

No. _____

No. 9756-0

**IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION TWO**

In re Personal Restraint Petition of

VINCENT L. FOWLER,

Petitioner

Kitsap County Superior Court No. 13-1-00466-4

PETITION FOR REVIEW

JOHN HENRY BROWNE
Attorney for Petitioner

LAW OFFICES OF JOHN HENRY BROWNE, P.S.
800 Norton Building
801 Second Avenue
Seattle, WA 98104-3414
(206) 388-0777

I. STATUS OF PETITIONER

Petitioner Vincent L. Fowler, by and through his attorneys, applies for relief from confinement. Mr. Fowler is currently incarcerated at the Stafford Creek Correctional Center, 191 Constantine Way, Aberdeen, WA 98520.

After trial in Kitsap County Superior Court No. 13-1-00466-4, on October 13, 2013, the jury found Mr. Fowler guilty of two counts of first degree child molestation and one count of first degree rape of a child. The court imposed sentencing on January 10, 2014.

Mr. Fowler then filed simultaneous appeals in Division II (No. 45774-1-II) and Division III (No. 33227-6-III) claiming that: (1) the trial court's missing witness instruction was unwarranted and violated due process; (2) the instruction constituted an impermissible comment on the evidence; and (3) the discretionary imposition of the costs of Mr. Fowler's court-appointed attorney without regard to his present or future ability to pay violated his Sixth Amendment right to counsel. In an unpublished opinion, Division Three affirmed. 189 Wn.App. 1039, 2015 WL 4911843 (August 18, 2015).

On September 16, 2015, Mr. Fowler filed a petition for review, which the Supreme Court granted. The Court found error in the trial court's assessment of the discretionary legal financial obligations without

considering the statutorily enumerated factors and remanded for resentencing. State v. Fowler, 185 Wn.2d 1016, 368 P.3d 170 (2016).

The trial court entered its Order Modifying Judgment and Sentence on October 19, 2016.

II. FACTS RELEVANT TO PLACEHOLDER PETITION

On or about September 2, 2015, Mr. Fowler's paid attorney John Crowley \$9,500 for him to file a personal restraint petition. See Exhibit 1, Fee Agreement. Crowley, however, seems to have done nothing on this case—or several other cases, and many more disserved clients have recently also begun to step forward.

Due to his misconduct, Crowley was subject to several grievances, and the Washington State Bar Association initiated disciplinary proceedings. Rather than defend against the charges and face punishment, effective September 18, 2017, Crowley permanently retired from the practice of law. See Ex. 2, Resignation Form of John Rodney Crowley.

Specifically relevant to this case, several of the counts lodged by the Office of Disciplinary Counsel allege that Crowley accepted payment for services without entering into a written fee agreement and without entering the funds into a trust account and then failed to communicate with the client or perform his contractual obligations. Id. at Ex. A at 9-16.

This case, unfortunately, is just another example left behind of the wake of Crowley's incompetence.

Mr. Fowler's family contacted and retained this office on approximately October 9, 2017—just over one week prior to the one-year deadline. In that time, this office has not yet been able to obtain Mr. Fowler's file—lest conduct the requisite investigation needed prior to filing a petition on his behalf.

III. GROUNDS FOR RELIEF

Given the above, the grounds for relief are yet unclear. More time is required to obtain prior counsel's file, diagnose issues, conduct investigation, if necessary, and then prepare and file the petition.

IV. REQUEST FOR RELIEF

For the foregoing reasons, Mr. Fowler respectfully requests that this court grant additional time to prepare his petition, which will, ultimately, request his relief from confinement—most likely for ineffective assistance of trial counsel.

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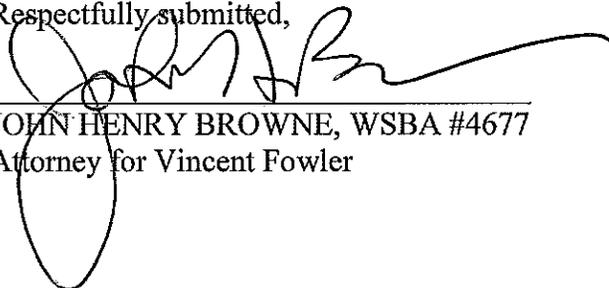
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V. OATH OF COUNSEL

I declare under penalty of perjury under the laws of the State of Washington I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Signed this 18th day of October, 2017 at Seattle, Washington.

Respectfully submitted,



JOHN HENRY BROWNE, WSBA #4677
Attorney for Vincent Fowler

CERTIFICATE OF SERVICE

I certify that on the 18th day of October, 2017, I caused a true and correct copy of the Petition for Review to be served on Respondent via e-file to the Kitsap County Prosecuting Attorney's Office and to Appellant via first class mail.

Counsel for the Respondent:

Kitsap County Prosecuting Attorney's Office
614 Division Street, 2nd Floor
Port Orchard, WA 98366

Appellant:

Vincent L. Fowler, DOC #389354
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

John Henry Browne 10/18/17
NAME DATE at Seattle, WA

EXHIBIT 1

The Crowley Law Firm, P.L.L.C.

