

Supreme Court No. 200,681-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

PAUL H. KING,
Lawyer (Bar No. 7370).

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

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I. COUNTERSTATEMENT OF THE ISSUES

1. During the investigation of a grievance, disciplinary counsel took the deposition of Mark Maurin, but Maurin's deposition was never offered or admitted in evidence. King was not given notice of the deposition because notice was not required and because King had already threatened or harassed another potential witness in the investigation. Was King denied his right to cross-examine the witnesses who testified at the disciplinary hearing, where no statement by Maurin was ever offered or admitted in evidence?

2. A review committee ordered a hearing on King's alleged misconduct. The vote was 2-0, with one review committee member not present. The review committee's order was affirmed, first by the Disciplinary Board Chair and then by the entire Disciplinary Board. Is the subsequent disciplinary hearing a nullity merely because one of the three review committee members did not cast a vote?

3. King was served by registered and certified mail with the formal complaint and the notice to answer because he could not be found in Washington State. Such service constitutes "personal service" as defined in Rule 4.1(b)(3)(B) of the Rules for Enforcement of Lawyer Conduct (ELC). King filed an answer, participated fully in the disciplinary proceeding, and expressly conceded that service by mail was

proper. After the hearing ended, King moved to dismiss on the grounds that he had not been “personally served.” Did the Hearing Officer err in denying King’s motion to dismiss?

4. King was personally served under ELC 4.1(b)(3)(B) with a notice to answer that was precisely of the form prescribed by ELC 10.4(a). Is the subsequent disciplinary hearing a nullity because the notice to answer was not of the form prescribed by Rule 4(d)(4) of the Superior Court Civil Rules (CR) for a summons in a civil action?

5. The disciplinary hearing was delayed and rescheduled three times at King’s request. Eventually, in response to the Association’s motion for an order setting a hearing date, the Hearing Officer set a hearing date almost 14 months after the matter was ordered to hearing. Without giving any reasons, King requested that the hearing be delayed for an additional two months. Did the hearing officer err in denying King’s request?

6. In the course of the investigation and the formal proceeding that followed, King filed multiple lawsuits and grievances against the Hearing Officer, Disciplinary Counsel, the Disciplinary Board, the Washington State Bar Association, and others. All of them were dismissed. Can a respondent lawyer contrive a disqualifying conflict of

interest by suing everyone responsible for carrying out the functions set forth in the ELC?

7. King proposed three corrections to the hearing transcript that would have no effect on the outcome of the proceeding even if there were some reason to believe they should be made. The Hearing Officer entered an order settling the transcript without the proposed corrections, and a unanimous Disciplinary Board adopted the Hearing Officer's decision. Has King shown that he is entitled to any relief from the order settling the transcript?

8. The unchallenged findings of fact and conclusions of law establish that following his third disciplinary suspension King continued to practice law in direct violation of this Court's order; that he actively concealed his unauthorized practice through lies and deception; that he obstructed and delayed an investigation of his misconduct by refusing to appear for depositions, refusing to produce documents, filing frivolous motions, and otherwise; and that he engaged in a concerted effort to threaten, harass, and intimidate his former client, the Hearing Officer, and others involved in the investigation and the formal proceeding that followed. The Hearing Officer and a unanimous Disciplinary Board recommended disbarment. Should this Court affirm?

II. COUNTERSTATEMENT OF THE CASE

A. SUBSTANTIVE FACTS

On February 12, 2002, this Court suspended lawyer Paul H. King from the practice of law in Washington for six months effective April 25, 2002. FCR¹ ¶ 2; EX 1. On May 8, 2002, in a separate proceeding, this Court suspended King from the practice of law in Washington for two years effective April 25, 2002. FCR ¶ 3; EX 2. On August 15, 2002, the United States District Court for the Western District of Washington suspended King from the practice of law in that court for three years effective April 25, 2002. FCR ¶ 4; EX 3.

In March 2004, while King was still under orders of suspension by this Court and the U.S. District Court, Kurt Rahrig contacted King's assistant, Roger Knight, concerning a claim for breach of contract against his former employer, Alcatel USA. FCR ¶ 9; TR 156-57. Although Knight is a frequent pro se litigant who has been held in contempt of court and sanctioned for his frivolous and vexatious litigation more times than he can remember, he is not a lawyer licensed to practice law in this or any other state. TR 796-800. Between March and September 2004, King, Knight, and Rahrig communicated via email about the possibility of King

¹ "FCR" refers to the Findings, Conclusions, and Hearing Officer's Recommendation (BF 242).

representing Rahrig in a lawsuit against Alcatel USA. FCR ¶ 10; EX 4-7; TR 156-57.

On September 3, 2004, after this Court's suspension orders had expired, King signed a contingent fee agreement with Rahrig. FCR ¶ 11; EX 8. The agreement provided that King would waive any right to fees if he withdrew from the representation. EX 8. Although the agreement states that Rahrig "hereby retains John Scannell, Actionlaw.net and Paul H. King" to represent him in his dispute with Alcatel USA, Scannell did not sign the fee agreement, never agreed to represent Rahrig, never consulted with Rahrig, and never performed any legal services for Rahrig. FCR ¶ 11; TR 172-73. Furthermore, Scannell was not a partner of King and did not share office space with King, either. FCR ¶ 11.

King did associate with Jay Levit, a lawyer licensed to practice law in Virginia. FCR ¶¶ 12-13; TR 173, 260-61. King and Levit agreed that although Levit would appear on Rahrig's behalf in Virginia, King would be the lead lawyer and would direct the strategy of the case. FCR ¶ 13; TR 265-66. King agreed to pay Levit 35% of his one-third contingent fee. EX 88; TR 270.

In November 2004, Levit filed Rahrig v. Alcatel in a Virginia state court. FCR ¶ 12; TR 263. In December 2004, the case was removed to the U.S. District Court for the Eastern District of Virginia. FCR ¶ 14; EX

16; TR 263. Levit suggested that King seek *pro hac vice* admission there, but King declined. FCR ¶ 14; TR 272-73. Although Levit acted as counsel of record in Virginia, King took the lead in counseling Rahrig and in drafting the legal documents used in the lawsuit. FCR ¶ 13; TR 267-69. Alcatel's counsel were directed to serve their pleadings on King, as well as Levit. FCR ¶ 17; EX 15, 18, 22, 24, 25, 28.

