

200,811-9  
Supreme Court No. ~~200,799-6~~

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE DISCIPLINARY PROCEEDING AGAINST

W. RUSSELL VAN CAMP,

Lawyer (Bar No. 5385).

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

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Appendix D - Disciplinary Board Order Amending Hearing Officer's Decision (BF 111)

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Appendix F - Campbell December 15, 2006 letter to Van Camp (EX 7)

## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Under the ABA Standards, the presumptive sanction is higher if the lawyer's misconduct causes "serious injury" as opposed to "injury." Here, the hearing officer found that Van Camp failed to refund \$15,000 in unearned fees but concluded that the injury was not "serious," so the presumptive sanction was suspension. The Board adopted the hearing officer's factual findings but concluded that the injury was "serious," so the presumptive sanction was disbarment. Given the Board's vast experience in administering sanctions, should the Court adopt its conclusion regarding level of injury over that of the hearing officer?

2. This is Van Camp's fourth disciplinary proceeding. His prior discipline includes a censure, reprimand, and suspension, and some of his prior misconduct is similar to that here. The Board found that Van Camp's current misconduct, aggravated by his significant disciplinary history and five other factors, warranted disbarment. Regardless of whether the Court finds "serious" injury, should the Court adopt the Board's recommendation of disbarment?

## **II. COUNTERSTATEMENT OF THE CASE**

### **A. PROCEDURAL FACTS**

In March 2009, the Association filed a second amended formal complaint charging Van Camp with nine counts of misconduct arising

from his representation of Randy and Renee Honkala. BF 47. A five-day hearing occurred in April and July 2009. TR 1, 263, 499, 808, 914.<sup>1</sup> The hearing officer entered her Findings of Fact, Conclusions of Law and Recommendation on September 8, 2009, as amended on October 20, 2009. BF 83, 89 (attached as Appendix A). The hearing officer dismissed three counts but concluded that the Association proved six counts of misconduct by a clear preponderance of the evidence:

- Count 1: Van Camp violated RPC 1.2(a) by, among other things, failing to abide by Honkala's instructions throughout the representation and failing to assist him in making informed decisions about settlement;
- Count 2: Van Camp violated RPC 1.3 by failing to respond to opposing counsel's offers to settle;
- Count 3: Van Camp violated RPC 1.4(a) by failing to timely provide Honkala copies of correspondence and settlement proposals, even after repeated requests;
- Count 4: Van Camp violated RPC 1.4(b) and RPC 1.5(b) by having Honkala sign an ambiguous fee agreement and by failing to explain clearly at the outset of representation how his fee would be calculated and how Honkala's \$25,000 payment would be applied;
- Count 5: Van Camp violated RPC 1.5(a) by charging \$25,000 under the facts of this case;
- Count 9: Van Camp violated RPC 8.4(c) by misrepresenting, in his July 31, 2007 letter to Honkala, that opposing counsel had provided a proposed preliminary injunction with his December 15, 2006 letter.

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<sup>1</sup> TR refers to the transcript of the hearing. TR (3/19/10) refers to the transcript of the argument before the Disciplinary Board.

BF 83 at 21-24.<sup>2</sup> (The relevant RPC are attached as Appendix B.) The hearing officer found that Van Camp acted knowingly with respect to counts 1-3 and 9 and intentionally to benefit himself with respect to counts 4-5, and that Honkala suffered injury. BF 83 at 24-25. Applying the American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards), the hearing officer found the presumptive sanction for Counts 1-3 and 9 was suspension under Standard 4.42 and the presumptive sanction for Counts 4-5 was suspension under Standard 7.2. Id. (The applicable ABA Standards are attached as Appendix C.) The hearing officer found one mitigating factor (reputation as a successful litigator) and five aggravating factors: prior disciplinary offenses, dishonest or selfish motive, bad faith obstruction of the disciplinary process, refusal to acknowledge wrongful nature of conduct, and substantial experience in the practice of law. BF 83 at 25-29. She recommended a two-year suspension and restitution of \$15,000. BF 83 at 29-30.

The Disciplinary Board heard oral argument at its March 19, 2010 meeting. TR (3/19/10) 1-33. By a vote of seven to three, the Board

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<sup>2</sup> The hearing officer numbered her factual findings sequentially but did not so number the remaining paragraphs. We cite to the factual findings by paragraph number and to the conclusions and recommendation by page number.

increased the recommended sanction to disbarment. BF 111 (attached as Appendix D).<sup>3</sup> For Counts 4 and 5, the Board adopted the hearing officer's findings but increased the presumptive sanction to disbarment because the findings supported a conclusion that the client, the legal system, and the profession suffered serious injury. Id. at 2-3. The Board also found that the record supported an additional aggravating factor, indifference to making restitution. Id. at 3. It concluded that the numerous aggravating factors outweighed the mitigating factor and justified disbarment. Id. at 4-5. In addition, the Board agreed with the hearing officer's recommendation that Van Camp refund \$15,000 to Honkala. Id. at 4.<sup>4</sup>

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<sup>3</sup> The dissent favored a three-year suspension. BF 111 at 1 n.2.

<sup>4</sup> In his brief, Van Camp trumpets that he refunded \$15,000 to Honkala but fails to mention when he did so. See Respondent's Brief (RB) at 6, 9, 11, 17, 33, 42. The evidence before the hearing officer and Disciplinary Board was that Van Camp made no refund to Honkala and would not do so until Honkala submitted to arbitration. TR 252; BF 83 ¶ 80, TR (3/19/10) 15-16. The only evidence of any refund was supplied to this Court by Van Camp with his response to the order to show cause for his interim suspension. See Lawyer's Answer to Motion for Interim Suspension at 3 and appendices. That evidence showed that Van Camp sent Honkala a refund check on May 5, 2010—more than three years after he took Honkala's money, eight months after the hearing officer recommended that he make the refund, six weeks after the Disciplinary Board agreed and recommended his disbarment, four weeks after the Association petitioned for his interim suspension, and one day before his answer to the petition was due. The record on review in disciplinary matters consists of the record before the hearing officer and Board. ELC 12.5. "[T]he record for review must be accepted as it was made, as of the time it was made." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 21, 482 P.2d 775 (1971). The Court should strike Van Camp's reference to events that occurred long after the record in the case was complete. Nelson v. McGoldrick, 127 Wn.2d 124, 141, 896 P.2d 1258 (1995).

## **B. SUBSTANTIVE FACTS**

### **1. Van Camp's Background**

As of the 2009 disciplinary hearing, Van Camp had been a litigator in Spokane for 36 years and had handled 37 cases in the Eastern District of Washington. TR 694-95, 945; BF 83 FF ¶ 1. He is, in his words, a “very expensive attorney” who “make[s] a lot of money.” TR 798.

### **2. Wendle Motors v. Honkala**

As of the 2009 disciplinary hearing, Randy Honkala was unemployed and had been receiving disability payments for depression and ADD for over four years. He has a high-school education. TR 133-34; BF 83 FF ¶ 3. His wife worked as an accountant. TR 427. They have three children. TR 133.

Honkala restored cars as a hobby. BF 83 FF ¶ 3. In 2006 he worked briefly as a salesman at Wendle Motors (Wendle) in Spokane. TR 149-53. At the time he left he had placed orders with Wendle for two Mustang Shelbys, which are specialty cars in high demand. TR 153-33. Honkala planned to keep one car and hoped to re-sell the other for a \$10,000 profit. TR 160-61; BF 83 FF ¶ 5. But Honkala was unhappy with the condition of one of the cars on delivery. TR 154-55, 164-68; BF 83 FF ¶ 6. Although Wendle took the car back, Honkala lost \$5,000 in expenses and any expectancy of a profit. TR 164-65. When he later

learned that Wendle listed the defective car for sale at a profit, he began a campaign of retaliation. He posted derogatory comments about the car and Wendle's conduct on the Internet and contacted a potential purchaser to dissuade him from buying the car. TR 166-68.

In November 2006, Wendle sued Honkala and his wife in federal court for damages and injunctive relief. TR 34; EX 1-2; BF 83 FF ¶¶ 8-9. Richard Campbell represented Wendle. TR 32. In December 2006 the court held a telephonic TRO hearing at which Honkala appeared pro se. TR 39; EX 2, docket no. 9. Campbell told the court that his client wanted to explore resolving the case with Honkala. EX 4; BF 83 FF ¶ 10. Honkala agreed to stop his Internet postings and requested that any restraining order be mutual. EX 4; TR 40. The court entered a mutual restraining order and advised Honkala to get counsel. EX 4; BF 83 FF ¶¶ 10-11.

Campbell then moved for a preliminary injunction. TR 42. He also sent Honkala a proposed stipulation and permanent injunction to resolve the case, TR 42-43, but Honkala did not understand the term "permanent injunction" or that the case would be dropped if he agreed. TR 174-75; BF 83 FF ¶ 13. Honkala did not respond. TR 43, BF 83 FF ¶ 14. Instead, he decided to hire a lawyer. TR 175.

### 3. Honkala Hires Van Camp

Honkala found Van Camp's name in the phone book. TR 177. They met on December 15, 2006, at Van Camp's office. Id.; BF 83 FF ¶ 16. Honkala brought the material he had received from Campbell. TR 178-79. Van Camp gave him a "sales-type pitch" and expressed interest in taking the case. TR 180. They discussed the hourly rates charged by the various members of the firm and that Van Camp wanted a "retainer" of \$25,000. TR 179, 185; BF 83 FF ¶ 19. To Honkala, \$25,000 was "a lot of money," TR 189, but he felt he had no choice at that point. TR 185. Honkala told Van Camp that he wanted the case to "go away," although if that did not happen he was willing to fight. TR 180, 182-83. He wanted Van Camp to put enough pressure on Wendle that they would settle. TR 182, 197-98; BF 83 FF ¶ 20. Van Camp told Honkala he had a good case, that Wendle would pay him money, and advised him not to settle. TR 182, 402; BF 83 FF ¶¶ 16. Van Camp brushed off Campbell's proposed settlement without any substantive discussion or explanation. TR 233; BF 83 FF ¶ 23.

Van Camp directed Honkala to meet with a staff member who questioned Honkala in depth about the case and presented him with a form fee agreement. EX 6; BF 83 FF ¶¶ 25-26. With respect to fees, the agreement provided as follows:

THE ATTORNEY'S FEES SHALL BE:

A. An earned retainer of: \$25,000

B. An hourly rate, computed as follows:

Mr. Van Camp, Mr. Deissner, 250.00

Mr. Shaw, 100.00

Paralegals' 50.00

Secretarial 25.00

Hourly time when computed is one-half hour increments  
for attorneys and quarter-hour increments for all others.

Monies paid by the client shall be considered as earned  
towards the ultimate total fee, unless otherwise designated.

EX 6 (attached as Appendix E). A small graphic of a finger in the left hand margin pointed to the line stating "A. An earned retainer of: \$25,000." EX 6; BF 83 FF ¶¶ 28-29. But the fee agreement did not define the term "earned retainer," did not indicate that the fee was nonrefundable, and did not explain how the \$25,000 would be applied. EX 6. No one at the firm explained those concepts to Honkala, either. TR 187, BF 83 FF ¶¶ 19, 28-32. Honkala thought, based on his discussions with Van Camp and his prior experience in hiring a lawyer, that Van Camp would bill hourly against the \$25,000. TR 144, 185-86, 431; BF 83 FF ¶ 27.

Meanwhile, Van Camp phoned Campbell to introduce himself. TR 44-45. During this call Van Camp joked that Campbell would have to buy him a box of chocolates for all the money he would make for Campbell on the case. Id.; BF 83 FF ¶ 21. Campbell responded that his client really wanted to settle, TR 45, and, shortly thereafter, faxed a letter to Van Camp

reinforcing that point and referencing the “box of chocolates” remark. EX 7 (attached as Appendix F); BF 83 FF ¶ 22. As Honkala was about to leave Van Camp’s office that day, Van Camp appeared in the hallway holding a document in his hand, “evidently something from [Campbell].” TR 189. Van Camp told Honkala that he had spoken with Campbell and that Campbell was “sweating,” but he did not give Honkala a copy of the document or convey its contents. TR 189.

Although Campbell’s letter stated that a copy of a proposed permanent injunction was enclosed, the letter contained no enclosure. TR 46-47. Van Camp did not ask Campbell to provide the missing enclosure. TR 49; BF 83 FF ¶ 23. He did not then, or ever, respond to the offer in Campbell’s letter. TR 49; Campbell Deposition (June 18, 2009) at 19. He did, however, call Campbell’s office to complain that Campbell put the “box of chocolates” comment in writing, which Van Camp considered a breach of “protocol.” TR 118-19, 716; BF 83 FF ¶¶ 23-24.

#### **4. Van Camp’s Representation of Honkala**

Honkala returned to Van Camp’s office on December 18, 2006 to deliver the check for \$25,000, which he had borrowed against his home. TR 189-90. Van Camp promptly deposited the funds into his general account. EX 12.

Honkala met that day with lawyer Dustin Deissner, who told him he had 15 minutes to file a reply to the preliminary injunction motion and asked him to sign a declaration. TR 192-93; EX 10. Honkala told Deissner that the declaration contained inaccuracies, but Deissner said that the pleading was drafted in haste and there was not enough time to correct it. TR 193. Deissner filed the declaration and a two-page memorandum in opposition to the motion. EX 10-11; BF 83 FF ¶ 36. A few days later, the court granted the preliminary injunction and set a scheduling conference. EX 2, docket nos. 22, 23; BF 83 FF ¶ 38.

On February 21, 2007, in anticipation of the conference, Campbell wrote Van Camp seeking a response to the settlement offer contained in his December 15, 2006 letter. EX 13. Campbell knew the settlement issue would come up at the conference and his client “wanted to get this case over with.” TR 56. Van Camp did not respond to Campbell or forward the letter to Honkala. TR 60, 214; BF 83 FF ¶ 40. He performed no substantive legal work on Honkala’s case before the status conference. BF 83 at ¶ 41.

On March 5, 2007, Van Camp received a letter from the Honkalas that raised concerns about his handling of the case. EX 14. The letter stated that they wanted the case resolved “as quickly as possible.” Id. They also asked for copies of all documents that had been filed in the case

on their behalf (of which there were very few, see EX 2) and an itemized statement showing the charges that had been billed against the \$25,000 “retainer.” EX 14; BF 83 FF ¶¶ 44-45; TR 433. Eight days later, Van Camp responded with an email advising that the \$25,000 was a “flat fee” so he did not keep hours, but they would not be charged more fees. EX 17; BF 83 FF ¶ 46. The Honkalas were “shocked.” TR 209, 434. This was the first they had heard of a “flat fee” and had to look up the term on the Internet. TR 209, 434. They thought the \$25,000 would be applied to the time spent on the case. TR 434.

Honkala responded with an email asking for a copy of the fee agreement and copies of all documents filed or sent out on the Honkalas’ behalf, noting, “[w]e are out of the loop and want to know what’s going on.” EX 18; BF 83 FF ¶ 47. When more than two weeks went by without a response, Renee Honkala emailed Van Camp asking, again, for copies of whatever Van Camp had filed on their behalf and an update on “what steps you are taking to resolve this case.” EX 18. On March 30, 2007, Van Camp’s assistant sent the Honkalas a letter purporting to enclose “all documents we have in your file.” EX 21. The packet included a copy of the fee agreement and Campbell’s February 21, 2007 letter that referenced the December 15, 2006 settlement offer, EX 13, but did not include a copy of the December 15, 2006 letter itself. TR 214, 217, 437.

