DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re **JAMES JOSEPH RAFFA,** Lawyer (Bar No. 20394).	Proceeding No. 21#00030 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENTATION

The Hearing Officer held the hearing in this matter on Monday, August 5, 2024 – Tuesday, August 6, 2024, under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent James J. Raffa appeared at the hearing with counsel, Jeffrey T. Kestle. Disciplinary Counsel Benjamin J. Attanasio appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association ("WSBA").

Disciplinary Counsel has the burden of establishing acts of misconduct by clear preponderance of the evidence. ELC 10.14(b).

For the reasons set forth below, the Hearing Officer recommends that Respondent receive an admonition for violations of RPC 1.4(b) (under Count 4 of the Complaint), and RPC 1.5(e) (under Count 6 of the Complaint).

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I. FORMAL COMPLAINT

The Formal Complaint filed by Disciplinary Counsel charged lawyer James J. Raffa with the following counts of misconduct:

Count 1 – By using and/or converting *Mahler* fees for Respondent's own benefit and/or the benefit of others without entitlement to the funds, Respondent violated RPC 1.15A(b) and/or RPC 8.4(c).

Count 2 – By failing to maintain client and/or third person funds in a trust account, Respondent violated RPC 1.15A(c)

Count 3 – By failing to promptly pay or deliver funds that clients and/or third persons were entitled to receive, Respondent violated RPC 1.15A(f).

Count 4 – By providing clients with false, misleading, and/or incomplete settlement statements and/or by misrepresenting the amounts paid for subrogation, attorney fees, and /or the amounts clients were due to receive, Respondent violated RPC 1.4, RPC 1.5(c)(3), and/or RPC 8.4(c).

Count 5 – By charging and/or collecting an unreasonable fee, Respondent violated RPC1.5(a).

Count 6 – By sharing legal fees with another lawyer who was not in Respondent's firm, without meeting the requirements of RPC 1.5(e)(1), in the matters relating to SK, HR, DJ, and/or SE, Respondent violated RPC 1.5(e).

Based on the pleadings filed in this proceeding, and the witness testimony and exhibits admitted during the hearing, the Hearing Officer makes the following:

II. FINDINGS OF FACT

A. Respondent's Background

1. Respondent was admitted to practice law in Wisconsin in 1986.

2. Respondent was admitted to the practice of law in the State of Washington on May 15, 1991.

3. Respondent has no history of prior RPC violations or discipline in either Washington or Wisconsin.

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4. Respondent was a sole practitioner in Wisconsin from 1986 to 1990.

5. Respondent moved to Washington State in 1990.

6. Respondent was employed at the Tacoma law firm of Leggett & Kram from 1991 to 2000, first as an associate and then as a partner. Respondent had a general practice during that time.

7. Respondent has practiced as a sole practitioner since 2000. Respondent maintained a general practice from 2000 to 2014. Respondent focused on family law, estate planning, probate, and personal injury from 2014 to 2019. Respondent has focused strictly on personal injury from 2019 to the present.

B. Respondent's Contingent Fee Agreement

8. In 2000, while Respondent was still with the law firm Leggett & Kram, Leggett & Kram revised its standard contingency fee agreement to add the words "insurance company payments" to its paragraph #3 description of the contingency fee payments the client would owe. [TR 8/6/24, 9:5-17]. After leaving Leggett & Kram, later in 2000, Respondent continued to use this "insurance company payments" language in paragraph 3 of the standard contingency fee agreement he used in his own, sole practice. He has continued to use this paragraph 3 language at all times relevant to this case. [*E.g.*, EX. A-105]. That paragraph 3 reads as follows:

> 3. If the case is settled or a judgment is rendered in my favor, I agree to pay Mr. Raffa a fee of thirty-three and one-third percent (33 1/3%) of all amounts recovered, including, but not limited to: interest, costs, attorneys' fees, medical expenses, property damage repair costs, judgments, ***insurance company payments***, and settlements, and sales tax thereon if any. (emphasis added).

E.g., EX A-105, p. 1.

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9. Leggett & Kram added the phrase "insurance company payments" in response to the Washington Supreme Court decision in *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998), and WSBA Ethics Advisory Opinion 1913, which was issued in 2000. [TR 9:12-13:7]. Leggett & Kram made the change so that the firm could collect its contingent fee on personal injury protection ("PIP") insurance payments and medical insurance payments made on behalf of the firm's clients by the clients' insurers. [TR 8/6/24 9:12-11:15; 71:21-72:6].

10. Respondent and ODC ***agree*** that a lawyer may contract for a contingent fee on personal injury protection insurance payments and medical insurance payments subject to reasonableness under the RPC 1.5. Disciplinary Counsel stated in closing argument that "[i]t's not ODC's position that a lawyer could not contract for Mahler fees, subject to reasonableness under the RPC." [TR 106:11-13]. Thus, the narrowed issue at the hearing was whether there was a valid contract for such fees and whether it was reasonable.

C. Procedural History

11. Respondent received the grievance in this case on June 25, 2018. [TR 8/6/24 7:2-4]. The grievance was not filed by any of Respondent's clients. [TR 8/6/24 7:5-14]. Rather, it was filed by Respondent's former bookkeeper whom Respondent had terminated and who was attempting to obtain unemployment compensation benefits after Respondent disputed her unemployment benefits claim with the State. [TR 8/6/24 7:15-8:6]. The bookkeeper's unemployment claim was ultimately denied. Id.[1]

[1] It is significant, but not determinative, that the Grievant appears to have been "vexatious", as defined under ELC 5.1, and appears to have been motivated by a desire to weaponize the ODC to leverage the Grievant's unemployment unemployment claim. It is significant because it appears the complaint was presented for improper purposes. It is not determinative because such is a peril inherent in the ELC's which allow "anyone" to file a grievance against a lawyer and do not specify any limits on the reasons *and* because ODC filed the claim and it still must be evaluated based on the evidence or lack thereof.

