FILED

Sep 10, 2024

Disciplinary Board

Docket # 193

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SHAKESPEAR N. FEYISSA,

Lawyer (Bar No. 33747).

Proceeding No. 20#00053

HEARING OFFICER'S AMENDED DECISION

The Hearing Officer held the hearing in this matter on Monday, April 15, 2024 – Saturday, April 20, 2024,[1] Monday, April 22, 2024 – Friday, April 26, 2024, and Monday, April 29, 2024, under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Shakespear N. Feyissa appeared at the hearing with counsel, Anne I. Seidel. Disciplinary Counsel Francesca D'Angelo and Nate Blanchard 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 a clear preponderance of the evidence. ELC 10.14(b).

For the reasons set forth below, the Hearing Officer recommends that Respondent be disbarred.

I. FORMAL COMPLAINT

The Third Amended Formal Complaint filed by Disciplinary Counsel charged lawyer

[11] Grievant Teena Quichocho – Respondent's former paralegal – testified on Monday, April 15, 2024, but her examination did not conclude that day. To accommodate her work schedule, counsel for the parties agreed to resume and complete her examination on Saturday, April 20, 2024. The staff of WSBA should be commended for making the WSBA's facilities available during the weekend to serve the needs of the hearing.

Shakespear N. Feyissa with the following counts of misconduct:

Count 1 - By committing the crime of theft and/or converting client funds, Respondent violated RPC 1.15A(b), RPC 8.4(b) (by committing the crime of theft, RCW 9A.56.020(1)(a), 9A.56.010(23)(b)), and/or RPC 8.4(c).

Count 2 - By making false representations to one or more insurance providers and/or third parties personally and/or through Quichocho, Respondent violated RPC 8.4(a), RPC 4.1, and/or RPC 8.4(c).

Count 3 - By failing to give one or more clients reasonable and fair disclosure of material elements of the fee agreement, by misrepresenting the amounts of subrogation liens against one or more client's recoveries, and/or by making one or more misrepresentations as to whom the "Mahler" and/or other fees would be paid, Respondent violated RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3) and/or RPC 8.4(c).

Count 4 - By charging and/or collecting unreasonable fees, Respondent violated RPC 1.5(a).

Count 5 - By failing to maintain disputed funds from MeA's[2] settlement in trust until the dispute with GEICO was resolved, Respondent violated RPC 1.15A(g).

Count 6 - By submitting false evidence to ODC during a grievance investigation, Respondent violated RPC 8.1(a), RPC 8.4(c), and/or RPC 8.4(*l*) (by violating ELC 1.5 and/or ELC 5.3)

Count 7 - By lying to Fanning[3] about what MW's insurer was offering to settle MW's case, Respondent violated RPC 4.1(a) and RPC 8.4(c).

Count 8 – By failing to promptly pay to a third person what the third person was entitled to receive, Respondent violated RPC 1.15A(f).

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

[2] Client MeA's name is disclosed in EX 309, which is the Contingent Fee Agreement entered into with Respondent. All of the clients' names are stated in the fee agreements and original final accountings for each client. Because this proceeding arises from Respondent's conduct in 18 client matters, for the sake of simplicity this Decision refers to the clients by the initials used in the Third Amended Formal Complaint [BF #125].

[3] Counts 1-6 stem from the Grievance filed by Ms. Quichocho. Grievant Lisa Fanning, LMT, filed a separate Grievance against Respondent, with regard to his conduct towards her. Ms. Fanning performed massage therapy services to Respondent's client MW. MW is identified in EX 479. Counts 7 and 8 stem from Ms. Fanning's Grievance. *See* Third Amended Formal Complaint [BF #125], pp. 41-43.

II. FINDINGS OF FACT

A. Respondent's Background.

1. Respondent was admitted to the practice of law in the State of Washington on June 19, 2003.

2. There is no prior discipline.

3. Respondent has a compelling life story. Respondent was born in Ethiopia. In 1990, Respondent – then age 14 or 15[4] -- and his older sister were sent by their mother from Ethiopia to Kenya, for safety from the civil war in Ethiopia. Respondent's father purportedly was a political prisoner for his alleged support of the Oromo Liberation Front. At that time, the Ethiopian government was pressing youths into involuntary military conscription.

4. After two years of severe hardship in a refugee camp in Kenya, Respondent and his sister entered the United States, and eventually were settled in the Seattle area. The siblings at times were placed in separate foster homes. Eventually, a foster parent was able to place both of them as scholarship students at The Bush School, a well-known Seattle private school attended primarily by children of prosperous families. While Respondent enjoyed playing high school soccer, he encountered overt and hurtful racism from opposing teams, including epithets such as "the N- word." Fortunately, Respondent's soccer teammates stood up for him. During the hearing, Respondent and his sister exhibited emotional distress having to recount their time as refugees, being in foster care, and their difficulties adjusting to life in the United States.

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[4] The testimony from Respondent and his sister is that they left Ethiopia in 1990, but his exact age at this juncture was not definitively stated during the hearing. Respondent's age at the time of departure is estimated from his date of birth, set forth in EX R503, p. 1.

5. After graduation from The Bush School, Respondent attended Seattle University, and eventually finished his undergraduate degree at Central Washington University. Throughout his time as a student in both high school and college, he worked multiple minimum-wage jobs so that he could send money to his mother in Ethiopia.

6. While working as a court approved translator in the Amharic language,[5] he noticed the language barrier to justice, decided to become a lawyer and was accepted to the Seattle University School of Law. During law school, he continued to work in minimum-wage jobs to provide income for his mother. Also during law school, he briefly worked for the Attorney General's office on Labor & Industries matters, and for a small estate and probate office.

7. Following completion of law school in December 2002, Respondent took and passed the February 2003 bar exam, and was sworn in on June 19, 2003.

8. Respondent sought work in law firms, but was not offered a lawyer position, only paralegal positions. With the assistance of Frederic Townsend, Dean of Seattle University Law School, Respondent briefly worked for the law firm then known as Preston Gates & Ellis, as a document review lawyer. A few months later, Respondent began his own office as a solo practitioner.

9. After opening his law office, Respondent handled immigration matters, and some criminal defense cases. During approximately the 2005-2006 time period, Respondent began to represent taxicab drivers of Ethiopian descent in personal injury matters. Initially, most of his personal injury clients did not have the optional Personal Injury Protection ("PIP") coverage in their motor vehicle insurance policies. At some point after 2009, Respondent

[5] Respondent's first language is Oromo. He also speaks Amharic, English, and has some understanding of Tigrinya. Oromo, Amharic and Tigrinya are three of the more commonly used languages in Ethiopia.

began to work on cases which involved PIP.

10. The Seattle area has an active Ethiopian community. Undisputed testimony from Respondent's friends and contacts, is that Respondent is well-known and respected within the Ethiopian community in Seattle. Testimony from colleagues shows a significant record of pro bono activities: co-founding the Ethiopian Legal Clinic in 2010 (for which in 2015, the Ethiopian Community Center hired a program manager), putting in regular office hours each week; volunteering with the Ethiopian Cultural Center; and assisting with the Refugee Resettlement Office, Archdiocese of Episcopal Church, in Olympia, WA.

11. Respondent also volunteers pro bono on a national and international level. In 2005, Respondent represented an Ethiopian radio station, Tinsae Radio, in defense against a lawsuit brought by the Ethiopian government. In 2010, Respondent was one of the founders and first president of the Ethiopian Heritage Foundation**.** In 2014, Respondent represented Ethiopian US-based journalists who were subjected to spyware by the Ethiopian government.[6] Respondent also flew to Rio De Janeiro to assist Feyisa Lilesa of Ethiopia, winner of the silver medal in the men's Olympic marathon on August 21, 2016, who feared political reprisal for protesting the Ethiopian government as he crossed the finish line.[7] Respondent also has appeared on Ethiopian language radio broadcasts.

12. In addition to his pro bono activities on Ethiopian-related matters, Respondent is on the Board of Trustees for the Museum of History & Industry, in Seattle, WA. [EX 504]

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[6] The Hearing Officer takes judicial notice of a newspaper article which gives background on the Ethiopian spyware situation: https://www.washingtonpost.com/business/technology/us-citizen-sues-ethiopia-for-allegedly-using-computer-spyware-against-him/2014/02/18/b17409c6-98aa-11e3-80ac-63a8ba7f7942_story.html.

[7] The Hearing Officer takes judicial notice of a newspaper article which gives background on Feyisa Lilesa's situation: https://www.washingtonpost.com/news/worldviews/wp/2016/08/22/whats-next-for-the-ethiopian-silver-medalist-who-protested-his-government/.

Respondent also assisted pro bono in recovering a collection of Chinese Imperial robes and other pieces, from the Tacoma Art Museum. [EX 506] Respondent also is credited as the author of a section of the Washington State Association for Justice's 2018 Motor Vehicle Litigation Deskbook, Vol 2, titled, "Trial Brief(s)." [EX R509]

B. Respondent's Adoption of *Mahler* Surcharge Provision.

13. According to Respondent, in approximately 2013,[8] he was told by another attorney whose name he cannot remember, that he could collect an additional attorney fee pursuant to *Mahler v. Szucs*,135 Wn.2d 398, 957 P.2d 632 (1998). [TR, p. 2018/1 – 2019/3.] Respondent testified that he read *Mahler* at the time, and determined that he could claim the *Mahler* proportionate share as an attorney fee. [TR, pp. 2014/23 – 2015/21.] In particular, Respondent concluded, "So after that with that when I read it [*Mahler*] too, I felt like my – the way I understood is okay. So I guess the proportionate share goes to the lawyer." [TR, p. 2016, ll. 3 – 5.]

14. Respondent testified that he obtained the form *Mahler* Surcharge Provision[9] language used by him, from a different lawyer, whom he could not identify. He began using this language "right away" after the conversation he had with the lawyer who told him about *Mahler*.

[8] This approximate year Respondent began to use his *Mahler* Surcharge Provision, was estimated by the Hearing Officer by resorting to the following timeline: (1) the Contingent Fee Agreement of Sherry Reese, dated October 23, 2012, which did not include the Mahler Surcharge provision [EX 93]; and (2) the Contingent Fee Agreement of BG, dated July 13, 2013 [EX 382], which did include the provision. Respondent testified during the hearing that he thought he was told about the *Mahler* within a year or two after his daughter's birth in 2009, but his estimate is inconsistent with the dates of the fee agreements submitted during the hearing. *See* TR, pp. 2014, ll. 3-22.

[9] Respondent during his testimony consistently called his fee agreement's reference to *Mahler*, as the "Mahler fee." The Hearing Officer chooses the term "*Mahler* Surcharge Provision" to describe Respondent's fee agreement provision. "*Mahler* Surcharge" more accurately describe Respondent's "Mahler fee" as a separate surcharge in addition to "The legal fee of Attorney" which he typically charged on a 33.3%/40% basis. The Hearing Officer in this Decision also references "The legal fee of Attorney" referenced *infra* from Respondent's Contingent Fee Agreements, as the "base attorney fee."

[TR, p. 2019, ll. 4-9.]

15. The Contingent Fee Agreement of Client BG, signed by Respondent on July 13, 2013 [EX 382], is the earliest example of the *Mahler* Surcharge Provision language submitted during the hearing. The Contingent Fee Agreements of Clients YH, dated October 20, 2014 [EX 254]; and YG, dated April 11, 2015 [EX 414], also contain the same *Mahler* Surcharge Provision. The language at issue reads:

> The legal fee of Attorney shall be 33.3% of the gross amount recovered, if settlement is achieved without the necessity of filing a lawsuit, or, going to trial 40% of the ultimate gross settlement or judgment following the trial and any appeal undertaken by the adversary. Additionally, in PIP (Personal Injury Protection) reimbursement cases and where Malher[10] [sic] or Winters[11] fees are applicable, Attorney earns additional appropriate fees from the first party carrier from the medical payment portion of the proceeds of the settlement.
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> *E.g.*, EX 382, p. 2 (emphasis added).

16. At some point during 2015, Respondent changed his form Contingent Fee Agreement to boldface the *Mahler* Surcharge Provision.[12] The Contingent Fee Agreement of MA, dated December 22, 2015 [EX 280], is of this form. Respondent testified he made this change to emphasize to clients that an additional fee would be charged, so that if they questioned his fees at the time of the settlement and final accounting, he could point to this language and remind them that they had prior notice he would be charging an additional fee. [TR, pp. 2051/16 – 2053/1.] Respondent also offered testimony – from himself and other Ethiopian lay witnesses -- that in Ethiopia, it is a cultural practice to seek to renegotiate contract

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[10] Respondent's fee agreements all contain this misspelling of "Mahler."

[11] "Winters" refers to *Winters v. State Farm Mut. Auto. Ins. Co.,* 144 Wn.2d 869, 31 P.3d 1164 (2001).

[12] This approximate date was determined by the following timeline: (1) the Contingent Fee Agreement of Yilma Gebreyes [Client YG], dated April 11, 2015, which contained the non-boldfaced *Mahler* Surcharge Provision [EX 414, p. 2]; and (2) the Contingent Fee Agreement of Michelle Aldrich [Client MA], dated December 22, 2015, which contained the boldfaced version [EX 280, p.2].

terms, and that he wanted to preclude his Ethiopian clients from trying to renegotiate terms at the time of the settlement and final accountings of their cases. The updated provision reads:

> The legal fee of Attorney shall be 33.3% of the gross amount recovered, if settlement is achieved without the necessity of filing a lawsuit, or, going to trial 40% of the ultimate gross settlement or judgment following the trial and any appeal undertaken by the adversary. **Additionally, in PIP (Personal Injury Protection) reimbursement cases and where Malher or Winters fees are applicable, Attorney earns additional appropriate fees from the first party carrier from the medical payment portion of the proceeds of the settlement.**

> *E.g.*, EX 280, p. 2 (emphasis in original).

17. In approximately 2016, Respondent made additional changes to the form Contingent Fee Agreement, italicizing "Malher" and "Winters," and changing "additional appropriate fees" to "additional appropriate and reasonable fees". The reasons for these particular changes were not explained during the hearing. The Contingent Fee Agreements of Clients WA, dated June 13, 2016 [EX 127]; MeA, dated November 29, 2016 [EX 309]; KN, undated[13] [EX 355]; ME, dated August 30, 2016 [EX 356]; BA, dated February 28, 2017 [EX 455]; and MW, dated November 3, 2016 [EX 479], are of this form. The updated provision reads:

> The legal fee of Attorney shall be 33.3%[14] of the gross amount recovered, if settlement is achieved without the necessity of filing a lawsuit, or, going to trial 40% of the ultimate gross settlement or judgment following the trial and any appeal undertaken by the adversary. **Additionally, in PIP (Personal Injury Protection) reimbursement cases and where *Malher* or *Winters* fees are applicable, Attorney earns additional appropriate and reasonable fees from the first party carrier from the medical payment portion of the proceeds of the settlement.**

> *E.g.*, EX 309, p. 2 (emphasis in original).

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[13] KN's undated fee agreement was signed at the same time as the fee agreement of her husband, ME.

[14] WA negotiated the "legal fee of Attorney" to be 27% of the gross amount recovered, if settled without a lawsuit, 33% if settled after filing a lawsuit, and 40% if after trial and any appeal. [EX 127, p. 2.]

18. Respondent testified that if PIP was involved, he verbally would discuss *Mahler* and *Winters* fees with each client to explain that if the client's automobile insurance included first-party PIP benefits, "So I tell them the way I understood it, you know, the proportionate share is the attorney from the discount would go to us." TR, pp. 2032/24 – 2033/9. Put another way, "that's what the additional [fee] payment is." *E.g.*, TR 2045/5 – 2047/24.

19. Respondent during the hearing admitted that his files contain no contemporaneous, written evidence of what he discussed with each client about the *Mahler* Surcharge Provision.

20. Respondent's testimony as to his advising his clients of his *Mahler* Surcharge Provision, consisted of conclusory statements that he explained the provision. However:

- There was no testimony that a copy of *Mahler* or *Winters* ever was given to the client.
- There was no testimony that Respondent explained that the holding in *Mahler* actually allocated the first party PIP insurer's proportionate share of the client's attorney fees and costs, to the client, i.e. the proportionate share is treated as a credit against the PIP insurer's subrogation recovery from the client's settlement funds.
- There was no testimony that Respondent explained that the fee agreement's reference to "fees from the first party carrier" did not involve additional "new money" paid by the first-party PIP insurer.
- There was no testimony that a surcharge for PIP subrogation liens related to any unusual or difficult work associated with PIP liens, as opposed to other liens asserted against the client's settlement funds.

- There was no testimony that Respondent ever disclosed that "the Mahler fee" would add an additional fee in the range of 7% - 20%[15] from the client's settlement funds, nor did he give any other estimate or example of how much of a Mahler fee could be debited from the client's settlement funds.
- There was no testimony that Respondent ever disclosed that the total attorney fees he would be charging from the client's settlement funds, could range from 41% - 59%, exclusive of costs,[16] in contrast to "The legal fee of Attorney shall be 33.3 [up to 40%]" stated in the Contingent Fee Agreement.
- There is no evidence that Respondent ever advised a client that the *Mahler* Surcharge Provision would operate as a mark-up of the regular, base attorney fee charged to the client.
- There is no evidence that Respondent ever advised a client that the *Mahler* Surcharge Provision would operate as a mark-up of the costs charged to the client.

C. Respondent's Office & Billing Procedures.

21. On August 26, 2019, the Grievance against Respondent was filed by Teena Quichocho, Respondent's former paralegal. [EX 2] Ms. Quichocho worked for Respondent for the period June 10, 2014 – January 29, 2019. [EX R519] Ms. Quichocho's career as a legal assistant or paralegal began in 1990, with experience primarily in family law and personal injury.

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[15] This range was derived from 16 of the client files at issue. A summary chart created by the Hearing Officer from the data presented during the hearing, is attached as Exhibit A to this Hearing Officer's Decision.

[16] *See* Exhibit A to this Decision.

22. Ms. Quichocho denied having ever signed a confidentiality agreement with Respondent. Respondent has not produced one.

23. Ms. Quichocho's duties were to answer the phone, keep Respondent's schedule, fill out the contingent fee agreement form for each client, prepare demand letters, prepare letters of representation, prepare letters to doctors, communicate with insurers, prepare pleadings, deal with discovery requests, calculate fees and costs, and prepare final accountings when cases settled.

