

FILED

Apr 21 2020

Disciplinary
Board

Docket # 037

BEFORE THE
DISCIPLINARY BOARD

In re

GEOFFREY CROSS,
Lawyer (Bar No. 3089).

Proceeding No. 19#00035

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

The undersigned Hearing Officer held the hearing on March 6, 2020 under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Geoffrey Cross appeared at the hearing with his counsel, Pamela J. DeVet. Senior Disciplinary Counsel Scott G. Busby appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint charged Respondent with one count of misconduct, as follows:

Count 1: By revealing information relating to his representation of Mr. Vickers without Mr. Vickers's informed consent, Respondent violated RPC 1.6(a) and/or RPC 1.9(c)(2).

Based on the pleadings, the hearing testimony, and the admitted exhibits, the Hearing Officer makes the following:

FINDINGS OF FACT

1
2 1. Respondent was admitted to the practice of law in the State of Washington on
3 August 15, 1968. [Formal Complaint & Answer ¶ 1]

4 2. On April 12, 2013, Drew Vickers was involved in an accident while driving a
5 Yamaha all-terrain vehicle (ATV). Mr. Vickers and his passenger, Mary Valenzuela, were both
6 injured. [Formal Complaint & Answer ¶ 2]

7 3. Shortly after the accident, Mr. Vickers consulted with lawyer Michael Carroll about
8 representation in two matters: (a) a potential lawsuit on his behalf against Yamaha, the
9 manufacturer of the ATV, and (b) potential criminal charges against him arising out of the
10 accident. [Formal Complaint & Answer ¶ 3]

11 4. Mr. Carroll and Respondent had known each other for many years. Mr. Carroll
12 shared office space with Respondent and worked for him as a contractor. Mr. Carroll referred
13 cases to Respondent. Mr. Carroll settled cases for Respondent, and Respondent paid Mr.
14 Carroll “commissions” for the cases he settled. [See, e.g., Formal Complaint & Answer ¶ 4; EX
15 27 (Deposition of Geoffrey Cross) at 7-8; TR 12-13]

16 5. Mr. Carroll referred Mr. Vickers to Respondent. [Formal Complaint & Answer ¶ 5]

17 6. Respondent agreed to represent Mr. Vickers in the criminal matter. [Formal
18 Complaint & Answer ¶ 6]

19 7. On January 6, 2014, Mr. Vickers was charged with vehicular assault, RCW
20 46.61.522, and criminal trespass in the second degree, RCW 9A.52.080, in *State v. Vickers*,
21 Pierce County Superior Court No. 14-1-00074-1. [Formal Complaint & Answer ¶ 7; EX 1, 6-7]

22 8. On January 10, 2014, Respondent filed a notice of appearance on behalf of Mr.
23 Vickers in *State v. Vickers*. [Formal Complaint & Answer ¶ 8; EX 1]

1 9. On March 11, 2014, under a plea agreement Respondent negotiated, Mr. Vickers
2 pleaded guilty to reckless driving, RCW 46.61.500, and criminal trespass in the second degree.

3 [Formal Complaint & Answer ¶ 9; EX 1, 9-10]

4 10. According to the Prosecutor’s Statement Regarding Amended Information, the
5 vehicular assault charge was amended to reckless driving because it was “highly likely” that the
6 accident resulted from a mechanical failure in the ATV. [Formal Complaint & Answer ¶ 10;

7 EX 10]

8 11. After a restitution hearing on May 28, 2014, Respondent had no further contact with
9 Mr. Vickers. [Formal Complaint & Answer ¶ 11]

10 12. On July 8, 2016, Mr. Carroll filed suit against Mr. Vickers on behalf of Ms.
11 Valenzuela in *Valenzuela v. Vickers*, Pierce County Superior Court No. 16-2-09320-1. The
12 complaint alleged that Mr. Vickers was liable for the injuries Ms. Valenzuela sustained as a
13 result of the ATV accident. [Formal Complaint & Answer ¶ 12; EX 13]