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12. ODC filed its Formal Complaint in September 2022 [TR 8/6/24 8:7-8].

13. The only witness at the hearing was Respondent. ODC contacted one or more of Respondent's former clients prior to the hearing [TR 8/6/24 151:11-15] but called none of them as witnesses and provided no statements from any of them. It is unknown if these former clients refused to testify or if ODC decided to not offer their testimony for strategic reasons. It is also unknown why ODC did not present the complainant's testimony. Finally, ODC presented no evidence indicating that any PIP or medical insurer complained or took issue with Respondent's actions at issue.

D. Repeated Contingency Fee Scenario at Issue.

14. With a few slight alterations that will be noted below, this case involves the same *undisputed* contingency fee scenario repeated multiple times.

a) In each case, Respondent entered a contingency fee agreement with a client. Each agreement contained the paragraph 3 language quoted in paragraph 8 hereinabove. Broken down into its component parts, that agreement reads:

> If the case is settled or a judgment is rendered in my favor, I agree to pay Mr. Raffa a fee of thirty-three and one-third percent (33 1/3%) ***of all amounts recovered***, including, but not limited to:
>
> - interest,
> - costs,
> - attorneys' fees,
> - ***medical expenses***,
> - property damage repair costs,
> - judgments,
> - ***insurance company payments***,

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- ***and settlements***,

- and sales tax thereon if any. (emphasis added).

(emphasis added).

In other words, the client agreed to pay Respondent 1/3 of any recovery of each of those items listed. It is significant to note that, on its face, this language clearly separates monies recovered for insurance company payments, medical expenses and settlements. It is also significant to note that, contrary to ODC's contention, this language does not say that the client will reimburse Respondent 1/3 of the "gross amount" recovered; the term "gross amount" is not used.

b) In all or most cases, the Respondent also discussed these terms with the client.

c) In each case, shortly after entering the contingency fee agreement, Respondent sent letters to the client's PIP and/or medical insurance carrier notifying them of his appearance as counsel and informing them that he would be retaining a one third contingency fee on any reimbursement payments made to those insurer's. Respondent sent copies of these letters to his clients. There was no evidence that *any* client or insurer ever questioned or disputed this notice that Respondent would retain one third of any monies ultimately paid to the insurer *as an attorney's contingency fee.*

d) In each case, after negotiating a settlement with the tortfeasor / tortfeasor's insurance carrier, Respondent provided the client with a Settlement Authorization that indicated that Respondent would reimburse the PIP and/or medical insurer *in full.* These notices were silent as to the 1/3 contingency fee reduction. In each case, the clients signed this authorization. Respondent testified that he did not include a reference to the 1/3 reduction because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with

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the insurance company settle. And, two, [pursuant to the attorney/client fee agreement] those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17]. He did not explain why he did not simply disclose that, pursuant to the fee agreement with the client, his office would retain 1/3 of the reimbursement payment to the PIP and medical insurers.

e) In every – or nearly every – case, after the case settled and the tortfeasor / tortfeasor's insurer paid, Respondent sent a check to his client's PIP and/or medical insurer with a cover letter. Each check was reduced by the contingency fee Respondent was retaining and each cover explained that contingency fee reduction. Significantly, *each cover letter was cc'd to the client and no client ever questioned the reduction or complained.*

f) In each case, Respondent provided the client with a final trust account statement that recorded the fact that Respondent reduced every PIP/medical insurer reimbursement payment by a contingency amount in addition to the contingency fee he retained from the initial tortfeasor / tortfeasor insurer's payment. Significantly, *no client ever questioned the reduction or complained.*

g) ODC notes that Respondent never included an explanation of "*Mahler fees"* in any of the attorney / client contracts but also fails to identify any authority requiring such disclosure or explanation.[2]

h) There is no evidence that any client ever disputed or disagreed with the above-described arrangement or payments.

i) There is no evidence that any PIP or medical insurer ever disagreed with or disputed any of the above scenarios or payments.

[2] Indeed, requiring explanations of the law, let alone legal concepts as complex and amorphous as those set forth in *Mahler,* would be a slippery slope for lawyers and the public alike.

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15. Finally, it is – again – critical to note that the ODC did *not* take the position that lawyers are ethically and legally barred from taking a contingency fee payment on reimbursements to PIP or medical insurers. To the contrary, ODC took the position that lawyers may contract with their clients for such payments as long as the payments are *reasonable.* ODC's argument was that: (1) under the objective manifestation of contracts theory, there was no contract allowing Respondent to retain such "*Mahler fees"*; and, (2) that the retention of such fees was not reasonable because the clients only agreed to a total 1/3 "***gross***" contingency fee and never agreed to a 1/3 contingency fee on reimbursements to the PIP or medical insurers. As such, ODC argues, Respondent's retention of a fee on PIP and medical insurer reimbursements was unreasonable. ODC does not offer any argument or evidence that the total percentages retained by Respondent were ever unreasonable and did not address this point during the hearing.

16. This core issue is whether Respondent's retention of these "*Mahler fees"* violate RPC §§ 1.4, 1.5(a), (c)(3), (e)(1), 1.15A(b), (c), (f), 8.4(c). When evaluating this issue, as noted above, it cannot be overemphasized that *both Respondent and ODC agree that if a client agreed to have Respondent retain a contingency fee on reimbursements to the PIP and/or medical insurers, such contingency fee would be ethically proper.* Further, whether or not this is accurate, it is a point to which the parties stipulated *and* it would violate Respondent's right to procedural due process for the Hearing Officer to find differently for purposes of this action.