The Honkalas met with Van Camp on April 4, 2007. TR 218, 436. With respect to the fee, Van Camp told them that the reference to “earned retainer” in the fee agreement meant it was a flat fee, so that they would not be charged more money but, also, that they would not get any money back. TR 218, 402-03, 440-41. With respect to Campbell’s settlement offer, Van Camp “said something to the effect that they want you to say you’re guilty, now they want you to say you’re ugly too.” TR 439. He did not provide them a copy of the December 15, 2006 letter, did not explain the terms of the offer, and did not discuss any potential counter-offer. Id.

The Honkalas left the meeting with no clear idea of what was being done to resolve the case. TR 441. In addition, since Van Camp told them they would not receive any money back, they felt they could not fire him because they could not afford to start over with another lawyer. TR 403-04. Thus, they wanted to see some results. TR 221. But, while Van Camp responded to Wendle’s interrogatories, he performed no other substantive work on the case until July. BF 83 FF ¶¶ 47, 50.

Van Camp arranged a mediation for July 2007. TR 70, 224. He told Honkala that Wendle would be “sweating” and would pay money, so Honkala agreed. TR 224. Campbell insisted that Van Camp file an answer to the complaint, which was about six months overdue, before

mediation so he would “know what we’re actually fighting over.” TR 66. On July 20, 2007, some eight months after the lawsuit was filed, Van Camp filed an answer and counterclaims based on lost contract expectancy and defamation. TR 69; EX 23; BF 83 FF ¶ 50. Shortly thereafter, Van Camp met with the Honkalas to discuss the mediation. He led them to believe Wendle would pay money to settle the case. TR 478, 488.

The mediation occurred on July 25, 2007. TR 68. Van Camp raised the issue of Wendle paying Honkala’s attorney fees. TR 73. Wendle refused. *Id.* The case did not settle. TR 225; BF 83 FF ¶ 52. The parties never discussed the substance of settling the matter via a permanent injunction. TR 75.

At the mediation, the Honkalas learned of the December 15, 2006 letter Campbell had sent Van Camp containing “some type of offer.” TR 225. They had no way of knowing whether the offer was similar to or different from the one Campbell had sent Honkala initially. TR 227. The next day, they asked Van Camp for copies of the December 15, 2006 settlement offer and other documents and stressed that they wanted the case resolved “as quickly as possible.” EX 24; TR 226, 444; BF 83 FF ¶ 53. In response, Van Camp’s office sent the Honkalas a copy of the answer he filed and some documents but did not include either Campbell’s

December 15, 2006 letter or the proposed permanent injunction. EX 25; BF 83 FF ¶ 55.

Frustrated, the Honkalas requested copies of those documents again. TR 445-46; EX 26. On July 31, 2007, Van Camp sent them an altered version of Campbell's December 15, 2006 letter. EX 28; BF 83 FF ¶¶ 56-59.<sup>5</sup> In the cover letter, Van Camp represented that the document Campbell had enclosed with this letter was the motion for preliminary injunction that had been served on Honkala and granted by the court. EX 28; TR 230. But what Campbell proposed in his letter was a permanent injunction, not the motion for a preliminary injunction. TR 43, 232. This was a knowing misrepresentation. BF 83 at 24.

On August 1, 2007, the Honkalas emailed Van Camp yet again asking to receive a copy of the proposed permanent injunction. EX 29. On August 3, 2007, Van Camp responded that he did not have a copy of the document. EX 31. That same day, his staff asked Campbell to send a copy. EX 30; BF 83 FF ¶ 61. Campbell faxed the document to Van Camp on August 6, 2007, along with a letter stating that Wendle would agree to a dismissal with prejudice without costs or attorney fees in exchange for

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<sup>5</sup> The copy of the December 15, 2006 letter that Van Camp provided to the Honkalas had been altered to delete the reference to the box of chocolates and Wendle's desire to settle the case promptly. Compare EX 28 with EX 7. The Association charged Van Camp with altering the letter or instructing his staff do so. BF 83 at 3 (Counts 7-8). The hearing officer found that the Association had not met its burden of persuasion. BF 83 FF ¶ 79.

the stipulated permanent injunction. EX 33. Van Camp did not forward this letter to the Honkalas. TR 409, 485.

Meanwhile, on August 3, 2007, the Honkalas filed a grievance with the Association based on Van Camp's failure to communicate settlement offers to them and on the nonrefundable "earned retainer." EX 60; TR 235-37. After Van Camp received the grievance he wrote the Honkalas asking if they still wanted to pursue settlement. EX 36; BF 83 FF ¶ 63. Honkala responded with a lengthy email reiterating that they wanted to settle. EX 37.

On August 21, 2007, Honkala emailed Van Camp reminding him, yet again, that they wanted to settle but still had not yet seen a written proposal. EX 41. Renee Honkala sent a similar email the next day. EX 44. Van Camp received another copy of the stipulation and proposed permanent injunction from Campbell on August 22, 2007. EX 47. He finally sent the Honkalas a copy of the permanent injunction on August 31, 2007. TR 479, 485. It is unclear from the record when, if at all, he forwarded Campbell's August 6, 2007 or August 22, 2007 letter to them. TR 486-87.

On August 31, 2007, Honkala fired Van Camp because Van Camp had not adequately explained the "earned retainer," transmitted Campbell's settlement offers, or resolved the case. EX 55; TR 250-52. In

the termination letter, Honkala asked for a statement of costs and a refund of the balance of the retainer. EX 55. He got neither. TR 252.

On September 4, 2007, the next business day, Honkala contacted Campbell and began working out a settlement, which was accomplished in a few days. EX 57; TR 83-87; TR 254-55. The terms of the settlement were similar to what Campbell had proposed in December 2006 in that the parties agreed to abide by the terms of the preliminary injunction, but the agreement stated specifically that the case would be dismissed. TR 87. The Honkalas hired lawyer John Loeffler to help finalize the settlement. Loeffler charged them a total of \$500 for his services. TR 127-29.

#### **5. Van Camp's Responses to the Bar Investigation**

Van Camp responded to the Honkalas' grievance on August 21, 2007, before he was fired. EX 61. He said that he had explained to them that the term "earned retainer" meant that the fee would not exceed \$25,000 and that he would take the entire amount without billing against it. He claimed he had "already done sufficient work to earn most of the fee," EX 61 at 1, but indicated that, after the case ended, he would review the fee with Honkala and either refund some of it or submit to arbitration. Id. at 2. He also said that a proposed permanent injunction "was never included in correspondence to me," EX 61 at 2, despite, at a minimum, the transmittal from Campbell to him on August 6, 2007. EX 33. Finally, he

stated the discovery cutoff, which was three weeks away, see EX 16, “has not yet approached,” EX 61 at 2, that he was waiting until after the mediation to conduct “extensive discovery,” and now had “depositions set up.” EX 61 at 2. By that time, however, he had set only one deposition—that of Chud Wendle. TR 78.

In October 2007, Van Camp submitted an additional response along with reconstructed time records and declarations from himself and Deissner about how much time they spent on the case. EX 62-65. As to the reconstruction, Van Camp declared, under penalty of perjury, that he had reviewed the Honkala file and estimated the time spent “to the best of my ability.” EX 63; TR 780, 784; see also TR 790 (Van Camp’s testimony that, if the time estimates were unrealistic, it was because they were too low). He stated that any dispute regarding the fee agreement was a “moot point” because the reconstruction showed that the firm’s fees calculated on an hourly basis exceeded the \$25,000 retainer. EX 65 at 2. Van Camp said he was willing to “hold my fees to \$25,000” but would submit to fee arbitration. EX 65 at 6. But, by that time, Honkala had lost trust in Van Camp and wanted no further dealings with him outside of the grievance process. TR 376.<sup>6</sup>

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<sup>6</sup> At hearing, Van Camp acknowledged that Honkala was due a refund but attributed his failure to pay it to Honkala’s decision to forgo arbitration TR 952.

At hearing, Van Camp's then-paralegal, Christian Barber, testified for Van Camp about the reconstructed records. He said he created the time records by going through the file and estimating or conferring with the attorney about the time that it took to prepare particular documents. TR 598, 600-601. In rebuttal, by which time he had been terminated from Van Camp's firm, TR 895-99, Barber clarified his direct testimony about the reconstruction. TR 877-92. He said that when he first went through the file and calculated the work performed in minimum .10-hour increments, the resulting total was between \$8,000 and \$10,000. TR 880. Van Camp told him the result was too low and instructed him to recalculate using minimum .50-hour increments. Id. When he did so, the total increased to between \$16,000 and \$20,000. TR 881. Van Camp said that figure still was too low. TR 882. Barber replied that the only way to make it higher was to alter the document to show that he, Van Camp, had reviewed every document or letter that came in. Van Camp instructed him to do so. TR 882. That adjustment pushed the total to between \$25,000 and \$30,000. TR 883. Barber created additional versions of the reconstruction, with "the final cut," TR 885, showing a total of roughly \$33,000. TR 883; compare EX 64 with EX 65 at Bates no. 73-78.<sup>7</sup>

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<sup>7</sup> The documents Van Camp provided the Association in October 2007 contained two different reconstructions, one with hourly fees totaling \$33,209.08, EX 64, and another with hourly fees totaling \$25,652.49, EX 65 at Bates no. 73-78.

## 6. Van Camp's Prior Discipline

In 1985, Van Camp received a censure for violating (1) DR 2-106(a) and DR 2-107(a)(3) by charging an excessive fee, (2) DR 1-102(5) and DR 1-102(4) by engaging in conduct prejudicial to the administration of justice and making misrepresentations to the court and the Association, (3) DR 5-105(a) and (b) by engaging in potential conflicts of interest, (4) DR 5-103(b) by making loans to a client, and (5) DR 7-110(b) by having an ex parte hearing without notice to the other party. EX 67. He also was required to pay restitution of \$29,000 to his client due to the excessive fee. Id. at 28.

In 2002, Van Camp was suspended for six months for violating former RPC 3.1, RPC 3.3(a)(1) and RPC 8.4(c) by making false statements in his bankruptcy proceeding. EX 68-70.

In 2005, Van Camp was reprimanded for violating (1) former RPC 1.4(b) by using the term "earned retainer fee" in a fee agreement without clearly defining the term, and (2) former RPC 1.14(a) by removing funds from his trust account before they were fully earned. EX 71-74. With respect to Van Camp's failure to explain the term "earned retainer fee," the hearing officer in that case found it was a "close call" whether Van Camp acted negligently or intentionally "to avoid the requirements of the

RPC.” EX 71 at 9. The hearing officer gave Van Camp “the benefit of the doubt.” Id. at 10.

### **III. SUMMARY OF ARGUMENT**

Van Camp represented Randy and Renee Honkala, who were defendants in a federal suit. They paid him \$25,000, which he later claimed was nonrefundable. Although the Honkalas told Van Camp they wished to settle their case and repeatedly asked to see documents relating to it, he failed to provide or explain a settlement proposal made by opposing counsel at the outset of the representation. After eight months, the Honkalas fired Van Camp and quickly settled the case on their own. Although Van Camp did little either to settle the case or advance the Honkalas’ position, he failed to refund any fees. And, in response to the Honkalas’ grievance, he gave the Association trumped-up time records to make it appear that he had earned the whole fee.

The primary issue on appeal is the sanction. The hearing officer found, among other things, that Van Camp knowingly deceived Honkala by presenting him with an ambiguous fee agreement, which Van Camp drafted expressly to benefit himself, and that he failed to perform work to justify the \$25,000 fee yet refused to make any refund. But, because the hearing officer concluded—without explanation—that Van Camp’s conduct caused “injury” rather than “serious injury,” she applied a

presumptive sanction of suspension. Ultimately, she recommended that Van Camp be suspended for two years and pay restitution of \$15,000. The Disciplinary Board increased the recommended sanction to disbarment because it concluded that Van Camp's knowing use of an ambiguous fee agreement, failure to perform work to justify his fee, and refusal to make any refund for over three years caused serious injury to his clients and the legal system.

The Court should adopt the Board's disbarment recommendation for two independent reasons. First, when the hearing officer and Board differ as to sanction, the Court gives more weight to the Board given its unique perspective and experience with the broad range of disciplinary matters. Here, in light of Van Camp's withholding significant sums from his client for years, the Board properly concluded that Van Camp's misconduct caused "serious" injury, justifying disbarment. Second, both the hearing officer and the Board found multiple, serious aggravating factors, including Van Camp's recidivism. This is his fourth disciplinary proceeding over the past 25 years, and he has been sanctioned for conduct similar to that found here. The facts demonstrate that he simply cannot be trusted to practice law within the confines of the ethical rules. Thus, regardless of whether the Court finds the injury "serious," disbarment is the only sanction that will adequately protect the public.

#### IV. ARGUMENT

##### A. STANDARD OF REVIEW

Unchallenged findings of fact are verities on appeal. In re Marshall, 160 Wn.2d 317, 330, 157 P.3d 859 (2007). Failure to brief challenges to factual findings precludes appellate review. In re Whitney, 155 Wn.2d 451, 466-67, 120 P.3d 550 (2005).

The Court upholds challenged factual findings if they are supported by substantial evidence, which is evidence “sufficient to persuade a fair-minded, rational person of the truth of a declared premise.” Marshall, 160 Wn.2d at 330 (quotation omitted). 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. In re Cramer (Cramer I), 165 Wn.2d 323, 332, 198 P.3d 485 (2008). Parties challenging factual findings must present argument as to why the findings are unsupported by the record. Marshall, 160 Wn.2d at 331. The Court will 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 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). And, where the sanction recommendations of the hearing officer and Disciplinary Board differ, the court gives greater weight to the Board "based on the Board's unique experience and perspective in the administration of sanctions." In re Preszler, \_\_\_ Wn.2d \_\_\_, 232 P.3d 1118, 1126 (2010).

**B. BECAUSE VAN CAMP FAILED TO BRIEF OR ARGUE HIS ASSIGNMENTS OF ERROR, THE FINDINGS OF FACT ARE VERITIES**

RAP 10.3(a)(6), which applies to these proceedings under ELC 12.6(f), states that a party must provide argument in support of the issues presented for review, together with citations to the record and legal authority. Although Van Camp assigns error to eight of the hearing officer's factual findings, RB at vi-vii, he fails to support those assignments with any argument whatsoever.<sup>8</sup> Accordingly, these assignments of error are abandoned. Valley View Indus. Park v. City of Redmond, 107 Wn.2d 621, 630, 733 P.2d 182 (1987) ("[a] party abandons assignments of error to findings of fact if it fails to argue them in its brief"). All the hearing officer's findings become verities on appeal. Whitney, 155 Wn.2d at 466-67.

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<sup>8</sup> Van Camp raised the same issues before the Disciplinary Board. BF 101 at iii-iv. The Board affirmed all but one finding, which the Association had conceded should be corrected. BF 111 at 1-2.

**C. THE FINDINGS OF FACT SUPPORT THE CONCLUSIONS OF LAW**

Van Camp challenges the conclusion of law (COL) for each count the hearing officer found was proven. As set forth below, the findings support the conclusions.

**1. Count 1 (COL 2): Violation of RPC 1.2**

RPC 1.2(a) provides that a lawyer must abide by the client's objectives with respect to the representation. The hearing officer found Van Camp violated this rule by, among other things, failing to abide by Honkala's instructions throughout the representation and failing to assist him in making informed decisions regarding settlement. BF 83 at 21.<sup>9</sup> Although Van Camp again claims that he tried to abide by Honkala's objectives, RB at 23-28, the hearing officer rejected his excuses. "A hearing officer is not bound by various explanations if he or she is not persuaded by them." In re Whitt, 149 Wn.2d 707, 722, 72 P.3d 173 (2003); see also Marshall, 160 Wn.2d 331.

