

2006 25-6

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SUPREME COURT  
STATE OF WASHINGTON

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IN RE:

LARRY A. BOTIMER

LAWYER (BAR NO. 23805)

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BRIEF OF APPELLANT LARRY A. BOTIMER

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STATE OF WASHINGTON

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**STATEMENT OF THE CASE**

Attorney Larry A. Botimer is accused of violating conflict of interest rules, disclosing confidences and secrets of a client and disclosing the fact that a tax return he prepared for a client was later determined to be fraudulent. The Disciplinary Board has ordered Mr. Botimer to be suspended for six months.

**Tax Return Preparation**

Appellant Larry A. Botimer prepared the tax returns for Ruth Reinking for the tax years 1996 through 2001 and prepared the federal tax returns for Ruth Reinking's son and daughter-in-law, Jan and Janet Reinking, for the tax years 1995 through 2002. Of course the requirement that a taxpayer and her tax preparer prepare and file an accurate and complete tax return is set forth in many different statutes, rules and case decisions. A federal tax return is also the sworn declaration of both the taxpayer and the tax preparer. The tax return provides as follows:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of Preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

\_\_\_\_\_  
Signature of Taxpayer

\_\_\_\_\_  
Signature of Tax Preparer

EX A-28.

During all the time that Mr. Botimer prepared the tax returns for Ruth

Reinking and Jan and Janet Reinking, none of the allocations made by Mr. Botimer in his tax return preparation has ever been challenged or questioned by Ruth Reinking, the Internal Revenue Service, Jan and Janet Reinking, or anyone else. There has been no conflict of interest issue raised by anyone concerning the tax preparation work performed by Mr. Botimer for the parties. As far as Mr. Botimer knows, there is no allegation in this disciplinary matter that any of the tax returns he prepared for any party were inaccurate. TR 53-222.

In 2002, Mr. Botimer sent a letter to the Internal Revenue Service stating that as "the signed preparer for Mrs. Reinking's returns for the tax years 1998, 1999 and 2000" he had discovered that Ruth Reinking's tax returns for those years did not correctly state her share of income and loss from a corporation in which she held an interest, Alternative Care Corporation (ACC), and that she had failed to pay gift tax on gifts to her other son James Reinking (Jim). EX A-23.

This letter to the Internal Revenue Service was intended by Mr. Botimer to benefit and protect Ruth Reinking. This letter to the Internal Revenue Service acted as notification to the Internal Revenue Service so as to prevent the imposition of penalties and interest for filing improper returns. It would not have resulted in Ruth Reinking owing any additional tax. Ironically, if the Internal Revenue Service had acted upon Mr. Botimer's letter, the end result would have been a significant reduction in her tax liabilities for the years 1998, 1999 and 2000, and the elimination of the Internal Revenue Service tax lien in the amount

of approximately \$200,000 that had been placed on her home as a result of her failing to claim her proper tax benefits from Alternative Care Corporation. The Bar Association has never disputed, or even questioned, these contentions. TR 53-222.

The failure by Ruth Reinking to claim her proper tax benefits from Alternative Care Corporation was the fault of James Reinking and the attorneys and accountants who jointly represented James Reinking and Ruth Reinking at the time. This is especially egregious in light of the significant changes in tax law concerning net operating losses that went into effect after September 11, 2001, which would have allowed Ruth Reinking to recover those tax benefits by filing proper returns up until the end of 2005. The actions of Ruth Reinking's advisors, tax advisors, attorneys and accountants that jointly represented her and James Reinking seriously and irreparably damaged her personal financial situation. Why the Bar Association has failed to take action against these attorneys who have hurt Ruth Reinking and why they have chosen to take action against Mr. Botimer, who has at all times tried to help Ruth Reinking, is inexplicable. TR 53-222.

If Mr. Botimer had failed to disclose to the Internal Revenue Service the filing of false tax returns that he prepared and signed as his personal declaration under penalty of perjury, he would be committing perjury and would face disbarment. The attorney-client privilege does not apply with regard to the

furtherance of a criminal or fraudulent scheme by a taxpayer. TR 53-222.

**Larry Botimer's Actions in the Superior Court Litigation**

For many years, Ruth Reinking and her former husband, John Reinking, owned and operated, among other properties, an assisted living facility known as Magnolia Health Care Center (hereafter "Magnolia"). Ruth Reinking received ownership of Magnolia, and the real property where it was located, as part of the property settlement in her marital dissolution. EX A-35.

In the 1970's Ruth Reinking tired of operating the business. She asked her son and daughter-in-law, Jan and Janet Reinking to come into the business with her. She told them that, as a "reward" for years of working with her and for her at Magnolia, she would give them half the "Magnolia property" when it was sold. Jan and Janet Reinking joined Ruth Reinking in operating Magnolia. In the early 1990's, Ruth Reinking decided that she wanted to retire, or semi-retire. Jan and Janet Reinking decided that, rather than continue to operate Magnolia for Ruth Reinking, they wanted to buy the business. In 1993, Ruth Reinking gifted the Magnolia business to Jan and Janet Reinking and they signed a lease on the real property under it. The real property continued to be held in the name of Ruth Reinking alone. Throughout the term of the lease, Ruth Reinking received \$5,000 per month rent for the real property. EX A-35.

Jan and Janet Reinking operated Magnolia, converting it into a skilled nursing care facility. In late 1999 or early 2000, Jan and Janet Reinking realized

that the facility was in need of significant updating in order to continue operations as a skilled nursing home. Jan and Janet Reinking began discussing the disposition of the business and the real property with Ruth Reinking. Under the circumstances at the time, it did not make financial sense to attempt to sell the business. In 2000, the parties agreed that the soundest financial course was to close the Magnolia nursing home business and sell the real property to realize the significant value in the underlying real estate. EX A-35.

Ruth Reinking had no ownership interest in Magnolia as a shareholder. Jan and Janet Reinking owned 100 percent of the Magnolia health care business which had been gifted to them by Ruth Reinking. Mr. Botimer had nothing to do with that gift. Mr. Botimer never handled any business matters for any member of the Reinking family. Mr. Botimer prepared tax returns for Ruth Reinking and Jan and Janet Reinking and corresponded with various individuals concerning those tax returns. During the entire time that Mr. Botimer prepared tax returns for the Reinkings, there was never any dispute, conflict or disagreement between the Reinkings. Mr. Botimer prepared the tax returns of the Reinkings based upon information that he received from the Reinkings. Ruth Reinking and Jan Reinking, at all times, freely shared information with each other. That information included correspondence with attorneys, correspondence with accountants and correspondence, faxes and phone conversations with Ruth Reinking's other son, James Reinking, and his wife, Donna. Larry Botimer ceased

doing all work for Ruth Reinking in 2002. It was not until 2004 that he became aware of a dispute between Jan Reinking and Ruth Reinking. EX A-35.

Ruth Reinking had promised Jan and Janet Reinking one-half of the proceeds of sale of the Magnolia property when it was sold. These promises were made repeatedly by Ruth Reinking to Jan and Janet Reinking from the late 1970's through the year 2000. Jan and Janet Reinking made significant personal sacrifices, including selling their home, to relocate patients and to make improvements to the property to maximize its value for sale. Jan and Janet Reinking invested approximately \$68,000 in the property in order to achieve its sale. While the sale of the Magnolia real property was delayed by environmental, historical and zoning problems, Ruth Reinking borrowed approximately \$700,000 and secured that loan with a Deed of Trust on the Magnolia real property. Jan and Janet Reinking knew nothing about this loan. Ruth Reinking used the loan proceeds to acquire two assisted living center properties in the Spokane area. In fact, Ruth Reinking was acquiring shares in a corporate shell that actually owned the properties. That corporation, Alternative Care Corporation, was formed by her other son, James and his wife, Donna. While James and Donna Reinking led Ruth Reinking to believe she was to be a 75 percent owner of Alternative Care Corporation, that never came to pass. Ruth Reinking began with approximately 75 percent ownership of Alternative Care Corporation, but the business was in financial trouble from the outset. James Reinking was the manager of Alternative

Care Corporation's assisted living facilities and essentially ran these facilities into the ground. James Reinking was not paying attention to the business, was not complying with regulations relating to nursing facilities and was unable to turn the business around. The lender required Alternative Care Corporation to engage a turnaround consultant to bring Alternative Care Corporation back to financial stability. That turnaround consultant cost approximately \$150,000. Appellant Larry Botimer had absolutely nothing to do with any of this. Other attorneys, however, simultaneously representing James Reinking and Ruth Reinking, are believed to have participated in these transactions which financially devastated Ruth Reinking. At one point, for reasons that are ill-defined, James Reinking told Ruth Reinking that the Department of Housing and Urban Development required that her share of corporate ownership be reduced to 25 percent in order for Alternative Care Corporation to continue operating the assisted living facilities with HUD refinancing. James Reinking therefore reissued stock in Alternative Care Corporation such that James and Donna Reinking held a 75 percent interest and Ruth Reinking held only a 25 percent interest. Again, Larry Botimer did not have anything to do with that transaction. It is, however, believed that other attorneys simultaneously representing James Reinking and Ruth Reinking did advise Ruth Reinking regarding this transaction. EX A-35.

When the sale of the Magnolia real property closed, the settlement statement showed a payout of proceeds of sale to the Alternative Care Corporation's lender,

who held a Deed of Trust on the Magnolia real property, in the amount \$700,000 and a payout to the turnaround consultant in the amount of \$151,000. Jan and Janet Reinking did not receive any proceeds of the sale of the Magnolia real property as promised by Ruth Reinking. Again, Appellant Larry Botimer had nothing to do with the sale of the Magnolia real property or its closing. EX A-35, TR 53-222.

