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Supreme Court No. 2006744TER

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

STEPHEN D. CRAMER,

Lawyer (Bar No. 9085).

**ANSWERING BRIEF OF THE
WASHINGTON STATE BAR ASSOCIATION**

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I. COUNTERSTATEMENT OF THE ISSUES

1. Rules 8.4(b) and (c) of the Rules of Professional Conduct (RPC) prohibit criminal and dishonest conduct. Here, the Washington State Department of Revenue (DOR) revoked Cramer's law business license because of outstanding tax warrants. Instead of ceasing operations or paying the taxes, Cramer transferred his business assets to a new corporation, failed to register that corporation with the DOR, and continued to engage in business in violation of state law. The hearing officer found, and the Disciplinary Board affirmed, that Cramer intentionally and dishonestly attempted to circumvent the law and DOR oversight, thereby violating the RPC. Should the Court affirm?

2. Cramer's prior discipline includes two censures, two reprimands and an eight-month suspension. The hearing officer and Disciplinary Board determined that Cramer's current misconduct, aggravated by his disciplinary history and other factors, warranted disbarment. Should this Court adopt the recommendation of disbarment?

II. COUNTERSTATEMENT OF THE CASE

A. PROCEDURAL FACTS

In November 2007, the Washington State Bar Association (Association) filed a two-count formal complaint. Count 1 alleged that Cramer violated RPC 8.4(b) (through violation of RCW 82.32.290(1))

and/or RCW 82.32.290(2)), RPC 8.4(c), and/or RPC 8.4(i) by illegally removing a posted revocation order, by operating his law business without a valid business license, and/or by continuing to operate his law business after his business license had been revoked. Count 2 alleged that Cramer violated RPC 8.4(c) by attempting to circumvent state tax laws when he changed the name of the business under which he practiced law. Bar File (BF) 2. [The rules and statutes cited in the formal complaint are attached as Appendix A.]

The hearing was set for January 24, 2008. BF 17. Cramer did not appear. His lawyer advised the hearing officer that he had notified Cramer of the hearing date. Transcript (TR) 4-5, 14-15; Exhibit (EX) R18. Under Rule 10.13(b) of the Rules for Enforcement of Lawyer Conduct (ELC), the hearing proceeded without Cramer. TR 9-10. Subsequently, the hearing officer reopened the hearing to allow Cramer to testify. BF 61. Cramer appeared and presented evidence on September 11, 2008. TR 102-73.

The hearing officer entered Amended Findings of Fact, Conclusions of Law and Recommendation (AFFCL) on October 10, 2008. BF 85. [The AFFCL are attached as Appendix B.] He concluded that the Association had proved Counts 1 and 2 as charged. AFFCL ¶¶ 85-94. He determined that the presumptive sanction for each count was disbarment

under Standard 5.11(b) of the American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards). AFFCL ¶ 97. [The applicable ABA Standards are attached as Appendix C.] The hearing officer found no mitigating factors and four aggravating factors: prior disciplinary offenses, bad faith obstruction of the disciplinary process, substantial experience in the practice of law and indifference to making restitution. Id. at ¶¶ 98-99. He recommended disbarment. Id. at ¶ 100.

The Disciplinary Board considered the matter at its January 23, 2009 meeting. On February 2, 2009, by a vote of nine to three, the Board affirmed the hearing officer's decision. BF 104. [The Board's decision is attached as Appendix D.] The dissenting members agreed that the presumptive sanction was disbarment but would have recommended a three-year suspension. BF 104 at 1 n.1.

B. SUBSTANTIVE FACTS¹

1. Cramer's Statutory Violations

Cramer has been practicing law as a solo practitioner since 1985. AFFCL ¶ 20. On July 1, 1995, the DOR issued him a certificate of

¹ In his statement of facts, Cramer cites to his own testimony by referencing an unofficial version of the transcript, so his citations to the record are confusing: Cramer testified on the third day of hearing, which is reported in the official transcript beginning at TR 102. The Association's witnesses testified on the first day of hearing, which is reported in the official transcript beginning at TR 1.

registration (also known as a business license, TR 48) and tax registration number for Stephen D. Cramer PLLC, a limited liability company. AFFCL ¶ 21; EX 1.² Cramer was the sole owner of Stephen D. Cramer PLLC. AFFCL ¶ 22.

In 2003, Cramer stopped filing his quarterly excise tax statements and eventually stopped paying taxes altogether. By 2006, he owed approximately \$10,000 in back taxes. AFFCL ¶¶ 26-28.

In April 2006, DOR Agent Felicia Jones advised Cramer that she had scheduled a “prehearing” for May 8, 2006, during which she would meet with him to discuss how he could arrange to pay his tax deficiencies and file delinquent tax statements. AFFCL ¶ 29. Cramer was aware of the “prehearing” but did not appear or return Jones’s follow-up calls. AFFCL ¶ 30-32. Jones would have been willing to work with Cramer to set up a payment plan had he responded to her. TR 38-39.

In August 2006, Jones sent Cramer notice of a September 13, 2006 hearing to determine whether to revoke his law business’s certificate of registration based on his outstanding tax warrants and his failure to demonstrate that he would be able to pay his past and future tax obligations. AFFCL ¶ 33; EX 1D. Cramer was aware of the hearing but

² The AFFCL mistakenly state the date as July 1, 2005. AFFCL ¶ 24.

did not appear. AFFCL ¶ 35.³ That day, the DOR issued and served a Preliminary Revocation Order, revoking the certificate of registration for Stephen D. Cramer PLLC based on Cramer's failure to pay excise taxes for tax years 2003 through 2005. AFFCL ¶¶ 36-37; EX 2.

The Preliminary Revocation Order advised Cramer that he had 21 days to request review. AFFCL ¶ 38; EX 2 at 3. Cramer did not request review. AFFCL ¶ 39. Instead, on September 22, 2006, he sent Jones a letter stating, in full: "NOTICE IS HEREBY GIVEN that Stephen D. Cramer, PLLC will cease doing business and terminate all further business operations on September 30, 2006. The limited liability company will then be dissolved through the Washington Secretary of State as soon as possible after that date." EX 8C. [Letter attached as Appendix E.] The letter said nothing about his continuing in business as a new entity. Id. Cramer executed a notice of dissolution of the limited liability company effective September 30, 2006. EX 8E.

Meanwhile, on September 20, 2006, Cramer obtained a certificate of incorporation for a new professional services corporation, the Law Office of Stephen D. Cramer, Inc., P.S., and obtained a new tax registration number. AFFCL ¶¶ 40, 46. He was the sole owner and

³ In his brief, Cramer cites his own testimony for the proposition that he was notified that the September 13, 2006 hearing "would be a formality." RB at 4. Jones did not so testify, and the hearing officer did not so find.

officer of the corporation. AFFCL ¶ 40; TR 143-44. He incorporated his law practice under the name Law Office of Stephen D. Cramer, Inc., P.S. with a different tax identification number specifically because the DOR had revoked the certificate for Stephen D. Cramer PLLC. AFFCL ¶ 75. He explicitly transferred the assets of the limited liability company, but not its liabilities, to the new corporation. EX R23.

The Preliminary Revocation Order for Stephen D. Cramer PLLC became final on October 6, 2006. AFFCL ¶ 41; EX 3 (Final Revocation Order). The Final Revocation Order provides that it “be posted in a conspicuous place at the main entrance to the taxpayer’s place of business and remain posted until the Tax Warrants are paid.” AFFCL ¶ 43; see RCW 82.32.215. The order further advised:

NOTICE: Section 82.32.290 of the Revised Code of Washington provides that it shall be unlawful for any person to engage in business after revocation of a Certificate of Registration. Persons violating this provision shall be guilty of a Class C felony. All cases will be immediately referred to the Prosecuting Attorney.

EX 3.

On October 12, 2006, Jones posted the Final Revocation Order on the door to Cramer’s law office. AFFCL ¶ 42. Although Cramer did not pay the tax warrants for Stephen D. Cramer PLLC or take any steps to enter into a payment plan with the DOR, he intentionally removed the

Final Revocation Order a few weeks after it was posted. AFFCL ¶¶ 44-45, 76; TR 141.

Between October 13, 2006, and January 8, 2007, Cramer intentionally operated the Law Office of Stephen D. Cramer, Inc., P.S., as his law business without registering with the DOR or obtaining a business license. AFFCL ¶¶ 48, 72-73, 77-78. Such registration is required by law, see RCW 82.32.030, and alerts the DOR that revenue may be coming in. TR 60. In operating the corporation, Cramer kept the same law office space, office equipment, accounts receivables, and employee as when he operated his law practice as Stephen D. Cramer PLLC. AFFCL ¶ 48.

Jones received information that Cramer might be conducting business without being registered with the DOR. She notified Steve Hiatt, a DOR agent charged with locating unregistered business entities. TR 56-57. Hiatt discovered Cramer's filing with the Secretary of State incorporating his new corporation. TR 60. On November 22, 2006, Hiatt sent Cramer a letter asking whether he was conducting business in Washington under the name of Law Office of Stephen D. Cramer, Inc., P.S., and if so, to provide his registration number or submit a completed master application for a certificate of registration for that business. AFFCL ¶ 51; EX 8G. Cramer received Hiatt's letter but did not respond. AFFCL ¶¶ 53-54.

In January 2007, after conducting surveillance to confirm that Cramer was engaging in business without a license, Hiatt visited Cramer at his law office. AFFCL ¶¶ 55-57. He advised Cramer that the certificate of registration for his limited liability company had been revoked and showed him a copy of the Final Revocation Order. Id. at ¶ 59. Cramer replied that he had started a new corporation and thought the Secretary of State would handle the registration of that entity with the DOR. Id. at ¶¶ 60, 62. Hiatt showed Cramer a copy the November 22, 2006 letter, EX 8G, which advised him that he needed to register his new corporation with the DOR. Id. at ¶ 63. Cramer falsely denied having seen the letter. AFFCL ¶¶ 64-65; TR 64-65.