The hearing officer recognized that Honkala instructed Van Camp both to pursue the litigation more aggressively and to settle, but found that

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<sup>9</sup> Van Camp claims that COL 2 is at odds with the hearing officer's finding about Honkala's position at the mediation, citing Finding 52. RB at 30. But the finding Van Camp references in his brief was modified by the hearing officer in her amended decision to read: "Honkala hoped Wendle would pay him money as part of a settlement." BF 89 at 2. Honkala's expectation in this regard is unsurprising given that Van Camp told him that Wendle would settle and pay him money. TR 224, 478, 488.

Van Camp failed to advance either course. BF 83 FF ¶ 67; see also BF 83 FF ¶¶ 36, 37, 39, 41, 47, 50, 64, 66. Contrary to Van Camp's view, the hearing officer reasonably could find that pursuing the litigation aggressively was consistent with settlement: had Van Camp pursued the counterclaims aggressively, Wendle might have felt pressure to settle, which was Honkala's goal. See id. FF ¶ 20. Moreover, due to Van Camp's failure to communicate, Honkala was unaware that Wendle wanted to settle from the outset. The findings fully support the conclusion that Van Camp violated RPC 1.2 by failing to abide by his clients' objective or to counsel them on how to achieve it.

**2. Count 2 (COL 3): Violation of RPC 1.3**

RPC 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. The hearing officer found that Van Camp violated this rule by failing to respond to Wendle's offers to settle contained in Campbell's December 15, 2006 letter and subsequent communications. BF 83 at 21. Specifically, the unchallenged findings reflect that the Honkalas wanted to resolve the case quickly, BF 83 FF ¶¶ 45, 47, 49, 67, but did not understand the proposal sent by Campbell, id. FF ¶¶ 13-14, and that Van Camp did not explain that the action could be

dismissed if he agreed to the permanent injunction. Id. FF ¶ 20.<sup>10</sup> Moreover, because Van Camp failed to provide the Honkalas with a copy of the settlement document he received from Campbell, they had no way to know whether the terms were the same as or different from what they had received initially. TR 42-43, 174-75, 227. The unchallenged findings further reflect that Van Camp never responded to Campbell's offer, despite Campbell's specific request for a response. BF 83 FF ¶ 23, 40.<sup>11</sup> The findings fully support the conclusion that Van Camp failed to act diligently to advance his clients' goals.

### **3. Count 3 (COL 4): Violation of RPC 1.4**

RPC 1.4 requires a lawyer to, among other things, keep clients reasonably informed, respond to reasonable requests for information, and provide clients adequate information to allow them to make informed choices about the representation. The hearing officer found Van Camp violated this rule by failing to provide the Honkalas with copies of correspondence and settlement proposals, BF 83 at 21, again rejecting Van

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<sup>10</sup> Van Camp argues that he had no duty to communicate the offer regarding the permanent injunction because Honkala had received and rejected it, RB at 31, but cites no authority to support the notion that a lawyer need not explain a settlement offer to a client if the client obtained it before the representation began. In this case, Honkala testified that the very reason he hired a lawyer was because he didn't understand what Campbell had sent him. TR 175.

<sup>11</sup> If, as Van Camp suggests, RB at 31-32, his failure to respond to the settlement offer was strategic, he never discussed such a strategy with his client. "No judgment is good judgment if it lacks the knowledge and approval of one's client." In re Kennedy, 97 Wn.2d 719, 723, 649 P.2d 110 (1982).

Camp's various explanations. See Whitt, 149 Wn.2d at 722. Specifically, she found that Van Camp received an offer from Campbell on the same day that Honkala hired him, and a subsequent written request for a response to the offer, but did not timely tell his clients about the offer despite their repeated requests for information. BF 83 FF ¶¶ 22-23, 53, 55. The hearing officer rejected Van Camp's claim that he was "confused," instead finding that he withheld the settlement offer deliberately to prolong the litigation to justify his fee. EX 83 at 24-25, 27. The unchallenged findings support the conclusion that Van Camp violated RPC 1.4 by failing to communicate the settlement offer to his clients.

**4. Count 4 (COL 5): Violation of RPC 1.4(b) and 1.5(b)**

RPC 1.4(b) requires lawyers to provide clients adequate information to allow them to make informed choices about the representation. RPC 1.5(b) requires lawyers to communicate with clients about the basis for the fee. The hearing officer found that Van Camp violated these rules by failing to advise Honkala how the fee would be calculated or the payment applied, by failing to describe the scope of the work to be performed, and by presenting Honkala with a fee agreement that was ambiguous with respect to the "earned retainer." BF 83 at 21-22. The unchallenged findings support the findings as to the ambiguity of the agreement, Honkala's lack of understanding that an "earned retainer"

would be nonrefundable, and Van Camp's failure to explain it. BF 83 FF ¶¶ 19, 27, 30-32.<sup>12</sup> The hearing officer rejected Van Camp's disputed testimony that he explained the agreement to Honkala, and that he believed its terms were clear. See Whitt, 149 Wn.2d at 722; Marshall, 160 Wn.2d at 331.

**5. Count 5 (COL 6): Violation of RPC 1.5(a)**

RPC 1.5(a) prohibits a lawyer from charging an unreasonable fee. The hearing officer found that the \$25,000 fee in this case was unreasonable under the circumstances. BF 83 at 22.

Van Camp initially suggests that this case raises a "fee dispute" that should not be addressed by lawyer discipline, citing In re Behrman, 165 Wn.2d 414, 422-23, 197 P.3d 1177 (2008). RB at 33. His reliance on Behrman is misplaced because that case did not involve a challenge to the reasonableness of the fee under RPC 1.5. Lawyer discipline is the proper forum to review the reasonableness of a lawyer's fee under the RPC. In re Boelter, 139 Wn.2d 81, 96-97, 985 P.2d 328 (1999); see also In re VanDerbeek, 153 Wn.2d 64, 81-84, 101 P.3d 88 (2004) (lawyer

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<sup>12</sup> Van Camp cites a portion of Finding 19 to claim that he did explain the fee to Honkala. RB at 39. The finding states in pertinent part, "Respondent told Honkala that if the case settled within a week he would refund most of the \$25,000 retainer." BF 83 FF ¶ 19. But this finding is fully consistent with Honkala's view that the matter was being handled hourly, for if little work was performed most of the fee would be refunded. If anything, this finding explains why Van Camp failed to give Honkala a copy of Campbell's letter containing the settlement offer, which he received the day Honkala hired him.

violated former RPC 1.5 by knowingly inflating time and overbilling); In re DeRuiz, 152 Wn.2d 558, 574-75, 99 P.3d 881 (2004) (lawyer violated former RPC 1.5 by accepting “nonrefundable” fee and neither completing the work nor refunding the fee).

Van Camp also raises the remarkable claim that the RPC 1.5(a) charge is a “red herring” since “no fee amount has ever been determined.” RB at 41. He maintains that he “hasn’t finally charged any fee” because he offered to arbitrate but Honkala refused, and because he has refunded \$15,000 to Honkala. RB at 42. These arguments are meritless.

With respect to the offer to arbitrate, Honkala had good reason to be skeptical. See TR 376. Van Camp’s offer was predicated on his claim that his hourly fees exceeded \$25,000,<sup>13</sup> as supported by reconstructed time records that the hearing officer found were a “grossly over-inflated fabrication of time and services.” BF 83 at 28. In context, the arbitration “offer” was a thinly-veiled threat that Honkala might have to pay additional fees if he pursued the matter. See EX 65 at 6. Nothing about the offer undermines the conclusion that Van Camp charged Honkala an unreasonable fee.

As for the refund, Van Camp refused to pay Honkala a dime for years. He did so only after the hearing officer recommended he refund

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<sup>13</sup> See EX 61 at 1 and EX 65 at 2, 6.

\$15,000 and the Disciplinary Board agreed and recommended his disbarment. See supra at 4 n.4. Even then, he delayed until the day before his answer to the interim suspension petition was due. Id. The Court should strike all references to this contrived “evidence” from the brief. Id. But, even if the Court considers it, Van Camp’s belated repayment does not make the fee reasonable or undercut the fact that he failed to make any refund for years. “Ending misconduct does not erase . . . that misconduct which has already occurred.” In re Dann, 136 Wn.2d 67, 83-84, 960 P.2d 416 (1998). Moreover, the timing of the refund makes clear that Van Camp “act[ed] in fear of punishment, not out of an earnest desire to remedy the damage and admit liability.” Preszler, 232 P.3d at 1131.

The hearing officer found that Van Camp retained the full \$25,000 fee even though he was dismissed before completing discovery and failed to obtain any relief or results for his client. BF 83 FF ¶¶ 36-37, 41, 47, 50, 64, 66-67; see DeRuiz, 152 Wn.2d at 574-75; RPC 1.5(a)(1), (4). She noted specifically that Van Camp’s legal experience did not benefit his clients. BF 83 at 29; see RPC 1.5(a)(7). And she did not credit Van Camp’s claim that his lack of effort reflected a strategy to delay work to his client’s benefit. Since the Honkalas had paid him up front, there was no financial savings to them to postpone work. To the contrary, that approach contravened their objective of a speedy resolution. As the

hearing officer found, the \$25,000 advance fee, which Van Camp considered nonrefundable, “created a disincentive to [him] to invest any significant effort in defending the case or pursuing the client’s counterclaims.” BF 83 at 27. And Van Camp’s failure to timely advise his clients about the settlement proposal dragged the case out for months. BF 83 at 24-25. Once the Honkalas fired him, they quickly settled on their own, requiring only \$500 in legal fees to review the settlement documents. BF 83 FF ¶¶ 72-74. The unchallenged findings fully support the hearing officer’s conclusion that the \$25,000 fee was unreasonable.

**6. Count 9 (COL 9): Violation of 8.4(c)**

RPC 8.4(c) prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. The hearing officer found that Van Camp’s July 31, 2007 letter to the Honkalas, in which he told them that Campbell’s December 15, 2006 letter had included a preliminary injunction, EX 28, violated this rule. BF 83 at 24. Van Camp argues that the letter contains “factual errors” but no misrepresentation, RB at 45, but the hearing officer did not believe him. See Whitt, 149 Wn.2d at 722. The record reflects that Campbell already had filed a motion for a preliminary injunction when he sent the December 15, 2006 letter. EX 2, docket nos. 11-12. That letter proposed, instead, a permanent injunction as a means for resolving the lawsuit. EX 7. Van Camp, however, told his clients that

Campbell's letter had proposed a preliminary injunction, which, by the time he wrote the letter, had been in place for seven months. "[I]t is the province of the finder of fact to determine what conclusions reasonably follow from the particular evidence in the case." State v. Bencivenga, 137 Wn.2d 703, 711, 974 P.2d 832 (1999). The findings support the inference that Van Camp knowingly withheld information about the settlement proposal in a deliberate attempt to prolong the litigation and make it appear that the charged fee was reasonable. BF 83 at 25.

**D. THE COURT SHOULD ADOPT THE DISCIPLINARY 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 Disciplinary Board Properly Found That the Presumptive Sanction for Counts 4 and 5 Is Disbarment**

ABA Standard 7.0 applies to the violations regarding the fee and fee agreement charged in Counts 4 and 5. Standard 7.1, disbarment, applies if the lawyer acts knowingly with the intent to benefit the lawyer

or another and causes serious injury or potential injury; Standard 7.2, suspension, applies if the lawyer acts knowingly and causes injury or potential injury. The hearing officer found that the presumptive sanction was suspension because the injury was not “serious,” even though she found Van Camp intended to benefit himself:

Respondent knowingly deceived the client by presenting his client with a fee agreement which was ambiguous, and which contained a term the meaning of which was not fully communicated to the client. Respondent did not provide legal services warranting a fee of \$25,000.00, and he refused voluntarily to refund any portion of the fee to the client. . . . The client suffered financial injury and the fee agreement was drafted expressly and knowingly by the Respondent with the intent to benefit the lawyer. Respondent’s conduct did not cause *serious or potentially serious* injury which would warrant consideration of Standard 7.1, but did cause injury to the client.

BF 83 at 25 (emphasis in original). The hearing officer did not otherwise explain why the injury to Honkala was not “serious.” The Board increased the presumptive sanction to disbarment because it concluded that the hearing officer’s factual findings “establish serious injury to Mr. Honkala and to the legal system or profession.” BF 111 at 3.

**a. The level of injury supports disbarment**

Van Camp argues that the Board erred in increasing the presumptive sanction because the hearing officer’s determination of

“injury” is a factual finding that must be afforded deference. RB at 12-13.

This argument fails for several reasons.

To begin with, review is de novo because the determination of the level of injury is a legal conclusion, not a factual finding. See ELC 11.12 (Board reviews legal conclusions de novo). “If a determination concerns whether evidence shows that something occurred or existed, it is properly labeled a finding of fact, but if the determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law.” State v. Neidergang, 43 Wn. App. 656, 658-59, 719 P.2d 576 (1986). With respect to injury, the determination of what injury occurred (or potentially could have occurred) is a factual finding, but the determination of whether that injury is “serious” involves applying law to facts. That’s what happened here: the Board accepted the hearing officer’s factual findings but reached a different conclusion as to whether these facts established “serious” injury.

De novo review by the Board is appropriate. The term “serious” is not defined by the ABA Standards. The interpretation of the term should not conclusively be left to the potentially idiosyncratic view of an individual hearing officer. Since the Board “is the only body to hear the full range of disciplinary matters,” In re Cohen, 150 Wn.2d 744, 754, 82 P.3d 224 (2004), it is better suited to evaluate the level of injury caused by

a lawyer's misconduct and to apply the "seriousness" standard evenhandedly across cases. Further, de novo review by the Board is consistent with the Court's general policy of giving more weight to the Board's sanction determination than to that of the hearing officer, given the Board's experience in determining sanction. Id. It is also consistent with the recent decision in Preszler, 232 P.3d at 1128, where the Court adopted the Board's conclusion that the client suffered "ordinary" injury over the hearing officer's implied finding of serious injury.

The Board's decision here was appropriate. Despite Van Camp's efforts to generate a factual dispute about Honkala's assets, RB at 9-10,<sup>14</sup> Honkala testified that the \$25,000 fee was "a lot of money" for him. TR 189. Yet, as the hearing officer found and the Board agreed, Van Camp should have refunded \$15,000 to Honkala years ago. In the criminal context, the legislature has determined that the intentional deprivation of sums over \$5,000 is sufficiently serious to constitute first degree theft, a class B felony. RCW 9A.56.030. The Court should adopt the Board's conclusion that Van Camp's long-term retention of three times that amount in unearned fees constitutes "serious" harm.

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<sup>14</sup> Van Camp asserts, for example, that Honkala was trying to sell his "valuable home." RB at 10. But the record contains no evidence of the value of Honkala's home, other than that he had to borrow against it to come up with Van Camp's fee. TR 189-90.

In addition, in cases like this one, serious injury may be inferred based on the nature of the misconduct. In People v. Espinoza, 35 P.3d 552 (Colo. 2001), as here, the lawyer “knowingly inflated her hourly billings to her client in an effort to justify the unreasonable retention of a portion of a professional fee held for the benefit of the client.” Id. at 559. The Espinoza court ruled that “[w]hen an attorney exercises dominion and control over funds of a client and refuses to return those funds after a proper demand, serious injury to the client may be inferred.” Id.

Finally, the Board properly found serious injury not only to Honkala but, also, to the legal system and profession. BF 111 at 3. A lawyer who repeatedly uses ambiguous fee agreements to the detriment of his clients, who retains fees far in excess of those earned, and who blames his client for failing to take appropriate steps to obtain a refund damages the profession in the eyes of the public.