The Association has made very detailed allegations in its Formal Complaint and First Amended Formal Complaint against Mr. Botimer regarding the operation, control, ownership and sale of the Magnolia health care business, the Magnolia real property and Alternative Care Corporation. CP 2, CP 15. However, there was no testimony from anyone that Mr. Botimer provided legal advice, legal work or participated in any way in the operation, control, ownership or sale of the Magnolia health care business, the Magnolia real estate or Alternative Care Corporation. Again, Mr. Botimer stopped doing all work for Ruth Reinking in 2002. TR 53-222.

Unable to resolve the situation, Jan and Janet Reinking filed suit in 2004 in King County Superior Cause No. 04-2-34487-5 SEA, against Ruth Reinking, James and Donna Reinking and Alternative Care Corporation, alleging causes of action for breach of contract, unjust enrichment, fraudulent and negligent misrepresentation, promissory estoppel, specific performance, conversion, constructive trust and appointment of a receiver. (Hereafter referred to as the

“Superior Court litigation”) Paul Simmerley represented Jan and Janet Reinking. EX R-1, EX R-3. Jan Reinking’s goal in pursuing this litigation was not only to recover his interest in Alternative Care Corporation but also to recover his mother’s (Ruth) interest in Alternative Care Corporation from his brother, James. Ruth Reinking, James and Donna Reinking and Alternative Care Corporation denied all allegations of the complaint and asserted causes of action for conversion, breach of contract, slander/libel, indemnification and attorney fees. EX R-2. Ruth Reinking, James Reinking, Donna Reinking and Alternative Care Corporation were all represented by the same attorney, J. Gregory Lockwood. Throughout the litigation, it was repeatedly pointed out to Mr. Lockwood that he had a conflict of interest in representing all these defendants simultaneously. In mediation with mediator JoAnne Tompkins of Judicial Dispute Resolution, Mr. Lockwood offered to settle the case by giving Jan and Janet Reinking Ruth Reinking’s house while his other client, James Reinking, contributed nothing to the proposed settlement.. Ruth Reinking was not even present at the mediation. TR 371-517.

A week long jury trial was conducted in April of 2006. Prior to the commencement of the trial, the trial judge, the Honorable Suzanne Barnett, conducted an evidentiary hearing, with live testimony, on the issue of whether Larry Botimer would be permitted to testify. The attorney for Ruth Reinking, J. Gregory Lockwood, had brought a motion to prevent Mr. Botimer from testifying

based upon attorney-client privilege. After hearing testimony regarding Mr. Lockwood's motion to prevent Mr. Botimer from testifying, Judge Barnett ruled that he could testify without limitation. Mr. Botimer then testified, pursuant to subpoena and pursuant to Judge Barnett's court order. EX A-33, EX R-4.

The Association contended that Judge Barnett prevented Mr. Botimer from testifying about "trust funds". This is a mischaracterization of the ruling. The Association mixed up Judge Barnett's orders on the Motions in Limine that were filed prior to trial. Judge Barnett ruled that Mr. Botimer could testify without any limitation whatsoever. She also ruled that Jan and Janet Reinking could not offer testimony in their case regarding Ruth Reinking's embezzlement of trust monies belonging to her grandchildren that she gave to her son, James Reinking. The ruling had nothing whatsoever to do with privilege. In the mid-1990's, Jan Reinking had employed Paul Simmerly to commence litigation in Kitsap County Superior Court to interpret his father's will. Jan sought to obtain a portion of his father's estate for Jan's children, James' children and the child of their sister, Bonnie. Jan paid all of the attorney fees and costs to pursue that litigation, which was successful. Ruth Reinking was eventually made the trustee of the trust created for her grandchildren and used her position to pay trust monies to James Reinking for the operation of Alternative Care Corporation and for his personal expenses. Incredibly, in the King County Superior Court trial involving Alternative Care Corporation, James Reinking and the attorney for James and

Ruth Reinking, J. Gregory Lockwood, falsely represented to the court and the jury that Jan Reinking had somehow profited from this Kitsap County litigation over their father's will. CP 75, EX A-33.

The jury in the King County Superior Court litigation returned a verdict in favor of Jan and Janet Reinking and against Ruth Reinking, James Reinking, Donna Reinking and Alternative Care Corporation in the amount of \$530,951.30. Judge Barnett also awarded a judgment for attorney fees against these defendants in the amount of \$62,840.00. Detailed Findings of Fact and Conclusions of Law were also entered by Judge Barnett. EX A-35, EX A-36. Judge Barnett took all of the stock in Alternative Care Corporation away from James Reinking and awarded half of it to Jan Reinking and half of it to Ruth Reinking. Attorney J. Gregory Lockwood filed an appeal on behalf of Ruth Reinking, James Reinking and Donna Reinking. Ruth Reinking directed Mr. Lockwood, in writing, to dismiss the appeal, but he ignored this direction from his client. EX A-37, EX A-38.

James and Donna Reinking filed personal Chapter 7 bankruptcy. For a period of many years, James and Donna Reinking paid themselves excessive compensation from Alternative Care Corporation to the detriment of its other owners, Ruth Reinking and Jan Reinking. Shortly after the judgment was entered, James Reinking and his attorney, J. Gregory Lockwood, arranged for Ruth Reinking to transfer nearly all of her stock in Alternative Care Corporation to

James Reinking. Ruth Reinking received little or no compensation for this transfer. TR 371-517.

For years, James Reinking failed to make payments Alternative Care Corporation owed to its principal lender, who held a Deed of Trust on the real property and a security interest on the personal property. Without consulting Jan Reinking, James Reinking put Alternative Care Corporation into Chapter 11 Bankruptcy Proceedings. These Chapter 11 reorganization proceedings failed and Alternative Care Corporation's lender received permission from the bankruptcy court to foreclose on the property of Alternative Care Corporation. TR 371-517.

#### **SUMMARY OF ARGUMENT**

Attorney Larry A. Botimer is being accused of having conflicts of interest, disclosing confidences and secrets of his client and disclosing the fact that his client filed a false tax return. The Hearing Officer found no actual conflicts of interest. The Hearing Officer only found "potential" conflicts of interest. These "potential" conflicts of interest were extremely minor and never materialized into actual conflicts. The confidences and secrets Mr. Botimer is alleged to have disclosed were not confidences and secrets. All of these alleged confidences and secrets were well-known to Ruth Reinking's son, Jan Reinking, who was suing her, and Jan Reinking obtained knowledge of these alleged confidences and secrets through means other than Larry Botimer. An attorney/tax preparer has a duty to disclose that it has come to his attention that a tax return he filed is

fraudulent. No harm came to Ruth Reinking by any of the actions taken by Larry Botimer.

## ARGUMENT

### Findings Which Deal with all Counts of the Complaint

#### The Hearing Officer Erred in Entering His Findings of Fact 5, 10, 18, 19, 27, 34, 35, 36, 37, 40, 43, 44, 49, 58 and 62 Which Deal With All Counts of the Complaint:

**Finding of Fact No. 5: Thereafter Ruth would continue to work at the business doing landscaping, laundry and occasionally as a nurse. She also did some “consulting” to the business. While she did not receive additional income from landscaping, laundry or working as a nurse, she did receive consulting fees from Magnolia, reported as such on her returns.**

Ruth Reinking had no actual consulting income on the returns prepared by Mr. Botimer. Both the Bar and the Hearing Officer are relying on a false factual interpretation which ignores Mr. Botimer’s testimony and declarations. The declarations and testimony of Mr. Botimer clearly explained that the “consulting income” shown on the returns was an allocation of “partnership income” from her involvement with her sons’ businesses. In the case of Magnolia, Ruth Reinking’s returns show the payment of her real estate taxes by the business as consulting income and it exactly matches her deduction for those taxes. This is because the payment of Ruth Reinkings’ personal debt is income to her and it is not compensation for services. After consulting with Jan and Ruth Reinking it was agreed that it would be characterized as consulting income since it was business income. At no time did Mr. Botimer recommend to Ruth Reinking that she create a consulting business of her own. Disciplinary Counsel misunderstood the tax

situation or the reason and rules used to prepare the Reinking returns. No self-employment tax was required to be paid or B & O tax since this was not compensation for services; and no 1099 MISC was filed by Magnolia as would have been required if it was compensation.

**Finding of Fact No. 10: Larry Botimer began preparing Ruth's income tax returns around 1988**

Mr. Botimer did not file the 1988 tax return for Ruth Reinking.

**Finding of Fact 18: In 1998 or earlier, Larry Botimer recommended to Ruth Reinking that she form a "consulting business" so that she could claim expense deductions to offset "consulting" income paid to her by Jan regarding Magnolia.**

**Finding of Fact 19: Ruth's tax returns for 1998 and 1999 include income and expenses related to this "consulting business."**

These Findings of Fact rely entirely on the testimony of Ruth Reinking and are not substantiated by any written record whatsoever. The tax returns do not reflect this as a fact and in fact clearly contradict this if properly evaluated. It should be noted that the only witness able to testify as to the correct tax law who testified is Mr. Botimer. In failing to contradict any of Mr. Botimer's testimony, the Finding of Fact cannot in any way be considered to meet a preponderance of the evidence standard.

**Finding of Fact No. 27: A probate for Jan Reinking's father, John Reinking, was established on or about 1996. Larry Botimer introduced Jan to attorney Paul Simmerly for the purpose of suing the estate and obtaining funds to be set aside for Jan's children and the children of his siblings, Jim Reinking and Bonnie Blehm.**

Larry Botimer was hired by Jan Reinking to provide advice and research on the possibility of challenging his father's will after John Reinking died. Because of the expense of will contests and the disfavor in which the courts hold them, Larry Botimer agreed to keep track of his hours and only bill if the action was successful. The case entailed hours devoted to all the possible ways to contest a will and other theories, such as contracts to make a will and or construction of wills. In the end it was decided to ask for a petition to have the will subject to construction. Mr. Simmerly was hired to represent the Reinking grandchildren and to conduct the trial. Once the case was concluded, Larry Botimer submitted his bill for the research and trial preparation and the parties agreed to pay it. These are the correct facts about the case, but they are completely irrelevant to this action because Ruth Reinking was not a party.

