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STATE OF WASHINGTON
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Supreme Court No. 201,088-1
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

JOE WICKERSHAM,

Lawyer (Bar No. 18816).

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

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I. COUNTERSTATEMENT OF THE ISSUE

Under the ABA Standards, when a lawyer abandons his practice the presumptive sanction is disbarment. Here, following a period of bizarre behavior and numerous missed court appearances, Wickersham knowingly closed his office, fled Washington without providing contact information or filing notices of withdrawal, and left his clients to fend for themselves. The Disciplinary Board found that Wickersham abandoned his practice, but unanimously mitigated the presumptive sanction to suspension based on his emotional problems. It determined that a three-year suspension was necessary to protect the public. Should the Court affirm?

II. COUNTERSTATEMENT OF THE CASE

A. PROCEDURAL FACTS

On April 25, 2011, the Association filed a formal complaint charging Wickersham with seven counts of misconduct as follows:

- Count 1: By failing to attend his clients' scheduled court appearances, without explanation or formal withdrawal, Respondent violated RPC 8.4(d);
- Count 2: By abruptly ending his representation of Mr. Griffin, Mr. Ballard, and Mr. Zimcosky, without taking steps to ensure that his client's interests were protected, Respondent violated RPC 1.16(d);
- Count 3: By accepting \$2,700 from Mr. Ballard and then failing to do any work on his behalf, Respondent violated RPC 1.5(a) and RPC 1.3;

- Count 4: By failing to tell Mr. Griffin, Mr. Ballard, or Mr. Zimcosky that he had ceased practicing law and would no longer represent them, Respondent violated RPC 1.4(b);
- Count 5: By acting inappropriately at some court appearances and failing to appear at others, and by failing to properly withdraw from Mr. Zimcosky's case, Respondent violated RPC 8.4(d) and RPC 1.3;
- Count 6: By failing to competently represent Mr. Zimcosky during court appearances, Respondent violated RPC 1.1;
- Count 7: By committing the acts as described in ¶¶ 2-50, Respondent demonstrated unfitness to practice law in violation of RPC 8.4(n).¹

BF 7 at ¶¶ 51-57. Hearing Officer Lish Whitson held a three-day hearing in September 2011. He entered Findings of Fact, Conclusions of Law and Recommendation on December 19, 2011, BF 69, and amended Findings of Fact, Conclusions of Law and Recommendation on December 29, 2011, BF 72 (AFFCL).² The hearing officer found that the Association proved each count by a clear preponderance of the evidence. *Id.* ¶¶ 116-122. With respect to Count 7, he found that Wickersham's "taking client funds for work he failed to perform, abandoning his clients, and engaging in

¹ The charged RPC are attached as Appendix A.

² The AFFCL is attached as Appendix B. The amended decision clarifies ¶¶ 14, 15, 17, 24, and 102 of the original decision in response to the Association's motion to modify. *See* BF 69-70.

unprofessional behavior both in and out of the courtroom rises to the level of conduct demonstrating unfitness to practice law.” Id. ¶ 122.

The hearing officer applied the American Bar Association’s Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) to find that the following presumptive sanctions applied:

- Count 1: Suspension under ABA Standard 6.2, AFFCL ¶¶ 124-26;
- Count 2: Suspension under ABA Standard 7.0, Id. ¶¶ 127-29;
- Count 3: Suspension under ABA Standards 4.4 and 7.0, Id. ¶¶ 130-35;
- Count 4: Suspension under ABA Standard 4.4, Id. ¶¶ 136-38;
- Count 5: Suspension under ABA Standards 4.4 and 6.0, Id. ¶¶ 139-41;
- Count 6: Reprimand under ABA Standard 4.5, Id. ¶¶ 142-44;
- Count 7: Disbarment under ABA Standard 4.4, Id. ¶¶ 145-46.³

As to Count 7 (unfitness to practice), the hearing officer found that Wickersham’s conduct during the summer of 2010 caused serious injury or potentially serious injury to all of his clients, who were “left without their files, their unearned fees, and any direction from Respondent about what to do with their cases.” Id. ¶ 146. The hearing officer found four aggravating factors—prior disciplinary offenses, pattern of misconduct, multiple offenses, and substantial experience in the practice of law—and

³ The ABA Standards cited by the hearing officer are attached as Appendix C.

no mitigating factors. Id. ¶¶ 149-50. He recommended disbarment, a fitness to practice evaluation before reinstatement, and restitution to client Zimcosky. Id. ¶¶ 151-59.

The Disciplinary Board considered the matter under ELC 11.2(b)(1). By order entered July 16, 2012, BF 111,⁴ the Board struck the factual findings related to EX A-118 (Ballard) and the conclusions of law related to Ballard, id. at 2-3,⁵ but adopted the remaining findings and conclusions, id. at 3. The Board determined that the presumptive sanction for Count 7 was disbarment under ABA Standard 4.41(a), finding that Wickersham abandoned his practice, causing injury to two clients and potentially serious injury to others. Id. at 3-4. It removed the aggravating factor of pattern of misconduct, added the mitigating factor of personal or emotional problems, and mitigated the presumptive sanction of disbarment to a three-year suspension, with the fitness to practice and restitution requirements unchanged. Id. at 2, 4-5. The Board explicitly advised Wickersham that “mitigation from disbarment is not to be taken lightly

⁴ The Board’s decision is attached as Appendix D.

⁵ Ballard did not testify at the hearing. The Board struck the Ballard findings because the hearing officer based many of his findings on the content of Ballard’s grievance, EX A-118, which was admitted only to show that the grievance was filed. BF 111 at 2-3. In effect, the Board (1) the struck the last sentence of AFFCL ¶ 44, the second sentence of AFFCL ¶ 46, and all of AFFCL ¶¶ 47 and 51, (2) dismissed Count 3, AFFCL ¶ 118, and (3) deleted Ballard from the list of clients referenced in Counts 2 and 4, id. ¶¶ 117, 119.

and that the sanction in this matter is a close question.” Id. at 5. The decision was unanimous. Id. at 1 n.2.

Wickersham filed a timely notice of appeal. The Association does not challenge the Board’s modifications of the hearing officer’s decision and asks the Court to adopt the Board’s unanimous sanction recommendation.

B. SUBSTANTIVE FACTS⁶

1. The Zimcosky Matter

In February 2010, Walter Zimcosky was charged in Auburn Municipal Court with Driving Under the Influence. AFFCL ¶ 9. He paid Wickersham \$3,500 to represent him up to trial. Id. ¶ 10; TR 333, 344. Wickersham filed a Notice of Appearance on Zimcosky’s behalf in March 2010, AFFCL ¶ 11, and met with his client two or three times, id. ¶ 10.

At a June 18, 2010, hearing on a suppression motion, Wickersham displayed “exceedingly odd behavior.” Id. ¶ 14. For example, he engaged in shadow boxing, quickly paced around the courtroom, yelled “touchdown Washington,” showed prosecutors the inside of his mouth, flipped his tie over his shoulder, tucked and un-tucked his shirt, picked at small sores on his face, asked nonsensical questions of a witness, made

⁶ We omit the facts relating to Wickersham’s representation of Ballard in light of the Board’s decision.

rambling objections, and was discourteous to the court and prosecutors. Id. ¶¶ 14-16; TR 22, 24-26, 141, 150, 208, 211-213. Several observers questioned his competency. TR 74, 141-42, 211-12.

Following the lunch break, Wickersham returned to court 35 minutes late, at which point he learned that the court had struck his motions. AFFCL ¶ 17. He laughed and left the courthouse, making no effort to address the matter with the court. Id.; TR 31-32; EX A-135.

On June 21, 2010, the date set for trial, the prosecutor filed a motion to continue the trial and disqualify Wickersham from representing Zimcosky because of Wickersham's bizarre behavior. AFFCL ¶ 20. Following a July 16, 2010, hearing, the court declined to disqualify Wickersham because it was unfamiliar with the legal standard to apply to the issue. Id. ¶ 21. The court set the matter over to July 23, 2010. EX A-125.

Meanwhile, on July 22, 2010, Wickersham was taken by police for a mental health evaluation for what was diagnosed as a "substance induced psychosis." EX R-8;⁷ AFFCL ¶¶ 23, 95; TR 194-95, 535.

When the parties reconvened on July 23, 2010, to address the suppression motions, Wickersham arrived disheveled, still with a hospital

⁷Although the list of Respondent Exhibits, BF 61, reflects that EX R-8 was rejected, that exhibit was in fact admitted by the hearing officer. TR 418; see BF 111 at n.1.

armband on his wrist. AFFCL ¶ 24; TR 89-91. He carried neckties in his hand but was not wearing one. Id. He behaved erratically and asked the court several times if he could leave. The court set the matter over to July 30, 2010. AFFCL ¶¶ 24-27.

Throughout the representation, Wickersham left increasingly bizarre voice mail messages for Zimcosky. Id. ¶ 30. Sometime before the July 30, 2010 hearing, Wickersham accused Zimcosky of being in collusion with the City of Auburn to get him in trouble. TR 334. Wickersham never clearly told Zimcosky that he was withdrawing from representing him, TR 336; AFFCL ¶ 30, although Zimcosky decided he did not want Wickersham as his lawyer anymore. TR 335. Zimcosky believed Wickersham's conduct was unprofessional. Id.

The morning of the July 30, 2010 hearing, Wickersham left a rambling, 17-minute message on the Association's voicemail stating, among other things, that he would not be appearing in Auburn on behalf of Zimcosky because the court was corrupt and he (Wickersham) was the victim of a hate crime by Judge Stead and others in the court system. AFFCL ¶ 28; EX A-130. He also left a message with the court stating that he would not show up because he believed Zimcosky was in cahoots with the prosecutor. TR 102-03. Under CrRLJ 3.1(e), a lawyer must obtain

court permission in order to withdraw from a criminal case. Wickersham never obtained such permission. AFFCL ¶ 32; TR 242-43.

Zimcosky appeared for the July 30, 2010, hearing unrepresented. TR 46-47. The court declared Wickersham ineffective and advised Zimcosky to seek a new lawyer, apply for a public defender, or represent himself. TR 337. Zimcosky, who had been on disability, just wanted the matter to be over with. TR 338. He chose to represent himself and ultimately pleaded guilty to reckless driving. *Id.*; AFFCL ¶ 31. He sent Wickersham a letter seeking a refund of his fee but Wickersham never provided one. TR 282, 338-39.

While the Zimcosky case was pending, Wickersham left a number of rambling voicemails for Auburn City Attorney Daniel Heid and spoke to him on the phone several times. Among other things, Wickersham complained about a conspiracy and threatened to sue the City of Auburn and Heid personally. AFFCL ¶¶ 22, 25-26; TR 80-84, 94-96; EX A-131, A-135.

2. The Griffin Matter

On April 14, 2010, Wickersham filed a notice of appearance on behalf of Jonathan Griffin in Cowlitz County Superior Court, where Griffin was facing felony drug charges with a firearm enhancement. AFFCL ¶ 52; EX A-100. Trial was set for August 30, 2010. EX A-104.

Wickersham appeared on behalf of his client for pre-trial matters in May and June 2010, EX A-100, but failed to appear at a motion hearing on August 19, 2010, AFFCL ¶ 54; EX A-101A. At that hearing, Griffin told the court that Wickersham told him that Wickersham's office had been broken into and all his files stolen, and that Wickersham's service dog had been shot by law enforcement authorities. EX A-101A at 2; AFFCL ¶ 54. Although the prosecutor stated that he had tried to contact Wickersham and heard a voicemail greeting to the effect that Wickersham "may no longer be working as an attorney," EX A-101A at 6, Griffin said that Wickersham was "very much still" his attorney. Id. At the court's request, Griffin called Wickersham and confirmed that Wickersham would appear for a hearing on August 26, 2010. Id. at 4; AFFCL ¶ 56.

Griffin appeared on August 26, 2010, but Wickersham did not. TR 320; AFFCL ¶ 63. Griffin was frustrated because he had not been able to reach Wickersham. TR 330; AFFCL ¶ 63. The court struck the trial date and set the matter over to September 8, 2010. AFFCL ¶ 63.

Again, Griffin appeared on September 8, 2010, but Wickersham did not. AFFCL ¶ 64. Griffin told the court that he had spoken to Wickersham and Wickersham said he was going to represent him, but that Wickersham had not appeared at a hearing in a different matter and Griffin had been told by the judge in that case that Wickersham was not going to

be practicing law anymore. EX A-102A at 2. The court set the matter over again. Id.