Grand Central Building
216 First Avenue South, Suite 204
Seattle, Washington 98104
Tel (206) 625-7500 ♦ Fax (206) 625-1223

LEGAL SERVICES AGREEMENT

I. AGREEMENT FOR LEGAL SERVICES:

I, Darryl Fowler and on behalf of Vincent Fowler, hereby engage The Crowley Law Firm, P.L.L.C. and John Crowley, as my lawyer, subject to the conditions and limitations expressed below, in the handling of the following matter(s): Personal Restraint Petition.

- Option #1: This is a flat fee case with a single flat fee to cover both pre-trial and trial services.
- Option #2: This is a flat fee case with a two tiered fee. There is a pre-trial fee and a separate trial fee under this option.
- Option #3: This is an investigation case only.
- Option #4: This case is for legal services related to any post-conviction matters including appeals and personal restraint petitions, vacating convictions and any other agreements for post-conviction legal services.
- Option #5: This is a third party payer case.

II. UNDERSTANDINGS AND AGREEMENTS OF THE PARTIES AFTER NEGOTIATION FOR ENGAGEMENT:

The parties agree that The Crowley Law Firm, P.L.L.C., and the lawyer who will represent me, (lawyer name), will use its best efforts and skills in his representation of me. I agree that the attorney with whom I have negotiated this agreement has not indicated in any way what he believed the case outcome will be. (Potential client and third party payer has re-read this clause twice and agrees with this statement). It is also agreed that the attorney negotiating this agreement and the prospective client or third party payer have discussed potential legal avenues which may be taken during any representation on this case. However, it is also agreed that the attorney has made no assertions whatsoever as to whether the attorney will be successful in representing the potential client if in fact an agreement is reached regarding representation. The parties agree that there have been no guarantees at all regarding the actual results or case outcome that may be obtained in this case. (Client and third party payer has re-read this paragraph twice and agrees to this statement).

I represent to The Crowley Law Firm, P.L.L.C. that the sources of the funds being used to pay my attorney fees are not from the proceeds of criminal activity or enterprises or any type of fraudulent activities. The Crowley Law Firm, P.L.L.C. has informed me that it is its practice to report any cash transactions equal to or in excess of \$10,000.00 consistent with all requirements of IRS Form 8300 and will make such a report in my case as may be required. (Potential client and third party payer has re-read the previous paragraph twice).

III. AGREEMENT DETAIL FOR THE SCOPE OF LEGAL SERVICES ENGAGED:

Option #1: This is a flat fee case with a single flat fee to cover both the pre-trial and any trial. I agree to pay _____ for representation of Mr. _____ at the trial court level. This fee will pay for all costs associated with legal expenses related the charges of _____. This fee will not change whether the matter proceeds through any trial or is settled, dismissed, or whether the client becomes a witness in the case or for any other reason that may arise. The fees collected under this option may be deposited into the attorney's business operating account and shall not be deposited into the attorney's trust account. The funds are agreed to have been earned upon receipt.

Option #2: This is a flat fee case with a two tiered fee structure. There is a pre-trial fee and a separate trial fee under this option. I have elected to pay this as a two tiered fee. I agree to pay _____ .00 for all matters related to pre-trial legal services including any pre-trial motions that may be made on my case. I also agree to pay the second tier of the fee – the trial fee - 30-days prior to trial of _____. Although the \$ _____ is a trial fee, it is agreed between the parties that it is due and earned 30-days prior to trial even if the matter later settles and after the parties have committed to trial but before the trial actually started. (I have read this previous clause twice and discussed this with the lawyer negotiating this agreement). It is also understood by the parties and agreed to by the parties that at times, a trial fee is paid 30-days in advance of trial but the matter later settles in advance of trial. If this event occurs, and because the fee was earned upon receipt, it is agreed that the lawyer has earned this fee as the trial was prepared for, the case was ready for trial, and most of the time required for a trial, except for the time of the actual trial itself, was already completed. (Client has read the previous line twice and discussed this with the lawyer negotiating the agreement for legal services).

Option #3: This option covers all services related to an investigation case. An investigation case is how most police agencies and prosecutor's offices classify cases that are under their investigation (an investigation case is not investigated by the lawyer or his office and the parties are not agreeing to the lawyer conducting any investigation on this case other than the potential collection of witness statements as described in this paragraph, below). It is understood by the client that during the investigation or pre-charge phase of the case, that the lawyer will make all reasonable efforts to contact either or both the police investigator or prosecutor assigned to the case and attempt to either head-off potential charges or to settle the case before a charging decision has been made as well as make reasonable efforts to gather witnesses for the defendant and collect any witness statements for his presentation to the prosecuting authority.

