

Aug 12, 2022

Disciplinary
Board

Docket # 059

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

COLLEEN A. HARTL,
Lawyer (Bar No. 18051).

Proceeding No. 21#00031

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

The undersigned Hearing Officer held the hearing in this matter on June 21 and 29, 2022, under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Colleen A. Hartl appeared at the hearing. Disciplinary Counsel Henry Cruz appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Colleen A. Hartl with the following counts of misconduct:

Count I – Making false statements to Judge Timothy L. Ashcraft, in violation of RPC 3.3(a)(1) and/or RPC 8.4(c).

Count II – Making false statements to Sandi Rutten, in violation of RPC 3.3(a)(1) and/or
RPC 8.4(c).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
Officer makes the following:

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in the State of Washington on October
31, 1988.

2. Respondent represented the defendant in State v. Austin, Pierce County Superior
Court Case No. 19-1-00860-3.

3. The trial in that matter was set to begin on October 20, 2020. Trial was scheduled to
continue on October 22, 2020, at 9:00 a.m. before Judge Timothy L. Ashcraft.

4. On October 22, 2020, Respondent did not appear at the scheduled time of trial.

5. On October 22, 2020, at approximately 9:19 a.m., Respondent emailed Judge
Ashcraft's judicial assistant, Sandi Rutten, and stated that "someone hit me on the way to court"
and that Respondent was "finishing up with them."

6. These statements were false.

7. On October 22, 2020, at approximately 10:02 a.m., Respondent sent another email to
Rutten, stating that Respondent "had to switch cars" and would arrive in court at 10:30 a.m.

8. Respondent's statement that Respondent had to switch cars was false.

9. Respondent did not appear for trial that day until shortly before 10:45 a.m.

10. Judge Ashcraft went on the record and asked Respondent to explain Respondent's
tardiness.

11. Respondent stated to Judge Ashcraft that "I had an accident on the way to court," that

1 “somebody hit the back quarter panel of my car,” and that “I was dealing with that.”

2 12. These statements were false.

3 13. In response to multiple questions by Judge Ashcraft about the alleged accident,
4 Respondent continued to maintain that there had been an auto accident and provided more and
5 more elaborate details regarding the reported accident, including:

6 a) The accident occurred on Veterans Drive in Kent, Washington;

7 b) The accident occurred at about 8:30 a.m.;

8 c) The back tire of Respondent’s vehicle was flat;

9 d) The accident involved more than two vehicles;

10 e) Respondent and the other individuals involved in the accident waited for AAA;

11 f) Respondent called Respondent’s husband to bring another car;

12 g) Respondent’s husband brought another car and Respondent switched cars with
13 Respondent’s husband while Respondent’s husband waited for the tow truck;

14 h) Respondent exchanged information with the other individuals involved in the
15 accident;

16 i) Respondent’s husband had the contact information for the other individuals
17 involved in the accident; and

18 j) Respondent’s car was towed.

19 14. Each of these statements was false.

20 15. Judge Ashcraft ordered Respondent to produce documentation corroborating the
21 accident, namely a tow receipt and the information of the other parties involved in the accident,
22 at the next trial date.

23 16. Respondent agreed to produce the requested information.
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1 17. At the next trial day on October 26, 2020, Judge Ashcraft asked Respondent: "Do you
2 have the information that I requested last week?"

3 18. The information Judge Ashcraft was referring to was the tow receipt and the
4 information of all other parties involved in the alleged accident.

5 19. Respondent told Judge Ashcraft that Respondent would bring "that" at lunchtime.

6 20. This statement was false.

7 21. Later that same day, Judge Ashcraft asked Respondent on the record if Respondent
8 had "the information."

9 22. The information Judge Ashcraft was referring to was the tow receipt and the
10 information of all other parties involved in the alleged accident.

11 23. Respondent stated to Judge Ashcraft: "I'm looking for that for you, because I did have
12 it, and I – I'm looking for it."

13 24. This statement was false.

14 25. Respondent testified at the disciplinary hearing that Respondent's statements to the
15 court on October 26, 2020, were due to a miscommunication as to what information Respondent
16 would be providing the court. Respondent testified that Respondent was referring to a written
17 apology that Respondent had drafted, but left in her car. Respondent's testimony is simply
18 inconsistent with the actual words used by both the court and Respondent. Respondent's
19 testimony on this issue is not credible.