Wickersham had no further contact with the court and never filed a notice of withdrawal. TR 321, 323. Under CrR 3.1(e), a lawyer must obtain court permission in order to withdraw from a criminal case that has been set for trial. Wickersham never obtained court permission in order to withdraw from representing Griffin. AFFCL ¶ 67.

Griffin hired new counsel. TR 323. His case ultimately was dismissed as part of a plea agreement involving a federal case. AFFCL ¶ 71; TR 471.

3. Abandonment of Practice

Sometime in August 2010, Wickersham placed an outgoing message on his office phone stating that he had stopped practicing law and his office was “permanently closed,” with no forwarding contact information or advice to clients as to what they should do. AFFCL ¶¶ 72-73, 81; EX A-113 (attached as Appendix E). He left Washington on August 23, 2010, and traveled with his son through eight different states until mid-September 2010. TR 236. During that time he had no cell phone and was not in communication with anyone. Id. He did not turn over any client files before he left. TR 181; AFFCL ¶ 84. He did not file any notices of withdrawal in any of his active cases, AFFCL ¶ 83; TR 180,

and neither Zimcosky nor Griffin was aware that he was closing his office or why he stopped appearing on their cases, AFFCL ¶¶ 30, 63; TR 320, 336; EX A-101A at 6.

After Wickersham returned to Washington, he did not reopen his practice until mid-December 2010. TR 128-29. From August 23, 2010, until mid-December 2010, no one checked his mail or answered his phone, and the voice mail box became too full to accept additional messages. AFFCL ¶ 80; TR 129-30, 397. Certified mail sent to him by the Association during this time was returned unclaimed. AFFCL ¶ 87.

4. Defense Case

Wickersham said he left Washington on August 23, 2010, because he was traumatized by a constellation of events, including the shooting of his service dog by a law enforcement officer, the alleged tampering with evidence by someone within the Auburn court system, and a perceived break-in at his office. TR 177-78, 380; AFFCL ¶¶ 91, 100-101. The hearing officer found that Wickersham's explanations for leaving Washington were "numerous and not always consistent," AFFCL ¶ 88; see id. ¶¶ 73-78, and that the stressors in his life did not justify his abandoning his practice. Id. ¶ 102.

Wickersham's mental health counselor and "advocate," TR 545, testified that Wickersham had mental health problems but was compliant with treatment and improving. TR 527-530, 543-44; AFFCL ¶¶ 93-97.

III. SUMMARY OF ARGUMENT

In August 2010, after a period of bizarre behavior inside and outside of court, Wickersham abandoned his law practice. Although mental health problems contributed to his conduct, Wickersham knew of those problems yet did nothing to protect his clients or the legal system. He left Washington without providing contact information or instructions to clients, did not return client files, and did not file notices of withdrawal in pending cases.

Wickersham argues that he should receive no discipline or, at most, a reprimand because his conduct caused no harm and he was suffering mental health problems. But Wickersham's conduct did cause harm: his clients were left unrepresented and paid for services they did not receive, and courts held needless hearings and had to reschedule trials. Further, under the ABA Standards and Washington law, mental health problems do not excuse professional misconduct. Here, consistent with the ABA Standards and the goals of lawyer discipline, the Disciplinary Board took Wickersham's emotional problems into account by mitigating the presumptive sanction from disbarment to suspension. It unanimously

determined that a three-year suspension was necessary to protect the public and to allow Wickersham time to complete his recovery. The Court should affirm.

IV. 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). Failure to assign error or properly brief challenges to factual findings precludes appellate review. In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 895, 175 P.3d 1070 (2008). The Court upholds challenged factual findings if they are supported by substantial evidence. Marshall, 160 Wn.2d at 330. “Substantial evidence supports a finding if the record would persuade a fair and rational person that the finding is true.” In re Disciplinary Proceeding Against Scannell, 169 Wn.2d 723, 737, 239 P.3d 332 (2010).

The Court gives particular weight to the credibility determinations of the hearing officer, who had direct contact with the witnesses and is best able to make such judgments. Marshall, 160 Wn.2d at 330; see generally Morse v. Antonellis, 149 Wn.2d 572, 70 P.3d 125 (2003) (overturning Court of Appeals for substituting its credibility determination for that of the jury). The hearing officer as fact finder is entitled to draw

reasonable inferences from circumstantial evidence. See In re Disciplinary Proceeding Against Cohen (Cohen I), 149 Wn.2d 323, 332-33, 67 P.3d 1086 (2003). “An essential function of the fact finder is to discount theories which it determines unreasonable because the finder of fact is the sole and exclusive judge of the evidence, the weight to be given thereto, and the credibility of witnesses.” State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Parties challenging factual findings must not simply reargue their version of the facts but, instead, must present argument as to why the findings are unsupported by the record. Marshall, 160 Wn.2d at 331. The Court does not overturn findings “based simply on an alternative explanation or versions of the facts previously rejected by the hearing officer” Id.

The Court reviews conclusions of law de novo, upholding them if supported by the findings of fact. In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 59, 93 P.3d 166 (2004). It also reviews sanction recommendations de novo, but will “affirm the Disciplinary Board's recommendation unless [it] can articulate a specific reason to reject it.” In re Disciplinary Proceeding Against Van Camp, 171 Wn.2d 781, 809, 257 P.3d 599 (2011). The Court hesitates to reject the Board's recommendation if it is unanimous. Guarnero, 152 Wn.2d at 59.

B. BECAUSE WICKERSHAM FAILED TO BRIEF OR ARGUE SOME OF HIS ASSIGNMENTS OF ERROR, THE FINDINGS OF FACT ARE VERITIES AND HIS CHALLENGES TO THE CONCLUSIONS OF LAW ARE WAIVED

RAP 10.3(a)(6), which applies to these proceedings under ELC 12.6(f), states that a party must provide argument in support of the issues presented for review, together with citations to the record and legal authority. Although Wickersham assigns error to the hearing officer's findings of misconduct and the Board's adoption of those findings, Respondent's Brief (RB) at 5, he fails to support those assignments with any argument whatsoever. The only findings he challenges are those related to sanction. Accordingly, his unsupported assignments of error are abandoned. Valley View Indus. Park v. City of Redmond, 107 Wn.2d 621, 630, 733 P.2d 182 (1987) (“[a] party abandons assignments of error to findings of fact if it fails to argue them in its brief”); Van Camp, 171 Wn.2d at 788 n.1 (findings not adequately challenged in brief are verities on appeal).

C. THE COURT SHOULD ADOPT THE BOARD'S UNANIMOUS RECOMMENDATION OF A THREE-YEAR SUSPENSION

Under the ABA Standards, the Court first determines the presumptive sanction by examining the ethical duty violated, the lawyer's mental state, and the injury caused. Marshall, 160 Wn.2d at 342. It then determines whether the presumptive sanction should be increased or

reduced due to aggravating or mitigating factors. Id. Finally, if raised by the respondent lawyer, the Court reviews the degree of unanimity among Board members and the proportionality of the sanction. Id.

1. The Record Supports the Presumptive Sanctions Found by the Hearing Officer and Board

The hearing officer and Board applied the following ABA Standards to find that the presumptive sanction for Counts 1-2 and 4-5 was suspension and that the presumptive sanction for Count 7 was disbarment:⁸

- Standard 4.41(a): Disbarment is appropriate when a lawyer abandons the practice and causes serious or potentially serious injury to a client (BF 111 at 3-4; Count 7);
- Standard 4.42(a): Suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client (AFFCL ¶¶ 136-141; Counts 4-5);⁹
- Standard 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. (AFFCL ¶¶ 124-26, 139, 141; Counts 1 and 5);

⁸ The hearing officer concluded, AFFCL ¶¶ 142-44, and the Board affirmed, BF 111 at 4 n.3, that the presumptive sanction for Count 6 was reprimand under ABA Standard 4.53. As Wickersham does not challenge this conclusion we do not address it.

⁹ The Disciplinary Board affirmed the hearing officer's sanction recommendations with respect to these counts, BF 111 at 4 n.3, but did not find a pattern of neglect. Id. at 3. It appears that the Board impliedly applied Standard 4.42(a) but not Standard 4.42(b).

- Standard 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 (AFFCL ¶¶ 127-28 (Count 2)).

Wickersham argues that the record does not support the findings that he abandoned his practice, caused any injury, or acted knowingly. RB at 11-13. For the most part, he simply reiterates the testimony and arguments that the hearing officer and Disciplinary Board rejected. This is insufficient to overturn factual findings. Marshall, 160 Wn.2d at 331; In re Disciplinary Proceeding Against Simmerly, 174 Wn.2d 963, 988-89, 285 P.3d 838 (2012). As set forth below, substantial evidence supports the challenged findings.

a. Substantial evidence supports the findings that Wickersham abandoned his practice

The hearing officer and Board properly concluded that Wickersham abandoned his practice based on the following evidence:

- Wickersham never told Zimosky that he was withdrawing from representing him, TR 336, AFFCL ¶ 30, and never filed a notice of withdrawal, AFFCL ¶ 32; TR 242-43;
- Wickersham told Griffin that he would appear for the August 26, 2010, hearing but failed to appear. EX A-101A at 4; TR 320, 330; AFFCL ¶¶ 56, 63. He then told Griffin that he would appear for a subsequent hearing but never appeared again, EX A-102A at 2; AFFCL ¶ 64, and never filed a notice of withdrawal, TR 321; AFFCL ¶ 67;
- Wickersham's outgoing message on his office phone advised that he had stopped practicing law and that his office was

“permanently closed,” but gave no forwarding contact information or advice to clients as to what they should do. AFFCL ¶¶ 72-73, 81; EX A-113;

- Wickersham left Washington for several weeks and was not in communication with anyone. TR 236;
- Wickersham did not turn over any client files before he left town. TR 181; AFFCL ¶ 84;
- Wickersham did not file any notices of withdrawal in any of his active cases. AFFCL ¶ 83; TR 180;
- Neither Zimcosky nor Griffin was aware that Wickersham was closing his office or why he stopped appearing on their cases. AFFCL ¶¶ 30, 63; TR 320, 336; EX A-101A at 6; and
- After Wickersham returned to Washington, he did not reopen his practice for three months. TR 128-29. No one checked his mail or answered his phone, and his voice mail box became too full to accept additional messages. AFFCL ¶ 80; TR 132-33, 397.

Wickersham argues that he did not abandon his practice because the hearing officer found that he communicated with clients Zimcosky and Griffin, citing AFFCL ¶¶ 30, 54, 56, and 58. RB at 12.¹⁰ But what these findings actually reflect is that Wickersham (1) left “lengthy, bizarre telephone messages” for Zimcosky and accused Zimcosky of being part of a conspiracy, AFFCL ¶ 30, (2) promised Griffin he would be at a scheduled court hearing but failed to show up ever again, AFFCL ¶¶ 54,

¹⁰ Wickersham also states that the Board found that he communicated with his clients, citing BF 111 at 3. RB at 12. The Board decision contains no such finding.

56, 63, and (3) told Griffin that his office had been broken into and his files stolen, which was inconsistent with his hearing testimony. AFFCL ¶¶ 58-60. These findings do not undermine the hearing officer's conclusion that Wickersham abandoned his practice.

b. Substantial evidence supports the findings that Wickersham caused injury and potentially serious injury to his clients and the courts

The hearing officer found that Wickersham's conduct caused injury. AFFCL ¶¶ 38-40, 70, 125, 145. Under the ABA Standards, "injury" means harm to a client, the public, the legal system, or the profession that results from a lawyer's misconduct. ABA Standards at 7. Injury may be actual or potential. Id. "[A] disciplinary proceeding does not require a showing of actual harm. . . . The rationale is the need for protection of the public and the integrity of the profession." In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 486, 492-93, 998 P.2d 833 (2000).

Wickersham claims that his clients were not injured because their cases ultimately were resolved favorably. RB at 12. But he can hardly take credit for that. When he failed to appear at hearings on their behalf, they were unrepresented. TR 47, 320-321; AFFCL ¶¶ 54, 63-64. Zimcosky chose to continue pro se and was able to negotiate a favorable resolution because the prosecutor felt sorry for him. TR 222, 338; AFFCL

¶ 31. But he paid for representation he did not receive. TR 333. Griffin was frustrated by his inability to contact Wickersham, TR 330, then had to hire another lawyer to resolve his case, TR 323.