On October 21, 2004, this Court ordered King to show cause under ELC 9.2(c) why the same discipline imposed by the U.S. District Court on August 15, 2002 should not be imposed in the State of Washington. FCR ¶ 6; EX 9, 11. Through Scannell, his counsel, King contested the imposition of reciprocal discipline. On March 9, 2005, this Court suspended King from the practice of law in the State of Washington until August 13, 2005. FCR ¶ 7; EX 41, 44. Later, this Court entered a corrective order stating that King's suspension would expire on June 7, 2005. FCR ¶ 7; EX 133.

On the evening of March 9, 2005, just after this Court's order of suspension was entered, King or someone acting under his direction sent an email message to Alcatel's counsel stating:

Please have pleadings addressed to Actionlaw.net John Scannell Attorney from now on. *Mr. King is taking a leave.* Same address as before.

FCR ¶ 16, 20; EX 42 (emphasis added).

King did not notify Rahrig, Levit, or Alcatel's counsel that he had been suspended from the practice of law. FCR ¶ 15; TR 176, 308, 349. He did not take any steps to avoid the reasonable likelihood that Rahrig would continue to rely on him as a lawyer authorized to practice law. FCR ¶ 51, TR 174-75, 266. On the contrary, he continued to cultivate his lawyer-client relationship with Rahrig in hopes of receiving a large contingent fee upon the conclusion of Rahrig v. Alcatel. FCR ¶¶ 51, 117.

On March 18, 2005, Disciplinary Counsel Leslie Ching Allen wrote to Scannell, King's counsel in the reciprocal discipline proceeding, to advise him and his client of King's duties on suspension. EX 46. One such duty is the service of an affidavit as required by ELC 14.3. On or about April 11, 2005, King submitted a declaration in which he stated, under penalty of perjury:

Since the discipline imposed was agreed upon by both parties and the date for termination was agreed to in advance, I wrapped up my affairs and closed the practice. I had no active clients at the close of March 9, 2005 the due date.

FCR ¶ 48; EX 53. Those statements were false, and King knew they were false when he made them. FCR ¶ 48.

After receiving the March 9, 2005 order of suspension, King continued to take the lead in counseling Rahrig and in preparing the legal documents used in the lawsuit. FCR ¶ 50, TR 266. Rahrig and Levit

continued to rely on King as a lawyer authorized to practice law. FCR ¶ 26, 51. After receiving the March 9, 2005 order of suspension, King continued to regularly confer with Rahrig by email, by telephone, and in person at King's office. FCR ¶¶ 24-26, 28-29. King also continued to regularly confer by email and by telephone with Levit, his co-counsel. FCR ¶ 27, 30-32; EX 89, 119. In short, King continued to act as Rahrig's lawyer in exactly the same manner as he had before this Court suspended him from the practice of law on March 9, 2005. FCR ¶ 51.

On April 26, 2005, Levit sent King a letter in which he memorialized their fee-sharing agreement to "make sure there [was] no misunderstanding." FCR ¶ 33; EX 88. Levit asked King to indicate his agreement by signing the letter. EX 88; TR 270-71. King signed the letter and returned it to Levit on May 24, 2005. FCR ¶ 33; EX 88, 103; TR 271, 300.

On or about May 26, 2005, Levit discovered that King had been suspended from the practice of law by this Court on March 9, 2005. FCR ¶ 13; TR 308. Levit informed Rahrig of King's suspension, and on May 31, 2005, Rahrig informed King by mail and by email that he was no longer Rahrig's lawyer. FCR ¶ 37; EX 123, 128; TR 308-09.

Later that day, Rahrig received a reply from Knight's email address that was either drafted by King or prepared at King's direction.

FCR ¶37; EX 125. In it, King offered an opinion as to “how . . . silly the concept of ‘practicing law without a license’ is.” FCR ¶37; EX 125. Later the same day, Rahrig received another reply stating that King “was not the attorney on the case” and that he had “transferred the case to Mr. Scannek [sic] on March 9, 2005.” FCR ¶ 38; EX 126. That statement was false, and King knew it was false. FCR ¶¶ 11, 39, 54, 55. Although Rahrig had consulted with King on almost a daily basis between March 9, 2005 and May 26, 2005, he had never sought or received any legal counsel from Scannell. FCR ¶¶ 11, 25-28; TR 172-73.

On May 31, 2005, Rahrig filed a grievance against King. FCR ¶ 56; EX 127. The next day, he requested his file from King and directed King to contact him only through Levit. FCR ¶ 57; EX 130.

On June 2, 2005, King was asked to respond to Rahrig’s grievance by June 16, 2005. FCR ¶ 58; EX 131. On June 21, 2005, King sent a memorandum to Disciplinary Counsel stating that he would need “the full 30 days to answer the complaint adequately.” FCR ¶ 59; EX 134. On July 6, 2005, Disciplinary Counsel notified King that, under ELC 5.3(e), he would be subpoenaed for a deposition unless he responded to Rahrig’s grievance by July 19, 2005. FCR ¶ 60; EX 135.

On or about July 18, 2005, King caused a Summons and a Complaint for Monies Due to be delivered to Rahrig. FCR ¶ 61; EX 136-

37. The summons and complaint identify both King and Knight as plaintiffs, although Rahrig never entered into any fee agreement with Knight. Id. The summons was signed by Knight as “Plaintiff” and by King as “Attorney.” EX 136. The complaint, which was never filed, bears a fictitious King County Superior Court cause number. FCR ¶ 61, 64; EX 137.

The complaint alleged that Rahrig breached his fee agreement with King by failing to pay legal fees even though (1) King was required to withdraw from representation upon his March 9, 2005 suspension, (2) King had stated, in writing and under penalty of perjury, that he had no clients as of March 9, 2005, and (3) King’s fee agreement expressly stated that King would waive any right to fees if he withdrew from representation. EX 137. In light of his fee agreement and his suspension from the practice of law, King’s claims against Rahrig were frivolous. FCR ¶ 95. Nevertheless, Rahrig was obliged to hire a lawyer and pay him \$615 to defend against King’s frivolous claims. FCR ¶ 62; TR 225.

On July 22, 2005, King requested a deferral of the Association’s investigation under ELC 5.3(c). FCR ¶ 98; EX 138. As the basis for his deferral request, King stated: “I have a lawsuit pending on this matter as to a determination if there was an attorney-client relationship with Rahrig as to his Virginia Federal Case. His attorney in Virginia has denied any

attorney client relationship even exists.” FCR ¶ 98; EX 138. Those statements were false and misleading in that Levit had never denied the existence of an attorney-client relationship between King and Rahrig. FCR ¶ 98. King’s deferral request was denied, and he requested review. FCR ¶ 65; EX 140, 144. King then withdrew his request for review just before a review committee was to consider it. FCR ¶ 104; EX 150.