Option #4: This option is for legal services related to any post-conviction matters including appeals and personal restraint petitions, vacating convictions and any other agreements for post-conviction legal services. This is a post-conviction case (appeals, personal restraint petition, vacating conviction, etc.). Client agrees to pay the flat fee of (fee amount) for the entire legal service for this case. This fee covers all costs (except for filing fees or fees related to transcripts) involved in the handling of this matter. I agree to pay the flat fee of 9500.00 for all services related to the Personal Restraint Petition. All fees will deposited into the ~~business operating account~~ and not into any trust account as these fees are earned upon receipt.

Option #5: There is a third party payer in this case. The third party payer is not a client in this case but has the authority to hire the lawyer and to negotiate a legal fee for the client and then has the obligation to pay for the legal services contracted. Third party payers are the "payer" for the legal services only. The third party payer is not entitled to communicate with the lawyer, or his

representatives, about the case in any way. The third party payer may not terminate the legal services after agreement is reached for legal services – that is something only the client may do. The third party payer may however, terminate his/her future involvement with this agreement (refuse to pay future legal services, or rather, terminate their third party payee status at any time). In addition, the third party payer may, if the client and lawyer terminate their professional relationship prior to the conclusion of legal services contracted for, be entitled to a partial refund of legal fees that they have paid to the lawyer if the client would be entitled to such a refund had the client been the payer of the legal fees in this case. By signing this agreement, client is also agreeing that if there is any refund of legal fees in this case and if a 3rd party payer has paid moneys in this case, the 3rd party payer is entitled to a proportional refund of any fees refunded in this case. The parties agree that

III. STIPULATIONS AND OTHER AGREEMENTS AND RESPONSIBILITIES:

The parties agree that this case will not be billed on an hourly basis regardless of whether the actual attorney's time working on the case exceeds the number of hours the costs would be if the attorney charged his hourly rate of 300.00 per hour. If for any reason the attorney/client relationship terminates prior to the conclusion of services contracted for in this agreement, the client (or third party payer) may be entitled to a refund. If the professional relationship terminates prior to the conclusion of the legal services, a calculation will be made to determine whether there are any funds which should be returned to the client (or third party payer) using an hourly calculation at the rate of \$ 300.00 per hour.

After the representation on the case begins, it is important for the lawyer and the client to communicate about the case. Whether in trial or post-conviction cases, the attorney and client agree to maintain open communication through either telephone, e-mail, texting or personal visitation. Client agrees that any copies of pleadings or other communication shall be delivered to client through e-mail only (unless client is in-custody) and that client agrees to obtain and maintain a valid e-mail address for communication purposes. Client agrees that client will, shortly after the professional relationship is agreed to, make prompt contact with the client's paralegal and make an office appointment (or set an in-custody visit) for review of the case file if he or she so desires. The parties agree that it is the responsibility of the client to call his or her paralegal for appointments to review the case file, if the client so chooses and it is the client's responsibility to call to make appointments to review the case with the lawyer and to review the case file with the lawyer and to discuss with the lawyer the file contents if he so chooses. (Client agrees that he/she has re-read this clause twice).

Client further agrees that at the lawyer's choosing, the lawyer may periodically assign another lawyer to appear for the contracted lawyer at non-essential court hearings (arraignments, case settings, pre-trials, motions to continue, for example). However, lawyer agrees that he will appear for essential hearings such as bail hearings, suppression hearings, trials, sentencing hearings and any oral arguments on post-conviction cases unless otherwise agreed.

Finally, as the client or as the third party payer, I have discussed any questions that I have had about these agreements and they have been satisfactorily answered prior to signing this agreement for legal services. I have received a copy of this agreement.

DATED this 2nd day of September, 2015.

John Crowley, Lawyer

Vincent Fowler (Client)

Darryl Fowler (3rd party Payor)

EXHIBIT 2

FILED
SEP 18 2017
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
JOHN RODNEY CROWLEY,
Lawyer (Bar No. 19868).

Proceeding No.15#00056
ODC File No(s). 14-01245,14-01541,
15-00189, 15-01378, 16-00901
RESIGNATION FORM OF JOHN RODNEY
CROWLEY (ELC 9.3(b))

John Rodney Crowley, being duly sworn, hereby attests to the following:

1. I am over the age of eighteen years and am competent. I make the statements in this affidavit from personal knowledge.
2. I was admitted to practice law in the State of Washington on November 13, 1990.
3. I was served with the Second Amended Formal Complaint and Notice to Answer in this matter and filed an Answer on April 17, 2017.
4. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Rules for Enforcement of Lawyer Conduct (ELC).
5. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged

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1 misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in
2 disciplinary counsel's statement but, rather than defend against the allegations, I wish to
3 permanently resign from membership in the Association.

4 6. I am submitting with this affidavit a check in the amount of \$1,780.83 made out to
5 the Washington State Bar Association as payment for expenses and costs.

6 7. I agree to pay any additional costs or restitution that may be ordered by a Review
7 Committee under ELC 9.3(g).

8 8. I understand that my resignation is permanent and that any future application by
9 me for reinstatement as a member of the Association is currently barred. If the Supreme Court
10 changes this rule or an application is otherwise permitted in the future, it will be treated as an
11 application by one who has been disbarred for ethical misconduct, and that, if I file an
12 application, I will not be entitled to a reconsideration or reexamination of the facts, complaints,
13 allegations, or instances of alleged misconduct on which this resignation was based.

