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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re JOE WICKERSHAM, Lawyer (Bar No. 18816).	Supreme Court No. 201,088-1 ASSOCIATION'S RESPONSE TO WICKERSHAM'S OPPOSITION TO STATEMENT OF ADDITIONAL AUTHORITIES

I. INTRODUCTION

The Washington State Bar Association (Association) submitted a Statement of Additional Authorities consisting of citations to eight public disciplinary cases, with accompanying decision papers, on the issue of whether a three-year suspension is a disproportionate sanction for a lawyer's abandonment of his practice. All of the cases arose from default proceedings and resulted in final orders of disbarment, but not published decisions, issued by the Court. Respondent Joe Wickersham asks the Court to strike the Association's Statement of Additional Authorities for three primary reasons. None has merit.

II. ARGUMENT

First, Wickersham relies on General Rule (GR) 14.1(a), which provides that a party "may not cite as an authority an unpublished opinion of the Court of Appeals." Opposition at 2. But the Association did not cite "an unpublished opinion of the Court of Appeals." Instead, we provided

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administrative records to the Court for its review. The Court hears Bar matters not only under its appellate authority but also under its supervisory authority over the administrative apparatus regulating the practice of law in Washington. The rules governing appellate practice do not necessarily apply in this context:

> A disciplinary proceeding is not in the nature of an appellate review as that term is generally understood. Thus this court is not entirely bound by traditional rules of appellate practice and we retain discretion to step outside our procedural rules when warranted.

In re Disciplinary Proceeding Against McGlothlen, 99 Wn. 2d 515, 521, 663 P.2d 1330 (1983) (quotation and citation omitted); see also In re Disciplinary Proceeding Against Kronenberg, 155 Wn.2d 184, 191 n. 2, 117 P.3d 1134 (2005) (declining to "impose Washington's appellate court procedures on the disciplinary process"); see generally Rules for Enforcement of Lawyer Conduct (ELC) 2.1, 12.2(b). The Court has never invoked GR 14.1(a) to prohibit reference to public disciplinary decisions for purposes of proportionality analysis. To the contrary, the Court regularly considers such material when addressing the issue.[1]

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[1] See, e.g., In re Disciplinary Proceeding Against Eugster, 166 Wn.2d 293, 324-26 & nn.28-31, 209 P.3d 435 (2009); In re Disciplinary Proceeding Against Behrman, 165 Wn.2d 414, 427, 197 P.3d 1177 (2008); In re Disciplinary Proceeding Against Poole, 164 Wn.2d 710, 736-38, 193 P.3d 1064 (2008); In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 734, 185 P.3d 1160 (2008); In re Disciplinary Proceeding Against Lopez, 153 Wn.2d 570, 595-96, 106 P.3d 221 (2005); In re Disciplinary Proceeding Against Anschell, 149 Wn.2d

Second, Wickersham states that he tried to search the Association's records for Disciplinary Board decisions but the records were not available to the general public for research. Opposition at 3. From there he extrapolates that disciplinary counsel must have engaged in ex parte communication, or relied improper "insider" assistance, to come up with the citations presented to the Court. Id. Wickersham is mistaken on both counts. The Association's disciplinary information is available to the public on its website and is searchable. See Discipline Information Search, Washington State Bar Association, http://www.mywsba.org/default.aspx?tabid=179 (last visited April 8, 2013). That lawyers in the Office of Disciplinary Counsel, with years of experience in the field, might be more adept at accessing and assimilating disciplinary information than are members of the public does not mean that anything improper occurred.

Finally, Wickersham suggests that the cases provided in the Association's Statement of Supplemental Authorities are irrelevant due to the lack of published decisions regarding abandonment of practice. Opposition at 3-4. But it is precisely because there are no published decisions in the area—perhaps because all the comparable cases arise from

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484, 517-19, 69 P.3d 844 (2003); In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 86, 960 P.2d 416 (1998).

default proceedings—that the public decisions are relevant. The point is that abandonment of practice cases generally result in disbarment, so the Disciplinary Board's three-year suspension recommendation is not disproportionate. Certainly, the Court may decide that these cases are not useful to its proportionality analysis, but that does not provide grounds to strike the Association's Statement of Additional Authorities.

III. CONCLUSION

The Court should deny Respondent's motion to strike the Association's Statement of Additional Authorities.

DATED THIS 11th day of April, 2013.

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re Joe Wickersham, Lawyer (Bar No. 18816)	Supreme Court No. 201,088-1 DISCIPLINARY COUNSEL'S DECLARATION OF SERVICE BY MAIL

The undersigned Disciplinary Counsel of the Washington State Bar Association declares that she caused a copy of the ASSOCIATION'S RESPONSE TO WICKERSHAM'S OPPOSITION TO STATEMENT OF ADDITIONAL AUTHORITIES to be mailed by regular first class mail with postage prepaid on April 11, 2013 to:

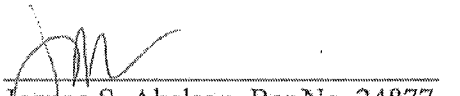
Joe Wickersham
826 Metcalf Street
Sedro Woolley, WA 98284-1423

Jai Rho
3555 San Pasqual St
Pasadena, CA 91107

and via email to: clydewickersham@hotmail.com and jrho99@yahoo.com

The undersigned declares under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

4/11/13 Seattle
Date and Place



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OFFICE RECEPTIONIST, CLERK

To: Joanne Abelson
Cc: Chandler, Desiree R.; clydewickersham@hotmail.com; jrho99@yahoo.com
Subject: RE: In re Wickersham, Supreme Court No. 201,088-1, Bar No. 18816

Rec'd 4-11-13

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-----Original Message-----
From: Joanne Abelson [mailto:joannea@wsba.org]
Sent: Thursday, April 11, 2013 8:02 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Chandler, Desiree R.; clydewickersham@hotmail.com; jrho99@yahoo.com
Subject: In re Wickersham, Supreme Court No. 201,088-1, Bar No. 18816

Dear Clerk,

Attached for filing are the following documents in the case of In re Wickersham, Supreme Court No. 201,088-1, Bar No. 18816:

1. Association's Response to Wickersham's Opposition to Statement of Additional Authorities
2. Declaration of Service by Mail

Please send confirmation that these documents have been received. Thank you.

Sincerely,

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