After the meeting, Hiatt sent Cramer another letter, identical to his November 22, 2006 letter, enclosing another master license application. AFFCL ¶ 70. On January 8, 2007, Cramer submitted his application to the DOR for the Law Office of Stephen D. Cramer, Inc., P.S. AFFCL ¶ 71. The DOR subsequently determined that his new corporation was a successor to Stephen D. Cramer PLLC and transferred the tax liabilities from the limited liability company to the new corporation. AFFCL ¶ 74; EX 14M; see RCW 82.32.140. Cramer paid his overdue taxes for both entities in February or March 2008, after the DOR began garnishing the

bank accounts of the successor corporation. TR 123, 139-40; AFFCL ¶ 82.

With respect to Cramer's state of mind, the hearing officer found that his

continuation of his law business after the Department of Revenue had revoked the certificate of registration for Stephen D. Cramer PLLC, and his operation of the Law Office of Stephen D. Cramer, Inc., P.S., without a certificate of registration from the Department of Revenue, was calculated to circumvent the Department of Revenue and state tax laws, and involved dishonesty, deceit, and disregard for a rule of law (RCW 82.32.290).

AFFCL ¶ 79.

2. Defense Case

Cramer admitted that he formed the Law Office of Stephen D. Cramer, Inc., P.S. after the DOR revoked his business license for Stephen D. Cramer PLLC in order to buy time to continue his law practice and generate income. TR 114, 116, 125; EX 17 at 219-20. He asserted that he did not intend to defraud anyone and that he kept DOR fully apprised of what he was doing. TR 116, 125-26, 153-54. He cited a letter in which he said he advised the DOR that Stephen D. Cramer PLLC was shutting down. TR 119, 155. But this letter said nothing about the new company or about his continuing to practice under a different corporate form. TR 156; EX 8C. He acknowledged that he did not send the incorporation

papers for the Law Office of Stephen D. Cramer, Inc., P.S. to the DOR. TR 163. The hearing officer found that “Respondent’s testimony that he had notified the Department of Revenue that he was continuing to operate as the Law Office of Stephen D. Cramer, Inc., P.S., is not credible.” AFFCL ¶ 69.⁴

Cramer claimed that he did not know he had to obtain a certificate of registration with DOR before he could engage in his law business. See TR 64. The hearing officer also found this claim was “not credible.” AFFCL ¶ 67.

Cramer admitted that he removed the DOR’s posted revocation notice, stating that he did so because Stephen D. Cramer PLLC was no longer doing business. TR 140-41; see also BF 15 at ¶ 17. He also claimed that Jones had posted the notice in the wrong place. TR 142.

3. Cramer’s Prior Discipline

In 1991, Cramer stipulated to a reprimand for knowingly failing to disclose adverse authority to a tribunal, in violation of RPC 3.3(a)(3), 8.4(a), 8.4(c) and 8.4(d), failing to promptly file a creditor’s claim, in violation of RPC 1.1, and failing to supervise non-lawyer staff and obtain

⁴ At the Disciplinary Board argument, Cramer’s counsel conceded that Cramer did not notify the DOR about the new corporation until January 11, 2007, after he was visited by the DOR agents. TR 1/23/09 at 6, 25-26.

conflict of interest waivers, in violation of RPC 5.4(b)(2). Exhibit A to EX 15.

In 1994, following a hearing, Cramer received two letters of censure. The first censure was for failing to supervise non-lawyer staff and failing to act with reasonable diligence, in violation of RPC 5.3(a). The second censure was for disbursing client trust funds to himself contrary to the terms of a written fee agreement, in violation of RPC 1.14(a)(2). Exhibit B to EX 15.

In 2008, Cramer received an eight-month suspension for depositing an advance fee into his operating account instead of into his trust account, in violation of RPC 1.14(a) and 8.4(c), and a reprimand for misrepresenting to disciplinary counsel that he had deposited those funds into his trust account, in violation of RPC 8.4(c), 8.4(d), 8.4(l), and ELC 5.3(e). Exhibit C to EX 15; see In re Disciplinary Proceeding Against Cramer, 165 Wn.2d 323, 198 P.3d 485 (2008).⁵

III. SUMMARY OF ARGUMENT

The DOR revoked Cramer's law business license for failure to pay taxes. At that point, under Washington law, Cramer had several options:

⁵ At the time of the hearing in this matter, Cramer's appeal of the Disciplinary Board suspension and reprimand recommendation was pending. AFFCL ¶ 98(a). The Court issued its decision affirming that recommendation in December 2008, approximately six weeks before the Disciplinary Board argument.

pay the outstanding warrants, enter into a payment plan, or cease operations. He chose, instead, to continue to operate his law business despite the revocation order by transferring his business assets to a new corporate entity without registering that entity with the DOR. The hearing officer found that through this and other actions Cramer intentionally and dishonestly attempted to circumvent state law. The Disciplinary Board affirmed.

At hearing, the pivotal question was Cramer's state of mind. The hearing officer rejected Cramer's defense that he kept the DOR apprised of his activities and that any mistakes were inadvertent, finding instead that he acted intentionally. Although Cramer fails to assign error to any of the hearing officer's factual findings, he continues to assert that he acted unintentionally. The Court should reject this argument, both because it is flawed procedurally and because the Court does not retry the facts.

Cramer claims that, as a matter of law, his conduct does not violate RPC 8.4(b) or 8.4(c) because no nexus exists between characteristics relevant to the practice of law and his conduct, which he asserts was not dishonest. His arguments ignore not only the hearing officer's unchallenged factual findings that he intentionally engaged in dishonest, illegal conduct, but also the relevance of the characteristic of honesty to the practice of law. When this Court licenses a lawyer, it does more than

represent to the public that the individual is skilled in the law. It also represents that the individual possesses the character worthy of the public trust. Cramer's willingness to engage in a scheme to avoid his legal obligations is highly relevant to that determination.

The hearing officer and Board recommended disbarment, finding four aggravating factors and no mitigating factors. Cramer argues that mitigating factors exist, and that the proper sanction is a reprimand or suspension. But prominent among the factors in aggravation is Cramer's 18-year history of disciplinary sanctions, which includes two censures, two reprimands and a suspension – a fact Cramer never mentions in his briefing to this Court. Cramer cites no cases demonstrating that the sanction is disproportionate, particularly in light of his extensive disciplinary history. The Court should affirm and adopt the Board's recommendation of disbarment.

IV. ARGUMENT

A. OVERVIEW OF STATE EXCISE TAX LAW

Washington taxes “the act or privilege of engaging in business activities.” RCW 82.04.220. The DOR is responsible for collecting these taxes. Accordingly, Washington law requires those who engage in business to obtain a certificate of registration with the DOR. RCW

82.32.030. It is a gross misdemeanor to engage in business without one. RCW 82.32.290(1)(a)(i), (ii), (1)(b).

Taxes due and owing are considered a debt to the State. RCW 82.32.240. The DOR assesses taxes on those who fail to file returns or pay taxes. RCW 82.32.100(2). If the taxes are not paid timely, the DOR issues a warrant. RCW 82.32.210(1). The DOR may take action to collect on outstanding warrants, including garnishment. See, e.g., RCW 82.32.220, 82.32.235, 82.32.240. A tax warrant becomes due immediately if the DOR believes the taxpayer is about to cease business or dissipate assets. RCW 82.32.210. Additionally, Washington law provides for orderly collection of taxes when businesses change hands. When a taxpayer “quits business, or sells out, exchanges, or otherwise disposes” of more than half the business assets, any outstanding taxes are due and payable immediately. RCW 82.32.140(1). The successor must withhold the amount of taxes due from the purchase price until the taxes are paid. RCW 82.32.140(2). If the taxes are not paid, the successor becomes liable. Id.

In addition to undertaking collection efforts, the DOR may revoke a business’s certificate of registration if a tax warrant is not paid timely. RCW 82.32.215. If this occurs, the DOR issues a notice of revocation. The notice is placed on the taxpayer’s premises and must remain posted

until the warrant is paid. Id. It is a gross misdemeanor to remove a posted notice. RCW 82.32.290(1)(a)(iii), (1)(b).

A revoked certificate shall not be reinstated until the taxpayer pays the warrant or makes satisfactory arrangements with the DOR. RCW 82.32.215. It is a felony to engage in business after revocation of a certificate of registration. RCW 82.32.290(2)(a)(i), (ii), 2(b).

B. STANDARD OF REVIEW

Unchallenged findings of fact are verities on appeal. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 330, 157 P.3d 859 (2007). Failure to assign error or properly brief challenges to factual findings may preclude appellate review. In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 895, 175 P.3d 1070 (2008).

The Court upholds challenged factual findings if they are supported by substantial evidence. Marshall, 160 Wn.2d at 330. Substantial evidence “is evidence sufficient to persuade a fair-minded, rational person of the truth of a declared premise.” Id. (quotation omitted). In reviewing factual findings, the Court gives particular weight to the credibility determinations of the hearing officer, who has had direct contact with the witnesses and is best able to make such judgments. Cramer, 165 Wn.2d at 332. Parties challenging factual findings must not simply reargue their version of the facts but, instead, must present

argument as to why the findings are unsupported by the record. Marshall, 160 Wn.2d at 331. The Court does not overturn findings “based simply on an alternative explanation or versions of the facts previously rejected by the hearing officer” Id.

The Court reviews conclusions of law de novo, upholding them if supported by the findings of fact. In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 59, 93 P.3d 166 (2004). It also reviews sanction recommendations de novo, but generally affirms the Board’s recommendation unless it “can articulate a specific reason to reject” it. Id. (quotations omitted).

C. BECAUSE CRAMER DOES NOT ASSIGN ERROR TO ANY OF THE HEARING OFFICER’S FACTUAL FINDINGS, THEY ARE VERITIES. IN ANY EVENT, SUBSTANTIAL EVIDENCE SUPPORTS THE FINDINGS THAT CRAMER ACTED INTENTIONALLY

Rule 10.3(g) of the Rules of Appellate Procedure (RAP), which applies to these proceedings under ELC 12.6(f), provides that an “appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.” Cramer has not assigned error to any findings of fact. Hence, they are verities on appeal. Moreman v. Butcher, 126 Wn.2d 36, 39, 891 P.2d 725 (1995); Marshall, 160 Wn.2d at 330.

