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STATE OF WASHINGTON

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE:

STEPHEN D. CRAMER,
Lawyer (Bar No 9085).

CASE NO. 2005373
Proceeding No. 06#00020

PETITIONER'S REPLY
BRIEF

COMES NOW Appellant Stephen D. Cramer, by and through his
counsel of record, Hawley Troxell Ennis & Hawley LLP, and files
Petitioner's Reply Brief. Pursuant to Rule 10 3(c) of the Rules of
Appellate Procedure, Petitioner has attempted to limit this reply brief to
responding to only those issues raised by Respondent's Answering Brief
filed on or about May 27, 2008

PETITIONER'S REPLY BRIEF

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I.
FACTUAL FINDINGS IN ERROR

In footnote 2 of its Answering Brief, the Washington State Bar Association (“WSBA”) argues that Cramer has not assigned error to the specific findings of fact underling the conclusions of law that are in error. Cramer takes issue with that characterization of the Petitioner’s Brief.

The Petitioner’s Brief certainly takes issue with the factual findings of the Hearing Officer. Specifically, Petitioner’s Brief challenges factual findings 14, 15, 22, 23, 24, and 25.

A. Factual Finding #14 is in Error.

Respondent should have known that the payments made by Mr. Garcia on the 9th and 12th of April should have been deposited into the trust account.

Pages 19-22 of the Petitioner’s Brief are devoted to refuting this factual finding.

B. Factual Finding #15 is in Error.

15. There was no meeting of the minds or agreement by Mr. Garcia that the initial \$1,000 payment was non-refundable; he did not sign and return the fee agreement. The respondent should have known that the \$1,000 should have been deposited to his trust account.

The Petitioner’s Brief clearly states that both of the findings in paragraph 15 “are erroneous.” PB 14, line 8. The Petitioner’s Brief has five pages of argument showing how the Hearing Officer and Disciplinary

Board erred when they made and/or adopted those factual findings. PB
14-18

C. Factual Findings #22 and #23 are Irrelevant and Misleading.

22. Respondent knew that the case was not going to trial on 15
April 2002 on 12 April 2002.

23. Respondent's billing statements contained in his file reflect the
payment of the \$2,500 on 12 April 2002.

Petitioner's Brief did not explicitly challenge either of these
findings of fact, as these facts are not relevant. They are, however,
misleading.

The Hearing Officer cited these facts apparently for the unstated
conclusion that Cramer was taking the retainer despite knowledge that he
did not need it. First, those two facts, while true in a vacuum, do not say
anything conclusive. The record is unclear when Garcia paid his final
retainer check or when Cramer learned trial was being postponed for at
least a day. The evidence in the record is that Garcia gave Cramer the
final retainer payment on April 12 but the actual time of day was never
discussed in the testimony. TR 55:1-11. Cramer testified that he may
have received the call from the court temporarily postponing trial in the
late afternoon on April 12. TR 184:3-10. Thus, factual findings #22 and
#23 are irrelevant because they do not clarify whether Garcia paid the

money to Cramer before Cramer learned of the temporary postponement of trial

In addition, those facts are not relevant because trial was not postponed indefinitely. It was still scheduled to go forward, potentially as early as April 16, 2002. Cramer was not trying to take his clients money. Trial was set to go forward at any time and the retainer was a reasonable amount to cover the expense of preparing for and going forward with trial. Even when it was pushed back for several weeks, there was nothing insidious in Cramer keeping the retainer and billing Garcia against that retainer, with the expectation that trial or mediation would still be inevitable and would draw down the full amount of the retainer

D. Factual Findings #24 and #25 Are In Error.

24. Respondent produced a bank statement for the Association asserting that \$2,500 paid on 16 April 2002 was paid by Mr. Garcia and deposited to the trust account. Respondent should have known when presenting the statement that it was not Mr. Garcia's funds. He knew from his billing statements that the funds were paid on 12 April 2002 not 16 April 2002, Ex. 216 page 133, that they were paid before the trial date of 15 April 2002. He reviewed Mr. Garcia's file before producing bank statement and billing records for the Association.