24. Ms. Quichocho ran the office's daily activities. In the beginning of her employment, Respondent was in the office 3-4 times each week, but later he rarely was in the office during normal business hours. Respondent expected his staff to perform pursuant to his instructions so that he would not need to be in the office.

25. Respondent employed two other assistants during Ms. Quichocho's tenure. Neither testified during the hearing.

26. Ms. Quichocho was accustomed to calculating the *Mahler* PIP percentage by using a form Subrogation Worksheet, using the formula:

    Benefits Paid or Gross (whichever is less) ÷ (Gross Recovery) = Proportionate Share

    Proportionate Share x (Fees & Costs) = Insurance Company's Share of Costs & Fees

    See, e.g., EX 267.

27. ODC's lawyer expert David S. Heller testified that the above formula used by Quichocho was correct under the decision in *Mahler*.

28. Respondent treated the "Insurance Company's Share of Costs & Fees" pursuant to the above formula, as the additional "Mahler fee" to be paid to him pursuant to the *Mahler* Surcharge Provision.

29. At the conclusion of a matter, the Subrogation Worksheet was not given to the client with the Final Accounting.

30. Ms. Quichocho communicated with Respondent daily by text, phone or email. She would contact Respondent if she felt she needed his input on work product being prepared by her, typically by emailing him draft work product. She would leave him documents for his signature, as he often would come into the office after hours.

31. Ms. Quichocho would refer all client questions about the fee agreement, to Respondent.

32. Ms. Quichocho gave all draft final accountings to Respondent, for his review and approval, prior to each final accounting's submission to the client.

33. Ms. Quichocho would refer all client questions about their final accounting, to Respondent.

34. During the hearing, Respondent admitted that his original final accountings submitted to his clients, did not always specify the amounts paid to the PIP insurer. [*E.g.*, TR, pp. 395-396.]

35. During the hearing, Respondent admitted that his original final accountings submitted to his clients, did not specify that he was the recipient of "Mahler fees" referenced in the final accountings. [*E.g.*, TR, pp. 397-398.]

36. During the hearing, Respondent admitted there was no written record that he explained *Mahler* fees or *Winters* fees to clients at the time of their final accountings. [*E.g.*, TR, pp. 402-403.]

D. Procedural History.

37. In approximately 2018, Ms. Quichocho became concerned that Respondent was overcharging his "Mahler fees." TR, p. 51, ll.3-7. She noticed, "He would take a hundred percent of his fee off the Mahler even if I had the [PIP] amount reduced or waived." TR, p.

51, ll. 3-14.[17]

38. Ms. Quichocho began collecting copies of documents of Respondent's having her lie about settlement amounts to PIP insurers and health care providers. She also collected copies of documents of Respondent's charging Mahler fees and costs in cases where the PIP insurer's subrogation interest was either reduced or waived.

39. Ms. Quichocho during her employment occasionally suggested that Respondent should reduce his Mahler fees in cases where the PIP insurer had either waived or reduced its subrogation interest, or where existing liens would leave the client with little or nothing. However, there was no evidence that during her employment, Respondent was expressly notified by her or any other person that Respondent's Mahler fees were either inconsistent with the holding in *Mahler,* or in violation of the Rules of Professional Conduct.

40. By mid-2018, Ms. Quichocho showed signs of stress and complained to Respondent about feeling overworked. [*See* EX 320, texts dated July 3, 2018.]. In response, Respondent seemed unsympathetic and suggested that she was not "producing." *Id.*

41. On January 29, 2019, Ms. Quichocho quit. By her own admission during the hearing, she "walked out." *See also* EX R522, p. 3, ¶11.

42. Quichocho had mixed feelings about working for Respondent. She testified she was comfortable working for him. For a short time after she had left his employment, she occasionally assisted when requested by him.

43. Ms. Quichocho filed for unemployment benefits. In her initial filing with the Employment Security Department ("ESD"), she claimed her employment was terminated by Respondent

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[17] The evidence indicates that Respondent did not always take 100% of his Mahler fees. As shown, *infra,* Respondent "split" the Mahler fee in GH's case, and reduced the Mahler fee in WA's case. He also reduced the fees charged in the cases of AA and BG, apparently in response to their input.

due to lack of production. [EX R519]. Respondent contested the unemployment claim, and appeared at her unemployment hearing. During her unemployment hearing, she claimed she left the job due to stress and anxiety from work and family issues. [EX R522, p. 3, ¶ 17.]

44. On May 13, 2019, the Office of Administrative Hearings issued an Initial Order, denying Ms. Quichocho's unemployment claim. Ms. Quichocho appealed to the Commissioner's Review Office of ESD.

45. On July 26, 2019, the Commissioner issued a Decision of Commissioner, which affirmed the Initial Order. [EX R524]. Ms. Quichocho claimed that she did not receive the Decision of Commissioner until August 23, 2019. [EX R525, p. 1.]

46. On August 26, 2019, Ms. Quichocho filed a Petition for Reconsideration, to appeal the Decision of Commissioner. In the Petition for Reconsideration, she for the first time in the unemployment claim asserted she quit due to a hostile work environment created by Respondent's billing practices. [EX R525, p. 2.] This Petition for Reconsideration was denied as untimely. [EX R526]

47. Also on August 26, 2019, the same day she filed her Petition for Reconsideration to ESD, Quichocho filed her Grievance. [EX 2, p. 000001.]

48. Respondent asserts Ms. Quichocho's testimony is not credible, because she filed the Grievance in retaliation for his successful contest of her unemployment claim. The Hearing Officer finds that while Ms. Quichocho filed the Grievance in retaliation for Respondent's contesting the unemployment claim, Ms. Quichocho's testimony as to Respondent's work for his clients and his billing practices was calm and supported by the documents. As substantially all of her testimony as to Respondent's client matters was

corroborated by documents – whose authenticity were not questioned – the Hearing Officer finds her testimony credible as to Respondent's work on his clients' matters and his billing practices.

49. Respondent also asserts Ms. Quichocho's testimony is not credible, because slightly more than a month after the Grievance was filed, she offered Respondent through a mutual friend to dismiss the Grievance in exchange for payment. Respondent and Ms. Quichocho's testimony differ as to who instigated this proposal, but the weight of the evidence is that Ms. Quichocho first raised the idea. Ms. Quichocho admits she was interested in a financial settlement from Respondent, as she was unemployed and in financial need, but claims negotiations ended when she refused to accede to Respondent's demand that she [falsely] state that she had stolen the documents submitted with the Grievance. While the Hearing Officer does not condone the negotiations between Ms. Quichocho and Respondent, the negotiations do not affect the credibility of Ms. Quichocho's testimony regarding Respondent's work on his clients' matters and his billing practices, as substantially all of her testimony as to Respondent's client matters were corroborated by the documents.

50. In response to ODC's investigation and throughout this proceeding, Respondent sought to discredit Ms. Quichocho with evidence of alleged misconduct towards an ex-boyfriend. Respondent also sought to introduce evidence from a prior employer, as to her conduct more than 10 years prior. The Hearing Officer finds that Ms. Quichocho's prior disputes with these third parties are irrelevant as to the credibility of her testimony and documentary evidence as to Respondent's conduct.

51. Respondent's repeated accusations that Ms. Quichocho stole documents from him – long a

centerpiece of his defense during ODC's investigation and in the subsequent disciplinary proceeding -- are without support in fact. While she had copies of certain documents, Ms. Quichocho did not remove his files. Indeed, as further discussed *infra*, Respondent had care, custody and control of his files, including electronic files and access to office emails.

52. Respondent's assertion that Ms. Quichocho was precluded from testifying against him under a confidentiality agreement, is without support in fact. No confidentiality agreement was produced by Respondent.

53. The Hearing Officer finds that Respondent's attacks on Ms. Quichocho from the time he became aware of her filing the Grievance, were attempts by him to divert attention from his conduct.

54. In the Grievance dated August 26, 2019, Ms. Quichocho submitted documents relating to Clients AW, GT, SR, YH, and BG, plus two other clients whose matters are not at issue in the present proceeding. [EX 2, pp. 000003 – 000028.]

55. In a letter dated September 6, 2019, Respondent was told by ODC, "You must personally assure that all records, files, and accounts related to the grievance are retained . . .". [EX R545, Ex. F attached thereto.]

56. Shortly after Respondent received a copy of the Grievance, Respondent discussed the Grievance with a mentor, J.D. Smith, a well-respected personal injury lawyer.[18] Respondent told attorney Smith about Respondent's keeping the "portion that would be saved for Mahler . . .". [TR p. 1948, ll. 22-24.] Respondent acknowledged during his testimony, that Smith disagreed with Respondent's collection of Mahler fees. Smith told Respondent that he (Smith) handled *Mahler* by giving the *Mahler* money to the client. On

[18] This gathering of friends at Mr. Smith's home, also included an unnamed workers' compensation lawyer.

cross-examination, Smith testified that under *Mahler*, the insurer is paying a part of the costs and fees, but then "it's part of [the client's] net." [*See* TR, pp. 1954/19 – 1955/5.]. Smith testified that Respondent still thought he [Respondent] was right, but Smith advised him to refund the *Mahler* amounts out of an abundance of caution.

57. Smith testified from this conversation, he did not sense that Respondent was intentionally cheating. [TR p. 1949, ll. 19-22.]

58. The Hearing Officer finds the testimony of J.D. Smith, credible.

59. Based on the aforementioned conversation between Respondent and J.D. Smith, the Hearing Officer finds that Respondent subjectively believed his Mahler Surcharge Provision complied with *Mahler* and *Winters*. Respondent's conversation with attorney Smith was Respondent's first notice that he had misread *Mahler*.

60. In response to the Grievance, Respondent retained counsel in September 2019. [Declaration, dated March 10, 2023, ¶1, attached as Exhibit B to the [Corrected] Response to ODC's Motion To Compel Amended Answer, Cross-Motion To Exclude Evidence And Request For Evidentiary Hearing, BF #35.][19] The record is unclear whether this was before or after Respondent's conversation with attorney Smith.

61. In response to the Grievance, in a letter from his counsel dated October 18, 2019, Respondent claimed that he could not locate the files for the clients named in the Grievance, which ostensibly including the files of AW, GT and SR. [EX R-558, p. 2.]

62. From the outset of ODC's investigation of the Grievance, Respondent refused to voluntarily produce documents. On February 13, 2020, ODC sent Respondent's counsel an Additional Request for Response to Grievance. [EX 3] Respondent was given a list of 34

[19] During the hearing, counsel for Respondent on the record stated that materials already part of the bar file need not be filed as formal hearing exhibits.

former clients, of whom 15 are subjects of the present disciplinary proceeding against Respondent: AA, AM, AW, BA, BG, GH, GT, HS, ME, MeA, MA, SR, WA YH, and YG. In particular, for each client, Respondent was asked to "provide copies of all financial records relating to all funds received and/or disbursed in connection with that client. This includes all of the following:

- Agreements pertaining to fees and costs (RPC 1.5(c)(1)-(2), 1.15B(a)(3));
- Statements or accountings to the client or any third party showing the disbursement of funds to them or on their behalf (RPC 1.5(c)(3), 1.15B(a)(4));

  . . .

- Those portions of client's file reasonably necessary for a complete understanding of the financial transactions pertaining to the client (RPC 1.15B(a)(9)).

. . .

In addition, for each of the clients listed below, please provide copies of all correspondence relating to that client to or from any of the following:

- The client;
- Any insurer;
- Any party who asserted a subrogation claim against funds received in connection with the client.

[EX 3]

63. In response to the Additional Request, on March 13, 2020, Respondent through counsel objected to providing any responsive documents. [EX R563] Counsel for the parties agreed that due to the pandemic, there would be an extension of time for Respondent's motion to the Chief Hearing Officer pursuant to ELC 5.6(b).

64. During its preliminary investigation, and to check Quichocho's allegations, ODC obtained insurance company documents related to Respondent's client matters, from the National Insurance Crime Bureau ("NICB"). [BF #39, Ex. B thereto, pp. 4-5.]

65. On October 16, 2020, Respondent filed an ELC 5.6 Motion And Objection, seeking to avoid production of the documents. [BF #39, Ex. A attached thereto.] Respondent argued the production should not occur because: (1) the information provided by Quichocho was stolen property and ODC's possession of the information violated his property rights in the documents; and (2) the request was unduly burdensome. [BF #39, Exs. A and C attached thereto.]

66. In support of his motion objecting to ODC's request for documents, Respondent submitted a declaration dated October 16, 2020. [EX 26] Respondent described himself as having had "a successful personal injury practice in Seattle for over fifteen years." [EX 26, ¶ 3.] He also stated, "Due to the pandemic, I closed my office and brought everything that was there to my house." [EX 26, ¶ 10.] He also asserted, "To find any responsive emails, I would have to spend a substantial amount of time searching for any responsive emails in my firm's email accounts[20] other than the Outlook account that Ms. Quichocho wiped clean." [EX 26, ¶ 13.]

67. On December 5, 2020, the Chief Hearing Officer denied Respondent's ELC 5.6 motion, and ordered Respondent to comply within 30 days from entry of the order. [EX 4]

68. On January 20, 2021, Respondent responded to the February 13, 2020 Additional Request for Response. Respondent's counsel provided ODC with a flash drive "that contains the documents Mr. Feyissa has been able to locate. There are documents that he has not been

[20] This statement by Respondent shows that as of October 16, 2020, he was aware of email accounts that needed to be searched.

able to find, likely because Ms. Quichocho stole them." Respondent's counsel noted, "[H]e was unable to find the fee agreements for Aster Woldemicheal [sic][21], Gina Torey[22] and Sherry Reese[23] . . .". *Id.* Respondent through counsel also said, "He has also been unable to find the fee agreements for Aster Mebrate[24] and Seyoum Haileyesus [sic], who are married." *Id.*

69. The January 20, 2021 letter also disclosed that because he could not find their fee agreements, Respondent made refunds of the previously charged Mahler fees to clients AW, GT, SR, AM and HS.[25] Respondent also had discovered that the wrong fee agreement – the older form without the *Mahler* Surcharge Provision – was used in client GH's case, and a Mahler fee refund was issued to GH.

70. Following Respondent's January 20, 2021 production, on February 19, 2021, ODC issued another Additional Request for Response to Grievance, which sought documents relating to Respondent's reconstruction of certain trust account records, and of the refunds made by him. [EX #5]

71. On March 22, 2021, Respondent responded to the Additional Request dated January 20, 2021. This production included copies of text messages with clients that should have been produced in response to the earlier request. [Declaration In Response To ODC's Motion To Allow Discovery, p. 1, ll. 19-22, BF #56.] The documents produced included 3

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[21] This client is known as "AW" in the Third Amended Complaint. The correct spelling of her surname is "Weldemichael."

[22] This client is known as "GT" in the Third Amended Complaint.

[23] This client is known as "SR" in the Third Amended Complaint.

[24] This client is known as "AM" in the Third Amended Complaint.

[25] EX 560 misidentified HS in reverse as "Seyoum Haileyesus." This client is known as "HS" in the Third Amended Complaint.

declarations, all dated October 9, 2019:

a. Declaration of Aster Weldemichael ("Declaration of AW") [EX 6, pp. 000080-000082].

b. Declaration of Gina Lorraine Bell (formerly Gina L. Torey) ("Declaration of GT") [EX 6, pp. 000015-000017].

c. Declaration of Sherry L. Reese ("Declaration of SR") [EX 6, pp. 000030-000032].

72. The Declaration of AW was prepared by Respondent, and stated: "**I HAVE LOST THE COPY OF THE FEE AGREEMENT WE SIGNED, but I am certain that it's the exact similar to the fee agreement attached herein**." [EX 68, ¶ 2 (emphasis in original).] The attachment to this declaration was a Contingent Fee Agreement dated October 9, 2019, which contained the 2016 boldfaced *Mahler* Surcharge Provision: "**Additionally, in PIP (Personal Injury Protection) reimbursement cases, and where *Malher* or *Winters* fees are applicable, Attorney earns additional appropriate and reasonable fees from the first party carrier from the medical payment portion of the proceeds of the settlement.**" [EX 68, p. 3 (emphasis in original).]

73. The Declaration of GT was prepared by Respondent, and stated: "**I HAVE LOST THE COPY OF THE FEE AGREEMENT WE SIGNED, but I am certain that it's the exact similar to the fee agreement attached herein.**" [EX 85, ¶ 2 (emphasis in original).] The attachment to this declaration was a Contingent Fee Agreement dated October 9, 2019, which contained the 2016 boldfaced *Mahler* Surcharge Provision: "**Additionally, in PIP (Personal Injury Protection) reimbursement cases, and where *Malher* or *Winters* fees are applicable, Attorney earns additional appropriate and reasonable fees from the first party carrier from the medical payment portion of the proceeds of the**

settlement." [EX 85, p. 3 (emphasis in original).]

74. The Declaration of SR was prepared by Respondent, and stated: "**<u>I HAVE LOST THE COPY OF THE FEE AGREEMENT WE SIGNED, but I am certain that it's the exact similar to the fee agreement attached herein.</u>**" [EX 115, ¶ 2 (emphasis in original).] The attachment to this declaration was a Contingent Fee Agreement dated October 9, 2019, which contained the 2016 boldfaced *Mahler* Surcharge Provision: "Additionally, in PIP (Personal Injury Protection) reimbursement cases, and where *Malher* or *Winters* fees are applicable, Attorney earns additional appropriate and reasonable fees from the first party carrier from the medical payment portion of the proceeds of the settlement." [EX 115, p. 3 (emphasis in original).]

75. Subsequent to Respondent's production of documents on March 22, 2021, ODC in its Formal Complaint, dated October 4, 2022, asserted that Clients AW, GT, SR, AM and HS did not have written fee agreements. [BF #3, ¶¶ 4 (Client AW), 35 (Client GT), 57 (Client SR), 166 (Client AM), & 185 (Client HS). Additionally, ODC in its First Amended Formal Complaint, dated January 23, 2022, ¶¶ 4, 35, 57, 166, & 185 [BF #22]; and the Second Amended Formal Complaint, dated January 25, 2023, ¶¶4, 35, 57, 166 & 185 [BF #23], continued to assert – consistent with Respondent's claim that he could not locate the original written fee agreements -- that Clients AW, GT, SR, AM & HS did not have written fee agreements for their contingency fee matters.

76. On February 6, 2023, Respondent filed an Answer To Second Amended Formal Complaint., in which Respondent refused to respond to Paragraphs 2-431, *i.e.*, Counts 1-5. [BF #25, pp. 1-2.] Respondent's objection was based on ODC's obtaining stolen information from Quichocho, and "All such evidence was obtained in violation of

Respondent's rights." [BF #25, ¶ 2.]