The hearing officer found that, after the DOR revoked Cramer's business license, he intentionally failed to obtain a certificate of registration for the new corporation in an effort to evade DOR oversight and state tax laws. AFFCL ¶¶ 77-79. Findings regarding state of mind are factual findings to which the Court gives "great weight." Cramer, 165 Wn.2d at 332. Despite the fact that he never assigned error to this or any other any factual finding, Cramer asserts that he did not attempt to hide the fact that he was continuing to practice law from the DOR or intend to circumvent the tax laws. See, e.g., Respondent's Brief (RB) at 2, 12, 14, 19. But he presents no argument as to why the hearing officer's findings are not supported by substantial evidence. At most, he references his own testimony, which is insufficient to overturn a factual finding. See Marshall, 160 Wn.2d at 331. Thus, even if the Court were to overlook Cramer's failure to comply with RAP 10.3(g), it should decline to consider his challenge to the hearing officer's findings that he acted intentionally because his claims are insufficiently briefed. Burtch, 162 Wn.2d at 895-96 (declining to address factual challenges that "would require a reviewing court to unearth arguments from the record for the benefit of an appellant"); In re Disciplinary Proceeding Against Whitney, 155 Wn.2d 451, 467, 120 P.3d 550 (2005) (declining to address insufficiently briefed challenges).

In any event, substantial evidence supports the hearing officer's finding that Cramer acted intentionally. Mental state generally is proved through circumstantial evidence from which the hearing officer may draw reasonable inferences. In re Disciplinary Proceeding Against Cohen (Cohen I), 149 Wn.2d 323, 332-33, 67 P.3d 1086 (2003). False or improbable explanations may provide circumstantial evidence of guilt. Guarnero, 152 Wn.2d at 60. Here, although Cramer told DOR Agent Hiatt and the Association that he did not receive Hiatt's November 22, 2006 letter directing him to submit an application for a certificate of registration for the corporation, see TR 64; EX 24; BF 15 at ¶¶ 21-22, that letter bore a copy-received stamp indicating that he received it. EX 8G; AFFCL ¶¶ 51-53. The hearing officer found Cramer's explanation that he did not realize he had received the letter "not credible." AFFCL ¶¶ 64-65. The hearing officer also found "not credible" Cramer's claims that he did not know he had to obtain a certificate of registration with the DOR before he could engage in his business, or that he had notified the DOR that he was continuing to operate his law business under the corporation. AFFCL ¶¶ 67, 69. The hearing officer was not required to accept Cramer's self-serving testimony, and did not. See In re Disciplinary Proceeding Against Whitt, 149 Wn.2d 707, 722, 72 P.3d 173 (2003) ("hearing officer is not bound by various explanations if he or she is not persuaded by them"); In

re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 78, 960 P.2d 416 (1998). The Court should not disturb these factual findings. See Cramer, 165 Wn.2d at 332.

D. THE FINDINGS OF FACT SUPPORT THE CONCLUSIONS THAT CRAMER VIOLATED RPC 8.4(b) AND RPC 8.4(c)

1. The Hearing Officer and Board Properly Concluded That Cramer Engaged in Criminal and Dishonest Conduct When He Violated State Law, As Alleged in Count 1

The hearing officer and Board found that Cramer violated RPC 8.4(b), 8.4(c), and 8.4(i) by removing the posted revocation order, by engaging in business without a certificate of registration, and by continuing to engage in his law business after the revocation order, all violations of RCW 82.32.290. AFFCL ¶¶ 45, 48-49, 86-93. The hearing officer found that Cramer committed these acts intentionally in an attempt to circumvent the DOR and state tax laws. AFFCL ¶¶ 76-79. Cramer does not assign error to any of the underlying factual findings, but, rather, asserts that his conduct does not violate RPC 8.4(b) and 8.4(c) as a matter of law. RB at 12-13.⁶

⁶ Cramer concedes that by operating his law business without obtaining a certificate of registration, he violated RPC 8.4(i), which provides that it is misconduct for a lawyer to “commit any . . . act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise.” RB at 14. As discussed above, he claims that he violated this rule unintentionally, *id.*, notwithstanding the hearing officer’s unchallenged finding to the contrary.

It is misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.” RPC 8.4(b). The rule applies when “criminal conduct indicates lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category.” In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 766, 801 P.2d 962 (1990) (quotations omitted). To determine whether the lawyer’s conduct reflects adversely on the lawyer’s fitness, the Court does not confine its review to the elements of the underlying crime, but, instead, evaluates whether “there is some nexus between the lawyer's conduct and those characteristics relevant to law practice.” Id. at 768.

Cramer argues that no “nexus” exists between his “failure to obtain all of the proper registrations” and the practice of law. RB at 14. But this case is not about a lawyer who neglected to fill out the right paperwork. Among other things, the hearing officer found that Cramer intentionally failed to register with the DOR to conceal his activities from the DOR as part of a scheme to circumvent the law. AFFCL ¶¶ 68-69, 77-79. Even if, theoretically, one could commit the underlying crimes without fraudulent intent, that was not the case here. Without question, a nexus exists between such conduct and characteristics relevant to the practice of law.

See Curran, 115 Wn.2d at 766; see also APR 24.2(a)(5) (factors considered when determining character and fitness include “acts involving dishonesty, making false statements, fraud, deceit or misrepresentation”).

Cramer also claims that his actions do not reflect adversely on his fitness as a lawyer because he continued to practice in order to benefit his clients. RB at 14; see also id. at 1-2, 6-7. Even if this were his motive (something the hearing officer did not find), it would not excuse the violation. A lawyer has an obligation to withdraw from representing a client when continued representation “will result in violation of the Rules of Professional Conduct or other law[.]” RPC 1.16(a)(1). Moreover, whether Cramer’s attempt to defraud the DOR may have benefited his clients is not the point. The injury from lawyer misconduct “is as much to the image of the legal profession as it is to the individual client.” Dann, 136 Wn.2d at 79 n.2.

It is misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” RPC 8.4(c). Notwithstanding the misconduct discussed above, Cramer argues that he did not violate this rule because of the following language from In re Disciplinary Proceeding Against Dynan: “To determine an RPC 8.4(c) violation, the court must decide ‘whether the attorney lied. No ethical duty could be plainer.’” In re Disciplinary Proceeding Against Dynan, 152

Wn.2d 601, 616, 98 P.3d 444 (2004) (quoting Dann, 136 Wn.2d at 77). See RB at 13. Cramer contends that, because he did not tell an outright lie, he did not violate RPC 8.4(c).⁷ RB at 14.

Cramer misreads Dynan. The Dynan court, like the Dann court before it, was addressing and rejecting a lawyer's argument that no RPC 8.4(c) violation occurred because the lawyer could explain the lie. See Dynan, 152 Wn.2d at 616. The Court did not purport to limit the reach of RPC 8.4(c) to simply telling an outright lie, and should not do so. RPC 8.4(c) covers a broad array of prohibited behavior: "dishonesty, fraud, deceit or misrepresentation." Under Cramer's reading, much of this rule would be rendered meaningless, contrary to the principle that statutes should be construed so that all the language is given effect. E.g., Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Moreover, disciplinary rules should be interpreted to achieve their primary purpose – protection of the public. In re Disciplinary Proceeding Against Greenlee, 158 Wn.2d 259, 271, 143 P.3d 807 (2006). Rule 8.4(c) is intended to protect the public from lawyers who manifest dishonesty, fraud, deceit or misrepresentation in all their permutations. Under the circumstances of this case, the hearing officer

⁷ Cramer ignores the hearing officer's unchallenged finding that he lied when he told DOR Agent Hiatt that he had not seen Hiatt's November 22, 2006 letter. AFFCL ¶¶ 64-65.

and Board properly found that Cramer's removal of the posted revocation order, his engaging in business without a certificate of registration, and his continuing to engage in his law business after the revocation order violated RPC 8.4(c).

2. The Hearing Officer and Board Properly Concluded That Cramer Engaged in Dishonest and Deceitful Conduct by His Scheme to Circumvent State Law and DOR Oversight, As Alleged in Count 2

The hearing officer and Board found that Cramer violated RPC 8.4(c) when he intentionally attempted to circumvent the DOR's final revocation order by changing the name of his law firm and continuing in business without a certificate of registration. AFFCL ¶¶ 79, 94; BF 104.

Cramer asserts that "he never misrepresented that he was continuing to practice law." RB at 15. This claim is belied by the facts. After the DOR revoked the certificate of registration for the limited liability company, Cramer sent DOR Agent Jones a letter stating that the business would "terminate all further business operations" and soon dissolve. EX 8C. The letter said nothing about the creation of the new corporation to which he assigned all assets and through which he intended to continue in business. EX R23. It was deceptive.

Cramer also claims error on grounds that he did, in fact, cease operation of Stephen D. Cramer, PLLC after the DOR revoked its

certificate of registration. RB at 15. But he immediately resurrected his law business as a corporation, with the same law office space, same office equipment, same accounts receivables and same employee as when he operated his law practice as a limited liability company. AFFCL ¶ 48; TR 138. He failed, however, to register that corporation with the DOR. AFFCL ¶¶ 68-69, 78; EX 8C. Such registration is required by law and alerts DOR that revenue may be coming in. TR 60; see RCW 82.32.030. The hearing officer reasonably could infer that Cramer intended to operate his business by “flying under the radar” for as long as possible.

The hearing officer and Board properly rejected Cramer’s claim that no violation occurred under these circumstances. His argument is based on the notion that he legally could avoid the consequences of the DOR’s revocation order through the artifice of changing his corporate status. But the law disregards the corporate form where to do otherwise would perpetuate a fraud:

As a general rule, a corporate entity and the limitations on liability afforded by corporate structure will be respected by the courts. In certain exceptional cases, however, the device of incorporation may be used to frustrate legitimate obligations. In such cases, courts, in an attempt to bring about justice, have disregarded the corporate entity, looking through form to the reality of the relations between persons and corporations.