**b. The knowing and intentional nature of Van Camp’s conduct supports disbarment**

The ABA Standards define “intent” as “when the lawyer acts with the conscious objective or purpose to accomplish a particular result,” including when the lawyer acts to benefit himself. In re Vanderveen, 166 Wn.2d 594, 611, 211 P.3d 1008 (2009). Here, the hearing officer and Board found that (1) Van Camp “knowingly deceived the client by

presenting his client with a fee agreement which was ambiguous, and which contained a term the meaning of which was not fully communicated to the client,” BF 83 at 25; BF 111 at 3, and (2) the fee agreement “was drafted expressly and knowingly by Respondent with the intent to benefit the lawyer.” BF 83 at 25; BF 111 at 3, emphasis added. This finding of intent makes Van Camp’s mental state more culpable than that set forth in ABA Standard 7.2.

Van Camp argues that the hearing officer failed to find that he knew his fee agreement was ambiguous when he entered into it, so, at most, he was negligent. RB at 13-16. But, as the hearing officer found and the Board affirmed, Van Camp’s discipline just a year earlier for using the term “earned retainer fee” in his fee agreement without defining it supports the inference that Van Camp acted knowingly. BF 83 at 26-27; BF 111 at 3; see EX 71-74; accord In re Trejo, 163 Wn.2d 706, 725, 185 P.3d 1160 (2008) (prior discipline for similar misconduct supported finding of knowledge).<sup>15</sup> Although the hearing officer in the prior matter gave Van Camp the “benefit of the doubt” that his actions were negligent, EX 71 at 10, this hearing officer, unsurprisingly, did not. Her finding is afforded great deference. Trejo, 163 Wn.2d at 722.

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<sup>15</sup> Indeed, during his oral argument before the Board, Van Camp’s counsel conceded that the prior discipline provided notice to Van Camp of the need for full disclosure when using the term “earned retainer.” TR (3/19/10) at 17.

**2. The Hearing Officer and Disciplinary Board Properly Found That the Presumptive Sanction for Counts 1, 2, 3, and 9 Is Suspension**

Counts 1-3 and 9 deal with Van Camp's failure to abide by his clients' instructions to settle the case or to provide them with information and documents. The hearing officer applied ABA Standard 4.42, suspension. BF 83 at 24-25. Van Camp objects, stating that he acted negligently and that Honkala suffered no harm whatsoever. RB at 17. This argument fails as it relies on Van Camp's version of events, which the hearing officer rejected. See Marshall, 160 Wn.2d at 331.

First, as to mental state, the hearing officer found that Van Camp deliberately prolonged the litigation to justify his fee. BF 83 at 24-25. As above, this finding is afforded great deference, Trejo, 163 Wn.2d at 722, and is a reasonable inference from unchallenged findings and evidence in the record that (1) the clients repeatedly told Van Camp that they wanted to settle, BF 83 ¶¶ 20, 44, 47, 49, 53; EX 14, 18, 24, but he never explained Campbell's settlement offer to them and never responded to it himself, BF 83 ¶¶ 20, 23, 40; EX 24, 49; TR 49 60, 439; (2) the clients repeatedly asked Van Camp for information that he never provided, BF 83 ¶¶ 44-45, 47, 49, 55; EX 14, 18, 24, 26, 29, or, when he provided it, he misled them as to its significance, EX 28; and (3) he did little to move the case along. BF ¶¶ 37, 41, 50, 64, 67.

Second, as to harm, at a minimum Van Camp's failure to dispose of the case promptly cost his clients increased legal fees and the stress and frustration of protracted litigation. BF 83 at 25; see In re Lopez, 153 Wn.2d 570, 591, 106 P.3d 221 (2005).

**3. The Multiple, Serious Aggravating Factors—Including Van Camp's Long History of Discipline—Support Disbarment**

The hearing officer found five aggravating factors, BF 83 at 26-29, and the Disciplinary Board added a sixth. BF 111 at 3. Van Camp challenges only one of them, and that one only in part. RB at 20-21.

The uncontested aggravating factors are:

- Dishonest and selfish motive: Van Camp deliberately withheld information from his client that would facilitate a quick settlement to prolong the litigation in order to make his fee appear reasonable. BF 83 at 27;
- Bad faith obstruction of the disciplinary process: Van Camp submitted reconstructed time records in response to the grievance that were a "grossly over-inflated fabrication of time and services." BF 83 at 28. Fabrication of documents in response to a grievance constitutes serious misconduct. In re Burtch, 162 Wn.2d 873, 898-99, 175 P.3d 1070 (2008); Whitt, 149 Wn.2d at 720;
- Refusal to acknowledge wrongful nature of conduct: As to some charges, Van Camp admitted the facts but claimed they were not wrongful. The hearing officer found Van Camp's refusal to accept a share of responsibility particularly troubling in light of his prior misconduct. BF 83 at 28;
- Substantial experience in the practice of law: Van Camp has been a lawyer for 36 years. BF 29; TR 694; and

- Indifference to making restitution, Van Camp failed for years to refund any of the unearned fees. BF 111 at 3.<sup>16</sup>

The aggravating factor that Van Camp disputes is prior disciplinary offenses. The hearing officer found this factor applied based on Van Camp's long history of discipline: a censure in 1985, a six-month suspension in 2002, and a reprimand in 2005. BF 83 at 26-27; see EX 67-74. The 2002 suspension was for making false statements in his own bankruptcy petition, which the hearing officer noted "reflects poorly on Respondent's record for truthfulness and honesty, and is indicative of a serious disregard for upholding the integrity of the legal system and profession." BF 83 at 27. The 1985 censure and the 2005 reprimand were, respectively, for charging excessive fees<sup>17</sup> and improperly using the term "earned retainer" without explanation, as was the case here. The hearing officer noted, "Sadly, if the past record is any indicator of failing to adhere to the RPC's in his practice, there is a risk that Respondent may continue to engage in further RPC violations." BF 83 at 29.

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<sup>16</sup> This factor would apply even were the Court to consider Van Camp's belated refund to Honkala. In re Cramer (Cramer II), 168 Wn.2d 220, 238, 225 P.3d 881 (2010). And in Preszler, 232 P.3d at 1131, the Court held that, where, as here, the misconduct is knowing, restitution paid after a client demand is not in good faith. Any other result, the Court noted, would "give an incentive to culpable lawyers to withhold restitution until they are caught." Id.

<sup>17</sup> Because of the similarity, the hearing officer should not have considered the 1985 censure "somewhat remote." BF 83 at 27. The Court has found prior discipline for similar misconduct to be an aggravating factor even though the prior discipline occurred 17 years earlier. VanDerbeek, 153 Wn.2d at 92.

Van Camp objects to the Board's consideration of his 2005 reprimand because, he claims, the facts are not identical. Specifically, he argues that the confusion regarding the term "earned retainer" in the prior case involved the application of the "earned retainer" to fees versus costs, whereas in this case the confusion involved whether the "earned retainer" was refundable. RB at 20-21. But prior misconduct need not be identical for this aggravating factor to apply. See, e.g., Cramer II, 168 Wn.2d at 237. As the hearing officer observed, the significance of prior misconduct lies in its relationship to the prospect of future misconduct:

Known repetition clearly implies incorrigibility. Repeated misconduct after receiving the warning of a sanction short of disbarment can confidently be regarded as an ill omen for compliance in the future. The lawyer appears unable to profit from the warning, suggesting the need for sterner measures. Recidivism most strongly suggests a more severe sanction if the prior discipline was for misconduct that closely resembles the misconduct found in the pending case.

Charles Wolfram, Modern Legal Ethics 122-23 (1986).

This is Van Camp's fourth disciplinary proceeding in the past 25 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 Yates, 110 Wn.2d 444, 453, 755 P.2d 770 (1988); see also Burtch, 162 Wn.2d at 900-01 (disbarring lawyer

given his long disciplinary history); In re Kuvara, 149 Wn.2d 237, 261-62, 66 P.3d 1057 (2003) (same). Here, the record shows that Van Camp has not learned from his prior discipline, except perhaps to sharpen his practices. This aggravating factor should be given “great weight.” In re Brothers, 149 Wn.2d 575, 586, 70 P.3d 940 (2003).

In contrast to the multiple aggravating factors, the only mitigating factor cited by the hearing officer was Van Camp’s reputation as “a successful plaintiff’s personal injury attorney.” BF 83 at 26. This factor should be given little, if any, weight. Although the ABA Standards recognize a lawyer’s “character or reputation” as a mitigating factor, the factor should not apply unless the lawyer’s character or reputation relates in some way to characteristics such as honesty or integrity. The relevance to lawyer discipline of being a “successful” litigator is dubious.

In sum, the multiple, serious aggravating factors greatly outweigh the sole mitigating factor. In Cramer II, 168 Wn.2d at 237, the Court found that a less extensive set of aggravating factors would have justified disbarment in that case, even if it were not the presumptive sanction.<sup>18</sup> Similarly, even if disbarment were not the presumptive sanction here, it

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<sup>18</sup> The aggravating factors in Cramer II were prior discipline, bad faith obstruction of the disciplinary process, substantial experience in the practice of law, and indifference to making restitution. 168 Wn.2d at 237-38.

would be the proper sanction in light of Van Camp's long history of prior discipline and the other significant aggravating factors.

**4. The Disciplinary Board Dissent, Which Contains No Reasoning or Explanation, Provides No Grounds to Deviate From Disbarment**

The Court grants greater deference to the Board when it is unanimous. See Trejo, 163 Wn.2d at 734. Here, the Board voted seven to three for disbarment, with the minority voting to increase the recommended length of suspension from two years to three. BF 111 at 1 n.2.<sup>19</sup> But the minority provided no written dissent, so it is impossible to evaluate the soundness of its analysis. The mere fact of a split vote is insufficient to justify a lower sanction. See In re Christopher, 153 Wn.2d 669, 686, 105 P.3d 976 (2005) (declining to disturb Board's recommendation despite Board vote of six to four); Boelter, 139 Wn.2d at 104-05 (declining to disturb Board's recommendation despite Board vote of six to five). The issue remains whether sufficient grounds exist to reject the Board's recommendation. Trejo, 163 Wn.2d at 734. As noted above, the record supports the presumptive sanction of disbarment for two counts, and the aggravating factors support disbarment even if the presumptive sanction for all counts were suspension.

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<sup>19</sup> Van Camp asks the Court to impose a suspension of six months or less. RB at 20, 46. The Board, however, was unanimously opposed to anything less than a three-year suspension. BF 111 at 1.

**5. Van Camp 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 similarly situated, we take into account all of the lawyer's misconduct, including his record of prior disciplinary offenses, and especially any prior, similar misconduct.” Cramer II, 168 Wn.2d at 240. “The attorney facing discipline bears the burden of bringing cases to the court's attention that demonstrate the disproportionality of the sanction imposed.” Id. (quotation omitted).

Van Camp cites several cases in an effort to demonstrate disproportionality, RB at 18-20, but none is “similarly situated.” All the cases he cites involve ethical violations or presumptive sanctions different from those in this case.<sup>20</sup> See Preszler, 232 P.3d at 1136 (rejecting proportionality argument where cases were “not comparable because they deal with a different presumptive sanction and different charge of misconduct”). None of the cases Van Camp cites involves situations where the Court disapproved disbarment for misconduct anything like his.

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<sup>20</sup> Botimer, Hicks, Eugster, Cramer I, Trejo, Holcomb, and Poole I involved different misconduct and presumptive sanctions less than disbarment. DeRuiz involved some similar misconduct but a presumptive sanction less than disbarment. Plumb involved different misconduct but did not analyze the case under the ABA Standards so did not arrive at a presumptive sanction.

Furthermore, most of the cases Van Camp cites (Botimer, Hicks, Eugster, Holcomb, DeRuiz, and Plumb) involve lawyers who had no history of misconduct. They should be rejected for that reason alone. Burtch, 162 Wn.2d at 900. Disbarment is consistent with other cases disbaring lawyers with a significant history of misconduct. Id.; Kuvara, 149 Wn.2d at 261; Yates, 110 Wn.2d at 453.

**E. THE HEARING OFFICER PROPERLY EXERCISED HER DISCRETION IN RULING ON EVIDENCE**

Van Camp challenges two evidentiary rulings. RB at 21-23. Such rulings are reviewed for abuse of discretion. Marshall, 160 Wn.2d at 341. “An abuse of discretion occurs only when no reasonable person would take the view adopted.” In re Bonet, 144 Wn.2d 502, 510, 29 P.3d 1242 (2001). The hearing officer properly exercised her discretion here.

**1. The ELC Allow Rebuttal Witnesses. In Any Event, Van Camp Opened the Door to the Association’s Rebuttal Expert Witness by Calling an Expert Witness in His Case**

The Association’s witness list did not designate an expert witness but reserved the right to call witnesses in rebuttal. BF 31. Van Camp’s witness list named three experts to testify on the reasonableness of his fee. BF 38. The Association subsequently moved to amend its witness list to include Spokane attorney Leslie Weatherhead to testify as an expert concerning the reasonableness of Van Camp’s fee. BF 42. The hearing officer denied the amended designation as untimely. BF 44. At the close

of its case, the Association sought to make an offer of proof regarding Weatherhead's expert testimony. TR 506. But, during the defense case, Van Camp called an expert to testify that his fee was reasonable. TR 535-57. As a result, after the defense rested, disciplinary counsel moved to present testimony from Weatherhead in rebuttal. TR 800-01.

The hearing officer granted the motion on June 1, 2009. BF 57. Due to scheduling difficulties, the hearing recommenced on July 9, 2009—more than five weeks later, BF 59, and Van Camp presented surrebuttal on July 31, 2009—more than three weeks after that. See TR 909-10, 919. Van Camp did not seek any discovery as to Weatherhead at any time after the hearing officer granted the Association's motion.

Van Camp claims that the hearing officer erred in admitting the rebuttal testimony for two reasons. First, although he acknowledges that ELC 10.13(d) allows parties to "submit rebuttal evidence," he contends that the word "evidence" in this rule should be limited to exhibits or previously-disclosed witnesses. RB at 22. This argument fails. The Court interprets court rules to give effect to their plain meaning. In re King, 168 Wn.2d 888, 899, 232 P.3d 1095 (2010). Familiar legal terms are given their familiar legal meanings. Rasor v. Retail Credit Co., 87 Wn.2d 516, 530, 554 P.2d 1041 (1976). "Evidence" is a broad term, defined as "[s]omething (including testimony, documents, and tangible

objects) that tends to prove or disprove the existence of an alleged fact.” Black’s Law Dictionary 635 (9th ed. 2009). ELC 10.13(d) uses the term without qualification. No reason exists to narrow the term “evidence” to exclude testimony from witnesses. Additionally, “rebuttal evidence” is evidence offered to disprove or contradict evidence presented by the opposing party. Id. at 639. To require that rebuttal witnesses be “previously-disclosed” would thwart the intent of the rule.

Second, Van Camp quotes State v. White, 74 Wn.2d 386, 394-95, 444 P.2d 661 (1968) to support a claim that witnesses who could have been called in a party’s case-in-chief are not proper rebuttal witnesses. RB at 22. But he presents only a part of the relevant paragraph. The remainder of the paragraph makes clear that rebuttal evidence may overlap with evidence in the party’s case-in-chief, and that while it may be difficult to ascertain whether the rebuttal testimony is in reply to new matters, admissibility falls within the court’s discretion. White, 74 Wn.2d at 395. Here, the hearing officer allowed the Association to present a rebuttal expert after Van Camp “opened the door” by calling his own expert during his case in chief. Rebuttal testimony is proper under such circumstances. Burtch, 162 Wn.2d at 891-92 (rebuttal character witness proper after lawyer called own witness on the subject); State v. Swan, 114

Wn.2d 613, 653-54, 790 P.2d 610 (1990) (rebuttal testimony proper when defendant testified to past good behavior and denied prior misconduct).