**Findings of Fact Nos. 34, 35, 36, and 37:**

**34. Beginning in 1999 or earlier Larry Botimer had discussions with Ruth about possible estate planning alternatives.**

**35. Larry Botimer stated in a January 17, 2006 declaration provided to Jan's counsel:**

**(Mrs. Reinking) would occasionally ask me questions about tax law and estate planning and review her potential estate plan with me. She repeatedly advised me that she would want me to prepare her estate plan as soon as her deceased former husband's estate was settled.**

**36. Larry Botimer stated in a July 22, 2005 declaration provided to Jan's counsel:**

**After the successful conclusion of the controversy over John Reinking's estate, Ruth Reinking began discussing a family estate plan for**

herself and her children and grandchildren with me. She would, on occasion, call me at my office and ask me about questions about particular types of estate plans or ways to avoid gift and estate tax.

37. Ruth sent several notes, memos or letters to Larry Botimer about estate planning issues, including a January 13, 2002 memo that identified a bank as her chosen executor rather than naming one of her sons. She considered Larry Botimer to be her lawyer regarding these consultations and considered this information to be confidential.

These findings clearly misrepresent Ruth Reinking's relationship with Mr. Botimer. All of the advice received by Ruth Reinking was related to the tax consequences of her actions and in no way amounted to "representation." No "estate planning" tools such as a questionnaire about assets and plans was ever sent to Ruth Reinking and only documents containing her wishes were provided to Mr. Botimer and to her family members. Ruth Reinking anticipated that Larry Botimer would do her estate work, but the letter specifically states "if you wish." That is not an affirmative agreement at all. Also, she indicated that the Seventh Day Adventist conference would act as executor, not a bank as misrepresented by the Hearing Officer. In no event would Larry Botimer have prepared a will for Ruth Reinking under those circumstances, which is why Mr. Botimer referred Ruth Reinking to a Tacoma attorney. The Bar and the Hearing Officer ignore the fact that Ruth Reinking agreed to see another attorney upon Mr. Botimer's advice precisely because he felt she had a conflict of interest with her son Jim, and because Mr. Botimer was not going to act as anything other than her tax preparer once the dispute over the proceeds of the Magnolia sale had been settled.

**Finding of Fact No. 40: In a letter to Ruth Reinking dated January 19, 2001, Larry Botimer stated that Jan had become as unreasonable and unrealistic as Jim and that he had told Jan that he must get his own attorney**

**if he insisted on pursuing his agenda of forcing everyone to accept his demands.**

This letter has been totally misinterpreted out of its family context to provide the appearance of a factual basis for the Conclusions of Law. Ruth Reinking did not testify about the letter or her understanding of the surrounding circumstances. It does show that Mr. Botimer was present in discussions with her and Jan Reinking lending credibility to the testimony of Mr. Botimer and Jan Reinking. Mr. Botimer has never maintained that a serious conflict existed between Jan and his brother Jim and this letter does not establish any other conflict.

**Finding of Fact No. 43: Ruth Reinking did not have a continuing relationship with any attorney other than Larry Botimer for the period from 1996-2001, although she met on a one-time basis with two other attorneys.**

Ruth Reinking did not consider Mr. Botimer to be her attorney until she was convinced to claim that by Mr. Lockwood as part of his joint representation of Ruth and Jim Reinking. The exhibit from Mr. Zeno's firm expressly states that they represent Ruth Reinking. Indeed Ruth Reinking referred the question of possible estate tax to that firm and received a reply contradicting Mr. Botimer's position. Ruth Reinking relied on Mr. Zeno's firm for business advice, not on Mr. Botimer. This was well known to Mr. Botimer, because Mr. Zeno represented Jim Reinking and was part of the costs for organizing the Spokane properties that Ruth Reinking wanted to take as an expense, but which she needed to amortize or have accounted for by the Spokane accountant. As always, Mr. Botimer

answered her questions about the preparation of her returns but provided no business advice.

**Finding of Fact No. 44: Larry Botimer regarded the representation of Jan and Ruth Reinking as being joint and maintained one Reinking family file.**

Here the extremely limited nature of Mr. Botimer's legal services concerning the proceeds of the sale of the Magnolia property is being ignored. Everything Mr. Botimer did in this connection was concerned with the ultimately correct tax reporting of that sale. That is the extent of the co-representation involved and because of the extensive nature of the discussions involving those proceeds, Mr. Botimer received unprotected information from both Ruth Reinking and Jan Reinking.

**Finding of Fact No 49: Larry Botimer researched historic preservation statutes and gave copies to Jan.**

Larry Botimer did not "research" the statutes, he simply made copies for the Reinkings.

**Finding of Fact No. 58: After Larry Botimer learned of this (disposition of proceeds of sale of Magnolia), he sent an October 28, 2002 letter to Ruth stating that he would no longer provide her with tax or legal services because of her failure to cooperate with him, refusal to follow his advice and failure to pay for his legal services, and that he intended to send the enclosed notification letter to the IRS stating that her tax returns did not contain a true record of her taxable income and that she had failed to report gifts to her son.**

A completely false finding is being made to call into question by innuendo Mr. Botimer's motivations. Larry Botimer sent the October 28<sup>th</sup> letter to Ruth Reinking because he had learned that no amended returns were going to be filed

by Ruth Reinking and Alternative Care Corporation and Larry Botimer resents the fact that, with no proof of any kind, it was asserted and accepted that his motive for sending the letter was learning that he was not going to be paid. Larry Botimer provided tax preparation to Ruth Reinking at a huge discount which surely negates any mercenary motive on his part. Indeed, both the Association and the Hearing Officer have neglected to consider as a mitigating factor, that Larry Botimer had no selfish or deceitful motives in the actions he took.

**Finding of Fact No. 62: The declarations provided background information about Ruth's business and estate planning affairs, with an attached copy of Respondent's 2002 letter to the IRS and attached copies of documents and tax returns relating to the tax advice and tax preparation work he had done for Ruth and Jan, which Ruth considered confidences and secrets personal to her.**

This Finding of Fact fails to reference the fact that Ruth Reinking at no time gave any instructions to Mr. Botimer that she wished any of the information about the disputed tax and ownership in Alternative Care Corporation to be kept confidential. It should be noted that Larry Botimer did not disclose a "secret" in his declaration by remarking that Ruth Reinking had consulting income that she did not pay B & O tax for. This was made as part of the complete explanation about the nature of Ruth Reinking's enterprises with her sons and the tax structure. Ruth Reinking did not owe B & O tax because the consulting income was income from her business interest as co-owner with her sons. Larry Botimer was making the point that she did not pay B & O because she was not in business by herself as a consultant. Thus it was not a secret that could cause harm to Ruth

Reinking, because no tax of any kind was owing and no action of any kind could be taken against her.

**Count 1: What Conflicts of Interest?**

**The Hearing Officer Erred in Entering Conclusions of Law 74 through 78 and Finding a Violation of Count 1, which alleged that: *By representing Ruth, Jan and Janet in Magnolia tax and business matters, without obtaining an informed consent as to the joint representation, Larry Botimer violated former RPC 1.7(b).***

74. **Count 1:** There was a potential conflict in Respondent's joint representation of Ruth and Jan during the time when they maintained a relationship as lessor/lessee and/or as implied partners.

75. There was a potential conflict in Respondent's joint representation of Ruth as a testator and Jan Reinking as one potential beneficiary of Ruth's estate.

76. There was a potential conflict in Respondent's joint representation of Ruth and Jan regarding tax and corporate matters involved in a possible restructuring of ACC ownership and management, deriving from potential and actual use of Magnolia sale proceeds, since Ruth was faced with conflicting demands by Jan and Jim Reinking as to such matters.

77. Respondent's defense claim that he only prepared tax returns and did no legal work for Jan Reinking and Ruth Reinking is not supported by the evidence. Some of the work that Larry Botimer did for Jan and Ruth was joint, e.g. advice about possible ACC restructuring; some of the work was individual, such a preparation of their personal tax returns or estate planning advice for Ruth.

78. **Count 1 is proven by a clear preponderance of the evidence.**

In his Conclusions of Law 74 through 76, set forth above, the Hearing Officer states his conclusions about the nature and extent of the legal services

performed for Ruth Reinking by Larry Botimer and concludes that there were potential conflicts. However, the Hearing Officer only identifies three areas of potential conflict and identifies no actual conflict. These "potential" conflicts never materialized into actual conflicts.

These alleged "potential" conflicts were extremely minor, or even non-existent. The advice Mr. Botimer gave about estate planning, tax and corporate matters was less than the advice given by the Bar Association in the pamphlets it hands out to the public. We have no idea why it is a conflict of interest when Ruth Reinking came to Larry Botimer and advised him that she intended to sell the Magnolia real estate. We have no idea why photocopying a statute on the preservation of historic buildings amounts to a conflict of interest. We have no idea why it is a conflict for a lessor and lessee to see an attorney when that attorney did not draft that lease, there were no disputes about the lease and the lease was never discussed.