14 9. I agree to (a) notify all other states and jurisdictions in which I am admitted of this
15 resignation in lieu of discipline; (b) seek to resign permanently from the practice of law, and (c)
16 provide disciplinary counsel with copies of this notification and any response(s). I acknowledge
17 that this resignation could be treated as a disbarment by all other jurisdictions.

18 10. I agree to (a) notify all other professional licensing agencies in any jurisdiction
19 from which I have a professional license that is predicated on my admission to practice law of
20 this resignation in lieu of discipline; (b) seek to resign permanently from any such license; and
21 (c) provide disciplinary counsel with copies of any of these notifications and any responses.

22 11. I agree that when applying for any employment, I will disclose the resignation in
23 lieu of discipline in response to any question regarding disciplinary action or the status of my

1 license to practice law.

2 12. I understand that my resignation becomes effective on disciplinary counsel's
3 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) disciplinary
4 counsel must do so promptly following receipt of this document and payment of costs and
5 expenses.

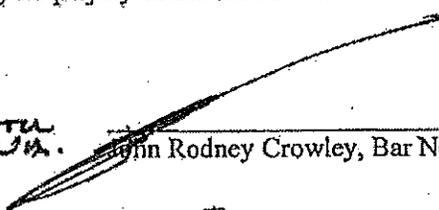
6 13. When my resignation becomes effective, I agree to be subject to all restrictions that
7 apply to a disbarred lawyer.

8 14. Upon filing of my resignation, I agree to comply with the same duties as a
9 disbarred lawyer under ELC 14.1 through ELC 14.4.

10 15. I understand that, after my resignation becomes effective, it is permanent. I will
11 never be eligible to apply and will not be considered for admission or reinstatement to the
12 practice of law nor will I be eligible for admission for any limited practice of law.

13 16. I certify under penalty of perjury under the laws of the State of Washington that
14 the foregoing is true and correct.

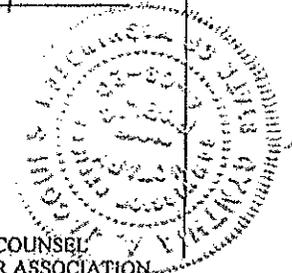
15 07.18.17 Seattle WA.
Date and Place


John Rodney Crowley, Bar No. 19868

17 SUBSCRIBED AND SWORN to before me this 18th day of July, 2017.

18 Gymna O'Connell
NOTARY PUBLIC for the state of
19 Washington, residing at Woodinville
Washington
20 My commission expires: 6/8/20

21 ENDORSED BY:
22 Debra Slater
23 Debra Slater, Disciplinary Counsel
Bar No. 18346



OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C.

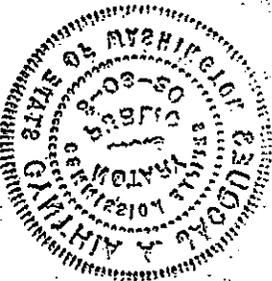


EXHIBIT A

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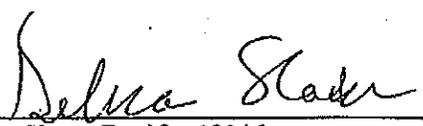
BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
JOHN RODNEY CROWLEY,
Lawyer (Bar No. 19868).

Proceeding No. 15#00056
ODC File No(s), 14-01245, 14-01541,
15-00189, 15-01378, & 16-00901
STATEMENT OF ALLEGED
MISCONDUCT UNDER ELC 9.3(b)(1)

The attached formal complaint, filed on May 22, 2017, in Proceeding No. 15#00056, constitutes Disciplinary Counsel's statement of alleged misconduct under Rule 9.3(b)(1) of the Rules for Enforcement of Lawyer Conduct.

DATED this 27th day of May, 2017.


Debra Slater, Bar No. 18346
Disciplinary Counsel

FILED
MAY 22 2017
DISCIPLINARY
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**BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION**

In re
JOHN RODNEY CROWLEY,
Lawyer (Bar No. 19868).

Proceeding No. 15#00056
**THIRD AMENDED FORMAL
COMPLAINT**

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

ADMISSION TO PRACTICE

1. Respondent John Rodney Crowley was admitted to the practice of law in the State of Washington on November 13, 1990.

FACTS REGARDING COUNTS 1 THROUGH 4: ARTHUR C. GRIEVANCE

2. In April 2012, Ellensburg Detective Cameron Clasen (Clasen), began an investigation into the suspected theft of computer equipment by Arthur C.

Handwritten mark

1 3. On May 15, 2012, Arthur C. hired Respondent to represent him. Arthur C. told
2 Respondent that he wanted to resolve the matter before any arrest.

3 4. Respondent contacted Detective Clasen and informed him that he represented Arthur
4 C.

5 5. Between May 15, 2012, and September 2012, Arthur C. telephoned and texted
6 Respondent multiple times.

