

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TIMOTHY R. SOUTH,
Lawyer (Bar No. 26267).

Proceeding No. 24#00017

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

Pursuant to ELC 10.6, the undersigned Hearing Officer held a default disciplinary hearing on August 29, 2024. In accordance with ELC 10.6(b)(2), respondent Timothy South was not provided notice of the hearing and did not appear. Disciplinary Counsel Briana Gieri appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

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

1. The Formal Complaint (Bar File No. 2) charged Timothy R. South 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. Based on statements made by Disciplinary Counsel during the hearing, the following corrections should be noted. In paragraph 14, the correct date is September 6, 2022. In paragraph 82, Respondent did not file a **timely** response to

1 the grievance. As shown in Hearing Exhibit 1 (Ex. A), he filed an untimely response on August
2 22, 2023,

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

5 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
6 **REGARDING RECOMMENDED SANCTION**

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

10 **4.4 Lack of Diligence**

11 4.41 Disbarment is generally appropriate when:

- 12 (a) a lawyer abandons the practice and causes serious or potentially serious
13 injury to a client; or
14 (b) a lawyer knowingly fails to perform services for a client and causes
15 serious or potentially serious injury to a client; or
16 (c) a lawyer engages in a pattern of neglect with respect to client matters
17 and causes serious or potentially serious injury to a client.

18 4.42 Suspension is generally appropriate when:

- 19 (a) a lawyer knowingly fails to perform services for a client and causes
20 injury or potential injury to a client, or
21 (b) a lawyer engages in a pattern of neglect and causes injury or potential
22 injury to a client.

23 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not
24 act with reasonable diligence in representing a client, and causes injury or
potential injury to a client.

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

6.1 False Statements, Fraud, and Misrepresentation

6.11 Disbarment is generally appropriate when a lawyer, with the intent to
deceive the court, makes a false statement, submits a false document, or
improperly withholds material information, and causes serious or
potentially serious injury to a party, or causes a significant or potentially
significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false
statements or documents are being submitted to the court or that material
information is improperly being withheld, and takes no remedial action, and

causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

6.2 Abuse of the Legal Process

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

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.

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,

1 and causes little or no actual or potential injury to a client, the public, or the
2 legal system.

3 **Count 1**

4 5. ABA Standard 4.4 applies to the duty to act with diligence in representing a client.
Respondent knowingly failed to diligently represent Respondent's client Alan Cutler. The actual
5 injury is a default judgment against the client in the dissolution action, money judgments against
6 the client totaling \$374,000, and the client's loss of the opportunity to present evidence and
7 testimony in support of client's case. The presumptive sanction for the violation of RPC 1.3 as
8 charged in Count 1 is suspension under ABA Standard 4.42.

9 6. The Hearing Officer considered whether the default judgment against Respondent's
10 client establishes serious injury under Standard 4.41 rather than injury under Standard 4.42.
11 Disciplinary Counsel stated that the monetary award in the dissolution matter represented a
12 property distribution. The response signed by the client (Complaint, pars. 49-51) agreed to that
13 award. As a result, there is no evidence to support a finding that the client suffered serious injury
14

15 7. ABA Standard 6.2 applies to the duty to expedite litigation. RPC 3.2 focuses on delays.
Respondent knowingly failed to provide timely responses to discovery requests. These delays had
16 the potential for causing delay. There is, however, no showing that any substantial actual delay
17 resulted from the Respondent's misconduct. The presumptive sanction for the violation of RPC
18 3.2 as charged in Count 1 is suspension under ABA Standard 6.22.

19 **Count 2**

20 8. ABA Standard 4.4 applies to the duty to maintain prompt communications with clients
21 about the status of their case and obtain the client's informed consent for decisions regarding their
22 case. Respondent knowingly failed to involve Cutler in discussions about the motions regarding
23 default and failed to obtain Cutler's consent to the case strategy thereafter. The actual injury is
24

1 described above. The presumptive sanction for the violations of RPC 1.4(a) and RPC 1.4(b) as
2 charged in Count 2 is suspension under ABA Standard 4.42.

