

FILED

Aug 27, 2024

Disciplinary
Board

Docket # 048

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

ROBERT E. KOVACEVICH,

Lawyer (Bar No. 2723)

Proceeding No. 23#00013

ODC File No. 20-00193

Resignation Form of Robert Eugene
Kovacevich (ELC 9.3(b))

I, Robert Eugene Kovacevich, declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.

2. I was admitted to practice law in the State of Washington on September 11, 1959. I retired from the practice of law in May 2024.

3. I was served with a Formal Complaint and Notice to Answer in this matter on May 8, 2023.

4. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Washington Supreme Court's Rules for

Resignation Form of Robert Eugene Kovacevich
(ELC 9.3(b))
Page 1OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8297

1 Enforcement of Lawyer Conduct (ELC). I had the opportunity to consult with counsel about this
2 decision.

3 5. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged
4 misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in
5 Disciplinary Counsel's statement, and I dispute them, but rather than defend against the
6 allegations, I wish to permanently resign from membership in the Association.

7 6. I consent to entry of an order under ELC 13.9(c) assessing expenses of \$1,500 in
8 this matter.

9 7. I agree to pay any additional costs or restitution that may be ordered by a Review
10 Committee under ELC 9.3(g).

11 8. I understand that my resignation is permanent and that any future application by me
12 for reinstatement as a member of the Association is currently barred. If the Washington Supreme
13 Court changes this rule or an application is otherwise permitted in the future, it will be treated as
14 an application by one who has been disbarred for ethical misconduct. If I file an application, I
15 will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or
16 instances of alleged misconduct on which this resignation was based.

17 9. I agree to (a) notify all other states and jurisdictions in which I am admitted,
18 including tribal courts, of this resignation in lieu of discipline; (b) seek to resign permanently
19 from the practice of law in such other jurisdictions; and (c) provide Disciplinary Counsel with
20 copies of this notification and any response(s). I acknowledge that this resignation could be treated
21 as a disbarment by all other jurisdictions.

22 10. I agree to (a) notify all other professional licensing agencies in any jurisdiction from
23 which I have a professional license that is predicated on my admission to practice law of this

24 Resignation Form of Robert Eugene Kidwacevich
(ELC 9.3(b))
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1 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)
2 provide disciplinary counsel with copies of any of these notifications and any responses.

3 11. I agree that when applying for any employment, I will disclose the resignation in
4 lieu of discipline in response to any question regarding disciplinary action or the status of my
5 license to practice law.

6 12. I understand that my resignation becomes effective on Disciplinary Counsel's
7 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) Disciplinary
8 Counsel must do so promptly following receipt of this document.

9 13. When my resignation becomes effective, I agree to be subject to all restrictions that
10 apply to a disbarred lawyer.

11 14. Upon filing of my resignation, I agree to comply with the same duties as a disbarred
12 lawyer under ELC 14.1 through ELC 14.4.

13 15. I understand that, after my resignation becomes effective, it is permanent. I will
14 never be eligible to apply and will not be considered for admission or reinstatement to the practice
15 of law nor will I be eligible for admission for any limited practice of law.

16 16. I certify under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18 AUGUST 27, 2024


19 Date and Place

SPOKANE

20 ENDORSED BY:

WAS #19674

21 
22 Robert E. Kovacevich, Bar No. 2723

23 
24 Francisco Rodriguez,
Senior Disciplinary Counsel, Bar No. 22881

Resignation Form of Robert Eugene Kovacevich
(ELC 9.3(b))
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**EXHIBIT
A**

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

ROBERT E. KOVACEVICH,

Lawyer (Bar No. 2723)

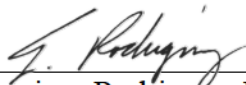
Proceeding No. 23#00013

ODC File No. 20-00193

STATEMENT OF ALLEGED
MISCONDUCT UNDER ELC 9.3(b)(1)

The attached formal complaint, filed on April 27, 2023, in Proceeding No. 23#00013, constitutes Disciplinary Counsel's statement of alleged misconduct under Rule 9.3(b)(1) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

DATED this 7th day of May, 2024.



Francisco Rodriguez, Bar No. 22881
Senior Disciplinary Counsel

FILED

Apr 27, 2023

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

ROBERT EUGENE KOVACEVICH,

Lawyer (Bar No. 2723).

Proceeding No. 23#00013

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 Robert Eugene Kovacevich was admitted to the practice of law in the State of Washington on September 11, 1959.