25. Respondent should have known that he did not deposit the \$2,500 to the trust account when he made that representation to the Association despite the burglary and theft of checks and bank records from his office.

Again, Petitioner's Brief explicitly challenged these findings as in error. See PB at 23-25. These findings are erroneous for two reasons.

First, the Hearing Officer states that Cramer “reviewed Mr Garcia’s file before producing bank statement and billing records.” Cramer testified that he merely had his secretary print out the billing records from the computer. TR 242:22-243:18. Cramer was never asked nor did he ever testify regarding whether he carefully reviewed the billing records. Neither the Hearing Officer nor the WSBA can point to any evidence indicating that he did review those records. Cramer believed he was innocent and he believed that he had the document to prove his innocence. Whether he should have done more to confirm the accuracy of the document is an issue of negligence, not a knowing violation of the rules.

Second, and more important, even if Cramer had reviewed those billing records, they would not have told him anything to dissuade him from believing that he properly deposited the retainer into his trust account. The billing statements only indicate that the funds were received on April 12 (which of course is not true, as part of the payment was received on April 9). They do not say anything about when they were deposited. April 12 was a Friday, so only one workday passed before the deposit was made on April 16. Therefore, the billing records, even if they had been reviewed, would not have caused Cramer to believe that he had erred with his deposits. If anything, the billing records would have merely

confirmed for Cramer that he received the funds on April 12 and must have deposited them two working days later, on April 16.

II.
RESPONSE TO FACTS CITED BY RESPONDENT

A detailed and complete rendition of the facts in the record is found in the initial brief filed by Petitioner. The Answering Brief (“AB”) filed by the Washington State Bar Association (“WSBA”) contains more selective facts and Petitioner takes issue with some of these facts

A. Agreement As To Initial Payment Being Nonrefundable

First, the WSBA states that “[Garcia and Cramer] never agreed that any fee payment Garcia made to Cramer would be nonrefundable.” AB at 4. In support of that “fact,” the WSBA cites to sections of the transcript where Garcia testified that he never discussed any fee issues with Cramer. That hearing testimony from Garcia was specifically rejected by the Hearing Officer, who found that “Respondent gave Mr. Garcia a form fee agreement similar to the one admitted in this matter.” The WSBA also cites the portion of the transcript where Cramer explained that he must have discussed the fee agreement with Garcia, including the non-refundable provision.

Q. Did you enter into a written fee agreement with Mr. Garcia?

A. I would have. I wasn’t able to find it. I wish I could have found it.

Q. You don't recall?

A. Well, I don't recall, but whenever a new client comes in the door and he's going to be charged by an hourly rate, I always do a written fee agreement.

Q. And you recall what you thought happened in this case.

A. Well, my theory would be I probably – Kim Garcia – I never met her, heard of her – probably filled out the agreement, gave it to Mr. Garcia, told him to take it home and have her sign it and bring it back. That's happened in a few cases.

See also TR 169:10-172:23 (“I would have told Frank Garcia that this a non-refundable deposit, it's a small amount, I'm going to represent you in the construction case, I'm going to bill you by the hour, let's go.”).

These facts do not support a factual finding that Garcia and Cramer never agreed to a nonrefundable fee payment. The facts may support the conclusion that a written fee agreement was never signed, but they do not support the finding that there was no oral agreement.

B. The Timing Of Receipt Of The April 15, 2002 Payment And The Cancellation of Trial

The WSBA also states, “As of [April 12, 2008], Cramer knew that Garcia's trial was not going to go forward on April 15 because there were no available judges or courtrooms, but he did not communicate this to Garcia.” AB at 5. That factual assertion is technically accurate but misleading. The WSBA is attempting to infer that Cramer accepted the retainer from Garcia despite the knowledge that he would not need the retainer. The WSBA wants the Court to believe that Cramer knew trial

would not go forward on April 15, 2002 or any other proximate date and therefore he was misleading his client when he accepted the retainer payment on April 12, 2002. The testimony, however, does not support that conclusion.