77. Respondent's arguments in support of the Objection stated in Paragraph 2 of his Answer, were materially identical to the arguments previously made to the Chief Hearing Officer, and rejected by the Chief Hearing Officer.

78. On February 16, 2023, ODC filed a Motion to Compel Amended Answer Complaint With ELC 10.5(b). [BF #29]

79. On March 10, 2023, Respondent filed his Response To ODC's Motion To Compel Answer, in which he cross-moved to exclude all evidence related to documents and information received by ODC from Quichocho. The arguments made by Respondent in support of the Response To ODC's Motion To Compel Amended Answer, Cross-Motion To Exclude Evidence, were materially identical to the arguments previously made to the Chief Hearing Officer, and rejected by the Chief Hearing Officer.

80. On April 3, 2023, the Hearing Officer granted ODC's Motion to Compel Amended Answer, and denied Respondent's Cross-Motion To Exclude Evidence. [BF #48] The Hearing Officer's Order included a finding that by refusing to specifically admit or deny each fact or claim asserted in Paragraphs 2-431 of the Second Amended Formal Complaint, Respondent failed to comply with ELC 10.5(b)(1) and Civil Rule 8(b).

81. On April 24, 2023, Respondent filed his Amended Answer To Paragraphs 2-431 of the Second Amended Complaint. [BF #51]

82. On February 7, 2023, ODC asked Respondent to produce the complete client files for 16 of the clients referenced in the Formal Complaint. [Declaration of Disciplinary Counsel, dated May 3, 2023, ¶ 9, BF #53.] On March 9, 2023, Respondent's counsel informed ODC that Respondent would wait until after the Hearing Officer's ruling on ODC's Motion to

Compel Amended Answer and related pleadings before considering whether to respond to ODC's request. *Id.,* ¶ 10.

83. The day after the Order Granting ODC's Motion To Compel Amended Answer, And Denying Respondent's Cross-Motion To Exclude Evidence [BF # 48], on April 4, 2023, ODC reiterated its request that Respondent provide the complete client files for 16 of the clients referenced in the Second Formal Complaint. Respondent resisted production, claiming, "He believes he has already given you everything that would be relevant." [BF #56, p. 2, line 18.] Respondent's counsel also claimed, "We just do not know what he could have that would be relevant to anything alleged in the Second Amended Formal Complaint." [BF #56, p. 3, ll. 2-4.]

84. On April 18, 2023, ODC also requested Respondent to produce correspondence and proof of refunds that occurred after March 22, 2021. [BF #53, ¶ 14.]

85. On May 3, 2023, ODC filed a Motion To Allow Discovery Under ELC 10.11(c). seeking an order allowing ODC to propound two requests for production: (1) to obtain Respondent's client files for 16 matters; and (2) to obtain Respondent's communications with the same 16 clients after March 22, 2021. [BF #52] As part of the motion, ODC set forth evidence that Respondent failed to produce emails responsive to the Chief Hearing Officer's prior order. [BF #52, p. 4, ll. 8-11, & BF # 53, ¶ 13.]

86. Respondent opposed issuance of the requests for production. [BF #55]. In his May 15, 2023 declaration submitted in opposition to ODC's Motion To Allow Discovery [EX 17], Respondent stated:

- He had been living in Addis Ababa, Ethiopia, since late August 2022.[26]
- "I closed my office in 2020 due to the pandemic and moved everything to my house. I had also significantly reduced my practice by then and had no support staff."
- Respondent's retention practice typically was to retain "only critical financial documents, such as fee agreements, final accountings, copies of bills and checks, and releases."
- Respondent claimed he could not remember why he did not previously provide emails from his office's existing email accounts. [EX 17, ¶¶ 7-8.]
- "I have looked at the files on my computer and I do not have anything that was requested by ODC during its investigation that was not already provided."
- "I do not have any physical files for the five clients whose files are missing . . . Those clients are called AW, GT, RS, AM and HS in the formal complaint."

87. On May 17, 2023, the Hearing Officer granted ODC's Motion To Allow Discovery. [BF #63]

88. On July 14, 2023, in response to ODC's Requests for Production of Documents and Tangible Things, Respondent responded to ODC's formal discovery requests. [EX R561] The documents included:

- Three banker's boxes of physical client files, including physical files for AW, GT, SR, AM and HS.
- A copy of Client AW's original signed fee agreement, dated February 4, 2012. It

[26] This was after he issued the July 7, 2022 refunds of the Mahler fees previously charged to Clients WA, AA, YH, MA, MeA, ME, KN, BG, YG & BA, discussed *infra* at ¶ ___.

did not include a *Mahler* Surcharge Provision, let alone the 2016 version. [EX 51, p. 2.]

- A copy of Client GT's original signed fee agreement, dated September 28, 2012. It did not include a *Mahler* Surcharge Provision, let alone the 2016 version. [EX 76, p. 2.]
- A copy of Client SR's original signed fee agreement, dated October 23, 2012. It did not include a *Mahler* Surcharge Provision, let alone the 2016 version. [EX 93, p. 2.]
- A copy of Client AM's original signed fee agreement, dated October 27, 2015. It did not include a *Mahler* Surcharge Provision. [EX 196]
- A copy of Client HS's original signed fee agreement, dated October 7, 2015. It did not include a *Mahler* Surcharge Provision. [EX 197]
- Documents – including emails and electronic files – which Respondent admitted during the hearing were responsive pursuant to the Chief Hearing Officer's order of December 5, 2020, but not produced until July 2023. [*See, e.g.*, TR 2444-2453, & EXs 142, 208, 433, & 230 referenced therein.]

89. Respondent testified during the hearing that he found the files for AW, GT, and SR, in the crawl space of his house's "mother-in-law" space. Respondent claimed he had forgotten that he had moved files to the crawl space.

90. During the hearing, Respondent testified that he closed his office and moved his files, a few months before the pandemic. TR p. 2371/20-2372/1. This was contrary to the statement made in his two prior declarations, which averred he closed his office and moved his files

during the pandemic.[27] The Hearing Officer finds that this change in testimony was an intentional attempt by Respondent to pre-date his misplacing the files of AW, GT, and SR, to a time prior to the ODC's Additional Request for Response to Grievance, dated February 13, 2020, so as to reduce his culpability for failing to obey the Chief Hearing Officer's order of December 5, 2020.

91. Respondent claimed during the hearing that in the process of complying with the Requests for Production, he had found AM and HS's files in a drawer in Ms. Quichocho's former desk.

92. In the electronic records produced by Respondent on July 14, 2023, ODC found Respondent's electronic client files were kept in Microsoft Word folders, with a folder labeled with each corresponding client's name.

93. The folder for Client GT contained a document known as "CONTINGENCY – GINA TOREY." According to the Microsoft Word "Properties" function, this document was created by Respondent himself on September 28 2012,[28] and thereafter revised by him personally on October 9, 2019. [EX 25]

94. The Microsoft Word folder for Client AW contained a document called "CONTINGENCY – Aster." According to the Microsoft Word "Properties" function, this document was created by Respondent himself on February 4, 2012, and thereafter last revised by him personally on March 1, 2020. The folder for Client AW contained a document called

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[27] Governor Inslee on March 23, 2020, issued the first COVID-19 "stay-at-home" order, effective March 25, 2020. https://governor.wa.gov/sites/default/files/proclamations/20-25%20Coronovirus%20Stay%20Safe-Stay%20Healthy%20(tmp)%20(002).pdf

[28] Paralegal Quichocho was not employed by Respondent prior to June 2014, and she quit in January 2019. She therefore could not have created the documents tagged by the Microsoft Word software as created in 2012, which thereafter were revised in October 2019.

"CONTINGENCY – Aster." [EX 25]

95. The evidence shows that the October 9, 2019 revised electronic template for GT's contingency fee agreement, was used by Respondent to generate the October 9, 2019 revised contingency fee agreements for AW and SR. *See* EX 22, EX 23, & EX 24.

96. The Hearing Officer finds that Respondent knew no later than October 9, 2019, that he had found on his computer system, unsigned electronic versions of GT's and AW's original fee agreements, but did not produce them during ODC's investigation. [EX 25]

97. Respondent offered no excuses and/or explanations for not fully complying with the Chief Hearing Officer's order of December 5, 2020, to produce copies of the electronic versions of the original fee agreements of GT and AW. From the outset of this matter, Respondent resisted production of his files, and claimed he could not find the files of AW, GT, SR, AM and HS until well into May 2023.

98. According to the "Properties" data of EX 25, on October 9, 2019, Respondent modified the September 28, 2012 fee agreement of GT. It appears from the face of the October 9, 2019 version of the fee agreement signed by GT [EX 85], that Respondent intentionally modified the September 28, 2012 fee agreement of GT to insert the 2016 version of the *Mahler* Surcharge Provision. Respondent intentionally used GT's revised fee agreement as a template to create the revised fee agreements signed by AW and SR on October 9, 2019. Respondent intentionally inserted the 2016 *Mahler* Surcharge Provision and induced his former clients AW, GT and SR to execute updated fee agreements, to create better factual – but false -- evidence and induce what he thought would be favorable testimony from his former clients.

99. Based on the electronic date stamp from the "Properties" data shown in EX 25, the Hearing

Officer finds that Respondent no later than October 9, 2019, was aware of the electronic unsigned copies of the contingent fee agreements of AW and GT, but failed to print and produce them despite the Chief Hearing Officer's order of December 5, 2020. Respondent's failure to print and produce these documents was intentional. Respondent's failure to print and produce these documents was for a selfish purpose – attempting to evade discovery and impede ODC's investigation. Respondent's intentional failure to produce the electronic unsigned copies of these contingent fee agreements in accordance with the Chief Hearing Officer's order was bad faith obstruction of the disciplinary proceeding.

100. Respondent intentionally wrote over GT's original fee agreement to insert the 2016 version of the *Mahler* Surcharge Provision – a version that did not exist at the time AW, GT and SR's files were opened. Respondent intentionally induced SR, GT and AW into signing the updated versions of the fee agreements, as well as each of them executing a declaration attesting to the document's being an accurate representation of her original fee agreement, for the purpose of creating falsified evidence in his favor for use in the disciplinary proceeding.

101. Respondent's creation of the false declarations of AW, GT, and SR – including the false revised contingency fee agreements with the 2016 version of the *Mahler* Surcharge Provision – was with intent to deceive ODC and potentially the Hearing Officer. Submission of the false documents caused serious injury or potentially serious injury to ODC, which relied upon the revised contingency fee agreements in preparing the Formal Complaint, First Amended Formal Complaint, and Second Amended Formal Complaint. Submission of the false documents to ODC caused a significant or potentially significant

adverse effect on the legal proceeding, i.e., the disciplinary proceeding. Respondent's conduct was prejudicial to the administration or justice.

102. Based on Respondent's Declaration of October 16, 2020, Respondent was actually aware that if the Chief Hearing Officer denied his ELC 5.6 Motion, he would be obligated to search his office emails. [EX 26, ¶ 13.] Respondent failed to search his office emails in response to the Chief Hearing Officer's order dated December 5, 2020.

103. The Hearing Officer expressly rejects Respondent's *mea culpa* offered in his May 15, 2023 declaration – that he could not remember why he did not provide the emails earlier – as nonsensical. Respondent's failure to search his office emails is consistent with his clear stated desire from the outset of ODC's investigation: he did not want to produce documents. The Hearing Officer finds that Respondent's failure to search his office emails until the time of the production on July 14, 2023, was intentional, and was bad faith obstruction of the disciplinary proceeding. Respondent's failure to search his office emails in response to the Chief Hearing Officer's order dated December 5, 2020, was for a selfish purpose – attempting to evade discovery and impede ODC's investigation. Respondent's conduct was prejudicial to the administration or justice.

104. The Hearing Officer finds that Respondent's failure to diligently search for documents in his care, custody and control which were responsive to the Chief Hearing Officer's order of December 5, 2020, was intentional. Respondent's failure to diligently search for documents in his care, custody and control which were responsive to the Chief Hearing Officer's order of December 5, 2020, was for a selfish purpose – attempting to evade discovery and impede ODC's investigation. Respondent's conduct was prejudicial to the administration or justice.

105. Respondent's testimony that he personally moved his files from his office during the pandemic – after the Grievance was filed, and while the Additional Request for Response to Grievance was pending from ODC – and did not notice that files of AW, GT and SR sought by ODC were in his hands as he moved them, is not credible.

E. The Client Files: Respondent's Charging Mahler Fees For Non-PIP Liens.

106. In the case of AA, Respondent charged a Mahler fee to the portion of the settlement funds allocable to an Optum lien. The Optum lien was pursuant to medical payments made under Apple Health, and thus was not a PIP reimbursement item. Because the face of the Mahler Surcharge Provision applied only to PIP liens, Respondent charging a Mahler fee to the Optum lien was improper. Respondent should have known that he improperly charged a Mahler fee to the Optum lien, and that this caused injury to AA at the time of the original final accounting.

107. In the case of BA, which was a worker's compensation matter covered by the Washington Department of Labor & Industries ("DLI"), Respondent failed to recognize that the statutory DLI lien was not a PIP lien. Because the face of the Mahler Surcharge Provision applied only to PIP liens, Respondent charging a Mahler fee to the DLI lien was improper. Respondent should have known that he improperly charged a Mahler fee to the DLI lien, and that this caused injury to BA.[29]

F. False Statements To Third Parties In The Cases of AW, SR, WA, HS, GH, YH, MA, BG, YG, DA and MW(Count 2).

[29] In the Third Amended Formal Complaint, ODC treated the DLI order as limiting Respondent's attorney fees to $3,333.33 and $497.93 in costs. [BF #125, ¶¶ 466-478.] However, this issue was not addressed in ODC's Hearing Brief, and the expert testimony during the hearing did not point to any statutory or case law that definitively treated a DLI order as superseding an attorney fee set by a private contract. The simplest answer to address Respondent's taking a "Mahler fee" in this case, is to point out that the DLI lien was not a PIP lien.

108. During the hearing, Respondent admitted that he – personally or through statements made by Quichocho at his direction and/or ratification -- made false misrepresentations to first-party PIP insurers and/or third-party medical providers in the cases of AW, SR, WA, HS, GH, YH, YG, and BG. Respondent's statements were knowingly false. Respondent's false and misleading statements were intentional conduct.

109. In the case of AW, GEICO Insurance ("GEICO") had a $8,004 PIP subrogation lien. In a letter dated November 11, 2014, Quichocho at Respondent's direction requested GEICO to waive its subrogated lien, on the ground that AW only was awarded $11,500 at arbitration. [EX 55] This letter also falsely represented that Respondent had agreed to take a reduction of fees and costs to help AW receive fair compensation. In a fax dated November 13, 2014, GEICO in response to the November 11, 2014 letter and confirming a conversation with Quichocho on November 13, 2014, offered to reduce its lien to $3,386.00.

110. The actual arbitration award as of October 13, 2014 was $18,840.00 [EX 54]; on November 19, 2014, the arbitration award was amended to $19,864.61, which included $1,024.57 in costs [EX 59]. The tortfeasor's insurer in AW's case, settled the claim for $19,040.04, and issued a check for this amount on November 20, 2014. In a letter dated November 25, 2014, Quichocho at Respondent's direction represented to GEICO that the fees and costs to litigate were in excess of $9,000.00, and that the reduction to $3,386.00 offered by GEICO would "only cover *Mahler* fees with no compensation for Ms. Weldemichael . . .". [EX 61] In response to the letter, GEICO agreed to reduce its subrogated lien to $500.00. [EX 63]

111. In his original final accounting for AW, signed by both AW and Respondent on December 16, 2014, Respondent did not reduce his fees; rather, contrary to the letter of November 11,

2014, Respondent charged AW his full 40% base attorney fee ($19,040.40 settlement x 0.40 = $7,616.16). [EX 66] The final accounting also failed to state that GEICO was receiving a $500.00 disbursement for its subrogated interest; rather, the original final accounting shows a $4,129.11 charge for "Mahler or Winters' fees and discount by GEICO. GEICO subrogation lien – reduced from $8.004.00)".

112. By failing to disclose in the original final accounting GEICO's reduction of its lien from $8,004.00 to $500.00, Respondent intentionally obscured his taking a $3,629.11 Mahler fee, and on the face of the final accounting appeared as if a $4,129.11 payment was made to GEICO. Respondent's disclosures intentionally failed to show that a $3,629.11 Mahler fee was remitted to Respondent, and failed to state to the client the method by which the Mahler fee was calculated.

113. Respondent's block billing the Mahler fee with the PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to AW that this was an additional fee was collected by Respondent.

114. AW testified at the hearing. She is a self-employed childcare provider. When asked to review the original final accounting and asked how much was paid to GEICO, looking at EX 66, she said "$4,129.11." She did not know the meaning of "Mahler." When she signed the October 9, 2019 Contingent Fee Agreement attached to her declaration, Respondent did not explain either "Mahler" or "Winters" to her. At the October 9, 2019 meeting, Respondent refunded the $3,629.11 Mahler fee to AW.

115. Client SR did not testify at the hearing. In her case, GEICO had a PIP subrogated interest of $10,000.00. [EX 94] In attempting to convince GEICO to reduce its PIP interest to $800.00, on March 23, 2015, Respondent directed and/or approved of Quichocho's falsely

stating to GEICO that the tortfeasor's settlement offer was only $11,300. [EX 100; EX 101.] Responded admitted during the hearing that this statement was untrue. The settlement offer at that time was $18,139. [EX 97]. In April 2015, SR's case settled for $18,639. After some additional negotiations, Quichocho convinced GEICO to reduce its PIP interest to $1,200. [EX 108]

116. In his original final accounting for SR, signed by both SR and Respondent on April 20, 2015, Respondent charged SR $6,213.00 in attorney fees (33.3% of $18,639), and $569.34 in costs. [EX 111] Even though the PIP insurer had reduced its subrogated interest from $10,000 to $1,200, Respondent charged SR his full Mahler fee, calculated at $3,662.46. [EX 110 & EX 111.]. This final accounting described a $4,862.46 charge as "Mahler or Winters' fees (GEICO subrogation reduced from $10,000.00)".

117. By failing to disclose in the original final accounting GEICO's reduction of its lien from $10,000.00 to $1,200.00, Respondent intentionally obscured his taking a $3,662.46 Mahler fee, and on the face of the final accounting appeared as if a $4,862.46 payment was made to GEICO. Respondent's disclosures intentionally failed to show that a $3,662.46 Mahler fee was remitted to Respondent, and failed to state to the client the method by which the Mahler fee was calculated.