On October 12, 2005, Disciplinary Counsel issued a subpoena duces tecum under ELC 5.5 commanding King to appear and produce documents at a deposition on November 2, 2005. FCR ¶ 67; EX 146. Efforts to serve King were unsuccessful, so on November 3, 2005, Disciplinary Counsel issued a second subpoena duces tecum commanding him to appear and produce documents on November 22, 2005. FCR ¶¶ 67-68; EX 149, 152. On November 10, 2005, King was served with the second subpoena duces tecum at the King County Courthouse. FCR ¶ 68; TR 322-24.

King failed to appear for the deposition, and he failed to produce any of the documents called for by the subpoena duces tecum. FCR ¶¶ 71, 111; EX 153. On the afternoon before the scheduled deposition, King caused his first motion to terminate the deposition to be delivered to the Association. FCR ¶ 69; EX 154. King asserted, without any citation to authority, that jurisdiction over Rahrig’s grievance lay in Virginia, even

though King was admitted to practice law in Washington, not Virginia, and even though all of King's misconduct occurred in Washington, not Virginia. FCR ¶ 69; EX 154. On June 6, 2006, the Disciplinary Board Chair denied King's first motion to terminate the deposition. FCR ¶ 73; EX 164.

On June 13, 2006, and again on June 26, 2006, Disciplinary Counsel informed King that his deposition would resume on June 28, 2006. FCR ¶ 74; EX 165-67. On the afternoon before the scheduled deposition, Disciplinary Counsel received a letter from Knight, along with a notice of unavailability purportedly signed by King on June 16, 2006. FCR ¶ 74; EX 168-69. King requested that his deposition be rescheduled after July 10, 2006, supposedly to accommodate his vacation plans. EX 168. On July 5, 2006, and again on July 19, 2006, Disciplinary Counsel informed King that his deposition would resume on July 20, 2006. EX 170, 173, 175-76.

King again failed to appear for his deposition, and he again failed to produce any of the documents called for by the subpoena duces tecum. FCR ¶ 79; EX 182. About an hour before the scheduled deposition, King caused his second motion to terminate the deposition to be delivered to the Association. FCR ¶ 76; EX 174, 178, 181. In that motion, King asserted for the first time that he was a resident of Kitsap County and could only be

deposed in Kitsap County, even though one week earlier he had signed and filed a complaint in the King County Superior Court stating that he was a resident of King County. FCR ¶ 77; EX 171. King also asserted that his deposition could not be taken unless notice of the deposition was served on Scannell, even though Scannell had never appeared for King in this matter. FCR ¶ 77-78; EX 178. King also based his refusal to attend the deposition on the bizarre assertion that *Disciplinary Counsel* had decided his first motion to terminate the deposition. EX 178. On August 16, 2006, the Disciplinary Board Chair denied King's second motion to terminate and ordered him to allow his deposition to be taken. FCR ¶ 80; EX 184.

On August 25, 2006, Disciplinary Counsel sent King a letter informing him that his deposition would resume on September 5, 2006. FCR ¶ 83; EX 185. On the same date, King caused a "Motion to Set Aside or Stay Order" to be delivered to the Association. FCR ¶ 81; EX 186. Even though this matter had not yet been ordered to hearing, King asserted that the Disciplinary Board Chair's August 17, 2006 order should be vacated because "the person who should be ruling on this motion would be the chief hearing officer." EX 186, 188. King had raised no such objection to the order denying his first motion to terminate, and King himself had addressed the proposed order he submitted with his second

motion to “the Disciplinary Board,” not to the Chief Hearing Officer. EX 181.

King failed to appear for his deposition yet again, and he failed yet again to produce any of the documents called for by the subpoena duces tecum. FCR ¶ 84; EX 189. On September 21, 2006, the Disciplinary Board Chair denied King’s “Motion to Set Aside or Stay Order.” FCR ¶ 85; EX 191.

On October 2, 2006, Knight sent an email message to Disciplinary Counsel stating, “Paul asked me to e-mail and to tell you that he is out of town.” FCR ¶ 86; EX 192. King did not disclose where he was or when he would allow his deposition to be taken in accordance with the subpoena duces tecum served on November 10, 2005 and the three orders entered on June 7, 2006, August 17, 2006, and September 21, 2006. King never allowed his deposition to be taken, and he never produced any of the documents called for by the subpoena duces tecum. FCR ¶¶ 108, 111.

King treated the investigation that preceded the commencement of formal proceedings “like a cat-and-mouse game,” without any regard for his duty to cooperate. FCR ¶ 143. King’s failure to respond promptly to requests for information was inexcusable, as was his failure to attend his deposition and produce the documents called for by the subpoena duces tecum. FRC ¶¶ 106, 114-15. King’s motions were frivolous and were

filed for the purpose of obstructing and delaying the investigation. FCR ¶¶ 114-15. As described below, King continued this course of conduct throughout the formal proceedings that followed.

B. PROCEDURAL FACTS

The results of the investigation were reported to a review committee under ELC 5.6(c). On January 5, 2007, a review committee ordered a hearing under ELC 5.6(d). FCR ¶ 87; BF 1. After more delay occasioned by King's dilatory motion practice, the formal complaint was filed on May 8, 2007. FCR ¶ 88-90, 92; BF 2, 6-10, 12-13, 17, 56. The formal complaint alleged 10 counts of misconduct, as follows:

COUNT 1: By failing to notify Mr. Rahrig and/or opposing counsel of his March 9, 2005 suspension from the practice of law, Respondent violated RPC 8.4(l) (through violation of a duty imposed by ELC 14.1).

COUNT 2: By informing his opposing counsel that he was merely "taking a leave" when in fact he had been suspended from the practice of law, and/or by falsely representing that lawyer John Scannell had substituted for him, Respondent violated RPC 8.4(c).

COUNT 3: By submitting a declaration in an official proceeding that contained materially false statements that he knew to be false, Respondent violated RPC 8.4(b) (by committing perjury in the first degree, in violation of RCW 9A.72.020, and false swearing, in violation of RCW 9A.72.040)), and/or RPC 8.4(c), and/or RPC 8.4(l) (through violation of a duty imposed by ELC 14.3).

