

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

)	
)	Proceeding No. 12#00037
In re)	
)	FINDINGS OF FACT,
D. ANGUS LEE,)	CONCLUSIONS OF LAW
Lawyer)	AND HEARING OFFICER'S
(Bar No.36473))	RECOMMENDATION

In accordance with Rules 10.12, 10.13 and 10.14 of the Rules of Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing in the above noted matter on January 21-23, 2015. Respondent appeared through his counsel, Leland G. Ripley, at the hearing. Disciplinary Counsel Mark G. Honeywell appeared for the Washington State Bar Association (Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Mr. Lee with the following counts of misconduct:

Findings of Fact, Conclusions of
Law & Recommendation

COUNT 1

1. By being involved in the Office's handling of the Neils/Dalluge matter under one or more of the circumstances as set forth in the Formal Complaint, without explaining to his client the implications and/or risks thereof, and/or without obtaining consent in writing from his client, Respondent violated RPC 1.7 (conflict of interest).¹

COUNT 2

2. By requiring that Mr. Lin engage in a prosecutorial review of police reports in the John Doe/Dalluge matter, knowing of the circumstances that created a conflict of interest for Mr. Lin, Respondent violated RPC 1.7 and/or RPC 5.1² and/or RPC 8.4(a)³.

¹ RPC 1.7(a) provides: Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

² RPC 5.1(b) provides: A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

³ RPC 8.4(a) provides: It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

COUNT 3

3. By being involved in the Office's handling of the June 5th incident under one or more of the circumstances set forth above, without explaining to his client the implications and/or risks thereof, and/or without obtaining consent in writing from his client, Respondent violated RPC 1.7 (conflict of interest).

FINDINGS OF FACT

4. Based on the pleadings in this case and the testimony and exhibits produced at the hearing, the Hearing Officer makes the following Findings of Fact:

5. Respondent was admitted to the practice of law in the State of Washington on July 21, 2005.

6. Respondent was a Deputy Prosecuting Attorney for Grant County in 2008. That year he sought the position of Prosecuting Attorney on an interim basis. The Grant County Prosecuting Attorney had been elected to the Superior Court bench, mandating the appointment of a successor prosecutor until an election could be held.

7. Certain employees of the Grant County Prosecuting Attorney, including Administrative Assistant Cathleen D. Neils and Deputy Prosecutor Albert Lin, opposed the appointment of Respondent to the vacated prosecutor position.

8. Respondent was appointed to the open position of Grant County Prosecuting Attorney in January 2009.

9. As Grant County Prosecuting Attorney Respondent and his deputies would be representing the State of Washington as their client in certain criminal matters.

10. In February 2009 Respondent fired Cathleen D. Neils, an employee who had worked in the prosecutor's office for approximately seventeen years.

11. With the election approaching, both Respondent and Mr. Lin entered the race for the position of Prosecuting Attorney for Grant County in June 2009.

12. In the months prior to the November 2009 election Respondent, the interim Prosecuting Attorney, directed his deputy, Albert Lin, to review three separate potential criminal matters. They are (1) the Neils/Dalluge matter; the John Doe/Dalluge matter; and (3) the June 5th incident involving a possible hit and run committed by a sitting Grant County judge.

13. Respondent won the election for Grant County Prosecuting Attorney in the November election. His term began on December 4, 2009.

14. On the day he began his term as the elected Prosecuting Attorney for Grant County, Respondent decided not to reappoint Mr. Lin to his position as Deputy Prosecuting Attorney.

The Neils/Dalluge Matter

15. On or about June 1, 2009, a criminal report was filed with the Ephrata Police Department by Elisa Dalluge alleging that Cathleen D. Neils had filed a false report

concerning an alleged violation by Elisa Dalluge of a no contact order.

16. The Grant County Prosecutor's Office received a copy of the Elisa Dalluge report in early June 2009.

17. Several weeks later Respondent assigned the criminal report in the Neils/Dalluge matter to Albert Lin for a charging decision.

18. Respondent was aware, when he assigned the report to Mr. Lin that the Prosecuting Attorneys Office had been involved in the events which gave rise to Ms. Dalluge's filing of the criminal report.

19. Respondent had been personally involved in obtaining the no contact order against Ms. Dalluge.

20. Respondent was aware that Ms. Neils, during 2008, was outspoken in her opposition to Respondent's appointment as interim Prosecuting Attorney.

21. In early 2009 Respondent had personally made a criminal report against Ms. Neils on a matter unrelated to the Neils/Dalluge matter.