The Hearing Officer has apparently concluded that if two or more family members come into an attorney's office, that attorney may not answer any question whatsoever. The "potential" conflicts present in this case are the same that an attorney has when a husband and wife come into his office and seek advice about a community financial matter. Under the reasoning of the Hearing Officer, this would be a potential conflict of interest because 50% of all marriages end in divorce and his advice might help one spouse and hurt the other. Business

partners could not seek the advice of any attorney about a business problem because, after all, partnerships do break up and the advice has the potential for helping one partner's interest and hurting the other's interests.

Mr. Botimer never represented Ruth Reinking or Jan Reinking on Magnolia Health Care business matters or consulted with either of them about business matters or estate planning. Mr. Botimer never did any estate planning for either Jan Reinking or Ruth Reinking. He advised them of the tax consequences and possible tax plans and the sale of Magnolia Real Estate and its proceeds in 2000 and 2001. Ruth Reinking had, at all times, her own attorney in Kirkland, Washington, G. Michael Zeno, to consult on business and estate planning matters. TR 240-333.

Mr. Botimer prepared tax returns for Ruth Reinking and Jan Reinking based upon information that he jointly received from Ruth Reinking and Jan Reinking. The final tax returns that he prepared for Ruth Reinking and Jan Reinking were for 2000.

The final work of any kind that Mr. Botimer did for either Ruth Reinking or Jan Reinking was filing an Extension for Ruth Reinking for her 2001 tax return in April of 2002. At that time, Mr. Botimer had arranged for Ruth Reinking to meet with a tax attorney in Tacoma to handle her non-tax affairs. EX A-33.

It was not until 2004 that Mr. Botimer first became aware of a dispute between Ruth Reinking and Jan Reinking. Mr. Botimer had nothing to do with

that dispute or conflict and took no part, at any time, in giving advice or representation to any party regarding that dispute or conflict. TR 210.

Jan Reinking and his wife, Janet Reinking, filed suit against Ruth Reinking, Jim Reinking and Donna Reinking and Alternative Care Corporation, in 2004, two years after Mr. Botimer ceased doing any work for Ruth Reinking or Jan Reinking. TR 416.

In April of 2002, when Larry Botimer ceased doing all work for Ruth Reinking and Jan Reinking, there was no reason to believe that there was even a possibility of a conflict of interest or subsequent harm. TR 210. No evidence was presented on what the conflict was alleged to be.

There is nothing improper about an attorney meeting with two people who are lessor/lessee or implied partners at the same time. Never, at any time, when Mr. Botimer performed services for Ruth Reinking or Jan Reinking was there a dispute about the lease. Mr. Botimer did not draft the lease. Mr. Botimer never gave advice to either party about the lease. Larry Botimer performed no estate planning for either Jan Reinking or Ruth Reinking. The subject of Ruth Reinking's potential beneficiaries under a possible will never came up. A mere possibility of subsequent harm does not itself require a disclosure and consent. RPC 1.7, Comment 8.

**Count 2: What Confidences and Secrets?**

**The Hearing Officer Erred in Making his Findings of Fact 65 through 68 and in Entering His Conclusions of Law 79 through 83 and by Finding a Violation of Count 2 which alleged that: *By providing information and declarations to Jan's attorney, including Ruth's personal tax returns and descriptions of conversations with her about estate planning without Ruth's consent, Larry Botimer violated former RPC 1.6 and/or former RPC 1.9(b)(currently RPC 1.9(c)(1)).***

**The Disciplinary Board Erred in Denying Mr. Botimer's Motion to Re-open Disciplinary Proceedings.**

65. The testimony of Jan Reinking that his mother Ruth Reinking kept a stack of her personal tax returns on her desk and freely shared them with him, and that it was he rather than Larry Botimer who provided copies of Ruth's tax returns to Mr. Simmerly was not credible or in the alternative Jan was not the source of the copies of the tax records supplied by Larry Botimer and attached to his declarations filed in the Reinking litigation.

66. Jan Reinking's testimony that Ruth gave him copies of correspondence with Larry Botimer while he lived at her home, from August 2000 to August 2001, and that after he moved out of her home to a rental residence and later moved to Walla Walla, she mailed him copies of letters was not credible.

67. Larry Botimer neither sought nor obtained consent from Ruth before providing information and documents to Jan's attorney

79. **Count 2:** Larry Botimer voluntarily provided confidential client information of Ruth to Paul Simmerly, counsel for Jan Reinking in the Reinking litigation, by providing declarations that described Ruth's personal and business affairs, with attached copies of her personal income tax returns and of some of her correspondence directed to him.

80. Respondent's January 17, 2006 declaration stated that Ruth Reinking had failed to pay Business and Occupation tax for her "consulting" business. This information was a client secret as defined in the former RPC.

81. Respondent's July 22, 2005 declaration included as an attachment his letter to the IRS stating that Ruth had requested her daughter to illegally withdraw funds from grandchildren's custodial accounts and had invested these funds in ACC as if they were her own funds. Mr. Botimer's January 17, 2006 declaration stated that the grandchildren's monies had been illegally withdrawn and illegally used by Jim for his own benefit. This information was a client secret as defined in the former RPC.

82. Larry Botimer failed to obtain Ruth's consent to disclose her secrets and confidences, he did not invoke attorney-client privilege when he supplied the information or wait for a court determination regarding the extent of possible evidentiary waiver, and he did not act to limit or protect the information that he supplied. The ruling by Judge Barnett did not address Respondent's obligations under the Rules of Professional Conduct.. At most it was a prospective ruling that he was not barred from testifying based on attorney-client privilege or in the proceeding. It did not address his prior disclosures of information and documents nor did it retroactively condone them. There is no issued preclusion with respect to Judge Barnett's ruling. Respondent's acts and omissions violated former RPC 1.6 and former RPC 1.9(b).

83. Count 2 is proven by a clear preponderance of the evidence.

Count 2 of the Association's complaint refers solely to what Appellant Larry Botimer did in the Superior Court litigation between Jan Reinking and Ruth Reinking. The facts needed to resolve this count are not in dispute. What those facts mean, however, is hotly disputed.

The Hearing Officer's findings of fact in this case completely ignore extremely important facts about the relationship of Ruth Reinking and Jan Reinking. For over two decades, Jan Reinking ran Magnolia Health Care for his mother, Ruth Reinking, first as an employee and then as an owner. For many of these years, Jan Reinking's wife, Janet, also worked at this facility. Jan and Janet

Reinking "did the books" for Ruth Reinking. They knew every aspect of her personal financial situation and her business financial situation. They lived with Ruth Reinking in her house for a period of time. Jan Reinking essentially supplied Larry Botimer the financial data which Mr. Botimer used to prepare Ruth Reinking's tax returns. There was nothing in Larry Botimer's declarations or his testimony in the Superior Court litigation that was new information to Jan Reinking. Jan Reinking was responsible for initiating the litigation that secured money for Ruth Reinking's grandchildren that she was supposed to hold in trust. Jan Reinking knew all about Ruth Reinking's misconduct in handling these trust funds. Larry Botimer disclosed no confidences or secrets at any time.

Certainly the concept of attorney-client privilege and maintaining the confidences and secrets of a client are important principles. However, these principles are by no means absolute. The attorney-client privilege is subject to waiver for any number of reasons and confidences and secrets are not confidences and secrets if the client herself discloses them to third parties or if they are known by third parties. N Here Ruth Reinking had previously disclosed them to her son, Jan.

First of all, in analyzing the conduct of Mr. Botimer, we must recognize that the propriety of what he did in the Superior Court litigation has already been adjudicated by the Honorable Suzanne Barnett, King County Superior Court Judge. At all times during that litigation, Ruth Reinking was present and she was represented by her attorney, J. Gregory Lockwood. Larry Botimer testified in the

Superior Court litigation pursuant to subpoena and court order. Now, the Association seeks to have him suspended from practicing law for obeying the order of a Superior Court Judge. Ruth Reinking's attorney, J. Gregory Lockwood, objected to Mr. Botimer's testimony, declarations and evidence and these objections were overruled by Judge Barnett and she allowed Mr. Botimer to testify. Ruth Reinking failed to appeal those orders. We cannot now second guess Judge Barnett's rulings. However, even if we were to engage in second guessing, Judge Barnett's rulings were based on well-settled principles of law that were never challenged by Ruth Reinking's attorney in the Superior Court litigation or by the Association in this disciplinary proceedings.

This proceeding was extremely unfair to Mr. Botimer because many of the allegations made against him relied upon what he did in the Superior Court litigation and the Association failed to obtain a transcript of those proceedings. As a result, we have the absurd situation where the Association is arguing that Mr. Botimer did or did not do something in the Superior Court litigation when the Association has no knowledge whatsoever about what went on in that litigation. For this reason, Mr. Botimer obtained an Order Clarifying Trial Court Record from Judge Barnett in the Superior Court litigation. The Association does not dispute the accuracy of this order, but objected to its being included the record anyway. Mr. Botimer's motion, which attaches Judge Barnett's Order Clarifying Trial Court Record is attached hereto and incorporated herein as Appendix "A".

It is identified in the records of the Disciplinary Board as Docket No. 96. This motion also raises important questions about why Mr. Botimer was singled out by the Association for “selective prosecution”.

The testimony of Larry Botimer and the information contained in the declarations and documents submitted by Larry Botimer in the Superior Court litigation was not privileged because this information was communicated to third parties by Ruth Reinking and the documents were shared by Ruth Reinking with third parties. TR 71, 425-427. *Ramsey v. Mading*, 36 Wn.2d 312, 217 P.2d 1041 (1950); *In Re Quick's Estate*, 161 Wash. 537, 297 Pac. 198 (1931). The communications and documents involved were collected as part of a joint enterprise, the operation and sale of the Magnolia Health Care business and real estate. TR 71. Larry Botimer acted for the mutual benefit of Ruth Reinking and Jan Reinking, with the express permission of Ruth Reinking and Jan Reinking. TR 71. Privilege does not apply in these circumstances. *Billias v. Panageotou*, 193 Wash. 523 (1938). There has never been any evidence presented or argument made by the Association that the services that were provided by Larry Botimer in regard to the operation and sale of Magnolia Health Care and its real estate caused any harm to Ruth Reinking.