Culinary Workers & Bartenders Union No. 596 Health & Welfare Trust v. Gateway Cafe, Inc., 91 Wn.2d 353, 366, 588 P.2d 1334 (1979) (corporate entity disregarded when successor created to avoid corporation's obligations to third parties).⁸ Relevant to this case, state law requires taxpayers to satisfy their tax obligations before operating or quitting a business. RCW 82.32.140 (tax liability due immediately when quitting business and imposed on successors); RCW 82.32.210 (allowing DOR to accelerate payment obligation if it believes taxpayer will quit business, leave state or dissipate assets); RCW 82.32.290(2)(a) (prohibiting engaging in business after revocation). The clear legislative intent was to protect State coffers from attempts to avoid or evade payment of taxes in situations like this one. The hearing officer and Board properly disregarded Cramer's corporate entity, which differed only in name from the limited liability company and was created as a sham for the sole purpose of evading Cramer's tax liabilities. To find otherwise would

⁸ In addition, corporate officers, such as Cramer, "cannot use the corporate form to shield themselves from individual liability" if they are responsible for the corporation's wrongdoing. State v. Ralph Williams' North West Chrysler Plymouth, Inc., 87 Wn.2d 298, 322, 553 P.2d 423 (1976) (corporate president personally liable for violating consumer protection act based on his role in formulating and supervising corporation's deceptive practices); State Dep't. of Ecology v. Lundgren, 94 Wn. App. 236, 243-45, 971 P.2d 948 (1999) (sole owner and officer of corporation personally liable for violating state environmental law based on his knowledge of unlawful activity).

thwart the intent of the Legislature, render the statutory enforcement scheme toothless, and facilitate fraud.

The findings in this matter amply support the conclusion that Cramer's overall scheme to avoid payment of taxes and DOR oversight violated RPC 8.4(c).

E. THE COURT SHOULD ADOPT THE BOARD'S RECOMMENDED SANCTION OF DISBARMENT

Under the ABA Standards, the Court first determines the presumptive sanction by examining the ethical duty violated, the lawyer's mental state, and the injury caused. Marshall, 160 Wn.2d at 342. It then determines whether the presumptive sanction should be increased or reduced due to aggravating or mitigating factors. Id. Finally, the Court reviews the degree of unanimity among Board members and the proportionality of the sanction. Id.

1. The Hearing Officer and Board Properly Determined That the Presumptive Sanction Is Disbarment

The hearing officer and Board found that the presumptive sanction was disbarment under ABA Standard 5.11(b), which applies when a lawyer engages in "intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice." See Appendix C. Cramer argues that this ABA Standard does not apply for several reasons. First, he asserts that his

conduct did not involve dishonesty, fraud, deceit or misrepresentation, notwithstanding the unchallenged findings. RB at 18. Second, he claims that, even if he acted intentionally and dishonestly, his actions do not seriously adversely reflect on his fitness to practice because the statutory violations were not serious. Id. But the statutory violations are just the start. Cramer engaged in subterfuge to evade his legal obligations. He used his knowledge of the law for dishonest purposes. The hearing officer and Board properly concluded that such conduct seriously adversely reflects on his fitness to practice and warrants disbarment.⁹

2. The Hearing Officer and Board Properly Declined to Mitigate the Sanction Because the Record Supports Four Aggravating Factors and No Mitigating Factors

Ordinarily, the presumptive sanction should be imposed unless the aggravating or mitigating factors are sufficiently “compelling” to justify a

⁹ As Cramer notes, RB at 17, the ABA Standards do not apply to his admitted violation of RPC 8.4(i), disregard for the rule of law, because that rule has no counterpart in the ABA Model Rules. Curran, 115 Wn.2d at 770 (discussing predecessor to RPC 8.4(i)). The Curran court said that, “in most cases,” violation of this prohibition should result “only in a reprimand or censure.” Id. at 772. But, where the misconduct is “directly related to the practice of law,” such as operating one’s law practice illegally, the presumptive sanction is suspension. See In re Disciplinary Proceeding Against Perez-Peña, 161 Wn.2d 820, 834, 168 P.3d 408 (2007). Both Curran and Perez-Peña are distinguishable from this case as neither involved intentional, dishonest and fraudulent conduct: the former involved drunk driving and the latter assault. But, because ABA Standard 5.11(b) applies to the RPC 8.4(b) and (c) violations, no separate sanction analysis is necessary for the RPC 8.4(i) violation. See In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (with multiple ethical violations, the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations”), (quotation omitted).

departure therefrom. Cohen I, 149 Wn.2d at 339. Here, the hearing officer found, and the Board affirmed, compelling aggravating factors that would justify disbarment even if it were not the presumptive sanction and found no mitigating factors to support a downward departure.

With no citation to authority, Cramer argues that the hearing officer and Board misapplied the aggravating and mitigating factors. RB at 19. To the contrary, the record fully supports these findings.

a. The Record Supports the Aggravating Factors

The first aggravating factor, prior disciplinary offenses, ABA Standard 9.22(a), is supported by Cramer's long history of discipline: a reprimand in 1991, two censures in 1994 and a reprimand and suspension in 2008. See AFFCL ¶ 98(a); EX 15. The 1991 reprimand and the 2008 suspension and reprimand involved violations of RPC 8.4(c), as did the conduct here. Additionally, as here, the 2008 suspension involved Cramer's improper efforts to obtain funds due to his precarious financial situation. See Cramer, 165 Wn.2d at 328, 333-34. Cramer was aware of the proceedings leading up to the 2008 discipline when he committed the instant misconduct. See Exhibit C to EX 15 at BF 60 (noting that the formal complaint was filed on April 3, 2006). This aggravating factor should be given "great weight." In re Disciplinary Proceeding Against Brothers, 149 Wn.2d 575, 586, 70 P.3d 940 (2003).

Second, bad faith obstruction of the disciplinary proceeding, ABA Standard 9.22(e), is supported by Cramer's failure to appear at the January 2008 disciplinary hearing. AFFCL ¶ 98(e). The hearing officer found Cramer's excuse that his then-lawyer failed to tell him about the hearing was "not credible." AFFCL ¶ 13. As a result of Cramer's failure to appear and ensuing procedural machinations, see AFFCL at 1-6, the disciplinary proceeding was not concluded until September 2008 – a nine-month delay.

Third, substantial experience in the practice of law, ABA Standard 9.22(i), is supported by the fact that Cramer has been licensed to practice since 1979. AFFCL ¶¶ 1, 98(i); see Cramer, 165 Wn.2d at 337-38.¹⁰ As Cramer does not challenge this factor, it is a verity on appeal. In re Disciplinary Proceeding Against Christopher, 153 Wn.2d 669, 681, 105 P.3d 976 (2005).

Fourth, indifference to making restitution, ABA Standard 9.22(j), is supported by the fact that Cramer failed to take any steps to pay off his tax warrants or enter into a payment plan until after the January 2008 hearing and, as Cramer admitted, only after the DOR began garnishment

¹⁰ AFFCL ¶ 98(i) contains a typographical error in that it states that Cramer was admitted in 1976 instead of 1979. Compare AFFCL ¶ 1.

proceedings against him, more than a year after the DOR revoked his license. TR 123, 139-40; AFFCL ¶ 82.

b. Cramer Failed to Meet His Burden to Prove Any Mitigating Factors

Cramer argues that three mitigating factors apply. A respondent lawyer bears the burden of proving mitigating factors. In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 730, 185 P.3d 1160 (2008).

First, Cramer argues the Board should have applied the mitigating factor of remoteness of prior offenses, ABA Standard 9.32(m), because his 1991 and 1994 prior discipline is “too remote.” RB at 19. He cites no cases to support that proposition. The Court rejected a similar argument in Cramer’s prior appeal, Cramer, 165 Wn.2d at 337, and should do so here. The Court regularly looks to misconduct even older than this in determining whether prior misconduct serves as an aggravating factor. Id.; see also Greenlee, 158 Wn.2d at 276 n.2 (prior discipline occurred more than 20 years earlier); In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d 64, 92, 101 P.3d 88 (2004) (prior discipline occurred 20 years earlier); In re Disciplinary Proceeding Against Cohen (Cohen II), 150 Wn.2d 744, 761, 82 P.3d 224 (2004) (prior discipline occurred 10 and 30 years earlier); In re Disciplinary Proceeding Against

Kuvara, 149 Wn.2d 237, 243, 66 P.3d 1057 (2003) (prior discipline occurred 16 and two years earlier).

Second, relying only on his testimony that the hearing officer rejected, Cramer asserts that he had an “absence of dishonest or selfish motive.” RB at 19; see ABA Standard 9.32(b). This claim runs counter to the hearing officer’s findings and is insufficient to meet his burden. Trejo, 163 Wn.2d at 730.

Third, Cramer alleges that he made a “timely good faith effort to pay off the tax warrants,” RB at 19, so the mitigating factor timely good faith effort to pay restitution should apply. See ABA Standard 9.32(d). But Cramer did not begin to pay off these warrants until after the January 2008 hearing at which he failed to appear. TR 123, 139. Under the ABA Standards, restitution made after the commencement of disciplinary proceedings “should not be considered in mitigation” because “[l]awyers who make restitution only after a disciplinary proceeding has been instituted against them . . . cannot be regarded as acting out of a sense of responsibility for their misconduct, but, instead, as attempting to circumvent the operation of the disciplinary system.” ABA Standards at 51, cmt. to Standard 9.4. Moreover, the restitution here was compelled by the DOR’s garnishment proceedings. Compelled restitution is not a mitigating factor. In re Disciplinary Proceeding Against Huddleston, 137

Wn.2d 560, 579, 974 P.2d 325 (1999); ABA Standard 9.4(a). Cramer has failed to meet his burden as to this mitigating factor as well. Trejo, 163 Wn.2d at 731-32.

3. The Court Should Give No Weight to the Disciplinary Board Dissent Because It Is Unsound

The Court grants greater deference to the recommendation of a unanimous Board. Trejo, 163 Wn.2d at 734. But, even when the vote is close, the Court does not depart from the Board's recommendation without ample cause. See, e.g., In re Disciplinary Proceeding Against Boelter, 139 Wn.2d 81, 104-05, 985 P.2d 328 (1999) (declining to disturb Board's recommendation despite Board vote of six to five); Christopher, 153 Wn.2d at 686 (declining to disturb Board's recommendation despite Board vote of six to four).