COUNT 4: By continuing to engage in the practice of law after the March 9, 2005 order of suspension, and/or by failing to take the steps necessary to avoid any reasonable

likelihood that anyone would rely on him as a lawyer authorized to practice law, Respondent violated RPC 5.5(e), and/or RPC 8.4(b) (through violation of RCW 2.48.180), and/or RPC 8.4(l) (through violation of a duty imposed by ELC 14.2), and/or RPC 8.4(j).

COUNT 5: By delivering a summons and a complaint with a fictitious cause number to Mr. Rahrig, and/or by asserting claims and/or issues therein that were frivolous, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(c), and/or RPC 8.4(d).

COUNT 6: By using the summons and complaint as a pretext for a deferral request intended to obstruct and delay the Association's investigation of Mr. Rahrig's grievance, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(c), and/or RPC 8.4(d).

COUNT 7: By attempting to induce Mr. Rahrig to withdraw his grievance by threatening him with a frivolous lawsuit, Respondent violated RPC 8.4(a) and/or RPC 8.4(d).

COUNT 8: By failing to promptly respond to requests for a response to Mr. Rahrig's grievance, Respondent violated RPC 8.4(d) and/or RPC 8.4(l) (through violation of a duty imposed by ELC 5.3).

COUNT 9: By avoiding service of a deposition subpoena, and/or by failing to appear for his deposition on multiple occasions, and/or by failing to produce any of the documents called for by the subpoena duces tecum, Respondent violated RPC 8.4(d) and/or RPC 8.4(l) (through violation of duties imposed by ELC 5.3 and 5.5).

COUNT 10: By filing frivolous motions intended to obstruct and delay an investigation, and/or by disobeying orders denying those motions, Respondent violated RPC 3.1, and/or RPC 4.4, and/or RPC 8.4(d), and/or RPC 8.4(l) (through violation of duties imposed by ELC 5.3 and 5.5).

FCR at 1-2; BF 17.

The formal complaint and the notice to answer were served by mail in accordance with ELC 4.1(b)(3)(B) because King could not be found in Washington State. BF 24, 30, 46. King conceded that service by mail was proper. BF 67.

Soon after a Hearing Officer was appointed, King and Scannell filed a Second Amended Petition for Writ of Mandamus in the King County Superior Court naming the Hearing Officer as a defendant. FCR ¶ 120. King caused the petition to be served at the Hearing Officer's home late at night, although he did not bother to serve any of the other named defendants. FCR ¶ 120. King explained his basis for suing the Hearing Officer as follows:

Well, you're a party to the Bar, and, you know, we thought that everybody included – and besides, it really isn't a process as we pointed out in our brief, it's the charging formula that you have. And once you get charged, of course, you have a problem. But you're considering enhanced charges based upon our due process arguments, really.

* * * *

I mean, the question is – it really isn't a question if you're a necessary party or aren't. And you practice law. There's a way of joining and non-joining people; right? I mean, you could do that. The Bar didn't do it; right? They had the duty, obligation; correct? I mean, the problem we get in this is we're practicing lawyers, they're practicing in the arena of discipline. So we know kind of the joinders that . . . And that's nothing against Mr. Busby or anything, it's just that those issues are litigated. When you guys talk about all these ELC's and everything, to be honest, you know, I'm not as familiar as you by far in charging counts

and all that stuff. I have no doubt that they're much more But that's our position, and that's what your counsel said. So your counsel is your representative. If he didn't do something for you, I mean, that's your complaint with him, not with me, right?

FCR ¶ 121; TR 762-63. The court dismissed the petition for lack of jurisdiction, and King appealed.² FCR ¶ 122; EX 203-04.

Then King filed a witness list naming the Hearing Officer, six employees of the Office of Disciplinary Counsel (including the disciplinary counsel assigned to this case), and thirteen members of the Disciplinary Board as witnesses. FCR ¶ 123; BF 92. King did not have a good faith intention to call these persons as witnesses, and he included their names on the witness list purely for the purpose of harassment. FCR ¶ 123.

Then, shortly before the disciplinary hearing was to begin, King and his confederates, Roger Knight and John Scannell, began filing a series of repetitive motions designed to obstruct and delay the hearing. FCR ¶ 124-25; BF 146-58, 167, 171-73, 175-76, 178, 181, 197-98, 200-03, 205-07, 209-10, 212, 215-16, 220, 222. The basis for these motions was the Petition for Writ of Mandamus referenced above. After their motions were denied, King, Knight, and Scannell filed grievances against the Hearing Officer. FCR ¶ 125. When a Conflicts Review Officer found

² Supreme Court No. 832056.

those grievances to be meritless, King and Knight filed an original action in this Court against both the Hearing Officer and the Conflicts Review Officer.³ FCR ¶ 125.

Between the filing of the formal complaint and the disciplinary hearing, King made at least seventeen separate attempts to halt or delay the hearing. FCR ¶ 126; BF 54, 65, 75, 78, 86, 100, 119.10, 134, 146, 166, 171, 176, 194, 197, 200, 201, 205. Those efforts were frivolous, and they wasted substantial time and resources. FCR ¶ 126. King failed to cooperate in post-complaint discovery, and he failed to comply with the Hearing Officer's prehearing orders. FCR ¶ 128. He treated the formal proceeding, like the investigation that preceded it, as a "cat-and-mouse game." FCR ¶ 128. He made deceptive and dishonest statements in his prehearing pleadings and at the hearing itself. FCR ¶ 118.

The Hearing Officer filed his Findings, Conclusions, and Hearing Officer's Recommendation on September 19, 2008. BF 242. The Hearing Officer concluded that King committed the violations charged in Counts 1-5 and 8-10 of the formal complaint, and he recommended disbarment. FCR ¶¶ 132-44, 161. On February 2, 2009, the Disciplinary Board unanimously adopted the Hearing Officer's decision. BF 263.

³ Supreme Court No. 815178.

King is currently suspended from the practice of law under ELC 7.1(e)(1) based on his felony conviction for Mail Fraud⁴ and under ELC 7.2(a)(2) based on the Board's unanimous decision recommending disbarment.⁵

III. ARGUMENT

A. STANDARD OF REVIEW

Unchallenged findings of fact are verities on appeal. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 330, 157 P.3d 859 (2007). Conclusions of law will be upheld if they are supported by the findings of fact. Id.