7 6. Respondent did not respond to Arthur C.'s calls or texts.

8 7. In September 2012, Arthur C. spoke with Respondent. He informed Respondent he
9 had enlisted in the National Guard and would like to resolve the matter before he left for
10 training in February 2013.

11 8. On December 14, 2012, Arthur C. telephoned and sent a text message to
12 Respondent. Later that day, Arthur C. and Respondent had a six minute conversation.

13 9. On December 27, 2012, Detective Clasen telephoned Respondent and advised him
14 that Arthur C. would be criminally charged. Respondent told Clasen that he would contact
15 Arthur C. and call him back.

16 10. Respondent failed to call Clasen back.

17 11. Respondent did not contact Arthur C.

18 12. On January 2, 2013, Clasen contacted Respondent again. Respondent told Clasen
19 that he was looking for contact information for Arthur C. and that he had not yet spoken with
20 Arthur C. even though Respondent had spoken with Arthur C. on December 14, 2012.

21 13. Respondent's statements to Clasen were false and Respondent knew they were false.
22 Respondent had contact information for Arthur C. and had contacted Arthur C.

23 14. On January 7, 2013, Respondent telephoned Arthur C. and spoke with him.

- 1 15. On January 8, 2013, Clasen contacted Respondent again. Respondent told Clasen he
- 2 had not been able to find contact information for Arthur C.
- 3 16. Respondent's statement to Clasen was false and Respondent knew it was false.
- 4 17. On January 10, 2013, Clasen contacted Respondent. Respondent asked Clasen to
- 5 contact him in six days to arrange for Arthur C. to surrender.
- 6 18. On January 11, 2013, Respondent and Arthur C. had a five minute telephone
- 7 conversation.
- 8 19. On January 16, 2013, the day Arthur C. was to surrender, Clasen contacted
- 9 Respondent. Respondent told Clasen he couldn't talk at that time, and he would call him back
- 10 in 30 minutes.
- 11 20. Respondent did not call Clasen.
- 12 21. Clasen telephoned Respondent the next day. Respondent told Clasen that he had not
- 13 spoken with Arthur C.
- 14 22. Respondent's statement to Clasen was false and Respondent knew it was false.
- 15 23. Respondent told Clasen to go ahead and get an arrest warrant for Arthur C.
- 16 24. On March 13, 2013, an arrest warrant was issued.
- 17 25. Respondent did not tell Arthur C. that he had told Clasen to go ahead and get the
- 18 arrest warrant.
- 19 26. Respondent did not tell Arthur C. that Clasen had obtained an arrest warrant.
- 20 27. On April 8, 2013, Respondent contacted the prosecutor and requested a hearing to
- 21 quash the warrant.
- 22 28. Respondent did not file a Notice of Appearance or note the matter for hearing.
- 23 29. Other than the telephone call to the prosecutor, Respondent did not take any steps to

- 1 40. Some or all of the \$6,250 was paid in advance of performance of the services.
- 2 41. Respondent did not deposit the money Pino paid him into his trust account.
- 3 42. Some or all of the \$\$6,250 was for fees and/or expenses that Respondent never
- 4 earned or incurred.
- 5 43. On December 7, 2012, Respondent filed a Motion for Substitution of Counsel.
- 6 44. On December 10, 2012, an order was entered substituting Respondent as Pino's
- 7 lawyer.
- 8 45. An omnibus hearing took place on January 14, 2013. Respondent was not present but
- 9 instead arranged for Oak Harbor lawyer Kenneth Manni to appear for him and request a
- 10 continuance.
- 11 46. The omnibus hearing was rescheduled for January 22, 2013.
- 12 47. At the January 22, 2013 omnibus hearing, Respondent did not attend, but instead
- 13 arranged for lawyer Mitch Harrison to appear for him.
- 14 48. On January 30, 2013, felony charges were filed against Pino in Skagit County.
- 15 49. Lawyer Jeri Bonkoski represented Pino on the Skagit County case.
- 16 50. Island County set a hearing for February 25, 2013 to revoke Pino's pretrial release
- 17 because of the Skagit County charges.
- 18 51. Respondent told Pino he would appear at the February 25, 2013 hearing in Island
- 19 County.
- 20 52. Respondent failed to appear at the February 25, 2013 hearing in Island County.
- 21 53. Island County's Motion to Revoke Release was granted and a bench warrant issued
- 22 for Pino's arrest.
- 23 54. On March 11, 2013, Bonkoski sent Respondent an email informing him that the

1 Skagit County prosecutor and the Island County prosecutor were discussing the possibility of a
2 global resolution of all charges against Pino.

3 55. Respondent did not respond to Bonkoski's email or otherwise communicate with her
4 about the global settlement.

5 56. On March 22, 2013, Bonkoski forwarded a global settlement offer to Respondent.
6 Bonkoski asked Respondent for his input on the Island County charges. Bonkoski also
7 forwarded to Respondent a letter from Pino requesting that he be permitted to participate in drug
8 court.

9 57. Respondent did not respond to Bonkoski.