In addition, at the time Wickersham abandoned his practice, he had between eight and 12 active clients. AFFCL ¶ 84. The hearing officer and Board properly found that these other clients suffered potentially serious injury because Wickersham left town and was incommunicado for months without turning over any client files, instructing his clients on how to proceed, or withdrawing from any cases. BF 111 at 3; see AFFCL ¶¶ 79-84; TR 180-82, 236.

Finally, the legal system suffered injury from delays, administrative burdens, and additional court proceedings resulting from Wickersham's repeated failures to appear at his clients' hearings. TR 47, 322-23, 328, 330; AFFCL ¶¶ 125, 128. Wickersham's reference to such injury as "inconvenience," RB at 3, shows that the hearing officer's observations about Wickersham's lack of insight into the effects of his behavior on his clients and the justice system remain true. See AFFCL ¶¶ 105, 111.

c. Substantial evidence supports the findings that Wickersham acted knowingly

The hearing officer found that Wickersham acted knowingly when he failed to appear for his clients in court and abruptly abandoned his practice. AFFCL ¶¶ 103, 125, 128, 150. Under the ABA Standards, “knowledge” means “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” ABA Standards at 17. “Negligence” means “the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.” Id.

Without citation to the record, Wickersham claims he acted no more than negligently. RB at 12. But the Court gives “great weight to the hearing officer’s factual findings regarding the lawyer’s state of mind.” Van Camp, 171 Wn.2d at 811. The record supports the findings that Wickersham was aware that he was due in court to represent his clients but nonetheless failed to show up. See, e.g., TR 102-03; EX A-101A at 6, A-102A at 2, A-130; AFFCL ¶¶ 28, 56. It appears undisputed that Wickersham was aware he left Washington without providing contact information or any way to reach him. See TR 130-33. And the evidence

also shows that he was aware he did not file notices of withdrawal or return files to his clients before he left Washington; he simply didn't feel he had to do so. TR 180-81, 237-38, 241-43, 281.¹¹ The Court should not disturb the hearing officer's findings that Wickersham acted knowingly.

Wickersham also complains that the hearing officer failed to find that his mental impairments excused his conduct. RB at 3, challenging AFFCL ¶ 114. Both the ABA Standards and this Court's precedent "require accountability for misconduct," In re Disciplinary Proceeding Against McLendon, 120 Wn.2d 761, 773, 845 P.2d 1006 (1993), so mental disability is not a complete defense but may be a mitigating factor under certain circumstances. Id. (analyzing a prior version of the mitigating factor of mental disability); ABA Standard 9.32(i). Here, the hearing officer and Board rejected the mitigating factor of mental disability and/or chemical dependency as unsupported by the evidence, AFFCL ¶¶ 97, 111-115; BF 111 at 4. This decision is supported by the testimony of Wickersham's mental health counselor that Wickersham was not cured and that rehabilitation would not necessarily prevent recurrence. TR 529-32, 543-44. As noted, however, the Board did apply the

¹¹ Although Wickersham testified that he contacted all his clients before leaving, TR 133, the hearing officer did not have to credit that testimony. In re Disciplinary Proceeding Against Whitt, 149 Wn.2d 707, 722, 72 P.3d 173 (2003) (hearing officer "is not bound by various explanations if he or she is not persuaded by them"). Substantial evidence supports a finding that Wickersham did not contact Zimcosky or Griffin. See TR 320, 330, 336.

mitigating factor of personal and emotional problems. BF 111 at 4-5; ABA Standard 9.32(c).

In any event, the record shows that the hearing officer carefully considered Wickersham's testimony and arguments about the effect of his mental health on his actions during the period in question, observing that Wickersham's explanations for leaving Washington were "numerous and not always consistent," AFFCL ¶ 88; see id. ¶¶ 73-78, and, notably, that Wickersham declared in his opening statement that he was "fit to practice law at the time," TR 14; AFFCL ¶ 76. The hearing officer determined that the stressors in Wickersham's life did not justify his violating his obligations to his clients and breaching his duties as an officer of the court, AFFCL ¶ 102, and that, notwithstanding any psychological issues, Wickersham "knowingly abandoned his practice for approximately five months," id. ¶ 103; see also id. ¶¶ 128, 150. Indeed, the hearing officer found that although Wickersham was aware of his mental health problems, he "took no steps to protect his clients from the effects. In fact, he is still in denial that his actions had any adverse impact on either his clients or the justice system." Id. ¶ 111. Such an appraisal of the evidence is an "essential function of the fact finder." Bencivenga, 137 Wn.2d at 709. The Court should not disturb the hearing officer's finding that

Wickersham's mental health problems did not preclude him from acting with knowledge.

2. The Board Mitigated the Sanction from Disbarment to Suspension. No Further Mitigation is Warranted

The Board balanced three aggravating factors and one mitigating factor to lower the sanction from disbarment to a three-year suspension. BF 111 at 4-5. Wickersham argues that he should be subject to no discipline at all or, at most, a reprimand, due to additional mitigating factors. RB at 16. But the Board's decision was lenient. No further mitigation is warranted.¹²

a. The multiple aggravating factors outweigh the lone mitigating factor found by the Board

The Board approved three aggravating factors found by the hearing officer:

- prior disciplinary offenses, ABA Standard 9.22(a) [Wickersham received a reprimand in 2006 for an unreasonable fee. EX A-136];

¹² Wickersham also suggests that discipline is not appropriate because the Association never sought interim suspension, disability proceedings, or a custodian. RB at 4, 11. But the specific measures Wickersham claims the Association should have pursued are not prerequisites to discipline. See, e.g., In re Disciplinary Proceeding Against Kronenberg, 155 Wn.2d 184, 197 n.9, 117 P.3d 1134 (2005) (“[w]e have never held that an interim suspension is a prerequisite to disbarment and we decline to do so here”). Moreover, the evidence at hearing from Wickersham's mental health counselor, TR 527-530, 543-44, would not appear to support instituting disability proceedings under ELC Title 8. Notably, the hearing officer who observed Wickersham at hearing did not find cause to do so.

- multiple offenses, ABA Standard 9.22(d) [Wickersham committed misconduct with respect to different clients and courts and violated several different RPC. See In re Disciplinary Proceeding Against Poole (Poole I), 156 Wn.2d 196, 225, 125 P.3d 954 (2006) (multiple offenses aggravating factor applied when two counts of misconduct upheld)]; and
- substantial experience in the practice of law, ABA Standard 9.22(i) [Wickersham was admitted to practice in 1989. See In re Disciplinary Proceeding Against Ferguson, 170 Wn.2d 916, 942, 246 P.3d 1236 (2011) (substantial experience aggravator generally applies when lawyer has practiced for 10 or more years)].

AFFCL ¶ 149; BF 111 at 4. As Wickersham does not challenge the aggravating factors, they are verities on appeal. In re Disciplinary Proceeding Against Christopher, 153 Wn.2d 669, 681, 105 P.3d 976 (2005).

The sole mitigating factor found by the Board, personal and emotional problems, ABA Standard 9.32(c), should be given no more weight than it already received. The Board applied this mitigator based on the hearing officer's determination that Wickersham's mental disability and/or chemical dependency "contributed to" the misconduct. BF 111 at 4; see AFFCL ¶ 112. But, in In re Disciplinary Proceeding Against Poole (Poole II), 164 Wn.2d 710, 734, 193 P.3d 1064 (2008), the Court held that the lawyer's personal and emotional problems should be given "little weight" when those problems did not "cause" the misconduct. If

anything, by mitigating the sanction from disbarment to suspension based on this factor, the Board gave it more weight than it should have.

On balance, the aggravating and mitigating factors do not support further mitigation.

b. Wickersham failed to meet his burden of proving the other mitigating factors he seeks

Wickersham argues that additional mitigating factors should apply. A respondent lawyer bears the burden of proving mitigating factors. In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 730, 185 P.3d 1160 (2008).

First, Wickersham argues the Board should have applied the mitigating factor of remoteness of prior offenses, ABA Standard 9.32(m), because his prior reprimand was four years old. RB at 16. But the Court routinely looks to misconduct much older than this in determining whether prior misconduct serves as an aggravating factor. See, e.g., In re Disciplinary Proceeding Against Cramer, 168 Wn.2d 220, 238, 225 P.3d 881 (2010) (prior discipline occurred 12 and 15 years earlier); In re Disciplinary Proceeding Against Greenlee, 158 Wn.2d 259, 276 n.2, 143 P.3d 807 (2006) (prior discipline occurred more than 20 years earlier); In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d 64, 92, 101 P.3d 88 (2004) (prior discipline occurred 20 years earlier); In re

Disciplinary Proceeding Against Cohen (Cohen II), 150 Wn.2d 744, 761, 82 P.3d 224 (2004) (prior discipline occurred 10 and 30 years earlier).

Second, Wickersham asserts that he had an “absence of dishonest motive.” RB at 16. But ABA Standard 9.32(b) requires “absence of a dishonest or selfish motive.” (Emphasis added.) The hearing officer found that Wickersham acted selfishly in that he knew of his mental health problems but did nothing to protect his clients from the effects. AFFCL ¶ 111. The hearing officer was in the best position to assess Wickersham’s motivations.

Third, Wickersham seeks the mitigating factor of remorse. RB at 17; ABA Standard 9.32(l). This factor is based primarily on a credibility evaluation, which the Court must give great weight. In re Disciplinary Proceeding Against Behrman, 165 Wn.2d 414, 423, 197 P.3d 1177 (2008). Although Wickersham cites a snippet of his own testimony in which he said he should have done things differently, RB at 17, the hearing officer, based on the totality of the evidence, declined to find remorse. This finding is not surprising, as remorse generally begins with a sense of wrongdoing, which the hearing officer found markedly lacking. AFFCL ¶¶ 111, 114. The Court should not disturb the hearing officer’s evaluation of the evidence. Bencivenga, 137 Wn.2d at 709.

Fourth, Wickersham seeks the mitigator of good character or reputation, ABA Standard 9.32(g), based apparently on the testimony of a friend regarding his pro bono work and legal acumen. RB at 7, 16. Such testimony stood in marked contrast to the testimony about Wickersham's very public courtroom behavior, which was bizarre, inappropriate, and unprofessional. See TR 22, 24-25, 74, 89-91, 141-42, 150, 208, 211-213, 335; AFFCL ¶¶ 14-16. Further, the hearing officer concluded that Wickersham failed to provide clients Zimcosky and Griffin competent representation. AFFCL ¶ 121. Wickersham failed to meet his burden to prove that this mitigating factor applied.

Finally, Wickersham claims that he should not be subject to discipline because his condition has improved and he poses no threat to anyone. RB at 2, 4, 7, 11, 16-17. But “[e]nding misconduct does not erase . . . that misconduct which has already occurred. Even where an attorney has been rehabilitated prior to the imposition of discipline, the legal system itself has not been redeemed.” In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 83-84, 960 P.2d 416 (1998) (quotation omitted); In re Disciplinary Proceeding Against Dynan, 152 Wn.2d 601, 622, 98 P.3d 444 (2004) (declining to find cessation of misconduct a mitigating factor). Even if Wickersham's condition has continued to

improve (a fact that is not supported by the record),¹³ discipline remains appropriate.