King does not challenge any of the Hearing Officer's findings of fact. He does not argue that the Hearing Officer's conclusions of law are unsupported by the findings of fact. He does not dispute that, among other things, he:

- violated Rule 8.4(l) of the Rules of Professional Conduct (RPC) by failing to notify his client and his opposing counsel of his March 9, 2005 suspension (FCR ¶132);
- violated RPC 8.4(c) by falsely stating that he was "taking a leave" to conceal the fact that was practicing law while suspended (FCR ¶133);
- violated RPC 8.4(l) by submitting a false affidavit of compliance with Title 14 ELC (FCR ¶ 134);

⁴ Supreme Court No. 200,660-4.

⁵ Supreme Court No. 200,686-8.

- violated RPC 5.5(e), 8.4(b), 8.4(l) and 8.4(j) by practicing law while suspended (FCR ¶138);
- violated RPC 3.1 and 8.4(c) by asserting frivolous claims against his former client (FCR ¶ 139);
- violated RPC 8.4(l) by failing to promptly respond to requests for a response to Mr. Rahrig's grievance (FCR ¶ 142);
- violated RPC 8.4(l) by refusing to appear for his scheduled depositions and by refusing to produce any of the documents called for by the Association's subpoena duces tecum (FCR ¶ 143);
- violated RPC 3.1 and 8.4(l) by filing frivolous motions intended to obstruct and delay an investigation (FCR ¶ 144); and
- engaged in a concerted effort to threaten, harass, and intimidate his former client and other persons involved in this disciplinary proceeding, including the Hearing Officer, Disciplinary Board members, and employees of the Association (FCR ¶ 159).

King's arguments on appeal relate solely to the frivolous procedural roadblocks he tried to erect in his repeated efforts to thwart this proceeding and the investigation that preceded it.

B. KING HAD NO RIGHT TO "CROSS-EXAMINE" A PERSON WHOSE STATEMENTS WERE NEVER OFFERED OR ADMITTED IN EVIDENCE

Under ELC 5.5, during the investigation of a grievance, disciplinary counsel may depose a respondent lawyer or a witness before the filing of a formal complaint. Although CR 30, which applies "to the extent possible" to depositions under ELC 5.5, provides for notice to every

other “party to the action,” there is no action and hence no “party to the action” until the filing of a formal complaint. ELC 10.3(b); CR 3(a). Thus, no notice is required to anyone other than the deponent, although it does not follow that the deposition would be admissible in a subsequent disciplinary proceeding. TR 482, 500; EX 157 at 7-8; ELC 10.13(d) (testimony may be submitted by deposition as permitted by CR 32); CR 32(a) (deposition may be used at trial or hearing against party who had notice thereof). In a case such as this, where at least one potential witness was threatened or harassed, it may be preferable not to give notice to the subject of the investigation. TR 482-83; FCR ¶ 159.

King contends that he was denied his “right” to “cross-examine” Mark Maurin. But there is no right to cross-examine every person questioned in the course of investigating a grievance. The right to cross-examine witnesses applies to witnesses who testify at the disciplinary hearing. ELC 10.13(d). Maurin never testified at the disciplinary hearing, and no statements by Maurin were ever offered or admitted in evidence. FCR ¶ 70. King was allowed to cross-examine every witness who did testify at the disciplinary hearing, and he could have subpoenaed Maurin to testify if he believed that Maurin’s testimony would be helpful. ELC 10.13(e).

C. THE REVIEW COMMITTEE ORDER IS VALID AND WAS AFFIRMED BY THE ENTIRE DISCIPLINARY BOARD

On January 5, 2007, a review committee ordered a hearing under ELC 5.6(d). FCR ¶ 87; BF 1. The vote was 2-0, with one review committee member not present. BF 1. On January 16, 2007, King filed a motion to vacate the review committee order because only two of three members voted. FCR ¶ 88; BF 2. The Association filed an answer on January 22, 2007, and the motion was denied by the Disciplinary Board Chair on February 7, 2007. FCR ¶ 88; BF 4, 6.

On February 14, 2007, King filed a tardy reply to the Association's answer, as well as a motion for reconsideration supported by the declaration of Roger Knight concerning his quest for the 1876 edition of *Robert's Rules of Order*. FCR ¶ 89; BF 7-9. After considering the motion, the declaration, and King's reply, the Chair denied the motion for reconsideration. FCR ¶ 89; BF 10.

King then filed an "Appeal to the Full Disciplinary Board and Motion to Vacate the Disciplinary Board Chair Orders Denying Respondent's Motions" arguing that the Chair's order was invalid. FCR ¶ 90; BF 12. The motion was supported by another declaration by Knight concerning his "extensive research" on the 1876 edition of *Robert's Rules of Order*. BF 13. On July 30, 2007, the Disciplinary Board unanimously

rejected King's challenges to the review committee order and the Chair's orders, adding that "the ordered hearing should move forward." BF 56.

King contends that the review committee order is invalid because only two of its three members were present. But nothing in the ELC provides that a review committee cannot act through a majority of its members. It is undisputed that the meeting was held in accordance with ELC 2.4(f). It is undisputed that two of three review committee members found sufficient evidence of unethical behavior to order a hearing. BF 1. And it is undisputed that two is a majority of three. That the nonvoting member was a nonlawyer is of no significance whatever. See In re Disciplinary Proceeding Against Haskell, 136 Wn.2d 300, 318, 962 P.2d 813 (1998). Finally, the overwhelming evidence of King's extensive ethical misconduct demonstrates that the review committee's decision was correct.

King also contends that the Chair's order denying his motion to vacate the review committee order was invalid because the Disciplinary Board as a whole should have ruled on the motion instead. He ignores the fact that the Board *did* review his motion to vacate the review committee order. BF 56. Furthermore, nothing in the ELC requires the Board to decide every motion or review every ruling made in the course of an investigation or a formal proceeding. Under ELC 11.2(b), the Board

reviews certain “decisions” as defined in ELC 11.2(a). “Decision” means “the hearing officer or panel’s findings of fact, conclusions of law, and recommendation.” ELC 11.2(a). On the other hand, the Board *may* review an interim ruling, but only “if the Chair determines that review is necessary and appropriate and will serve the ends of justice.” ELC 10.9. Requiring the Board to convene and consider every motion and every interim ruling made in the course of an investigation or a formal proceeding would only provide King and his confederates with another means of delay.