Third, although Van Camp claims prejudice, RB at 22, the record shows he had ample time to discover and rebut Weatherhead's testimony, but he simply never took the opportunity. He didn't seek a continuance, either. In Swan, the Court rejected a claim of prejudice when the rebuttal witness was disclosed only a day in advance: "Since the defense at no time requested a continuance or a chance to reopen its case, it cannot now argue that ample preparation time was lacking." Swan, 114 Wn.2d at 654. The same is true here.

Finally, in light of all the evidence at hearing regarding Van Camp's misconduct in this case, his history of misconduct, and the other aggravating factors, any error in admitting the rebuttal evidence was harmless. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

## **2. Van Camp Waived Any Claim of Error Regarding Communications Made During Mediation**

Before hearing, Van Camp presented a motion stating that he wanted to question the mediator, Judge Harold Clarke, about his communications with Honkala regarding settlement, and arguing that the mediation privilege should not apply. BF 74. The hearing officer reserved ruling on the issue until Judge Clarke testified. TR 340. During

hearing, Van Camp's counsel advised that the mediation privilege issue as to Judge Clarke's testimony "has become moot" because the Judge had no memory of communications during the mediation. TR 508. The Judge then testified generally as to what occurred at the mediation, TR 509-531, and Van Camp offered an exhibit written by the Judge containing his impressions of the mediation. EX 283.

During Honkala's cross-examination, counsel argued about the applicability of the privilege to this case given that the Association had not charged Van Camp with misconduct with respect to the mediation. TR 277-78. The hearing officer allowed "some limited cross-examination" on the subject. Id. The issue arose again during Van Camp's testimony, TR 723-30, and Van Camp's lawyer argued that he "would like Mr. Van Camp to be able to testify that in fact at that mediation, Mr. Honkala was told that he could settle by walking away and chose not to do that." TR 726. The hearing officer agreed. TR 728. Van Camp's lawyer then asked Van Camp that question, TR 729, and declined to ask anything further, stating, "Actually, that was the only question I needed to ask at this point. I'll move on." TR 730.

Van Camp now claims the hearing officer erred by not allowing him to "delve into" the events that occurred at the mediation. RB at 22-23. But he cites to no ruling that prevented him from eliciting the

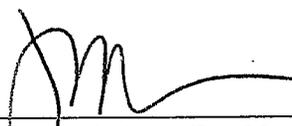
information he sought, thus waiving review. State v. Riker, 123 Wn.2d 351, 369, 869 P.2d 43 (1994). Further, he failed to make an offer of proof at hearing as to what the witnesses would say over and above the testimony they gave. The purpose of an offer of proof is to inform the trial court of the nature of the evidence so it can rule on admissibility and to create an adequate record for review. See generally, 5 Karl Tegland, Washington Practice: Evidence Law and Practice § 103.19 (5th ed. 2007). Without such an offer, a claim is not reviewable. ER 103(a)(2); Riker, 123 Wn.2d at 369-70.

#### V. CONCLUSION

Van Camp has received every disciplinary sanction the system has to offer short of disbarment. His continued misconduct shows that he is unwilling or unable to comply with the ethical rules governing all lawyers. Disbarment is necessary to protect the public and the integrity of the legal profession. The Court should affirm the Board's recommendation of disbarment.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of August, 2010.

WASHINGTON STATE BAR ASSOCIATION

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

# APPENDIX A

**FILED**

SEP 08 2009

**DISCIPLINARY BOARD**

Hearing Dates: April 27-29, July 9 & 31, 2009  
Hearing Locations: Seattle and Spokane, WA

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

W. RUSSELL VAN CAMP,  
Lawyer (Bar No. 5385).

Public No. 08 # 00044

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND HEARING OFFICER'S  
RECOMMENDATIONS

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC") a hearing was held before the undersigned hearing officer on April 27-29, July 9 and 31, 2009. Disciplinary Counsel Natalea Skvir appeared for the Association, and Respondent, W. Russell Van Camp, appeared through counsel, Dustin Deissner. Oral Argument was held on July 31, 2009.

**I. FORMAL COMPLAINT**

The Respondent was charged by formal complaint on August 5, 2008 with seven counts of violations of the Rules of Professional Conduct ("RPC"). A first amended formal complaint was filed on October 8, 2008 with an additional count of a violation of RPC. The Association filed the second formal amended complaint on March 26, 2009 charging Respondent with an additional count, for a total of nine counts.

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1 A summary of the substance of the allegations contained in the Second Amended Formal  
2 Complaint follows.

3 **Count 1**

4 By not abiding by the client's objectives to try to settle the case as quickly as possible,  
5 Respondent violated RPC 1.2(a).

6 **Count 2**

7 By failing to follow up with attorney Richard Campbell's December 15, 2006 letter and  
8 other settlement proposals, Respondent violated RPC 1.3.

9 **Count 3**

10 By failing to timely provide the client with copies of letters and settlement proposals,  
11 even after repeated requests, Respondent violated RPC 1.4(a).

12 **Count 4**

13 By failing to explain clearly at the outset of representation how his fee would be  
14 calculated and/or how the client's \$25,000 payment would be applied, Respondent violated  
15 RPC 1.4(b) and/or RPC 1.5(b).

16 **Count 5**

17 By charging \$25,000 under the facts of this case, Respondent violated RPC 1.5(a).

18 **Count 6**

19 By failing to timely provide Randy Honkala ("Honkala") a copy of Richard Campbell's  
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21  
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1 December 15, 2006 correspondence in violation of his probation conditions, Respondent  
2 violated RPC 8.4(1).

3 **Count 7**

4 By providing to Honkala an altered version of Campbell's December 15, 2006 letter  
5 instead of the original version, without informing Honkala that it was an altered document,  
6 Respondent violated RPC 5.3(b) and/or RPC 5.3(c), and/or RPC 8.4(a) and/or RPC 8.4(c).

7 **Count 8**

8 By altering Campbell's December 15, 2006 letter, either personally or through the acts  
9 of another, and/or by uttering and/or offering and/or putting off as true an altered version of  
10 Campbell's December 15, 2006 letter, knowing it to be altered, Respondent violated RPC 5.3(c)  
11 and/or RPC 8.4(a) and/or RPC 8.4(b) by committing forgery in violation of RCW 9A.60.020.

12 **Count 9**

13 By misrepresenting in his July 31, 2007 letter to Honkala that Campbell had provided a  
14 proposed preliminary injunction with his December 15, 2006 letter, Respondent violated RPC  
15 8.4(c).

16 **II. HEARING**

17 At the hearing on April 27-29, July 9 and 31, 2009, witnesses were sworn and presented  
18 testimony and exhibits were admitted into evidence. Having considered the evidence and  
19 argument of counsel, the Hearing Officer makes the following findings of fact, conclusions of  
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1 law, and recommendation. If any finding should be properly denominated a conclusion it shall  
2 be so considered, and if any conclusion should properly be denominated a finding, it shall be so  
3 considered. All findings are based on the evidence presented at the hearing, including the  
4 transcript and the video recording of the deposition of Dustin Deissner, and the transcript of the  
5 deposition of Richard Campbell.

### 6 III. FINDINGS OF FACT

7 The following facts were proven by a clear preponderance of the evidence. ELC  
8 10.14(b).

- 9 1. Respondent has practiced law in the State of Washington for approximately 36 years. He  
10 currently practices with the law firm of Van Camp & Deissner. His law practice is  
11 primarily in trial work, plaintiff personal injury and criminal defense cases. Most of the  
12 cases in his practice are taken on a contingency basis for which he does not keep  
13 contemporaneous time records. Since 1988, Respondent has handled 37 cases in the U.S.  
14 District Court, Eastern District of Washington.
- 15 2. Wendle Motors ("Wendle") is a Spokane automobile dealership which sells various makes  
16 of vehicles. Chud Wendle is a co-owner of Wendle.
- 17 3. Randy Honkala has a high school education, and has been married to Renee Honkala for  
18 16 years. Honkala has a lifetime hobby of restoring cars, and sometimes reselling them.  
19 He suffers from Attention Deficit Disorder and depression, which somewhat interferes  
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1 with his ability to read. He lived in Arizona for 20 years prior to moving to the Spokane  
2 area in 2005. His only prior experience as a litigant was in Arizona when he sued his  
3 employer for EEOC violations.

4 4. Honkala was employed as a car salesman at Wendle from July 1, 2006 to August 14,  
5 2006, when he voluntarily left the job. He told Wendle that he wanted to leave on good  
6 terms, that the work schedule did not suit him and he needed more time to devote to  
7 remodeling his house.

8 5. In 2006, Honkala purchased a specialty vehicle, a convertible Shelby Mustang, from  
9 Wendle for approximately \$45,000. He had obtained the car by using a "power lease  
10 certificate", which he bought from a third party for \$5000. The power lease certificate  
11 gave Honkala unique rights to purchase the vehicle. Honkala intended to resell the vehicle  
12 and hoped to generate a profit of at least \$10,000 on resale.

13 6. Honkala took possession of the vehicle but was very unsatisfied with its condition.  
14 Wendle took back the vehicle and fully refunded the purchase price. Honkala did not  
15 recover the cost of the power lease certificate.

16 7. After Wendle took repossession of the vehicle, it listed it for sale. Honkala became very  
17 angry when he learned of this. He posted derogatory and disparaging comments about the  
18 car's condition and about Wendle on various internet sites, particularly car web sites, such  
19 as Wendel had "high pressure sales tactics and crooked deals." His purpose was to  
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1 pressure Ford and to discourage potential buyers from purchasing the vehicle. Honkala  
2 also contacted one bidder, who ultimately decided not to purchase the car. Wendle also  
3 posted negative comments on the internet about Honkala. Honkala planned to sue Wendle  
4 to recover damages.

5 8. On November 11, 2006, Wendle sued Honkala (and Renee Honkala), Wendle Motors,  
6 Inc. v. Honkala, U.S. District Court, Eastern District of Washington, Case No. 06-CV-  
7 334-FVS. Exhibit 1. Wendle was represented by Richard Campbell (“Campbell”), a  
8 Spokane attorney who practices primarily in the area of commercial and business law.

9 9. The complaint alleged five causes of action: (1) misappropriation of trade secrets, (2)  
10 tortious interference with business relations, (3) civil libel, slander and defamation, (4)  
11 Consumer Protection Act violations, and (5) Lanham Act violations, arising out of  
12 allegations that Honkala made false and misleading statements and posted same on the  
13 internet websites. Wendle sought both damages and injunctive relief.

14 10. Wendle moved for a temporary injunction to stop Honkala’s internet postings. The court  
15 held a telephonic hearing on December 11, 2006. Honkala appeared pro se. Campbell  
16 said he would like to get the matter resolved and the case would not go to trial if there was  
17 any conceivable way of doing so. Honkala agreed to cease posting information on the  
18 internet and to stop contacting potential buyers of the vehicle, which he did. Exhibit 4.  
19 The District Court suggested that Honkala seek counsel.

1 11. On December 8, 2006, the District Court entered a mutual temporary restraining order,  
2 and directed Wendle to post a \$1000 bond. Exhibit 4.

3 12. On December 12, 2006, Campbell sent an e-mail to Honkala which was consistent with  
4 Wendle's position expressed at the temporary injunction hearing. It stated:

5 Please find the enclosed stipulation and permanent injunction. Although  
6 it has a strong claim for damages against you, Wendle's primary focus is for you  
7 to cease and desist your Internet postings concerning it and the convertible, your  
8 emails to Ford concerning Wendle or the convertible, and distribution of  
9 proprietary information.

10 Agreeing to the stipulation will of course save you from significant costs,  
11 time and attorney fees. The stipulation and order provide for a mutual ban on  
12 defamation, as you requested and were granted in the TRO hearing.

13 Exhibit 5.

14 13. Honkala received Campbell's e-mail (exhibit 5), but was unable to open the attached  
15 document. Honkala did not understand the meaning of a "permanent injunction". He also  
16 did not understand whether, by agreeing the stipulation, Wendle would have to dismiss the  
17 action.

18 14. Honkala did not respond to Wendle's offer. Wendle filed a motion for a preliminary  
19 injunction, which it noted it for hearing on December 20, 2006.

20 15. Honkala began to search for an attorney to represent him, and found Respondent's  
21 advertisement in the yellow pages.

22 16. Honkala and Respondent met for the first time in Respondent's office on December 15,  
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1 2006. The first meeting lasted approximately one to two hours at which time they  
2 discussed the vehicle and the case. Honkala brought with him documentation concerning  
3 the claim and the vehicle. Respondent told Honkala that he thought the case was  
4 "fascinating" because it presented unusual facts and it involved a unique vehicle.  
5 Respondent told Honkala he had a good case and advised Honkala not to settle.

6 17. Honkala believed that Respondent gave him a sales pitch and expounded on his legal  
7 experience. He liked Respondent's character, and described him as a "bulldog".

8 18. Honkala was feeling depressed when he met with Respondent. This condition affected his  
9 state of mind and his memory.

10 19. At the first meeting, Respondent told Honkala that he would require a retainer of \$25,000.  
11 Respondent did not explain to Honkala how the funds would be applied. Respondent told  
12 Honkala that if the case settled within a week he would refund most of the \$25,000  
13 retainer. Respondent did not keep contemporaneous time records. Exhibit 63.

14 20. Honkala hired Respondent to put pressure on Wendle to settle. Respondent fully expected  
15 that the case would settle prior to trial. Respondent did not explain to Honkala that if he  
16 agreed to a permanent injunction, the action could have been dismissed on these terms.

17 21. On December 15, 2006, Respondent called Campbell to tell him he would be representing  
18 Honkala. Respondent told Campbell that he should send Respondent a box of chocolates  
19 to thank him for all the money Campbell would make in fees on this case. Respondent's  
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1 remark was made in jest. Respondent did not expect his remark to be repeated in a written  
2 correspondence. Respondent had previously made the "box of chocolates" remark in jest  
3 to other attorneys.

4 22. Later that day, Campbell faxed Respondent a letter (the "December 15, 2006 letter")  
5 which contained a settlement offer. Exhibit 7. The second paragraph of the letter of  
6 December 15, 2006 stated:

7 I am also providing you with a copy of the proposed permanent injunction  
8 which I proposed to your client as a means to resolve the matter without  
9 further litigation. While I take your comment that I should provide you with a  
10 box of chocolates for all the money you are going to make me on this case as  
11 tongue-in-cheek, however, it is really Wendle's desire to simply resolve this  
12 case by having Mr. Honkala agree to cease and desist from commercially  
13 defaming Wendle on the Internet or in e-mails to Ford management, and not  
14 to contact potential buyers of the convertible.

15 23. Respondent received the December 15, 2006 letter, but the proposed permanent  
16 injunction was not attached to it. Respondent neither responded to the letter, nor did he  
17 request the missing attachment from Campbell.

18 24. After receiving the December 15, 2006 letter, Respondent telephoned Campbell's office  
19 later that day. Respondent spoke to Thomas Gerrard, a Rule 9 extern for Campbell's law  
20 office. Respondent yelled at Mr. Gerrard and told him he was angry about the box of  
21 chocolates remark in the letter.

22 25. That same day, Honkala met with Don Shaw, a paralegal of Respondent's office for  
23 approximately 1-2 hours. Mr. Shaw formerly practiced law. Mr. Shaw took detailed notes

1 about the case but did not give Honkala a copy of the notes.