3 **Count 3**

4 9. ABA Standard 6.1 applies to cases involving dishonesty to a court and cases involving
5 conduct prejudicial to the administration of justice. Respondent acted knowingly in making false
6 statements to the court regarding receipt of the default pleadings. Respondent asserted to the
7 court an intention to vacate the defaulted orders, but Respondent failed to file such a motion.
8 There was potential injury to the court and to the profession. It does not appear, however, that
9 the court placed any significant reliance on Respondent's statements. The presumptive sanction
10 for the violations of RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d) as charged in Count 3 is
11 suspension under ABA Standard 6.12.

12 **Count 4**

13 10. ABA Standard 7.0 applies to violations of the duty to return a client file promptly after
14 the representation terminates. Respondent knowingly failed to return Cutler's client file after
15 withdrawal from Cutler's case. Respondent's failure to do so inhibited Cutler's ability to
16 participate in the ongoing litigation and prevented Cutler's new lawyer from properly preparing
17 the case. The presumptive sanction for the violation of RPC 1.16(d) as charged in Count 4 is
18 suspension under ABA Standard 7.2.

19 **Count 5**

20 11. ABA Standard 7.0 applies to violations of the duty to cooperate in disciplinary
21 investigations. In re Disciplinary Proceeding Against Scannell, 169 Wn.2d 723, 744, 239 P.3d
22 322 (2010). Respondent knowingly failed to cooperate with ODC. Respondent's failure to
23 cooperate extended the investigation timeline and caused injury to ODC. There was injury to the
24

1 profession. The presumptive sanction for the violation of RPC 8.4(l) (by violating ELC 1.5,
2 5.3(f), 5.3(g), and 5.5(d)) as charged in Count 5 is suspension under ABA Standard 7.2.

3 12. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d
4 1330 (1993), the “ultimate sanction imposed should at least be consistent with the sanction for
5 the most serious instance of misconduct among a number of violations.”

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

8 14. The following aggravating factors set forth in Section 9.22 of the ABA Standards
9 apply to each of the Counts in this case:

- 10 (d) multiple offenses; and
11 (i) substantial experience in the practice of law (licensed in Washington since
12 1996).

13 15. The Respondent acted with a dishonest or selfish motive with regard to Counts 2 and
14 3. These violations were motivated by a desire to cover up his earlier lack of diligence. With
15 regard to Counts 1, 4, and 5, there was no dishonest or selfish motive. Those violations
16 represented lack of diligence, rather than any intent to deceive or desire for personal gain.

17 16. The respondent’s failure to file an Answer to the Formal Complaint is not an additional
18 aggravating factor. That failure prevented Respondent from contesting any of the facts alleged by
19 ODC or providing any evidence of mitigating factors. These consequences amply address the
20 Respondent’s failure. Further aggravation is unwarranted.

21 17. The following mitigating factor set forth in Section 9.32 of the ABA Standards applies
22 to all Counts in this case:

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

24 18. The evidence in Exhibit 1 shows that Respondent’s mother died on November 8, 2022.

1 The emotional upset resulting from this event establishes the mitigating factor of personal or
2 emotional problems. This mitigating factor applies to all violations occurring after that date. It
3 thus applies in full to Counts 2, 3, 4, and 5. It applies to Count 1 insofar as the lack of diligence
4 occurred after that date. Accordingly, the mitigating factor applies to the actions that led directly
5 to entry of the default judgment.

6 19. Exhibit 1 sets out statements by Respondent that he suffered from depression. There
7 is insufficient evidence of this to support a finding of a mitigating factor. Such depression would,
8 however, explain why Respondent's action in the dissolution matter departed from his prior
9 standards of practice. The respondent's claims will therefore be considered in conjunction with
10 the mitigating factor of absence of a prior disciplinary record.

11 20. The aggravating and mitigating factors do not provide cause to deviate from the
12 presumptive sanction of suspension. They do, however, inform the recommendation as to the
13 length of suspension.

14 **RECOMMENDATION**

15 21. The Hearing Officer recommends that Respondent Timothy South be suspended from
16 the practice of law for one year. The violations in this case were serious and protracted, which
17 calls for a substantial sanction. On the other hand, the violations involved a single case during a
18 legal career of over 25 years. The most serious violations occurred shortly after the death of
19 Respondent's mother. A one-year suspension reflects the seriousness of the misconduct, while
20 also taking into account the mitigating circumstances. When accompanied by probation as
21 recommended below, such a suspension is adequate to protect the public

22 22. Following the suspension, Respondent should be on probation for two years from the
23 date of reinstatement. Recommended conditions of probation are set forth in paragraphs 30, 31,
24 and 32.