118. Respondent's block billing the Mahler fee with the PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to SR that this was an additional fee was collected by Respondent.

119. Respondent refunded $3,662.46 to SR on October 9, 2019. [EX 115, p. 000005.]

120. Client WA testified at the hearing. WA knew Respondent from their time in law school, and considered them to be friends. WA was admitted to the practice of law in the State of

Washington in 2007, and practiced in Washington during 2008-2019, thereafter moving to Maryland. While in Washington as a solo practitioner, his work was mostly in criminal law, and occasionally family law. In Maryland, he practices immigration law for another lawyer. WA did not have much experience with personal injury law, having begun representation on one such case which he transferred to another attorney.

121. WA was injured in a motor vehicle accident on January 6, 2016. WA hired Respondent, because Respondent was willing to reduce his fee to 27% if settled without the need of filing a lawsuit or trial, 33% of settlement or judgment if a lawsuit is filed. WA did not notice that the fee agreement contained a further provision that the fee would be 40% "following the trial and any appeal". [EX 127] WA testified that Respondent did not explain the Mahler/Winter language in the fee agreement, and that WA did not know what it meant. WA had no understanding of *Mahler* prior to being informed of the present disciplinary matter. WA testified that had he known Respondent would be charging a Mahler fee out of his portion of the settlement proceeds, he would not have signed the fee agreement, as WA was very concerned with his financial needs, aware of his child support lien, and thus was very sensitive of the fee which would be charged to him.

122. GEICO paid $9,555.20 in PIP benefits on WA's behalf. [EX 128] WA was awarded $19,144.69 at arbitration. [EX 130] On February 8, 2018, WA's claim against the tortfeasor was settled for $23,500 in lieu of filing for trial de novo. [EX 131]

123. In addition to the $9,555.20 PIP lien, WA had outstanding bills from Cornerstone Chiropractic totaling $3,724.55. There also was a $5,853.05 child support lien against WA's settlement funds, in the amount of $5,853.05. The tortfeasor's insurer paid the child support lien out of the settlement funds, and remitted the remaining $17,646.95 to

Respondent in trust for WA.

124. On April 26, 2018, in a letter to GEICO, Respondent wrote to GEICO, requesting a waiver of its subrogated interest. Respondent thought this letter was so good, he told Quichocho to save it for later use. [EX 141] This letter contained the following false statements:

- "The arbitration award came to less than **<u>$19,000.00</u>.**" [EX 142, emphasis in original.] This statement was false because it omitted mention that the case had settled for $23,500.
- "We spent in costs alone over **<u>$5,680.00</u>.**" [EX 142, emphasis in original.] The original final accounting shows the actual amount was $1,401.09. [EX 149]
- "[O]ur client has a child support lien . . . from two States totaling over $27,455.00. . . . The Staes agree to take **<u>$7,000.00</u>** each for now and continue to pursue him for the remaining amount." [EX 142, emphasis in original.]. When EX 142 was shown to WA during the hearing, he called the letter "ridiculous" and "embarrassing" by this letter, as there was no second child support lien from another state, and WA was concerned that his attorney falsely misrepresented him to his insurance carrier. WA said he was not shown the letter during Respondent's representation.
- "Cornerstone Chiropractic, over treat, over billed, and has an outstanding bill of over **<u>$6,700.00</u>!**" [EX 142, emphasis in original.] This statement was false because the actual amount was $3,724.55.

125. In reliance of the April 26, 2018 letter, GEICO waived its PIP reimbursement claim. [EX 144, p. 000002.]. Respondent texted WA a copy of GEICO's PIP waiver. [EX 151, p. 000003.]. WA's original final accounting set forth a specific line item that the GEICO

subrogation lien was waived. [EX 149]

126. When he signed off on the final accounting on April 30, 2018, while he felt the final accounting [EX 149] was not a detailed breakdown, he did not question Respondent's taking a 40% fee at the time. WA testified that he was unhappy with the low financial result of the case for him, was unhappy with the process, and wanted to move on. He did not question the $2,208.16 debited from the settlement funds as "Mahler fees (GEICO's proportionate share of fees and costs – 50% waived from $4,417.70)". Respondent's disclosures on the final accounting failed to state to the client the method by which the Mahler fee was calculated.

127. WA's original final accounting did disclose that the GEICO subrogation lien was waived. However, the line item for the "Mahler fees" still was ambiguous on its face, as it referred to GEICO and did not specify that Respondent was the recipient of the $2,208.85 line item. [EX 149]

128. After becoming aware of the disciplinary proceeding and after reviewing *Mahler* himself, WA found it upsetting to think the Mahler fee should have been paid to him as the client.

129. On July 7, 2022, Respondent texted WA, asking for a current address so that Respondent could refund the Mahler fee, and refund a portion of the base attorney fee. [EX 151, p. 000002.] Respondent refunded to WA a $2,208.16 Mahler fee,[30] and reduced the base attorney fee from $9,400 [40%] to $7,755.00 (33.3%), resulting in an additional refund of $1645, for a total refund to WA of $3,853.16. [*Compare* EX 150, *with* EX 149.]. WA testified that Respondent's conduct was upsetting, as the additional money earlier would

[30] It should be noted that the $2,208.16 Mahler fee from Respondent's point of view at the time of the original final accounting, EX 149, was a 50% reduction of the Mahler fee he typically would have charged.

have made a tremendous difference at the time.

130. Client HS testified at the hearing. HS had an associate's degree in nursing, and was a registered nurse. HS and his wife, AM, were injured in an automobile accident on October 4, 2015. At the time the fee agreement was signed, HS said Respondent explained it to him, but during the hearing said he did not know the meaning of "Mahler" either at the time of the fee agreement's signing, or as of the day of his testimony. When shown the original final accounting, EX 209, he could not identify who received the $4,138.66 debited from the $50,000.00 in settlement funds as "American Family (Mahler fees; medical bills $14,788.45)". [EX 209]

131. The final accounting for HS did not disclose in a line item that American Family had waived its subrogated lien. The final accounting for HS did not specifically disclose that the $4,138.66 was paid to Respondent. Respondent intentionally obscured his taking a $4,138.66 Mahler fee, and on the face of the final accounting appeared as if a $4,138.66 payment was made to American Family. Respondent's disclosures on the final accounting failed to state to the client the method by which the Mahler fee was calculated.

132. Respondent's block billing the Mahler fee with the waived PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to HS that this was an additional fee was collected by Respondent.

133. In the case of AM, wife of HS, American Family also waived its subrogated lien. [EX 207] The final accounting for AM did not disclose in a line item that American Family had waived its subrogated lien. [EX 210] The final accounting for AM did not specifically disclose that $1,400.45 identified as "American Family (Mahler fees medical bills **$5,619.00**)" was paid to Respondent. [EX 210, emphasis in original.] Respondent

intentionally obscured his taking a $1,400.45 Mahler fee, and on the face of the final accounting appeared as if a $1,400.45 payment was made to American Family. Respondent's disclosures on the final accounting failed to state to the client the method by which the Mahler fee was calculated.

134. Respondent's block billing the Mahler fee with the waived PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to AM that this was an additional fee was collected by Respondent.

135. Seattle Spine And Sports Medicine ("Seattle Spine") had a medical lien of approximately $2,500.00 for services rendered to HS. On February 16, 2019, Respondent sent Seattle Spine a fax, requesting a withdrawal of their lien. The letter contained the following intentional misrepresentations, which Respondent admitted during the hearing were untrue:

- "We are withdrawing from the case because the case went south on us."
- "Haileyesus and his family are forced to dismiss the lawsuit against USAA insured."
- "[W]e will be withdrawing from the case and needless to say we will be forced to write off our high litigation costs as well."
- "Haileyesus and his witnesses just did not do well in their deposition to survive a liability issue . . .".

[EX 208]

136. The record presented at the hearing lacks evidence whether Seattle Spine waived its lien. The original final accounting states that HS is responsible for any outstanding liens, including Seattle Spine. [EX 208]

137. Client GH was a friend of Quichocho. GH did not testify at the hearing. Respondent never

met with or spoke with GH, but Respondent did sign the fee agreement. [EX 225]. Quichocho accidentally selected the older fee agreement form that did not include a *Mahler* Surcharge Provision. Respondent did not notice the *Mahler* Surcharge Provision was missing from the fee agreement.

138. On December 1, 2016, GH's case with the tortfeasor settled for $19,500. [EX 228] Respondent issued a final accounting for the $19,500, which both GH and Respondent signed on December 23, 2016, in which $9,470.78 was held in trust for Ameriprise's PIP lien. [EX 229]

139. Respondent approved of Quichocho's representation to Ameriprise in an email dated December 8, 2016, "We have settled Gary's claim for $11,200.00." [EX 230] Respondent admitted during the hearing that this was not true.

140. Respondent also approved of the false statement in the December 8, 2016 email, "We will be reducing our fees and costs to help Mr. Holley receive a fair compensation." Respondent admitted during the hearing that this was not true. These false statements were intentional, in an attempt to convince Ameriprise to reduce its PIP subrogated interest to $1,100.00.

141. Following the December 8, 2016 email, Ameriprise declined to reduce the PIP lien to $1,200.00, but indicated it would reduce its $9,470.78 subrogation interest only "according to Mahler" to $6,314.17. [EX 232] Respondent responded in an email dated December 21, 2016, claiming that Ameriprise's position would prevent settlement, "You are not only making it impossible for us to settle, you are jeopardizing the entire case." [EX 233] Respondent at the hearing admitted that this statement was not true. Indeed, the case already had settled for $19,500.00.

142. Despite the misrepresentations made by Respondent personally or through Quichocho, Ameriprise knew that the settlement was for $19,500.00. [EX 239; EX 236, p. 000001.] Respondent was surprised that Ameriprise had discovered the true settlement amount, as Respondent expected to be the sole source of information to his clients' PIP insurers about his clients' settlement negotiations. GH directed Respondent to have Ameriprise paid in full, as he was concerned that he would be subject to collections. [EX 238, p. 000001.]. Ameriprise set forth its calculations on its expectation of its net PIP reimbursement after *Mahler* is applied. [EX 243, p. 000001.]

143. On March 3, 2017, GH signed a supplemental final accounting. [EX 246] This supplemental final accounting shows a $6,052.94 payment as "PIP subrogation (Ameriprise)." EX 246 also shows has a debit of $1,708.92 as "Mahler fees from $3,417.84 – attorney agrees to divide equally with client". Respondent split the Mahler fee with GH in response to GH's not being happy. Respondent did so to "get rid of him." [EX 245]. Respondent's disclosures on the final accounting failed to state to the client the method by which the Mahler fee was calculated.

144. On January 19, 2021, Respondent refunded the $1,708.92 Mahler fee to GH. [EX 247][31]

145. Client YH did not testify at the hearing. YH was injured in a motor vehicle accident on October 19, 2014. Amica had a PIP lien for $12,000. [EX 259] Ms. Quichocho at Respondent's direction, requested a full waiver of subrogation. [EX 257; EX 258.] In support of the request for waiver of subrogation, Ms. Quichocho stated, "We will also reduce our fees and costs to help her." [EX 257; *see also* EX 261.] Respondent admitted

[31] The actual check bears the date, "January 19, 2020." Given the context – that Respondent issued the refund after the Grievance was filed and his subsequent discovery that GH's fee agreement did not contain the *Mahler* Surcharge Provision, the "2020" was a scrivener's error common to the new year.

that this statement was untrue. Further, the record shows that Respondent told Ms. Quichocho, "You should have exaggerated our costs." [EX 260]. On August 13, 2018, Respondent offered Amica a $500 check to settle the subrogation claim. [EX 265] However, on September 21, 2019, Amica agreed to waive its PIP subrogation.[32] [EX 269]

146. On September 4, 2018, YH signed a final accounting. [EX 268] This final accounting shows a $4,774.29 payment for "Mahler Fees (Amica's proportionate share of fees and costs)." Respondent's disclosures on the final accounting failed to state to YH the method by which the Mahler fee was calculated, was inherently ambiguous, as it appeared on its face to be a payment to Amica, and failed to explicitly identify Respondent as the recipient of the "Mahler fees."

147. Client MA did not testify at the hearing. MA's December 22, 2015 contingent fee agreement with Respondent contained the 2015 version of the *Mahler* Surcharge Provision. After MA filed for Chapter 7 bankruptcy, MA's contingent fee agreement was given to the US Trustee, Edmund J. Wood. [EX 281, EX 282.]. Respondent thereafter entered into a fee agreement with the Trustee, dated September 15, 2016, an agreement which did not include a *Mahler* Surcharge Provision. [EX 283] However, on April 19, 2018, the Trustee decided to close the bankruptcy case. [EX 292]

148. Respondent settled MA's case for $37,500. However, Quichocho in a letter to State Farm, which had a $7,905 subrogation lien, asked for a waiver of subrogation and represented that the settlement was for $25,000. Respondent admitted during the hearing that this statement was untrue. State Farm thereafter agreed to reduce its lien to $4,000.

149. The final accounting for MA included a $4,000 line item that disclosed "State Farm

[32] It is unclear from the record whether Amica cashed the $500 check; if not, Respondent still might owe $500 to YH.

subrogation lien (less Mahler Fees)." [EX 299]. The final accounting also included a line item of $2,785.51 for "Mahler fees (State Farm's proportionate share of fees and costs). Respondent's disclosures on the final accounting failed to state to MA the method by which the Mahler fee was calculated, was inherently ambiguous, as it appeared on its face to be a payment to State Farm, and failed to explicitly identify Respondent as the recipient of the "Mahler fees."

150. Client BG did not testify at the hearing. BG was injured in a motor vehicle accident on June 17, 2013. Her minor son was a passenger in the vehicle. Her husband, Daniel Gadissa, was a frequent colleague of Respondent – Mr. Gadissa was an immigration specialist at the Refugee Settlement Office, Archdiocese of Olympia, who during 2008-2022, consulted with Respondent for advice, referred pro bono cases to Respondent, and testified during the hearing on Respondent's behalf. [*See* TR pp. 2330/1 – 2333/25.]. Both BG and Mr. Gadissa, and their minor child, are listed as plaintiffs in the Complaint for Damages filed by Respondent. [EX 385] At arbitration, in an award dated February 17, 2017, BG and Mr. Gadissa were awarded a total of $38,437.58. [EX 386, EX 387.] On June 21, 2017, BG and Mr. Gadissa agreed to settle for $25,500, which avoided a trial de novo. [EX 390, EX 391.]

151. Ameriprise had a PIP lien for $8,932.00. [EX 393] With Respondent's approval and knowledge, Quichocho in an email dated September 28, 2017, falsely stated to Ameriprise that the case had settled for only $17,500. Respondent was a "cc" on this email. Respondent actively gave input to Quichocho during the negotiations with Ameriprise. [*See* EX 396.] Respondent personally sent Ameriprise an email dated October 16, 2017, in part justifying the waiver request by falsely stating, "We have cut our fees more than 75%

just to get client agree to sign the release, so we can move on!" [EX 398] In response, Ameriprise agreed to reduce its PIP lien for $1000.00. [EX 399]

152. Consistent with her testimony that when she prepared final accountings, they were presented to Respondent for his review and approval, emails show that Respondent approved of the draft final accounting for BG's case. [EX 400, EX 401, EX 403.]

153. The original final accounting for BG's case separately disclosed line items for the PIP subrogation lien and the Mahler fee. BG's original final accounting listed a $1,000.00 debit from the total settlement, for $1,000.00, identified as "Ameriprise – reduced from subrogation lien $8,932.00". BG's original final accounting also described a $4,220.45 debit as "Mahler fees – (Ameriprise subrogation lien $3,932 – proportionate share of fees and costs $4,220.45)". Respondent also reduced his base attorney fee from 40% to 33 %. [EX 406]. This was because BG questioned why the first draft of the final accounting resulted in recovery to her of only $8,000. [*Compare* EX 400, p. 000002, *with* EX 402, EX 403, p. 000002, & EX 406, p. 000002. Respondent's disclosures on the final accounting failed to state to the client the method by which the Mahler fee was calculated, and was ambiguous on its face by its failure to explicitly identify Respondent as the recipient of the "Maher fee."

154. Client YG testified at the hearing. YG is a truck driver, who knew Respondent from the Ethiopian community in Seattle. YG was injured by two tortfeasors: Kum C. Maun; and Gary E. Kummert, who was driving a work truck in the course of his employment. [EX 416] YG testified that he understood the fee agreement provided for 33.3% if settled before court, 40% if the case went to court, and that Respondent provided this explanation in Amharic. YG indicated that he can read English well enough to understand the fee

agreement [EX 414], but did not understand then or at the time of the hearing, the meaning of "Mahler," and could not otherwise recall what Respondent explained to him when the fee agreement was executed in 2015.

155. Dr. Peter Britton, DC, treated YG. Dr. Britton filed a lien against tortfeasor Maun. [EX 439, p. 2.] Dr. Britton's office was unaware of the other tortfeasor, so his lien did not name Kummert or Kummert's employer. Maun's insurer – State Farm -- settled YG's claim against tortfeasor Maun for $16,227. The other tortfeasor's insurer – Great West Casualty -- settled YG's claim for $35,000. Respondent represented to Dr. Britton in writing that the case settled for $16,227, but did not inform Dr. Britton of the additional $35,000 from the other tortfeasor's insurer.

156. Respondent – who personally handled YG's claim after Quichocho's departure[33] -- was unduly aggressive with Dr. Britton during negotiations over Dr. Britton's lien, accusing Dr. Britton of overtreating and indulging in *ad hominen* personal attacks, threatening Dr. Britton with professional discipline. Dr. Britton acknowledged that his bookkeeper had mistakenly not advised Dr. Britton that about $7500 of his office's bills had been paid under YG's PIP coverage, with a remaining $14,278.42 balance. [EX 432, p. 000018, text message dated May 22, 2019, 2:00 p.m.] On September 11, 2019, in the belief that YG's claim had only settled for $16,227, Dr. Britton signed off on the Notice of Satisfaction to release his lien. [EX 441] Dr. Britton also expressed during the hearing, his personal sympathy for YG's situation. Dr. Britton testified that had he known YG's case had settled for a total of $51,227, he would not have released his lien.

[33] The emails associated with YG's case, reflect that Respondent's being out of the country during this time was difficult for Quichocho at the time she walked off the job. *See* EX 423, email dated January 10, 2019, 1:58:43 p.m.