3. The Remaining Noble Factors Support the Board's Recommendation

Finally, the Court reviews the two remaining Noble factors of unanimity and proportionality. In re Disciplinary Proceeding Against Kuvara, 149 Wn.2d 237, 259, 66 P.3d 1057 (2003). “The court will generally adopt the Board's recommended sanction unless the sanction departs significantly from sanctions imposed in other cases or the Board was not unanimous in its decision.” In re Disciplinary Proceeding Against Haley, 156 Wn.2d 324, 339, 126 P.3d 1262 (2006).

a. The Board's unanimous recommendation is entitled to great deference

The Board voted 13-0 in favor of a three-year suspension. BF 111 at 1 n.2. The Court gives great deference to the recommendation of a unanimous Board and will uphold it “in the absence of a clear reason for departure.” Simmerly, 174 Wn.2d at 989 (quotation omitted). Such deference is based on the Board's “unique experience and perspective in

¹³ In his brief to this Court, Wickersham claims that, since the hearing, he has represented clients with “outstanding” client satisfaction and “excellent” results. See RB at 2, 7, 11. He cites to hearing testimony from a client and a colleague to whom he gave pro bono assistance. TR 557-58, 561-62. But this hardly shows that his mental condition has stabilized. The Court should note that, as recently as February 2012, Wickersham saw fit to file pleadings in this proceeding likening disciplinary counsel to Nazis, complete with photos of Adolf Hitler and “of the Nazi hanging Jews.” BF 93 at 2.

the administration of sanctions.” Id. Wickersham has provided no clear reason to depart from the Board’s unanimous recommendation.

b. Wickersham failed to meet his burden of proving that a three-year suspension is disproportionate

In proportionality review, the Court compares the case at hand with “similarly situated cases in which the same sanction was approved or disapproved.” VanDerbeek, 153 Wn.2d at 97 (quotation omitted). Although Wickersham criticizes the hearing officer and Board for not engaging in proportionality analysis, RB at 16, it was his burden to bring cases to their attention to demonstrate disproportionality. Cramer, 168 Wn.2d at 240. A respondent lawyer must show that the recommended sanction departs significantly from sanctions imposed in similar cases, taking into account the misconduct, culpability, and aggravating and mitigating factors. Van Camp, 171 Wn.2d at 816.

Wickersham cites several cases in an effort to demonstrate disproportionality, RB at 14-16, but none is “similarly situated.” The cases he cites involve ethical violations or presumptive sanctions different from those in this case.¹⁴ See In re Disciplinary Proceeding Against Preszler, 169 Wn.2d 1, 38, 232 P.3d 1118 (2010) (rejecting proportionality argument where cases were “not comparable because they deal with a

¹⁴ Conteh, Ferguson, Longacre, Dynan, and Grubb involve misconduct wholly unrelated to Wickersham’s. Conteh, Ferguson, and Longacre involve presumptive sanctions less than disbarment.

different presumptive sanction and different charge of misconduct”). Miller involved some similar misconduct (lawyer was terminated but failed to withdraw or provide competent representation), but only a single client. Moreover, Miller (like Grubb) was decided before the Court adopted the ABA Standards and contains no discussion of presumptive sanctions. Given that the Court adopted the ABA Standards to create consistency in imposing sanctions, In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 770-71, 801 P.2d 962 (1990), it would undermine that goal to base proportionality on cases that were not analyzed under the Standards.

In any event, in none of the cases Wickersham cites did the lawyer abandon his practice for months, leaving his clients and the courts without recourse. Like Wickersham, we have found no cases involving sanctions for comparable misconduct. Accordingly, proportionality analysis provides no basis to deviate from the Board’s unanimous sanction recommendation, which was properly grounded in the ABA Standards.

V. CONCLUSION

Wickersham’s abrupt abandonment of practice injured his clients and the legal system. He acted knowingly, despite mental health problems. The Board unanimously determined that a three-year suspension was necessary to allow him to complete his treatment and to

protect the public. The Court should affirm that recommendation, along with the recommendations for restitution and a fitness to practice evaluation before reinstatement.

RESPECTFULLY SUBMITTED this 8th day of November, 2012.

WASHINGTON STATE BAR ASSOCIATION



Joanne S. Abelson, Bar No. 24877
Senior Disciplinary Counsel

APPENDIX A

RULES OF PROFESSIONAL CONDUCT

RPC 1.1 -- Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RPC 1.3 -- Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

RPC 1.4 -- Communication

...

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RPC 1.5 -- Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent; and
- (9) the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

RPC 1.16 -- Declining or Terminating Representation

...

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

RPC 8.4 -- Misconduct

It is professional misconduct for a lawyer to:

...

(d) engage in conduct that is prejudicial to the administration of justice;

...

(n) engage in conduct demonstrating unfitness to practice law.

APPENDIX B

FILED

DEC 29 2011

DISCIPLINARY BOARD

**BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION**

In re

**JOE WICKERSHAM,
Lawyer (Bar No. 18816).**

Proceeding No. 11#00010

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND HEARING OFFICER'S
RECOMMENDATION**

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing in the above noted matter on September 6-8, 2011. Respondent Joe Wickersham appeared pro se at the hearing. Disciplinary Counsel Erica Temple appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Mr. Wickersham with the following counts of misconduct:

COUNT 1

1. By failing to attend his clients' scheduled court appearances, without explanation or

072

1 formal withdrawal, Respondent violated RPC 8.4(d).

2 **COUNT 2**

3 2. By abruptly ending his representation of Mr. Griffin, Mr. Ballard, and Mr.
4 Zimcosky, without taking steps to ensure that his client's interests were protected, Respondent
5 violated RPC 1.16(d).

6 **COUNT 3**

7 3. By accepting \$2,700 from Mr. Ballard and then failing to do any work on his behalf,
8 Respondent violated RPC 1.5(a) and RPC 1.3.

9 **COUNT 4**

10 4. By failing to tell Mr. Griffin, Mr. Ballard, or Mr. Zimcosky that he had ceased
11 practicing law and would no longer represent them, Respondent violated RPC 1.4(b).

12 **COUNT 5**

13 5. By acting in an inappropriate manner at some court appearances and failing to
14 appear at others, and by failing to properly withdraw from Mr. Zimcosky's case, Respondent
15 violated RPC 8.4(d) and RPC 1.3.

16 **COUNT 6**

17 6. By failing to competently represent Mr. Zimcosky during court appearances,
18 Respondent violated RPC 1.1.

19 **COUNT 7**

20 7. By committing the acts as described in ¶¶2-50 of the Formal Complaint, Respondent
21 demonstrated unfitness to practice law in violation of RPC 8.4(n).

22 **FINDINGS OF FACT**

23 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
24

1 Officer makes the following Findings of Fact:

2 8. Respondent was admitted to the practice of law in the State of Washington on
3 November 9, 1989. At the time of the incidents outlined below, his law office was located at
4 13955 S.E. 173rd Place, Renton, WA 98058.

5 **The Zimcosky Matter**

6 9. On February 10, 2010 Walter Zimcosky was arrested for Driving Under the
7 Influence (DUI) and was subsequently charged in Auburn Municipal Court with DUI.

8 10. Mr. Zimcosky's wife retained Respondent and paid him \$3,500, with a check dated
9 March 3, 2010. Ex A-126. Mr. Zimcosky underwent treatment for alcohol abuse and
10 subsequently met with Respondent at his office two to three times. (334:3-5).

11 11. Respondent filed a Notice of Appearance on behalf of Mr. Zimcosky on March 23,
12 2010.

13 12. The Court scheduled a CrR 3.5/3.6 Motion Hearing for June 14, 2010, a Readiness
14 hearing for June 18, 2010, and a Jury Trial for June 21, 2010.

15 13. On June 14, 2010 Mr. Zimcosky was present for the motion hearing but
16 Respondent was not. Respondent had called to the court the night before to say that he was ill.
17 A new Motion hearing date was set for June 18, 2010.

18 14. On June 18, 2010, Respondent appeared in Auburn Municipal Court. According
19 to the prosecuting attorney, Harry Boesche, Respondent displayed exceedingly odd behavior.
20 (22:24-23:9; 24:4-7; 25:18-27:17). He was loud and disheveled. He engaged in "karate moves,"
21 quickly paced around the courtroom, showed prosecutors the inside of his mouth, flipped his tie
22 over his shoulder, and tucked and un-tucked his shirt. (141:9-143:23; 150:11-152:4).
23 Respondent denied he had acted strangely. The hearing officer found clear and convincing
24

1 evidence from the various witnesses that testified on this subject that Respondent acted
2 inappropriately as noted in paragraph 16.

3 15. According to defense attorney, Matthew Rusnak, and prosecuting attorney, Stacy
4 Krantz, during the motion hearing, Respondent asked nonsensical questions of the officer who
5 was testifying, made rambling objections, made "goofy faces and was repeatedly discourteous
6 to the court and prosecutors. (208:2-209:3; 211:6-24; 212:10-20; 213:21-214:2). The hearing
7 officer found clear and convincing evidence that these observations were so, as noted in the
8 finding in paragraph 16.

9 16. Respondent's behavior was not appropriate for a lawyer representing a client in a
10 trial court.

11 17. After a break in the proceedings, Respondent returned to court 35 minutes after the
12 court had directed, and when he was informed that the court had stricken his motion, he was
13 reported to have laughed and left the courthouse, making no effort to take up the matter with the
14 court. (31:18-33:11). See Ex A-135; Ex A-128. The hearing officer found clear and convincing
15 evidence that this in fact occurred.

16 18. The prosecutors in the Zimcosky case were concerned that Respondent might not
17 be competent to represent Mr. Zimcosky. (30:23-31:6; 143:24-144:8). Respondent disagreed.

18 19. On June 21, 2010, the City moved to continue the trial and, as noted above, raised
19 concerns about Respondent's ability to effectively represent his client. During the motion,
20 Respondent acted erratically, argued with and interrupted the judge. (34:6-35:2). See Ex R-20.

21 20. Because of what he believed was bizarre behavior on the part of Respondent,
22 Auburn City prosecutor Harry Boesche filed a Motion to Disqualify Respondent from
23 representing Mr. Zimcosky. See Ex A-131.

1 21. The court set a hearing date of July 16, 2010. On July 16, 2010 the judge declined
2 to remove Respondent from representing Mr. Zimcosky because the judge did not know the
3 proper legal standard to apply to the issue.

4 22. On July 19, 2010, Respondent left a number of rambling bizarre voicemails for the
5 Auburn City Attorney, Daniel Heid. Ex A-131. In those recordings, among other things, he
6 stated: "... they've got a working conspiracy and it's all about the budget. Cause how do you
7 get a trial? They move to disqualify me for ineffective assistance of counsel. Go listen to my
8 first (unintelligible) opportunity to speak Monday when they want to disqualify me." (Recorded
9 on Monday, July 19, 2010 at 8:01 a.m.). At 8:05 a.m., the same morning, he called back and
10 stated in part: "I am not ineffective. Judge Stead and Harry Boesche didn't even know what the
11 minimum threshold is for an attorney to be ineffective assistance of counsel. Look at the
12 proceedings. It's pathetic. Who's incompetent?"

13 23. On July 22, 2010, Respondent was taken by police for a mental health evaluation
14 at a hospital for what was described as a "substance induced psychosis." Ex R-8.

15 24. On July 23, 2010, the parties reconvened in Auburn Municipal Court to address
16 Respondent's CrR 3.5/3.6 motions. Respondent arrived late, disheveled, and with a hospital
17 armband on his wrist. He was carrying a handful of neckties but was not wearing a tie. He was
18 reported to have behaved erratically and asked the court several times if he could leave. (89:16-
19 91:18). The hearing officer found clear and convincing evidence that this in fact occurred.

20 25. The following Monday, July 26, 2010, he left another message, which stated in
21 part: "Dan Heid, I've called you several times to tell you about what's going on and now I know
22 why you didn't call back because you're in bed with them. You're all a pawn and play a certain
23 role in a common scheme or plan. Yeah, Stacy Krantz, yeah, Harry Boesche, he's the main
24

1 (unintelligible-?). It's all about numbers Dan, you need me to say numbers and dates, he's got to
2 say numbers and dates, he's got to act stupid, the judge has got to act stupid." He then went on
3 to say: "Dan, soon you will have my claim and it's going to be so outlandish you can't pay it
4 because you see I don't want money, this isn't about money, I can't be bought. Dan, I want your
5 personal assets, retirement, whatever your wife, children – I don't want – I don't want, I want
6 you guys to sit in a jury trial with all your pollutant lawyers, 'cause then you'd see how fun
7 when then had their (unintelligible –a rambling list of names) challenge to me. You know, these
8 days - these last – and Dan, your just part of the plan." Ex A-135. (80:21-81:10; 81:25-83-22;
9 84:6-85:18).

10 26. Mr. Heid also spoke to Respondent on the phone approximately three times.
11 During those conversations, Respondent again made threats to sue the city and Mr. Heid
12 personally. Respondent's actions prompted Mr. Heid to file a Grievance with the Association,
13 with transcribed voicemails attached. Ex A-131. (94:13-95:24; 96:20-97:2).

14 27. The court set the CrR 3.5/3.6 matter over to July 30, 2010.

