent's compliance with these conditions.
- 6

7 DATED this 22nd day of September, 2022.

8 

9
0 James D. Hicks
Hearing Officer

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 Tarik Polovina, at tpolovina@mckinleyirvin.com, on the 23rd day of September, 2022.



Clerk to the Disciplinary Board