Here, the Board voted nine to three in favor of disbarment. BF 104. The Board's dissent should be given no weight because it is unsound. The dissent states, in full, as follows:

Those voting in the minority agree with the Hearing Officer that the *ABA Standards* lead to disbarment as the appropriate sanction in this case. However, the minority believes that this sanction is overly harsh. By imposing the ultimate sanction on Mr. Cramer, when he did pay back the taxes, it is not possible to treat Mr. Cramer differently than a lawyer who failed to pay the taxes. In this instance, those voting in the minority believe that a three-year suspension would be a more appropriate sanction.

BF 104 at n.1 (emphasis added). These comments reflect a misunderstanding of the case. Cramer was neither charged with nor sanctioned for failing to pay his taxes. The gravamen of this case was Cramer's fraudulent scheme to avoid paying those taxes through the ruse of changing his corporate form to escape DOR oversight – a fundamental act of dishonesty far different from simply failing to pay taxes.

Moreover, the fact that Cramer repaid the taxes after the DOR established successor liability and began garnishment proceedings is hardly mitigating. Huddleston, 137 Wn.2d at 579; ABA Standard 9.4(a). But, by recommending a reduced sanction based on this factor, the dissent appears to treat such forced restitution as a mitigating factor that outweighs all the aggravating factors. The dissent's flawed logic provides no cause to deviate from the majority's disbarment recommendation.

4. Cramer Failed to Meet His Burden of Proving That Disbarment is Disproportionate

In proportionality review, the Court compares the case at hand with “similarly situated cases in which the same sanction was either approved or disapproved.” VanDerbeek, 153 Wn.2d at 97 (quotation omitted). In determining whether a case is sufficiently similar to the case at hand, the Court takes into account all of the lawyer's misconduct, including his record of prior disciplinary offenses, and especially any

prior, similar misconduct. See Cohen II, 150 Wn.2d at 763-64. “[T]he attorney facing discipline bears the burden of bringing cases to the court's attention that demonstrate the disproportionality of the sanction imposed.” Id. at 763.

In support of his contention that disbarment is a disproportionate sanction, Cramer cites a number of cases in which disbarment was imposed for conduct that he contends was “more egregious” than his own. RB at 20-21. While the Association does not concede that Cramer’s misconduct was any less reprehensible than that of the other lawyers whose cases he cites, the form of his argument is fundamentally flawed. Just because one lawyer can point to a second lawyer who was disbarred for misconduct even worse than his own, it does not follow that the first lawyer does not also deserve to be disbarred. If it were so, then only one lawyer would ever deserve disbarment: the one whose misconduct was the worst. Cramer cannot carry his burden of proof by pointing to disbarred lawyers who did worse things than he has done; rather, he must show that there are cases sufficiently similar to his own in which disbarment was disapproved by this Court. None of the cases Cramer cites involves

situations where the Court disapproved disbarment for misconduct anything like his.¹¹

Cramer's proportionality argument also overlooks his history of misconduct. This is Cramer's fourth disciplinary proceeding and will be his sixth disciplinary sanction in the past 18 years. The Court has recognized the need to disbar lawyers to protect the public where "repeated behavior . . . indicates the attorney did not learn from previous disciplinary action" In re Disciplinary Proceeding Against Yates, 110 Wn.2d 444, 453, 755 P.2d 770 (1988) (disbarring lawyer given a disciplinary history spanning more than 20 years); see also Burtch, 162 Wn.2d. at 900 (rejecting proportionality argument where other cases did not involve similar disciplinary history); Kuvara, 149 Wn.2d at 261 (disbarment appropriate where "previous sanctions have failed to deter misconduct on [lawyer's] part"). Disbarment is appropriate here.

V. CONCLUSION

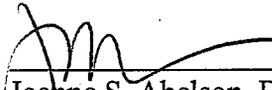
Cramer has received every disciplinary sanction the system has to offer short of disbarment. His current misconduct involved dishonest conduct "calculated to circumvent" his legal obligations. AFFCL ¶ 79. No mitigating factors exist. Disbarment is appropriate to protect the

¹¹More to the point is Huddleston, 137 Wn.2d 560, where the Court disbarred a lawyer who engaged in a series of fraudulent activities related to a magazine subscription service.

public and the integrity of the legal profession. The Court should affirm the hearing officer's and Disciplinary Board's recommendation of disbarment.

RESPECTFULLY SUBMITTED this 13 day of May, 2009.

WASHINGTON STATE BAR ASSOCIATION



Joanne S. Abelson, Bar No. 24877
Senior Disciplinary Counsel

APPENDIX A

**RPC 8.4
MISCONDUCT**

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding[.]

RCW 82.32.290

(1)(a) It shall be unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign a resale certificate without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law.

APPENDIX B

FILED

OCT 10 2008

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

Stephen D. Cramer,
Lawyer (Bar No. 9085).

Public No. 07#00056

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on January 24, 2008 and September 11, 2008. Disciplinary Counsel Joanne Abelson and Leslie C. Allen appeared for the Washington State Bar Association (the Association). Respondent's Counsel, Leland G. Ripley appeared at the January 24, 2008 hearing. Respondent's Counsel, Stephen C. Smith, appeared at the September 11, 2008 hearing.

At the start of the January 24, 2008 hearing (9:00 a.m.), Mr. Ripley advised the Hearing Officer that the Respondent was not present. The Hearing Officer questioned Mr. Ripley about what notice he had given Respondent about the hearing. Mr. Ripley stated that he sent Respondent a copy of the November 6, 2007 Order Setting Hearing Date and Establishing

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1 Prehearing Deadlines (Scheduling Order) promptly after he was served with a copy of the
2 Order. The Scheduling Order specifically set the hearing to commence at 9:00 a.m. on January
3 24, 2008. Mr. Ripley stated that he also had forwarded Disciplinary Counsel's December 2007
4 request that Respondent sign a confidentiality waiver that would permit Washington State
5 Department of Revenue (Department of Revenue) Agents to testify about Respondent's tax
6 matters at the hearing. Respondent signed the confidentiality waivers and returned them to Mr.
7 Ripley on or after January 8, 2008. Mr. Ripley stated that on January 23, 2008, he called
8 Respondent to discuss the next day's hearing. The first time Mr. Ripley called the Respondent,
9 the phone was busy. The second time Mr. Ripley called the Respondent, he left a voice mail
10 message asking Respondent to meet him at the Association's offices at 8:30 a.m. on January 24,
11 2008. Mr. Ripley stated that as of the start of the hearing, Respondent had not returned Mr.
12 Ripley's telephone message nor had he met Mr. Ripley at the appointed time. Finally, the
13 Hearing Officer asked Mr. Ripley: "Are you satisfied that you made sufficient effort to notify
14 your client of today's hearing?" Mr. Ripley replied, "Yes."

15 After the close of the Association's case, Mr. Ripley moved to withdraw as counsel for
16 the Respondent. The Hearing Officer granted Mr. Ripley's motion to withdraw, and amended
17 the Scheduling Order to permit Respondent seven additional calendar days after the Association
18 files its Proposed Findings of Fact, Conclusions of Law and Recommendation (FFCL) within
19 which to submit his own proposed FFCL.

20 On January 28, 2008, the Hearing Officer received a letter from Mr. Ripley with an
21 attached letter from Respondent. Respondent's attached letter dated January 24, 2008 stated
22 that he had "received no prior notice of this morning's events from any source." On January 27,
23 2008, the Hearing Officer received a faxed letter from Respondent referencing his January 24th

1 letter and requesting the Hearing Officer's "forbearance on any further action until new counsel
2 appears on [Respondent's] behalf." On February 4, 2008, the Hearing Officer received a faxed
3 letter from Respondent in which he stated that he had made an appointment with attorney [T.F.].
4 Respondent's letter also requested (1) a stay of proceedings until new counsel appeared and (2)
5 a teleconference with the Hearing Officer and Disciplinary Counsel to "discuss the current
6 issues."

7 By letter dated and received by the Hearing Officer via fax on February 11, 2008,
8 Disciplinary Counsel agreed to a two-week extension during which Respondent could "present
9 proposed Findings or make any motion he feels is appropriate." Later on February 11th, the
10 Hearing Officer faxed a letter to both parties "ordering that Respondent has until 4:30 p.m. on
11 February 25, 2008 to present his proposed Findings, Conclusions and Recommendations and/or
12 bring before me any appropriate motions."

13 On Friday, February 22, 2008, Respondent faxed to the Hearing Officer his "Motion for
14 Order Re-Opening Hearing and Extending Deadline for filing Findings of Fact and Conclusions
15 of Law. . . ." Later on February 22, 2008, the Hearing Officer faxed a letter to both parties
16 ordering Disciplinary Counsel to submit its response by 4:30 p.m. on Friday, March 7, 2008.
17 The additional time to respond was granted because Disciplinary Counsel had previously
18 notified Respondent and the Hearing Officer that she would be out of her office until March 4,
19 2008.

20 On March 6, 2008, the Hearing Officer received via fax the parties' signed "Stipulation
21 to Re-Open Hearing to Permit Respondent to Testify" and "Order." On Friday, March 7, 2008,
22 the Hearing Officer signed and faxed to the parties their agreed-upon Order approving the
23 Stipulation and requiring the parties to "coordinate with my secretary . . . to schedule a

1 | teleconference for the week of March 10, 2008 to select a date to take Respondent's testimony."
2 | Later on March 7, 2008, the Hearing Officer's secretary telephoned both parties and left
3 | voicemails in an attempt to facilitate the scheduling of the agreed-upon and ordered scheduling
4 | teleconference. Disciplinary Counsel responded later that afternoon and informed the Hearing
5 | Officer's secretary that she was available for the teleconference any time during the week of
6 | March 10, 2008 except for two specific hours. Respondent returned the voicemail later that
7 | same afternoon of March 7, 2008 and informed the Hearing Officer's secretary that he was
8 | hiring attorney [T.F.] and his attorney would call back to schedule the teleconference.

9 | On Monday, March 10, 2008, the Hearing Officer's secretary left another voicemail at
10 | Respondent's office phone number in which she notified Respondent that she had not received
11 | any additional contact from Respondent or anyone representing him. The week of March 10,
12 | 2008 passed with no contact from Respondent or anyone on his behalf.