2 26. Mr. Shaw gave Honkala a two-page document entitled "Retainer Agreement" printed on  
3 the Respondent's letterhead. Exhibit 6. Honkala told Mr. Shaw he did not have the  
4 money available, but would have to borrow it in a home equity loan, which he did. At  
5 some point, Honkala signed the Retainer Agreement. He was not given a copy of the  
6 Retainer Agreement.

7 27. At the inception of the Retainer Agreement, Honkala believed that he was retaining  
8 Respondent on an hourly rate basis, and that Respondent's fees would be charged against  
9 the retainer.

10 28. Only one section of the Retainer Agreement concerns fees. It reads:

11 **THE ATTORNEYS FEE SHALL BE:**

12 A. An earned retainer of: \$25,000.00

13 B. An hourly rate, computed as follows:

13 Mr. Van Camp, Mr. Deissner	250.00
14 Mr. Shaw	100.00
14 Paralegals	50.00
15 Secretarial	25.00

15 Hourly time when computed is one-half hour increments for attorneys  
16 and quarter-hour increments for all others.

17 Monies paid by the client shall be considered as earned towards the  
18 ultimate total fee, unless otherwise designated.

19 29. There is a finger symbol in the left margin pointing toward the "A" line.

20 30. Exhibit 6 contains no definition of "earned retainer". Respondent intended that "earned  
21 retainer" was akin to a flat fee which is paid at the beginning of the representation. The  
22

1 Retainer Agreement does not expressly set the \$25,000 as a cap or maximum. The  
2 Retainer Agreement is the only written agreement between Honkala and Respondent  
3 concerning the terms of representation.

4 31. The Retainer Agreement states that it is “for the purpose of representing [Honkala] in a  
5 suit” but contains no other description of the scope as to what the Respondent agreed to do  
6 for Honkala.

7 32. The Respondent rarely takes hourly cases. However, the Retainer Agreement set forth  
8 hourly rates for attorneys and staff because it was a form used for other types of non  
9 “earned retainer” cases.

10 33. On December 15, 2006, attorney Dustin Deissner filed a notice of appearance on behalf of  
11 Honkala. Mr. Deissner has practiced with Respondent since 1987, primarily in plaintiff’s  
12 personal injury law. He is an employee of the Respondent’s law office, W.R. Van Camp,  
13 P.C. The majority of the Van Camp & Deissner cases are shared between Mr. Deissner  
14 and Respondent on an ad hoc basis.

15 34. The staff of Van Camp & Deissner is expected to seek direction from either Mr. Deissner  
16 or Respondent on anything that is “non-routine”. Van Camp & Deissner does not hold  
17 staff training regarding the RPCs. Van Camp & Deissner deals with ethics issues as they  
18 arise.

19 35. On December 18, 2006, Honkala had second meeting at the Respondent’s law office. He  
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1 gave Mr. Shaw a check in the amount of \$25,000, and Mr. Shaw issued Honkala a receipt  
2 for \$25,000 which indicated it was for an "Earned Retainer. They did not discuss the  
3 Retainer Agreement. Respondent's office deposited the check in its general business  
4 account the next day. Exhibits 9 and 12.

5 36. At the December 18 meeting, Deissner drafted Honkala's declaration in response to  
6 Wendle's motion for preliminary injunction. Exhibit 10. Deissner also drafted a two-  
7 page "Memorandum Opposing TRO". Exhibit 11. The memorandum and Honkala's  
8 declaration were the only two documents filed in response to the motion.

9 37. Respondent performed no work in response to the Preliminary Injunction motion.

10 38. The District Court held a telephonic hearing on the motion for preliminary injunction on  
11 December 20, 2006. Deissner represented Honkala. The District Court entered an order  
12 granting the motion on December 29, 2006.

13 39. Respondent did not consider the preliminary injunction order very serious. He  
14 characterized this as a tort case and believed that Honkala's objective was to obtain  
15 damages from Wendle for loss of the power lease and lost profit. There is no evidence  
16 Respondent advised Honkala on the significance of the preliminary injunction order.

17 40. On February 21, 2007, Campbell wrote to Respondent seeking a response to the December  
18 15, 2006 letter, and referencing the "permanent injunction as a means to approach  
19 settlement and resolve this matter quickly." Exhibit 13. Respondent did not reply.

1 41. There is no evidence that Respondent performed any substantive legal work on the case  
2 between December 16, 2006 and March 2, 2007. Respondent did not prepare a proposed  
3 strategy or outline of Honkala's goals or course of action.

4 42. On March 2, 2007, Respondent represented Honkala in a telephonic scheduling  
5 conference with the District Court. Exhibit 15. The court issued a Scheduling Conference  
6 Order which included various deadlines. Exhibit 16. Per the terms of that order, the  
7 deadline to complete discovery was September 10, 2007.

8 43. In early March, 2007, Respondent's office prepared answers to Wendle's first set of  
9 interrogatories and requests for production. Exhibit 215.

10 44. On March 5, 2007, Honkala wrote to Respondent. Exhibit 14. His instructions to  
11 Respondent indicated a strong desire to quickly resolve the case, and sent a very explicit  
12 message to Respondent that attorney-client communications needed prompt attention on  
13 the issues of client expectations, documentation, and billing.

14 45. Honkala expressed concern whether Respondent was handling his case with his best  
15 interests in mind. He raised three issues: first, Honkala asked Respondent how to get the  
16 case dismissed as quickly as possible; second, Honkala requested copies of all the  
17 documents which Respondent filed on his behalf; third, Honkala requested an itemized bill  
18 showing what Respondent had billed against the \$25,000 retainer.

19 46. On March 13, 2007, Respondent replied to Honkala as follows:  
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1 As to the breakdown of fees, our retainer agreement was for an earned retainer  
2 (flat fee), you would not be charged any more attorney fees. You don't have  
3 to worry about an additional charge for fees. I do not keep hours on such  
4 retainers. If you have any questions let me know.

5 Exhibit 17.

6 47. On March 14, 2007, Honkala and Renee Honkala each wrote to Respondent requesting  
7 copies of documents filed in the case, and inquiring what steps Respondent was taking to  
8 resolve the case. Exhibit 18. Respondent replied on March 29, 2007 suggested a meeting  
9 and indicated that the case was "in the early stages of discovery." Id. As of that date,  
10 other than the answers to interrogatories, Respondent had prepared no discovery.

11 48. On March 30, 2007, Respondent sent a packet of materials to Honkala. Exhibit 21. The  
12 cover letter does not outline what was enclosed in the packet.

13 49. On April 2, 2007, Honkalas again wrote to Respondent seeking to discuss the allegations,  
14 asking what steps were needed for a resolution, and requesting a copy of the retainer  
15 agreement. Exhibit 22. Respondent did not reply.

16 50. On July 20, 2007, Respondent filed an Answer, Affirmative Defenses and Counterclaim,  
17 approximately six months after the due date according to the civil rules. Exhibit 23.  
18 Wendle had not moved for default previously. The Counterclaim was two-pronged: it  
19 sought to recover the lost contract expectancy of the bargain with Wendle due to Wendle's  
20 actions, and sought damages for Wendle's defamation of Honkala. Exhibit 23. The  
21 court's docket does not reflect that Respondent took any other action between March 2,

1 2007 and July 20, 2007, approximately 4.5 months.

2 51. In May 2007, Respondent initiated the idea of mediation to settle the case. Wendle agreed.

3 Both counsel selected Judge Harold Clarke. Mediation took place on July 25, 2007.

4 52. Respondent assured Honkala that the case would settle at mediation. Honkala would not  
5 agree to settle unless Wendle paid him money. Wendle's position was that it would never  
6 pay Honkala any money, and that there was no legal basis for attorney's fees. The  
7 mediation did not settle the case.

8 53. On July 26, 2007, Honkala asked Respondent for copies of anything filed in support of the  
9 Counterclaim. He requested the December 15, 2006 letter, and a copy of the proposed  
10 permanent injunction. Honkala reiterated that he wanted the case resolved as quickly as  
11 possible. Exhibit 24.

12 54. Respondent's law office employed various staff between December 2006 and August  
13 2007. Donna Davis had been an employee since June 2006. She worked as a legal  
14 assistant and secretary, but had no paralegal training Ms. Davis reported to Respondent  
15 and he established the terms of her employment.

16 55. On July 27, 2007, Respondent mailed to Honkala a packet containing six documents.  
17 Exhibit 25. The packet was prepared by Ms. Davis. After receiving the packet, Honkala  
18 replied on July 28, 2007 and complained that the packet did not include a copy of the  
19 proposed permanent injunction. Exhibit 26.

1 56. Respondent instructed Ms. Davis to prepare a complete set of all documents and mail it to  
2 Honkala. Ms. Davis and Respondent had a conversation in his office concerning the  
3 December 15, 2006 letter. Respondent told Ms. Davis that he did not like the reference to  
4 the box of chocolates remark in the December 15, 2006 letter. Ms. Davis interpreted  
5 Respondent's comment to mean that this comment in the December 15, 2006 letter was  
6 somehow harmful to Respondent's reputation.

7 57. Ms. Davis then reconstructed the document in order to excise the "box of chocolates"  
8 remark from the December 15, 2006 letter by physically cutting and repasting the text  
9 back together. Ms. Davis also excised additional language from the letter. The change in  
10 the document is difficult to detect.

11 58. In the original, the second paragraph of letter read:

12 I am also providing you with a copy of the proposed permanent injunction  
13 which I proposed to your client as a means to resolve the matter without  
14 further litigation. While I take your comment that I should provide you with a  
15 box of chocolates for all the money you are going to make me on this case as  
16 tongue-in-cheek, however, it is really Wendle's desire to simply resolve this  
17 case by having Mr. Honkala agree to cease and desist from commercially  
18 defaming Wendle on the Internet or in e-mails to Ford management, and not  
19 to contact potential buyers of the convertible.

20 Exhibit 7.

21 After alteration, the second paragraph read:

22 I am also providing you with a copy of the proposed permanent injunction which  
23 I proposed to your client as a means to resolve the matter without further  
24 litigation.

1 Exhibit 28 (second page).

2 59. Ms. Davis was aware that she was altering a letter without Respondent's explicit  
3 permission or direction. Ms. Davis was unaware of the legal consequences to herself or  
4 Respondent at that time. Ms. Davis had nothing obvious to gain from her actions other  
5 than protecting Respondent's reputation.

6 60. Respondent drafted the cover letter. Exhibit 28, and had an opportunity to review the  
7 enclosures before it was mailed, but did not notice that it contained the altered December  
8 15, 2006 letter.

9 61. On August 3, 2007, Ms. Davis wrote to Campbell and requested a copy of the permanent  
10 injunction. Exhibit 30. Campbell responded, and provided a copy. Exhibit 33.

11 62. On August 3, 2007, J. Clarke wrote a letter to Respondent, in an effort to try to resolve the  
12 case, and suggested that Honkala agree to accept the sum of \$12,500 in a possible  
13 settlement. Exhibit 32. This was outside J. Clarke's usual practice as a mediator. Wendle  
14 still refused to pay any money to Honkala and the case did not settle.

15 63. Honkala filed a grievance against Respondent with the Association on July 31, 2007.  
16 Exhibits 60 and 61. Respondent received a copy of the grievance on August 8, 2007. The  
17 next day, Respondent wrote to Honkala and apologized for not keeping him informed.  
18 Exhibit 36. Without indicating what he meant or why, Respondent told Honkala there was  
19 a good chance to have case resolved in his favor. Exhibit 36.

1 64. Respondent did no substantive work on the case between the July 26, 2007 mediation and  
2 August 22, 2007. On August 22, 2007, Respondent wrote to Honkalas and told them that  
3 discovery “would put pressure on them to settle”. Exhibit 45. Discovery cut-off was  
4 approximately 2.5 weeks later, on September 7, 2007.

5 65. On August 28, 2007, Respondent took the deposition of Chud Wendle. At Respondent’s  
6 request, Honkala prepared a list of questions to Chud Wendle. He asked Respondent to  
7 add other allegations against Wendle. Respondent did not amend the counterclaim.

8 66. Chud Wendle’s deposition lasted approximately 1:20. This was the only discovery  
9 Respondent actually completed on behalf of Honkala counterclaim. Respondent later  
10 indicated he would prepare a motion to extend discovery cutoff. Respondent did not draft  
11 that motion.

12 67. Honkala’s instructions were unclear at some points during the representation. Initially, he  
13 wanted to pursue Wendle for damages in a counterclaim. Later, he only wanted to settle  
14 the case and recover no damages. Respondent’s representation of Honkala demonstrated a  
15 lack of any serious effort to pursue the counterclaims, and the only effort Respondent  
16 made toward reaching a settlement took place at the mediation. Thus, Respondent did not  
17 advance either course of action.

18 68. Respondent took a risk in delaying discovery to the deadline, because a motion to extend  
19 discovery cutoff is entirely within the discretion of the assigned judge, even if the parties  
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1 agree. There is no evidence that Wendle would have agreed to such an extension.

2 69. By August 30, 2007, Respondent had subpoena deposition notices drafted for four  
3 Wendle employees to take place between September 5 and September 10, 2007. Exhibits  
4 56 and 57.

5 70. Prior to August 31, 2007, Respondent believed that a portion of the \$25,000 retainer  
6 should be returned to Honkala. Respondent offered to submit Honkala's fee dispute to  
7 arbitration but it was never arbitrated.

8 71. Honkala terminated the Retainer Agreement on August 31, 2007. Exhibit 55.

9 72. In early September, 2007, Honkala contacted Campbell and told him he was prepared to  
10 settle the case. Honkala asked Wendle for \$5000 to settle, but Wendle refused. Exhibit  
11 57. Honkala was to be deposed two days later. Honkala wanted the settlement finalized  
12 before that date.

13 73. Honkala finally agreed to the terms of the permanent injunction. The only difference in the  
14 preliminary injunction and the permanent injunction was that if in case of breach,  
15 jurisdiction would be in Superior Court, and damages for breach were established at a  
16 maximum of \$100,000.

17 74. Honkala contacted Spokane attorney John Loeffler for the limited purpose of reviewing  
18 the settlement. Loeffler reviewed the proposed injunction agreement. He charged Honkala  
19 \$150 per hour, and his invoice totaled approximately \$500.

1 75. For purposes of comparison, Campbell's total bill for his work was approximately  
2 \$27,000, of which between \$3000- \$6000 was for costs for legal research. The majority of  
3 Campbell's billings were for work on the temporary and preliminary injunction.

4 76. Honkala estimated that the value of legal services he received from the Respondent was  
5 between \$7500 and \$10,000.

6 77. At some point after the Association amended its complaint to include the count of  
7 forgery, Mr. Deissner elicited Ms. Davis' declaration concerning her actions and reasons  
8 for taking these actions. Exhibit 59. Ms. Davis confessed to altering the December 15,  
9 2006 letter.

10 78. At the time of Ms. Davis' confession, Mr. Deissner was representing Respondent in this  
11 disciplinary action. She was not advised to obtain independent legal advice prior to  
12 signing the declaration. Ms. Davis was not disciplined for her actions. These facts are  
13 deeply concerning in so far as counts 7 and 8 are concerned. They raise serious questions  
14 as to the credibility of the declarant and Exhibit 59. However, there is no direct contrary  
15 evidence.

16 79. I find that, given all the circumstances, the Association's theory that Respondent directed  
17 Ms. Davis to alter the December 15, 2006 letter before mailing it Honkala is plausible.  
18 However, the evidence is circumstantial and the Association's case is not sufficiently  
19 strong as to support a finding that Respondent, through the acts of Ms. Davis, knowingly  
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1 presented Honkala with an altered version of December 15, 2006 letter.