17. As set forth in more detail below, the Hearing Officer finds that, based on the evidence ODC has not met its burden of proving by a clear preponderance of the evidence that: a) the clients did not agree to Respondent reducing payments to the PIP or medical insurers by a contingency fee amount; or, b) that the total fee retained by the Respondent was unreasonable. However, the Hearing Officer does find that Respondent committed several violations of RPC

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1.5(e) by failing to advise multiple clients of the co-counsel arrangements he had with another attorney. Additionally, the Hearing Officer finds that Respondent committed multiple minor violations of RPC 1.4, by providing clients with settlement authorizations that failed to reference the contingency fee he withheld from the PIP and medical insurer reimbursement payments. These errors are minor because they still accurately represented the total final amount of the payout to the client and because these settlement authorizations were bookended by other communications that clearly stated that the Respondent was retaining the contingency, i.e., *Mahler fee* from the PIP / medical insurer reimbursement payments.

E. Respondent's Fees - Client SH

18. Respondent represented SH individually and on behalf of SH's deceased spouse, TH, in connection with personal injury claims. On October 10, 2012, SH signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above, i.e, Respondent's contingency fee agreement paragraph 3. [EX A-105].[3]

19. At the beginning of the representation, Respondent sent letters to SH's and SH's deceased spouse's PIP and medical insurers advising that Respondent would receive 1/3 of the insurance payments the insurers made on behalf of SH. [TR 8/6/24 24:4-25:17]. Respondent sent copies of the letters to SH. [Id.].

20. On February 9, 2016, SH signed two Settlement Authorization forms prepared by Respondent's office and two Disbursal Instructions forms. [EX A-107-A-108]. The forms

[3] As noted earlier, ODC emphasizes that "Respondent's fee agreement contained no mention of the *Mahler* decision or *Mahler* fees and no explanation of the principle that PIP insurers would contribute a share of the client's legal expenses or any similar concept. EX A-105." However, ODC fails to identify how such reference in a contingency fee agreement is required or advised.

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showed that SH and SH's deceased spouse's PIP and medical insurers would be reimbursed out of these paymts; however, the forms did not show that Respondent would receive or retain 1/3 of these as attorney's fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with the insurance company settle. And, two, [pursuant to the attorney/client fee agreement] those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

21. In April 2016, after the third-party personal injury claims settled, Respondent sent letters to SH's and SH's deceased spouse's PIP insurer and medical insurer advising that he was retaining 1/3 of the insurance payments the insurers made on behalf of SH. [EX A-116-A-119]. Respondent sent copies of the letters to SH. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

22. Respondent believes he provided SH with a copy of his firm's trust account reconciliation statement showing how all the third-party settlement funds were distributed. [EX A-124; TR 8/6/24 23:1-13]. It was his office practice to do so. [Id.]. There was no evidence that he did not.

23. Respondent testified that his fees in the SH matter were reasonable [TR 8/6/24 23:14-16]. Respondent also testified that SH never complained to Respondent about his fees and never told Respondent that she was unclear about how Respondent's fees were determined. [TR 8/6/24 23:17-24:3]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that SH or SH's deceased spouse's estate *ever* complained about the fee agreement or payments or so much as questioned them.

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24. Ultimately, the percentage of the settlement funds SH and TH retained were exactly what was disclosed. However, the amount Respondent retained – inclusive of the contingency on insurer reimbursements, was 39.1% in SH's case and 40.1% in TH's case. Given that ODC has offered no argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

F. Respondent's Fees - Client SK

25. Respondent represented SK in connection with personal injury claims. SK signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above. [TR 8/5/24 44:8-16].

26. At the beginning of the representation, Respondent sent a letter to SK's PIP insurer advising that Respondent would receive 1/3 of insurance payments the insurer made on behalf of SK. [EX. A-126]. Respondent sent a copy of the letter to SK. [Id.]. Shortly thereafter, the PIP insurer sent a letter to Respondent that stated in part, "Pursuant to the *Mahler* decision, you may be entitled to claim attorney fees and legal costs related to recovering our PIP payments to or for your client. . . As to attorney fees, we will pay our pro rata share." [EX. A-127]. Respondent testified that it was his office policy at the time to provide copies of such letters to his clients. [TR 8/6/24 25:18-26:6]. There was no evidence to the contrary.

26. On August 18, 2016, SK signed a Settlement Authorization form and a Disbursal Instructions form prepared by Respondent's office. [EX. A-132-A-133]. The forms showed that SK would not receive any portion of the insurance company payments made by SK's PIP insurer. However, the forms did not show that Respondent would receive 1/3 of the insurance payments the insurer made on behalf of SK as fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with

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the insurance company settle. And, two, those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

27. In August 2016, after the third-party personal injury claim settled, Respondent sent a letter to SK's PIP insurer advising that he was retaining 1/3 of the insurance payments the insurer made on behalf of SK. [EX A-138]. Respondent sent a copy of the letter to SK. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

28. Respondent believes he provided SK with a copy of his firm's trust account reconciliation statement showing how all of the third-party settlement funds were distributed. [EX A-134; TR 8/6/24 26:17-27:4]. It was his office practice to do so. [TR 8/6/24 23:1-13]. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal. Respondent agreed to keep less in fees that he was entitled to keep under the parties' contract to make sure SK was made whole. [TR 8/6/24 33:7-34:17].

29. Respondent testified that his fees in the SK matter were reasonable [TR 8/6/24 27:5-7]. Respondent also testified that SK never complained to Respondent about his fees and never told Respondent that she was unclear about how Respondent's fees were determined. [TR 8/6/24 27:8-17]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that the client *ever* complained about the fee agreement or payments or so much as questioned them.

30. Ultimately, the settlement funds SK retained were more than originally contracted for. However, the amount Respondent and attorney Gorski retained – inclusive of the contingency on insurer reimbursements, was 44.3%. Given that ODC has offered no argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

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G. Respondent's Fees - Client HR

31. Respondent represented HR in connection with a personal injury claim. On January 23, 2013, HR signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above. [EX A-142].