14 13. On May 11, 2017, Mr. Vickers’s lawyer, Kathleen Thompson, filed a motion to
15 amend the answer in *Valenzuela v. Vickers* to assert as an affirmative defense that the accident
16 was caused by a mechanical failure in the ATV. [Formal Complaint & Answer ¶ 13; EX 16]

17 14. Both Ms. Thompson and Mr. Carroll discussed *Valenzuela v. Vickers* with
18 Respondent. [See, e.g., EX 27 at 12-14; TR 21] Based on these discussions, Respondent knew:

19 a. that Mr. Carroll represented Mary Valenzuela, the party adverse to Mr. Vickers in
20 *Valenzuela v. Vickers* [See, e.g., EX 27 at 15, 39; TR21-22, 66];

21 b. that Ms. Thompson represented Mr. Vickers in *Valenzuela v. Vickers* [See, e.g., EX
22 27 at 13-14; TR 21-22, 66];

23 c. that Ms. Thompson was trying to amend Mr. Vickers’s answer in *Valenzuela v.*
24

1 *Vickers* to assert an affirmative defense [*See, e.g.*, EX 27 at 15, 47; TR 23-24];

2 d. that Mr. Carroll was trying to prevent Ms. Thompson from amending Mr. Vickers’s
3 answer in *Valenzuela v. Vickers* to assert an affirmative defense [*See, e.g.*, EX 27 at
4 14-16, 27-29; TR 24, 32];

5 15. Respondent believed that Ms. Thompson was also trying to disqualify Mr. Carroll
6 from representing Ms. Valenzuela in *Valenzuela v. Vickers*. [EX 27 at 15]

7 16. Ms. Thompson did not file a motion to disqualify Mr. Carroll from representing Ms.
8 Valenzuela in *Valenzuela v. Vickers*. TR 89-90.

9 17. Mr. Carroll asked Respondent to provide information relating to Respondent’s
10 representation of Mr. Vickers that he could use to oppose Mr. Vickers’s effort to amend the
11 answer. Among other things, Mr. Carroll wanted Respondent to say that he (Respondent) and
12 Mr. Vickers had decided to “abandon” Mr. Vickers’s potential case against Yamaha. [*See, e.g.*,
13 EX 27 at 16, 28; TR 34]

14 18. Respondent believed that Mr. Carroll also wanted information relating to
15 Respondent’s representation of Mr. Vickers that he could use to defeat an effort by Mr. Vickers
16 to disqualify Mr. Carroll. [Formal Complaint & Answer ¶ 14; EX 27 at 18]

17 19. Respondent agreed to provide, and did provide, the declaration relating to his
18 previous representation of Mr. Vickers for Mr. Carroll to use to oppose Mr. Vickers’s efforts.
19 [*See, e.g.*, EX 17 at 3; EX 27 at 23-24; Formal Complaint & Answer ¶ 15]

20 20. Respondent did so with knowledge of the facts and circumstances set forth in ¶ 14
21 above.

22 21. Respondent did so with knowledge that he had had no contact with Mr. Vickers for
23 about three years and that Mr. Vickers had not consented to the disclosure of information

1 relating to Respondent's representation of him. [*See, e.g.*, Formal Complaint & Answer ¶¶ 11,
2 22-23; EX 27 at 51; TR 20-21, 35]

3 22. Respondent did so with the intent of helping Mr. Carroll. [*See, e.g.*, EX 27 at 27, 48-
4 49]

5 23. Respondent told Mr. Carroll, among other things, that he had discussed with Mr.
6 Vickers the possibility of filing a lawsuit against Yamaha and that Mr. Vickers had decided
7 against it. [*See, e.g.*, Formal Complaint & Answer ¶ 16; EX 17 at 3; TR 19-20]

8 24. Mr. Vickers's motion to amend his answer was granted. On June 5, 2017, Ms.
9 Thompson filed an Amended Answer asserting as an affirmative defense that the accident was
10 caused by a mechanical failure in the ATV. [Formal Complaint & Answer ¶ 18; EX 18]