In the Superior Court litigation, allegations were made that Ruth Reinking acted in bad faith and/or with fraudulent intent in her dealings with Jan Reinking and this bad faith or fraudulent conduct prohibits her assertion of attorney-client

privilege. *Escalante v. Sentry Ins. Co.*, 49 Wn.App. 375, 743 P.2d 832 (1987), Rev. Denied, 109 Wn.2d 1025 (1988).

Ruth Reinking interjected the communications she alleges to have been privileged into the Superior Court litigation and she asserted counterclaims against Jan Reinking and this action waived the attorney-client privilege. *Seattle Northwest v. SDG Holding Co.*, 61 Wn.App. 725, 742, 812 P.2d 488 (1991). The selective disclosure of some communications alleged to be privileged by Ruth Reinking in the lawsuit also waived attorney-client privilege. *In Re John Doe Corp.*, 675 F.2d 482, 489 (2d Cir. 1982).

A party seeking to assert the attorney-client privilege bears the burden of proving the existence of the attorney-client relationship. The client must also prove the privilege extends to the communication at issue. The privilege is not absolute and must be narrowly construed. *Versuslaw, Inc. v. Stoel, Rieves, LLP*, 127 Wn.App. 309, 11 P.3d 866 (2005); *Dietz v. Doe*, 131 Wn.2d 835, 935 P.2d 611 (1997).

Only those communications between attorney and client which are intended to be confidential are protected by the privilege. Where the communication is made in the presence of third parties, the confidential nature of the communication has been waived and the privilege is not available. *Ramsey v. Mading*, 36 Wn.2d 312, 217 P.2d 1041 (1950); *In Re Quick's Estate*, 161, Wash. 537, 297 Pac.198( 1931). All of the personal tax returns of Ruth Reinking and the

other documents attached to the declarations submitted by Larry Botimer in the Superior Court litigation were also obtained by Jan Reinking in the Superior Court litigation through discovery in the Superior Court litigation. Ex A-32. The personal tax returns of Ruth Reinking and other documents which were attached to the declarations Larry Botimer submitted in the Superior Court litigation were obtained from Jan Reinking, who had obtained the returns and documents from Ruth Reinking. TR 425-427.

Mr. Botimer testified about all of the matters contained in the declarations he had previously submitted in the Superior Court litigation. TR 211-212; Appendix "A".

**Count 3: Must an Attorney Remain Silent When his Client Files a False Declaration Under Penalty of Perjury?**

**The Hearing Officer Erred in Making his Conclusions of Law 84 through 87 and Finding a Violation of Count 3 which Alleged That: *By contacting the IRS reporting alleged inaccuracies in Ruth's filed tax returns and alleged avoidance of gift tax, without her consent, Larry Botimer violated RPC 16 and/or former RPC 1.9(b) (currently RPC 1.9(c)(1)).***

84. **Count 3:** Larry Botimer sent a letter to the IRS. The letter put Ruth Reinking at risk for audit and assessment of underpayments, penalties and interest by the IRS with respect to the possibility that she did not correctly state her share of income and loss from ACC, that she had failed to pay gift tax on gifts to Jim and she had diverted money from her grandchildren's trusts. The letter did ultimately benefit her by limiting her liability to additional interest and penalties and by serving to start the limitations period for IRS audit. Irrespective of whether the letter harmed or benefited Ruth Reinking, Respondent's action violated former RPC 1.6

and former RPC 1.9(b) as it betrayed Ruth Reinking's confidences and secrets without her consent.

85. Federal law, tax procedure, guidelines and regulations did not require that Larry Botimer write his 2002 letter to the IRS about a later discovery that Ruth's income tax returns that he had prepared were not correct.

86. Any failure by Ruth Reinking to file amended tax returns reflecting an ownership interest in ACC or gift tax returns was not a continuing crime.

87. Count 3 is proven by a clear preponderance of the evidence.

The facts surrounding Count 3 that are essential to its resolution are also not in dispute. The conclusions to be drawn from those facts, however, are in dispute.

The Hearing Officer has established the principle in this proceeding that when an attorney prepares a tax return for a client and the client and the attorney both verify under penalty of perjury that it is accurate, the attorney must remain silent if he later discovers that that tax return was fraudulent. This is believed to be a matter of first impression in this country. Neither Larry Botimer nor the Association, or their experts, have been able to find any authority dealing with this situation. If this principle is adopted by this Court, it should apply equally to declarations filed by attorneys and/or their clients in courts of law.

Larry Botimer prepared the personal tax returns for Ruth Reinking for the years 1995 through 2000. TR 70. Mr. Botimer signed each of these tax returns he prepared for Ruth Reinking under penalty of perjury. This made each one of

these tax returns a sworn declaration of Larry Botimer, as much as the sworn declaration of Ruth Reinking. TR 70-71. The accuracy of Mr. Botimer's tax preparation has never been challenged or questioned by Ruth Reinking, the Internal Revenue Service or the Association in this proceeding. There also has been no conflict of interest issue raised by anyone concerning the tax preparation work performed by Mr. Botimer for Ruth Reinking. TR 240-333. Mr. Botimer prepared the tax returns of the Reinkings based upon information that he received from Ruth Reinking and Jan Reinking jointly. TR 71. During the entire time that Mr. Botimer prepared tax returns for the Reinkings there was never any dispute, conflict or disagreement between the Reinkings. TR 210.

If Larry Botimer failed to disclose to the Internal Revenue Service the filing of false tax returns that he had prepared and signed as his personal declaration under penalty of perjury, he would be committing perjury and would face criminal charges and possible disbarment and would be subjecting himself and Ruth Reinking to possible charges of conspiracy for failure to report the ongoing crime of defrauding the government. Title 31 CFR, Subtitle A, Part 10, Revised as of 6/20/05; "Tax Crimes", Tax Management Portfolio 636-2<sup>nd</sup>. Mr. Botimer, and every other tax preparer is subject to the US Treasury Department's regulations governing the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers before the Internal Revenue Service. 31 CFR, Subtitle A, Part 10, Revised as of 6/20/05. A tax preparer is

required by law to report the filing of an inaccurate tax return when one is filed. Failure to do so is conspiracy. 128 USCA §371; *U.S. v. Buckner*, 610 F.2d 570 (1979).

As we can see from each of these tax returns, the United States Government requires a tax preparer to verify that the return is true and accurate under penalty of perjury. Why is there such a requirement if a tax preparer is required to remain absolutely silent if he later discovers his verification to be inaccurate? This Court must come up with an answer to that question if it is to sustain the ruling of the Hearing Officer.

#### SANCTIONS

The imposition of sanctions against Larry Botimer is not warranted when the nature of the relationship between attorney and client is relatively undefined, the attorney acts in good faith, and with honest intent, and there is no evidence that the client has been harmed. *In Re McGlothlen*, 99 Wn.2d 515, 526, 663 P.2d 1330 (1983). When two experts in legal ethics cannot agree on the obligations of an attorney, as was the case here, discipline is not appropriate. When the unethical nature of an action has not been previously decided, no discipline is appropriate. *In Re Smith*, 42 Wn.2d 188, 197, 254 P.2d 464 (1953).

Here, Ruth Reinking was not harmed in any way by any of the actions of Larry Botimer and no allegation is even made that she was. Here, Mr. Botimer's expert in legal ethics, Leland Ripley, former Chief Disciplinary Counsel for the

Washington State Bar Association, testified that Mr. Botimer did nothing wrong. Whether or not an attorney/tax preparer has a duty to disclose that a tax return he previously prepared is fraudulent is a question that has never previously been decided anywhere in the United States.

An attorney should not be sanctioned for testifying pursuant to subpoena and court order in a court proceeding. Neither should he be disciplined for producing declarations which cover subjects he later was ordered to testify about and which could in no way be characterized as confidences or secrets or matters protected by attorney-client privilege.

The conflict of interest requirements established by the Hearing Officer in this case are impossible standards to meet. There was no conflict of interest with regard to estate planning matters. All Mr. Botimer did was discuss estate planning concepts with Ruth Reinking in the same manner as Bar Association pamphlets on estate planning and continuing legal education lecturers do. No wills or other estate planning documents were created for either Ruth Reinking or Jan Reinking. No agreement was ever made by Mr. Botimer to do estate planning work for Ruth Reinking. He never received any payment for estate planning for Ruth Reinking. With regard to business matters, Mr. Botimer did very little, if anything, that could be characterized as representing the parties. There was no conflict between Ruth Reinking and Jan Reinking when Mr. Botimer ceased all

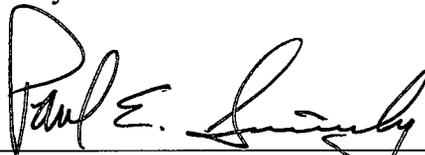
representation of either party in 2002. Litigation between the Reinkings did not begin until 2004.

CONCLUSION

The Findings and recommendation of the Hearing Officer and Disciplinary Board should be reversed in all respects and this matter dismissed.

Respectfully submitted this 11<sup>TH</sup> day of SEPTEMBER, 2008.

Herman, Recor, Araki, Kaufman,  
Simmerly & Jackson PLLC



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PAUL E. SIMMERLY WSBA #10719  
Attorney for Appellant  
Larry A. Botimer

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(425) 451-1400

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DISCIPLINARY BOARD

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BEFORE THE  
DISCIPLINARY BOARD  
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WASHINGTON STATE BAR ASSOCIATION W.S.B.A.