13 | By letter faxed on Monday, March 17, 2008, the Hearing Officer notified the parties that
14 | because Respondent had failed to comply with his signed Stipulation and the Hearing Officer's
15 | Order, the Order had lapsed by its own terms. Further, the Hearing Officer ordered that the
16 | hearing of this matter was closed and that Respondent had forfeited his right to testify therein.
17 | Finally, the Order granted Respondent another extension of time for the purpose of submitting
18 | his proposed FFCL on or before March 27, 2008.

19 | On March 19, 2008, the Hearing Officer received an email from a new attorney, Stephen
20 | Smith. This email stated: "We have today been retained to represent [Respondent] in the
21 | referenced action. We will be filing a formal notice of appearance ASAP. Additionally, we
22 | will file a Motion for Reconsideration of your Letter/Order of March 17, 2008 in order to allow
23 | [Respondent's] testimony to be taken in this matter." As of Monday, March 31, 2008, no notice

1 of appearance has been served on the Hearing Officer by any attorney on Respondent's behalf,
2 nor did Respondent file proposed FFCL by the March 27, 2008 deadline. Thus, on March 31,
3 2008, the Hearing Officer entered Findings, Conclusions and a Recommendation that
4 Respondent be disbarred.

5 Respondent did not seek reconsideration of the Hearing Officer's decision, as allowed
6 under ELC 10.16(c). Instead, on April 14, 2008, Respondent filed a petition asking the
7 Disciplinary Board to set aside the Findings, Conclusions and Recommendations. On May 2,
8 2008, the Chair of the Disciplinary Board denied Respondent's petition, but suggested "that the
9 parties consider stipulating to some procedure that would allow the full Board to receive the
10 Respondent's testimony in this matter so that any review will be based on a complete record."

11 On June 4, 2008, Respondent filed a motion to reopen the hearing to permit Respondent
12 to testify. The Association advised that it would not object should the Hearing Officer choose
13 to reopen the hearing to take Respondent's testimony. On July 8, 2008, the Hearing Officer
14 entered an order reopening the hearing and setting a hearing date for July 31, 2008. On July 29,
15 2008, upon agreement of counsel, the Hearing Officer rescheduled the July 31, 2008 hearing to
16 August 28, 2008. On August 1, 2008, Respondent's Counsel was served with a copy of the
17 order resetting the hearing date to August 28, 2008 at 9:30 a.m.

18 Neither Respondent nor his counsel were present when the August 28, 2008 hearing
19 commenced at 9:30 a.m. At 10:00 a.m., the Hearing Officer asked Disciplinary Counsel to
20 check their voice mails and emails to determine if Respondent's Counsel had left any messages
21 and if not, to call him. Disciplinary Counsel reported back to the Hearing Officer that neither of
22 them had received a voice mail or email from Respondent's Counsel. Disciplinary Counsel
23 advised that she had left Respondent's Counsel a voice mail message on his office telephone

1 and on his cell phone. During Disciplinary Counsel's report back to the Hearing Officer, she
2 received notice that Respondent's Counsel had returned her call and left a number to reach him
3 at his cell phone. The hearing went off the record while Disciplinary Counsel called
4 Respondent's Counsel in the presence of the Hearing Officer.

5 Respondent's Counsel advised that he had miscalendared the hearing and confused it
6 with another Supreme Court matter involving Respondent. The Hearing Officer instructed
7 Respondent's Counsel to work with Disciplinary Counsel as soon as possible to set another
8 hearing date. The parties agreed on a hearing date of September 11, 2008 at 1:30 p.m.

9 The hearing was reopened at 1:30 p.m. on September 11, 2008 at the offices of the
10 Washington State Bar Association. At the hearing, Respondent and his counsel appeared.
11 Respondent testified and exhibits were admitted into evidence.

12 FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

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

15 Count I - By removing the Department of Revenue's posted order revoking Stephen D.
16 Cramer LLC's and/or Stephen D. Cramer PLLC's certificate of registration, by operating the
17 Law Office of Stephen D. Cramer, Inc., P.S. without a valid Department of Revenue business
18 license and/or certificate of registration, and/or by continuing to operate his law business after
19 the Department of Revenue had revoked the certificate of registration for Stephen D. Cramer
20 LLC, Respondent violated RPC 8.4(b) (by violating RCW 82.32.290(1) and/or RCW
21 82.32.290(2)), RPC 8.4(c), and/or RPC 8.4(i).

22 Count II - By attempting to circumvent the Department of Revenue's tax law
23 requirements by changing the name of the business under which Respondent practiced law,

1 Respondent violated RPC 8.4(c).

2 Based on the pleadings in the case, and the testimony and exhibits at the January 24,
3 2008 and September 11, 2008 hearings, the Hearing Officer makes the following:

4 FINDINGS OF FACT

5 1. Respondent was admitted to the practice of law in the State of Washington on May
6 22, 1979.

7 PROCEDURAL FINDINGS

8 2. On or about September 17, 2007, Respondent received the Association's Formal
9 Complaint.

10 3. On September 19, 2007, Respondent filed his Acknowledgment of Service of the
11 Formal Complaint.

12 4. On October 1, 2007, Leland G. Ripley, filed his notice of appearance as
13 Respondent's Counsel.

14 5. On November 6, 2007, the Hearing Officer conducted a telephonic hearing to set
15 the case schedule. Mr. Ripley and Disciplinary Counsel Leslie Allen were present at the
16 telephonic hearing.

17 6. November 6, 2007, Respondent filed his Answer to the Formal Complaint.

18 7. On November 9, 2007, the Hearing Officer filed the Scheduling Order.

19 8. The Scheduling Order set the disciplinary hearing for January 24, 2008.

20 9. On November 9, 2007, Becky Crowley, Clerk to the Disciplinary Board, served
21 Respondent's Counsel and Disciplinary Counsel with a copy of the Scheduling Order.

22 10. Respondent received adequate notice of the date of the disciplinary hearing.

23 11. Respondent did not appear at the January 24, 2008 disciplinary hearing.

1 12. Respondent denies that his counsel, Leland Ripley, gave him notice of the January
2 24, 2008 hearing date.

3 13. Respondent's testimony is not credible.

4 14. Neither Respondent nor any representative of Respondent scheduled a time for the
5 taking of his testimony during the week of March 10, 2008 as required by the Hearing
6 Officer's Order of March 7, 2008.

7 15. The hearing was reopened and rescheduled for August 28, 2008.

8 16. Neither Respondent nor his counsel appeared at the August 28, 2008 disciplinary
9 hearing.

10 17. Respondent denies that his counsel, Stephen C. Smith, gave him notice of the
11 August 28, 2008 hearing date.

12 18. The hearing, rescheduled for September 11, 2008, commenced at 1:30 p m.

13 19. Both Respondent and his counsel were present for the September 11, 2008 hearing.

14 FINDINGS REGARDING UNDERLYING GRIEVANCE

15 20. Respondent has engaged in a solo law practice since 1985.

16 21. On or before 1995, Respondent began to operate his law practice as a limited
17 liability company, under the name of Stephen D. Cramer PLLC.

18 22. Respondent was the sole owner of Stephen D. Cramer PLLC.

19 23. Between 1996 and the relevant time period (January 8, 2007), Respondent
20 occupied the same law offices and employed the same employee (Angie Blanco).

21 24. On July 1, 2005, the Department of Revenue issued Stephen D. Cramer PLLC a
22 master license and certificate of registration using UBI No. 601 641 084.

23 25. In communications with the Department of Revenue regarding his law business

1 registered under UBI No. 601 641 084, Respondent used "Stephen D. Cramer LLC"
2 interchangeably with "Stephen D. Cramer PLLC." (Hereafter, references to "Stephen D.
3 Cramer LLC" also include references to "Stephen D. Cramer PLLC," and vice versa.)

4 26. Respondent ceased filing his quarterly excise tax statements with the Department
5 of Revenue starting in 2003.

6 27. By 2006, Respondent was in significant arrears in paying his business and
7 occupation taxes (excise taxes) to the Department of Revenue.

8 28. As a result, the Department of Revenue filed three tax warrants, totaling \$9,963.39,
9 with the King County Superior Court Clerk's office on May 24, 2004, April 12, 2005, and
10 May 10, 2006. These tax warrants covered the tax years 2003 – 2005.

11 29. On or about April 26, 2006, the Department of Revenue Agent Felicia Jones
12 advised Respondent that she had scheduled a "prehearing" for May 8, 2006, during which she
13 would meet with Respondent and discuss how Respondent could arrange to pay his tax
14 deficiencies and file delinquent excise tax statements.

15 30. Respondent did not appear at the May 8, 2006 Department of Revenue
16 "prehearing."

17 31. Respondent was aware of the "prehearing," but chose not to appear at that hearing.

18 32. Thereafter, Ms. Jones left several voice mail messages at Respondent's place of
19 business asking that he return her call. Respondent did not return Ms. Jones' telephone calls.

20 33. On or about August 10, 2006, Ms. Jones sent Respondent a notice that the
21 Department of Revenue, Compliance Division, would hold a hearing on September 13, 2006
22 to determine whether to revoke his law business's certificate of registration based on the
23 outstanding tax warrants and Respondent's failure to demonstrate that he would be able to pay

1 his past and future tax obligations.

2 34. Felicia Jones appeared at the compliance hearing on the Department of Revenue's
3 behalf and submitted an Affidavit to support the Department of Revenue's revocation request.

4 35. Respondent was aware of the September 13, 2006 hearing, but chose not to appear
5 at that hearing.

6 36. On September 13, 2006, the Department of Revenue Compliance Division
7 Presiding Officer, Eric Overson, entered Findings of Fact, Conclusions of Law, and an Order
8 (Preliminary Revocation Order) revoking Stephen D. Cramer, LLC's certificate of
9 registration, based on Respondent's failure to pay excise taxes for tax years 2003 through
10 2005.

11 37. The Department of Revenue mailed Respondent a copy of the September 13, 2006
12 Preliminary Revocation Order the same day.

13 38. The Preliminary Revocation Order stated that Respondent had 21 days to request a
14 review of the Order.

15 39. Respondent did not request review of the Preliminary Revocation Order.