15 28. The morning of July 30, 2010, Respondent left a message on the Association's
16 voicemail stating, "I'm not going to go to court this morning in Auburn and it's a Walter
17 Zinkowski [sic] case so I invite you to immediately look into this." He went on to say that he
18 was a victim of a hate crime by Judge Stead and others in the criminal justice system in Auburn
19 because he is legally blind. He also accused his mother and her boyfriend of being part of the
20 conspiracy. See Ex A-130.

21 29. Respondent continues to allege that there was a conspiracy on the part of the
22 Auburn police and the city prosecuting attorney's office to delete portions of the recording of
23 Respondent's cross examination of the police officer examined by Respondent at the initial CrR
24

1 3.5/3.6 hearing on June 18, 2010. Respondent's "expert" on this point, Loren Grytness, was
2 allowed to testify because of the relaxed rules of evidence that apply to these proceedings.
3 However he would not, without additional testimony, have passed the Frye/ER 702 test. The
4 testimony did not address any of the specific Counts in the Formal Complaint.

5 30. Respondent also left lengthy, bizarre telephone messages for Mr. Zimcosky,
6 including one stating that he was no longer his attorney because Respondent felt Mr. Zimcosky
7 was part of a conspiracy. (334:12-21). However, Mr. Zimcosky testified Respondent did not
8 contact him to tell him clearly that he was withdrawing from representing him or closing his
9 office.

10 31. Mr. Zimcosky sent a request for a refund of his money, but the letter was returned
11 "undeliverable". (336:10-339:1). Mr. Zimcosky ended up representing himself pro se. He
12 ultimately pled guilty to reckless driving. Respondent says it turned out better for Mr. Zimcosky
13 than it he had been represented by Respondent. (607:11-20).

14 32. The Auburn court never released Respondent from his obligation to represent Mr.
15 Zimcosky. (242:24-243:3).

16 33. CrRLJ 3.1(e) states that a lawyer cannot withdraw from a criminal case that has
17 been set for trial without permission of the court.

18 34. Respondent did not comply with CrRLJ 3.1(e).

19 35. Respondent did not provide the services promised to Mr. Zimcosky and he did not
20 refund the fee Mr. Zimcosky gave him to perform the service. Ex A-126.

21 36. On August 20, 2010 the Association sent a copy of the Grievance and Request for
22 Response to Respondent at his address of record with the Association. On August 31, 2010 the
23 mail was returned, "UNCLAIMED." Respondent's son explained that while they were "on the
24

1 | run" no one was monitoring mail or voicemail messages. (396:1-397:17).

2 | 37. Respondent and his son "fled" King County and drove around Montana and
3 | Wyoming from August 23, 2010 until mid-September. Respondent did not resume practicing
4 | until December 17, 2010. (129:17-21) He has not appeared in court since August 23, 2010.
5 | (130:1-5).

6 | 38. Respondent's actions in the Zimcosky case caused injury. The Auburn prosecutor
7 | spent time preparing for hearings that did not go forward and several hours drafting the Motion
8 | to Disqualify Respondent.

9 | 39. Respondent caused injury to Mr. Zimcosky, who paid \$3,500 for representation
10 | that was incomplete and ineffective. In the end, Respondent abandoned Mr. Zimcosky's case,
11 | leaving him to conduct his own plea negotiations.

12 | 40. There was also injury to the profession, because Respondent delayed court
13 | proceedings, his appearance in court on June 18, 2010 was unprofessional, and he failed to
14 | appear for scheduled court hearings, all of which were prejudicial to the administration of
15 | justice.

16 | **The Ballard Matter**

17 | 41. In June 2010 Raymond Ballard was involved in an automobile collision and was
18 | arrested for Driving Under the Influence (DUI). Respondent testified that sometime between
19 | June 10 and June 12, 2010, Mr. Ballard contacted Respondent's office by telephone and had a
20 | conversation with Respondent about having him represent him in a Department of Licensing
21 | ("DOL") implied consent hearing and for any criminal charges that might be brought relating to
22 | the DUI. (243:23-25).

23 | 42. Mr. Ballard went to Respondent's office on June 21, 2010 to meet with
24 |

1 Respondent and give him a retainer. Although Respondent was at his nearby home at the time,
2 he sent his teenage son, Carter Wickersham ("C. J."), to the office to meet Mr. Ballard. Mr.
3 Ballard gave C. J. \$2,700 in cash, \$2,500 for a retainer and \$200 to set a hearing with the DOL.
4 Mr. Ballard received a receipt from C. J. (244:19-245:21). Respondent never did meet Mr.
5 Ballard in person. (250:17-19).

6 43. Respondent sent in a request for a DOL hearing on behalf of Mr. Ballard. (246:14,
7 247:15) The Washington State Department of Licensing (DOL) subsequently set a hearing to
8 suspend Mr. Ballard's driver's license. Respondent did not represent Mr. Ballard at a DOL
9 hearing.

10 44. In fact, Respondent did not do any further work for Mr. Ballard. Respondent
11 testified he had phone conversations with Mr. Ballard and told him that he needed to have an
12 alcohol evaluation. In response to this advice, Respondent testified Mr. Ballard screamed at him
13 that he (Mr. Ballard) was not an alcoholic. Respondent said Mr. Ballard said he would get a new
14 lawyer and hung up the phone. Respondent testified he took this to mean he was fired. (247:22-
15 248:22). As noted below, that is not Mr. Ballard's recollection of the telephone conversation.

16 45. In August 2010 Mr. Ballard was charged in King County District Court No.
17 C00769875 with Driving Under the Influence. His arraignment was set for August 26, 2010.
18 Respondent did not file a notice of appearance nor did he make a court appearance on behalf of
19 Mr. Ballard.

20 46. Respondent excused his failure to represent Mr. Ballard regarding the DUI and the
21 DOL hearing based on his interpretation of the phone conversation noted above, to wit, he had
22 been fired. (248:12-17). However, Mr. Ballard did not have that understanding concerning his
23 representation by Respondent. In any event, Respondent left town prior to the August 26, 2010
24

1 hearing without alerting Mr. Ballard. (128:9-129:3).

2 47. Mr. Ballard filed a Grievance against Respondent on September 27, 2010. In his
3 Grievance, he tells a much different story than that told by the Respondent. Ex A-118. In his
4 sworn statement, Mr. Ballard indicated he called Respondent and “at first he [Respondent] gave
5 me a phony name, when I asked him again he yelled at me and hung up the phone.” Mr. Ballard
6 went on to state “I Ray Ballard am on disabilyty [sic] and poor I paid him with my insurance
7 money I got for my car I have diabetes real bad, my heart is only working 30% I can’t heardly
8 [sic] walk anymore ...” [the rest of his statement is illegible].

9 48. On September 30, 2010 the Association mailed a Request for Lawyer Response to
10 Respondent’s office requesting a response to Mr. Ballard’s grievance. The request was returned
11 as undeliverable. Ex A-109.

12 49. On October 14, 2010, after receiving a copy of Mr. Ballard’s Grievance,
13 Respondent wrote a check to Mr. Ballard for the \$2,500 in fees for the money his son had
14 received on June 21, 2010. (254:2-4). See Ex A-121.

15 50. Mr. Ballard did not testify at the disciplinary hearing.

16 51. Respondent caused injury to Mr. Ballard, who did not have the use of \$2,500 for
17 four months, and during that time he had to hire a new lawyer for both the DOL hearing and his
18 criminal proceeding.

19 **The Griffin Matter**

20 52. Respondent was hired to represent Jonathan W. Griffin in Cowlitz County
21 Superior Court No. 09-1-00902-1 on a felony charge with a firearm enhancement, as well as a
22 number of other unrelated city and municipal court matters. (224:25-225:14).

23 53. Respondent filed a notice of appearance on behalf of Mr. Griffin in Cowlitz
24

1 County on April 14, 2010 and went to court with Mr. Griffin on two other occasions. (224:10-
2 13). He filed a motion to suppress certain evidence on June 30, 2010. Ex A-103.

3 54. However, Respondent failed to appear with his client for a motion hearing that was
4 scheduled for August 19, 2010. See Ex A-101 and Ex A-104. Respondent did not notify the
5 court that he would not be present. During the hearing Mr. Griffin explained to the court that he
6 had been told by the Respondent that Respondent was not present because his service dog was
7 shot "like two or three days ago and has a tube in his throat right now."

8 55. At the hearing on August 19, 2010, the prosecutor informed the court that he had
9 tried to contact Respondent, prior to the hearing, and heard a voicemail message that
10 Respondent "may no longer be working as an attorney." Ex A-101 at 5:24-6:3.

11 56. Mr. Griffin called Respondent during the hearing and confirmed with the court that
12 Respondent agreed to August 26, 2010 at 1:30 pm for resetting the hearing on Respondent's
13 pending motion.

14 57. The court set the matter over to August 26th and warned Mr. Griffin that he would
15 consider sanctions against Respondent if Respondent again failed to appear. Ex A-101 at 6:16-
16 6:21 [Note - the message referred to by the prosecutor, is apparently the message found in Ex
17 A-113 and transcribed by the Association on September 27, 2010 (183:25-184:20).]

18 58. Of concern is the veracity of a statement attributed to Respondent but made by Mr.
19 Griffin in open court on August 19, 2010. He told the Cowlitz County Superior Court judge,
20 James Stonier, "His office was broken into. All his files were stolen. His house was broken into.
21 All his files were stolen." (Ex A-101 at 2:17-2:19).

22 59. Respondent's own testimony at the disciplinary hearing was that he was able to
23 contact all his existing clients before leaving town on August 23, 2010 to let them know he was
24

1 | quitting his practice. "I've got a great memory and the files were in my home, so all that had to
2 | happen, if I wasn't sure, I would go to the box with my son and my son would have the -- in-
3 | take there with the phone number and all the files were sitting right there under the kitchen
4 | table. (134:1-134:6)

5 | 60. However, at another time, he testified that on July 22, 2010 some items were taken
6 | from his house when the police came and took him to the hospital for a mental observation.
7 | (264:8-265:25)

8 | 61. Respondent testified he went to Cowlitz County on August 23, 2010, believing that
9 | Judge Stephen Warning had ordered him to appear, despite the hearing Judge Stonier had set for
10 | August 26. (234:4-8) He testified that when he arrived there was no hearing set. He looked into
11 | Judge Stonier's courtroom and the judge was sitting there alone, but Respondent did not speak
12 | with the judge. (235:20-22). He left the court without confirming the next court date.

13 | 62. Respondent testified he "terminated [his] services" to Mr. Griffin, did not notify
14 | the court and did not file a notice of withdrawal. (237:14-23). He went home and left for
15 | Montana that same day.

16 | 63. On August 26, 2010, Mr. Griffin was present in court but Respondent was not.
17 | Mr. Griffin expressed frustration that he was going to have to hire new counsel, and that he was
18 | unable to contact with Respondent. The court struck the trial date and set the matter over to
19 | September 8, 2010.

20 | 64. On September 8, 2010, Mr. Griffin appeared but yet again Respondent did not.
21 | Mr. Griffin told the court that he had spoken to Respondent and that Respondent was aware of
22 | the court date. Ex A-102.

23 | 65. Respondent failed to have any further contact with the court, never filed a notice of
24 |

1 intent to withdraw and was never acknowledged to have withdrawn by the court. (243:2)

2 66. CrR 3.1(e) states that a lawyer cannot withdraw from a criminal case that has been
3 set for trial without permission of the court. Cowlitz County Superior Court requires lawyers to
4 follow that rule.

5 67. Respondent did not comply with CrR 3.1(e).

6 68. On September 28, 2010, the Association sent a copy of the Formal Grievance filed
7 by Judge Stonier and a request for response to Mr. Wickersham at his address of record with the
8 Association.

9 69. On October 4, 2010 the request for response was returned, "UNCLAIMED
10 UNABLE TO FORWARD."

11 70. Respondent's failure to appear in Mr. Griffin's matter caused injury in the form of
12 inconvenience and delay to the court, and necessitated Mr. Griffin retaining a new lawyer.

13 71. Mr. Griffin's case was ultimately dismissed as part of a plea agreement with a
14 federal case. Mr. Griffin did not testify at the disciplinary hearing.

15 **Abandonment of Practice**

16 72. Respondent recorded a voicemail message on his office phone, which was heard
17 by anyone, including clients, who called him. Ex A-113. This is apparently the message the
18 prosecutor heard when he called Respondent's office prior to the Court hearing on August 19,
19 2010 in Cowlitz County.