Garcia only indicated that he hand-delivered the payment on April 12, 2002; he did not testify to a specific time of the day. TR 55:1-11. Cramer testified that he learned of the postponed trial "probably by Friday afternoon" TR 184:3-10. That testimony is hardly conclusive that Cramer knew of the cancelled trial before he received the remaining amounts needed for his retainer.

In addition, Cramer testified that the trial was only postponed and could be rescheduled for the following days, as quickly as April 16, 2002 TR 183:17. The trial was eventually postponed for a longer period but those facts do not support the conclusion that Cramer was acting improperly. He believed trial was going to go forward on April 15, 2002. He learned the trial was being postponed, potentially for only a day or two. He received the retainer; whether he received that retainer before or after learning of the short postponement is unclear. In any event, he still believed trial was imminent and would require a retainer.

C. Cramer Unaware Of The Balance In His General Account

The WSBA further states, "Cramer admitted that he checked his account's balance by phone at times, but did not say whether he did so prior to depositing Garcia's checks." AB at 5. Again, this statement of fact is misleading. Cramer did say that he has checked his balances by phone on occasion: "not very often." TR 165. Cramer did not say whether he checked prior to depositing the Garcia checks, but his failure to address that issue is only because counsel for the WSBA failed to ask the question. Counsel for the WSBA likely did not ask that question because she knew the response is obviously "No." Cramer's testimony is unequivocal that he made a mistake about depositing the funds in the wrong account. TR 259:3-10. The WSBA has absolutely no evidence to suggest that Cramer checked or was otherwise aware of his bank account balances prior to depositing the retainer into his general business account.

D. Cramer's Normal Receipt And Treatment Of The Retainer

The WSBA states, "In fact, Cramer did not earn the \$2,500 advance fees until November 2002, seven months later" AB at 6. That assertion of fact is again technically correct but ignores the additional relevant facts that show those fees could have easily been earned much earlier. The retainer was received at a time when trial was imminent. The uncontested facts are that trial was originally scheduled for April 15, 2002.

The uncontested evidence is that the Court, not Cramer, decided to postpone the trial date and then normal attorney scheduling conflicts resulted in additional postponement. Eventually, resolution of the matter was pushed back in order to utilize binding arbitration and therefore the retainer was not used up for several months. TR 182-183. But, the taking of the retainer just prior to trial was not dishonest and the additional postponement of trial by the Court is not evidence of any knowing misuse of client funds. In all his billings from April through November, Cramer properly treated the funds as a retainer that he applied to the work that he performed in the case.

E. Cramer's Limitations Due To The Burglary Of His Office

The WSBA's fact section also states, "Cramer reviewed Garcia's client file and billing statements prior to responding to the Association." AB at 6. The WSBA does not cite to any portion of the hearing transcript to support this fact. The WSBA only cites to the Hearing Officer's findings. As discussed above, the Hearing Officer's finding is not supported by the testimony and record before the Court, nor is this fact even relevant since the billing records would have only confirmed Cramer's belief that the funds were received around April 12 and deposited two working days later on April 16.

F. Discovery of Cramer's Misstatement To The WSBA

The final objectionable factual assertion is that "Cramer's misrepresentation did not come to light until five months later when Garcia's wife faxed copies of the cancelled checks to the Association" AB at 7. This fact is misleading. As noted in the Petitioner's Brief, Cramer obviously would have expected the WSBA to do its own follow up work to confirm the accuracy of his belief. PB 24-29 The WSBA could have subpoenaed the checks from the banks. The Rules for Enforcement of Lawyer Conduct anticipate that the WSBA, and not Cramer, will seek further documentation from third parties. Cramer did nothing to inhibit the WSBA from confirming the truth. He merely provided the information that he thought would resolve the matter and waited for the WSBA to resolve the issue

Had it not been for the burglary of his office, Cramer would have certainly provided additional information that could have helped the WSBA more easily identify Cramer's error. However, after the burglary, Cramer had nothing to turn over, and the WSBA was right to look elsewhere. Any five-month delay in getting the complete information was delay caused by the ramifications of the burglary and the WSBA's own busy schedule.