16 40. On September 20, 2006, Respondent obtained a Certificate of Incorporation for the
17 Law Office of Stephen D. Cramer, Inc., P.S. from the Washington State Secretary of State's
18 office. He is the sole owner of the Law Office of Stephen D. Cramer, Inc., P.S.

19 41. On October 6, 2006, the Washington State Department of Revenue Regional
20 Compliance Manager signed the final Order Revoking the certificate of registration (Final
21 Revocation Order) for Respondent's law business, Stephen D. Cramer LLC.

22 42. On October 12, 2006, Ms. Jones posted the Final Revocation Order on the main
23 entrance to Respondent's interior law office rather than the main entrance to the building that

1 Respondent shares with other independent attorneys.

2 43. The Final Revocation Order stated that the order "be posted in a conspicuous place
3 at the main entrance to the taxpayer's place of business and remain posted until the Tax
4 Warrants are paid." It further stated

5 NOTICE: Section 82.32.290 of the Revised Code of Washington provides
6 that it shall be unlawful for any person to engage in business after revocation of
7 a certificate of registration. Persons violating this provision shall be guilty of a
8 Class C felony. All cases will be immediately referred to the Prosecuting
9 Attorney.

10 44. Respondent did not pay the tax warrants for Stephen D. Cramer PLLC, nor did he
11 take steps to enter into any payment plan with the Department of Revenue.

12 45. A few weeks later, Respondent removed the posted Final Order of Revocation
13 from the door to his law office.

14 46. On September 20, 2006, Respondent obtained a certificate of incorporation for a
15 new corporation, the "Law Office of Stephen D. Cramer, Inc., P.S." At the same time, the
16 State of Washington assigned this new corporation UBI No. 602-651-764.

17 47. The Law Office of Stephen D. Cramer, Inc., P.S., is the successor of Stephen D.
18 Cramer, PLLC.

19 48. Between October 13, 2006 and January 8, 2007, Respondent operated the Law
20 Office of Stephen D. Cramer, Inc., P.S., as his law business without any disruption in services
21 to his clients. He kept the same law office space, office equipment, accounts receivables, and
22 employee as when he operated his law practice as Stephen D. Cramer PLLC.

23 49. Despite having received a master license and certificate of registration for Stephen
24 D. Cramer PLLC just 15 months before, Respondent did not apply for a certificate of
25 registration or obtain a business license from the Department of Revenue before engaging in

1 business as the Law Office of Stephen D. Cramer, Inc., P.S.

2 50. On November 21, 2006, the Association wrote Respondent a letter asking him to
3 respond to allegations that he continued to engage in business after his certificate of
4 registration was revoked by the Department of Revenue, a violation of RCW 82.32.290.

5 51. On November 22, 2006, Department of Revenue Agent, Stephen Hiatt, sent
6 Respondent a letter asking whether he was conducting business in Washington under the
7 name of Law Office of Stephen D. Cramer, Inc., P.S., and if so, to submit a completed Master
8 Application for a business license and/or certificate of registration for the Law Office of
9 Stephen D. Cramer, Inc., P.S.

10 52. Respondent attached Mr. Hiatt's November 22, 2006 letter to, and specifically
11 identified it in, his December 1, 2006 correspondence to the Association.

12 53. The copy of the November 22, 2006 Hiatt letter that Respondent gave to the
13 Association contained Respondent's copy-received stamp indicating that Respondent received
14 Mr. Hiatt's letter on December 1, 2006.

15 54. Respondent did not respond to Mr. Hiatt's November 22, 2006 letter.

16 55. On December 21, 2006, Mr. Hiatt conducted a surveillance of Respondent's law
17 offices to determine if he was continuing to engage in business despite having no certificate of
18 registration.

19 56. Mr. Hiatt's surveillance disclosed that Respondent's law offices were still open
20 and that a motor vehicle registered to Respondent was parked near Respondent's law office
21 sign.

22 57. On January 4, 2007, Mr. Hiatt and Department of Revenue Special Agent Fulton
23 went to Respondent's law office and asked to meet with him.

1 58. Respondent asked the Department of Revenue Agents to step outside the office
2 building to discuss their business with him.

3 59. The Department of Revenue Agents advised Respondent that his PLLC's
4 certificate of registration had been revoked and showed him a copy of the Final Revocation
5 Order.

6 60. Respondent told them that he had started a new corporation that he had registered
7 with the Secretary of State's Office.

8 61. The Department of Revenue Agents told Respondent that he needed also to register
9 his new corporation with the Department of Revenue.

10 62. Respondent replied that he thought that the Secretary of State's office would take
11 care of his Department of Revenue registration.

12 63. Mr. Hiatt showed Respondent a copy of the letter that he had sent him on
13 November 22, 2006 informing him that Respondent needed to register his new corporation
14 with the Department of Revenue.

15 64. Respondent told Mr. Hiatt that he had not seen Mr. Hiatt's November 22, 2006
16 letter.

17 65. This statement was false. Respondent had received the Mr. Hiatt's November 22,
18 2006 letter, it was in his files, and he had previously provided a copy of the letter to the Bar
19 Association. Respondent's explanation that he had not realized he had received Mr. Hiatt's
20 November 22, 2006 letter is not credible.

21 66. Respondent denied knowing that he had to obtain a certificate of registration with
22 the Department of Revenue before he could engage in business in the state of Washington.

23 67. Respondent's claim that he did not know that he had to obtain a certificate of
24

1 registration with the Department of Revenue before he could engage in business in the state of
2 Washington is not credible.

3 68. Respondent testified at the hearing that he did not conceal his activities from the
4 Department of Revenue and that he gave notice to the Department of Revenue that he was
5 continuing to operate as the Law Office of Stephen D. Cramer, Inc., P.S.

6 69. Respondent's testimony that he had notified the Department of Revenue that he
7 was continuing to operate as the Law Office of Stephen D. Cramer, Inc., P.S., is not credible.

8 70. On January 5, 2007, Mr. Hiatt sent Respondent another letter, identical to his
9 November 22, 2006 letter, enclosing another Master License application.

10 71. On January 8, 2007, Respondent submitted a Master Application to the
11 Department of Revenue for the Law Office of Stephen D. Cramer, Inc., P.S.

12 72. Respondent's January 8, 2007 Master Application admitted that he had been
13 operating the business of Law Office of Stephen D. Cramer, Inc., P.S. since October 13, 2006.

14 73. Between October 13, 2006 and January 8, 2007, Respondent engaged in business
15 without a business license and without a certificate of registration from the Department of
16 Revenue.

17 74. By letter dated January 11, 2007, the Department of Revenue advised Respondent
18 that it had determined his new corporation was a successor to "Stephen D. Cramer LLC tax
19 reporting number 601 641 094."

20 75. On January 30, 2007, Respondent testified in another matter that he had
21 incorporated his law practice under the name "Law Office of Stephen D. Cramer, Inc., P.S.",
22 using a different tax identification number, specifically because the Department of Revenue
23 had revoked the certificate of authority for his business "Stephen D. Cramer PLLC."

1 76. Respondent intentionally removed the Final Revocation Order that the Department
2 of Revenue had posted on his office door without first paying or attempting to make any
3 payments on the tax warrants underlying the Final Revocation Order.

4 77. Respondent intentionally engaged in his law business after his certificate of
5 registration for Stephen D. Cramer PLLC had been revoked by the Department of Revenue.

6 78. Respondent intentionally engaged in his law business, Law Office of Stephen D.
7 Cramer, Inc., P.S., without first obtaining a certificate of registration with the Department of
8 Revenue.

9 79. Respondent's continuation of his law business after the Department of Revenue
10 had revoked the certificate of registration for Stephen D. Cramer PLLC, and his operation of the
11 Law Office of Stephen D. Cramer, Inc., P.S., without a certificate of registration from the
12 Department of Revenue, was calculated to circumvent the Department of Revenue and state tax
13 laws, and involved dishonesty, deceit, and disregard for a rule of law (RCW 82.32.290).

14 80. The public and the legal system were injured by Respondent's conduct in placing
15 himself above the state tax laws. The Department of Revenue was injured by the efforts its
16 Agents expended having to track Respondent down to ensure that he operated his law business
17 with a certificate of registration from the Department of Revenue, and by the efforts its Agents
18 have taken to collect on the overdue excise taxes.

19 81. Respondent failed to appear at the January 24, 2008 disciplinary hearing, despite
20 being notified by his counsel of the date of the hearing, in violation of ELC 10.13(b).

21 82. In 2008, Respondent paid the Department of Revenue the balance of overdue taxes
22 owed by Stephen D. Cramer PLLC and overdue taxes owed by the Law Office of Stephen D.
23 Cramer, P.S., Inc. As of the September 11, 2008 hearing date, Respondent was current on his

1 filing and payment of excise taxes to the Department of Revenue.

2 CONCLUSIONS OF LAW

3 Violations Analysis

4 83. The Washington State Bar Association (the Association) bears the burden of
5 proving each count of the Formal Complaint by a “clear preponderance of the evidence.” ELC
6 10.14(b); In re Disciplinary Proceeding Against Allotta, 109 Wn.2d 787, 792, 748 P.2d 628
7 (1988).

8 84. The “clear preponderance standard is applicable to [lawyer] misconduct amounting
9 to a felony or misdemeanor, for which an attorney is subject to discipline even in the absence of
10 a criminal conviction.” In re Disciplinary Proceeding Against Huddleston, 137 Wn.2d 560, 570
11 n.6, 974 P.2d 325 (1999)

12 85. The Association proved Count 1 by a clear preponderance of the evidence as
13 follows:

14 86. RCW 82.32.290(1) provides the following:

15 (1)(a) It shall be unlawful:

16 (i) For any person to engage in business without having obtained a
17 certificate of registration as provided in this chapter;

18 (ii) For the president...or other officer of any company to cause or permit
19 the company to engage in business without having obtained a certificate
20 of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by
the department [of Revenue];

21 (1)(b) Any person violating any of the provision of this subsection (1) shall
be guilty of a gross misdemeanor in accordance with chapters 9A.20 RCW.