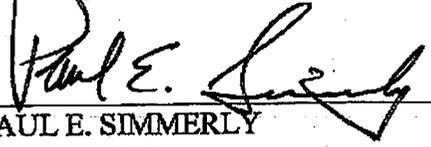
<p>In re  LARRY A. BOTIMER  Lawyer (Bar No. 23805).</p>	<p>Public No. 07#00003  MOTION AND DECLARATION TO REOPEN DISCIPLINARY HEARING TO ACCEPT NEW EVIDENCE</p>
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MOTION

COMES NOW the Respondent, Larry A. Botimer, by and through his attorney of record, Paul E. Simmerly, and moves this Court for an order reopening the disciplinary hearing in this matter for the purposes of accepting new evidence that has arisen since the hearing was closed. This motion is based upon the attached Declaration of Counsel and the records and files herein.

Dated this 20<sup>TH</sup> day of May, 2008.

Herman, Recor, Araki, Kaufman,  
Simmerly & Jackson PLLC



PAUL E. SIMMERLY  
WSBA #10719  
Attorney for Respondent  
Larry A. Botimer

MOTION AND DECLARATION FOR ORDER  
REOPENING DISCIPLINARY HEARING  
Page 1 of 8

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APPENDIX "A"

ORIGINAL

APPENDIX "A"

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**DECLARATION OF COUNSEL**

Paul E. Simmerly declares and states as follows:

1. I am the attorney of record for the Respondent, Larry A. Botimer, in the above-entitled disciplinary proceeding, am competent to be a witness herein and make this declaration upon personal knowledge. This declaration is made in support of Respondent's Motion for an Order Reopening the Disciplinary Hearing To Accept New Evidence that has arisen since the disciplinary proceedings were closed.

2. One of these new pieces of evidence is an Order Clarifying Trial Court Record entered by the Honorable Suzanne Barnett, King County Superior Court Judge, on April 21, 2008. That Order is attached hereto and incorporated herein as Exhibit "A". Among other things, this Order confirms the undisputed testimony in this disciplinary hearing, and my representations to the Hearing Officer, that Mr. Botimer testified in the Superior Court trial about all of the matters contained in the three declarations that he had previously filed. The matters contained in these three declarations and the attached exhibits were not privileged. J. Gregory Lockwood, Ruth Reinking's attorney moved to strike/exclude these three declarations, but his motion was denied. During Mr. Botimer's testimony, Ruth Reinking's attorney objected several times, but his objections to Mr. Botimer's testimony were overruled. There were no "confidences" or "secrets" that were disclosed by Mr. Botimer in either his declarations or his live testimony. An attorney is not required to obtain a court ruling before making a determination that information within his knowledge, or documents within his possession are not subject to the attorney-client privilege or that the

1 information or documentation does not contain confidential or secret information.  
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3 Obviously, an attorney disclosing such information or providing such documentation  
4 without a court order does so at his peril. If he makes the wrong determination, he  
5 could be subject to sanctions. In this case, Respondent Botimer made a determination  
6 that he was allowed to disclose the information contained in his declarations and Judge  
7 Barnett later confirmed that his determination was correct. We now have a situation  
8 where Mr. Botimer has been sanctioned by the Hearing Officer for filing three  
9 declarations which the King County Superior Court has determined did not contain  
10 privileged information, confidences or secrets. The Findings of Fact and Conclusions  
11 of Law which deal with Mr. Botimer's declarations and his testimony are as follows:  
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13 35. Respondent stated in a January 17, 2006 declaration provided to Jan  
14 Reinking's counsel:

15 (Mrs. Reinking) would occasionally ask me questions  
16 about tax law and estate planning and review her potential  
17 estate plan with me. She repeatedly advised me that she  
18 would want me to prepare her estate plan as soon as her  
deceased former husband's estate was settled.

19 36. Respondent stated in a July 22, 2005 declaration provided to  
20 Jan Reinking's counsel:

21 After the successful conclusion of the controversy over  
22 John Reinking's estate, Ruth Reinking began discussing a  
23 family estate plan for herself and her children and  
24 grandchildren with me. She would, on occasion, call me at  
my office and ask me about questions about particular types  
of estate plans or ways to avoid gift and estate tax.

25 61. Respondent cooperated with Jan's attorney, Paul Simmerly, in the  
26 Reinking litigation and provided three separate declarations to Mr.  
27 Simmerly, one dated July 22, 2005 responding to a summary judgment  
motion and two dated January 17, 2006 in connection with a later motion.

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62. The declarations provided background information about Ruth's  
business and estate planning affairs with an attached copy of  
Respondent's 2002 letter to the IRS and attached copies of documents and  
tax returns relating to the tax advice and tax preparation work he had done  
for Ruth and Jan, which Ruth considered confidences and secrets personal  
to her.

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63. The declarations were filed with the court in the Reinking  
litigation.

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64. The copies of income tax returns attached to one of the  
declarations were unsigned.

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68. Respondent signed his three litigation declarations prior to an  
April 2006 Court Order that permitted him to testify in the Reinking  
litigation.

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69. The trial judge in the matter, The Hon. Suzanne Barnett, ruled on  
April 17, 2006, immediately prior to the start of the trial, on two motions  
in limine brought by Gregory Lockwood, Ruth's defense litigation  
attorney, granting the motion to rule out any testimony about use of trust  
moneys held for the grandchildren of John Reinking. She ruled against a  
motion to exclude Respondent's testimony on the grounds of attorney-  
client evidentiary privilege.

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70. In oral argument prior to the judicial ruling, Paul Simmerly argued  
that there was waiver of the attorney-client privilege for many different  
reasons. Judge Barnett's oral ruling stated the following rationale for  
permitting the testimony:

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If we don't have a written contract, we have certainly enough  
of the makings of an oral contract. And we can only figure it  
out by hearing from these people who know what has  
transpired. And Mr. Botimer happens to be one of them. So  
he will testify.

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71. Judge Barnett made no specific finding of a waiver of attorney-  
client privilege, but the nature of her ruling implied she felt that there was  
a waiver. Judge Barnett ruling did not address whether Respondent's  
actions in providing documents and declarations to Jan Reinking's attorney  
were proper under the statutory attorney-client privilege or under the rules  
of professional conduct.

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2 79. Count 2: Respondent voluntarily provided confidential client  
3 information of Ruth to Paul Simmerly, counsel for Jan Reinking in the  
4 Reinking litigation, by providing declarations that described Ruth's  
5 personal and business affairs, with attached copies of her personal income  
6 tax returns and some of her correspondence directed to him.

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8 80. Respondent's January 17, 2006 declaration stated that Ruth  
9 Reinking had failed to pay Business and Occupation tax for her  
10 "consulting" business. This information was a client secret as defined in  
11 the former RPC.

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13 81. Respondent's July 22, 2005 declaration included as an attachment  
14 his letter to the IRS stating that Ruth had requested her daughter to  
15 illegally withdraw funds from grandchildren's custodial accounts and had  
16 invested these funds in ACC as if they were her own funds. Respondent's  
17 January 17, 2006 declaration stated that the grandchildren's monies had  
18 been illegally withdrawn and illegally used by Jim for his own benefit.  
19 This information was a client secret as defined in the former RPC.

20  
21 82. Respondent failed to obtain Ruth's consent to disclose her secrets  
22 and confidences, he did not invoke attorney-client privilege when he  
23 supplied the information or wait for a court determination regarding the  
24 extent of possible evidentiary waiver, and he did not act to limit or protect  
25 the information that he supplied. The ruling by Judge Barnett did not  
26 address Respondent's obligations under the Rules of Professional Conduct.  
27 At most it was a prospective ruling that he not barred from testifying based  
28 on attorney-client privilege in the proceeding. It did not address is prior  
29 disclosures of information and documents nor did it retroactively condone  
30 them. There is no issue preclusion with respect to Judge Barnett's ruling.  
31 Respondent's acts and omissions violated former RPC 1.6 and former RPC  
32 1.9(b).

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34 93. Respondent assisted Jan Reinking by providing documents,  
35 information and declarations to Jan's attorney for use in the litigation  
36 against Ruth, including a copy of Respondent's letter to the IRS. This  
37 happened prior to any ruling by the trial judge who permitted Respondent  
38 to testify in the litigation. Respondent's conduct was intentional.

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40 94. Filing Ruth's tax returns and other confidential information in the  
41 litigation through the declarations provided by Respondent caused actual  
42 or potential harm to Ruth. Clients have an expectation of privacy  
43 regarding information supplied to their lawyer. Filing documents in public  
44 court files that contain client information is harmful. Likewise,  
45 cooperation with an opposing party and lawyer through the provision of

1 confidential information is harmful to a client or former client. Some of  
2 the information contained in Respondent's declarations, such as the  
3 allegations of misuse of her grandchildren's trust moneys, was potentially  
4 harmful to Ruth's testimony in her defense and was ruled out as a subject  
5 for testimony by the trial judge. Ruth Reinking did ultimately benefit from  
the disclosures by way of a jury award and judgment favorable to her was  
obtained.

6 95. The presumptive sanction for Respondent's conduct as to Counts 2  
7 and 3 is suspension.

8 The above Findings of Fact and Conclusions of Law are in direct conflict  
9 with what actually happened at the Superior Court Trial.