FACTS

2. Respondent represented Gordon Finch in connection with the Madeline Thiede 2009 Revocable Trust.

3. Thiede was Finch's mother.

1 4. The trust's assets included a shopping plaza, Thiede's home, and cash.

2 5. In April 2014, Thiede died.

3 6. Under the trust agreement, upon Thiede's death, Finch became trustee.

4 7. The trust agreement further provided that upon Thiede's death, the assets of the

5 trust were to be divided between Finch (26%), Finch's brother (26%), Kenneth Verhaag (24%),

6 and Gerald Verhaag (24%).

7 8. After Thiede's death, a disagreement arose among the trust's beneficiaries

8 regarding Finch's management of the trust and Finch's failure to fully distribute its assets.

9 9. In September 2016, Gerald Verhaag filed a petition in Spokane Superior Court

10 under case number 16-4-01301-7 seeking the removal of Finch as trustee.

11 10. Respondent represented Finch in this litigation.

12 11. On January 8, 2018, the court issued an oral ruling granting the petition to

13 remove Finch as trustee.

14 12. The court's ruling replaced Finch with a professional trustee, James Spurgetis.

15 13. Respondent was present when the court issued its January 8, 2018 oral ruling.

16 14. Finch was present when the court issued its January 8, 2018 oral ruling.

17 15. On January 10, 2018, the court issued a written order memorializing its oral

18 ruling removing Finch as trustee.

19 **Contempt #1**

20 16. After the January 8, 2018 hearing, Respondent advised Finch that despite the

21 court's ruling, Finch remained trustee until the court entered a written order.

22 17. During the time intervening between the court's oral ruling and the issuance of

23 its written order:

1 a. Respondent advised Finch to use trust funds to pay Respondent's fees.

2 b. Respondent advised Finch to pay for Finch's own services managing the

3 shopping center.

4 c. Respondent advised Finch that income earned before Thiede's death and held in

5 the trust's bank accounts was not the property of the trust, but was instead part of

6 Thiede's estate, and became the property of Finch and Finch's brother upon

7 Thiede's death.

8 18. On January 9, 2018, Respondent sent Finch an invoice for professional services

9 rendered in December 2017 and January 2018.

10 19. The January 9 invoice included work performed after the court's January 8, 2018

11 oral ruling.

12 20. Respondent continued to represent Finch after the court entered its written order

13 removing Finch as trustee on January 10, 2018.

14 21. On March 10, 2018, Respondent sent Finch an invoice for professional services

15 rendered in February 2018.

16 22. Respondent's March 2018 invoice was addressed to "Gordon Finch,

17 Beneficiary."

18 23. After Finch was removed as trustee, Respondent was representing Finch only as

19 a beneficiary of the Thiede trust, not as its trustee.

20 24. After being removed as trustee, Finch wrote five trust checks that subsequently

21 became the subject of litigation.

22 25. On January 8, 2018, Finch issued a trust check in the amount of \$6,243.75,

23 payable to Finch's wife, for work associated with the shopping center (hereafter referred to as

1 “Check #1”).

2 26. On January 9, 2018, Finch issued a trust check in the amount of \$17,919.38,
3 payable to Respondent, for legal fees from December 2017 and January 2018 (hereafter referred
4 to as “Check #2”).

5 27. On January 9, 2018, Finch issued a trust check in the amount of \$17,833.46,
6 payable to Finch, for commissions relating to the management of trust property (hereafter
7 referred to as “Check #3”).

8 28. On January 30, 2018, Finch transferred funds in the amount of \$85,698.00 to
9 Banner Bank, representing the claim by Finch and Finch’s brother to direct inheritance of these
10 funds (hereafter referred to as “Check #4”).

11 29. On March 12, 2018, Finch issued a trust check in the amount of \$11,211.08,
12 payable to Respondent, for legal fees incurred in February 2018 after Finch had been removed
13 as trustee (hereafter referred to as “Check #5”).

14 30. On May 10, 2018, Kenneth Verhaag’s lawyer wrote to Respondent demanding
15 the return of the \$11,211.80 paid to Respondent on March 12, 2018 (Check #5), as well as the
16 \$17,833.46 paid to Finch for commissions on January 9, 2018 (Check #3).

17 31. Respondent did not return the funds that had been paid to Respondent as
18 requested.

19 32. On June 25, 2018, trustee Spurgetis wrote to Respondent requesting the return of
20 the \$11,211.80 (Check #5).