11 25. Respondent believed that Mr. Carroll also wanted the declaration to use to defeat an
12 effort by Mr. Vickers to disqualify Mr. Carroll. [Formal Complaint & Answer ¶ 20]

13 26. Mr. Carroll asked Respondent to state in his declaration that Mr. Vickers had chosen
14 to abandon his potential claims against Yamaha based on the advice and counsel of Respondent.
15 [*See, e.g.*, EX 27 at 13-17, 27-29]

16 27. On June 1, 2017, Mr. Carroll filed a declaration in opposition to Mr. Vickers's
17 motion to amend the answer that included this and other information relating to Respondent's
18 previous representation of Mr. Vickers. [Formal Complaint & Answer ¶ 17; EX 17 at 3]

19 28. Respondent agreed to provide, and did provide, a declaration including information
20 relating to his representation of Mr. Vickers for Mr. Carroll to use to support his motion to
21 strike Mr. Vickers's affirmative defense. [*See, e.g.*, EX 19 at 4; EX 27 at 28-29]

22
23 29. On June 15, 2018, Mr. Carroll filed the Declaration of Geoffrey Cross, which states:
24

1 Geoffrey Cross, under penalty of perjury, deposes and states that I represented
2 Mr. Vickers. That Mike Carroll provided recall documents. That Mr. Vickers
3 did not wish to pursue a lawsuit against Yamaha over the recalled vehicle. This
4 was discussed about the time of his restitution hearing with the owner of the
5 vehicle. The costs of a products liability suit and the legal complications made it
6 something that we did not pursue. [Formal Complaint & Answer ¶ 21; EX 19 at
7 4]

8 30. Respondent did so with knowledge that he had had no contact with Mr. Vickers for
9 about three years and that Mr. Vickers had not consented to the disclosure of information
10 relating to Respondent's representation of him. [See, e.g., Formal Complaint & Answer ¶¶ 11,
11 22-23; EX 27 at 51-52]

12 31. Respondent did so with the intent of helping Mr. Carroll. [See, e.g., EX 27 at 48-49]

13 32. At no time did Respondent consult with Mr. Vickers about revealing information
14 relating to his representation of Mr. Vickers. [Formal Complaint & Answer ¶ 22]

15 33. At no time did Mr. Vickers consent to Respondent's disclosure of information
16 relating to his representation of Mr. Vickers. [Formal Complaint & Answer ¶ 23]

17 CONCLUSIONS OF LAW

18 Violations Analysis

19 The Hearing Officer finds that ODC proved the following by a clear preponderance of
20 the evidence:

21 By providing to Mr. Carroll a written declaration containing a client confidence, relating
22 to his previous lawyer client relationship with Mr. Vickers, without his permission or
23 informed consent, Respondent violated RPC 1.9(c)(2) incorporating RPC 1.6(a) as
24 charged in Count 1.

Sanction Analysis

34. A presumptive sanction must be determined for each ethical violation. *In re*
Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). Standard 4.2 of the American Bar

1 Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") (1991 ed. & Feb.
2 1992 Supp.) is applicable in this case:

3 4.2 Failure to Preserve the Client's Confidences

4 Absent aggravating or mitigating circumstances, upon application of the factors
5 set out in 3.0, the following sanctions are generally appropriate in cases
6 involving improper revelation of information relating to representation of a
7 client:

8 4.21 Disbarment is generally appropriate when a lawyer, with the intent to
9 benefit the lawyer or another, knowingly reveals information relating to
10 representation of a client not otherwise lawfully permitted to be disclosed, and
11 this disclosure causes injury or potential injury to a client.

12 4.22 Suspension is generally appropriate when a lawyer knowingly reveals
13 information relating to the representation of a client not otherwise lawfully
14 permitted to be disclosed, and this disclosure causes injury or potential injury to
15 a client.