32. At the beginning of the representation, Respondent sent a letter to HR's PIP insurer advising that Respondent would receive 1/3 of the insurance payments the insurers made on behalf of SH. [TR 8/6/24 24:4-25:17]. Respondent sent a copy of the letter to HR. [Id.]. There was no evidence to the contrary.

33. In January 2016, HR signed a Settlement Authorization form and Disbursal Instructions form prepared by Respondent's office. [EXS A-145 and A-146]. The forms showed that HR would not receive any portion of the insurance company payment made by HR's PIP insurer. However, the forms did not show that Respondent would receive 1/3 of the insurance payments the insurer made on behalf of HR as fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations wieth the insurance company settle. And, two, those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

34. In January 2016, after the third-party personal injury claim settled, Respondent sent a letter HR's PIP insurer advising that he was retaining 1/3 of the insurance payments the insurers made on behalf of HR. [EX A-148]. Respondent sent a copy of the letter to HR. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

35. Respondent provided HR with a copy of his firm's trust account reconciliation statement showing how all the third-party settlement funds were distributed. [EX A-147; TR 8/6/24 28:5-12]. Respondent agreed to keep less in fees that he was entitled to keep under the parties'

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contract to make sure HR was made whole. [TR 8/6/24 34:8-36:16]. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

36. Respondent testified that his fees in the HR matter were reasonable [TR 8/6/24 28:13-15]. Respondent also testified that HR never complained to Respondent about his fees and never told Respondent that she was unclear about how Respondent's fees were determined. [TR 8/6/24 28:16-24]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that the client *ever* complained about the fee agreement or payments or so much as questioned them.

37. Ultimately, the percentage of the settlement funds HR retained were what he originally contracted for. However, the amount Respondent retained – inclusive of the contingency on insurer reimbursements, was 38.4%. Given that ODC has offered no argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

H. Respondent's Fees - Client DJ

38. Respondent represented DJ in connection with a personal injury claim. In February 2016, DJ signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above. [EX A-154].

39. At the beginning of the representation, Respondent sent a letter to DJ's PIP insurer advising that Respondent would receive 1/3 of the insurance payments the insurer made to DJ. [TR 8/6/24 24:4-25:17]. Respondent sent a copy to DJ. [Id.]. There was no evidence to the contrary.

40. On November 2, 2016, DJ signed a Settlement Authorization form and a Disbursal Instructions form prepared by Respondent's office. [EX A-155 and A-156]. The forms showed

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that DJ would not receive any portion of the insurance company payments made by DJ's PIP insurer. However, the forms did not show that Respondent would receive 1/3 of the insurance payments the insurer made on behalf of DJ as fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with the insurance company settle. And, two, those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

41. In April 2016, after the third-party personal injury claim settled, Respondent sent a letter to DJ's PIP insurer advising that he was retaining 1/3 of the insurance payments the insurer made on behalf of DJ. [EX A-161]. Respondent sent a copy of the letter to DJ. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

42. Respondent believes he provided DJ with a copy of his firm's trust account reconciliation statement showing how all the third-party settlement funds were distributed. [EX A-160; TR 8/6/24 29:11-21]. It was his office practice to do so. [Id.]. There was no evidence to the contrary and there was not evidence that the client objected to this disbursal.

43. Respondent testified that his fees in the DJ matter were reasonable [TR 8/6/24 29:22-24]. Respondent also testified that DJ never complained to Respondent about his fees and never told Respondent that he was unclear about how Respondent's fees were determined. [TR 8/6/24 29:25-30:5]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that the client *ever* complained about the fee agreement or payments or so much as questioned them.

44. Ultimately, the percentage of the settlement funds DJ retained was what was originally contracted for. However, the amount Respondent and attorney Gorski retained – inclusive of the contingency on insurer reimbursements, was 37.4%. EX A-160. Given that ODC has offered no

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argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

I. Respondent's Fees - Client SE

45. Respondent represented SE in connection with a motor vehicle accident personal injury claim. On March 13, 2015, SE signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above. [EX A-171].

46. SE lived in Wisconsin and her motor vehicle accident occurred in Wisconsin. [TR 8/6/24 30:6-10]. Respondent believed he was acting under his Wisconsin law license while representing SE. [TR 8/6/24 30:11-15]. Respondent believes his conduct in representing SE was consistent with Wisconsin law and Wisconsin ethical rules. [TR 8/6/24 30:16-21]. Disciplinary Counsel's position on this issue shifted during the course of the proceedings; however, the critical point is that Disciplinary Counsel did candidly concede that, prior to the hearing, ODC did not research whether Respondent's conduct was proper under Wisconsin law. [TR 8/6/24 88:16-20].

47. On December 20, 2017, SE signed a Settlement Authorization form and a Disbursal Instructions form prepared by Respondent's office. [EX A-173 and A-174]. The forms showed that SE would not receive any portion of Allstate's insurance company medical payments made on SE's behalf. However, the forms did not show that Respondent would receive 1/3 of the insurance payments the insurer made on behalf of SE as fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with the insurance company settle. And, two, those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

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48. Respondent believes he provided SE with a copy of his firm's trust account reconciliation statement showing how all of the third-party settlement funds were distributed. [EX A-172; TR 8/6/24 30:22-31:9]. It was his office practice to do so. [Id.]. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

49. Respondent testified that his fees in the SE matter were reasonable [TR 8/6/24 31:10-12]. Respondent also testified that SE never complained to Respondent about his fees and never told Respondent that she was unclear about how Respondent's fees were determined. [TR 8/6/24 31:13-18]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that the client *ever* complained about the fee agreement or payments or so much as questioned them.