10 3. The other new evidence consists of the Washington State Bar  
11 Association's response to a Grievance filed by Jan Reinking against Ruth  
12 Reinking's attorney, J. Gregory Lockwood, WSBA File No. 07-02043. That  
13 WSBA Response is attached hereto and incorporated herein as Exhibit "B". This  
14 Response was authored by Nancy Bickford Miller, the same Disciplinary Counsel  
15 that prosecuted Mr. Botimer. J. Gregory Lockwood represented Ruth Reinking in  
16 the King County Superior Court action as well as his main client, James Reinking.  
17 Ms. Miller finds that this *actual conflict* of interest was misconduct, but declines  
18 to pursue it because "this appears to be an isolated instance of misconduct, does  
19 not reflect a pattern of misconduct and because the Association does not have  
20 unlimited resources ...." To seek a six month suspension of Mr. Botimer's license  
21 to practice law when only potential conflicts of interest have been found and to  
22 completely ignore discipline of any kind for Mr. Lockwood when actual conflicts  
23 of interest have been found is totally unconscionable. Ms. Miller is obviously  
24 extremely biased, for unknown reasons, against Mr. Botimer and is equally biased

25 MOTION AND DECLARATION FOR ORDER  
26 REOPENING DISCIPLINARY HEARING  
27 Page 6 of 8

28 HERMAN, RECOR, ARAKI, KAUFMAN,  
29 SIMMERLY & JACKSON, PLLC  
2100 - 116TH AVENUE N.E.  
BELLEVUE, WA 98004  
Phone (425) 451-1400 Fax (425) 451-1689

1 in favor of Mr. Lockwood. Ms. Miller failed to contact me in either of her  
2  
3 "investigations." Perhaps the Association is pursuing Mr. Botimer, and not Mr.  
4 Lockwood, because Mr. Botimer was perceived to be an easier target, requiring  
5 the expenditure of fewer of the Bar Association's resources, which are not  
6 "unlimited". There is something going on her that I am not being made aware of.  
7 This one-sided application of discipline to Mr. Botimer violates the Association's  
8 requirement of proportionality. The Findings of Fact and Conclusions of Law of  
9 the Hearing Officer that directly relate to this new evidence are as follows:  
10

11  
12 74. Count 1: There was a **potential conflict** in Respondent's joint  
13 representation of Ruth and Jan during the time when they maintained a  
relationship as lessor/lessee and/or as implied partners. (emphasis added)

14 75. There was a **potential conflict** in Respondent's joint representation  
15 of Ruth as a testator and Jan Reinking as one potential beneficiary of  
16 Ruth's estate. (emphasis added)

17 76. There was a **potential conflict** in Respondent's joint representation  
18 of Ruth and Jan Reinking regarding tax and corporate matters involved in a  
19 possible restructuring of ACC ownership and management, deriving from  
20 potential and actual use of Magnolia sale proceeds, since Ruth was faced  
with conflicting demands by Jan and Jim Reinking as to such matters.  
(emphasis added)

21 90. Ruth Reinking was **potentially harmed** by Respondent's failure to  
22 identify the conflict to her and describe the possible risks. (emphasis  
added)

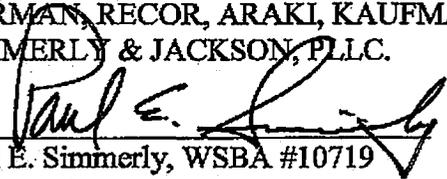
23 91. The presumptive sanction for Respondent's conduct as to Count 1  
24 is reprimand.

25 4. Respondent Botimer respectfully requests that the Hearing Officer  
26 reopen the Disciplinary Hearing to accept this new evidence and conduct further  
27 proceedings.

28 MOTION AND DECLARATION FOR ORDER  
REOPENING DISCIPLINARY HEARING  
29 Page 7 of 8

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Dated: <u>MAY 20, 2008</u>	HERMAN, RECOR, ARAKI, KAUFMAN SIMMERLY & JACKSON, PLLC.  Paul E. Simmerly, WSBA #10719 Attorney for Respondent Larry A. Botimer
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IN THE SUPERIOR COURT OF WASHINGTON  
KING COUNTY

JAN REINKING and JANET REINKING,

No. 04-2-34487-5 SEA

Plaintiffs,

ORDER CLARIFYING TRIAL  
COURT RECORD

vs.

RUTH REINKING, et al.,

Defendants.

THIS MATTER having come on regularly for hearing before the Honorable Suzanne Barnett, King County Superior Court Judge, upon the motion of the Plaintiffs for an Order Clarifying Trial Court Record, the Court having considered the Plaintiff's Motion, the Declaration of counsel for Plaintiff, Defendants' response, if any, the transcript of the proceedings, the Order on Motions in Limine, Defendants' Motion to Strike Declarations of Larry Botimer, and the records and filed herein, Now, Therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Attorney Larry A. Botimer testified in this proceeding pursuant to subpoena and court order. The attorney for Ruth Reinking, J. Gregory Lockwood, brought a motion to prevent Mr. Botimer from testifying for the reason that Mr. Botimer had been Ruth Reinking's attorney and that matters he would testify about were protected by attorney-client privilege. That issue was briefed and was the subject of an evidentiary hearing, with live testimony, before this court. After hearing testimony and

ORDER CLARIFYING TRIAL COURT  
RECORD  
Page 1 of 2

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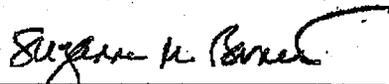
EXHIBIT "A"

1 reviewing the briefing, and allowing cross-examination by Ruth Reinking's attorney, J.  
2 Gregory Lockwood, this court allowed Mr. Botimer to testify without limitation or  
3 restriction. During Mr. Botimer's testimony, Ruth Reinking's attorney objected  
4 several times, but his objections to Mr. Botimer's testimony were overruled;

5 2. In his live testimony, Mr. Botimer testified about all of the matters contained  
6 in the three declarations that he had previously filed. One of these declarations was  
7 signed by Mr. Botimer on 7/22/05 and two were signed by him on 1/17/06. Ruth  
8 Reinking's attorney moved to strike/exclude these three declarations. The matters  
9 contained in these declarations and the attached Exhibits were not privileged;

10 3. All of the attachments to the declarations filed by Larry Botimer, including  
11 Ruth Reinking's tax returns, had been produced in the litigation pursuant to Plaintiffs'  
12 discovery requests and an Order Compelling Discovery.

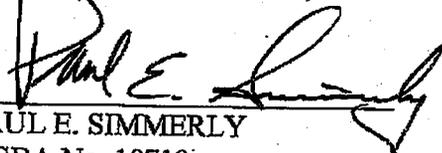
13 DONE IN OPEN COURT this 21<sup>st</sup> day of April, 2008.

14 

15 JUDGE SUZANNE BARNETT  
16 KING COUNTY SUPERIOR COURT

17 Presented by:

18 HERMAN, RECOR, KAUFMAN,  
19 SIMMERLY & JACKSON, PLLC

20 

21 PAUL E. SIMMERLY  
22 WSBA No. 10719  
23 Attorney for Plaintiffs

24 Approved as to form and content;  
25 Notice of Presentation

26 No. response.  
27 J. GREGORY LOCKWOOD  
28 WSBA No. 20629  
29 Attorney for Defendants

ORDER CLARIFYING TRIAL COURT  
RECORD  
Page 2 of 2

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# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

Nancy Bickford Miller  
Disciplinary Counsel

direct line: (206) 733-5934  
fax: (206) 727-8325

April 21, 2008

Jan Reinking  
3702 Auburn Way S, Apt R201  
Auburn WA 98092

RE: Grievance filed by Jan Reinking against J. Gregory Lockwood  
WSBA File No. 07-02043

Dear Mr. Reinking:

This letter is to advise you that we have completed our investigation of your grievance against lawyer J. Gregory Lockwood and to advise you of our decision. The purpose of our review has been to determine whether sufficient evidence exists on which to base a disciplinary proceeding. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only on a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct (RPC). This standard of proof is more stringent than the standard applied in civil cases.

Based on the information we have received, insufficient evidence exists to prove unethical conduct by Mr. Lockwood by a clear preponderance of the evidence in this matter to the extent that would warrant a disciplinary proceeding. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based on a review of your original grievance received on December 13, 2007, Mr. Lockwood's January 7, 2008 response, your January 22, 2008 comments and a March 20, 2008 letter from Mr. Lockwood. We also talked to Mr. Lockwood by telephone about your grievance.

You sued your mother Ruth Reinking, your brother James Reinking (Jim), and Alternative Care Corporation (ACC), a Spokane area nursing home business, in a dispute over family-owned nursing home businesses. Mr. Lockwood was defense counsel in that litigation. (*Reinking v. Reinking*, King County Superior Court No. 04-2-34487-5 SEA) You alleged that Mr. Lockwood continued to represent ACC after the King County Superior Court determined that you were the majority ACC stockholder. You also alleged that Mr. Lockwood did not prevent Jim from paying personal legal expenses from ACC funds; that Mr. Lockwood knew of fraudulent acts by Jim; that there was a conflict of interest in representing both Ruth and Jim; that at mediation he offered Ruth's house to you without Jim paying anything while knowing that Jim had caused a \$175,000 tax lien on Ruth's house; and that Mr. Lockwood took advantage of Ruth and caused her to lose \$1,500,000 when ACC was lost to a foreclosure action and he did not drop an appeal in the above action, as directed by Ruth, losing the ability to refinance ACC debt.

**EXHIBIT "B"**

Jan Reinking  
April 21, 2008  
Page 2

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Mr. Lockwood pointed out that after the King County Court awarded the majority of the ACC stock to you and to your mother, in a judgment entered June 21, 2006, an appeal was filed. As a result ownership and management of ACC was uncertain, with ongoing disputes between you and your brother. Your mother, Ruth, was essentially a passive investor. In the summer of 2006 she apparently transferred the stock interest in ACC that was awarded to her by the court to your brother, Jim.