157. YG's PIP insurer, Great West Casualty Co. ("Great West"), had a PIP lien was for $10,500.00. [EX 415]. On June 7, 2019, Respondent sent an email to ask Great West for a waiver of its subrogation interest. [EX 433] In doing so, Respondent made what he admitted during the hearing were the following untrue statements:

- [T]his case was a very difficult case. Liability was 40% and we were not able to advance with our lawsuit for many reasons. First, one of the defendants we sued was simply not involved other than just imply no involved . . . That case was not going anywhere. Therefore, after summary judgment, we dismissed the case.
- We only recovered $16,227.00.
- Yilma's medical bills alone are over $23,000.00; our cost is over $7,500.00 and there are many unpaid bills.

158. Instead, the costs for YG's case were $2,945.22. [EX 434, EX 435.] The $23,000.00 figure for medical bills, did not take into account Dr. Britton's pending write-off, but the statement as to the medical bills was not on its face untrue at the time, as Respondent still was conducting arguments with Dr. Britton via text at that time, *see* EX 432, p. 000022.

159. In response to Respondent's email of June 7, 2019, Great West agreed to waive its PIP subrogation lien. [EX 433]

160. In the original final accountings for YG's case, Respondent did not state that Great West had waived its PIP subrogation lien. [EX 434, EX 435.] Instead, the original final accountings list a payment of $4,320.00 as "Great West PIP Mahler Payments – ***Reduced from $10,800.00***". (Emphasis in original.) By personally not disclosing the PIP waiver in this manner, Respondent obscured that he was being paid an additional attorney fee of $4,320.00. Respondent's original final accountings did not disclose to YG how the Mahler

fee was calculated.

161. Respondent's block billing the Mahler fee with the PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to YG that this was an additional fee was collected by Respondent.

162. In the case of DA, Respondent settled DA's case for $15,000, but told chiropractor Joseph "Girma" C. Ayele, DC, in writing that the case had settled for $9,356 "or so." Respondent testified that Dr. Ayele as an Ethiopian would understand from their mutual cultural context that the "or so" was an invitation to negotiate and was not a specific representation of the actual settlement amount. Because Dr. Ayele did not testify during the hearing, and the "or so" was qualitatively different from Respondent's admitted misrepresentations to other insurers and providers, the meaning of Respondent's statement to Dr. Ayele was vaguer and subject to debate. Therefore, ODC's proof was insufficient to show that Respondent's statement to Dr. Ayele was knowingly false.

163. In the case of MW, PIP was not involved. Grievant Lisa Fanning, a licensed massage therapist, charged $999.00 for services during November 12, 2016 – January 6, 2017. [EX 480]. Ms. Fanning kept in touch with Respondent about her outstanding bills, expecting payment upon settlement of MW's personal injury claim. [EX 481, EX 484, EX 485.]

164. On March 26, 2019, Respondent settled MW's case for $9,000. [EX 488] Later that same day, Respondent personally sent an email to Ms. Fanning, claiming that he was "trying to settle the case," and that, "[T]hey are offering $2,312.44 as total settlement, that includes neighborhood clinic lien of $774.67 and our fees and costs? . . . What do you say!" [EX 490]

165. During the hearing, Respondent admitted that his statement to Ms. Fanning that the offer

was $2,312.44, rather than the $9,000.00 already settled for, was not true.

166. On March 27, 2019, Ms. Fanning declined to reduce her bill. Respondent's "negotiations" towards Ms. Fanning became increasingly abusive, calling Ms. Fanning "one incredibly unreasonable, vicious and quiet [sic] honestly insane person!!" Respondent also threatened to have Ms. Fanning investigated. [EX 493]

167. On or about March 29, 2019, Respondent disbursed MW's settlement funds. [EX 491] In doing so, Respondent held $1,000 in trust, intending to negotiate with Ms. Fanning.

168. After April 2, 2019, there were no further communications between Respondent and Ms. Fanning, until Ms. Fanning in early December 2019, again asked for payment of the $999.00. The $999.00 was paid to Ms. Fanning on December 16, 2019.

169. During the hearing, Respondent's explanation for the 8-month delay in paying Ms. Fanning, was that he thought negotiations were ongoing.

170. The Hearing Officer finds that Respondent failed to promptly pay Ms. Fanning the $999.00 she was entitled to receive.

G. Respondent's Accord and Satisfaction Tactic in MeA's Case (Count 5).

171. Client MeA entered into a Contingent Fee Agreement dated November 29, 2016, which contained the Boldfaced Mahler surcharge language. [EX 309]. GEICO had paid $7,133 in PIP benefits on MeA's behalf. [EX 310] During negotiations to convince GEICO to reduce its PIP lien, in a letter dated June 20, 2018, Respondent's paralegal Quichocho stated: "We have agreed to take a reduction of our fees and costs to help Menbere receive a fair compensation." [EX 313] Respondent admitted during his testimony that he had reviewed this letter before it went out. Respondent admitted during his testimony that he had not agreed to reduce his fees and costs, and that this statement to GEICO "was a lie."

172. GEICO agreed in writing that it would reduce its PIP lien to net $3800. [EX 315] Notably, GEICO stated its "expected recovery with the standard Mahler reduction is $4,583.36." *Id.* Respondent continued to press for a full waiver of the PIP lien. [EXs 314, 321, 323, & 326.]

173. Respondent then directed Quichocho to send GEICO a $250 check with a letter stating that cashing the check would be a release of the subrogation interest. [EX 324] Quichocho's letter of July 12, 2018 stated:

> Enclosed please find out trust check number 1360 in the amount of $250.00 representing full and final payment of your subrogation interest. Upon cashing of this check, you are releasing all your subrogated interest in this claim.

174. GEICO cashed the $250.00 check, but continued to claim the remainder. [EX 329]. Respondent directed that GEICO be told "we will not pay a dime more!" [EX 330]. Respondent directed that the settlement funds be disbursed over GEICO's objections. [EXs 331, 332, 333, & 334.]

175. The Final Accounting for MeA, included a line item debit of $250.00 for "GEICO subrogation lien," which further noted GEICO's claim of a balance owing. The final accounting also stated a line item of $2,555.95 for "Mahler fees – (Geico subrogation lien proportionate share of fees and costs)". Respondent's disclosures on the final accounting failed to state to MeA the method by which the Mahler fee was calculated.

H. Testimony of Remaining Clients: GT, AA, ME (and KN).

176. Client GT testified at the hearing. At the time of her April 8, 2012 accident, she had just completed a degree as an aesthetician, and at the time of the hearing was working as a medical assistant. The original final accounting for GT was signed by her on September

26, 2014, and signed by Respondent on September 29, 2014. [EX 82] This Final Accounting reflects a Total Settlement of $24,000, from which $8,000 was for attorney fees (33.3%), and $4,478 was debited for "Mahler or Winters' fees and discount by State Farm. (State Farm subrogation lien – reduced from $10,000.00)". During her testimony, when shown EX 82, she thought the $4,478 was going to the insurance company. She testified that had she known Respondent was collecting a total of $11,478 ($8,000 representing his 33.3% fee, plus another $3,478 fee to Respondent, she would not have willingly paid that to Respondent.

177. By failing to disclose in the original final accounting State Farm's reduction of its PIP lien from $1,000.00, Respondent intentionally obscured his taking a $3,478.00 Mahler fee, and on the face of the final accounting appeared as if a $4,4,478.00 payment was made to State Farm. Respondent's disclosures failed to show that a $3,478.00 Mahler fee was remitted to Respondent, and failed to state to the client the method by which the Mahler fee was calculated.

178. Respondent's practice of merging his Mahler fee with the subrogation lien paid to the PIP insurer, was a form of "block billing." Block billing the Mahler fee with the PIP subrogation lien was ambiguous on the face of the final accounting, as it did not explicitly disclose to the client the specific additional fee collected by Respondent. As shown by the testimony of AW and GT, block billing the Mahler fee with the PIP subrogation lien also was ambiguous for being interpreted by the client as a total payment paid to the PIP insurer.

179. On October 8, 2019, Respondent called GT about whether she could locate her original Contingent Fee Agreement. During this phone call, Respondent indicated that Ms.

Quichocho had erred in the accounting. [EX 8, p. 000005.] Respondent arranged that he would drive to Sequim to meet with her, saying he would "bring a similar [copy] from your electronic file[34] along with the check and amended final account."

180. During the meeting with Respondent on October 9, 2019, Respondent falsely told GT that Ms. Quichocho had siphoned money from clients. Respondent induced GT to sign the Declaration, sign a Contingent Fee Agreement which contained the *Mahler* Surcharge Provision, and sign an Amended Final Accounting. GT did not recall Respondent's explaining the *Mahler* Surcharge Provision, and did not recall his explaining "Mahler" or "Winters" when she signed the October 9, 2019 Contingent Fee Agreement attached to her declaration. The Amended Final Accounting expressly set forth a debit of $1000 for the GEICO subrogation lien. Respondent refunded $3,478.00 to GT.

181. Client AA testified at the hearing. While her first language is Amharic, she was comfortable testifying in English. Client AA at the time of her motor vehicle accident, was employed with Sears. She testified that from the fee agreement, she was aware that there would be an additional attorney fee to Respondent, and that he did explain it to her in both English and Amharic. While she was temperamental during the time of Respondent's representation of her, she expressed appreciation for his work, gratitude for his office's assistance in helping her obtain Apple Health so that she could receive treatment and recover, and attributed to her being difficult at that time to the brain injury she suffered from the accident.

182. Client ME testified at the hearing during Respondent's case in chief, from his home in Texas. ME and KN are husband and wife, who were injured in a motor vehicle accident on

[34]This October 9, 2019 text from Respondent, is further proof that Respondent was fully aware of his clients' electronic files.

August 27, 2016. ME stated that KN did not wish to testify, and suggested that he was speaking on her behalf. [TR, p. 1696, ll. 17-24.]. ME stated that at the time the fee agreement with Respondent was signed, ME understood that there would be a separate fee to Respondent in addition to the 33 percent attorney fee. ME stated that the additional $3,424.33 Mahler fee paid in addition to the $13,333.33 paid (33% of $40,000.00 settlement) for KN's claim, was "okay" with him, as he agreed to it.

183. In total, out of the 16 client matters which involved Mahler fees, only 7 testified: AW, GT, AA, WA, HS (theoretically also speaking for his wife), ME, and YG. While the sample size only reflects half of the clients impacted by Mahler fees, the Hearing Officer finds the testimony sufficient to illustrate the ambiguities of the *Mahler* Surcharge Provision, the lack of any information at the time of the fee agreement's execution that the Mahler fees would range on the order of 8% - 20%, and the lack of any disclosure of the methodology of how Mahler fees were computed at the time of the final accountings.

I. Findings re: Files In Crawl Space.

184. During his testimony, Respondent claimed that he had forgotten that there were client files stored in the crawl space beneath his home's mother-in-law apartment. The Hearing Officer finds that Respondent's testimony as to his forgetting about files being stored in a crawl space – the least accessible part of his home -- is not credible. This is not credible as it is extremely strange that on one hand, Respondent claimed in EX R560 that he could find other files for the same time period, but not the ones sought. It is not credible that the exact files for AW, GT and SR were found in the same crawl space location.

185. Moreover, Respondent offered somewhat contradictory testimony about when he moved his files. In his Declaration dated October 16, 2020, he claimed, "Due to the pandemic, I

closed my office and brought everything that was there to my home." [EX 26, p. 2, ¶ 10. He reiterated in his May 15, 2023 declaration, that he moved his files during the pandemic. [EX 17]

186. However, during the hearing, he claimed to have closed his office a few months prior to the pandemic. The Hearing Officer construes this change in testimony as an intentional, bad faith attempt by Respondent to pre-date his moving his files to prior to ODC's February 13, 2020 Additional Request for Response to Grievance, in an attempt to appear less culpable for not producing the files of AW, GT, SR, HS and AM in response to the Chief Hearing Officer's order of December 5, 2020.

187. Respondent's excuses and/or explanations for not fully complying with the Chief Hearing Officer's December 5, 2020 order to produce documents, until July 14, 2023 (and only after formal requests for production were authorized by the Hearing Officer), are not credible. From the time ODC first sought documents from Respondent in February 2020, Respondent resisted production of his files, and continued to resist production as late as May 2023. It is not believable that Respondent moved his files by hand while under notice that certain files were subjects of inquiry by Disciplinary Counsel, and did not notice that the exact paper files sought in his disciplinary matter were in his hands and transported to his crawl space – hidden away in a difficult-to-access part of his house.[35]

188. The Hearing Officer finds that Respondent willfully and intentionally failed to cooperate with ODC's investigation prior to the filing of the Formal Complaint. The Hearing Officer further finds that Respondent willfully and intentionally failed to comply with the Chief

[35] Respondent later during the hearing testified that some of his friends helped him move his files to his house. There was no credible evidence presented at the hearing that any person other than Respondent placed the files of AW, GT and SR into the crawl space.

Hearing Officer's order of December 5, 2020. Respondent's objections to discovery during ODC's investigation was motivated by a dishonest or selfish motive – avoidance of discovery of his misconduct**.**

J.Refunds Where Fee Agreement Contained *Mahler* Fee Surcharge Provision.

189. On July 7, 2022, Respondent refunded the Mahler fees taken in the following matters, all of which involved clients whose contingent fee agreements did include a *Mahler* Surcharge Provision:

WA: $3,853.85

AA: $4,651.48 (of which $1,326.48 was the previously charged "Mahler fee" paid on Optum lien reduced to $2,693.17)

YH: $4,774.29

MA: $2,785.51

MeA: $2,555.95

ME: $3.424.81

KN: $3,424.33

BG: $4,220.15

YG: $4,410.80

BA: $1,082.48 (representing proportionate share on Dept. Labor & Industries lien)

[EX R539][36]

190. ODC stipulated on the record during the hearing, that the amounts refunded to his clients were correct.

191. Based on the data presented during the hearing, the Hearing Officer has calculated the

[36] The order in which the clients are named above, are consistent with the order set forth in the Third Amended Complaint, and not in the same order arranged in EX R539.

"Mahler" Fees originally charged by Respondent as percentages of the settlements, which is attached to this Decision as Exhibit A, and incorporated herein. The data shows that Respondent's "Mahler" Fees added an additional 7% - 20% -- on top of the 33.3% - 40% base attorney fee typically charged by Respondent. This resulted in total attorney fees charged by Respondent in the range of 41% - 59%, exclusive of costs.

192. The three earliest instances shown during the hearing of Respondent's charging his Mahler fee, are the cases of GT, with an original final accounting of October 1, 2014; AW, with an original final accounting of December 16, 2014, and AW, with an original final accounting of December 16, 2014. The Mahler fee charged to GT was 14% of her settlement; the Mahler fee charged to AW was 19% of her settlement; the Mahler fee charged to SR was 20% of her settlement. Despite data indicating that his Mahler fee could add significant amounts above the 33.3% - 40% expected by his clients – which could range as high as an additional 20% -- Respondent never gave any of his clients any estimate that the Mahler fee could be another 14%-20% on top of "The legal fee of Attorney" set at 33.3% - 40%. Respondent's failure to give such an estimate meant that the clients did not receive a reasonable and fair disclosure of this material element of the fee agreement and of Respondent's billing practices.

K. Expert Testimony.

193. ODC called attorney David S. Heller, a distinguished practitioner, as an expert witness. Mr. Heller testified that in his experience, lawyers in Washington who represent automobile personal injury plaintiffs charge a contingent fee of "33 and a third percent," with some charging an "escalator" amount of "40 percent" if a case goes to litigation. In his experience, attorneys do not charge a "Mahler fee," rather, consistent with the holdings

of *Mahler v. Szucs,* the proportionate share goes to the client. Mr. Heller reviewed the fee agreements, original final accountings, and existing client files, and concluded that while the matters appeared to be competently handled, the fees charged were excessive under RPC 1.5(a). Mr. Heller reviewed all of the enumerated factors of RPC 1.5(a). Mr. Heller also opined that the *Mahler* Surcharge Provision was ambiguous; the fee agreements were ambiguous for failure to set forth the method of calculating the additional Mahler fee; Respondent's *Mahler* calculation improperly increased the costs beyond 100%; Respondent's *Mahler* calculation improperly increased the attorney fees beyond 100% of the base amount; and that the final accountings were ambiguous as to the recipient and the PIP waiver/reduction amounts.

194. The Hearing Officer accepts Mr. Heller's expert testimony that misrepresentations to insurers and third-party medical providers hurts the plaintiffs' bar, and hurts plaintiffs, by breaching the trust insurers, DLI, and medical providers place in statements from lawyers about their clients' personal injury settlements. A lack of trust would make it harder to negotiate lien reductions, create a need for the third parties to confirm costs and attorney fees, or potentially lead medical providers to turn away injured persons whose medical coverage is under PIP. [TR pp. 1377/15 – 1380/7.]

195. If there are any variations from Mr. Heller's opinion in the Conclusions of Law set forth *infra,* the opinion of the Hearing Officer applies. Otherwise, the Hearing Officer accepts the opinions offered by Mr. Heller.

196. Respondent called attorney Philip A. Talmadge, a distinguished practitioner, as an expert witness. Mr. Talmadge's testimony was of limited potential applicability, as he only reviewed the fee agreement and original final accounting of BG, to support his opinion that

the fee agreement and final accounting were “adequate notice” under RPC 1.5(a). Mr. Talmadge expressly did not review the enumerated factors of RPC 1.5(a), and in particular declined to review RPC 1.5(a)(9).

197. For the reasons set forth in this Decision, the Hearing Officer disagrees with Mr. Talmadge’s opinion that the fee agreement and original final accounting of BG, were “adequate notice” under RPC 1.5(a). RPC 1.5(a) requires more than “adequate notice” -- rather, RPC 1.5(a) requires consideration of all the factors set forth in the rule, including RPC 1.5(a)(9).

198. Mr. Talmadge’s opinion that lodestar multiplier methodology by analogy justified the total attorney fees charged by Respondent, was inapplicable as lodestar multipliers are applied in cases where a prevailing party is awarded attorney fees in contingent fee matters against a third party. *See, e.g.., Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 600-01, 675 P.2d 193 (1983) (lodestar multiplier methodology in award to plaintiff against title insurer under Consumer Protection Act). Mr. Talmadge’s opinion on lodestar multiplier methodology therefore is inapplicable to Respondent’s fee chargeable to his personal injury clients.