50. Ultimately, the percentage of the settlement funds SE retained was what was originally contracted for. However, the amount Respondent and attorney Gorski retained – inclusive of the contingency on insurer reimbursements, was 47.2%. EX A-160. Given that ODC has offered no argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

H. Respondent's Fees - Client JE

51. Respondent represented JE in connection with a personal injury claim. On January 16, 2012, JE signed a Retainer Agreement that contained the same contingency fee language quoted in paragraph 8 above. [EX A-175].

52. At the beginning of the representation, Respondent sent a letter to JE's medical insurer advising that Respondent would receive a portion of insurance payments the insurer made on behalf of JE. [TR 8/6/24 24:4-25:17]. Respondent sent a copy of the letter to JE. [Id.]. There was no evidence to the contrary.

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53. On June 30, 2014, JE signed a Settlement Authorization form and a Disbursal Instruction form prepared by Respondent's office. [EX. A-180 and A-181]. The forms showed that JE would not receive any portion of the insurance company payments made by JE's medical insurer. However, the forms did not show that Respondent would receive a percentage of the insurance payments the insurer made on behalf of JE as fees. Respondent testified that this was so because "[o]ne, we were not sure of the amount of those fees, because we – we never are until the negotiations with the insurance company settle. And, two, those fees don't go to the client, they go to my office." [TR 8/6/24 20:1-17].

54. In August 2016, after the third-party personal injury claim settled, Respondent sent a letter to JE's medical insurer advising that he was retaining a portion of the insurance payments the insurer made to JE. [EX A-138]. Respondent sent copies of the letter to JE. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

55. Respondent provided JE with a copy his firm's trust account reconciliation statement showing how all of the third-party settlement funds were distributed. [EX A-183; TR 8/6/24 32:8-12]. There was no evidence to the contrary and there was no evidence that the client objected to this disbursal.

56. Respondent testified that his fees in the JE matter were reasonable [TR 8/6/24 32:24-33:1]. Respondent also testified that JE never complained to Respondent about his fees and never told Respondent that he was unclear about how Respondent's fees were determined. [TR 8/6/24 33:2-10]. ODC did not introduce any expert or lay testimony regarding the reasonableness of Respondent's fees. Likewise, ODC did not introduce any testimony or evidence that the client *ever* complained about the fee agreement or payments or so much as questioned them.

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57. Ultimately, the percentage of the settlement funds SE retained was what was originally contracted for. However, the amount Respondent and attorney Gorski retained – inclusive of the contingency on insurer reimbursements, was 50.9% of JE's $6,000 settlement. EX A-183. Given that ODC has offered no argument or evidence on the reasonableness of these amounts and given that it was not litigated during the hearing, the Hearing Officer cannot rule that it was unreasonable.

I. Respondent's Joint Representation with Attorney Rafel Gorski

58. Respondent worked with attorney Rafel Gorski, who worked at another law firm, on the following personal injury cases: SK, HR, DJ, and SE.

59. Each of the clients signed separate engagement agreements with Respondent and Gorski. However, none of the clients confirmed in writing their agreement to the division of fees between Respondent and Gorski.

60. Respondent read RPC 1.5(e) in connection with the contracts with these clients and attempted to comply with it. He read RPC 1.5(e) to require only that the clients understand that Respondent and attorney Gorski would receive a combined 1/3 contingent fee. [TR 8/6/24 78:6-80:5].

61. The total amount of attorneys' fees in these four cases did not change because of the joint representation. [TR 8/6/24 38:18-21].

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III. CONCLUSIONS OF LAW

62. **Counts 1-3** – Respondent is charged with violating RPC 1.15A(b) by allegedly converting client funds; violating 1.15A(c) by allegedly failing to maintain client funds in a trust account; and violating 1.15A(f) by allegedly failing to pay or deliver funds that clients were entitled to receive. Counts 1-3 are all based on ODC's argument that, under the *Mahler* decision and pursuant to WSBA Rules of Prof. Conduct Comm., Advisory Opinion 1913 (2000), Respondent was not allowed to retain 1/3 of the monies disbursed to reimburse insurance company PIP payments and medical payments advanced to the client prior to recovery from the Third-Party Tortfeasor / insurer *and* that these 1/3 sums belonged to Respondent's clients.

63. However, the critical point at the axis of this opinion is that *the parties agree that Respondent could ethically contract with his clients for a contingent fee on PIP and medical insurance company payments subject to reasonableness under RPC 1.5. In other words, the parties agree that Respondent could ethically and legally contract to retain a 1/3 contingency fee on the disbursals to the PIO and medical insurer's.* The question, then, is: 1) whether Respondent and his clients did so; and, 2) if they did, was the contingency fee charged to the PIP and medical insurer's reasonable? In answer to those questions, the Hearing Officer finds that: 1) there is substantial and competent evidence that Respondent and his clients did agree to such payments and there is *no* evidence that the Parties did not agree to such payments; and, 2) there is no evidence that the 1/3 Respondent retained from reimbursement payments to PIP and medical insurers was not reasonable.

64. Regarding the first question, the 10,000-foot-view brings into focus four indisputable points that prove Respondent and the named clients agreed to Respondent taking a 1/3 contingency fee on payments to the PIP and medical insurers. First, Respondent represented the

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named clients pursuant what was effectively the same attorney/client contingency fee agreements. Second, Respondent provided each named client with at least three communications clearly stating that Respondent was retaining a 1/3 contingency fee on all reimbursement payments to the PIP and medical insurers. Third, ODC contacted at least *some* of the clients who entered these agreements *but there is not one iota of evidence that one of these clients ever objected to Respondent's retention of 1/3 of the reimbursement payments made to the PIP or medical insurers and not one of these clients testified or provided any evidence in support of ODC's case*; fourth, there is not one iota of evidence that any of the PIP or medical insurers objected to Respondent keeping a 1/3 contingency fee on reimbursement payments.