1 23. The Hearing Officer considered whether restitution should be required. As discussed
2 above in paragraph 6, it is difficult to determine the degree of financial injury resulting from
3 Respondent's misconduct. Additionally, Disciplinary Counsel stated at the hearing that
4 Respondent has made restitution payments to his client, but the amounts cannot be determined.
5 For these reasons, the Hearing Officer is not recommending restitution.

6 Fitness to Practice Evaluation

7 24. The Hearing Officer recommends that as a condition of reinstatement, Respondent
8 should be required to undergo an independent examination by a licensed psychiatrist approved by
9 ODC to evaluate Respondent's fitness to practice law.

10 25. Respondent should be required to pay all expenses associated with the examination.

11 26. Respondent should be required to execute all necessary releases and authorizations to
12 permit the evaluator and disciplinary counsel to obtain full access to all pertinent health care and
13 treatment records for the applicable time period, and to permit the evaluator to release information
14 regarding the evaluation to disciplinary counsel, including a written report of the evaluator's
15 findings, diagnosis, and recommended treatment plan, if any. Respondent should be required to
16 provide disciplinary counsel with a copy of the releases and authorizations.

17 27. If the evaluator concludes there is reasonable cause to believe that Respondent does
18 not have the mental or physical capacity to practice law, then disciplinary counsel may report to
19 a review committee as provided in ELC 8.2.

20 28. If the evaluator recommends treatment, then Respondent should be required to
21 undergo treatment with a treatment provider. He should therefore be subject to all conditions of
22 probation set out in paragraphs 30, 31, and 32.

29. If the evaluator does not recommend treatment, then Respondent should not be subject to the treatment conditions set out in paragraph 31. He should still be subject to the conditions set out in paragraphs 30 and 32.

Probation

30. Respondent's compliance with these conditions should 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).

31. The conditions of probation in this paragraph should apply if the evaluator recommends treatment:

- a) Respondent shall undergo treatment with the evaluator or with another treatment provider approved by the Probation Administrator.
- b) Respondent shall comply with all requirements and recommendations of the treatment provider, including but not limited to the completion of any period of in- or out-patient treatment and aftercare and the taking of all prescribed medications.
- c) Respondent shall execute an authorization allowing and directing the treatment provider to take the following actions:
 - i) on a quarterly basis, send written reports to the Probation Administrator that include the dates of treatment, whether Respondent has been cooperative with treatment, and whether continued treatment is recommended;
 - ii) report immediately to the Probation Administrator if Respondent fails to appear for treatment or stops treatment without the provider's agreement prior to either termination of the treatment plan or expiration of the probation period set forth in this order;
 - iii) report immediately to the Probation Administrator if Respondent fails to comply with any treatment recommendations of the treatment provider;
 - iv) report immediately to the Probation Administrator if Respondent otherwise violates any of the terms or conditions of treatment;

- v) report immediately to the Probation Administrator if the provider will no longer serve as treatment provider to Respondent prior to termination of the treatment plan or expiration of the probation period set forth in this order; and
- vi) report to the Probation Administrator if Respondent successfully completes treatment and is discharged from further treatment.
- d) Respondent shall provide a copy of the authorization to the Probation Administrator upon execution.
- e) Respondent is responsible for paying any and all fees, costs, and/or expenses of mental health evaluation and treatment.

Practice Monitor

32. The conditions of probation in this paragraph should apply regardless of whether the evaluator recommends treatment:

- a) During the period of probation, Respondent's practice will be supervised by a practice monitor. The practice monitor must be a WSBA member 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.
- d) In the event the practice monitor is no longer able to perform his or her duties, the Probation Administrator will select a new practice monitor at his or her 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) 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.