Finally, King contends that he was “denied due process” because the Chair ruled on his motion to vacate before he filed his reply, more than three weeks after the Association filed its answer. But nothing in the ELC, the state constitution, or the federal constitution gives King the right to file a reply brief at all. See, e.g., ELC 10.8(c) (providing for motion, response, and ruling on motion “[u]pon expiration of the time for response”). And nothing requires the Chair to wait indefinitely for him to file one. In any case, the Chair considered King’s reply brief when she ruled on his motion for reconsideration. BF 11.

D. THE FORMAL COMPLAINT WAS PERSONALLY SERVED IN ACCORDANCE WITH ELC 4.1 AND 10.3

After a formal complaint is filed, it must be “personally served” on the respondent lawyer with a notice to answer. ELC 10.3(a)(2). The requirements of “personal service” are set forth in ELC 4.1(b)(3), which provides:

Personal Service. Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent’s place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for the practice of law, post office address, or address on file with the Association.

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

King was “personally served” under ELC 4.1(b)(3)(B) because he could not be found in Washington State. On March 13, 2007, King filed a “Notice of Unavailability” stating that he would be “out of the area and unavailable” until June 19, 2007. BF 15, 46 ¶ 3. The only address he

provided was the post office box in Seattle that had been his address on file with the Association since March 2005. BF 46 ¶ 4. On May 21, 2007, the Association received a “Notice of Change of Address” stating that King had changed his address from an address in Bremerton, Washington to an address in the Republic of the Philippines. BF 19, 46 ¶¶ 12-16. On May 24, 2007, the Association received a letter from King’s assistant, Roger Knight, stating that King was in the Philippines and had been there “for months.” BF 23. Knight requested that “all process” be mailed to King’s address in the Philippines. Id. Also on May 24, 2007, the Association received another “Notice of Unavailability” and another “Notice of Change of Address” to which was attached a copy of a temporary license issued to King in the Republic of the Philippines on March 29, 2007. BF 23-24, 46 ¶ 16.

Meanwhile, the Association tried without success to find King in Washington State. On May 8, 2007, investigator Scott O’Neal went to King’s office in Seattle. BF 46 ¶ 8, BF 48. O’Neal was told that King was out of the country and that he had been asked to vacate the premises. BF 46 ¶ 8, BF 48 ¶ 5. Also on May 8, 2007, O’Neal went to an address in Kenmore, Washington that he obtained from a traffic citation issued to King. BF 46 ¶ 9, BF 47. O’Neal was told that King resided there but would be in the Philippines for the next six weeks. BF 47 ¶ 4. In

accordance with ELC 4.1(b)(3)(B)(i), O'Neal left copies of the formal complaint and the notice to answer with a person of suitable age and discretion who resided there with King. BF 47 ¶¶ 4-5. Thus, King was personally served under ELC 4.1(b)(3)(B)(i).

But the Association did not stop there. On May 25, 2007, O'Neal went to an address in Bremerton, Washington that King listed as his residence address in Association records. BF 46 ¶ 10, BF 49. Neighbors told O'Neal that Scannell resided there, but they had never seen King. BF 49 ¶¶ 5-7. Finally, because King could not be found in Washington State, he was served by mail with the formal complaint and the notice to answer. BF 46 ¶ 17. Service was effected by registered and certified mail in accordance with ELC 4.1(b)(3)(B)(ii) at King's last known place of abode, at his office address, at his post office address, at his address on file with the Association, and at every other address King and his confederates had provided to the Association, including two addresses in the Philippines. BF 24, 30, 46 ¶¶ 18-20. Thus, King was personally served under ELC 4.1(b)(3)(B)(ii).

Furthermore, King waived the defense of insufficiency of service by his delay in asserting the defense and by conduct plainly inconsistent with the defense. If a party has been dilatory in asserting the defense, or if the party's assertion of the defense is inconsistent with his prior conduct,

then the defense is waived. Lybbert v. Grant County, 141 Wn.2d 29, 39, 1 P.3d 1124 (2000); Butler v. Joy, 116 Wn. App. 291, 296, 65 P.3d 671 (2003); Romjue v. Fairchild, 60 Wn. App. 278, 281, 803 P.2d 57 (1991); Raymond v. Fleming, 24 Wn. App. 112, 115, 600 P.2d 614 (1979). The rule is designed to prevent a defendant from lying in wait and “ambushing” the plaintiff after “misdirecting the plaintiff away from a defense.” Butler, 116 Wn. App. at 296; see also Lybbert, 141 Wn.2d at 40.

This is precisely what King did. He received the formal complaint and the notice to answer, he filed an answer, and he participated fully in the disciplinary proceeding. He expressly conceded that service by mail was proper. BF 67. In a sworn declaration filed on August 1, 2007, King stated, “It [sic] is no doubt that the Association can serve me in the Philippines by mail and in fact they did sometime during June 2007” Id. He added that “they served me in the Philippines, by mail, which under the rules is fine.” Id. Then he waited until May 12, 2008, the day the disciplinary hearing ended, to file his motion to dismiss the formal complaint on the grounds that he had not been “personally served.” BF 228, 230, 234. Nothing could be more inconsistent with King’s current position than his prior assertion that “under the rules” service by mail was

“fine.” Thus, even if King had any valid reason to challenge the sufficiency of service, he waived it.

E. THE NOTICE TO ANSWER WAS IN THE FORM PRESCRIBED BY ELC 10.4

As discussed above, the formal complaint was personally served with a notice to answer, in accordance with ELC 10.3(a)(2). A notice to answer must be substantially in the form prescribed by ELC 10.4(a). Here, the notice to answer that was personally served on King was *precisely* in form prescribed by ELC 10.4(a). BF 18. That it was not of the form prescribed by CR 4(d)(4) for a summons in a civil action is irrelevant. This is not a civil action, and the form and content of a notice to answer are governed by the Rules for Enforcement of Lawyer Conduct, not the Superior Court Civil Rules. ELC 1.1 (ELC govern procedure by which lawyer may be subjected to discipline), 10.14(a) (disciplinary proceedings neither civil nor criminal); CR 1 (CR govern procedure in superior court in civil suits).