199. Both Mr. Heller and Mr. Talmadge agree that an attorney may include a “*Mahler* fee” payable to the attorney, subject to the Rules of Professional Conduct. The Hearing Officer agrees that *Mahler v. Szucs* on its face did not forbid an attorney from negotiating a surcharge related to a client’s PIP subrogation lien, subject to the Rules of Professional Conduct.

200. Respondent offered no expert testimony against ODC’s accounting expert, Tracy Sambrano. The Hearing Officer accepts Ms. Sambrano’s accounting testimony, including

but not limited to the conclusion that Respondent's final accountings failed to disclose the amount of the "Mahler fees" taken by Respondent. The Hearing Officer incorporated Ms. Sambrano's calculations, except as otherwise noted, in Exhibit A attached hereto to this Decision.

201. Respondent offered the expert testimony of Dr. Steve Tutty, Ph.D, a clinical psychologist. Dr. Tutty offered the opinion, based on three remote interviews during May 2023, that Respondent suffered from major depressive disorder during the period 2009-2022. Dr. Tutty opined that the depression would cause cognitive errors, such as excessive worries, PTSD, and irritability. [EX 503] However, Dr. Tutty's report indicated that Respondent's response style "was indicative of exaggerating his psychological challenges . . . in a pathological manner." [EX 503, p 5.].

202. Respondent during the hearing placed great blame for his depression, on his child custody disputes with the child's mother. Respondent testified that during 2012-2022, he was deeply distressed about being separated from his daughter, his only child. While Respondent's concerns for his child's well-being were genuine – as confirmed by his friends who testified on his behalf -- it is worth noting the record submitted by Respondent during the hearing, indicates that the limitations on his visitation rights in large part were due to his decade-long refusal to complete a court-ordered state-certified domestic violence treatment program and also a DV Dads parenting class. He was first ordered to complete these programs in 2011. [EX R511, Attachment A thereto, ¶ 2.] He finally completed the 12-week WHOA course on August 23, 2021, and his 12-month DV Treatment on March 29, 2022.

203. The Hearing Officer finds that Dr. Tutty's testimony failed to link Respondent's depression

to Respondent's adoption of the *Mahler* Surcharge Provision, Respondent's billing practices, Respondent's misrepresentations to third-party insurers and medical providers, or any other errors committed by Respondent in his legal practice. The testimony of Dr. Tutty therefore was insufficient to establish the mitigating factor of personal or emotional problems.

III. CONCLUSIONS OF LAW

204. **<u>Count 1</u>** – Respondent is charged with violating RPC 1.15A(b) and RPC 8.4(b), by committing the crime of theft and/or converting funds pursuant to RCW 9A.56.020(1)(a), and 9A.56.010(23)(b).

205. Under RCW 9A.56.020(1)(a), the crime of "theft" means, "To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, <u>with intent to deprive</u> him or her of such property or services . . ." (emphasis added). Under RCW 9A.56.010(23)(b), the terms "wrongfully obtains" or "exerts unauthorized control mean, "having any property or services in one's possession, custody or control as . . . attorney . . . to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto . . .". The mental state for "intent" to deprive within the meaning of the statute, requires that the person must be "actually aware." Washington Criminal Jury Instructions 10.02, Comment on "Actual Awareness," *citing State v. Shipp,* 93 Wn.2d 510, 514-17, 610 P.2d 1322 (1980); *State v. Allen,* 182 Wn.2d 364, 373-75, 341 P.3d 268 (2015).

206. In response to the theft/conversion allegation, Respondent cites to RCW 9A.56.020(2)(a), by which, "In any prosecution for theft, it shall be a sufficient defense that . . . [t]he property or service was appropriated openly and avowedly under a claim of title made in

good faith, even though the claim be untenable . . .”. A subjective belief in a claim of title is insufficient to support a defense to theft; rather, there must be some objective corroborative evidence to support an assertion of good faith claim to title. *State v. Martin*, 7 Wn. App. 2d 1057 (2019); *State v. Chase*, 134 Wn. App. 792, 805-06, 142 P.3d 1630 (2006), *rev. denied*, 160 Wn.2d 1022, 163 P.3d 794 (2007).

207. As set forth *supra*, Respondent subjectively believed that the decisions in *Mahler* and *Winters* allowed him to charge an additional proportionate attorney fee under the language he adopted for his fee agreements. The Hearing Officer finds Respondent credible on this point due to the corroborating testimony of witness J.D. Smith. Therefore, the evidence presented at the hearing falls short of the clear preponderance standard required to show Respondent was “actually aware” his *Mahler* Surcharge Provision was improper, and thus Count 1 is not proven. As set forth *infra*, Respondent was mistaken as to the holding of *Mahler*, and was mistaken as to whether the fees would violate RPC 1.5(a), but he did not intend to take the Mahler fees without authorization. *Cf. In re Disciplinary Proceeding Against Vanderbeek*, 153 Wn.2d 64, 101 P.3d 88 (2004) (while lawyer violated RPC 1.5(a) by intentionally charging excessive and unreasonable fees, WSBA failed to demonstrate by a clear preponderance of the evidence that lawyer violated RPC 8.4(b) (theft in the first degree in violation of RCW 9A.56.020)). Therefore, Count 1 is dismissed.

208. **Count 5** –Count 5 charges that before disbursing settlement funds related to his representation of client MeA, Respondent should have maintained $3800 in trust due to GEICO’s claim that a $250 check tendered and cashed by GEICO was not a full accord and satisfaction of GEICO’s PIP reimbursement claim. ODC argues that Respondent’s conduct violated RPC 1.15A(g), which states, “If a lawyer possess property in which two or more

persons . . . claim interests, the lawyer must maintain the property in trust until the dispute is resolved. The lawyer must promptly distribute all undisputed portions of the property. The lawyer must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds."

209. Respondent's affirmative defense is that under RCW 62A.3-311, any further claim by GEICO was precluded due to an accord and satisfaction. Respondent's defense is based on the $250 check cashed by GEICO, as creating an enforceable accord and satisfaction under RCW 62A.3-311.

210. RCW 62A.3-311 reads in pertinent part:

> Accord and satisfaction by use of instrument.
>
> (a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
>
> (b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted <u>proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim</u>.
>
> . . .
>
> (Emphasis added.)

211. The Hearing Officer finds that pursuant to RCW 62A.3-311(a) – (b), the letter sent by Ms. Quichocho dated July 12, 2018 [EX 327] was sufficient notice under RCW 62A-3-311(b) to qualify as a conspicuous statement that the check was tendered as full satisfaction of the PIP subrogation claim. Therefore, an enforceable accord and satisfaction had occurred. *Henches v. Taylor*, No. 58282-8-I (unpublished Wash. Ct. App. Apr. 30, 2007) (accord and

satisfaction occurred where massage therapist cashed check when in response to a $11,945.86 bill, tender by patient's lawyer to massage therapist with a cover letter stating "I have enclosed a check for that amount [$5,243.45] as payment in full to settle Mr. Taylor's account with you."). *See also Oregon Mut. Ins. Co. v. Barton,* 109 Wn App. 405, 36 P.3d 1065 (2001). Therefore, Count 5 should be dismissed.

212. Based on the Findings of Fact, the Hearing Officer finds that ODC proved the following by a clear preponderance of the evidence.

213. **Count 2** – Under RPC 4.1(a), "In the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person . . .". Under RPC 8.4(c), "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . .". ODC also invokes RPC 8.4(a), by which "It is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct . . . through the acts of another," i.e., Quichocho.

214. As set forth *supra,* Respondent admitted to making false statements to first-party insurer GEICO in Client WA's case; false statements to health provider Seattle Spine & Sports in Client HS's case; first-party insurer Great West Casualty in Client YG's case; false statements to first-party insurer GEICO in Client AW's case; false statements to first-party insurer GEICO in SR's case; false statements to first-party insurer Ameriprise in Client GH's case; false statements to first-party insurer Ameriprise in BG's case; and false

statements to health provider Lisa Fanning in Client MW's case.[37] Therefore, the Hearing Officer finds that ODC's Count 2 is proven.

215. **<u>Count 3</u>** – As stated in the Third Amended Formal Complaint, Count 3 requires examination of three separate alleged categories of acts:

(a) Failure to give one or more clients reasonable and fair disclosure of material elements of the fee agreement;

(b) Misrepresenting the amounts of subrogation liens against one or more client's recoveries; and

(c) Making one or more misrepresentations as to whom the "Mahler" and/or other fees would be paid.

216. <u>Failure to give one or more clients reasonable and fair disclosure</u>. Consideration of this portion of Count 3 requires interpretation and construction of Respondent's *Mahler* Surcharge Provision. Respondent's *Mahler* Surcharge Provision was not part of the Contingent Fee Agreements of AW, GT, SR, AM, HS, and GH; therefore, the part of Count 3 applies only to the Contingent Fee Agreements of WA, AA, YH, MA, MeA, ME, KN, BG, YG, and BA.[38]

217. Neither party's hearing brief contained much discussion of the rules of contract interpretation and construction. However, ODC's expert David Heller did reference these

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[37] The Findings of Fact include findings that Respondent – either personally or through Ms. Quichocho – made false statements to third parties in the cases of YH and MA, based on evidence presented at the hearing. However, the Third Amended Formal Complaint [BF #125], did not enumerate the cases of YH and MA in the list of cases in which Respondent was charged for making misrepresentations to third parties. Similarly, ODC's Hearing Brief did not include the cases of YH and MA in the list of cases in which Respondent was charged with making misrepresentations to third parties. Therefore, for purposes of deciding Count 2, clients YH and MA are not included in this Conclusion of Law.

[38] Respondent's mistaken application of the *Mahler* Surcharge Provision as to AW, GT, SR, AM, HS, and GH, is discussed below within the Conclusions of Law for Count 4.

rules during his testimony, albeit without specific recitation to case law.

218. The courts in Washington follow the "objective manifestation" theory of contracts. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Under this approach, the focus is on "the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Id*. Words in a contract are assigned their reasonable, "ordinary, usual, and popular" meaning unless the agreement "clearly demonstrates a contrary intent." Id. at 503-04. If the parties' intent can be divined from the actual words within the four corners of the document, extrinsic evidence will not be considered. *See id.* at 503-04. If the court must resort to extrinsic evidence to interpret the agreement, it may do so only to determine the meaning of specific words and terms used in the contract, and not to infer an intent "independent of the instrument" or to "vary, contradict, or modify" what was written. *Id.* at 503-04 (Washington courts "do not interpret what was intended to be written but what was written" (clarifying the holding of *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990)). Any ambiguities in an attorney fee agreement will most often be construed against the lawyer as the drafter. *See In re Disciplinary Proceeding of Van Camp*, 171 Wn.2d at 809.

219. The language of Respondent's *Mahler* Surcharge Provision, expressly references "[I]n PIP (Personal Injury Protection) reimbursement cases and where *Mahler* [sic] or *Winters* fees are applicable . . . ." Thus, it is necessary to review the nature of PIP coverage, and *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998).

220. "Personal Injury Protection" ("PIP") is a first-party coverage that is an optional coverage for automobile insurance policies. *See* RCW 48.22.005(12), RCW 48.22.085 – 4.22.100. As reflected in many of Respondent's cases discussed *supra*, PIP coverage provides injured

insureds with medical and hospital benefits and wage loss benefits. RCW 48.22.095, RCW 48.22.100. PIP coverage typically reserves to the PIP insurer a right to reimbursement of the payments the PIP insurer paid on behalf of the injured party, against payments made to the injured party by the third-party tortfeasor's insurer on the tortfeasor's behalf. *See Thiringer v. American Motors Ins. Co.*, 91 Wn.2d 215, 588 P.2d 191 (1978); *Mahler*, 135 Wn.2d at 421.

221. In *Thiringer,* the Washington Supreme Court adopted the rule that the PIP insurer's right to reimbursement can be recovered only "after the insured is fully compensated for his loss." *Thiringer*, 91 Wn.2d 219 (citations omitted). This rule fosters the public policy that injured plaintiffs be fully indemnified for their losses, "[S]ince the insured pays a premium for the PIP coverage and has a right to expect that the payments promised under this coverage will be available to him if the amount he is able to recover from other sources, after diligent effort, is less than his general damages." *Id.* at 220.

222. Respondent consistently testified that his use of the term "Mahler fees" treated the *Mahler* credit as "attorney fees" which would be credited to the attorney, and not to the client. Respondent consistently claimed his use of the word "fees" was sufficient notice to his clients, both at the time each Contingent Fee Agreement was entered into by the client, and each Final Accounting. Unfortunately, Respondent's interpretation of *Mahler* was incorrect as a matter of law.

223. *Mahler* addressed the first-party insurer's obligation to reimburse its insured for a pro rata share of the legal expenses the insured paid to recover the first-party insurer's PIP payments from the third-party tortfeasor. In *Mahler,* the insured, Elaine Mahler, was injured in a motor vehicle accident. Her insurer, State Farm, paid $4,173.32 under her first-

party PIP coverage. Mahler pursued a lawsuit against the tortfeasor, and eventually settled for $24,250. Mahler's attorney informed State Farm it was obligated to give Mahler a credit for the legal expenses necessary to obtain the recovery of State Farm's PIP benefits. State Farm refused. After a mandatory arbitration hearing, followed by a trial de novo, the trial court entered a judgment in Mahler's favor, awarding Mahler $1,512.59 as an offset for her expenses in recovering State Farm's PIP payments. The calculation methodology approved by the Washington Supreme Court was explained:

> The trial court followed the formula in Mahler's insurance policy. It first found the proportion the amount of State Farm's PIP payments bore to the total recovery: $4,173.32 / $24,500 = 16.91%. It then calculated 16.91 percent of the total legal expenses, $9,370.31 (consisting of $8,083.33 for legal fees and $1,286.98 for costs), to reach the offset amount of $1,612.59. As a result of this calculation, State Farm is required to pay Mahler $1,612.59 as expenses for recovering State Farm's $4,173.12 in PIP payments, or approximately 39 percent of the amount it recovers. This might represent a slight advantage to Mahler, as she had to pay her attorney only 33 percent of the recovery for his services. As can be seen from State Farm's formula, however, the larger the settlement amount compared to the PIP payments, the smaller the percentage of expenses State Farm must share.
>
> *Mahler*, 135 Wn.2d at 407-08 n. 2.

224. The above methodology yields the following *Mahler* formula:

(PIP Payments / Settlement) x (attorney fees + costs) = *Mahler* Credit

This calculation methodology was expressly affirmed in *Safeco Ins. Co. v. Woodley,* 150 Wn.2d 765, 82 P.3d 660, 663 (2004).

225. Respondent's syllogistic error in treating the *Mahler* credit as "attorney fees" payable to the attorney, was expressly rejected by the Washington Supreme Court in the very text of *Mahler:*

> The vociferous concern of State Farm and the amici insurers that the plaintiffs' bar will receive a second, unmerited attorney fee is also misplaced. To the extent counsel for the insured pursues a recovery for the insured, counsel is entitled to a single fee from the insured for the work performed. In Mahler, for example, counsel received a

contingent fee from the overall recovery and placed an amount representing State Farm's PIP payments into Mahler's trust account. Counsel has already been fully compensated pursuant to the fee agreement. The money in trust, the settlement proceeds, belongs entirely to Mahler. State Farm, pursuant to Paragraph b, has chose in action against that money, less Mahler's reasonable expenses in recovering it, as reimbursement for its PIP payments pursuant to Paragraph b. It is of no concern to State Farm whether any fee agreement between Mahler and her attorney provides for additional attorney fees. State Farm has no standing to complain about fee agreements it is not a party to. This is as it should be. <u>The effort to secure a personal injury recovery, which involves both the insurer's PIP payments and the insured's other damages, must inure to the benefit of the insured, not the insured's lawyers</u>.

Mahler at 428-29 (emphasis added).

226. The Hearing Officer finds that Respondent's understanding of *Mahler* prior to his discussion with attorney J.D. Smith, was in error. Because his understanding of *Mahler* was erroneous, he could not possibly have given his clients a reasonable and fair disclosure of the holdings in *Mahler* and *Winters*, and thus he could not have given his clients a reasonable and fair disclosure of his *Mahler* Surcharge Provision.

227. Respondent claims that neither RPC 1.4(a) nor RPC 1.4(b) applies to Count 3, relying upon *Rafel Law Gp., PLLC v. Defoor*, 176 Wn. App 210, 308 P.3d 767 (2013). However, *Rafel* did not address either RPC 1.4(a) or RPC 1.4(b).

228. The better analysis is ODC's citation to *In re Disciplinary Proceedings Against Van Camp*, 171 Wn.2d 781, 257 P.3d 599 (2011). In that case, attorney Van Camp entered into an ambiguous fee agreement. Van Camp's fee agreement provided for an "earned retainer" of $25,000, without explanation of the meaning of "earned retainer." Van Camp did not explain how the fee would be calculated and applied, and did not explain whether the retainer was refundable. Van Camp's client believed he was retaining Van Camp on an hourly basis, as opposed to a $25,000 flat fee as claimed by Van Camp. The Washington Supreme Court held that Van Camp's failure to explain clearly <u>at the outset of the</u>

representation how his fee would be calculated and/or how the $25,000 payment would be applied, violated RPC 1.4(b) and RPC 1.5(b). [39] The court in *Van Camp* stressed that under RPC 1.4(b), the client "needed sufficient information about the matter (including how the fee was being calculated) to make informed decisions concerning his case." *Van Camp,* 257 P.3d at 610.

229. The Hearing Officer agrees with expert Heller, that Respondent's *Mahler* Surcharge Provision was ambiguous on its face. The fee agreements which contained the reference to *Mahler* and *Winters* contained no explanation of how the additional fee would be calculated. Even when Respondent's *Mahler* Surcharge Provision is treated as incorporating *Mahler* by reference, the clear preponderance of the evidence is Respondent never disclosed to his clients that the holding in *Mahler* created a credit in favor of the client, and further expressly disavowed creating an additional fee to the attorney. Further, there is no evidence that that Respondent ever explained the methodology by which the additional fee would be calculated. The actual data for the 16 cases in which Respondent charged a Mahler fee, reveals that the Mahler fee was an additional 7%-20% of the settlement funds, over and above the base charge 33.3%/40% plus out-of-pocket expenses. *See* Exhibit A to this Decision. Therefore, consistent with *Van Camp,* Respondent violated RPC 1.4(b).