2 80. Several months after he was terminated, Respondent offered to engage in fee arbitration  
3 with Honkala. That did not occur. Respondent has not refunded any portion of the  
4 \$25,000 fee.

#### 5 IV. CONCLUSIONS

6 1. This forum has jurisdiction over the subject matter of Respondent.

7 2. Respondent failed to assist Honkala in making informed decisions, failed to  
8 abide by Honkala's instructions throughout the period of representation, failed to fully advise  
9 him throughout, failed to assist him in weighing the pros and cons of his options, and failed to  
10 advise him that the claims filed by Wendle could have been settled by stipulating to a  
11 permanent injunction. Respondent violated RPC 1.2(a), as alleged in **Count 1**.

12 3. Respondent violated RPC 1.3 by failing to respond to Wendle's offers to settle,  
13 including those contained in the December 15, 2006 letter and subsequent communications, as  
14 alleged in **Count 2**.

15 4. Respondent violated RPC 1.4(a), by failing to timely provide Honkala with copies of  
16 correspondence and settlement proposals, and specifically, by withholding copies of the  
17 proposed preliminary injunction even after repeated requests, as alleged in **Count 3**. RPC 1.4,  
18 comment 2.

19 5. Respondent violated RPC 1.4(b) and 1.5(b) by failing to communicate to Honkala,  
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1 either before or within a reasonable time after commencing representation, how Respondent's  
2 fee would be calculated, and/or how Honkala's \$25,000 payment would be applied, as alleged  
3 in **Count 4**. Respondent further violated RPC 1.4(b) and 1.5(b), as alleged in **Count 4**, by  
4 asking Honkala to enter into the Retainer Agreement, which is ambiguous as to the basis for the  
5 fee because includes a description of both hourly and "earned retained" type fee arrangements,  
6 and is devoid of any description of the scope of the representation to be provided by the  
7 Respondent.

8 6. By charging \$25,000 under the facts of this case, Respondent violated RPC 1.5(a), as  
9 alleged in **Count 5**. Under RPC 1.5(a), factors (1),(4),(7) and (9) warrant particular  
10 consideration and import in the conclusion that the fee is unreasonable under the circumstances.

11 7. There was a failure of proof with respect to **Count 6**. The Association has not  
12 proven a violation of a prior disciplinary order in RPC 8.4(1). Exhibit 72 is a Disciplinary Board  
13 Order in Public No. 01-00067 dated September 10, 2004 which affirms, inter alia, a two-year  
14 probation requiring Respondent to stamp "copies mailed to client" on documents mailed to his  
15 client. Exhibit 73 is an Order from the Washington State Supreme Court, entered January 6,  
16 2005, denying Respondent's petition for review in that disciplinary case. The Association did  
17 not establish that the effective date of the Order (exhibit 73) applies to the time frame of  
18 December 15, 2006. Respondent argues in his Hearing Memorandum (at 33-34) that because  
19 the Disciplinary Board entered its order on September 10, 2004, the two year period  
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1 commenced on that date, and expired on September 10, 2006. Only suspensions and  
2 disbarments are effective on the date set by a Supreme Court order. ELC 13.2.

3 In any case, the latest effective date of that Order would be January 6, 2007. The  
4 majority of Respondent's representation in this case took place after that date.

5 8. **Counts 7 and 8** pertain to the same set of facts and the same RPC's and are  
6 addressed jointly. The Association proved that Respondent employed Donna Davis, a non-  
7 lawyer assistant and that he supervised her work on the Honkala case. The Association failed to  
8 prove that Respondent directed Ms. Davis to create an altered version of the December 15, 2006  
9 letter. The Association failed to prove that the Respondent had knowledge that Ms. Davis  
10 created and provided to Honkala an altered version of the December 15, 2006 letter.  
11 Accordingly, the Association failed to prove that Respondent violated RPC 5.3(c). The  
12 Association also failed to prove that what reasonable efforts Respondent should have taken to  
13 ensure that Ms. Davis was in compliance with the RPC's. Her actions may, but do not  
14 necessarily, reflect on Respondent's failure to supervise. Further, the Association has failed to  
15 prove that Respondent ordered, induced or directed Ms. Davis to violate or attempt to violate  
16 the RPC's. The Association has failed to prove that Respondent engaged in conduct involving  
17 dishonesty, fraud, deceit or misrepresentation. Accordingly, Respondent has not violated RPC  
18 8.4(a) or RPC 8.4(c).

19 The Association did not prove **Counts 7 and 8** on a clear preponderance of the  
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1 evidence. These counts are dismissed.

2 9. As to **Count 9**, the Association proved that Respondent knowingly misrepresented in  
3 his July 31, 2007 letter to Honkala that Campbell had provided a proposed *preliminary*  
4 injunction with his December 15, 2006 letter, Respondent violated RPC 8.4(c).

## 5 6 **V. RECOMMENDATIONS**

7 Respondent's prior disciplinary records are in the record in Association's exhibits 67-  
8 74 and are considered herein. ELC 10.13(f).

9 Washington adheres generally to the ABA standards with respect to factors in  
10 mitigation or aggravation of sanctions and of the type of sanction to impose for a particular  
11 RPC violation. The ABA sanctions take into consideration the state of mind of the  
12 Respondent and whether the particular RPC involves an interest involving the administration  
13 of justice, protection of the public or protection of a client. Some rules may involve more  
14 than one protected interest.

15 **For Counts 1, 2, 3, and 9, Standard 4.42 applies.** The presumptive sanction for  
16 these counts should be suspension. Respondent knowingly failed to abide by his client's  
17 objectives, failed to act with diligence, failed to act promptly, failed to communicate with the  
18 client on a reasonable basis, and failed to respond to communications from the client and  
19 opposing counsel. Respondent also injured his client by protracting the litigation and  
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1 withholding a settlement offer. He caused injury through deprivation of a fee, put the client's  
2 case at a disadvantage in the litigation, and created client frustration, stress and anxiety.  
3 Respondent's conduct also injured the profession. Respondent's conduct did not cause  
4 *serious or potentially serious injury* which would warrant consideration of Standard 4.41 but  
5 did cause injury to the client.

6 **For Counts 4 and 5, Standard 7.2 applies.** The presumptive sanction for these  
7 counts should be suspension. Respondent knowingly deceived the client by presenting his  
8 client with a fee agreement which was ambiguous, and which contained a term the meaning of  
9 which was not fully communicated to the client. Respondent did not provide legal services  
10 warranting a fee of \$25,000, and he refused to voluntarily refund any portion of the fee to the  
11 client. He withheld information about an early settlement offer which, had it been promptly  
12 communicated to the client, could have settled the litigation early on and at a minimal  
13 expense.

14 The client suffered financial injury and the fee arrangement was drafted expressly and  
15 knowingly by the Respondent with the intent to benefit the lawyer. Respondent's conduct did  
16 not cause *serious or potentially serious injury* which would warrant consideration of Standard  
17 7.1, but did cause injury to the client.

18 The Association sought a presumptive sanction of disbarment in relation to Counts 7  
19 and 8 for the felony of forgery. These counts were dismissed.

1           Mitigating Circumstances ABA Standard 9.32

2           The Association asserted in its hearing brief that no mitigating circumstances were  
3 applicable. Respondent has alluded to the arguments that he did not have a dishonest or  
4 selfish motive (factor b). Respondent's own testimony alluded to his reputation as a  
5 successful litigator in his many years of practice (factor g). His reputation in the community as  
6 a successful plaintiff's personal injury attorney was not disputed.

7           Respondent asks the hearing officer to consider that the client's objectives were too  
8 inconsistent and too poorly communicated. There is no provision in 9.32 to consider this as a  
9 mitigating factor.

10           Aggravating Circumstances ABA Standard 9.22

11           The Association argues that factors 9.32 (a),(b),(d),(f)(g) and (i) apply. Respondent  
12 does not dispute this. Each factor will be addressed in turn.

13           (a)   **Prior Disciplinary Offenses.** The exhibits in the record evidence prior  
14 disciplinary offenses. I am deeply concerned about the Respondent's record.

15           Respondent received a formal reprimand in April, 2005 which bears particular  
16 relevance to this case. Exhibit 74. Respondent used the term "earned retainer fee" without  
17 clearly defining the term, removed funds from his trust account before they were fully earned  
18 and without his client's permission under RPC 1.14(a) and (b). The facts bear a strong  
19 similarity to the 2005 disciplinary matter. Despite this prior reprimand, Respondent has again  
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1 chosen not to recognize the potential confusion with use of this term in a retainer agreement  
2 without additional explanatory language.

3 I also consider the disciplinary record from 2002 (exhibit 70). Respondent was  
4 suspended for six months for making false statements on a bankruptcy petition in violation of  
5 former RPC 3.1, 3.3(a)(1) and 8.4(c). I find this reflects poorly on Respondent's record for  
6 truthfulness and honesty, and is indicative of a serious disregard for upholding the integrity of  
7 the legal system and the profession.

8 I consider the censure and restitution in 1985 (exhibit 67) for charging an excessive fee  
9 to be somewhat remote in time to be of strong consideration as an aggravating factor here.

10 (b) **Dishonest or Selfish Motive.** I agree with the Association that, in these  
11 circumstances, taking a \$25,000 fee upfront created a disincentive to Respondent to invest any  
12 significant effort in defending the case or pursuing the client's counterclaims. I also find that  
13 by deliberately withholding the December 15, 2006 letter and other settlement proposals,  
14 Respondent prolonged the litigation with the selfish motive of justifying the fee. RPC 1.4,  
15 note 5.

16 (d) **Multiple Offenses.** This factor does not apply. This is a single client, single  
17 situation case. The circumstances began with the "earned retainer" fee agreement and  
18 Respondent's neglect while handling the case continued virtually throughout the entire  
19 representation period.

1           (f) **Bad Faith Obstruction during Disciplinary Process.** The Association has  
2 alleged bad faith in Respondent's replies to Honkala's grievance and questions posed by the  
3 Association. Exhibits 61, 64 and 66. Respondent has not contested these facts except that I  
4 add that Respondent claims he did not know he has submitted the altered version of the  
5 December 15, 2006 letter.

6           I consider the Respondent's October 10, 2007 declaration and the accompanying  
7 reconstructed time sheets which Respondent provided to the Association. Exhibits 63 and 64.  
8 Exhibit 64 is a grossly over-inflated fabrication of time and services. To the extent that  
9 Respondent provided this reconstruction to the Association in his defense during the  
10 disciplinary process, it was submitted in bad faith.

11           (g) **Refusal to acknowledge wrongful nature of conduct.** I find this to be a relevant  
12 aggravating consideration in determining the sanction, and should be considered in  
13 conjunction with factor (a), prior disciplinary offenses. It is very troubling that Respondent  
14 has consistently denied any wrongdoing throughout this proceeding and refused to accept a  
15 share of responsibility during this disciplinary process. Respondent placed blame on an  
16 unsophisticated client for giving him inconsistent instructions, he criticized opposing counsel  
17 for repeating in a letter a very unprofessional remark (about the box of chocolates) which he  
18 made, and he pointed out his staff's mistakes, lack of diligence and incompetence. While he  
19 did not provide staff with training or instruction on ethical practices in a law office, he  
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1 allowed his secretary to accept entire legal responsibility for potentially committing a felony  
2 without any willingness to bear any of the consequences of that action.

3 (i) **Substantial Experience in the Practice of Law.** I also find Respondent's  
4 extensive experience to be a heavy consideration in the recommended sanction. The evidence  
5 is that Respondent has practiced law since 1973, and has significant experience in handling  
6 cases at the state and federal level. His experience did not benefit the client in this case, and is  
7 an aggravating factor with respect to all counts.

8 Enhanced experience in the practice of law should indicate a high level of  
9 understanding of the RPC's. Sadly, if the past record is any indicator of failing to adhere to  
10 RPC's in his practice, there is a risk that Respondent may continue to engage in further RPC  
11 violations.

12 There are multiple violations of RPCs in this case. Suspension is appropriate for  
13 virtually all of the violations proved by the Association. Weighing the aggravating and  
14 mitigating factors as to all the counts does not change the presumptive sanction of suspension.

15 I have given sober thought to all the factors in determining both the nature of the  
16 recommended sanction, and the length of the recommended suspension. For reasons set  
17 forth herein, I recommend a suspension of 24 (twenty-four) months.

18 I also recommend that:

- 19 1. the Respondent be ordered to pay restitution to Honkala under ELC 13.7 in  
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the amount of \$15,000;

- 2. reinstatement be conditioned upon prior payment of restitution and upon a demonstrated proficiency in understanding and applying the Rules of Professional Conduct; and
- 3. Respondent be charged with an assessment of costs and expenses of this proceeding.

DATED this 8<sup>th</sup> day of September 2009.

Deirdre P. Glynn Levin  
 Deirdre P. Glynn Levin, WSBA #24226  
 Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Findings of Fact, Conclusions of Law & Recommendations  
 to be delivered to the Office of Disciplinary Counsel and to be mailed  
 to DUSTIN VESTER Respondent/Respondent's Counsel  
 at 1711 1st Avenue, Suite 500, Seattle, WA 98101 by certified/first class mail,  
 postage prepaid on the 8 day of September, 2009

[Signature]  
 Clerk/Counsel to the Disciplinary Board

FILED

OCT 20 2009

Hearing Dates: April 27-29, July 9 & 31, 2009  
Hearing Locations: Seattle and Spokane, WA

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

W. RUSSELL VAN CAMP,  
Lawyer (Bar No. 5385).

Public No. 08 # 00044

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

Having considered the Association's motion to modify, filed September 21, 2009, and the Respondent having received notice and having filed no response thereto, the Hearing Officer grants the motion in part, and enters the following **amended** findings of fact, conclusions of law and recommendations:

1. The date on Page 1, line 18 is amended to read "October 6, 2008."
2. The date in Finding 8 is amended to read "November 22, 2006."
3. The date in Finding 11 is amended to read "December 11, 2006".
4. Finding 24 is amended to read "Jarrard", and "Gerrard" is deleted in both places.
5. Finding 35 is amended to add the following second sentence, "He had obtained the \$25,000 fee by borrowing against the equity in his home."
6. Finding 43 is deleted entirely, and is amended to read as follows: "In mid-April 2007, Respondent's office prepared answers to Wendle's first set of interrogatories and requests for production. Exhibit 64."
7. The date in Finding 44 is amended to read "February 23, 2007."

089

1 8. Finding 52 is amended so that the second sentence is deleted in its entirety. The new  
2 second sentence reads, "Honkala hoped Wendle would offer to pay him money as part  
3 of a settlement."

4 9. Finding 62 is amended to delete the reference to Exhibit 32, and add a reference to  
5 Exhibit 285.

6 10. In Finding 63, the first sentence and references to Exhibits 60 and 61 are deleted.  
7 The following first sentence is substituted: "Honkala filed a grievance against  
8 Respondent with the Association on July 31, 2007. Exhibit 60." After the second  
9 sentence, add a new sentence as follows: "Respondent filed an initial reply to the  
10 Association. Exhibit 61."

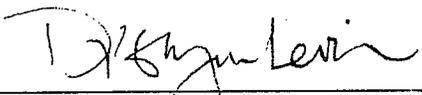
11 11. In Finding 64, the last sentence is amended to read, "Discovery cut-off was  
12 approximately 2.5 weeks later, on September 10, 2007."

13 12. In Finding 69, "August 30, 2007" is deleted and amended to read "August 31,  
14 2007".

15 13. Finding 70 is amended to strike the word "should", and substitute "could".  
16

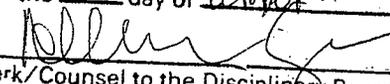
17 In all other respects, the Association's motion to modify, amend or correct the findings  
18 of fact, conclusions of law and recommendations is DENIED and the findings, conclusions and  
19 recommendations issued on September 8, 2009 are otherwise unchanged.