20 73. Respondent stated in part: "Hello, I am very sorry, but this office is now
21 permanently closed. It is no longer at the direction of Joe Wickersham. Please be advised
22 though Mr. Wickersham is in no trouble, has no problems with the Washington State Bar, and
23 simply has now been afforded a wonderful opportunity to relocate and get into a much better
24

1 | career.” He continued, “And throughout all of this, now I have learned a lot of bad things, and I
2 | know I was a target of a very, very, very, very horrible, intentional, calculated scheme and plan
3 | to have me locked up and take everything from me. But that ended when I called the police on a
4 | very early morning on the 22nd of July. Man, I told them not to come, but, and so I have to get
5 | out of the most unsafe county that I have ever been in, and that is the honest to God truth. Good
6 | luck here in King County with Sue Rahr. Boy, you ought to relocate in a big hurry.”

7 | 74. On July 30, 2010, Respondent left a long, rambling, and less than coherent,
8 | voicemail with the Association. See Ex A-130, which was admitted to show Respondent’s state
9 | of mind at the time. This explanation was different from the explanation on his office voicemail.

10 | He stated in part, “This is Joe Wickersham. My bar # is 18816. ... And I’m not going to
11 | go to court this morning in Auburn and it’s a Walter Zinkowski [sic] case so I invite you to
12 | immediately look into this. This is the most, uh, this is a hate crime. I am visually impaired you
13 | know. [disease ending in – astropy [sic]] and right now you know Walt Williams, as well as
14 | Carl Verzani is working with the Bar. And I want the Bar to alert police! And right now they
15 | know that they’ve uh completely lied to and mislead [sic] by my mother, Claudia Wickersham,
16 | and so for [sic] their stings they use Fred. Everybody’s Fred! You know my mom’s boyfriend’s
17 | Fred, the other guy with mushrooms on my roof is Fred, and you know its [sic] just.”

18 | “Cause, I want an investigation, and file a complaint, all of the things you hear on this
19 | recording, you already know if you don’t you should. This is more than pathetic, please wake
20 | up. I know you guys get to sleep and sleep in and do nothing but, you know, somebody needs to
21 | call Mike Rosen, someone needs to call James Rinaldi, fuck, that guy’s mentally ill.”

22 | He continued: “Yeah, but you know they have it at the show that well there’s one real
23 | honest real genuine lawyer, and he’s, he’s got in [sic] office in Fairwood but somehow Carl
24 |

1 | Verzani, my mom, and Walt. They're scheming plan actually, [stuttering] was successful I
2 | closed my office."

3 | "And you could, if you could condone what goes on with the Carl Verzani and the James
4 | Rinaldi and the Walt Williams and, you know I certainly don't belong in this bar association so.
5 | I'm going to go ahead and turn my WSBA card in to ya [sic] and send you a letter of what I'm
6 | trying to get you guys to investigate for a long time, because. You know Carl put a voice up,
7 | you guys like to go to this fucking."

8 | "Yeah, that's the clear fraud and forgery and you guys know if you don't and you don't
9 | call it just shows more of your, again, your, your culpability, your malice and this whole
10 | schemin' plan against Joe Wickersham and the uh, intent by the David Cristie's and the Linda
11 | Thompson's and the Bob Steads and the Burns and the list goes ON AND ON and Chris
12 | Anderson and uh. And then Monica [inaudible] Cohen and Harry Boesch and this
13 | [stuttering] [sic] it goes on and on!"

14 | "Again, 425-254-6935. It will do no good to contact me through my office number,
15 | however. So again, that's why I left my home. I left a number for, uh, some other lawyers, but
16 | please whenever you guy get in, if it sometime in December, please. Uh, but I'm not sure my
17 | number will be working. I can no longer be in you guy's, uh, you know clogged. Uh I'm
18 | certainly not gonna practice in courts, they go about their business this way. It's um, you know,
19 | I'm specifically referring to those two cases where I'm, uh, was a, am a defensive attorney, no
20 | longer am though. As of this morning."

21 | 75. Yet a third rationale for abandoning his practice evolved out of his representation
22 | of Mr. Griffin. Respondent testified that Mr. Griffin, allegedly a career criminal, thought
23 | Respondent was wearing a wire and working with the police.(237:8-16; 238:8-10; 238:20-

1 | 239:8) As a result of the Federal government's interest in Mr. Griffin, Respondent believes his
2 | phones were tapped and he was the subject of a federal "sting" operation, which apparently
3 | involved the Washington State Patrol (277:17-25) and/or a vice cop posing as a Fish and
4 | Wildlife officer. (236:20; 415:19; 612:23; 264:8 – 265:13)

5 | 76. On September 6, 2011, Respondent gave his opening statement where he explained
6 | about the conspiracy of people who endangered his life and the life of his son, leading him to
7 | "flee" for three and a half weeks. (13:8-14:1). Among Respondent's contentions about the
8 | events was the statement, "And what you'll find at the conclusion of this is that you'll find that I
9 | was fit to practice law at the time."

10 | 77. On September 8, 2011, Respondent gave his closing argument. He stated at all the
11 | reasons he became concerned for his safety and that of his son related to various incidents in
12 | and out of court during the period in question. (613:2--23). However, related to the facts in
13 | paragraph 74., Respondent went on to say: "Mr. Griffin said to me that he believed that I was
14 | part of a police sting and even said I was wired and he wanted no more of my services. And that
15 | also kind of freaked me out and I just took off right after he left my house on the 23rd. I was real
16 | concerned given some of the things that he told me about his criminal activities."

17 | 78. As Respondent most recently describes the events, in his December 28, 2010
18 | proposed Findings of Fact, "In the summer of 2010 Respondent suffered traumatic
19 | psychological injury due to the shooting of his dog in his home by a government agent, his
20 | home was broke [sic] into, his officer [sic] was broke into and also due to his discovery,
21 | supported by evidence and witnesses, of apparent tampering with physical evidence in a
22 | criminal proceeding he was a lawyer in. Respondent sought out and obtained expert advice in
23 | confirmation of this tampering and immediately thereafter reporting same to the court and then
24 |

1 the court officials involved made retaliatory complaints and declarations against Respondent
2 with the Association. After this blind Respondent suffered these psychological injuries he and
3 his minor son "C.J." fled the state late in the summer of 2010 in fear for their lives."

4 79. From August 2010, through at least December 2010, Respondent was not
5 practicing law, his office was closed, the exterior was covered with the red graffiti as noted
6 below and windows were broken. (129:14 -21; 130:11 - 15).

7 80. No one was checking mail or answering the phone during this time period. (130:11
8 -20; 131:24 - 14).

9 81. As of August 2010, calls to the office were answered with a long, rambling,
10 recorded message stating that "the office is permanently closed." The message provided no
11 information to Respondent's clients about what they should do. See Ex A-113

12 82. Respondent directed his son to paint "WSP = Killers", "Cops Kill", and "RIP" in
13 large red letters red on the outside walls of his office building. (276:19-20). See Ex A-112.

14 83. Respondent acknowledged that CrR 3.1(e) states: "Withdrawal of Lawyer.
15 Whenever a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from
16 said cause, except upon written consent of the court, for good and sufficient reason shown.
17 Respondent did not file Notices of Withdrawal in any of his active cases. (180:5-7; 180:24-
18 181:1; 241:9-12; 237:20-238:2; 242:24-243:3; 281:23-25).

19 84. As of August 2010, he had between eight and twelve active clients. (134:7-10). If
20 Respondent had files for certain clients, he did not return them. (181:15-19).

21 85. As of August 2010, Respondent had not earned fees belonging to Mr. Ballard.

22 86. Respondent refunded \$2,500 to Mr. Ballard in October 2010, after Mr. Ballard had
23 filed a grievance with the Association. Ex A-121.

1 87. The Association received grievances from Mr. Ballard, Judge James Stonier and
2 Mr. Heid. The Association sent a request for response to these grievances to Respondent, but
3 the mail was returned undeliverable. Ex A-109; Ex A-119; Ex A-133.

4 88. Respondent abandoned his practice. The reasons he has given are numerous and
5 not always consistent. See above.

6 89. There was serious injury to Mr. Ballard in being deprived of his retainer fee for
7 several months and potentially serious injury to all of Respondent's clients with pending matters
8 when they were not informed that their attorney was abandoning them in August of 2010.

9 **Findings Regarding Respondent's Mental State and Mental Health**

10 90. Respondent is visually impaired and relies on his son and others for assistance in
11 driving. Respondent uses a computer program to review written documents.

12 91. Respondent holds the belief that the Auburn Municipal Court prosecutors and
13 judges have altered or fabricated recordings of court proceedings, including the Zimcosky
14 matter. Respondent denies any mental health problems contribute to this belief and states that
15 this conspiracy has caused his mental health problems. See the Respondent's opening statement
16 and closing argument (11:20 - 12:2; 201:9 - 20; 601:19 - 603:8).

17 92. At the time of the hearing, Respondent was under the care of two mental health
18 professionals, Mr. Jonathan Goodman and Dr. Seema Basnett.

19 93. Mr. Goodman is a licensed mental health counselor who works in association with
20 Dr. Basnett, MD at SeaMar. (522:19 - 25). Respondent began treatment with him in April 2011
21 and attended 13 counseling sessions. Respondent has been diagnosed by Mr. Goodman with a
22 mood disorder, very likely major depressive disorder, PTSD. He may also suffer from mania,
23 hypomania, major depressive disorder, delusional disorder, and bipolar disorder. He is on
24

1 medication. See Ex R-11. Respondent says he has been treated for megalomania [which is
2 defined in Microsoft Word's Encarta Dictionary as "1. An excessive enjoyment in having power
3 over other people and a craving for more of it. 2. A psychiatric disorder in which the patient
4 experiences delusions of great power and importance."] (187:6 – 8).

5 94. Respondent's medical records show that he admitted to wanting to assault Mr.
6 Boesche and another prosecutor in Southwest District Court. Respondent says that since
7 February of 2011, which would have been prior to beginning treatment, he had stopped
8 harboring a desire to assault Mr. Boesche. (195:6-13; 198:10-199:1; 538:24-540:10).

9 95. The medical records also show that he had been on a "cocaine binge" in July 2010.
10 See Ex R-11; Ex A-129. (185:22-186:15; 194:6-195:5; 535:7-25).

11 96. Mr. Goodman opines that if Respondent remains in treatment and continues to take
12 medications as prescribed, he may be able to return to full functioning. (527:22-530:9) Mr.
13 Goodman was asked the following question by Respondent and opined: "Is it your opinion that
14 the rehabilitation will prevent that type of occurrence in the future?" "Very good question. We
15 cannot say with a hundred percent certainty what will occur in the future. But what I can say is
16 that if Mr. Wickersham continues in mental health treatment, there is a very good chance that
17 both medication and the psychotherapy that he's receiving will not only help to maintain some
18 stability, but might be preventive in nature in preventing a recurrence of that kind of behavior."
19 (531:10-19). To put Mr. Goodman's testimony in context, it is important to also read his cross-
20 examination by the Association's lawyer. (532:20-545:18).

21 97. As of the date of the hearing, Respondent's symptoms and mental health problems
22 had apparently improved, but have not ceased. He continues to harbor the belief that court
23 records have been tampered with, and that the police, prosecutors and judges are persecuting
24

1 him. See testimony of Respondent's best friend, attorney James Ranalli. (554:9-555:1; 555:24-
2 556:7)

3 98. Respondent called David Grytness to establish that the CD recording of the
4 proceedings on June 18, 2010 in Auburn Municipal Court was tampered with. Respondent paid
5 Mr. Grytness \$2,600 to examine the recording that he received from the court clerk. Mr.
6 Grytness believes that there was an alteration described as a "change in the background" noise
7 at one point on the CD. As noted above, ultimately his testimony was not believed to be either
8 relevant or useful in evaluating this case in the context of the Counts alleged by the Association.

9 99. The Auburn officials called to testify denied any alteration had occurred and there
10 is no evidence that any individual Auburn city employee or group of city employees actually
11 altered the recording or had the technological knowledge and ability to do so.

12 100. Respondent either believes he was the target of a "federal sting" wherein police or
13 Washington Fish and Wildlife officers entered his home and office without warrants or his
14 client Mr. Griffin was the target and Respondent just got caught up in the investigation.