22. After being fired in February 2009, Ms. Neils filed suit against Grant County, and against Respondent individually, for wrongful termination from her position as Administrative Assistant in the Grant County Prosecuting Attorneys Office.

23. Respondent filed counterclaims against Ms. Neils in her wrongful termination lawsuit, and soon thereafter assigned the Neils/Dalluge criminal report matter to Mr.

Lin.

24. Respondent took no steps to avoid any actual or potential conflicts of interest when he assigned the Neils/Dalluge matter to Albert Lin.

25. On July 13, 2009, Respondent received a memorandum from Mr. Lin explaining that the conflict of interest existed, and advised Respondent that the matter should be referred to the Washington State Attorney General for consideration.

26. Respondent rejected Mr. Lin's assessment of the situation and directed Mr. Lin again to review the Neils/Dalluge matter.

27. Mr. Lin responded, again declaring that it was a clear conflict of interest. Mr. Lin also indicated in a memorandum that he was consulting with the Washington State Bar Association concerning his position on the matter.

28. On July 14, 2009, Mr. Lin sent the Respondent a third memorandum in which he stated he had consulted with the Washington State Bar Association, which advised him to consult with private counsel, that he had done so, and had been advised that it was a clear conflict of interest to review the Neils/Dalluge matter.

29. Respondent sent back the Neils/Dalluge matter a third time and directed Mr. Lin to review it.

30. Mr. Lin wrote a fourth and final memorandum on July 15, 2009, reiterating his position concerning the

conflict of interest.

31. The next day, July 16, 2009, Respondent and Deputy Prosecutor Dalton Pence, questioned Mr. Lin concerning his relationship with Ms. Neils, and they were advised by Mr. Lin that he and Ms. Neils were friends, and that she was one of Mr. Lin's volunteers in his campaign for the position of Grant County Prosecuting Attorney.

32. Approximately two months later, on September 14, 2009, Respondent sent a letter to the Washington State Attorney General asking that office to review the Neils/Dalluge matter to determine if criminal charges should be filed.

33. The Washington State Attorney General declined to review the matter.

The John Doe/Dalluge Matter

34. The Grant County Prosecuting Attorney's office received a police report on September 15, 2009, regarding a complaint made by Ms. Dalluge. The essence of the complaint alleged perjury against a John Doe.

35. Respondent assigned the John Doe/Dalluge matter to Mr. Lin to make a charging decision.

36. The John Doe/Dalluge file contained a copy of a recent letter sent by Ms. Dalluge to the Federal Bureau of Investigation critical of the John Doe/Dalluge police report and its author.

37. Respondent assigned the John Doe/Dalluge matter

to Mr. Lin for a charging decision knowing that Mr. Lin had a conflict of interest regarding the matter.

38. On September 18, 2009, Mr. Lin declined to review the matter, citing a reference in the FBI letter to Cathleen D. Neils, former employee of the Grant County Prosecutor's Office and one of Mr. Lin's campaign workers.

39. Respondent did not accept Mr. Lin's explanation that he had a conflict in the John Doe/Dalluge matter.

40. On September 21, 2009, Respondent sent a memorandum to Mr. Lin asking him to explain the nature of the alleged conflict.

41. The next day Respondent called Mr. Lin to his office to discuss the John Doe/Dalluge matter. Mr. Lin explained again that he had a conflict of interest.

42. The next day Respondent informed Mr. Lin that his continued refusal to review the John Doe/Dalluge matter would be considered insubordination.

43. Mr. Lin once again refused to review the John Doe/Dalluge matter. There were several other deputies in the prosecutor's office who could have made a charging decision.

The June 5th Incident

44. On June 5, 2009, at a location near Quincy, Washington, a Grant County District Court judge was involved in a minor collision with another car.

45. That District Court judge did not stop his

vehicle at the scene of the collision.

46. Later that District Court judge was stopped near Ephrata, Washington and questioned about the collision.

47. That District Court judge was not arrested or charged with any traffic violations or misdemeanors.

48. Respondent learned of the vehicle collision that day, June 5, 2009 (Testimony of Respondent, p. 115).

49. On October 13, 2009, at an election event which both Respondent and Mr. Lin attended, Respondent was asked by an attendee why Respondent and his office had done nothing about the June 5th incident involving the District Court judge.

50. On October 14, 2009, Respondent provided reports and other materials concerning the collision to Albert Lin to make a charging decision.

