

FILED

JUN 16 2016

DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

STEPHEN KERR EUGSTER,

Lawyer (Bar No. 2003).

Proceeding No. 16#00017

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent Stephen Kerr Eugster was admitted to the practice of law in the State of Washington on January 2, 1970.

FACTS REGARDING COUNTS 1 – 3

2. In September 2014, Verdelle O'Neill (Ms. O'Neill) was 88 years old, legally blind, and hard of hearing.

1 3. Ms. O'Neill resided in Spokane, Washington.

2 4. Kevin Carbury and Michelle Carbury (the Carburys) were Ms. O'Neill's neighbors.

3 5. The Carburys had borrowed a substantial amount of money from Ms. O'Neill.

4 6. In September 2014, Ms. O'Neill moved temporarily to Sullivan Park Care Center
5 (Sullivan Park) after suffering from congestive heart failure.

6 7. Mr. Carbury told Respondent that Ms. O'Neill was in need of a lawyer.

7 8. Mr. Carbury had previously consulted with Respondent about filing a bankruptcy
8 petition on his behalf.

9 9. On or about September 11, 2014, Respondent met with Ms. O'Neill at Sullivan Park.

10 10. During the meeting, Ms. O'Neill expressed concern to Respondent that the Carburys
11 owed her money.

12 11. Respondent knew that Ms. O'Neill would be a potential creditor if the Carburys filed
13 for bankruptcy.

14 12. On or about September 12, 2014, Ms. O'Neill signed a fee agreement (agreement)
15 with Respondent for "Estate Planning; Power of Attorney, and other estate planning
16 documents."

17 13. The agreement stated that Respondent's fee for legal and other work would be \$75
18 per hour.

19 14. On or about September 12, 2014, Ms. O'Neill also signed a power of attorney
20 appointing Respondent as her attorney-in-fact.

21 15. The power of attorney gave Respondent full power to administer Ms. O'Neill's
22 personal and business affairs and granted him power to take action for the recovery of debts
23 owed to her.

1 16. The power of attorney also allowed Respondent to be reimbursed for reasonable
2 expenses incurred but did not provide for other compensation.

3 17. On or about September 12, 2014, Respondent drafted a letter addressed to Ms.
4 O'Neill and Kevin and Michelle Carbury.

5 18. The letter stated:

6 I write this letter to you in light of the fact that Mrs. O'Neill has asked me to
7 undertake legal work for her and, because Kevin and Michelle Carbury have
8 asked or soon will ask me to provide them with legal representation concerning a
chapter seven straight bankruptcy (liquidation).

9 ...
10 Kevin and Michelle, I understand are indebted to Mrs. O'Neill, in the amount of
11 \$20,000. If Kevin and Michelle go through a chapter 7 bankruptcy the amount
12 owing to Mrs. O'Neill will be listed as a debt in the bankruptcy proceeding. If
the bankruptcy results in a discharge of Kevin and Michelle, that is a discharge
of all of their debts including the \$20,000 owed to Mrs. O'Neill, Mrs. O'Neill
will not gain anything from Kevin and Michelle, unless Kevin and Michelle were
to agree to reaffirm the debt in the course of the bankruptcy or thereafter. They
would have no obligation to reaffirm the debt.

13 ...
14 The representation of each of you does not involve the assertion of a claim by
15 one of you against the other represented by me in the same litigation or a
16 proceeding before a tribunal. Mrs. O'Neill [sic], if a bankruptcy is filed by
17 Kevin and Michelle will be represented of [sic] other counsel if necessary for
18 purposes of filing her bankruptcy claim.

19 19. Ms. O'Neill signed the letter.