- 1 g) At each meeting, the practice monitor will discuss with Respondent practice issues
2 that have arisen or are anticipated. At the practice monitor's discretion, meetings may
3 be in person, by telephone, or by other electronic means.
- 4 h) The practice monitor will provide the Probation Administrator with quarterly written
5 reports regarding Respondent's compliance with probation terms and the RPC. Each
6 report must include the date of each meeting with Respondent, a brief synopsis of the
7 discussion topics, and a brief description of any concerns the practice monitor has
8 regarding the Respondent's compliance with the RPC. The report must be signed by
9 the practice monitor. Each report is due within 30 days of the completion of the
10 quarter.
- 11 i) If the practice monitor believes that Respondent is not complying with any of his
12 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
13 meeting, the practice monitor will promptly communicate that to the Probation
14 Administrator.
- 15 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
16 Association to defray the costs and expenses of administering the probation, as
17 follows:
- 18 i. \$250 due within 30 days of the start of the probation period;
- 19 ii. \$250 due within 6 months of the start of the probation period;
- 20 iii. \$250 due within 12 months of the start of the probation period; and
- 21 iv. \$250 due within 18 months of the start of the probation period.
- 22 k) All payments should be provided to the Probation Administrator for processing.

23 DATED this 3rd day of September, 2024.

24 

Seth A. Fine
Hearing Officer

FILED

May 15, 2024

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TIMOTHY R. SOUTH,

Lawyer (Bar No. 26267).

Proceeding No. 24#00017

FORMAL COMPLAINT

Under Rule 10.3 of the Washington Supreme Court's 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 Washington Supreme Court's Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent Timothy R. South was admitted to the practice of law in the State of Washington on November 15, 1996.

FACTS

2. On May 20, 2020, Patti Cutler filed a petition for dissolution from Alan Cutler [hereinafter "Cutler"]. Cutler v. Cutler, Cowlitz County Superior Court no. 20-3-00217-08.

3. In or around June 2020, Cutler hired Respondent for representation in the dissolution case.

1 4. Patti Cutler was represented by lawyer Deanna Rusch ["Rusch"].

2 5. In or around January 2021, Respondent provided initial discovery answers from

3 Cutler to opposing counsel.

4 6. The case was set for trial the week of September 12, 2022.

5 7. On August 18, 2022, Rusch sent a letter via email and U.S. First-class mail

6 requesting that Respondent provide Rusch with updated discovery documents from Cutler.

7 8. Respondent did not respond to Rusch's August 18, 2022 correspondence.

8 9. Rusch sent a follow-up email to Respondent on August 29, 2022.

9 10. Rusch's August 29, 2022 email requested that Respondent provide Cutler's

10 responsive discovery documents by the following Monday, or else Rusch would file a motion in

11 limine to exclude testimony or evidence from Cutler at trial.

12 11. Respondent did not respond to Rusch's August 29, 2022 email.

13 12. Respondent did not update Cutler's discovery answers as Rusch requested.

14 13. The trial readiness hearing was scheduled for September 6, 2022.

15 14. At the hearing on September 6, 2023, Respondent appeared and requested that the

16 trial date be rescheduled to a later date.

17 15. Respondent's request to continue the trial date was granted.

18 16. On September 22, 2022, the court issued a scheduling notice setting a trial readiness

19 hearing on January 31, 2023, and a one-day bench trial the week of February 6, 2023.

20 17. On or about September 22, 2022, Respondent received the scheduling notice.

21 18. Respondent did not inform Cutler of the new trial date.

22 19. On September 26, 2022, Rusch emailed Respondent requesting to set a Civil Rule

23 (CR) 26(i) conference regarding Respondent's failure to provide updated discovery documents.

1 20. Respondent did not respond to Rusch's September 26, 2022 email.

2 21. On December 15, 2022, Rusch emailed Respondent again to coordinate a CR 26(i)
3 conference regarding the outstanding supplemental discovery answers.

4 22. Respondent did not respond to Rusch's December 15, 2022 email.

5 23. On January 5, 2023, Rusch filed a motion for default against Cutler.

6 24. On January 5, 2023, Rusch filed a motion in limine requesting that Cutler be
7 prohibited from presenting any testimony or evidence at trial due to the failure to supplement
8 Cutler's discovery documents, and failure to respond to Rusch's repeated communications
9 dating back to August 2022.

10 25. The motions in limine and for default were served on Respondent by email and U.S.
11 regular mail.