20 26. After a court recess later that same day, Respondent provided Judge Ashcraft a written
21 apology admitting that Respondent's earlier story of an auto accident was a lie.

22 27. On October 30, 2020, Judge Ashcraft issued an Order of Contempt against Respondent
23 and found, beyond a reasonable doubt, that Respondent lied "again and again" to the court on
24

1 October 22, 2020 and on October 26, 2020.

2 28. At the October 30, 2020 contempt hearing, Respondent was provided an opportunity
3 to offer any further comments before the court entered its findings.

4 29. Respondent was entitled to appeal the Order of Contempt, but did not do so.

5 30. Instead, Respondent filed a motion for reconsideration challenging the court's finding
6 that Respondent repeatedly lied to the court, but did not challenge the contempt order itself.

7 31. Judge Ashcraft carefully considered Respondent's motion for reconsideration.

8 32. On November 4, 2020, Judge Ashcraft denied Respondent's motion for
9 reconsideration.

10 33. Judge Ashcraft ordered Respondent to provide a copy of the November 4, 2020 order
11 to the Association within 15 days of the date of the order.

12 34. Respondent failed to provide a copy of the November 4, 2020 order to the Association.

13 35. Respondent's testimony at the disciplinary hearing that Respondent did not see the
14 portion of the court's November 4, 2020 order directing Respondent to provide a copy of that
15 order to the Association is not credible.

16 36. Respondent created an elaboration of false detail upon false detail regarding the
17 alleged accident. Each of Respondent's false statements to the court on October 22, 2020, and
18 October 26, 2020, was a separate lie.

19 37. Respondent knew that the statements being offered to the court and to the court's
20 judicial assistant were false.

21 38. Respondent lies to Judge Ashcroft and Rutten involved dishonesty and
22 misrepresentation.

23 39. Respondent's conduct delayed a jury trial and disrespected judicial proceedings.
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1 40. Respondent, in lying to excuse Respondent's substantial tardiness for trial, acted with
2 a dishonest or selfish motive.

3 41. Respondent's repeated lies and failure to provide a copy of the court's November 4,
4 2020, order to the Association constituted a pattern of misconduct.

5 42. Respondent confessed and apologized to the court only after it became apparent that
6 the court would be continuing to demand corroboration of the alleged accident, corroboration that
7 was impossible to provide because the accident did not occur.

8 43. Although Respondent acknowledged the initial lie to the court, Respondent has
9 attempted to minimize or excuse Respondent's continued pattern of lies to the court.

10 44. Respondent's attempt to minimize Respondent's conduct reflects a refusal to
11 acknowledge the wrongful nature of Respondent's course of conduct in Judge Ashcraft's court.

12 45. The following findings relate to Respondent's conduct during this disciplinary
13 proceeding.

14 a) Respondent failed to participate in a Zoom practice session, which
15 complicated the prehearing conference in this matter.

16 b) Respondent failed to file a prehearing brief until literally moments before
17 the commencement of the hearing, after Respondent had committed to both
18 disciplinary counsel and the hearing officer that Respondent would file the brief
19 the week before.

20 c) Respondent did not inform the hearing officer or disciplinary counsel that
21 Respondent's expert witness, Dr. William Healey, would be unavailable for the
22 hearing until the prehearing conference on June 17, 2022, the day before a three-
23 day weekend before the hearing was to start.

1 d) Respondent did not advise Dr. Healey of the hearing until the week before
2 the hearing was to begin, even though at that point the hearing had been scheduled
3 for more than seven months.

4 e) Respondent was late for the second day of the hearing in these disciplinary
5 proceedings.

6 46. Respondent presented evidence that Respondent suffers from a panic disorder.

7 47. Respondent's expert, Dr. Healey, testified that, while a panic attack may have excused
8 an initial lie, the course of conduct of lying over the remainder of that same day, as well as into
9 the following trial day, is not consistent with or explained by a panic attack.

10 48. Dr. Healey's testimony on this issue was credible.

11 49. Respondent's panic disorder did not cause Respondent's misconduct.