230. Misrepresenting the amounts of subrogation liens against one or more client's recoveries. Independent of the *Mahler* Surcharge Provision's being declared void for ambiguity, *supra*, Count Three of the Third Amended Formal Complaint charges Respondent acted improperly by levying the full *Mahler* fee even in cases where the PIP insurer either

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[39] The Hearing Officer notes that ODC did not charge Respondent with a violation of RPC 1.5(b).

reduced or waived its right to subrogation. As pointed out by expert Heller, when the PIP insurer's subrogation amount is reduced or waived, given the premise in *Mahler* that the attorney already has been paid the attorney's fee, any reduction in the PIP insurer's right to reimbursement of PIP payments operates to increase the recovery to the client, not the attorney.

231. In addition, the PIP insurer that reduces or waives its right to subrogation of the PIP amounts, recognizes under *Thiringer* that the injured insured has not been or arguably has not been fully compensated by the tortfeasor. Because the PIP insured has not received funds in excess of her damages, the PIP insurer is not entitled to reimbursement and there can be no "common fund" recovered from the tortfeasor to share with the insurer. *See Winters*, 31 P.3d at 1170 (Examples (1) and (2)). If there is no common fund from which the PIP insurer benefitted, or if the common fund available to the PIP insurer is reduced, then the *Mahler* credit share owed by the PIP insurer also should be reduced or waived.

232. Another way to look at how a waiver or reduction of the PIP insurer's right to reimbursement, is to revisit the basic formula from ¶ 224, *supra:*

((Benefits Paid or Gross, whichever is less) ÷ (Gross Recovery)) x (Fees & Costs)

= Insurance Company's Share of Costs & Fees

233. To determine how a PIP insurer's reduction or waiver of its right to reimbursement works, in order to determine the PIP insurer's proportionate share is to consider the amount being recovered by the PIP insurer. Therefore, the numerator of the calculation changes conceptually to:

((Amount of PIP Benefits Recovered) ÷ (Gross Recovery)) x (Fees & Costs)

= Insurance Company's Share of Costs & Fees

234. Thus, when the PIP insurer waives its right to recover, the numerator becomes "0", meaning the PIP insurer's share of costs & fees is "0". Similarly, when the Amount of PIP Benefits Recovered is reduced through negotiations, the PIP insurer's *Mahler* share of costs and fees is reduced.

235. In the cases of AW [EX 66], GT [EX 82], SR [EX 111], HS [EX 209], AM [EX 210], Respondent block billed the Mahler fee with the reduced PIP subrogation amount. While Respondent mistakenly billed Mahler fees to these clients, whose fee agreements did not contain the *Mahler* Surcharge Provision, these original final accountings show Respondent's practice and intent to obscure his taking the Mahler fees.

236. In the cases of AA [EX 183], YG [EX 434]clients whose fee agreements included a *Mahler* Surcharge Provision, Respondent block billed the Mahler fee with the reduced PIP subrogation amount. These original final accountings show Respondent's practice and intent to obscure his taking the Mahler fees.

237. By failing to disclose the actual subrogation amount paid to the PIP insurer – if any – by block billing the Mahler fee amount with the actual subrogation amount, Respondent hid the amount of the additional Mahler fee he was taking from the client's settlement funds in the cases of: AW, GT, SR, HS, AM, AA, and YG.

238. Because Respondent's use of his *Mahler* Surcharge Provision is both void on its face, and as applied under RPC 1.5(a), as discussed *infra*, it is not necessary for purposes of this disciplinary proceeding to recalculate the proper *Mahler* offset in the cases of WA, AA, YH, MA, MeA, ME, KN, BG, and YG.

239. <u>Making one or more misrepresentations as to whom the "Mahler" and/or other fees would be paid</u>. This allegation in Count 3 applies to Respondent's final accountings which failed

to identify Respondent as the recipient of the Mahler fee.

240. In the cases of AW, GT, SR, AA, AM, HS and YG, Respondent's block billing the Mahler fee with the PIP subrogation amount paid to the PIP insurer, if any, acted to obscure Respondent as the recipient of the "Mahler fees."

241. In the original final accountings of WA [EX 149], GH [EX 229 & EX 246], YH [EX 268], MA [EX 299], MeA [EX 341], KN [366]. ME [EX 367], BG [EX 406], and BA [EX 467], Respondent did set forth line items for the reduced or waived subrogation liens, and set forth a separate line item for "Mahler fees." While less egregious than the block billed final accountings, nonetheless, these final accountings were ambiguous as to who received the funds, as the line items referenced the PIP insurer, and did not set forth the method of calculation.

242. Respondent's final accountings were ambiguous, and contained misrepresentations as to the total amounts charged by Respondent.

243. Respondent's final accountings thus do not comply with RPC 1.5(c)(3), which 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 <u>and the method of its determination</u>."[40] ODC also relies on RPC 8.4(c), which provides, "It is professional misconduct for a lawyer to . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation ." The Hearing Officer finds that Respondent's failure to fully disclose his deducting a *Mahler* Surcharge, with the attendant failure to disclose the method by which the surcharge was calculated, combined

[40] The Third Amended Complaint did not specifically charge Respondent with a violation of RPC 1.5(c)(2). However, ODC in Count 4 did charge Respondent with violation of RPC 1.5(a), which in RPC 1.5(a)(9) addresses "whether the fee agreement demonstrates that the client received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices."

with the drafting of the Final Accounting to make it appear that the amounts were paid to the PIP insurer, constitute violations of both RPC 1.5(c)(3) and RPC 8.4(c).

244. **<u>Count 4</u>** – Count 4 charged Respondent with charging and/or collecting unreasonable fees, in violation of RPC 1.5(a). Respondent's counsel in both Respondent's hearing brief and during the hearing, argued that the individual enumerated factors under RPC 1.5(a) should not be considered because the individual factors were not so identified in the Third Amended Complaint. The Hearing Officer ruled during the proceeding, and reiterates herein, that Count 4's reference to RPC 1.5(a) was sufficient notice to Respondent that the entire text of RPC 1.5(a) would be considered; to decide otherwise would eviscerate RPC 1.5(a).

245. RPC 1.5(a) reads:

> (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:[41]
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (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;

[41] Respondent essentially argues that Count 4 should not be read to include RPC 1.5(a) beyond this colon.

(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.

246. Comment [11] to RPC 1.5 explains:

> [11] Under paragraph (a)(9), one factor in determining whether a fee is reasonable is whether the fee agreement or confirming writing demonstrates that the client received a reasonable and fair disclosure of material elements of the fee agreement. Lawyers are encouraged to use written fee agreements that fully and fairly disclose all material terms in a manner easily understood by the client.

247. Count 4 requires consideration of three separate subsets of Respondent's clients: (1) clients whose Contingent Fee Agreements did not contain the *Mahler* Surcharge Provision: AW, GT, SR, AM, HS, and GH; (2) clients whose Contingent Fee Agreements did contain the *Mahler* Surcharge Provision, but were charged the surcharge for subrogation liens that did not involve PIP payments: AA and BA; and (3) clients whose Contingent Fee Agreements did contain the *Mahler* Surcharge Provision, whose cases included PIP payments: WA, AA, YH, MA, MeA, ME, KN, BG, and YG.

248. Because the fee agreements of AW, GT, SR, AM, HS and GH did not include a *Mahler* Surcharge Provision, Respondent's charging his Mahler fee in these cases was improper on the face of each client's fee agreement. While his paralegal did not notice the lack of a *Mahler* Surcharge Provision for these matters when she prepared the draft final accountings[42], Respondent nonetheless is responsible for accurate preparation of the final accountings for his clients. Respondent signed the Contingent Fee Agreements for each of

[42] In the cases of AM, HS, and GH, Quichocho accidentally used the older form of Contingent Fee Agreement, i.e., the form without the Mahler Surcharge Provision. The cases of AW, GT and SR began prior to Ms. Quichocho's employment.

these clients, and therefore was on notice that his charging a Mahler fee in these cases was not authorized by the applicable fee agreements, and that improperly charging the Mahler fee caused injury to each of these clients at the time of the original final accounting for each client.

249. Respondent also negligently applied the *Mahler* Surcharge Provision to Client AA as to Optum's subrogation lien, for which PIP did not apply. Further, Respondent negligently applied the *Mahler* Surcharge Provision to Client BA as to the DLI lien, for which PIP did not apply.

250. With respect to the clients whose Contingent Fee Agreements did contain a *Mahler* Surcharge Provision, Respondent was on notice from the first time he collected a Mahler fee – on October 1, 2014, from Client GT – that his using *Mahler* as a surcharge was a large percentage of the client's settlement. Instead of "The legal fee of Attorney" being collected as 33.3% - 40% per the Contingent Fee Agreement, GT was assessed an additional 14% of the settlement proceeds as a "Mahler fee," which raised Respondent's total fee to 48%. *See* Exhibit A attached hereto.

251. Analysis of Respondent's fees charged to his clients, resulted in Mahler fees in the range of an additional 8% - 20% of the settlement, for total fees charged in the range of 41% - 59%.

252. The *Mahler* surcharge to the clients, was excessive under the enumerated factors under RPC 1.5(a) as follows:

(1) As testified to by attorney Heller, Respondent's cases at issue were relatively standard personal injury matters, which did not involve any unusual amounts of time and labor. The records before the Hearing Officer indicate that Respondent rarely invested more than a couple of hours at most, to negotiate the PIP liens.

(2) There is no evidence that any of Respondent's client matters precluded other employment.

(3) Respondent's total attorney fees in the range of 41% - 59%, greatly exceeded the 33%-40% range expected in the Seattle area per attorney Heller for similar services.

(4) The amount involved and the settlement results obtained were relatively standard for personal injury cases in the Seattle area, per attorney Heller.

(5) There were no particular time limitations imposed by the client or by the circumstances.

(6) The factor of "nature and length of the professional relationship with the client" is enhanced in the cases where Respondent's clients were more comfortable with a lawyer who speaks Amharic.

(7) Respondent's experience and ability was appropriate.

(8) The fee was contingent.

(9) With respect to each client with a *Mahler* Surcharge Provision, Respondent failed to give the client a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices. Nowhere on the face of the fee agreement, or on the face of the final accountings, was there a showing of the method by which the Mahler fee was calculated.

253. Further, because of Respondent's *Mahler* Surcharge Provision violated multiple RPCs pursuant to both Count 3 and Count 4, disgorgement of the Mahler fees levied by Respondent in his original Final Accountings is appropriate. *Eriks v. Denver,* 118 Wn.2d 451, 463, 824 P.2d 1207 (1991) ("Disgorgement of fees is a reasonable way to 'discipline

specific breaches of professional responsibility . . .").[43] Respondent already has refunded the Mahler surcharge amounts, and ODC has stipulated on the record as to the accuracy of the refunds.

254. **<u>Count 6</u>** – Count 6 seeks to discipline Respondent under RPC 8.1(a), RPC 8.4(c) and/or RPC 8.4(l) (by violating ELC 1.5 and/or ELC 5.3), for "submitting false evidence to ODC during a grievance investigation . . .". This charge refers to the false declaration of AW, GT, and SR, submitted to ODC during the investigation period. *See* Third Amended Formal Complaint [BF # 125], ¶¶ 36-43, 69-76, & 110-117. Each of the false declarations included a false fee agreement, with Respondent's insertion of the 2016 version of the *Mahler* Surcharge Provision, a clause that did not exist until after the original final accountings of AW, GT and SR.

255. Respondent's motivation in creating the Declarations of AW, GT, and SR, was to fabricate testimony he thought would be favorable to him, and to create favorable evidence of the terms of the "missing" Contingent Fee Agreements.[44]

256. Respondent's argument that Count 6 fails because the declarations were not submitted as "evidence," but simply were produced because of the duty to provide documents under ELC 5.3(g). Respondent's argument places too narrow a definition of "evidence" as that word was used in Count 6. It is not for Respondent to unilaterally assert that documents produced are not "evidence." *Cf.* CR 26(b)(1) (information is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence). Moreover, ODC

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[43] ODC has not sought disgorgement of the remainder of the fees and costs charged by Respondent.

[44] The Hearing Officer notes that ODC did not charge Respondent with witness tampering, or attempted witness tampering. *Cf. In re Disciplinary Proceeding Against Kronenberg*, 155 Wn.2d 184, 117 P.3d 1134 (2005) (attorney disbarred for violation of RPCs 8.4(a)-(d), where attorney paid witness to leave the state and avoid testifying in prosecution of client/defendant in criminal case).

was well within its rights to treat the false declarations as "evidence" to support the charges that Respondent violated RPC 8.1(a), RPC 8.4(c) and/or RPC 8.4(l), and potentially to support an aggravating factor under ABA Standards 9.22(f).

257. ODC also had relied upon the false declarations in preparing the Formal Complaint, dated October 4, 2022 [BF #3]; the First Amended Formal Complaint, dated January 23, 2023 [BF #22]; and the Second Amended Formal Complaint, dated January 25, 2023 [BF # 23]. All three earlier versions of the formal complaint assumed that given the alleged absence of the original fee agreements, Respondent had begun representation of AW, GT, and SR, without a written fee agreement.

258. Respondent's conduct thus caused ODC to unnecessarily expend time and resources in reliance upon the false declarations.

259. Respondent's conduct in preparing the false declarations showed disrespect for the legal system as a whole.

260. Respondent's conduct in preparing the false declarations was intentional.

261. Under *In re Disciplinary Proceeding Against Whitt,* 149 Wn.2d 707, 72 P.3d 173 (2003), fabrication of documents to ODC during a disciplinary investigation warrants disbarment under RPC 8.4(c). As stated by the Washington Supreme Court, "Falsifying information during an attorney discipline proceeding is one of the most egregious charges that can be leveled against an attorney." *Whitt,* 149 Wn.2d at 720 (citation omitted). Such conduct harms the public by jeopardizing the reputation and perception of the legal system as a whole, and harms the legal system by attempting to circumvent the disciplinary process to evade responsibility for misconduct. *Id. See also In re Disciplinary Proceedings Against Simmerly,* 174 Wn.2d 963, 285 P.3d 838 (2012); *In re Disciplinary Proceeding Against*

Van Camp. 117 Wn.2d 781, 257 P.3d 599 (2011) (submission of falsified reconstructed time sheets).

262. Therefore, the Hearing Officer finds that ODC's Count 6 is proven.

263. **Count 7** – Counts 7 and 8 stem from the Grievance of Lisa Fanning. As previously stated *supra* in the context of Count 2, ODC has proven that Respondent lied to Fanning about what the third-party tortfeasor's insurer was offering to settle MW's case. This was a violation of RPC 4.1(a) (duty to not knowingly make a false statement of material fact to a third person), and RPC 8.4(c) (dishonesty, fraud, deceit or misrepresentation).

264. Therefore, the Hearing Officer finds that ODC's Count 7 is proven.

265. **Count 8** – RPC 1.15A(f) requires an attorney to promptly pay to a third person what the third person was entitled to receive. Respondent offered little defense to the 8-month gap between March 26, 2019 -- the date MW's case settled for $9,000 -- and payment to Ms. Fanning on or about December 16, 2019. There was no evidence submitted to support his belief that negotiations were ongoing, as there was no contact between Respondent and Ms. Fanning after March 26, 2019, until Ms. Fanning contacted Respondent in early December 2019. The 8-month delay in paying Ms. Fanning's $999 bill, violated RPC 1.15A(f).

266. Therefore, the Hearing Officer finds that ODC's Count 8 is proven.

IV. SANCTION ANALYSIS

Presumptive Sanction Determination

267. 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).

COUNT 2:

268. ABA Standards std. 5.1 applies to Respondent's violations of RPC 4.1(a), RPC 8.4(a), and RPC 8.4(c), as charged in Count 2. As explained in greater detail *supra*, Respondent made intentional misrepresentations to insurance carriers and third-party medical providers. Because his behavior "seriously adversely reflects on the lawyer's fitness to practice" within the meaning of ABA Standard 5.11(b), the presumptive sanction is disbarment.

269. The Hearing Officer rejects Respondent's argument that ABA Standard 5.13 should be the proper standard. Under Standard 5.13, "Reprimand is generally appropriate when a lawyer engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." The difference between Standard 5.11(b) and 5.13, is the seriousness of the dishonesty, fraud, deceit, or misrepresentation, and whether the misconduct was "intentional" vs. "knowingly". Respondent's misconduct is not an isolated incident; rather, his intentional lying to insurance carriers and third-party providers was his regular course of practice. Therefore, the Hearing Officer recommends disbarment under Standard 5.13.

COUNT 3

270. ABA Standards 4.4 on "Lack of Diligence" applies to Respondent's failure to give his clients fair and reasonable disclosure of the material terms of his *Mahler* Surcharge Provision to clients WA, AA, YH, MA, MeA, ME, KN, YG, BA and BG. This caused serious injury or potentially serious injury to his clients, who were not fully or correctly

advised of the fees of Respondent, and were not given an accurate statement of the holdings in *Mahler v. Szucs*. Respondent failed to give his clients notice that the Mahler fees would levy an additional 8% - 20% above the rates typically charged by other personal injury lawyers in the Seattle area. Respondent's conduct shows he engaged in a pattern of neglect with respect to these clients' matters and caused serious or potentially serious injury to these clients. The presumptive sanction is disbarment under Standard 4.41(c).

271. ABA Standards 4.6 on "Lack of Candor" applies to Respondent's misrepresentations in the original final accountings, in violation of RPC 1.5(c)(3) and RPC 8.4(c), by block billing the Mahler fee with the PIP subrogation lien, as done in the original final accountings of AW, GT, SR, AA, HS, AM and YG. Respondent's conduct as to the block billing knowingly failed to disclose and deceived these clients with the intent to benefit himself, and caused the clients serious injury or potential serious injury. The presumptive sanction is disbarment under Standard 4.61.

272. ABA Standards 4.6 also applies to Respondent's violation of RPC 1.5(c)(3) and RPC 8.4(c), by failing to explicitly state in the original final accountings of AW, GT, SR, WA, AA, HS, AM, YH, MA, MeA, ME, KN, BG, YG and BA, that Respondent was the recipient of the Mahler fees. Respondent's conduct knowingly deceived these clients with the intent to benefit himself, and caused the clients serious injury or potential serious injury. The presumptive sanction is disbarment under Standard 4.61.

COUNT 4

273. ABA Standards 7.0 applies to Respondent's violation of RPC 1.5(a) as charged in Count 4. As explained in greater detail *supra,* the Mahler fees charged were unreasonable.

Respondent's conduct was knowing, with the intent to benefit himself. There was serious financial injury to the clients, and there was potential injury to the public and the legal system. The presumptive sanction is disbarment under Standard 7.1.