65. Regarding the second question, ODC's only evidence or argument regarding "reasonableness" was that there was no agreement that the Respondent would retain the 1/3 contingency / *Mahler fee.*

66. More specifically, the answer to the first question, i.e., whether Respondent and his clients agreed that Respondent would retain the "*Mahler fee",* is found, primarily, in paragraph 3 of Respondents' fee agreements, which states:

> 3. If the case is settled or a judgment is rendered in my favor, I agree to pay Mr. Raffa a fee of thirty-three and one-third percent (33 1/3%) of all amounts recovered, including, but not limited to: interest, costs, attorneys' fees, ***medical expenses***, property damage repair costs, judgments, ***insurance company payments***, and settlements, and sales tax thereon if any. (emphasis added to the key language and not in the original).

67. The question is, what does this paragraph, and particularly the highlighted language mean? While ODC and Respondent agree that Washington adheres to the objective manifestation of intent in contracts theory, that theory is applied to *cases in which the parties dispute the meaning of a key contractual term*. Washington Courts have described the "objective

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manifestation of intent theory as follows: "Under this approach, [courts] attempt to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than the unexpressed subjective intent of the parties." *Hearst Commc'ns, Inc. v. Seattle Times*, 154 Wn.2d 493, 503, 115 P.3d 262 (1993) (citation omitted). *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990).

68. However, the standard scenario in which the Courts use this theory is not present in this case. This case is unusual in that it does not involve a dispute between the parties to a contract over the proper interpretation of the contract. Rather, it involves a dispute between one party to the contract (Respondent) and ODC over the proper interpretation of the contract. The *only evidence* as to how the parties to the contract interpreted the contract comes from Respondent's evidence and the lack of controverting client evidence. As such, it appears that ***a*** question is whether to interpret the contract in the manner the parties did or in the manner ODC urges. Neither Party has provided authority on this issue.

69. Regardless of whether the parties' interpretation or the objective manifestation theory is used, the conclusion is the same, i.e., the parties agreed to have Respondent take a contingency fee from the reimbursement to the PIP / medical insurers, i.e., the "*Mahler fee".*

First, the only evidence at the hearing was that the Parties agreed to this arrangement. Second, under the Objective manifestation of intent theory, both the plain language of the contingency fee agreement *and* the agreement read in context, support this conclusion. As noted earlier, in paragraph 14 above, the contract explicitly names numerous separate types of payments and specifies that counsel will take a 1/3 contingency fee from each one. These include "medical payments" and "insurance payments". Additionally, read in context of the entire transaction with each client, the language objectively provides that the Respondent will take these fees. The

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"context rule" "recognize[s] that intent of the contracting parties cannot be interpreted without examining the context surrounding the instrument's execution. If relevant for determining mutual intent, extrinsic evidence may include (1) the subject matter and objective of the contract, (2) all the circumstances surrounding the making of the contract, (3) the subsequent acts and conduct of the parties, and (4) the reasonableness of respective interpretations urged by the parties." *Id.* at 502, citing *Berg*, 115 Wn. 2d at 667. In this case, the following factors are germane to "context rule" considerations:

- Respondent testified that the phrase "insurance company payments" in his fee agreements included PIP and medical insurance company payments. [TR 8/6/24 71:21-72:6]. This evidence is far from determinative because it is simply evidence of Respondent's subjective intent; however, there was no evidence that anyone believed or interpreted the language differently. Specifically, there was no client evidence or expert testimony to the contrary.
- Respondent testified that Leggett & Kram added this language to its standard contingent fee agreement in 2000 so that the firm could collect a contingent fee on personal injury protection ("PIP") insurance payments and medical insurance payments made on behalf of the firm's clients by the clients' insurers. Respondent continued to use the language in his solo practice for the same reason. There was no evidence submitted that this Leggett & Kram contractual language was offensive or the source of any ODC complaints or actions. This evidence is of marginal significance and is in no way determinative of the relevant issue because it in no way establishes that the language was proper.

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- Respondent sent letters to his clients' PIP insurers and medical insurers at the beginning of the clients' cases and advised the insurers that he would receive 1/3 of the insurance payments the PIP and medical insurers made on behalf of Respondents' clients. Respondent sent copies of the letters to his clients. There was no evidence to the contrary and there is no evidence that *any* of the clients *ever* disputed or questioned this email. This fact is significant to determining that all clients in question interpreted the contract the same way Respondent interpreted it.
- Respondent sent letters to his clients' PIP insurers and medical insurers after settling with the tortfeasors and advised that he was keeping 1/3 of the insurance company payments the insurers made on behalf of Respondents' clients. Respondent sent copies of the letters to his clients. There was no evidence to the contrary and there is no evidence that *any* of the clients *ever* disputed or questioned this email. This fact is significant to determining that all clients in question interpreted the contract the same way Respondent interpreted it.
- Respondent provided copies of his trust account reconciliations to his clients at the conclusion of their cases. The reconciliations showed where all of the third-party settlement proceeds went. There was no evidence to the contrary and there is no evidence that *any* of the clients *ever* disputed or questioned this email. This fact is significant to determining that all clients in question interpreted the contract the same way Respondent interpreted it.

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- None of Respondents' clients complained to him about the 1/3 PIP/medical insurer fees he kept and none expressed confusion regarding how Respondent's fees were calculated.
- ODC contacted one or more of Respondent's clients prior to the hearing [TR 8/6/24 151:11-15] but called none of the clients as witnesses.
- Respondent is the only party to the contract urging a particular interpretation of the contract.