III.
PETITIONER DID NOT INFLATE THE BURDEN OF PROOF

The WSBA argued, “Cramer Improperly Attempts to Inflate the Burden of Proof.” AB at 9. This is a red herring and a mischaracterization of the argument found in Petitioner’s Brief. Cramer is not arguing that the standard is “beyond a clear preponderance.” Certainly, the *Marshall* case contains that language but a careful review of Petitioner’s Brief clearly reveals that Cramer’s argument always states that the WSBA failed to prove its case by clear and convincing evidence.

In addition, the WSBA states, AB at 9, that Cramer has relied upon a portion of *Little* that was overruled; that statement is flat out wrong and an obvious mischaracterization. Petitioner’s Brief only cites to the language in the *Marshall* dissent and in *Little* that explains why the WSBA is required to meet the clear and convincing standard rather than just simple preponderance:

We presume any licensed and practicing attorney maintains the high morals of the profession. This presumption is only rebutted when facts are proved beyond a clear preponderance of the evidence. Indeed, we have a constitutional obligation to ensure no attorney is unduly deprived of his property or liberty interests in his professional license. Challenged findings of facts must be supported by substantial evidence, which incorporate this heightened burden of proof. Nevertheless these findings cannot be conclusory, but must set forth specific facts demonstrating a clear violation of the Rules of Professional Conduct

In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 329, 157 P.3d 859 (2007) (dissent); *In re Little*, 40 Wn.2d 421, 430, 244 P.2d 255 (1952) (“The respondent in such a matter is, upon his admission to the bar, certified by the court to have then attained high moral and professional standards. It is to be presumed that he has maintained them and has performed his duty as an officer of the court in accordance with his oath.”); see also *In re Disciplinary Proceeding Against Dornay*, 160 Wn.2d 671, 695 n.6, 161 P.3d 333 (2007) (“We must presume Dornay maintained the high morals of the profession. The bar association can rebut this presumption only by proving its case beyond a clear preponderance of the evidence.”) (dissent).

The *Guarnero* decision overruled only the language from *Little* that “every doubt should be resolved in [the lawyer’s] favor.” *In re Disciplinary Proceeding Against Guarnero*, 152 Wn.2d 51, 61-62, 93 P.3d 166 (2004). No where does Petitioner’s Brief cite to that portion of *Little* or make that argument. The WSBA has misstated Cramer’s argument.

In fact, the *Guarnero* decision sets forth the standards quite plainly:

The WSBA must prove each count by a "clear preponderance of the evidence." A "[c]lear preponderance' is an intermediate standard of proof . . . requiring greater certainty than 'simple preponderance' but not to the extent required under 'beyond reasonable doubt.'" . . . When challenged on appeal, a hearing

officer's findings of fact will be upheld where they are supported by substantial evidence.

Id. at 58.

As cited in Petitioner's Brief, the *Marshall* dissent and the *Allotta* decision (cited by *Guarnero*) explain why the WSBA is required to show a clear preponderance of the evidence, rather than the normal simple preponderance:

"Clear preponderance" is an intermediate standard of proof in these cases, requiring greater certainty than "simple preponderance" but not to the extent required under "beyond reasonable doubt". This intermediate standard reflects the unique character of disciplinary proceedings. The standard of proof is higher than the simple preponderance normally required in civil actions because the stigma associated with disciplinary action is generally greater than that associated with most tort and contract cases. Yet because the interests in protecting the public, maintaining confidence, and preserving the integrity of the legal profession also weigh heavily in these proceedings, the standard of proof is somewhat lower than the beyond reasonable doubt standard required in criminal prosecutions.