20 20. Prior to signing the letter, Ms. Carbury revised the letter to reflect a dispute over the
21 amount of money that the Carburys owed to Ms. O'Neill as follows:

22 *maybe MC*
Kevin and Michelle, I understand, ~~are~~ indebted to Mrs. O'Neill, ~~in the amount of approximately~~
23 *MC* ~~\$20,000~~. If Kevin and Michelle go through a chapter 7 bankruptcy the amount owing to Mrs.
O'Neill will be listed as a debt in the bankruptcy proceeding. If the bankruptcy results in a
discharge of Kevin and Michelle, that is a discharge of all of their debts including ~~the \$20,000~~ *any money*
owed to Mrs. O'Neill, Mrs. O'Neill will not gain anything from Kevin and Michelle, unless
Kevin and Michelle were to agree to reaffirm the debt in the course of the bankruptcy or
thereafter. They would have no obligation to reaffirm the debt.

21 21. Ms. O'Neill did not initial the changes made by Ms. Carbury.

1 22. On or about September 17, 2014, Adult Protective Services (APS), received a
2 complaint by a member of the community that Ms. O'Neill was being financially exploited by
3 Mr. Carbury.

4 23. Around that same time, APS received a separate complaint against Respondent that
5 Ms. O'Neill was being financially exploited by Respondent. APS began an investigation into
6 both complaints.

7 24. On or about September 23, 2014, Respondent drafted and presented Ms. O'Neill
8 with a new power of attorney.

9 25. The new power of attorney added a provision that allowed Respondent to pay
10 himself compensation for his services as attorney-in-fact at the rate of \$75 per hour.

11 26. Ms. O'Neill signed the new power of attorney on or about September 23, 2014, the
12 same day that Respondent presented it to her.

13 27. The terms of the new power of attorney were not fair or reasonable to Ms. O'Neill.

14 28. Respondent did not advise Ms. O'Neill in writing about the desirability of seeking
15 the advice of independent counsel before she signed the new power of attorney.

16 29. Respondent did not give Ms. O'Neill a reasonable opportunity to seek the advice of
17 independent counsel before she signed the new power of attorney.

18 30. Ms. O'Neill did not give her informed consent in writing to the essential terms of the
19 transaction and/or Respondent's role in the transaction, including whether Respondent was
20 representing Ms. O'Neill in the transaction.

21 31. On or about October 7, 2014, Ms. O'Neill left Sullivan Park and returned to her
22 residence.

23 32. On or about October 8, 2014, Respondent gave Ms. O'Neill a \$4,925.92 invoice for

1 his professional services.

2 33. Respondent's invoice included multiple duplicate entries.

3 34. Respondent's invoice included time spent speaking to and meeting with the APS
4 investigator regarding APS's investigation of Respondent.

5 35. Respondent's invoice billed \$75 per hour for non-legal services such as picking up
6 Ms. O'Neill's prescriptions, delivering a letter to the post office, and making a hair appointment
7 for Ms. O'Neill.

8 36. One or more of the charges on the October 8, 2014 invoice were unreasonable.

9 37. Ms. O'Neill paid the October 8, 2014 invoice in full.

10 38. On or about December 4, 2014, Respondent gave Ms. O'Neill a \$1,681.36 invoice
11 for his professional services.

12 39. The invoice billed charges at \$75 per hour for non-legal services such as research
13 and purchasing household items and delivering the items to Ms. O'Neill.

14 40. One or more of the charges on the December 4, 2014 invoice were unreasonable.

15 41. Ms. O'Neill paid December 4, 2014 invoice in full.

16 42. On or about January 11, 2015, Respondent gave Ms. O'Neill a \$2,277.75 invoice for
17 his professional services.

18 43. Respondent's invoice included time spent speaking to and meeting with the APS
19 investigator regarding APS's investigation of Respondent.

20 44. The invoice billed charges at \$75 per hour for non-legal services such as cleaning
21 Ms. O'Neill's living room, kitchen, and bathroom, and starting a load of laundry.

22 45. One or more of the charges on the January 11, 2015 invoice were unreasonable.

23 46. Ms. O'Neill paid the January 11, 2015 invoice in full.

1 47. On or about February 22, 2015, Respondent gave Ms. O'Neill a \$1,911.73 invoice
2 for his professional services.

3 48. Respondent's invoice included time spent corresponding by email with the APS
4 investigator regarding APS's investigation of Respondent.

5 49. The invoice billed charges at \$75 per hour for non-legal services such as checking on
6 Ms. O'Neill's house, turning the heat down, and unplugging the heaters.