21 33. Spurgetis’s letter noted that the payment to Respondent was not authorized.

22 34. Respondent did not return the funds as requested.

23 35. Shortly thereafter, Spurgetis discovered the January 30, 2018 transfer of

1 \$85,698.46 Finch had made (Check #4).

2 36. Spurgetis notified counsel for the Verhaags regarding this transfer of funds.

3 37. On December 7, 2018, Gerald Verhaag filed a motion for contempt, return of
4 trust funds, and sanctions against both Respondent and Finch.

5 38. Gerald Verhaag's motion was based on Finch's issuance of three checks after
6 being removed as trustee, Check #3 (Finch's commissions), Check #4 (inheritance), and Check
7 #5 (Respondent fees).

8 39. On December 18, 2018, Respondent withdrew as Finch's lawyer.

9 40. On December 21, 2018, Finch's new lawyer, Scott Smith, sent trustee Spurgetis
10 a letter regarding the disputed payments.

11 41. Smith explained that Finch was returning the funds previously paid to Finch for
12 commissions (Check #3) and enclosed a check for \$17,833.46.

13 42. Smith's letter further informed Spurgetis that Smith had asked Respondent to
14 return the trust funds paid to Respondent for legal fees on March 12, 2018 (Check #5).

15 43. Smith's letter also disclosed that based on Respondent's advice, Finch had issued
16 a check to Finch's wife on January 8, 2018 (Check #1).

17 44. Finch returned these funds to the trust as well in a separate check that
18 accompanied Smith's letter.

19 45. On January 15, 2019, lawyer Aaron Lowe filed a notice of appearance in
20 Spokane County Superior Court No. 16-4-01301-7 on behalf of Respondent.

21 46. Subsequent filings on behalf of Respondent in both the trial and appellate courts
22 were generally signed by Lowe rather than Respondent.

23 47. However, Respondent continued to draft the documents filed with the courts on

Respondent's behalf.

48. Lowe did not charge Respondent for the representation.

49. Lowe had a very limited role in the proceedings at both the trial and appellate levels.

50. On March 27, 2019, the court issued a letter ruling finding both Respondent and Finch in contempt and directing Respondent to return \$11,211.80 to Spurgetis by April 5, 2019.

51. On May 3, 2019, the court entered a formal order of contempt.

52. In its contempt order, the court found that both its January 8, 2018 oral ruling, and January 10, 2018 written order removing Finch as trustee were clear and unambiguous.

53. The court found that Finch willfully violated these orders when Finch wrote Check #1 (Finch's wife), Check #3 (Finch's commissions), Check #4 (inheritance), and Check #5 (Respondent fees).

54. The court found that Respondent willfully violated these orders when Respondent accepted Check #5.

55. The court further found that Respondent willfully violated these orders when Respondent refused to return the funds when asked to do so.

56. The court ordered that Respondent and Finch be jointly responsible for attorney fees and costs incurred by the Verhaags through December 21, 2021, when Finch purged the contempt by returning the trust funds at issue, with Respondent alone responsible for fees and costs incurred after that date.

57. Respondent repaid the \$11,211.80 (Check #5).

Contempt #2

58. On April 10, 2019, Finch filed an affidavit with the court disclosing the January 9, 2018 check to Respondent in the amount of \$17,919.38 (Check #2).

59. On April 11, 2019, Kenneth Verhaag's lawyer wrote to Lowe requesting that Respondent return the \$17,919.38 received from Finch on January 9, 2018, after Finch was removed as trustee.

60. Respondent did not return the funds as requested.

61. On May 2, 2019, the Verhaags moved for a second contempt finding against Respondent and Finch for violation of the court's order removing Finch as trustee.

62. The Verhaags's May 2, 2019 motion was based on the January 9, 2018 check Finch had issued to Respondent (Check #2) which had not been considered in the first contempt order.

63. Neither Respondent nor Lowe responded to the May 2, 2019 contempt motion or appeared at the hearing on the motion.

64. On June 13, 2019, the court found both Respondent and Finch in contempt.

65. The court found that the issuance and acceptance of Check #2 were both willful and intentional acts contrary to the court's January 8, 2018 ruling removing Finch as trustee.

66. The court found that Finch had purged the contempt, and was required to take no further action.

67. The court directed Respondent to return the sum of \$17,919.38 to trustee Spurgetis within ten days of the entry of the court's order.