12 26. Respondent received the motion in limine and motion for default.

13 27. Respondent did not respond to either motion.

14 28. On or about January 23, 2023, Respondent informed Cutler of the motion for default
15 filed by Rusch.

16 29. Respondent did not tell Cutler that a hearing was set for Rusch's motion for default.

17 30. Respondent did not tell Cutler about the motion in limine that Rusch had filed.

18 31. On January 24, 2023, the court held a hearing on the motions in limine and for
19 default.

20 32. Neither Respondent nor Cutler appeared for the January 24, 2023 hearing.

21 33. The court granted the motion for default. As a result, Cutler had no right to
22 participate in any further proceedings.

23 34. The court granted the motion in limine, prohibiting Cutler from presenting any

1 testimony or evidence at trial.

2 35. The court awarded Rusch \$750 in attorney's fees judgments for each motion,
3 totaling \$1,500 to be paid by Cutler.

4 36. Respondent did not inform Cutler about the order on the motion in limine, or the
5 attorney's fee judgments entered against Cutler following the hearing on January 24, 2023.

6 37. On January 25, 2023, Rusch sent Respondent copies by mail of the proposed orders
7 from the hearing that would be presented to the court ex parte.

8 38. Respondent did not provide these orders to Cutler or otherwise inform Cutler that a
9 default had been entered against Cutler.

10 39. On January 31, 2023, at the trial readiness hearing, Rusch and Respondent both
11 appeared and addressed the court.

12 40. At this hearing, Respondent twice told the court that Respondent was unaware of the
13 default.

14 41. Respondent told the court that Respondent would file motion to vacate in the days
15 following the trial readiness hearing.

16 42. Respondent's statements claiming to be unaware of the default were knowingly
17 false.

18 43. The court scheduled the trial for Friday, February 10, 2023, at 9:00 a.m. via Zoom to
19 receive the prima facie testimony of Patti Cutler.

20 44. The court noted that if Respondent filed and served a motion to vacate the default
21 before then, it would be up to the judge on the day of trial to determine what to do.

22 45. Anticipating trial would proceed as planned, the court required the trial
23 memorandum to be filed for each party by the close of business on Monday, February 6, 2023.

1 46. Respondent did not communicate any information from the January 31, 2023 trial
2 readiness hearing to Cutler.

3 47. On February 1, 2023, Respondent and Cutler met in person at Respondent's office.

4 48. At this meeting, Respondent informed Cutler about the default.

5 49. Respondent presented Cutler with a response to the petition for dissolution to sign.

6 50. Respondent told Cutler that filing the response would cure the default.

7 51. On February 3, 2023, Respondent filed Cutler's signed response.

8 52. Respondent did not file a motion to vacate the default order and/or the order on
9 motion in limine any time before the scheduled trial date.

10 53. Respondent did not file an updated trial memorandum.

11 54. On February 9, 2023, Cutler and Respondent spoke by phone about Cutler's case.

12 55. During this call, Respondent told Cutler that Cutler's attendance was not required at
13 the court hearing on February 10, 2023.

14 56. Respondent told Cutler that the purpose of the upcoming hearing was to address the
15 default and set a new court date.

16 57. Respondent's statement to Cutler that the hearing was to address the default and to
17 set a new court date was knowingly false.

18 58. On the morning of February 10, 2023, Respondent, Rusch, and Patti Cutler all
19 appeared via Zoom to address the Court.

20 59. Cutler did not appear for the scheduled trial date.

21 60. The court noted that, although Respondent filed a response to the petition for
22 dissolution, Respondent did not file a motion to vacate either the default or the order on motion
23 in limine.

1 61. The court ordered that the trial would proceed as scheduled.

2 62. The court took testimony of Patti Cutler, heard argument, and gave an oral ruling
3 substantially in favor of Cutler's ex-spouse.

4 63. On February 10, 2023, Cutler called and emailed Respondent multiple times for
5 information about the case.

6 64. Respondent did not answer any of Cutler's calls.

7 65. Respondent did not respond to Cutler's emails.

8 66. On February 14, 2023, Cutler reached Respondent by phone.

9 67. Respondent told Cutler that Cutler would receive "a call right back."