7 50. One or more of the charges on the February 22, 2015 invoice were unreasonable.

8 51. Ms. O'Neill paid the February 22, 2015 invoice in full.

9 52. On or about March 31, 2015, Respondent gave Ms. O'Neill a \$2,887.20 invoice for
10 his professional services.

11 53. The invoice billed charges at \$75 per hour for non-legal services such as shopping
12 for groceries, "dealing with" a lock change at Ms. O'Neill's house, getting cash for Ms. O'Neill
13 from her bank, and bringing her food.

14 54. One or more of the charges on the March 31, 2015 invoice were unreasonable.

15 55. Ms. O'Neill paid the March 31, 2015 invoice in full.

16 56. On or about June 9, 2015, Respondent gave Ms. O'Neill a \$4,783.13 invoice for his
17 professional services.

18 57. The invoice billed charges at \$65 per hour for non-legal services such as telling Ms.
19 O'Neill about an upcoming Mariner's game, reminding her of her doctor's appointment,
20 cleaning her commode and toilet, washing dishes, and taking out her garbage.

21 58. One or more of the charges on the June 9, 2015 invoice were unreasonable.

22 59. Ms. O'Neill paid the June 9, 2015 invoice in full.

23 60. On or about January 13, 2015, Respondent filed a bankruptcy petition on behalf of

1 the Carburys which listed Ms. O'Neill as a creditor. The petition listed the amount of debt owed
2 to Ms. O'Neill as "unknown."

3 61. Respondent's representation of Ms. O'Neill was directly adverse to the Carburys.

4 62. Respondent's representation of the Carburys was directly adverse to Ms. O'Neill.

5 63. There was a significant risk that Respondent's representation of Ms. O'Neill would
6 be materially limited by Respondent's responsibilities to the Carburys.

7 64. There was a significant risk that Respondent's representation of the Carburys would
8 be materially limited by Respondent's responsibilities to Ms. O'Neill.

9 65. Respondent did not reasonably believe that he could provide competent and diligent
10 representation to the Carburys and/or Ms. O'Neill under the circumstances.

11 66. Respondent did not advise Ms. O'Neill to seek other counsel or assist her in
12 obtaining alternate representation for the purposes of filing a claim in the Carburys' bankruptcy.

13 67. On or about February 24, 2015, a meeting of creditors was held in the Carburys'
14 bankruptcy.

15 68. Ms. O'Neill did not appear for the meeting and was not represented by counsel.

16 69. In April 2015, APS closed its investigation of Respondent and Mr. Carbury. APS
17 recommended that the attorney general file a petition for guardianship based in part on concerns
18 about Ms. O'Neill's mental capacity.

19 70. On or about April 8, 2015, the attorney general filed a petition for guardianship
20 alleging that Ms. O'Neill had moderate to severe cognitive, visual, and hearing deficits. A
21 guardian ad litem was appointed to investigate the matter.

22 71. On or about May 27, 2015, the Carburys' debts to Ms. O'Neill were discharged.

23 72. On August 18, 2015, Ms. O'Neill died. The Guardianship action was dismissed.

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COUNT 1

73. By representing Ms. O'Neill and the Carburys, where one or both representations involved a concurrent conflict of interest, Respondent violated RPC 1.7.

COUNT 2

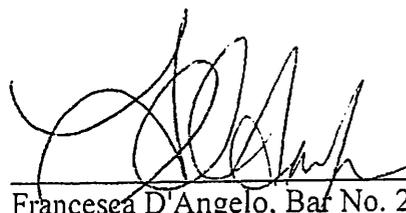
74. By having Ms. O'Neill execute the second power of attorney, without meeting the requirements of RPC 1.8(a)(1) and/or RPC 1.8(a)(2) and/or RPC 1.8(a)(3), Respondent violated RPC 1.8(a) and/or RPC 1.4(b).

COUNT 3

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

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

Dated this 16 day of June, 2016.



Francesea D'Angelo, Bar No. 22979
Disciplinary Counsel