16 4.23 Reprimand is generally appropriate when a lawyer negligently reveals
17 information relating to representation of a client not otherwise lawfully permitted
18 to be disclosed and this disclosure causes injury or potential injury to a client.

19 4.24 Admonition is generally appropriate when a lawyer negligently reveals
20 information relating to representation of a client not otherwise lawfully permitted
21 to be disclosed and this disclosure causes little or no actual or potential injury to
22 a client.

23 In revealing information relating to his previous representation of Mr. Vickers without
24 Mr. Vickers's informed consent, Respondent acted negligently. At the outset Respondent and
Mr. Carroll were acting as co-counsel to Mr. Vickers according to his understanding.
Respondent did not recognize his declaration content to be an intentional disclosure of a client
confidence in that he did not understand the fact of Mr. Vickers choice not to pursue Yamaha to
have been a protected client confidence. He was wrong and has since admitted that.
Respondent's understanding at the time of the alleged violations was complicated by the fact
that the confidence disclosed had become a verity, in that Mr. Vickers had not and could not

1 | successfully sue Yamaha because the statute of limitations had expired. It is alleged,
2 | Respondent made such disclosures at least twice, first in a telephone conversation with Mr.
3 | Carroll, and again in a declaration that Respondent himself prepared and signed for use against
4 | Mr. Vickers. But the evidence tends to reflect that Mr. Carroll was aware from Respondent and
5 | Mr. Vickers he had not pursued claims against Yamaha, from when Mr. Vickers discussed with
6 | Mr. Carroll and Respondent the potential civil claims, and around the time of Respondent's
7 | representation in the criminal case. So it has not been sufficiently proven that the confidential
8 | information provided to Mr. Carroll, separate from the declaration, was unknown by Mr.
9 | Carroll, and that confidentiality had been breached in that communication. Respondent knew
10 | he was preparing the declaration, he knew the words he put in it, he knew he was transmitting it
11 | to his client's adversary, but he did not understand that the communication was required to be
12 | protected by these rules. Respondent was generally aware of his obligations under the RPC,
13 | but the evidence is insufficient to prove he was aware of the nature and circumstances of his
14 | conduct.

15 | 35. Respondent admits that his purpose in disclosing his conversations with Mr. Vickers,
16 | his ex-client, in the declaration was to "aid" and "help" Mr. Carroll. [*See, e.g.,* EX 27 at 48-49]
17 | Respondent knew that Mr. Vickers was trying to amend his answer to assert an affirmative
18 | defense, and he believed that Mr. Vickers was trying to disqualify Mr. Carroll. [*See, e.g.,* EX 27
19 | at 13, 15, 19, 27-29, 47] Respondent knew that Mr. Carroll wanted his help in trying to prevent
20 | Mr. Vickers from amending his answer, and he believed that Mr. Carroll wanted his help in
21 | trying to prevent Mr. Vickers from disqualifying him. [*See, e.g.,* EX 27 at 15-18, 27-29, 49]
22 | Knowing that Mr. Carroll intended to use Respondent's disclosures against Mr. Vickers,
23 | Respondent nevertheless chose, in his words, to "aid" and to "help" Mr. Carroll. [*See, e.g.,* EX

1 | 27 at 48-49]

2 | 36. In revealing information by way of declaration relating to his previous representation
3 | of Mr. Vickers, without Mr. Vickers's informed consent, Respondent caused potential injury to
4 | Mr. Vickers. Mr. Vickers's defense in *Valenzuela v. Vickers* might have been impaired if Mr.
5 | Carroll had succeeded, with Respondent's "aid" and "help," in preventing Mr. Vickers from
6 | asserting an affirmative defense. There was a potential of a judgment against Mr. Vickers in
7 | excess of his insurance policy limits, putting both his personal assets and his business at risk.

8 | [TR 75-78]

9 | 37. Based on the Findings of Fact and Conclusions of Law and the application of the
10 | ABA *Standards*, the appropriate presumptive sanction is reprimand under standard 4.23.