See In re Disciplinary Proceeding Against Allotta, 109 Wn.2d 787, 792, 748 P.2d 628 (1988)

On appeal, the factual findings of the Hearing Officer are only upheld if they are supported "by substantial evidence of a clear and convincing nature." *In re Detention of LaBelle*, 107 Wn.2d 196, 210, 728 P 2d 138 (1986). In addition, the substantial evidence must be highly probable. *See In re Marriage of Schweitzer*, 132 Wn. 2d 318,

329, 937 P.2d 1062 (1997). As shown in Petitioner's Brief and clarified below, the Hearing Officer's factual findings are not supported by the substantial evidence of a clear and convincing nature.

**IV.
SUBSTANTIAL EVIDENCE OF A CLEAR AND CONVINCING
AND HIGHLY PROBABLE NATURE DOES NOT SUPPORT THE
FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THIS
MATTER**

Cramer is not asking the Court to "reweigh" the evidence, as suggested by the WSBA. Rather, Cramer is asking the Court to review the evidence in the record and determine whether the evidence can truly be characterized as highly probable and as "substantial evidence of a clear and convincing nature." This is the test on appeal. As explained below, and in Cramer's initial brief, the evidence relied upon by the Hearing Officer is inconclusive and cannot be characterized as substantial evidence of a clear and convincing nature.

A. Substantial Evidence of a Clear and Convincing Nature Does Not Support Conclusion That Cramer Should Have Known He Was Violating The Rules of Professional Conduct When He Treated The Initial \$1,000 Payment As Non-Refundable.

The WSBA's Answering Brief is extremely helpful in demonstrating the lack of substantial evidence of a clear and convincing nature to support the Hearing Officer's findings of fact and conclusions of law regarding the deposit of the initial \$1,000 payment into Cramer's

general business account. The WSBA only cites one fact in support of the Hearing Officer's conclusions: "Garcia never signed or returned the fee agreement." AB at 3-4 That fact is based on the testimony from Cramer that he was not able to locate the signed fee agreement in the client file. That fact is not substantial evidence of a clear and convincing nature of a knowing violation of the rules of professional conduct.

The rest of the facts, uncited by the WSBA, suggest that Cramer inadvertently failed to follow up with a client who failed to return the signed agreement. Cramer produced his form fee agreement, that provides for a non-refundable initial payments from clients, and he testified that he regularly explains the agreement and gives it to all of his clients for their signature. Garcia tried to testify that Cramer completely failed to provide a written fee agreement. But the Hearing Officer rejected Garcia's testimony and accepted Cramer's testimony. The Hearing Officer was correct in accepting Cramer's testimony because Garcia's biased recollection is illogical.

The WSBA cannot point to any facts that provide a motive for Cramer to knowingly hide the non-refundable nature of the \$1,000 fee. All Cramer had to do was point out the non-refundable provision in the fee agreement to Garcia and have Garcia say okay. No client would object to the non-refundable nature of a \$1,000 fee that would be earned within the

first six hours of legal work. A client trying to avoid a potential \$35,000 liability would certainly not bicker with being committed to pay his attorney at least \$1,000. Cramer's form fee agreement contained the non-refundable language, supporting Cramer's testimony that he regularly discussed and required a non-refundable initial fee. Cramer would gain nothing by failing to disclose the non-refundable nature of the fee.

Based on the sole evidence that there Cramer could not produce the signed, written fee agreement with Garcia, the Hearing Officer jumped to the conclusion that (1) the parties did not have an agreement about the non-refundable nature of the initial payment and (2) Cramer should have known he was misusing the funds if he treated them as non-refundable. Those findings are not supported by clear and convincing evidence and this Court should find that there is no substantial evidence of a clear and convincing nature to support those findings. Those findings are a giant leap of logic and do not meet the exacting standards of clear and convincing evidence, which higher burden is designed to provide an initial presumption that "any licensed and practicing attorney maintains the high morals of the profession" and is designed to protect against the terrible "stigma associated with disciplinary action." *See Marshall*, 160 Wn.2d at 329 (dissent); *Allotta*, 109 Wn 2d at 792.