King complains that a lawyer who is “out of the United States” needs “extra time to prepare a defense.” Brief of Attorney at 45. But he neglects to mention that he was not really outside the United States or even outside the City of Seattle during much of the time that he pretended to be in the Philippines. On June 11, 2007, for example, when he was

pretending to be in the Philippines, he was in his Seattle office. BF 46 ¶¶ 22-23, BF 51. On June 15, 2007, when he was pretending to be in the Philippines, he made an appearance in the King County Superior Court. BF 46 ¶¶ 22-23. On June 19, 2007, when he was pretending to be in the Philippines, he was in his Seattle office pretending to be someone else. BF 46 ¶¶ 22-23, BF 52. And on June 26, 2007, when he was still pretending to be in the Philippines, he was again in his Seattle office, although he was in such a rush to avoid being seen there that he fled through an emergency exit in a state of partial undress. BF 46 ¶¶ 22, 24, BF 50-51. While we may not know at which of his many addresses, both real and fictitious, King received the formal complaint and the notice to answer, we do know that he was in no way prejudiced by the form or content of the notice to answer.

F. THE HEARING WAS SET IN ACCORDANCE WITH ELC 10.12

The disciplinary hearing was originally set for December 3, 2007. BF 44. It was reset three times based on King's incessant requests for delay. BF 54, 65, 72-73, 75-78, 84, 86, 100, 121-23, 134-37, 146, 148-49, 166, 183, 192, 194-97, 209, 212, 215. Among other pretexts, King sought delay due to "a mix up in calendars" (BF 54 at 2), "a wedding in the Philippines" (BF 54 at 2), "house hunting" (BF 75 at 1), "a spousal visa"

(BF 75 at 1), “frequent travel” (BF 80 at 1-2), “blood pressure problems” (BF 80 at 1-2), “ticketing issues” (BF 86 at 1), a need to “avoid stress” (BF 86 at 1), difficulties with “foreign mail” (BF 119.10 at 2), his paralegal’s “blood glucose concentration” (BF 123 at 2), “wedding plans” (again) (BF 123 at 3), “weather and road conditions” (BF 123 at 4), “computer access” (BF 123 at 4), and his chauffeur’s “urinary tract infections” (BF 123 at 5).

On March 25, 2008, after the Hearing Officer delayed the hearing a third time at King’s request, the Association filed a Motion for Order Setting Hearing Date under ELC 10.8 and 10.12(b). BF 183, 192. King filed a response asking that the hearing be delayed yet again, this time until July 2008. BF 194. Noting the “numerous delays and extensions” that had already occurred, the Hearing Officer ordered that the hearing commence on April 28, 2008, almost 14 months after the matter was ordered to hearing. BF 195.

King claims, for reasons he cannot articulate, that some unidentified “procedures were not followed” in setting the hearing. Brief of Attorney at 43. The record shows, however, that the hearing was set in accordance with ELC 10.12, and King’s claim to the contrary is without any basis in law or fact.

G. AN INVESTIGATION OR A DISCIPLINARY PROCEEDING CANNOT BE THWARTED MERELY BY SUING THE DISCIPLINARY BOARD, THE HEARING OFFICER, OR DISCIPLINARY COUNSEL

Shortly before the disciplinary hearing was to begin, King and his confederates, Knight and Scannell, began filing a series of repetitive motions, complaints, grievances, and appeals intended to obstruct and delay the hearing. FCR ¶ 124-25; BF 146-58, 167, 171-73, 175-76, 178, 181, 197-98, 200-03, 205-07, 209-10, 212, 215-16, 220, 222. Those motions, complaints, grievances, and appeals continued right up to the day the hearing began. BF 216; TR 18-25. The pretext for all of them was the lawsuit that King and Scannell filed against the Washington State Bar Association, the “Disciplinary Committee” [sic], the Disciplinary Board Chair, the Hearing Officer, and Disciplinary Counsel. On appeal, King contends that the pretextual lawsuit he filed against the Hearing Officer and others created a disqualifying conflict of interest that he can use to thwart the disciplinary proceeding against him. His position is neither original nor legally supportable.

Due process of law, the appearance of fairness doctrine, and ELC 2.6(e)(4) require a hearing officer to disqualify himself only if he is biased or if his impartiality may reasonably be questioned. See Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000);

State v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996); see also Hill v. Department of Labor & Industries, 90 Wn.2d 276, 279, 580 P.2d 636 (1978) (common-law rules governing disqualification for conflict of interest apply to administrative tribunals); Nationscapital Mortgage Corp. v. State Dep't. of Fin. Inst., 133 Wn. App. 723, 765, 137 P.3d 78 (2006) (principles governing disqualification of judges apply to administrative proceedings). But a hearing officer is presumed to be impartial, and a party who alleges actual or potential bias must affirmatively establish his claim based on facts in the record, not mere speculation or innuendo. See Nationscapital, 133 Wn. App. at 766; Wolfkill, 103 Wn. App. at 841; Dominguez, 81 Wn. App. at 328-29.

It is well established that judicial officers are not disqualified merely because a litigant sues or threatens to sue them. See, e.g., United States v. Studley, 783 F.2d 934, 940 (9th Cir. 1986); Ronwin v. State Bar of Arizona, 686 F.2d 692, 701 (9th Cir. 1981), rev'd on other grounds sub nom. Hoover v. Ronwin, 466 U.S. 558, 104 S. Ct. 1989, 80 L. Ed. 2d 590 (1984); United States v. Grismore, 564 F.2d 929, 933 (10th Cir. 1977), cert. denied, 435 U.S. 954, 98 S. Ct. 1586, 55 L. Ed. 2d 806 (1978). “It cannot be that an automatic recusal can be obtained by the simple act of suing the judge.” United States v. Pryor, 960 F.2d 1, 3 (1st Cir. 1992). “Such an easy method for obtaining disqualification should not be

encouraged or allowed,” for to do so “would be to put the weapon of disqualification in the hands of the most unscrupulous.” Ronwin, 686 F.2d at 701; In re Ronwin, 139 Ariz. 576, 586, 680 P.2d 107 (1983). Not content with “the simple act of suing the judge,” King has surpassed even “the most unscrupulous” by suing the Association, the “Disciplinary Committee” [sic], the Disciplinary Board Chair, and Disciplinary Counsel, as well as the Hearing Officer.