11 | 38. The following aggravating factors set forth in Section 9.22 of the ABA *Standards*
12 | are applicable in this case:

13 | (a) Prior disciplinary offenses: Respondent has two prior disciplinary
14 | offenses in the last 10 years. Respondent received a reprimand in 2011
15 | for violating RPC 1.10 (imputed conflict of interest). Respondent
16 | received a second reprimand in 2016 for violating RPC 1.15A(c)(1) (hold
17 | client property separate from lawyer's own property), RPC 1.15A(e)
18 | (provide written accounting to client), RPC 1.15A(f) (promptly pay or
19 | deliver trust account funds to party entitled to receive them), and RPC
20 | 1.15A(h)(2) (keep complete trust account records). [EX 3-4, 11-12]
21 | Respondent's history of prior discipline is a substantial aggravating
22 | factor. *See In re Disciplinary Proceeding Against Greenlee*, 158 Wn.2d
23 | 259, 276 n.2, 143 P.3d 807 (2006).

19 | (b) Substantial experience in the practice of law: Respondent was admitted to
20 | the practice of law in 1968. [Formal Complaint & Answer ¶ 1] Any
21 | lawyer with so much experience should have carefully analyzed whether
22 | the information contained within the declaration was confidential
23 | information, requiring Mr. Vicker's informed consent to deliver that
24 | declaration. Revealing confidential information within that declaration
provided to a lawyer who Respondent knew would try to use that
information against Respondent's ex-client is a breach of Respondent's
obligations under the Rules of Professional conduct.

1 **39. Mitigating Factors.** The following mitigating factors, from the *ABA Standards*,
2 std. 9.32, were considered: (a) absence of a dishonest or selfish motive; (b) full and free
3 disclosure to disciplinary board or cooperative attitude toward proceedings; and (c) remoteness
4 of one prior offense.

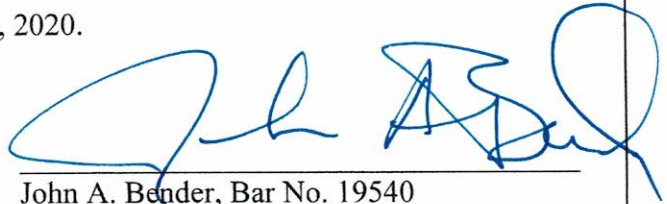
5 40. There was no evidence that Mr. Cross had a dishonest or selfish motive. This
6 mitigating factor weighs in Mr. Cross's favor.

7 41. For the "full and free disclosure" factor to apply, the attorney must show that his or
8 her disclosure or cooperation surpassed what is required from all attorneys. *In re Disciplinary*
9 *Proceeding Against Trejo*, 163 Wn.2d 701, 733, 185 P.3d 1160 (2008). Mr. Cross cooperated
10 with the Association's investigation into Mr. Carroll's conduct. Then he cooperated with the
11 Association's investigation of his own conduct. He provided information to the investigator and
12 responded to inquiries. He provided documents and supplemented information and documents.
13 His responses were timely. He has come to the conclusion he made this mistake, as a result of
14 this process. This mitigating factor weighs in Mr. Cross's favor.

15 42. The older of the two stipulated reprimands was unrelated to the kind of claims made
16 here and resulted from an associated lawyer's conduct not his. This factor weighs in Mr. Cross'
17 favor.

1 43. Based on the ABA *Standards*, the applicable aggravating factors, and mitigating
2 factors, the Hearing Officer recommends that Respondent Geoffrey Colburn Cross be
3 reprimanded.

4 Dated this 21 day of April, 2020.

5 

6 John A. Bender, Bar No. 19540
7 Hearing Officer

CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, I certify that I caused a copy of the Findings of Fact, Conclusions of Law and Hearing Officer's Decision to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Pamela Jo DeVet, at pjd@leesmart.com, on the 21st day of April, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Clerk to the Disciplinary Board