15 101. In August 2010, a Fish and Wildlife officer shot and wounded Respondent's dog,
16 but for some reason he often states it was the Washington State Patrol. (123:15-16). Ex A-112.

17 102. This incident may reasonably have caused a great deal of stress for the
18 Respondent, but does it, or the other stressors in his life at the time, justify Respondent taking
19 off on August 23, 2010 with no explanation to either his clients or to the courts where matters
20 were pending? The hearing officer found by clear and convincing evidence that this was an
21 unjustified violation of his attorney obligations toward his clients and a breach of his duty as an
22 officer of the court.

23 103. Respondent knowingly abandoned his practice for approximately five months.
24

1 104. Respondent was negligent in determining whether he was competent to represent
2 his clients in 2010.

3 105. Respondent has shown a complete lack of insight into how his actions have
4 affected his clients and the justice system as a whole. (See e.g., 549:10-550:2)

5 106. Respondent engaged in a pattern of misconduct.

6 107. Respondent committed multiple offenses pursuant to the RPCs.

7 108. Respondent was admitted to practice in 1989 and has substantial experience in the
8 practice of law.

9 109. Respondent was ordered to receive a reprimand in 2006. This discipline was based
10 on his conduct in 2005 involving an unreasonable fee and a prohibited division of fees. Ex A-
11 136.

12 110. No mitigating factors apply in this case.

13 111. To the extent that Respondent had mental health problems at the time, he was
14 aware of them and took no steps to protect his clients from the effects. In fact, he is still in
15 denial that his actions had any adverse impact on either his clients or the justice system.

16 112. There is medical evidence that the respondent is affected by a chemical
17 dependency and/or mental disability and that the chemical dependency and/or mental disability
18 contributed to the misconduct.

19 113. However, Respondent's recovery from the mental disability has not been
20 demonstrated by a meaningful and sustained period of successful rehabilitation.

21 114. Respondent presents as an intelligent but facile man. It is clear that over the years
22 he has attracted many clients. The fact that he has mental health issues does not excuse behavior
23 which is detrimental to his clients or the justice system. It is of concern that even though he is
24

1 now receiving treatment and he is on medication, he is still in denial that he did anything to
2 detrimentally impact the clients he abandoned or that he did anything inappropriate in his
3 interaction with the courts. He identified his malady as megalomania, but it might better be
4 described as hubris.

5 115. Recurrence of misconduct caused by Respondent's mental disability is possible
6 and even likely if he does not continue his therapy and continue to take appropriate medication.

7 CONCLUSIONS OF LAW

8 Violations Analysis

9 The Hearing Officer finds that the Association proved the following:

10 116. **Count 1-** By failing to attend his clients' scheduled court appearances, without
11 explanation or formal withdrawal, Respondent violated RPC 8.4(d), which prohibits conduct
12 prejudicial to the administration of justice. See, In re Disciplinary Proceedings Against Curran
13 115 Wn.2d 747, 801 P.2d 962 (1990), holding that the rule against conduct prejudicial to the
14 administration of justice should be construed to include violations of accepted practice norms.
15 Id. at 765. Respondent violated court rules by failing to properly withdraw in the Griffin and
16 Zimcosky matters. This count is proven by a clear preponderance of the evidence.

17 117. **Count 2-** By abruptly ending his representation of Mr. Griffin, Mr. Ballard, and
18 Mr. Zimcosky, without taking steps to ensure that his client's interests were protected,
19 Respondent violated RPC 1.16(d) which requires a lawyer to take steps to protect a client's
20 interests upon termination of representation. Respondent left his clients to fend for themselves;
21 Mr. Ballard and Mr. Griffin had to hire new lawyers, and Mr. Zimcosky proceeded pro-se.
22 Respondent failed to return Mr. Zimcosky's fee, and delayed returning Mr. Ballard's until he
23 filed a grievance. This count is proven by a clear preponderance of the evidence. However,
24

1 1.16(a)(2) states that "a lawyer shall not represent a client or, where representation has
2 commenced, shall ... withdraw from the representation of a client if: (2) the lawyer's physical
3 or mental condition materially impairs the lawyer's ability to represent the client." This does not
4 excuse the violation of RPC 1.16(d), but it may be a mitigating factor if Respondent was
5 sufficiently aware that his mental condition, at the time of the actions complained of, was
6 clearly impaired.

7 118. **Count 3-** By accepting \$2,700 from Mr. Ballard and then doing little work on his
8 behalf, Respondent violated RPC 1.5(a), which prohibits collecting an unreasonable fee, and
9 RPC 1.3, which requires a lawyer to act with reasonable diligence. Respondent was retained to
10 represent Mr. Ballard in criminal proceedings and a DOL hearing. He did not perform the
11 service he was hired to do, and failed to return unearned fees until after Mr. Ballard filed a
12 grievance. This count is proven by a clear preponderance of the evidence.

13 119. **Count 4-** By failing to tell Mr. Griffin, Mr. Ballard, or Mr. Zimcosky that he had
14 ceased practicing law and would no longer represent them, Respondent violated RPC 1.4(b),
15 which requires a lawyer to explain matters to their client so that the client can make informed
16 decisions about the representation. Although at times Respondent told his clients that he would
17 not appear for court hearings, Respondent's behavior in court was often so bizarre that the
18 clients could not make an informed decision about the representation. This count is proven by a
19 clear preponderance of the evidence.

20 120. **Count 5-** By acting inappropriately at some court appearances and failing to
21 appear at others, and by failing to properly withdraw from Mr. Zimcosky's case and Mr.
22 Griffin's case, Respondent violated RPC 8.4(d) and RPC 1.3. Respondent's behavior in Auburn
23 Municipal Court was unprofessional, as was his failure to appear on behalf of his clients there
24

1 and in Cowlitz County Superior Court. This count is proven by a clear preponderance of the
2 evidence.

3 121. **Count 6-** By failing to competently represent Mr. Zimcosky and Mr. Griffin before
4 the court, including exhibiting erratic, improper behavior on some occasions and failing to
5 appear at others for Mr. Zimcosky and Mr. Griffin, Respondent violated RPC 1.1, which
6 requires a lawyer to provide competent representation to a client. This count is proven by a
7 clear preponderance of the evidence.

8 122. **Count 7-** By committing the acts as described above, Respondent demonstrated
9 unfitness to practice law in violation of RPC 8.4(n). Unfitness to practice law involves
10 repetitious misconduct that is “deceitful, neglectful and unprofessional.” In re Disciplinary
11 Proceeding Against Zderic, 92 Wn.2d 777, 600 P.2d 1297 (1979). In this case, Respondent’s
12 actions in taking client funds for work he failed to perform, abandoning his clients, and
13 engaging in unprofessional behavior both in and out of the courtroom rises to the level of
14 conduct demonstrating unfitness to practice law. This count is proven by a clear preponderance
15 of the evidence.

16 **Sanction Analysis**

17 123. A presumptive sanction must be determined for each ethical violation. In re
18 Anschell, 149 Wn.2d 484, 69 P.2d 844, 852 (2003). The following standards of the American
19 Bar Association’s Standards for Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. &
20 Feb. 1992 Supp.) are presumptively applicable in this case:

21 124. **Count 1-** ABA Standard 6.2 applies to this violation of RPC 8.4(d).

22 125. Respondent acted knowingly in failing to attend his client's court appearances. His
23 client’s cases were delayed and the court’s time wasted.

- 1 126. The presumptive sanction is suspension.
- 2 127. **Count 2-** ABA Standard 7.0 applies to violations of RPC 1.16(d).
- 3 128. Respondent acted knowingly in abruptly ending his representation of clients. He
- 4 caused injury to Mr. Ballard, Mr. Griffin, Mr. Zimcosky, and the courts.
- 5 129. The presumptive sanction is suspension.
- 6 130. **Count 3-** ABA Standard 7.0 applies to violations of RPC 1.5(a).
- 7 131. Respondent acted knowingly. Mr. Ballard paid \$2,700 for work that was not
- 8 completed by Respondent.
- 9 132. The presumptive sanction is suspension.
- 10 133. ABA Standard 4.4 applies to violations of RPC 1.3.
- 11 134. Respondent knowingly abandoned his practice, failed to perform services for Mr.
- 12 Ballard, and engaged in a pattern of neglect. There was injury to the client and to the courts.
- 13 135. The presumptive sanction is suspension.
- 14 136. **Count 4-** ABA Standard 4.4 applies to violations of RPC 1.4(b).
- 15 137. Respondent engaged in a pattern of neglect when he failed to tell multiple clients
- 16 that he would no longer represent them and failed to file notices of withdrawal. There was
- 17 injury as described above.
- 18 138. The presumptive sanction is suspension.
- 19 139. **Count 5-** ABA Standard 6.0 applies to this violation of RPC 8.4(d).
- 20 140. ABA Standard 4.4 applies to violations of RPC 1.3.
- 21 141. The presumptive sanction is suspension.
- 22 142. **Count 6-** ABA Standard 4.5 applies to violations of RPC 1.1.
- 23 143. Respondent was at least negligent in failing to recognize that he was not able to
- 24

1 competently represent Mr. Zimcosky, resulting in the injury described above.

2 144. The presumptive sanction is a reprimand.

3 145. **Count 7-** ABA Standard 4.4 applies to the violation of RPC 8.4(n). The
4 presumptive sanction for a pattern of neglect of client matters causing serious or potentially
5 serious injury to a client is disbarment. The presumptive sanction where a lawyer abandons
6 his practice and causes serious or potentially serious injury to a client is also disbarment. There
7 was serious or potentially serious injury to all of Respondent's clients as of the summer of 2010.

8 146. In this case, Respondent engaged in a pattern of neglect of client matters and
9 abandoned his practice. His conduct caused serious or potentially serious injury to all of his
10 clients, who were left without their files, their unearned fees, and any direction from
11 Respondent about what to do with their cases. The presumptive sanction is disbarment.

12 147. When multiple ethical violations are found, the "ultimate sanction imposed should
13 at least be consistent with the sanction for the most serious instance of misconduct among a
14 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

15 148. Based on the Findings of Fact and Conclusions of Law and application of the ABA
16 Standards, the appropriate presumptive sanction is disbarment.

17 149. The following aggravating factors set forth in Section 9.22 of the ABA Standards
18 are applicable in this case:

- 19 (a) prior disciplinary offenses;
20 (c) a pattern of misconduct;
(d) multiple offenses; and,
21 (i) substantial experience in the practice of law.

22 150. No mitigating factors set forth in Section 9.32 of the ABA Standards are applicable
23 to this case, unless the Disciplinary Board or the Supreme Court believes Respondent was so
24 impaired that he could not knowingly have caused the harm outlined above. That was not the

1 conclusion reached by the Hearing Officer.

2 **Recommendation**

3 151. Based on the ABA Standards and the applicable aggravating and mitigating
4 factors, the Hearing Officer recommends that Respondent Joe Wickersham be disbarred.

5 152. As a condition of reinstatement, whether ultimately disbarred or suspended for
6 three years, Respondent shall, at least 30 days prior to a request for reinstatement, undergo an
7 independent examination by a licensed clinical psychologist or psychiatrist chosen by the
8 Association, and that Respondent shall execute all the necessary releases to permit this
9 evaluator to obtain all necessary treatment records and make a report to disciplinary counsel
10 addressing the following issues:

- 11 • Whether Respondent has recovered from any issues identified by the evaluator as
12 influencing Respondent's performance as a lawyer;
- 13 • Whether Respondent's condition is such that he is currently fit to practice law.

14 153. If the evaluator concludes that Respondent is not currently fit to practice law, the
15 report shall recommend a course of treatment necessary to enable Respondent to return to the
16 practice of law.

17 154. If the evaluator concludes that Respondent is not currently fit to practice law,
18 Respondent (or Respondent's counsel, if Respondent is then represented) and disciplinary
19 counsel shall meet to discuss the evaluator's report and what steps can be taken to address the
20 evaluator's concerns.

21 155. If Respondent and disciplinary counsel cannot reach an agreement, both parties
22 shall present written materials and arguments to the Disciplinary Board.

23 156. The Disciplinary Board shall decide under what conditions Respondent shall return
24

1 to the active practice of law.

2 157. If the Disciplinary Board decides the Respondent will never again be fit to resume
3 the active practice of law, that recommendation shall be sent to the Supreme Court for final
4 determination.

5 158. Respondent shall bear all costs associated with compliance with the terms and
6 conditions of the reinstatement set forth herein.