22 87. The Association has proved by a clear preponderance of the evidence that
23 Respondent violated RCW 82.32.290(1)(a)(i) and (ii) by engaging in his “Law Office of

1 Stephen D. Cramer, Inc., P.S.," law business without first having obtained a Department of
2 Revenue certificate of registration.

3 88. The Association has proved by a clear preponderance of the evidence that
4 Respondent removed the Final Revocation Order posted on his door without authority, in
5 violation of RCW 82.32.290(1)(a)(iii).

6 89. Respondent's violation of RCW 82.32.290(1) involved the commission of gross
7 misdemeanors. See RCW 82.32.290(1)(b).

8 90. RCW 82.32.290(2)(a) provides:

9 (2)(a) It shall be unlawful:

10 (i) For any person to engage in business after revocation of a certificate of
11 registration;

12 2(b) Any person violating any provision of this subsection (2) shall be guilty
13 of a class C felony in accordance with chapter 9A.20 RCW.

14 91. The Association has proved by a clear preponderance of the evidence that
15 Respondent violated RCW 82.32.290(2)(a) by continuing to engage in his law business after
16 October 6, 2006, when the Final Revocation Order was entered revoking Stephen D. Cramer
17 LLC's certificate of registration.

18 92. Respondent's violation of RCW 82.32.290(2)(a) involved the commission of a
19 class C felony. See RCW 82.32.290(2)(b).

20 93. By committing the gross misdemeanors and class C felony described above,
21 Respondent violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(i).

22 94. The Association proved Count 2 by a clear preponderance of the evidence. By
23 intentionally attempting to circumvent the Department of Revenue's Final Revocation Order by
24 changing the name of the business under which he practiced law and continuing to practice

1 without a certificate of registration, Respondent acted dishonestly and deceitfully, in violation
2 of RPC 8.4(c).

3 Sanction Analysis

4 95. A presumptive sanction must be determined for each ethical violation. In re
5 Anschell, 149 Wn.2d 484, 69 P.2d 844, 852 (2003). The following standards of the American
6 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
7 Feb. 1992 Supp.) are presumptively applicable in this case:

8 ABA Standards 5.1 applies to all of Respondent's misconduct (Count 1—violation of
9 RPC 8.4(b), 8.4(c), and 8.4(i) and Count 2—violation of RPC 8.4(c)). ABA Standards 5.1
10 provides:

11 **5.1 Failure to Maintain Personal Integrity**

12 5.11 Disbarment is generally appropriate when:

- 13 (a) a lawyer engages in serious criminal conduct, a necessary element
14 of which includes intentional interference with the administration
15 of justice, false swearing, misrepresentation, fraud, extortion,
16 misappropriation, or theft; or the sale, distribution or importation
17 of controlled substances; or the intentional killing of another; or an
18 attempt or conspiracy or solicitation of another to commit any of
19 these offenses; or
20 (b) a lawyer engages in any other intentional conduct involving
dishonesty, fraud, deceit, or misrepresentation that seriously
adversely reflects on the lawyer's fitness to practice.

21 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
22 criminal conduct which does not contain the elements listed in Standard
23 5.11 and that seriously adversely reflects on the lawyer's fitness to
24 practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in
any other conduct that involves dishonesty, fraud, deceit, or
misrepresentation and that adversely reflects on the lawyer's fitness to
practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct
that reflects adversely on the lawyer's fitness to practice law.

(Emphasis added.)

96. When multiple ethical violations are found, the "ultimate sanction imposed should

1 at least be consistent with the sanction for the most serious instance of misconduct among a
2 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
3 846 P.2d 1330 (1993).

4 97. Based on the Findings of Fact and Conclusions of Law and application of the ABA
5 Standards, the presumptive sanction for Respondent’s intentional and dishonest acts is
6 disbarment for Count 1 and disbarment for Count 2 pursuant to ABA Standard 5.11(b).

7 98. I find that the following aggravating factors, as set forth in Section 9.22 of the
8 ABA Standards, apply in this case:

- 9 (a) prior disciplinary offenses:
- 10 • In 1991, Respondent stipulated to a Reprimand for failure to disclose
11 material facts to a tribunal, failure to promptly file a creditor’s claim,
12 and failure to obtain written waivers of conflicts of interests;
 - 13 • In 1994, Respondent received two Censures for failing to supervise
14 and act with reasonable diligence, and for disbursing client trust funds
15 to himself contrary to the terms of the written fee agreement;
 - 16 • In 2007, a hearing officer and the Disciplinary Board recommended
17 that Respondent be suspended for eight months for misusing client
18 trust funds in violation of RPC 8.4(c) and 1.14(a), and that he also
19 receive a reprimand for misrepresenting to Disciplinary Counsel that
20 he had deposited the client’s advance fees into his trust account when
21 he actually had deposited them into his operating account, in violation
22 of RPC 8.4(c), RPC 8.4(d), RPC 8.4(l) and ELC 5.3(c). Respondent’s
23 appeal of the suspension and reprimand recommendations is currently
24 before the Supreme Court;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing
to comply with rules or orders of the disciplinary agency [Respondent
failed to appear at the January 24, 2008 hearing as required under ELC
10.13(b)];
- (i) substantial experience in the practice of law [Respondent has practiced law
since 1976]; and
- (j) indifference to making restitution [respondent did not pay off the tax
warrants or take any steps to enter into a payment plan with the Department
of Revenue until after the January 24, 2008 hearing].

22 99. The record reflects no ABA Standards § 9.32 mitigating factors.

23 100. Because I find no mitigating factors under Section 9.32 of the ABA Standards

1 and several aggravating factors under Section 9.22, I find no reason to depart from the
2 presumptive sanction of disbarment for each count.

3 RECOMMENDATION

4 101. Based on the ABA Standards, the number of aggravating factors, and the lack of
5 any mitigating factor, the Hearing Officer recommends that Respondent Stephen D. Cramer be
6 disbarred.

7 Dated this 9th day of October, 2008.

8 
9 Craig Charles Beles, WSBA No. 6329
10 Hearing Officer

11
12
13 CERTIFICATE OF SERVICE

14 I certify that I caused a copy of the Amended Findings
15 to be delivered to the Office of Disciplinary Counsel and to be mailed
16 to Stephen C. Smith, Respondent/Respondent's Counsel
17 at 877 Main St, Suite 1000, Bellevue, WA 98004-5824, by Certified first class mail,
18 postage prepaid on the 10th day of October, 2008

19 Julie Anne Shankles
20 Clerk/Counsel to the Disciplinary Board

APPENDIX C

ABA STANDARD 5.1

Standard 5.1 -- Failure to Maintain Personal Integrity

- 5.11 Disbarment is generally appropriate when:
- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
- 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

APPENDIX D

FILED

FEB 02 2009

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

STEPHEN D. CRAMER

Lawyer (WSBA No.9085)

Proceeding No. 07#00056

DISCIPLINARY BOARD ORDER
ADOPTING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its January 23, 2009 meeting, on automatic review of Hearing Officer Craig C. Beles' decision recommending disbarment following a hearing.

Having heard oral argument and reviewed the materials submitted by the parties and the applicable case law and rules,

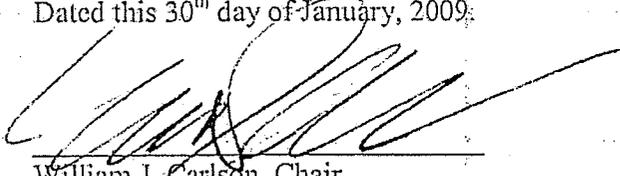
IT IS HEREBY ORDERED THAT the Hearing Officer's decision is adopted¹:

¹ The vote on this matter was 9-3. Those voting in the majority were: Anderson, Bahn, Barnes, Cena, Coppinger-Carter, Fine, Handmacher, Hazelton and Meehan.

Those voting in the minority were: Carlson, Greenwich and Urefia. Those voting in the minority agree with the Hearing Officer that the *ABA Standards* lead to disbarment as the appropriate sanction in this case. However, the minority believes that this sanction is overly harsh. By imposing the ultimate sanction on Mr. Cramer, when he did pay back the taxes, it is not possible to treat Mr. Cramer differently than a lawyer who failed to pay the taxes. In this instance, those voting in the minority believe that a three-year suspension would be a more appropriate sanction.

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1 Dated this 30th day of January, 2009.

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3 William J. Carlson, Chair
4 Disciplinary Board

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7
8
9 CERTIFICATE OF SERVICE

10 I certify that I caused a copy of the DB board order
11 to be delivered to the Office of Disciplinary Counsel and to be mailed
12 to Stephen C. Smith, Respondent/Respondent's Counsel
13 at 877 Main St. Ste 1000, Boise ID by Certified/first class mail,
14 postage prepaid on the 3 day of February, 2009

15 Becky Cleary
16 Clerk/Counsel to the Disciplinary Board

APPENDIX E

STEPHEN D. CRAMER, P.L.L.C.
ATTORNEY AT LAW

202 SOUTH 348TH STREET
POST OFFICE BOX 3767
FEDERAL WAY, WASHINGTON 98003-3767

MEMBER, WASHINGTON AND
ALASKA BAR ASSOCIATIONS

September 22, 2006

TELEPHONE: (253) 881-1337
FACSIMILE: (253) 874-8005
TOLL FREE: (888) 611-1337

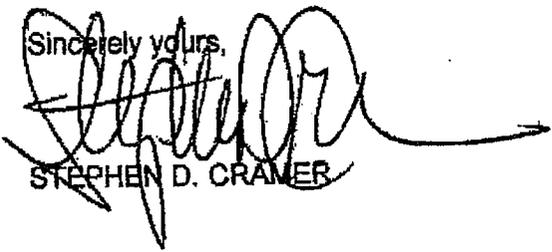
Felicia Jones, Revenue Agent
Washington Dept. of Revenue
20819 - 72ND Ave. S., #680
Kent, WA 98032

Re: *Stephen D. Cramer, PLLC*
No. 601 641 084

Dear Ms. Jones:

NOTICE IS HEREBY GIVEN that Stephen D. Cramer, PLLC will cease doing business and terminate all further business operations on **September 30, 2006**. The limited liability company will then be dissolved through the Washington Secretary of State as soon as possible after that date.

Sincerely yours,


STEPHEN D. CRAMER

SDC/amb



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