10 58. On March 29, 2013, Trisha Johnson, the Skagit County prosecutor sent Respondent
11 an email informing him that his help was needed to complete the global agreement. She also
12 informed him there was an April 4, 2013 hearing in Skagit County at which Bonkoski was to
13 have an answer on the global settlement.

14 59. Respondent replied to Johnson's email on May 15, 2013, almost two months later,
15 telling her he would respond to Bonkoski that day about the global settlement.

16 60. Respondent did not respond to Bonkoski about the global settlement.

17 61. Bonkoski and Johnson finalized the global settlement without Respondent's input or
18 involvement.

19 62. Respondent did not provide Pino's letter about participating in the drug court
20 program to either prosecutor.

21 63. On September 30, 2014, Respondent provided ODC with a written response to the
22 grievance filed by Pino.

23 64. Respondent stated in his September 30, 2014 response to ODC that he made many

1 | appearances on Pino's Island County case.

2 | 65. Respondent stated in his September 30, 2014 response to ODC that on December 12,
3 | 2012, he appeared in Island County on Pino's case and returned to Seattle.

4 | 66. Respondent stated in his September 30, 2014 response to ODC that the December
5 | 12, 2012 appearance in Island County on Pino's case took five hours of his time.

6 | 67. Respondent's statement that he appeared in Island County on Pino's case on
7 | December 12, 2012 was false. Respondent knew it was false.

8 | 68. Respondent's statement that the December 12, 2012 appearance took five hours of
9 | his time was false. Respondent knew it was false.

10 | 69. Respondent stated in his September 30, 2014 response to ODC that he appeared at a
11 | pre-omnibus hearing in Island County on Pino's case on January 14, 2013.

12 | 70. Respondent stated in his September 30, 2014 response to ODC that the pre-omnibus
13 | hearing in Island County on Pino's case on January 14, 2013 took five hours of his time.

14 | 71. Respondent's statement that he appeared at the January 14, 2013 hearing was false.
15 | Respondent knew it was false.

16 | 72. Respondent's statement that it took five hours of his time was false. Respondent
17 | knew it was false.

18 | 73. Respondent stated in his September 30, 2014 response to ODC that he appeared at a
19 | readiness hearing on Pino's case on February 19, 2013.

20 | 74. Respondent stated in his September 30, 2014 response to ODC that the readiness
21 | hearing on February 19, 2013 took 5.0 hours of his time.

22 | 75. Respondent's statement that he appeared at a readiness hearing on Pino's case on
23 | February 19, 2013 was false. Respondent knew it was false.

1 76. Respondent's statement that the readiness hearing took five hours of his time was
2 false. Respondent knew it was false.

3 77. Respondent stated in his September 30, 2014 response to ODC that he met with an
4 Island County prosecutor in Island County on Pino's case on February 20, 2013 and that the
5 meeting took five hours of his time.

6 78. Respondent's statement that he met with an Island County prosecutor in Island
7 County on February 20, 2013 on Pino's case was false. Respondent knew it was false.

8 79. Respondent's statement that the meeting with an Island County prosecutor took five
9 hours of his time was false. Respondent knew it was false.

10 80. Respondent stated in his September 30, 2014 response to ODC that he attended a
11 hearing on Pino's case on February 25, 2013 and that it took five hours of his time.

12 81. Respondent's statement that he appeared at a hearing on Pino's case on February 25,
13 2013 was false. Respondent knew it was false.

14 82. Respondent's statement that the hearing on February 25, 2013 took five hours of his
15 time was false. Respondent knew it was false.

16 83. Respondent stated in his September 30, 2014 response to ODC that he appeared at a
17 pre-trial conference on Pino's case on April 1, 2013 and that it took five hours of his time.

18 84. Respondent's statement that he had appeared at a pre-trial conference on Pino's case
19 on April 1, 2013 was false. Respondent knew it was false.

20 85. Respondent's statement that the pre-trial conference took five hours of his time was
21 false. Respondent knew it was false.

22 86. Pino repeatedly telephoned Respondent to inquire about his case.

23 87. Except for one telephone call and one visit, Respondent did not communicate with

1 Pino about his case.

2 **COUNT 5**

3 88. By failing to diligently represent Pino, Respondent violated RPC 1.3.

4 **COUNT 6**

5 89. By failing to communicate with Pino regarding his case, Respondent violated RPC

6 1.4.

7 **COUNT 7**

8 90. By charging and collection an unreasonable fee and/or unreasonable amount for
9 expenses, and or by failing to refund an advance payment of fees and/or expenses that he did
10 not earn or incur, Respondent violated RPC 1.5, RPC 1.15A(f), and/or RPC 1.16(d).

11 **COUNT 8**

12 91. By failing to deposit the funds Pino paid him into a trust account, Respondent
13 violated RPC 1.5(f) and/or RPC 1.15A(c).

14 **COUNT 9**

15 92. By knowingly making false statements to ODC during its investigation of the
16 grievance filed by Pino, Respondent violated RPC 8.1(a) and RPC 8.4(c).