68. Respondent was also ordered to pay fees and costs incurred by the Verhaags in bringing the motion for contempt.

1 **TEDRA Agreement**

2 69. On June 12, 2019, the parties filed a joint motion to approve an agreement under
3 the Trust and Estate Dispute Resolution Act (TEDRA).

4 70. On June 13, 2019, the court approved the TEDRA agreement.

5 71. The TEDRA agreement provided that Finch would pay all the attorney fees
6 Respondent owed the Verhaags and the Verhaags would assign their claims against Respondent
7 to Finch.

8 **Violation of June 2019 Contempt Order**

9 72. Respondent did not comply with the court's June 13, 2019 order directing
10 Respondent to return the \$17,919.38 fee payment received in January 2018 within 10 days.

11 73. On July 2, 2019, Finch moved for a judgment against Respondent for the amount
12 due under the June 2019 contempt order.

13 74. On August 19, 2019, the court entered an order finding that Respondent violated
14 its June 2019 contempt order by failing to repay the trustee by June 24, 2019, as required.

15 75. The court entered a judgment against Respondent in the amount of \$23,669.38.

16 76. The judgment amount included \$5,750.00 in civil penalties that had accrued.

17 77. On January 13, 2020, Respondent posted a supersedeas bond in the amount of
18 \$23,669.38, the amount due under the court's August 2019 judgment.

19 78. On March 23, 2022, the court ordered the supersedeas bond be disbursed to
20 Finch.

Appeals

79. On January 13, 2020, Respondent filed a notice of appeal “to appeal all orders entered by the Court since the first Notice of Appeal.” The Notice listed eight different orders:

6/12/2019 Order Approving TEDRA;
6/13/2019 Order re: Motion for Reconsideration;
6/14/2019 Order on Third Contempt;
8/19/2019 Ex Parte Action with Order; signed Findings of Fact,
Conclusions of Law: Judgment; Judgment Summary;
9/11/2019 Order re Attorney Fees;
11/8/2019 Order on Reconsideration;
12/19/2019 Order denying Motion to Vacate;
12/19/2019 Order Denying Motion to Vacate.

80. Lowe signed the notice of appeal, but Respondent drafted it.

81. The Court of Appeals assigned case number 37322-3-III to this appeal.

82. Because the appeal appeared to relate, at least in part, to orders that had been entered several months earlier, the court set the matter for a determination of appealability.

83. On March 17, 2020, a Court of Appeals commissioner ruled that Respondent had not timely appealed most of the orders identified in Respondent’s January 2020 notice of appeal.

84. Respondent was allowed to proceed with appeal of the December 2019 orders as the notice of appeal had been filed within 30 days of the entry of those orders.

85. Respondent was also allowed to proceed with appeal of the June 13, 2019 order denying reconsideration of the January 2018 contempt because a separate notice of appeal of that order had been filed in July 2019, and assigned Court of Appeals case number 36940-4-III.

86. The commissioner ruled that the remaining five orders were not timely appealed.

87. Respondent filed a motion to modify the commissioner’s ruling but did not initially challenge the Commissioner’s finding that the appeal was not timely as to five of the

1 orders.

2 88. Instead, Respondent asked the court to accept discretionary review of these
3 orders.

4 89. However, Respondent had not filed a motion for discretionary review.

5 90. In reply, Respondent argued that the appeal was timely as to the orders in
6 question because all the orders were connected.

7 91. Respondent's motion to modify the commissioner's ruling was denied, as was
8 Respondent's petition for discretionary review by the Washington Supreme Court.

9 92. The Court of Appeals consolidated Respondent's January 2020 appeal with two
10 other appeals that Respondent had filed in July 2019 and February 2020 and handled all three
11 under case number 36940-4-III.

12 93. Although Lowe appeared as counsel for Respondent on these appeals,
13 Respondent designated the clerk's papers and drafted all of the briefing.

14 94. Respondent's assistant filed the appellate briefs under Lowe's name.

15 95. Respondent's opening brief made 13 assignments of error, many of which related
16 only to final orders that were not timely appealed.

17 96. Respondent's briefing failed to adequately identify issues pertaining to the
18 assignments of error.

19 97. Respondent did not provide the Court of Appeals with an adequate record on
20 appeal.

21 98. On May 25, 2021, the Court of Appeals issued an unpublished decision
22 regarding the consolidated appeals.

23 99. In the Court of Appeals' decision, the court noted that Respondent had ignored

1 its rulings on appealability and continued to pursue issues that had not been timely appealed.

2 100. The court found that Respondent had not adequately identified issues pertaining
3 to the assignments of error identified in Respondent's opening brief.