The evidence before the Hearing Officer should have and could have led him to very different inferences and conclusions; thus, that evidence can not be considered substantial evidence of a clear and convincing nature. For example, the evidence of a missing fee agreement could have resulted in the conclusion that Cramer and Garcia did agree about the non-refundable fee but Garcia took the agreement home to show his wife and have his wife sign and then failed to return it. The conclusion would have been well supported by the facts: Cramer's modus operandi is to discuss fees with his clients at initial meetings, his written fee agreement has a spot for a non-refundable portion of the retainer, the Hearing Officer accepted Cramer's testimony that he gave Garcia the fee agreement, Garcia paid the \$1,000, and Cramer treated the \$1,000 as a non-refundable fee by putting it into the business account. It cannot be considered unusual for a solo practitioner, handling an extremely large number of cases, to forget to follow up with a client regarding a signed fee agreement as evidence of an oral agreement.

In sum, the Hearing Officer's conclusions presume the worst about Cramer. Despite Cramer's history of discussing and requiring non-refundable fees from his clients, the Hearing Officer concluded that Cramer knowingly did not discuss that issue with Garcia and/or get Garcia's consent and the only facts to support that conclusion are the lack

of a signed fee agreement in the file. That conclusion is not the most likely conclusion to be drawn from the facts and is certainly not supported by “substantial evidence of a clear and convincing nature.”

B. Substantial Evidence of a Clear and Convincing Nature Does Not Support Conclusion That Cramer Should Have Known He Was Violating The Rules of Professional Conduct When He Erroneously Placed The \$2,500 Retainer Into His General Business Account.

On pages 13-14 of the Answering Brief, the WSBA lists the various facts that it believes support the Hearing Officer’s conclusion that Cramer knowingly, *i.e.* should have known, deposited the \$2,500 retainer into his general business account, in violation of his client trust account. As an initial matter, several of the facts cited are erroneous or misstatements of the record. For example, as previously discussed above, the facts related to Cramer’s alleged knowledge of the trial postponement are irrelevant and overstated. The record does not support the conclusion that Cramer was taking the retainer for his own purposes; rather, the evidence shows that trial was still imminent when he accepted the retainer and postponement only came later such that Cramer’s retention of the retainer was certainly not unusual or inappropriate.

The WSBA is left with basically two facts to support its conclusion of a knowing misuse of client funds: an admittedly incorrect deposit of client funds and evidence of a shortfall in the general business account.

This is some evidence but this Court should conclude that this evidence cannot be characterized as substantial evidence of a clear and convincing nature.

Again, the issue before the Hearing Officer was whether the admittedly erroneous deposit of a mere \$2,500 was accidental or was done knowingly. The WSBA is focusing on circumstantial evidence of shortfalls in the general business account and is painting a picture of financial distress and a knowing attempt by Cramer to use client funds to avoid the shortfalls. Evidence of a shortfall in the business account should not be sufficient evidence to result in the stigma of an eight month suspension. As a solo practitioner, shortfalls happen. Small businesses regularly have such shortfalls, due to the ebb and flow of business. The WSBA presented no testimony to indicate that Cramer was concerned about the shortfall and desperate enough to knowingly use client funds and risk his license, reputation, and employment. Rather, the testimony was that Cramer did not keep a close eye on his finances and did not keep his accounting current.

In fact, there are undisputed facts in the record that conflict with the WSBA's and the Hearing Officer's conclusions. The WSBA points to several checks, particularly a \$1,000 IRS check, that would have bounced had it not been for the \$2,500 incorrect deposit. However, Cramer did not

act like a person who was concerned about the IRS check or any other check bouncing. The undisputed facts are that Cramer got the first portion of the retainer, \$1,500, on April 9 but he did not deposit those funds until April 15, five business days later. That delay contradicts the theory that Cramer was aware of a shortfall in his account and was trying to avoid bouncing checks. The \$1,000 IRS check had been outstanding since April 1, but Cramer was in no hurry to deposit a \$1,500 check from Garcia that would have covered the IRS check. In addition, there is no evidence that the IRS or any other creditor was making substantial threats regarding collection against Cramer.