17 **FACTS REGARDING COUNTS 10 THROUGH 12: WALTER TERRY GRIEVANCE**

18 93. In June 2014, Walter Terry hired Respondent to represent him in three matters: a
19 federal criminal case in Idaho, a forfeiture action, and a motion to vacate a 2007 felony
20 conviction.

21 94. Respondent did not enter into a written fee agreement with Terry.

22 95. Terry paid Respondent \$15,000 for representation on all three matters.

23 96. Some or all of the \$15,000 was paid in advance of performance of the services.

1 97. Respondent did not deposit the money Terry paid him into his trust account.

2 98. Some or all of the \$15,000 was for fees and/or expenses that Respondent never
3 earned or incurred.

4 99. Respondent refunded \$14,500 to Terry.

5 Federal Criminal Case in Idaho

6 100. In May 2014, Terry was arrested in Idaho for selling marijuana over the internet.

7 101. No charges were filed because the Drug Enforcement Administration (DEA)
8 wanted Terry's cooperation in obtaining evidence against his friend who deposited the funds
9 Terry received from the marijuana sales into the friend's bank account.

10 102. As part of Respondent's representation of Terry in the federal criminal case,
11 Respondent was to negotiate concessions in exchange for Terry obtaining evidence against his
12 friend.

13 103. Assistant U.S. Attorney Christian Nafzger provided Respondent with a draft plea
14 agreement in order to resolve the federal criminal case without the necessity of obtaining an
15 indictment.

16 104. Respondent failed to follow up with Nafzger, despite Respondent having been
17 given a date by which he needed to tell Nafzger whether Terry would accept the plea offer.

18 105. Respondent never communicated the plea offer to his client, Terry.

19 106. On April 27, 2015, Respondent terminated the representation.

20 Forfeiture Action

21 107. On May 15, 2014, the United States filed a lawsuit in the United States District
22 Court for the District of Idaho seeking forfeiture of Terry's Seattle residence.

23 108. Other than a single telephone call, Respondent failed to take any action on Terry's

1 s behalf on the matter.

2 Motion to Vacate 2007 Felony Conviction

3 109. In 2007, Terry was convicted of felony drug charges in King County Superior
4 Court.

5 110. On July 24, 2014, Respondent prepared a declaration in support of the Motion to
6 Vacate the conviction.

7 111. Terry reasonably believed that Respondent would file the motion right away.

8 112. Between September 2014 and January 2015, Terry repeatedly telephoned
9 Respondent, sent him text messages, and sent him emails trying to obtain information about his
10 matters.

11 113. Respondent failed to respond to Terry's requests for information about his
12 matters.

13 114. Respondent did not file the motion or take any other steps to vacate the
14 conviction.

15 115. In March 2015, after Terry filed this grievance against Respondent, Respondent
16 told Terry for the first time that the motion had not been filed.

17 **COUNT 10**

18 116. By failing to diligently represent Terry, Respondent violated RPC 1.3.

19 **COUNT 11**

20 117. By failing to communicate with Terry about his matters, Respondent violated
21 RPC 1.4.

22 **COUNT 12**

23 118. By failing to deposit the funds Terry paid him into a trust account, Respondent

1 | violated RPC 1.5(f) and/or RPC 1.15A(c).

2 | **FACTS REGARDING COUNTS 13 THROUGH 16: MIGUEL BARRAGAN GRIEVANCE**

3 | 119. Miguel Barragan was convicted of two counts of Rape of a Child and First
4 | Degree Assault in Grant County Superior Court.

5 | 120. In July 2011, Barragan telephoned Respondent and spoke with him about his
6 | case.

7 | 121. In July 2011, Barragan hired Respondent to file a personal restraint petition or
8 | file a motion for a CrR 7.8 hearing on his behalf.

9 | 122. Respondent was paid \$10,000 for the representation.

10 | 123. Respondent did not enter into a written fee agreement with Barragan.

11 | 124. Some or all of the \$10,000 was paid in advance of performance of the services.

12 | 125. Respondent did not deposit the money into a trust account.

13 | 126. Some or all of the \$10,000 was for fees and/or expenses that Respondent never
14 | earned or incurred.

15 | 127. During the time he represented Barragan, Respondent met in person with him
16 | twice to discuss his case.

17 | 128. During the time he represented Barragan, Respondent spoke with Barragan twice
18 | by telephone about his case.

19 | 129. Barragan and members of his family repeatedly telephoned Respondent and left
20 | messages for him to return their calls.

21 | 130. Respondent did not return the telephone calls or otherwise communicate with
22 | Barragan and/or his family about his case.

23 | 131. Respondent did not prepare or file the personal restraint petition or motion for a

1 CrR7.8 hearing that he was hired to prepare and file.

2 132. Respondent did little or no work on behalf of Barragan.

3 133. Upon termination of the representation, Respondent failed to refund the advance
4 payment of fees and/or expenses that he never earned or incurred.

5 **COUNT 13**

6 134. By failing to diligently represent Barragan, Respondent violated RPC 1.3.