12 CONCLUSIONS OF LAW

13 Violations Analysis

14 The Hearing Officer finds that ODC proved the following by a clear preponderance of the
15 evidence:

16 50. Respondent made false statements to Judge Ashcraft, in violation of RPC 3.3(a)(1)
17 and RPC 8.4(c).

18 51. Respondent made false statements to Judge Ashcraft's judicial assistant, Sandi Rutten,
19 in violation of RPC 3.3(a)(1) and RPC 8.4(c).

20 Sanction Analysis

21 52. A presumptive sanction must be determined for each ethical violation. In re Anschell,
22 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American Bar
23 Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb.
24

1992 Supp.) are presumptively applicable in this case.

53. ABA Standard 6.12 applies to Respondent's repeated lies to the court:

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.

54. Respondent knew that the statements being offered to the court were false.

55. Respondent caused injury or an adverse effect on a legal proceeding by virtue of its delay in a jury trial, as well as the disrespect to judicial proceedings occasioned by lying to a judge in open court.

56. The presumptive sanction under ABA Standard 6.12 is suspension.

57. ABA Standard 7.2 applies to the Respondent's conduct involving dishonesty and misrepresentation:

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.

58. Respondent knowingly engaged in conduct that is a violation of a duty owed as a professional. In this case, that is the obligation of candor to the tribunal. The dishonesty and misrepresentation caused injury to the legal system by virtue of its delay in a jury trial, as well as the disrespect to judicial proceedings occasioned by lying to a judge in open court.

59. The presumptive sanction under ABA Standard 7.2 is suspension.

60. Respondent was reprimanded in 2010 for conduct that is the same or similar to the conduct that is the subject of this proceeding. Therefore, ABA Standard 8.2 also applies:

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

1 61. Respondent was previously reprimanded for the same or similar conduct, for lying to
2 the judicial commission in the course of its investigation into improper conduct by Respondent.

3 62. Respondent's conduct caused injury to the legal system.

4 63. The presumptive sanction under ABA Standard 8.2 is suspension.

5 64. Based on the Findings of Fact and Conclusions of Law and application of the ABA
6 Standards, the appropriate presumptive sanction is suspension.

7 65. The following aggravating factors set forth in Section 9.22 of the ABA Standards are
8 applicable in this case:

9 (a) prior disciplinary offenses.

10 (b) dishonest or selfish motive.

11 (c) a pattern of misconduct. Respondent lied again and again to the court.
12 Moreover, Respondent was directed in the court's November 4 order to provide
13 the order to the bar, which the Respondent did not do. These actions reflect a
14 pattern.

15 (d) multiple offenses. This "factor plainly applies where an attorney faces
16 multiple counts of violating the RPCs." In re Starczewski, 177 Wn.2d 771, 792,
17 306 P.3d 905 (2013), citing In re Poole, 156 Wn.2d 196, 225, 125 P.3d 954 (2006)
18 (applying the multiple offenses factor because the court upheld two counts of
19 misconduct against the lawyer). Here, ODC has established both counts of
20 misconduct. Therefore, this factor applies.

21 (g) refusal to acknowledge wrongful nature of conduct. Respondent's
22 attempts to minimize her conduct reflect a refusal to acknowledge the wrongful
23 nature of her conduct in Judge Ashcraft's court.

24 (i) substantial experience in the practice of law. Respondent was admitted to
the practice of law in 1988.

66. Respondent identified a number of mitigating factors that the hearing officer has
carefully considered. The hearing officer finds that Respondent has not met her burden to
establish any mitigating factors.

67. Respondent argues that her conduct should be excused by her timely good faith effort
to rectify the consequences of the misconduct. The hearing officer rejects that contention.
Respondent confessed and apologized only after it became apparent that the court would be

1 continuing to demand corroboration of the accident. This corroboration was impossible to
2 provide because the accident did not occur.

3 68. Respondent argues that her free and full disclosure and cooperate attitude towards the
4 disciplinary proceedings should mitigate the misconduct. This mitigating factor does not apply.
5 Respondent's conduct in failing to provide the court's November 4 order to the Association and
6 dilatory conduct in these proceedings do not reflect a cooperative attitude.

7 69. Respondents introduced no character or reputation evidence. The mitigating factor of
8 character or reputation therefore was not established.