Under former ELC 2.12(a),⁶ the Association must defend any action against the Disciplinary Board, hearing officers, disciplinary counsel, and others for actions taken in good faith under the ELC. Under this rule, the Association’s General Counsel appeared and obtained a dismissal of King’s lawsuit based on lack of subject matter jurisdiction. FCR ¶ 122; EX 201, 203. But contrary to King’s repeated assertions, made without any supporting evidence, there have been no ex parte contacts between Disciplinary Counsel and the Hearing Officer, and no “combination of investigative . . . and adjudicative functions.” BF 195 at 2; Brief of Attorney at 18, 23. Disciplinary Counsel, the Hearing Officer, the Disciplinary Board, and the Association’s General Counsel have all

⁶ Effective January 2, 2008, former ELC 2.12(a) was removed from ELC 2.12, leaving as the current rule the language that was previously ELC 2.12(b). The provisions relating to exoneration from liability were moved to Rule 12.3 of the General Rules (GR).

carried out their designated functions under the ELC. See ELC 2.3, 2.5, 2.8; former ELC 2.12(a).

In support of the position that he can thwart a disciplinary investigation or proceeding simply by filing a lawsuit, King relies on Wash. Med. Disciplinary Bd. v. Johnston, 29 Wn. App. 613, 626, 630 P.2d 1354 (1981) (Johnston I), in which the Court of Appeals held that an appearance of unfairness was created by the same tribunal combining investigative and adjudicative functions. But even if that decision had not been reversed by this Court in Wash. Med. Disciplinary Bd. v. Johnston, 99 Wn.2d 466, 478-81, 483, 663 P.2d 457 (1983) (Johnston II), it would have no bearing on this case, since there is no evidence that the Hearing Officer in this case functioned as anything but an adjudicator. On the facts of this case, a “reasonably prudent and disinterested observer” would conclude not that King was denied a “fair, impartial, and neutral hearing,” but that he went out of his way to thwart such a hearing. See id. at 481.

H. THE DISCIPLINARY BOARD HAS RULED ON KING’S “APPEAL” FROM THE ORDER SETTLING THE HEARING TRANSCRIPT

After the hearing transcripts were filed and served, King filed a cryptic note that he entitled “Correction Page.” BF 235-37; see ELC 11.4(c). King’s three proposed corrections are utterly trivial, and would have no effect on the outcome of the proceeding even if there were some

reason to believe they should be made. His first proposed correction merely adds the word “yess” [sic] to a sentence that already contains the word “yeah.” BF 237; TR 230. His second and third proposed corrections relate to a charge that the Hearing Officer dismissed, and they would not alter the substance of the testimony anyway. BF 237; TR 380, 383; FCR ¶ 141.

The Hearing Officer entered an order settling the transcript without the proposed corrections. BF 238, 240. King filed an “appeal” from the order settling the transcript. BF 241. King now claims that this “appeal” has not been ruled upon. But he raised the same issue before the Disciplinary Board, and a unanimous Board adopted the Hearing Officer’s decision. BF 257 at 28, BF 263. Both the Hearing Officer and the Disciplinary Board rejected King’s proposed corrections, and King has provided no basis for this Court to do otherwise.

I. DISBARMENT IS THE ONLY APPROPRIATE SANCTION

The ABA Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) govern sanctions in lawyer discipline cases. Marshall, 160 Wn.2d at 342. First, the Court considers whether the Board determined the correct presumptive sanction, considering the ethical duty violated, the lawyer's mental state, and the actual or potential

injury caused by the lawyer's misconduct. Id. Next, the Court considers the aggravating or mitigating factors. Id.

1. The Presumptive Sanction

Applying ABA Standards stds. 5.1, 6.2, 7.0, and 8.0, the Hearing Officer concluded that disbarment was the presumptive sanction for King's violations of RPC 3.1, 5.5(e), 8.4(c), 8.4(j), and 8.4(l) as charged in Counts 1, 3-5, and 10 of the formal complaint.⁷ FCR ¶¶ 148, 150-52, 155. King does not dispute those conclusions or any of the findings of fact that support them. The Association believes that ABA Standards std. 7.0, rather than std. 8.0, is more applicable to King's violations of RPC 8.4(l) as charged in Counts 1 and 3, but under either standard the presumptive sanction is disbarment. FCR ¶¶ 148, 150; BF 179 at 19-21.

2. Aggravating and Mitigating Factors

The Hearing Officer found eight aggravating factors under ABA Standards std. 9.22:

- (a) prior disciplinary offenses (resulting in three prior suspensions⁸);
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) deceptive practices during the disciplinary process;

⁷ The applicable ABA Standards are attached as Appendix A.

⁸ EX 1-2, 44.

- (g) refusal to acknowledge wrongful nature of conduct;
- (i) substantial experience in the practice of law; and
- (k) illegal conduct (unlawful practice of law⁹).

FCR ¶¶ 116-131, 158. The Hearing Officer found two additional aggravating factors, as well: (1) that King “engaged in an effort to intimidate the WSBA and others involved in the disciplinary process,” and (2) that Kurt Rahrig, King’s former client, was “threatened or harassed” by King because he filed a grievance. FCR ¶ 159. All of those findings are unchallenged and are therefore verities on appeal. Marshall, 160 Wn.2d at 330. There are no mitigating factors. FCR ¶ 160.

3. The Appropriate Sanction

Where there are multiple violations, the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Taking into account the presumptive sanctions for the multiple violations established here, along with the many aggravating factors that include King’s serious and extensive prior disciplinary offenses, the only appropriate sanction is disbarment.

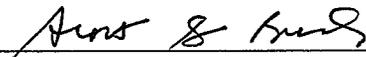
⁹ RCW 2.48.180.

IV. CONCLUSION

King has already been suspended from the practice of law on three separate occasions. His conduct in this, his fourth disciplinary proceeding, conclusively demonstrates his contempt for this Court's disciplinary orders, his contempt for the rules this Court has adopted for the administration of the lawyer discipline system, and his incorrigible propensity for dishonesty, fraud, deceit and misrepresentation. The Association respectfully urges this court to adopt the Board's unanimous recommendation that King be disbarred.

RESPECTFULLY SUBMITTED this 13th day of July, 2009.

WASHINGTON STATE BAR ASSOCIATION



Scott G. Busby, Bar No. 17522
Disciplinary Counsel

Appendix A
Selected *ABA Standards for Imposing Lawyer Sanctions*
(1991 ed. & Feb. 1992 Supp.)

4.6 *Lack of Candor*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
- 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.
- 4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

5.1 *Failure to Maintain Personal Integrity*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

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

6.2 Abuse of the Legal Process

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
- 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

7.0 Violations of Duties Owed as a Professional

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

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

8.0 *Prior Discipline Orders*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving prior discipline.

- 8.1 Disbarment is generally appropriate when a lawyer:
 - (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.3 Reprimand is generally appropriate when a lawyer:
 - (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
 - (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.