70. Regarding the reasonableness of such a contractual arrangement, ODC's ONLY argument is that Respondent's retention of Mahler fees was unreasonable because the clients only agreed to a gross contingency fee of 33 1/3%. However, as noted immediately above, this s not correct. Under both the plain contractual language and the contract interpreted in context, the Respondent and his clients agreed to have Respondent retain the contingency fee on insurance company reimbursements, i.e., the "*Mahler fee"* in addition to the base 1/3 contingency fee. There was no evidence, argument or authority on the issue of whether the total fee Respondent took in any of the given cases, was at a percentage that was unreasonable. As noted above, most of these totals were still under 40% but at least one was over 50%. Given that the reasonableness of these totals was not addressed at the hearing, it would violate Respondent's rights under the due process clause of the Constitution and under ELC 10.1 and 10.14, to rule that those amounts were excessive or unreasonable.

71. Additionally, the Hearing Officer finds that it was clear, under the terms of the fee agreement, that the clients *would not receive any of the reimbursement payments to the PIP or medical coverage insurers.* As such, none of these clients would have had any kind of

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contractual right or expectancy to receive a 1/3 withholding from the PIP/medical insurer reimbursement payments. This supports the finding that the 1/3 fee was reasonable.

72. Finally, there was no evidence that any PIP or medical insurer objected to Respondent 1/3 or their reimbursements as a contingency fee payment. Given the history of such insurers vehemently fighting over these payments, as evidenced in *Mahler* and post-*Mahler* cases, this supports a finding that the 1/3 fee retention was reasonable.

73. ODC has, implicitly, agreed to the above finding/conclusion by agreeing that this 1/3 payment is ethically appropriate *if the parties agreed to it and it was otherwise "reasonable".* Based on this and all of the above, ODC failed to prove Counts 1-3 by a clear preponderance of the evidence.

74. **Count 4** – Respondent is charged with violating RPC 1.4, RPC 1.5(c)(3), and/or RPC 8.4(c) by allegedly "providing clients with false, misleading, and/or incomplete settlement statements and/or by misrepresenting the amounts paid for subrogation, attorney fees, and/or the amounts clients were due to receive."

75. The analysis of Count 4 is a bit more difficult that Counts 1-3. In evaluating Count 4, all of the relevant communications between the Respondent and his clients must be considered. In each case, those communications consisted of:

a) The fee agreement which at the very least indicates that Respondent would keep 1/3 of the payments to the (PIP and medical) insurers;

b) Respondent's letter to the PIP/medical insurance carriers, that were cc'd to the client, informing those carriers that Respondent would be keeping a 1/3 contingency fee on monies paid to reimburse those carriers;

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c) The settlement authorization to the client that was inconsistent with the initial letter to the PIP and medical insurers by stating that the entire amount would be reimbursed – and necessarily indicating that neither Respondent nor the client would get 1/3 of that amount;

d) The cover letter to the medical insurer *and cc'd to the client*, accompanying the reimbursement check, stating that Respondent was keeping 1/3 of the payment as the attorney's contingency fee; and

5) The trust account printout that was provided to the client and that showed the 1/3 contingency fee retention from the medical insurance reimbursement payments. Clients.

76. Additionally, there were oral communications between Respondent and each client and the only evidence presented at the hearing about these communications came from Respondent. Respondent testified that he believed every client understood paragraph 3 of the contract in the same way he did and that no client indicated any concern about his keeping 1/3 of the insurance reimbursement payments. While ODC is correct in noting that Respondent's testimony was "self-serving" it does not alter the fact that there was absolutely no evidence to the contrary and ODC bears the burden. This burden is not met by simply stating that the one witness on the subject provided testimony that was self-serving. Additionally, having watched and listened to the Respondent's testimony, the Hearing Officer finds that it was credible.

77. Another point that must be considered is that the attorney and client are not on equal bargaining ground and that the attorney has a heightened duty to ensure clear communications and understanding.

78. Based on all of the above, the Hearing Officer finds and concludes the following regarding Count 4:

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a) It is not clear which, exact, provision or provisions of RPC 1.4, ODC is alleging that Respondent violated. Regardless, the Hearing Officer finds that sub section a) primarily addresses timeliness of communications and sub section b) primarily addresses content requiring communications reasonably necessary for clients to make informed decisions. In this case, there was no evidence that Respondent's communications were not timely. With respect to content, sub-section (b), Respondent provided ample communications regarding settlement. However, the language in the Settlement Authorizations *did not* include language stating that Respondent would be retaining a contingency fee from the reimbursements to the PIP/medical insurers. This language was inconsistent with the language in the contingency fee contracts, the language in the cover letters accompanying the payments and the language in the trust account statements. As such, this was an inconsistency that, at worst, muddied the waters of the attorney/client communications and – in context - constituted potentially misleading and incomplete Settlement Authorization statements. Based on this law and evidence, each Settlement Authorization constituted a minor violation of RPC 1.4(b).

b) RPC 1.5(c)(3) applies to contingency fee cases and requires:

> upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

The evidence, discussed in detail herein above, clearly establishes that Respondent complied with this requirement.

c) Finally, RCP 8.4(c) provides that a lawyer shall not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation". In this case, while the language in the Settlement Authorizations was not perfect, it did not contradict or mislead the clients as to the total amounts

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they would ultimately recover, and it was bookended by communications that clearly stated the fees would be and were retained from the insurance reimbursement payments. And, it is again important to note that there is no evidence – expert or otherwise – that anyone – client or insurance company - was deceived or that Respondent engaged in "dishonesty, fraud or deceit or misrepresentation". There is only speculation without evidence. On the other hand, there is substantial evidence that Respondent *was honest with his clients.* Specifically, he provided his clients with (1) copies of their fee agreements; (2) copies of Respondents' communications with the clients' PIP and medical insurers regarding his retention of a contingent fee on PIP and medical insurance company payments made on behalf of the clients, and (3) copies of Respondent's trust account ledgers showing where all of the third-party settlement funds went. None of Respondent's clients complained about the fees he kept or the method by which he calculated his fees. As such, Respondent did not violate RPC 8.4(c) because he communicated the information described in the preceding paragraph to his clients and did not engage in dishonesty, fraud, deceit, or misrepresentation.