274. In addition, ABA Standards 4.4 on "Lack of Diligence" applies to Respondent's charging his Mahler fee in the cases of AW, GT, SR, HS, AM, and GH, as these clients' fee agreements did not contain a *Mahler* Surcharge Provision. Having signed all of the fee agreements with these clients, and therefore had notice of the terms of these fee agreements, Respondent's conduct shows he engaged in a pattern of neglect with respect to these clients' matters and caused serious or potentially serious injury to these clients. The presumptive sanction is disbarment under Standard 4.41(c).

275. ABA Standards 4.4 on "Lack of Diligence" also applies to Respondent's charging his Mahler fee to AA's Optum lien, and to Respondent's charging his Mahler fee to BA's DLI lien. Respondent's failure to recognize that these liens were not PIP liens, shows he engaged in a pattern of neglect with respect to these clients' matters and caused serious or potentially serious injury to these clients. The presumptive sanction is disbarment under Standard 4.41(c).

COUNT 6

276. ABA Standards 6.1 applies to Respondent's violation of RPC 8.1(a), RPC 8.4(c), and RPC 8.4(l) (by violating ELC 1.5 and ELC 5.3), as charged in Count 6. As explained in greater detail *supra*, the record supports the conclusion that Respondent intentionally provided ODC with false documents in response to ODC's investigation requests. The presumptive sanction is disbarment under ABA Standards 6.11.

COUNT 7

277. When Respondent's lying to Fanning about what MW's insurer was offering to settle MW's case is considered in isolation, for Respondent's violations of RPC 4.1(a) and RPC 8.4(c) the presumptive sanction is reprimand under ABA Standards 5.13. However, when Count 7 is included as an add-on to Count 2, ABA Standards 5.11(b) applies, for which the presumptive sanction is disbarment as set forth *supra* under Count 2.

COUNT 8

278. ABA Standards 7.3 applies to Respondent's violation of RPC 1.15A(f) as charged in Count 8. While Respondent's failure to promptly pay Fanning was an isolated incident, Respondent was negligent in allowing Fanning's bill to remain unpaid for approximately 8 months. This was a violation of a duty owed as a professional that caused injury (delay) or potential injury to the public and the legal system. The presumptive sanction is reprimand.

Aggravating and Mitigating Factors Determination.

279. The Hearing Officer then determines whether aggravating or mitigating factors apply and whether the applicable factors alter the presumptive sanction. The following aggravating factors set forth in Section 9.22 of the ABA Standards are applicable in this case:

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(i) substantial experience in the practice of law

280. The Hearing Officer finds that under aggravating factor (b), Respondent acted with dishonest or selfish motive. Respondent insisted throughout his testimony that he was entitled by contract to the Mahler fees. At no time prior to the Grievance did Respondent consider that his fees were not reasonable, despite early signs from the original final accountings of AW, GT and SR that he was collecting an additional 14-20% of his clients' settlements.

281. Under aggravating factor (c), Respondent showed a pattern of misconduct in making misrepresentations to third parties to induce settlement of liens against his clients' settlements. Respondent also showed a pattern of misconduct in block billing his Mahler fees with the PIP lien payments in several cases as enumerated *supra*, and otherwise obscuring that he was the payee of the Mahler fees.

282. Respondent's bad faith obstruction of the disciplinary proceeding is shown throughout ODC's investigation, and during the pre-hearing disciplinary proceeding, with his multiple willful and intentional acts over the course of several years, attempting to evade production of documents. Respondent's failure to comply with the Chief Hearing Officer's order of December 5, 2020, was particularly disrespectful to the disciplinary process, and by itself is grounds for disbarment. Further, Respondent sought to avoid answering the Second Amended Formal Complaint, without any basis to refuse to answer under Civil Rule 8. Therefore, aggravating factor (e) is shown.

283. On aggravating factor (f), the submission of false evidence, false statements, or other deceptive practices during the disciplinary process, is substantially and amply covered by the allegations addressed as to Count 6, and in the lengthy procedural history over the course of the investigation phase and during the disciplinary proceeding.

284. On aggravating factor (g), throughout this proceeding, Respondent continued to

assert that he was entitled to his *Mahler* surcharge. It should be expressly noted that he continued throughout this proceeding – even after being counseled by respected attorney J.D. Smith shortly after the grievance was filed that the Mahler "fee" was improper, convincing Respondent to refund that portion of the fees taken – to assert that the fee provision was proper. *See, e.g.,* EX 539 (continuing to state in his refund letters, ". . . I am entitled to these fees based on the fee agreement we signed . . .").

285. With respect to aggravating factor (j), substantial experience in the practice of law is established, as Respondent was admitted to practice in 2003, presented himself to ODC on October 16, 2020 as having had a "successful personal injury practice in Seattle for over fifteen years," [EX 26, ¶], and the complained of acts in handling his clients' personal injury matters were during the period 2014-2019.

286. The following mitigating factors set forth in Section 9.32 of the ABA Standards have been considered in this case:

(a) absence of a prior disciplinary record;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(g) character or reputation;
(i) mental disability or chemical dependency including alcoholism or drug abuse when:
  (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
  (2) the chemical dependency or mental disability caused the misconduct;
  (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.
(j) delay in disciplinary proceedings *[explain]*;
(l) remorse;
(k) Imposition of other penalties or sanctions.

287. The Hearing Officer finds that mitigating factor (a) absence of a prior disciplinary record, applies to this case.

288. The Hearing Officer finds that (c) personal or emotional problems, does not apply to this case. The Washington Supreme Court requires a connection between the asserted emotional problem and the misconduct. *In re Disciplinary Proceeding Against Hicks*, 166 Wn.2d 774, 788, 214 P.3d 897, 904 (2009); *In re Disciplinary Proceeding Against Holcomb,* 162 Wn.2d 563, 591, 173 P.3d 898 (2007) (citing *In re Disciplinary Proceeding Against Christopher,* 153 Wn.2d 669, 684, 105 P.3d 976 (2005); *In re Disciplinary Proceeding Against Curran,* 115 Wn.2d 747, 774, 801 P.2d 962 (1990) (citing *In re Disciplinary Proceeding Against Johnson*, 114 Wn.2d 737, 748, 790 P.2d 1227 (1990). The evidence of Dr. Tutty and Respondent's friends, fall short of connecting Respondent's emotional problems, with his misreading the *Mahler* and *Winters* decisions. The evidence does not show any connection between Respondent's emotional problems, and his inserting and redrafting his *Mahler* Surcharge Provision. The evidence falls short of connecting his emotional problems, and his intentional failure to cooperate in producing documents required by the Chief Hearing Officer's order. The evidence falls short of connecting his emotional problems, and his creation of the false declarations of AW, GT, and SR.

289. Indeed, there is no evidence that Respondent's acuity in the practice of law – such as taking the defensible legal position that Dr. Britton's written lien was only enforceable against tortfeasor Maun – affected his ability to practice law. While his depression and lack of sleep could make him at times irritable and rude (as perhaps indicated in his communications with AA, Dr. Britton, Ms. Fanning), and unwilling to be in the office during normal business hours, there is no specific showing that he was unable to competently practice law. Indeed,

expert Heller expressly stated that Respondent's representation of his clients appeared competent.

290. Therefore, Respondent's personal and emotional problems and/or mental disability do not warrant a finding of a mitigating factor under either ABA Standard 9.32(c). Similarly, ABA Standard 9.32(i) mental disability or chemical dependency, does not apply.

291. The Hearing Officer finds that the mitigating factor set forth in Section 9.32(d) applies. No later than July 7, 2022 – prior to the filing of the Formal Complaint [BF #3] -- Respondent voluntarily refunded to all his clients the principal amounts of the Mahler fees taken by him.

292. Mitigating factor 9.32(g) on reputation applies, due to Respondent's significant pro bono activities on behalf of the Ethiopian community.

293. Mitigating factor 9.32(j) does not apply in this case. While Respondent complains of the delay in the proceedings during 2020, the pandemic was not within ODC's control. Respondent's complaint regarding the continuance of the prior November 2023 hearing date, is without any showing of prejudice from the few months' continuance. Further, the record shows Respondent's repeated delays in responding to discovery requests, both during ODC's investigation phase and during the pendency of the above-captioned disciplinary proceeding.

294. Mitigating factor 9.32(l) remorse, does not apply to this case. While Respondent in response to the Grievance changed his practice and no longer charges a Mahler fee, he continued to insist throughout the investigation, in the July 2, 2022 cover letters to his clients [EX R539], and throughout the disciplinary proceeding that he was entitled to charge the Mahler fee.

295. Mitigating factor 9.32(k) imposition of other penalties or sanctions, as urged in

Respondent's Hearing Brief, does not apply to this case. There was no material evidence of negative publicity or job loss presented at the hearing.

296. Respondent also argues that "cultural differences" should be considered as a mitigating factor, even though it is not enumerated in Standard 9.32. Respondent asserts that Ethiopian culture "explains" his false statements to insurers and third-party medical providers. Respondent submitted testimony from a lay witness that in Ethiopia, "If you tell a lie but everybody's happy, then you didn't do anything wrong." [TR, p. 1936, ll. 10-11.] Given the obligations imposed on lawyers pursuant to RPC 4.1, cultural background does not exempt Respondent from his professional obligations under the RPCs, and thus cannot be accepted as a reason to mitigate Respondent's conduct as a lawyer. Therefore, this proposed mitigating factor does not apply.

297. Respondent's consideration of ELC 1.4 on passage of time, as a mitigating factor does not apply to this case. Respondent asserts it was unfair to expect him to defend himself as to some of the fee agreements executed 12 years prior to the hearing, and long after expiration of the statute of limitations on the fee agreements. However, the core focus of this matter was the face of the documents and whether the conduct shown in the documents warrant discipline under the RPCs. Therefore, passage of time does not serve as a basis for mitigation in this case.

Sanction Recommendation.

298. When multiple ethical violations are found, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." *In re Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993). Deviation from the presumptive sanction should occur only if the aggravating and mitigating factors are sufficiently compelling to justify a departure. *In re Cohen*, 149 Wn.2d 323, 339, 67 P.3d 1086,

1094 (2003).

299. Had Respondent's misconduct been limited to the matters addressed in Counts 2, 3, 4, 7 and 8, given Respondent's subjective – yet seriously erroneous -- belief that he had correctly read and applied *Mahler*, because of his significant contributions to the Ethiopian community, the undersigned would have been willing to recommend a suspension of 18 months followed by a 2-year probationary period with a practice monitor, as sufficient, proportionate discipline to inform the public and warn other lawyers of the seriousness of the misconduct, remediate Respondent's practice deficiencies, and adequately serve the purposes of lawyer discipline to protect clients, the public and the legal system.

300. However, it is Respondent's multiple and deeply troubling instances of misconduct after the Grievance was filed, particularly the creation and submission of the false declarations of AW, GT and SR, the numerous acts of deceptive testimony about his client files, and his bad faith obstruction of discovery during the disciplinary process -- acts which are deeply disrespectful of the legal system -- that override any mitigating factors.

301.Therefore, based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent be disbarred.

<u>RESTITUTION</u>

302. The Hearing Officer "may" order restitution. ELC 13.7(a). ODC in its hearing brief requested Respondent pay his clients interest "for the period of time that Respondent wrongfully possessed their funds." ODC's Hearing Brief, p. 45, ll. 7-8. Therefore, it is hereby ordered that Respondent pay restitution in the form of 12% straight interest to the following former clients who were charged a Mahler fee even though their fee agreement either did not include the

Mahler Surcharge Provision, or were charged a Mahler fee for a non-PIP insurance lien:

- AW: 12% interest on $3,629.11 for the period September 26, 2014 - October 9, 2019 = $ 2,192.67.
- GT: 12% interest on $3,478.00 for the period December 16, 2014 - October 9, 2019 = $ 2,009.043.
- SR: 12% interest on $3,662.46 for the period April 20, 2015 - October 9, 2019 = $1,966.29.
- AA: 12% interest on $1,326.48 for the period April 30, 2018 – July 7, 2022 = $237.97.
- AM: 12% interest on $1,400.45 for the period February 17, 2019 – July 7, 2022 = $568.61.
- HS: 12% interest on $4,138.66 for the period February 17, 2019 – July 7, 2022 = $1,680.41.
- GH: 12% interest on $1,708.92 for the period March 3, 2017 – January 19, 2021 = $796.68.
- BA: 12% interest on $748.91 for the period January 16, 2018 – July 7, 2022 = $311.96.

303. The Hearing Officer exercises discretion against ordering restitution in the form of interest for Clients WA, YH, MA, MeA, ME, KN, BG, and YG, and against ordering restitution in the form of interest as to the Mahler fee charged by Respondent as to AA's PIP benefits, as these clients' fee agreements contained a *Mahler* Surcharge Provision. While the language of the surcharge employed by Respondent is void for failure to conform with *Mahler* itself, and also void for failure to comply with RPC 1.5(a), Respondent could have structured a surcharge

on PIP matters that could have satisfied RPC 1.5(a). Further, ODC stated on the record that no later than July 7, 2022, Respondent has-refunded the correct *Mahler* Surcharge amounts to these former clients. Under these circumstances, the Hearing Officer finds that equity does not require an award of interest as restitution.

304. ODC also requested an order of restitution that requires Respondent to audit all of his client files for the period 2016 to the present, and certify that Respondent has refunded any *Mahler* fees from his clients prior to seeking reinstatement to the bar. This proposed request from ODC would require that Respondent retain his clients' files beyond the seven-year period mandated by RPC 1.15B. However, as ODC conceded near the close of the hearing, there is no authority in the ELCs which authorize Hearing Officers to require an audit, or order retention of client files beyond the scope of RPC 1.15B. Further, the Hearing Officer has no jurisdiction to issue conditions and/or directives to the Character and Fitness Committee of the WSBA. In addition, ODC already has the authority to conduct an audit of Respondent's trust account records at its discretion. Therefore, the undersigned declines to order this item of relief sought by ODC.

Dated this 10th day of September, 2024.

JANICE SUE WANG, WSBA #19104
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the HO's Amended Decided to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Anne I. Seidel, at anne@anneseidel.com, on the 10th day of September, 2024.

Clerk to the Disciplinary Board

HEARING OFFICER'S SUMMARY CHART OF RESPONDENT'S FEE CHARGES

Exhibit A to Hearing Officer's Decision

Client	Date Original Final Accounting	Gross Settlement	Base Atty Fees (F) & Costs (C)	"Mahler" Fee	"Mahler" Fee as % of Settle't	Total Fees (Base Fee + Mahler Fee) As % of Settle't (Costs Not Included)
AW	12/16/2014	$19,040.40	$7,616.16 (F) $839.57 (C)	$3,629.11[1]	19%	59%
GT	10/01/2014	$24,000.00	$8,000 (F) $281.14 (C)	$3,478.00	14%	48%
SR	04/20/2015	$18,639.00	$6,213 (F) $569.34 (C)	$3,662.46	20%	53%
WA	04/30/2018	$23,500.00	$9,400 (F) $1,401.09 (C)	$2,208.16[2]	9%	49%
AA	08/07/2018	$50,000.00[3]	$20,000 (F) 1,727.10 (C)[4]	$3,325.00[5] $1,326.48 for Optum share	9%	49%
AM	02/17/2019	$20,000.00	$8,000 (F) $ 234.85 (C)	$1,400.45	7%	47%
HS	02/17/2019	$50,000.00	$20,000 (F)	$4,138.66	8%	48%

[1] There may be an error for this line item in accounting expert Sambrano's EX 10.5, which indicates the Mahler fee was $3,129.11. EX 65 & EX 67 reflects that the Mahler fee was $3,629.11.

[2] Total refund to WA per the Revised Final Accounting dated July 7, 2022, was for $3853.85. This was due in part to Respondent's reduction of his fee from 40% to 33%. [EX 150]

[3] Does not include separate $50,000 settlement for AA's first-party UIM claim.

[4] This amount is based on the original Final Accounting. Sambrano 's EX 10.5 had the base attorney fees & costs amount as a total amount of $23,053.58. This discrepancy is because Ms. Sambrano included the Optum proportionate fee amount in her base fee calculation, instead of treating the Optum proportionate fee as a separate improper "Mahler" fee charge.

[5] Original subrogation worksheet had the Mahler fee at $4345.42. [EX 177] Prior to the original final accounting, either in response to Ms. Quichocho or in response to AA's complaints to him, Respondent reduced this amount to $3325.00. [EX 178; EX 183.]

			$329.45 (C)			
GH	12/23/2016 & 03/03/2017	$19,500.00	$ 6,500 (F) $475.18 (C)	$1,708.92[6]	9%	42%
YH	09/04/2018	$25,000.00	$10,000 (F) $2,563.93 (C)	$4,774.29	19%	59%
MA	06/06/2018	$37,500.00	$12,500 (F) $379.15 (C)	$2,785.51	7%	41%
MeA	08/01/2018	$13,000.00	$4,333.33 (F) $315.85 (C)	$2,555.95	20%	53%
ME	09/04/2017 & 09/21/2018	$40,000.00	$13,333.33 (F) $365.92(C)	$3,424.81	8%	42%
KN	09/04/2017 & 09/21/2018	$40,000.00	$13,333.33 (F) $364.01 (C)	$3,424.33[7]	8%	42%
BG	10/31/2017	$25,500.00	$8,421.13 (F) $1858.42 (C)	$4,220.15[8]	16%	50%
YG	06/12/2019	$16,227.00 $35,000.00	$20,490.80 (F) $2,945.22 (C)	$4,320.00[9]	8%	48%
BA	1/16/2018	$9,000.00	$3,333.33 (F) $497.93 (C)	$ 748.91[10]	8%	45%

6 Respondent "split" the Mahler fee with GH.

7 This number is based on the refund made by Respondent on July 7, 2022. Ms. Sambrano's EX 10.5 had the amount as $3,424.81.

8 Ms. Sambrano had this figure as $4,220.45.

9 The actual amount refunded by Respondent on July 7, 2022, was $4,410.80. $90.80 of this payment represented "error charges." [EX 437]

10 Ms. Sambrano's analysis in EX 10.5 did not include a line item for BA. This number is from the original final accounting. [EX 467, p. 000002.] The actual amount refunded by Respondent on July 7, 2022, was $1,082.48. Respondent not only refunded the "Mahler" fee, but also reduced his base attorney fee to comport with the DLI order.

Sources: EX 10.5; All original final accountings; EX R539.