9 70. Respondent argues that she has a mental disability of a panic disorder. Respondent
10 has failed to prove that her panic disorder caused the misconduct. Respondent's own witness
11 testified explicitly that while a panic disorder may have excused an initial lie, the course of
12 conduct of lying over the remainder of that day, as well as into the following trial, is not consistent
13 with or explained by a panic attack.

14 71. The hearing officer finds that Respondent has not established that the panic disorder
15 caused the misconduct. The mitigating factor of mental disability does not apply.

16 72. The hearing officer concludes that suspension is the presumptive sanction and that the
17 sanction is reinforced by several aggravating factors and not offset by any mitigating factors.

18 73. "A period of six months is generally the accepted minimum term of suspension." In
19 re Cohen, 149 Wn.2d 323, 67 P.3d 1086, 1094 (2003).

20 74. The minimum term of six months is only appropriate "where there are both no
21 aggravating factors and at least some mitigating factors, or when the mitigating factors clearly
22 outweigh the aggravating factors." In re Hicks, 166 Wn.2d 774, 786, 214 P.3d 897 (2009)
23 (quotation omitted).
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1 75. Here, the minimum term of six months does not apply.

2 76. The maximum term of suspension in a disciplinary proceeding is three years. ELC
3 13.3(a).

4 77. Considering the aggravating and mitigating factors, the repeated nature of
5 Respondent's misconduct, and Respondent's previous discipline, weighing against the fact that
6 while Respondent's conduct caused injury, that injury was not substantial, the hearing officer
7 concludes that a suspension at the midpoint of the range between the minimum and the maximum
8 suspension is appropriate. Specifically, the midpoint between six months and 36 months is 21
9 months.

10 78. Respondent argues that a lengthy suspension would, in light of her age, effectively
11 amount to disbarment. The effect of a sanction on the lawyer is not a factor to be considered in
12 determining whether a sanction is appropriate. In re Hicks, 166 Wn.2d at 785 n.2.

13 79. Respondent has contended that a lengthy suspension is disproportionate to other
14 disciplinary cases. It is Respondent's burden to identify cases supporting Respondent's
15 contention of a disproportionate sanction. The hearing officer provided Respondent the
16 opportunity to furnish such cases to the hearing officer, and she did not do so.

17 80. Respondent failed to meet the burden of showing that a suspension would be a
18 disproportionate sanction.

1 Recommendation

2 81. Based on the ABA Standards and the applicable aggravating and mitigating factors,
3 the Hearing Officer recommends that Respondent Colleen A. Hartl be suspended for a period of
4 21 months.

5 Dated this 12th day of August, 2022.

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8 Timothy J. O'Connell, Bar No. 15372
9 Hearing Officer
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1 **CERTIFICATE OF SERVICE**

2 I, Brie Carranza, certify under the penalty of perjury under the laws of the State of
3 Washington that at all times mentioned herein, I was and am a resident of the state of
4 Washington, over the age of eighteen years, not a party to the proceeding or interested therein,
5 and competent to be a witness therein. My business address is that of Stoel Rives LLP, 3600
6 One Union Square, 600 University Street, Seattle, Washington 98101.

7 On August 12, 2022, I caused a copy of the foregoing document to be served upon the
8 following individual(s) in the manner indicated below:

9 Henry Cruz
10 WSBA
11 1325 Fourth Avenue, Suite 600
12 Seattle, WA 98101-2539
13 Phone: (206) 239-2123
14 Email: Henryrc@wsba.org

☒ e-mail delivery
☐ hand delivery
☐ facsimile transmission
☐ overnight delivery
☐ first class mail

12 Colleen A. Hartl
13 23321 62nd Avenue South, #E103
14 Kent, Washington 98032
15 Phone: (206) 715-2715
16 Email: colleen@hartllaw.com

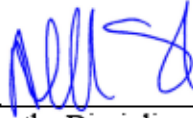
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15 Executed on August 12, 2022, at Seattle, Washington.

17 s/Brie Carranza
18 Brie Carranza

CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, 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 Colleen A. Hartl, at colleen@hartlaw.com, on the 15th day of August, 2022.



Clerk to the Disciplinary Board