Cramer made a mistake with one deposit and that mistake coincided with a period where his general business account was short on funds. Those facts should not be considered sufficient evidence to conclude that the incorrect deposit was knowingly made. That evidence is not sufficient evidence to support an eight month suspension and a destroyed reputation.

C. Substantial Evidence of a Clear and Convincing Nature Does Not Support Conclusion That Cramer Should Have Known He Was Making An Incorrect Statement To The WSBA Regarding The \$2,500 Deposit.

Again, the WSBA's Answering Brief shows the complete lack of facts to support the Hearing Officer's findings of fact and conclusions of

law regarding Cramer's incorrect statement to the WSBA. The WSBA does not cite to any fact that shows Cramer acted with knowledge when he erred in his one statement to the WSBA. The only allegedly "damning" fact cited is that Cramer had reviewed Garcia's client file and billing statements and knew from these billing statements that he received the funds from Garcia on April 12 and not April 16. As explained previously, those findings of the Hearing Officer are not supported by the record and cannot be cited to the record. The WSBA only cites the Hearing Officer's finding and not any testimony or document to support that conclusion.

In addition, and more importantly, even if Cramer had noted that he received the payments on April 12, how would that knowledge have clarified that the money would not have been deposited into trust on April 16? April 12 was a Friday, so depositing the funds on April 16 would only be two business days after the funds were received. Why would it be unusual for the money to be received on April 12 and then deposited on April 16, only two workdays later? The money was actually deposited on April 15, only one day off from what Cramer assumed. The billing records would only have further strengthened Cramer's belief that the April 16 deposit to the trust fund was the deposit of Garcia's funds. Thus, even if Cramer had reviewed the billing records, that one fact is hardly substantial evidence of a clear and convincing nature that Cramer should

have known that the \$2,500 deposit on April 16 could not have been a deposit of the Garcia funds that had been received only two working days prior.

V.

**AFTER REJECTING THE INADEQUATELY SUPPORTED
FACTUAL FINDINGS AND CONCLUSIONS OF LAW, THE
COURT SHOULD CONCLUDE THAT A SIGNIFICANTLY
REDUCED SANCTION IS APPROPRIATE**

The Answering Brief of the WSBA states that the sanctions adopted by the Disciplinary Board should be approved. Obviously, those sanctions are dependant on this Court's findings regarding the underlying facts and conclusions of law of the Hearing Officer, which are not supported by substantial evidence of a clear and convincing nature. After correcting the Hearing Officer's findings of fact and conclusions of law, the proper sanction is a reprimand and/or admonition, not a suspension of eight months. The reasons for giving a reprimand and/or admonition are thoroughly addressed in Petitioner's Brief and do not require repeating here.

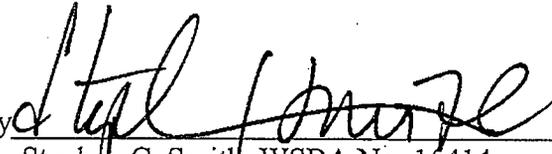
VI.

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Court find that the correct sanction for his negligence is a reprimand or admonition and the Board's sanction of an eight month suspension should be vacated.

RESPECTFULLY SUBMITTED THIS 16th day of June, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

Stephen C. Smith, WSBA No. 15414
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2008, I caused to be served a true copy of the foregoing PETITIONER'S REPLY BRIEF by the method indicated below, and addressed to each of the following:

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Stephen C. Smith

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Dear Court Clerk:

Attached for filing in the above subject matter is the the **Petitioner's Reply Brief** . If you have any questions regarding this matter or need further information, please telephone Stephen C. Smith at (208) 344-6000, or his assistant at (208) 388-4821.

COS: Francesca D'Angelo (via e-mail)

Sheila Clark

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