ACC filed bankruptcy in spring of 2007, but ultimately was unable to prevent foreclosure on its nursing home properties by the lending bank. A mediation and settlement in August 2007 between you, Jim and ACC, in which the ACC bankruptcy counsel and your attorney participated, resulted in a settlement which included an agreement to drop the appeal of your King County Superior Court Judgment against Jim, Ruth and ACC. According to Mr. Lockwood, he did not participate in the settlement discussions.

We have had the occasion to interview your mother, who appears to be easily influenced and has on occasion signed various and at times contradictory statements and agreements presented to her by you and by Jim. The original 2006 direction to Mr. Lockwood to drop the ACC appeal appears to be one such document. According to an unsolicited communication to us from Ruth Reinking, she asked you – fruitlessly, to drop the action against her, Jim and ACC prior to the April 2006 trial so as to permit refinancing of ACC debt. She does not appear to blame Mr. Lockwood for the ultimate ACC bankruptcy and losing the properties to foreclosure.

You alleged fraud by Jim Reinking, and suggested that Mr. Lockwood was knowledgeable about this and arguably therefore responsible. As to your claim that Jim was responsible for the tax lien on Ruth's home, this is because Jim claimed losses from operation of ACC that apparently could have been used to offset the capital gain from Ruth's sale of the Seattle nursing home, if Ruth had a documented stock interest in ACC, a subchapter S corporation. There is no evidence that Mr. Lockwood advised Jim about how to handle his and ACC tax filings.

Regarding your allegations of fraud by Jim, as a general rule a lawyer is not personally responsible for the conduct of his or her client. An attorney representing a business corporation is not expected or required to supervise the business activities of the client's board of directors or officers. Under our adversary system, a lawyer's primary duty is to protect the rights and interests of his or her client. As a general rule, lawyers may rely on their client's version of the facts and may state facts in a light favorable to their client. Assuming that the facts you presented in your grievance are correct, you presented no evidence that Mr. Lockwood had personally engaged in fraudulent activities. We could not establish by a clear preponderance of the evidence that Mr. Lockwood violated an ethical rule by accepting fee payments directed to him by Jim that were derived from ACC funds – or that he was responsible for other acts of Jim that may have been detrimental to Ruth.

Generally, a lawyer may and should aggressively pursue his or her client's interests by taking whatever steps the law allows to advance or protect those interests. While there are professional limits on what lawyers may do, the available information does not indicate that Mr. Lockwood's alleged conduct exceeded these limits.

Jan Reinking  
April 21, 2008  
Page 3

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The allegation in your grievance that we found most troubling was regarding the possible conflict between Jim and Ruth. Mr. Lockwood has acknowledged that he did not obtain a written consent to any conflict between them regarding his defense representation of both of them in your law suit. In a telephone conversation he explained that he did not regard the matter as involving a conflict because your theories of liability and potential damage claims against them were quite different. The suit against Ruth was essentially a contract action seeking half of the proceeds from sale of the Magnolia nursing home facility in Seattle. Jim and ACC were named as defendants because Jim was the shareholder of ACC, and Ruth had invested funds from Magnolia in the Spokane ACC properties. Therefore you hoped to obtain control of and/or funds from ACC that belonged to Ruth because of her debt to you. (It appears that none of the family business understandings were thoroughly and completely documented.)

Your attorney Paul Simmerly suggested to Mr. Lockwood in a February 2006 letter that there was a conflict between Ruth's and Jim's interests. Mr. Lockwood submitted a statement from Jim dated January 3, 2008, indicating that he had discussed the subject of conflicts with Jim and Ruth, and that the parties agreed there were no conflicts. Jim's statement also said that he was the president of ACC from 1998 until its "dissolutionment" in October 2007. We note, however, your statements in your January 22, 2008 letter that you took over operating control of ACC and functioned as manager from August to October 2006.

Mr. Lockwood told us that Ruth Reinking sent a letter to him apologizing for any problems created by her signing a separate grievance against him that you had prepared and coerced her into signing. She testified at the disciplinary hearing regarding attorney Larry Botimer that you had told her that you would not allow her to see her great grandchildren, of whom you apparently have legal custody, unless she signed that grievance. She does not appear to bear any ill will toward Mr. Lockwood.

We believe that any matter involving representation of joint litigation defendants has the potential for a conflict. That is particularly true once the matter has been decided and involves a joint and several judgment against the defendants, since their payment ability and inclinations may vary. RPC 1.7 provides that a lawyer may represent a client with a concurrent conflict of interest if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

The version of RPC 1.7 effective in the spring of 2006 had similar wording, before the above revised version took effect in September 2006.

Jan Reinking  
April 21, 2008  
Page 4

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Mr. Lockwood denied your grievance allegation that he offered your mother's home to you in settlement discussions prior to the *Reinking v. Reinking* trial in April 2006. In a telephone discussion he said he had no memory of offering the home and that if there were such discussions it would have been in the context of a possible remainder interest in a life estate for Ruth. He also said that ACC stock was offered to you which you rejected unless accompanied by a significant financial payment. (See his enclosed March 20, 2008 letter to us.)

According to Mr. Lockwood, he did not take part in settlement discussions in late summer of 2007, after both Jim Reinking and ACC had filed bankruptcy. Your attorney, Paul Simmerly, apparently engaged in discussions with Dan O'Rourke, bankruptcy counsel for Jim, and John Bury, bankruptcy counsel for ACC, which led to the eventual settlement. Ruth Reinking then advised him to dismiss the appeal of the King County judgment in September 2007 which he did.

You brought a July 2007 adversary action against Mr. Lockwood and his firm in the bankruptcy court, alleging acceptance of preferential transfers in the form of his fees for the *Reinking v. Reinking* litigation. Following an August 2007 motion to dismiss and for FRCP 11 sanctions, you were assessed \$500 in terms. Mr. Lockwood believes that your actions were harassment directed toward him and his firm.

We understand your frustration with actions taken by your family members and your wish to place some blame on Mr. Lockwood for the misfortunes that have fallen on your family. Your mother's decision to invest sale proceeds from the Seattle nursing home business, that you functionally had co-owned and managed, in the Spokane nursing home business, arguably mismanaged by your brother Jim, led to financial losses for the entire family. Your mother ardently wished for you, your brother and your sister to peaceably get along, which may have led to her making some unfortunate decisions. She had difficulty in choosing whether to follow your wishes or those of your brother and appears to have vacillated to some extent.

We carefully considered the matters set out in your grievance. We suggest to Mr. Lockwood, by way of this letter, that in any matter involving a joint representation, even if he believes that there is no conflict, the best course of action is to discuss and disclose any possible potential conflict and obtain written consent – to avoid future problems. We also remind him that a client conflict may develop over the course of a relationship, with a requirement of withdrawal or obtaining client consent to the emerging conflict. We might regard these facts differently if Mr. Lockwood had actively engaged in settlement discussions on behalf of Ruth and Jim Reinking after the June 2006 Judgment was entered. It appears however that bankruptcy counsel took over this role.

Under the Rules for Enforcement of Lawyer Conduct, a lawyer may be disciplined only upon a showing by a clear preponderance of the evidence that the lawyer violated ethical rules. As discussed above, as to most of the issues that you raised we do not find clear evidence that Mr. Lockwood breached an ethical rule.

We do, however, share some of the concern you have expressed about the conduct of Mr. Lockwood, regarding failure to obtain written consent to a potential conflict of interest. We have given careful consideration as to whether further investigation or disciplinary action is

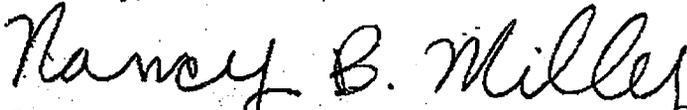
Jan Reinking  
April 21, 2008  
Page 5

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warranted. Because this appears to be an isolated instance of misconduct, does not reflect a pattern of misconduct and because the Association does not have unlimited resources, we are dismissing this matter under ELC 5.6(a). Although this letter is not a finding of misconduct or discipline, we wish to put Mr. Lockwood on notice that, in the future, such conduct must be avoided. Although we are dismissing this matter, we believe that good cause exists for long-term retention of the file materials and we will oppose any request by Mr. Lockwood for destruction of the file under ELC 3.6(b) until five years from the date of this letter.

If you do not mail or deliver a written request for review of this dismissal to us within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final.

Sincerely,



Nancy Bickford Miller  
Disciplinary Counsel

Enclosure (March 20, 2008 Lockwood letter)  
cc: J. Gregory Lockwood (w/o enclosure)

*Law office of*  
**J. Gregory Lockwood, P.L.L.C.**  
522 W. Riverside Avenue, Suite 420  
Spokane, Washington 99201  
(509) 624-8200 Telephone  
(509) 623-1491 Facsimile

**RECEIVED**

MAR 24 2008  
WSBA OFFICE OF  
DISCIPLINARY COUNSEL

March 20, 2008

Nancy B. Miller  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2573

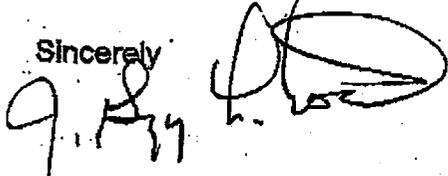
Re: WSBA 07-02043

Dear Nancy:

Mrs. Reinking's home was never offered as settlement in the litigation with her son Jan Reinking. At the mediation the Spokane business stock was discussed but Ms. Reinking's home was not on the table. Jan Reinking insisted on large judgments and sentiment was really not an option at the onset. It was our position that Jan Reinking did not have a valid claim. We were most certainly not going to offer Ms. Reinking's home on what we considered a groundless claim. There were no written offers or any documentation regarding the conversations that took place.

I hope this will resolve this matter.

Sincerely



J. Gregory Lockwood  
Attorney at Law

JGL/klb