7 159. Respondent shall pay \$3,500 to Mr. Zimcosky in restitution.

8
9 Dated this ²⁷18th day of December, 2011.

Lish Whitson
s/ Lish Whitson
Hearing Officer

13
14
15
16
17 CERTIFICATE OF SERVICE

18 I certify that I caused a copy of the PDF, COL & HD's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to De Wickerham Respondent/Respondent's Counsel
19 at 1007 & Lake Pkwy SE Kenton, WA 98546 by Certified/first-class mail,
postage prepaid on the 27th day of December, 2011

20 And to: [Signature]
Clerk/Counsel to the Disciplinary Board

21 [Redacted]
22 [Redacted]

APPENDIX C

ABA STANDARDS

ABA Standard 4.4 -- Lack of Diligence

- 4.41 Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

ABA Standard 4.5 -- Lack of Competence

- 4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.
- 4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.
- 4.53 Reprimand is generally appropriate when a lawyer:
- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
 - (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.
- 4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

ABA Standard 6.2 -- Abuse of the Legal Process

- 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.

ABA Standard 7.0 -- Violations of Duties Owed as a Professional

- 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.

APPENDIX D

FILED

JUL 16 2012

BEFORE THE
DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re
JOE WICKERSHAM,
Lawyer (WSBA No. 18816)

Proceeding No. 11#00010
DISCIPLINARY BOARD ORDER
AMENDING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its July 6, 2012 meeting, on automatic review of Hearing Officer Lish Whitson's December 29, 2011 Findings of Fact and Conclusions of Law And Hearing Officer's Recommendation. Mr. Whitson found that all seven charged counts were proven by a clear preponderance of the evidence. He recommended disbarment, restitution and a fitness to practice exam prior to reinstatement.

The Board reviews the hearing officer's finding of fact for substantial evidence. The Board reviews conclusions of law and sanction recommendations de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board. ELC 11.12(b)¹.

Having reviewed the materials submitted by the parties, heard oral argument, and considered the applicable case law and rules;

IT IS HEREBY ORDERED THAT the Hearing Officer's decision is adopted with the following amendments:²

¹ On May 30, 2012, Disciplinary Counsel filed an objection to Respondent's designation of exhibits that were not offered for admission during the hearing (R-1, R3, R-5, R-7, R-10, R-12, R-14, R-15, R-16, R-17, R-18, R-19, R-22, R-24 and R-25; and one rejected exhibit R-6. Respondent did file a response to this Motion. ELC 11.12(b) prohibits the Board from considering evidence not presented to the hearing officer. These exhibits are not part of the record and were not provided to the Board. Exhibit R-8 was admitted and was provided to the Board.

² The vote on this matter was unanimous. Those voting were Bray, Broom, Butterworth, Carrington, Coy, Evans, Ivarinen, Kaba, Neiland, Ogura, Trippett, Waite and Wilson.

ll

1 (1) All factual findings based on EX 118 are stricken and all conclusions of law relating to
2 Mr. Ballard are reversed.

3 (2) The recommended sanction is reduced to a three year suspension. The aggravating factor
4 of pattern of misconduct is stricken. The mitigating factor of personal or emotional
5 problems is added. The restitution and fitness to practice exam requirements are
6 unchanged.

7 (3) The Board carefully considered the appearance of fairness issue related to the hearing
8 officer's prior representation of Respondent, and affirms the CHO decision on that issue.

9 RAY BALLARD ALLEGATIONS

10 The Hearing Officer admitted Mr. Ballard's grievance form, Exhibit A-118, for the
11 limited purpose of showing that the grievance was filed. (TR 257, l. 18-258 l. 4) The Hearing
12 Officer clarified that "it will not be viewed as testimony or evidence." (TR 259 l. 3) Mr. Ballard
13 did not testify at the hearing, despite being subpoenaed by both parties. The Hearing Officer
14 then used the content of Mr. Ballard's grievance to make factual findings. (See e.g. FOF 44, .46
15 and 47) The Association conceded at oral argument that this use of the grievance content was
16 inappropriate. The factual findings citing facts from Mr. Ballard's grievance form must be
17 stricken.

The record contains the following facts regarding Mr. Ballard. Mr. Ballard contacted
respondent between June 10 and 12, 2010. (TR 243-44) Mr. Ballard met with Carter
Wickersham on June 17, 2010 at Respondent's office. (TR 244-5) Mr. Ballard paid \$2,700 for
Respondent's "retainer" and costs for the Department of Licensing implied consent hearing. (TR
245) Respondent sent the request for an implied consent hearing, along with the \$200 fee. (TR
246-7) During a phone conversation on August 16 or 17th, Respondent believed he was fired,
because Mr. Ballard stated that he was going to find another lawyer. (TR 248) On August 17,
2010, Mr. Ballard was charged with DUI. (EX 117) Respondent was out of town and away from
his office from August 23, 2010 until mid-September, 2010. (TR 252) Mr. Ballard appeared

1 with counsel for his August 26, 2010 arraignment. (EX A-117) Respondent first sent Mr.
2 Ballard a refund of his fee on October 14, 2010. (EX A-121)

3 The record does not contain evidence that Respondent abruptly withdrew from Mr.
4 Ballard's case (Count 2), missed any scheduled court appearances during the Ballard
5 representation (Count 1) or failed to do "any work" for Mr. Ballard (Count 3). All findings of
6 fact based on the substantive content of Exhibit 118 are stricken. All conclusions of law relating
7 to Mr. Ballard are stricken.

8 The remaining Findings of Fact and Conclusions of Law are adopted.

9 SANCTION ANALYSIS

10 Presumptive Sanction

11 The sanction determination is a two-part process, using the ABA Standards for Imposing Lawyer
12 Sanctions (1991 & Supp. 1992) as a basic, but flexible, guide. See e.g., In re Eugster, 166 Wn.2d
13 293, 314, 209 P.3d 435 (2009). First, the presumptive sanction is determined based on the
14 ethical duty violated, respondent's state of mind and the harm caused by the misconduct. Next,
15 a decision is made whether to modify the presumptive sanction based on aggravating and
16 mitigation factors. No one factor is controlling. The Court examines the misconduct as a whole
17 and in context. Id at 316.

18 When multiple ethical violations are found, the sanction imposed should at least be consistent
19 with the sanction for the most serious instance of misconduct. In re Petersen, 120 Wn.2d 833,
20 854, 846 P.2d (1993) The most serious presumptive sanction is disbarment for Count 7. The
21 Hearing Officer found that ABA Standard 4.41 applied to this violation. The Board specifically
22 finds that *ABA Standard 4.41(c)* does not apply, because the record does not establish a pattern
23 of neglect. Two instances of neglect arising from one period of mental disability or emotional
24 problems do not establish a pattern. Standard 4.41(a) applies because Respondent abandoned his
25 practice causing injury to two clients and potentially serious injury to others. The presumptive

1 sanction is disbarment.³

2 Aggravating and Mitigating Factors

3 *Pattern of Misconduct*

4 The Hearing Officer found four aggravating factors: prior disciplinary offense, pattern of
5 misconduct, multiple offenses and substantial experience in the practice of law; and no
6 mitigating factors. The Board finds that removal of the Ballard conclusions requires removal of
7 the pattern of misconduct aggravator. A pattern is not established by misconduct in two client
8 matters related in time to one event in Respondent's life.

9 *Personal or Emotional Problems*

10 The Board agrees with the Hearing Officer that the available mental health evidence does not
11 establish all four requirements for the ABA Standard 9.32(i) mental disability or chemical
12 dependency mitigator. However, it appears the hearing officer did not consider the mitigator of
13 personal or emotional problems. ABA Standard 9.32(c) The hearing officer found that
14 Respondent's licensed mental health counselor diagnosed Respondent with mood disorder, very
15 likely major depressive disorder, and PTSD. (FOF 93) The hearing officer also found that "there
16 is medical evidence that the respondent is affected by a chemical dependency and/or mental
17 disability and that the chemical dependency and/or mental disability contributed to the
18 misconduct. (FOF 112) The Commentary to ABA Standard 9.32 states, in pertinent part:

19 Cases concerning personal and emotional problems as mitigating factors
20 include a wide range of difficulties, most often involving marital or
21 financial problems. The two factors which have been treated most
22 inconsistently by the courts are mental disability or impairment and
23 chemical dependency. . . .Issues of physical and mental disability or
24 chemical dependency offered as mitigating factors in disciplinary
25 proceedings require careful analysis. Direct causation between the
26 disability or chemical dependency and the offense must be established. If
27 the offense is proven to be attributable solely to a disability or chemical
28 dependency, it should be given the greatest weight. If it is principally
29 responsible for the offence, it should be given very great weight; and if it
30 is a substantial contributing cause of the offense, it should be given great

31 3 Count 3 is stricken. The Board agrees with the hearing officer that the presumptive sanction for
32 Counts 1, 2, 4 and 5 is suspension, and the presumptive sanction for Count 6 is reprimand.

weight. In all other cases in which the disability or chemical dependency is considered as mitigating, it should be given little weight. A showing of rehabilitation from chemical dependency may be considered but should not in and of itself, be a justification for a recommendation for discipline less than that which would have been imposed upon an attorney in similar circumstances where a chemical dependency was not present.

Commentary at pages 51-52.

The Board finds that the mitigator of personal or emotional problems applies.

Sanction Recommendation

The Board recommends that the Court impose a 3-year suspension with the restitution and fitness to practice conditions stated in the hearing officer's decision. The Board believes that Respondent is working to ensure that his misconduct will not be repeated. Respondent's personal and emotional circumstances and the steps he is taking to prevent recurrence justify mitigating the sanction to a suspension. The length of the suspension is intended to allow Respondent time to seek appropriate treatment and complete his recovery while protecting the public. The Board would like Respondent to understand that mitigation from disbarment is not to be taken lightly and that the sanction in this matter is a close question.

Dated this 16th day of July, 2012

ATSD to:
[Redacted]
[Redacted]
Clyde Wickersham@no-mail.com

Thomas A. Waite
Thomas A. Waite
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the DO Order Amending HO Decision
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Clyde Wickersham Respondent/ Respondent's Counsel
at 1707 E. Lake Washington Dr. Renton, WA 98057 by Certified first class mail,
postage prepaid on the 16th day of July, 2012

[Signature]
Clerk/ Counsel to the Disciplinary Board

APPENDIX E

Joe Wickersham's voice message as of 9-27-10

Hello. I am very sorry, but this office is now permanently closed. It is no longer at the direction of Joe Wickersham. Please be advised though Mr. Wickersham is in no trouble, has no problems with Washington State Bar, and simply has now been afforded a wonderful opportunity to relocate and get into a much better career. So with that in mind, as we all know I am very true to myself first and then I try to work for you know, you people, the people that the police accuse you of doing things that you didn't do. So because of, maybe in a case of yes being, you know unmasked, being mentally ill, have a closed head injury, not being visibly impaired, and you know, having you know, ah, unfortunately my children, myself were the victims of a hate crime and victims of a common scheme of plans by people in political offices and people who are in judicial positions. Quite frankly, it started with the SW District Court and a case you can look up, a Mr. Jeff Fandrich, Jeffrey Fandrich – it's also a civil case file. It was the most horrible head-on, one of the most I have ever been associated with, and the, certainly the most on the line that I've ever associated with for a civil case – like I said, you can look it up, but as things escalated, of course, they were chicken shit to go to trial. So what did they do? They lied, lied, lied, and finally gave me a reckless endangerment on a case that should have been filed as vehicular assault. Then we go to Auburn on a case of Walter Zeimkowski – you can look it up. And then on a Monday morning, there were some files, and they, after they got eight discs, ah, which were tapered with by Harry Boeshay or somebody with the direction with Harry Boeshay (he's a prosecutor in Auburn). So, the city attorney, Dan Heart, fully knows of this as well as the Prosecutor's Office, yes, the Superior Court, as well. I testified in Joel Zilmmmer's case. And throughout all of this, now I have learned a lot of bad things, and I know I was a target of a very, very, very, very horrible, intentional, calculated scheme and plan to have me locked up and take everything from me. But that ended when I called the police on a very early morning on the 22nd of July. Man, I told them to not come, but, and so I have to get out of the most unsafe county that I have ever been in, and that is the honest to God truth. Good luck here in King County with Sue Rahr. Boy, you ought to relocate in a big hurry.