51. At the time Respondent requested Mr. Lin to make a charging decision regarding the June 5th auto collision, Respondent was aware that the subject of the report was a sitting Grant County District Court judge.

52. At the time Respondent requested Mr. Lin to make a charging decision regarding the June 5th auto collision, Respondent was aware that Mr. Lin was his opponent in the Grant County election.

53. Respondent took no steps to avoid any actual or potential conflicts of interest when he assigned the June 5th District Court judge/traffic collision matter to Albert Lin.

CONCLUSIONS OF LAW

Violations Analysis

54. The Hearing Officer finds that the Association proved the following:

55. **Count 1** - By controlling the Grant County Prosecuting Attorneys office handling of the Neils/Dalluge matter, Respondent violated RPC 1.7. Respondent ignored a clear conflict of interest in his effort to harass Deputy Prosecutor Albert Lin. This count is proven by a clear preponderance of the evidence.

56. **Count 2** - By demanding that Mr. Lin engage in a prosecutorial review of the John Doe/Dalluge matter knowing that Mr. Lin had stated he believed he had a conflict of interest, Respondent violated RPC 5.1 and RPC 8.4(a). This count is proven by a clear preponderance of the evidence.

57. **Count 3** - By involving the prosecutor's office in the handling of the June 5th incident, and without explaining to his client, the State of Washington, the implications and risks thereof, and without first obtaining consent from his client, Respondent violated RPC 1.7. This count is proven by a clear preponderance of the evidence.

Sanction Analysis

58. A presumptive sanction must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484,

502, 69 P.2d 844, 852 (2003). The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are presumptively applicable to this case:

59. **Count 1** - ABA Standard 4.33 applies to this violation of RPC 1.7.

60. Respondent acted knowingly in attempting to coerce a deputy prosecutor working in his office to act in a situation where there was a clear conflict of interest.

61. The presumptive sanction is a reprimand.

62. **Count 2** - ABA Standard 4.33 applies to this violation of RPC 5.1 and RPC 8.4(a).

63. Respondent acted knowingly and aggressively in attempting to coerce a deputy Prosecutor working in his office to act in the face of what the deputy felt was a clear conflict of interest in the John Doe/Dalluge matter.

64. The presumptive sanction is a reprimand.

65. **Count 3** - ABA Standard 4.33 applies to this violation of RPC 1.7.

66. Respondent acted knowingly in harassing a Deputy Prosecutor working in his office, knowing that it would amount to a conflict of interest if his deputy were to make a charging decision regarding the June 5th incident involving a District Court judge in whose courtroom the

prosecutor's office practiced.

Respondent's mental state, and his motivation for acting the way he did, was one of vindictiveness, seeking revenge in a spiteful and retaliatory manner against those who he perceived had crossed him.

67. 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 Peterson, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

68. Based on the Findings of Fact and Conclusions of Law and application of the ABA Standards, the appropriate presumptive sanction is a reprimand.

69. The following aggravating factor set forth in Section 9.22 of the ABA Standards are applicable to this case:

- (c) a pattern of misconduct;
- (d) multiple offenses.

70. The following mitigating factors set forth in Section 9.32 of the ABA Standards are applicable to this case:

- (a) absence of a prior disciplinary record;
- (f) inexperience in the practice of law.
- (j) delay in disciplinary proceedings;

Recommendation

71. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer

recommends that D. Angus Lee be reprimanded.

Dated this 23rd day of February, 2015.



/s/ TERENCE M. RYAN

Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Findings of Fact, Cmc. of Law & Hearing Officer's Rec.
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Leland Ripley Disciplinary Counsel
PO Box 130, Dismal, WA 99019 Certified/first class mail, and to Michael E. McFarland &
on the 2nd day of March, 2015. 818 W Riverside St 250
Julie B. Shanker Spokane, WA 99201-0710
Counsel to the Discipline
Achy

TERENCE M. RYAN
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FILED

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February 23, 2015

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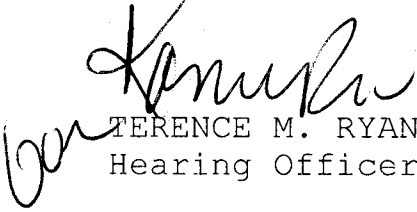
RE: D. Angus Lee
No. 12#00037

Dear Ms. Sato:

Enclosed please find the original FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION in the above matter. Please file this Order and serve copies to all parties.

Please call my office if you have any questions.

Sincerely,


TERENCE M. RYAN
Hearing Officer

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enclosure