20 DATED this 19<sup>th</sup> day of October 2009.

21   
22 \_\_\_\_\_  
23 Deirdre P. Glynn Levin, WSBA #24226  
Hearing Officer

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the Amended POF, COL and HO's Recommendations  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to DUSTIN DASSNER Respondent/Respondent's Counsel  
at PO Box 100000, Spokane, WA 99210 by Certified/first class mail  
postage prepaid on the 20th day of October, 2021

  
Clerk/Counsel to the Disciplinary Board

# APPENDIX B

## **SELECTED RULES OF PROFESSIONAL CONDUCT (RPC)**

### **RPC 1.2 – SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

### **RPC 1.3 – DILIGENCE**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **RPC 1.4 – COMMUNICATION**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### **RPC 1.5 – FEES**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;

- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent; and
- (9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee.

#### RPC 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to:

...

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

# APPENDIX C

## SELECTED ABA STANDARDS

### Standard 4.4 -- Lack of Diligence

- 4.41 Disbarment is generally appropriate when:
  - (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
  - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
  - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
  - (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
  - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

### Standard 7.0 -- Violations of Duties Owed as a Professional

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

# APPENDIX D

FILED

MAR 30 2010

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re

W. RUSSELL VAN CAMP,  
Lawyer (WSBA No. 5385)

Proceeding No. 08#00044

DISCIPLINARY BOARD ORDER  
AMENDING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its March 19, 2010 meeting, on automatic review of Hearing Officer Deidre Glen Levin's decision recommending a 24-month suspension with conditions and restitution, following a hearing.

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

**IT IS HEREBY ORDERED THAT** the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation of suspension are modified as follows.<sup>1</sup> The sanction recommendation is increased to disbarment.<sup>2</sup>

**FINDING OF FACT 13**

Both parties agree that Finding of Fact 13 should be amended as follows to conform to the evidence:

Honkala received Campbell's e-mail (exhibit 5). Honkala did not understand the

<sup>1</sup> The vote on this matter was 7-3. Those voting in the majority were: Anderson, Barnes, Coppinger-Carter, Fine, Greenwich, Handmacher and Meehan. Those voting in the minority were Ureña, Waite and Wilson. Bahn and Stiles recused and were not present for the argument, deliberations or vote.

<sup>2</sup> The dissenting members would all have approved a three-year suspension, rather than disbarment.

ORIGINAL

11

1 meaning of a “permanent injunction”. He also did not understand whether, by agreeing the  
2 stipulation, Wendle would have to dismiss the action.<sup>3</sup>

### 3 Discussion

4 The record indicates that although Mr. Honkala initially could not open the  
5 attachment, he did eventually receive the attachment in a format he could open. (TR 174-175)

### 6 **SANCTION ANALYSIS FOR COUNTS 4 and 5**

7 The Hearing Officer’s sanction analysis and recommendation regarding Counts 4 and 5  
8 (page 25, line 6 of original decision) is modified as follows:

9 For Counts 4 and 5, Standard 7.1 applies. The presumptive sanction for these counts is  
10 disbarment. Respondent knowingly deceived his client by presenting his client with a fee  
11 agreement which was ambiguous, and which contained a term the meaning of which was not  
12 fully communicated to the client. Respondent did not provide legal services warranting a fee of  
13 \$25,000, and he refused to voluntarily refund any portion of the fee to the client. He withheld  
14 information about an early settlement offer which, had it been promptly communicated to the  
15 client, could have settled the litigation early on and at a minimum expense.

16 The client suffered financial injury and the fee arrangement was drafted  
17 expressly and knowingly by the Respondent with the intent to benefit the lawyer. Respondent  
18 knowingly engaged in conduct that is a violation of a duty owed as a professional with the intent  
19 to obtain a benefit for the lawyer, and caused serious injury to the client and the legal system.<sup>4</sup>

---

20 <sup>3</sup> Original Finding of fact 13, with deleted language in underlined bold:  
21 Honkala received Campbell’s e-mail (exhibit 5), but was unable to open the attached document. Honkala did not  
22 understand the meaning of “permanent injunction”. He also did not understand whether, by agreeing the  
23 stipulation, Wendle would have to dismiss the action.

24 <sup>4</sup> The Hearing Officer’s original conclusion, with deleted or altered language in underlined bold:

1  
2 Discussion

3 The Hearing Officer found that Mr. Van Camp knowingly deceived his client by  
4 using an ambiguous fee agreement, failing to provide services warranting the \$25,000 fee, and  
5 failing to voluntarily refund any portion of the fee. Mr. Van Camp received a reprimand in  
6 2005 based on the ambiguous language in this same fee agreement. Consequently, Mr. Van  
7 Camp certainly knew that his fee agreement was ambiguous. Mr. Honkala paid Mr. Van Camp  
8 \$25,000 on December 18, 2006. (EX 9). The Hearing Officer's factual findings establish  
9 serious injury to Mr. Honkala and to the legal system or profession.<sup>5</sup>

10 **AGGRAVATING FACTORS**

11 The record supports adding the following aggravating factor to the sanction analysis:

12 9.22(j) indifference to making restitution.

13 Discussion

14 Mr. Van Camp has retained client funds for more than three years. He has failed to  
15 refund voluntarily any portion of his unearned fee. Adding the aggravating factor of  
16 indifference to making restitution is appropriate.

---

17 For Counts 4 and 5, Standard 7.2 applies. The presumptive sanction for these counts should be suspension. Respondent knowingly deceived the client by presenting his client with a fee agreement which was ambiguous, and which contained a term the meaning of which was not fully communicated to the client. Respondent did not provide legal services warranting a fee of \$25,000.00, and he refused to voluntarily refund any portion of the fee to the client. He withheld information about an early settlement offer which, had it been promptly communicated to the client, could have settled the litigation early on and at a minimal expense.

The client suffered financial injury and the fee arrangement was drafted expressly and knowingly by the Respondent with the intent to benefit the lawyer. **Respondent's conduct did not cause serious or potentially serious injury which would warrant consideration of Standard 7.1, but did cause injury to the client.**

<sup>5</sup> Counsel for Mr. Van Camp admitted at oral argument that the fee was not reasonable based on the actual amount of work done. He also stated at oral argument that Mr. Van Camp had not sent a refund because Mr. Honkala had not come up with an appropriate number. This admission that the fee was unreasonable and the attempt to shift responsibility to the client to take steps to obtain a refund further justifies finding serious harm.

1  
2  
3 **SANCTION ANALYSIS AND RECOMMENDATION**

4 The Hearing Officer's sanction analysis and recommendation at page 29, line 12 of the  
5 original decision is modified as follows:

6 There are multiple violations of the RPCs in this case. Disbarment is the appropriate  
7 presumptive sanction for Counts 4 and 5. Suspension is the appropriate presumptive  
8 sanction for Counts 1, 2, 3 and 9. The aggravating factors outweigh the mitigating  
9 factors. The record does not provide a reason to depart from the presumptive sanction of  
10 disbarment. It is recommended that Mr. Van Camp be ordered to pay \$15,000 in  
11 restitution to Mr. Honkala.

12 Discussion

13 Disbarment is the appropriate sanction because Mr. Van Camp knowingly used an  
14 ambiguous fee agreement, failed to perform work to justify his fee, and retained the  
15 client funds for more than three years, causing serious harm to his client and the legal  
16 system. Although the step between the reprimand for the earlier discipline involving this  
17 fee agreement and disbarment is large, it is justified based on Mr. Van Camp's  
continued use of his ambiguous fee agreement a year after receiving a reprimand, his  
1985 censure for charging an excessive fee, his 2002 suspension for false statements in a  
bankruptcy petition, dishonest and selfish motives in this matter, refusal to acknowledge  
his wrongful conduct, substantial experience in the practice of law and indifference to

1 making restitution. The aggravators in this case outweigh the mitigators, justifying the  
2 disbarment recommendation.

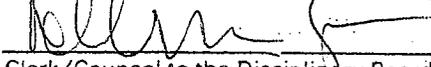
3 This decision is the Disciplinary Board's recommendation to the Supreme Court.  
4 Because this is a disbarment recommendation, Respondent has a right of appeal to the  
5 Supreme Court. (ELC 12.3(a)) Respondent must file a notice of appeal with the Clerk  
6 to the Disciplinary Board within 15 days of service of this decision. (ELC 12.3(b)) Any  
7 sanction ordered in this matter will take effect on the date stated in the Supreme Court  
8 order, or as provided by ELC 12.8 or 13.2.

8 Dated this 30th day of March, 2010.

9   
10 Seth A. Fine, Chair  
Disciplinary Board

11 CERTIFICATE OF SERVICE

12 I certify that I caused a copy of the DB's order amending HD's Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to JUSTIN DISCHER Respondent/Respondent's Counsel  
at 1701 N BROADWAY FIVE SIXTH FLOOR by Certified/first class mail  
13 postage prepaid on the 20th day of MARCH, 2010

14   
Clerk/Counsel to the Disciplinary Board

# APPENDIX E

# Van Camp & Deissner

Attorneys Emphasizing Personal Injury Litigation & Claims

W. Russell Van Camp

\* Dustin Deissner

Irving Bennion (Of Counsel)

\* Admitted in Washington & Idaho



Spokane County Courthouse  
Nulla Veritas - Tantum Evidentia

1707 W. Broadway Avenue  
Spokane, WA 99201

509-326-6935 voice

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Web address: [www.vancamplaw.net](http://www.vancamplaw.net)

E-mail: [rvancamp@vancamplaw.net](mailto:rvancamp@vancamplaw.net)

[ddeissner@vancamplaw.net](mailto:ddeissner@vancamplaw.net)

## RETAINER AGREEMENT

I, **Randolph A. Honkala, 505 E Gem Lane, Colbert WA 99005-9384, 467-8290h, 844-5552c, f350twinturbo@yahoo.com** do hereby employ **W. RUSSELL VAN CAMP**, of the law firm of **VAN CAMP & DEISSNER, PLLC**, Attorneys at Law, W 1707 Broadway Avenue, Spokane, WA. as my attorney for the purpose of representing and defending me in a suit, **Wendle Motors, Inc. v Honkala**, , US District Court, Eastern District of Washington, # CV -06-0334-FVS

### THE ATTORNEYS FEES SHALL BE:



- A. An earned retainer of: \$25,000.00
- B. An hourly rate, computed as follows:
  - Mr. Van Camp, Mr Deissner, 250.00
  - Mr. Shaw, 100.00
  - Paralegals' 50.00
  - Secretarial 25.00

Hourly time when computed is one-half hour increments for attorneys and quarter-hour increments for all others.

Monies paid by the client shall be considered as earned towards the ultimate total fee, unless otherwise designated.

Client agrees to pay all costs and expenses which are incurred in connection with this matter and understands **they are in addition to the fee being paid.** Client agrees there shall be a service charge of one percent per month on past due billings not paid within a month of their date.

Client agrees to the attorney's executing for him/she/them, guarantees or assurances of payment" for any billings from medical and health providers; such shall be in writing and made a part of the file and shall be paid from any settlement or judgment recovered on my behalf, second only to the payment of the attorneys' fees.

2H



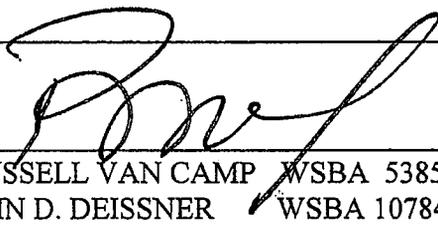
Client further agrees that any check or draft for settlement, or for payment of judgment, may be executed and signed by the attorney to facilitate its being deposited and hasten its clearing banking channels allowing for disbursal as soon as possible.

This Agreement is subject to acceptance by Mr. Deissner or Mr. Van Camp signified by his signature hereon and below.

**DATED: December 15, 2006.**

  
\_\_\_\_\_  
Client

\_\_\_\_\_  
Client

  
\_\_\_\_\_  
 W. RUSSELL VAN CAMP WSBA 5385  
 DUSTIN D. DEISSNER WSBA 10784

# APPENDIX F

# Campbell & Bissell, PLLC

Attorneys & Counselors at Law

Michael S. Bissell • Licensed in WA, ID & AK  
Richard D. Campbell • Licensed in WA, ID & MT

## FAX TRANSMISSION

If you have any difficulty receiving this fax, please call (509) 455-7100. Unless otherwise indicated, the information contained in this facsimile message is information protected by the attorney-client and/or attorney-work product privileges. It is intended only for the individual named below, and the privileges are not waived by virtue of this having been sent by facsimile. If the reader of this facsimile, or the employee or agent responsible to deliver it to the named recipient, is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. We will promptly reimburse you for the telephone and postage expenses. Thank You.

**To:** Russell Van Camp

**From:** Richard D. Campbell

**Fax No.:** 326-6978

**Date:** December 15, 2006

**Re:** Wendle Motors, Inc. v. Randolph Honkala

**Pages (includes this cover page):** 2

**File No.:** 1131

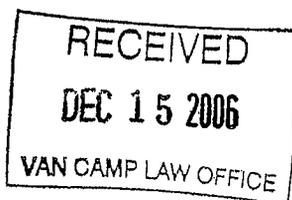
### Description:

Correspondence dated December 15, 2006, from Richard D. Campbell

### MESSAGE:

See attached.

Wendle Motors, Inc. 444-0314



509-455-7100 • Fax 509-455-7111 • [www.campbell-bissell.com](http://www.campbell-bissell.com)  
416 Symons Building • 7 South Howard Street • Spokane, Washington 99201



**Campbell & Bissell, PLLC**

Attorneys &amp; Counselors at Law

Michael S. Bissell • Licensed in WA, ID & AK  
Richard D. Campbell • Licensed in WA, ID & MT

December 15, 2006

**Via Facsimile: 326-6978**

Russell Van Camp  
Attorney at Law  
1707 W. Broadway Ave.  
Spokane, WA 99201-1817

**Re: Wendle Motors v. Honkala**

Dear Russ:

I am willing to grant you a continuance on the hearing for Preliminary Injunction on the condition that you prepare for filing today a stipulation and order extending the Temporary Restraining Order through the date of the injunction hearing.

I am also providing you with a copy of a proposed permanent injunction which I proposed to your client as a means to resolve the matter without further litigation. While I take your comment that I should provide you with a box of chocolates for all the money you are going to make me on this case as tongue-in-check, however, it really is Wendle's desire to simply resolve this case by having Mr. Honkala agree to cease and desist from commercially defaming Wendle on the Internet or in e-mails to Ford management, and not to contact potential buyers of the convertible.

Lastly, the TRO provided for expedited discovery, which I will be serving on you shortly. First off, however, we need to receive copies of Electronically Stored Information on your clients' hard drives relating to Wendle or the convertible. We propose to use a neutral third party for that operation, Litigation Document Group. The most cost effective process is to have LDG copy the hard drive and provide me only with relevant information consistent with the TRO. I would not have access to the complete hard drive. If you wish a protective order to be entered, please provide one for my review. I request that access to the hard drives today. Please advise as to when a LDG representative can have access to the Honkala's computers.

Very truly yours,

CAMPBELL &amp; BISSELL, PLLC

RICHARD D. CAMPBELL

RDC:mah  
Enclosure

cc: Wendle Motors, Inc.

RECEIVED

DEC 15 2006

VAN CAMP LAW OFFICE

509-455-7100 • Fax 509-455-7111 • www.campbell-bissell.com  
416 Symons Building • 7 South Howard Street • Spokane, Washington 99201