79. ODC has proven minor violations of RPC 1.4(b) but failed to prove any other violations alleged in Count 4 by a clear preponderance of the evidence.

80. **Count 5** – Respondent is charged with violating RPC 1.5(a) by allegedly charging and/or collecting an unreasonable fee.

81. RPC 1.5(a) states as follows:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;

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(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained.

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent; and

(9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

82. ODC's sole Count 5 argument, with respect to almost every client, is that Respondent's fees were unreasonable because they were inconsistent with his fee agreements. However, as explained in detail in the conclusions of law related to Counts 1-3, this argument is contrary to the governing law and facts. Respondent's fee agreements allowed him to keep a contingent fee on PIP and medical insurance company payments made on behalf of his clients in addition to the contingency fee on the third-party insurance company settlements. While the Hearing Officer could *speculate* that factors in RPC 1.5(a) may have been violated, that would be speculation that is not based on any evidence or argument presented. As such, engaging in such speculation would violate Respondent's right to a fair hearing under the Due Process clause of the Constitution and under ELC 10.1 and 10.14. Therefore, the factors set forth in RPC 1.5(a)(9) favors Respondent.

83. ODC failed to prove Count 5 by a clear preponderance of the evidence.

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84. **Count 6** – Respondent is charged with violating RPC 1.5(e) in connection with clients SK, HR, DJ, and SE by sharing fees with attorney Gorski without meeting the requirements of RPC 1.5(e).

85. Respondent and ODC agree Respondent violated RPC 1.5(e) because he did not receive written agreement from clients SK, HR, DJ, and SE to the division of fees between Respondent and attorney Gorski.

IV. SANCTION ANALYSIS

Presumptive Sanction Determination

The Washington Supreme Court requires the Hearing Officer to determine a presumptive sanction for each ethical violation using the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed.& Feb. 1992 Supp.). *In re Anschell*, 149 Wn.2d 484, 69 P.3d 844 (2003). The presumptive sanction is determined by considering (1) the ethical duty violated; (2) the lawyer's mental state; and (3) the extent of actual or potential harm caused by the misconduct. *In re Dann*, 136 Wn.2d 67, 77, 960 P.2d 416 (1998).

In this case, Respondent's violations indicate either reprimand or admonition. ABA Standard 7.3 governs "Reprimands". It states: "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. ABA Standard 7.4 governs "Admonitions". It states: 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, and causes little or no actual or potential injury to a client, the public, or the legal system.

RESPONDENT'S COUNT 4 VIOLATIONS OF RPC 1.4(b).

ABA standard 4.6 governs Respondent's RPC 1.4(b) violations. It states:

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4.6 Lack of Candor

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

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

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

In this case, Respondent negligently failed to provide his clients with a clear statement that he was retaining the *Mahler fee* in the Settlement Authorizations. The fact that this happened several times indicates a 4.63 reprimand. Conversely, the fact that there was no evidence that any of these failures caused any client any injury, indicates a 4.64 admonition. Additionally, the fact that the Settlement Authorizations were bookended by communications telling the clients that Respondent *was* keeping the fee, also indicates a 4.64 admonition. Additionally, given that the rule 1.1 of the ABA standards states that the purpose of lawyer discipline is to protect the public and the administration of justice and given that there is no evidence that either the public or the justice system were injured by Respondent's conduct, the Hearing Officer finds that an admonition is the appropriate sanction for the Count 4, RPC 1.4(b) violation.

Regarding the aggravating and mitigating factors:

The Hearing Officer finds that the following aggravating factors apply:

(d) multiple offenses.

(f) substantial experience in the practice of law.

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The Hearing Officer finds that the following mitigating factors apply:

(a) absence of a prior disciplinary record.

(b) absence of a dishonest or selfish motive.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

(j) delay in disciplinary proceedings.

(l) remorse.

RESPONDENT'S COUNT 6 VIOLATIONS OF RPC 1.5(e).

As explained in greater detail herein above, Respondent read RPC 1.5(e) in connection with his representation of clients SK, HR, DJ, and SE and believed he and attorney Gorski complied with it. Respondent was negligent in forming this incorrect belief. It is also critical to note that the only evidence at the hearing was that the fee division between Respondent and Gorski did not alter the contingency fee amount to which the clients agreed. Nonetheless, Respondent himself accedes to the fact that while his conduct did not cause injury to his clients, it caused potential injury. As such, the presumptive sanction is reprimand under ABA Standard 7.3 which states, "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 the client, the public, or the legal system."

Regarding the aggravating and mitigating factors:

The Hearing Officer finds that the following aggravating factors apply:

(d) multiple offenses.

(f) substantial experience in the practice of law.

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The Hearing Officer finds that the following mitigating factors apply:

(c) absence of a prior disciplinary record.

(d) absence of a dishonest or selfish motive.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

(j) delay in disciplinary proceedings.

(l) remorse.

Sanction Recommendation

Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent receive an admonition for his several but minor violations of RPC's 1.4(b) and 1.5(e). This recommendation is further supported by ABA Model Rule 10 which states that admonitions are appropriate only "in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should an admonition be imposed." In this case, these factors are met.

Dated: December 27, 2024.

/s/ Eric T. Krening_____.
ERIC KRENING, WSBA #27533
Hearing Officer

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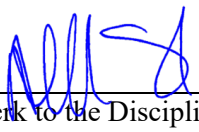
CERTIFICATE OF SERVICE

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's Counsel, Jeffrey T Kestle, at jkestle@foum.law, on the 27th day of December, 2024.



Clerk to the Disciplinary Board