10 68. Respondent did not return Cutler's call on February 14, 2023.

11 69. During a February 16, 2023 call, Respondent told Cutler that Respondent had "made
12 a big mistake."

13 70. During the February 16, 2023 call, Respondent told Cutler that the hearing on
14 February 10, 2023, was actually the trial date.

15 71. During the February 16, 2023 call, Respondent admitted to Cutler that Respondent
16 was not prepared.

17 72. During the February 16, 2023 call, Respondent informed Cutler that after the trial
18 took place, the judge ruled in favor of Cutler's ex-spouse on all issues.

19 73. Respondent signed a substitution of counsel effective March 9, 2023, thereby
20 withdrawing from Cutler's case. Attorney Brian Hunter substituted as counsel for Cutler.

21 74. Respondent failed to respond to phone calls and written correspondence from
22 Cutler's new lawyer to coordinate a transfer of Cutler's client file.

23 75. Respondent failed to provide Cutler's client file to Cutler or Cutler's new lawyer.

1 76. On April 11, 2023, the court issued final orders in the dissolution matter.

2 77. As part of the final orders, the court entered money judgments against Cutler totaling
3 \$372,500, to be paid to Cutler's ex-spouse.

4 78. Cutler's new lawyer filed a motion to vacate the final orders.

5 79. The motion to vacate was denied.

6 **Non-cooperation with grievance investigation**

7 80. On February 26, 2023, Cutler filed a grievance with the Office of Disciplinary
8 Counsel ["ODC"].

9 81. On March 8, 2023, ODC requested Respondent's response to the grievance.

10 82. Respondent did not respond to ODC's request for a response to the grievance.

11 83. On April 13, 2023, ODC sent a letter directing Respondent to provide a response to
12 the grievance within 10 days.

13 84. Respondent did not respond to ODC's April 13, 2023 letter.

14 85. On May 17, 2023, ODC served Respondent by email and certified mail a subpoena
15 for a deposition set for June 1, 2023.

16 86. This subpoena requested all documents in Respondent's possession relating to the
17 representation of Cutler.

18 87. Respondent did not provide any documents at or before the scheduled deposition.

19 88. Respondent failed to appear for the deposition on June 1, 2023.

20 **COUNT 1**

21 89. By failing to participate in a discovery conference, failing to update discovery,
22 failing to respond to a motion for default and motion in limine, failing to appear for the hearing
23 on these motions, failing to move to vacate the default orders, and/or failing to timely file a

1 response to the petition for dissolution, Respondent violated RPC 1.3 and/or 3.2.

2 **COUNT 2**

3 90. By failing to communicate or respond to Cutler's requests for information, by failing
4 to inform Cutler about the upcoming trial, and/or by failing to discuss with Cutler the
5 implications of Respondent's failures to respond to the petition for dissolution, discovery,
6 motion for default, and/or motion in limine, Respondent violated RPC 1.4(a) and/or 1.4(b).

7 **COUNT 3**

8 91. By knowingly making one or more false statements to the court, Respondent violated
9 RPC 3.3(a)(1), 8.4(c), and/or 8.4(d).

10 **COUNT 4**

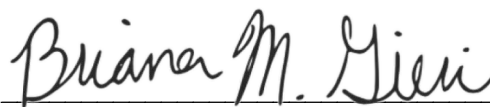
11 92. By failing to promptly return Cutler's client file after the representation terminated,
12 Respondent violated RPC 1.16(d).

13 **COUNT 5**

14 93. By failing to timely provide a preliminary written response to the grievance, and/or
15 by failing to appear at a deposition, and/or by failing to comply with a subpoena requiring the
16 production of records, Respondent violated RPC 8.4(l) (by violating ELC 1.5, 5.3(f), 5.3(g),
17 and/or 5.5(d)).

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

21 Dated this 15th day of May, 2024.

22 
23 Briana Gieri, Bar No. 53970
Disciplinary Counsel

I certify that I caused a copy of the Findings Of Fact, Conclusions Of Law, And Hearing Officer's Recommendation to be emailed to the Office of Disciplinary Counsel and to Respondent Timothy R. South, at teesouth@msn.com, on the 3rd day of September, 2024.



Acting Clerk to the Disciplinary Board