7 **COUNT 14**

8 135. By failing to communicate with Barragan regarding his case, Respondent
9 violated RPC 1.4.

10 **COUNT 15**

11 136. By failing to deposit the funds he was paid to represent Barragan into a trust
12 account, Respondent violated RPC 1.5(f) and/or RPC 1.15A(c).

13 **COUNT 16**

14 137. By charging and collecting an unreasonable fee and/or a unreasonable amount
15 for expenses, and/or failing to refund an advance payment of fees and/or expenses that he never
16 earned or incurred, Respondent violated RPC 1.5, RPC 1.15A(f), and/or RPC 1.16(d).

17 **FACTS REGARDING COUNTS 17 THROUGH 20: CONNIE WELKER GRIEVANCE**

18 138. In June 2014, Connie Welker hired Respondent to represent her friend, Phillip
19 Gleason, who was charged with felony firearm and drug charges in Pierce County Superior
20 Court. The charges arose from an incident that occurred while Gleason was on parole from an
21 Idaho robbery case.

22 139. On September 21, 2014, Welker paid Respondent \$8,500 for representation that
23 included pretrial, trial, and sentencing.

1 140. Respondent sent Welker a copy of a fee agreement he had signed, but neither
2 Gleason nor Welker executed a written fee agreement.

3 141. Respondent did not deposit the \$8,500 Welker paid him into a trust account.

4 142. In 2015, Gleason was involved in another incident in Washington while on
5 parole in the Idaho case. He fled to Idaho, where he was arrested.

6 143. At the time the charges were filed in the 2015 Washington case, Gleason was in
7 custody in Idaho.

8 144. Welker paid Respondent an additional fee of \$15,000 to represent Gleason on the
9 2015 charges.

10 145. Neither Gleason nor Welker entered into a written fee agreement with
11 Respondent for the additional representation.

12 146. Respondent did not deposit the \$15,000 into a trust account.

13 147. On March 30, 2015, while Gleason was in custody in Idaho, Respondent filed a
14 Demand for Extradition.

15 148. Gleason prepared and submitted the paperwork to be transferred from Idaho to
16 Washington under the Interstate Agreements for Detainers, RCW 9.100.010, which provides for
17 the transfer of prisoners to the requesting state.

18 149. Gleason was returned to Washington.

19 150. The Demand for Extradition Respondent filed was of no benefit to Gleason.

20 151. Between June 29, 2015 and April 1, 2016, the 2014 case was continued six
21 times. During the same time period, the 2015 case was continued four times.

22 152. Respondent did not appear at three of the court appearances, but had another
23 attorney appear for him.

1 153. Other than requesting continuances, Respondent did little or no work on
2 Gleason's cases.

3 154. In November 2015, prosecutor Bryce Nelson extended an offer to settle the
4 cases.

5 155. Respondent did not communicate the settlement offer to Gleason.

6 156. During the representation, both Gleason and Welker repeatedly tried to
7 communicate by telephone and email with Respondent to obtain information about the cases.

8 157. Respondent did not return Welker's calls or email, nor did he communicate with
9 her about Gleason's cases.

10 158. Respondent did not return Gleason's calls or otherwise communicate with him
11 about his cases.

12 159. In June 2016, Gleason terminated Respondent.

13 160. Respondent did not refund any of the \$23,500 fee he had been paid to either
14 Gleason or Welker.

15 **COUNT 17**

16 161. By failing to communicate with Gleason and/or Welker regarding Gleason's
17 case, and by failing to communicate the prosecution's settlement offer to Gleason, Respondent
18 violated RPC 1.2(a) and/or RPC 1.4.

19 **COUNT 18**

20 162. By failing to diligently represent Gleason, and/or by failing to make reasonable
21 efforts to expedite litigation, Respondent violated RPC 1.3 and/or RPC 3.2.

22 **COUNT 19**

23 163. By failing to deposit the fees Welker paid him into a trust account, Respondent

1 | violated RPC 1.5(f) and/or RPC 1.15A.

2 | **COUNT 20**

3 | 164. By charging and collecting an unreasonable fee, and or by failing to refund an
4 | advance payment of fees that he did not earn, Respondent violated RPC 1.5, RPC 1.15A(f),
5 | and/or RPC 1.16(d).

6 |
7 | THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for
8 | Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,
9 | restitution, and assessment of the costs and expenses of these proceedings.

10 |
11 | Dated this 22nd day of May, 2017.

12 |
13 | 
14 | _____
15 | Debra Slater, Bar No. 18346
16 | Disciplinary Counsel

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LAW OFFICES OF JOHN HENRY BROWNE, P.S.

October 18, 2017 - 3:26 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Fowler, Vincent L
Trial Court Case Number: 13-1-00466-4
Trial Court County: Kitsap Superior Court
Signing Judge: Jeffrey Bassett
Judgment Date: 2014-12-10

The following documents have been uploaded:

- 0-PRP_Personal_Restraint_Petition_Plus_20171018152214D2418026_2053.pdf
This File Contains:
Affidavit/Declaration - Service
Personal Restraint Petition
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