4 101. With respect to the December 2019 orders, the court found the record on appeal
5 to be "wholly inadequate" for review of any error assigned to denial of the motion to vacate.

6 102. With respect to the May 2019 contempt order, Respondent supplied a record on
7 appeal that was incomplete.

8 103. With respect to the May 2019 contempt order, Respondent supplied a record on
9 appeal that was skewed in Respondent's favor.

10 104. Respondent's preparation of the record on appeal violated practice norms.

11 105. Respondent's briefing on appeal violated practice norms.

12 106. Despite the deficiencies in the record, the court elected to review the merits of
13 Respondent's appeal and found that Respondent's actions in accepting payment from Finch
14 after Finch had been removed as trustee were "fairly characterized as contempt of a court
15 order."

16 107. Respondent's petition for review of the Court of Appeals decision by the
17 Washington Supreme Court was denied.

18 108. Respondent's subsequent petition to the United States Supreme Court for a writ
19 of certiorari was denied.

20 **Sanctions for Frivolous Notice of Mediation**

21 109. On January 21, 2022, Respondent filed a Notice of TEDRA Mediation in the trial
22 court. The Notice was signed by Lowe but drafted by Respondent.

23 110. Finch, Gerald Verhaag, and trustee Spurgetis all moved to quash the notice of

1 mediation and sought sanctions against Respondent.

2 111. Respondent, rather than Lowe, signed briefing submitted in response to the
3 motion to quash.

4 112. Respondent attended the hearing on the motion to quash and argued against the
5 motion.

6 113. Lowe did not attend the hearing.

7 114. On March 23, 2022, the court issued an order granting the motions to quash the
8 notice of mediation.

9 115. The court further ordered Respondent and Lowe together to pay the attorney fees
10 of Finch, Spurgetis, and Gerald Verhaag as sanctions for filing the frivolous notice of
11 mediation.

12 **Sanctions for Frivolous Motion to Reconsider**

13 116. On April 1, 2022, Respondent filed a motion to reconsider the court's sanctions
14 relating to the notice of mediation.

15 117. Both Respondent and Lowe signed the motion to reconsider.

16 118. Respondent alone drafted and filed the motion to reconsider.

17 119. On May 20, 2022, the court denied the motion to reconsider.

18 120. On May 31, 2022, the court issued a letter ruling finding Respondent's Motion
19 for Reconsideration to be "baseless and frivolous" and awarding attorney fees to the parties who
20 had responded to the motion.

21 121. On June 10, 2022, Respondent filed a notice of appeal seeking review of seven
22 orders, including the court's May 20, 2022 order denying the motion to reconsider, and the
23 court's May 31, 2022 letter ruling imposing sanctions.

122. This appeal remains pending before the Court of Appeals.

COUNT 1

123. By soliciting and/or accepting Check #2 from Finch as payment for legal fees after the issuance of a court order removing Finch as trustee, and/or by failing to return such funds when asked to do so by the successor trustee, Respondent violated RPC 3.4(c), RPC 8.4(a), RPC 8.4(d), and/or RPC 8.4(j).

COUNT 2

124. By soliciting and/or accepting Check #5 from Finch as payment for legal fees after the issuance of a court order removing Finch as trustee, Respondent violated RPC 3.4(c), RPC 8.4(a), RPC 8.4(d), and/or RPC 8.4(j).

COUNT 3

125. By failing to re-pay the legal fees received in January 2018, as required by the court's June 2019 contempt order, Respondent violated RPC 3.4(c), RPC 8.4(d), and/or RPC 8.4(j).

COUNT 4

126. Acting directly and/or through Lowe, by filing motions and/or a notice of mediation that had no basis in law and/or fact, Respondent violated RPC 3.1, RPC 4.4(a), RPC 8.4(a), and/or RPC 8.4(d).

COUNT 5

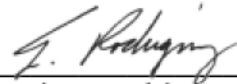
127. Acting directly and/or through Lowe, by filing a notice of appeal that was untimely as to one or more of the orders being appealed, Respondent violated RPC 3.1, RPC 4.4(a), RPC 8.4(a), and/or RPC 8.4(d).

COUNT 6

128. Acting directly and/or through Lowe, by engaging in appellate litigation practices that violated practice norms, Respondent violated RPC 8.4(a) and/or RPC 8.4(d).

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

Dated this 27th day of April, 2023.



Francisco Rodriguez, Bar No. 22881
Disciplinary Counsel