BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re **J. J. SANDLIN,** Lawyer (Bar No. 7392).	Proceeding No(s). 16#00084, 17#00084 ODC File No(s). 15-01743, 16-00555, 16-01217 RESIGNATION FORM OF J. J. SANDLIN (ELC 9.3(b))

I, J. J. Sandlin, declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.

2. I was admitted to practice law in the State of Washington on May 13, 1977.

3. I was served with a Formal Complaint and Notice to Answer in Proceeding No. 16#00084 on December 28, 2016. A disciplinary hearing was held on March 27-29, and May 24, 2018. The matter is currently on appeal before the Disciplinary Board.

4. I was served with a Formal Complaint and Notice to Answer in Proceeding No. 17#00084 on October 9, 2018.

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5. After consulting with my counsel, Leland G. Ripley, I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

6. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in Disciplinary Counsel's statement, but rather than continue to defend against the allegations, I wish to permanently resign from membership in the Association. Attached by agreement as Exhibit B is Respondent's Opening Brief for Board Review Hearing.

7. I consent to entry of an order under ELC 13.9(e) assessing expenses of $1,500 in this matter.

8. Disciplinary counsel has agreed not to seek additional costs or restitution from a Review Committee under ELC 9.3(g).

9. I understand that my resignation is permanent and that any future application by me for reinstatement as a member of the Association is currently barred. If the Washington Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been disbarred for ethical misconduct. If I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this resignation was based.

10. I agree to (a) notify any other states and jurisdictions in which I am admitted, of this resignation in lieu of discipline; (b) seek to resign permanently from the practice of law in those states and/or jurisdictions; and (c) provide Disciplinary Counsel with copies of this notification and any response(s). I acknowledge that this resignation could be treated as a disbarment by all other jurisdictions.

11. I agree to (a) notify all other professional licensing agencies in any jurisdiction

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from which I have a professional license that is predicated on my admission to practice law of this resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c) provide disciplinary counsel with copies of any of these notifications and any responses.

12. I agree that when applying for any employment, I will disclose the resignation in lieu of discipline in response to any question regarding disciplinary action or the status of my license to practice law.

13. I understand that my resignation becomes effective on Disciplinary Counsel's endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) Disciplinary Counsel must do so promptly following receipt of this document.

14. When my resignation becomes effective, I agree to be subject to all restrictions that apply to a disbarred lawyer.

15. Upon filing of my resignation, I agree to comply with the same duties as a disbarred lawyer under ELC 14.1 through ELC 14.4.

16. I understand that, after my resignation becomes effective, it is permanent. I will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will I be eligible for admission for any limited practice of law.

17. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

March 23, 2020 at Auburn, CA — J. J. Sandlin

Date and Place — J. J. Sandlin, Bar No. 7392

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JJS

RESPONDENT'S COUNSEL:

Leland G Ripley 3/24/2020

Leland G. Ripley
Bar No. 6266

ENDORSED BY:

M Craig Bray, Disciplinary Counsel
Bar No. 20821

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EXHIBIT A

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re **J. J. SANDLIN,** Lawyer (Bar No. 7392).	Proceeding No(s). 16#00084, 17#00084 ODC File No(s). 15-01743, 16-00555, 16-01217 STATEMENT OF ALLEGED MISCONDUCT UNDER ELC 9.3(b)(1)

The attached hearing officer's Findings of Fact, Conclusions of Law, and Recommended Sanction entered in Proceeding No. 16#00084 on August 17, 2018, constitutes Disciplinary Counsel's statement of alleged misconduct in that proceeding under Rule 9.3(b)(1) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC) (Exhibit 1).

The attached formal complaint, filed on September 6, 2018 in Proceeding No. 17#00084, constitutes Disciplinary Counsel's statement of alleged misconduct in that proceeding under ELC 9.3(b)(1) Exhibit 2).

I. ADMISSION TO PRACTICE

1. Respondent J. J. Sandlin was admitted to the practice of law in the State of

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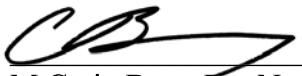
Washington on May 13, 1977.

DATED this 24th day of March, 2020.



M Craig Bray, Bar No. 20821
Disciplinary Counsel

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EXHIBIT 1

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	
J. J. SANDLIN	**PUBLIC NO. 16#00084**
Lawyer (WSBA No. 7392).	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED SANCTION**

This disciplinary proceeding was heard by Hearing Officer H. E. Stiles, II on March 27, 28, and 29, and on May 24, 2018, under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC) in the offices of the Washington State Bar Association (the Association) in Seattle. Respondent J. J. Sandlin who was admitted to practice law in the State of Washington on May 13, 1977, appeared personally pro se at the hearing; Disciplinary Counsel M. Craig Bray appeared for the Association.

There are two grievances against Respondent involved in this disciplinary proceeding, first, the Alexander Grievance filed by ODC, and, second, the Arnett/Morehouse Grievance filed by the Arnett and Morehouse families who were clients of Respondent. There are some similarities in the fact backgrounds between the two grievances in that in both cases Respondent was assisting homeowners in their efforts to avoid or delay foreclosures of their homes. There also are similarities in some of the misconduct charges ODC is pursuing in the two grievances, in particular that Respondent made assertions that were frivolous, i.e. not well-founded in fact

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or law, and otherwise caused unreasonable delays to lenders that were trying to exercise their delinquent loan foreclosure rights.

FORMAL COMPLAINT

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

Alexander Grievance

Count 1. By asserting frivolous claims and/or issues in the Alexander v. Capital One litigation, Respondent violated RPC 3.1 and/or RPC 1.1.

Count 2. By disobeying the rules of a tribunal in the Alexander v. Capital One appeal, Respondent violated RPC 1.1, RPC 3.4(c), and/or RPC 8.4(d).

Count 3. By representing a client in the Alexander v. Capital One appeal, where the representation involved a concurrent conflict of interest, Respondent violated RPC 1.7.

Count 4. By asserting frivolous claims and/or issues in the Unlawful Detainer cases and/or the Integrity Trust Bankruptcy case, Respondent violated RPC 1.1 and/or RPC 3.1, and or RPC 3.3(a).

Count 5. By unreasonably delaying and/or prolonging the Unlawful Detainer cases, for example, by filing the Integrity Trust bankruptcy, Respondent violated RPC 3.2, RPC 4.4(a), and/or 8.4(d).

Count 6. By filing the Integrity Trust v. Capital One litigation, Respondent sought to enjoin or restrain the unlawful detainer actions and violated RPC 8.4(a) and/or RPC 4.4(a) and/or RPC 8.4(d).

Arnett/Morehouse Grievance

Count 7. By failing to promptly convey information about the status of their case and/or by failing to adequately explain the strength of their claims or their options, Respondent violated RPC 1.4.

Count 8. Withdrew before hearing.

Count 9. By providing the Morehouses' bank account number to a third party, Respondent violated RPC 1.6.

Count 10. By filing Arnett v. MERS et al., seeking to quiet title in the family and alleging fraud by the defendants without factual and/or legal support for the claims, Respondent violated RPC 1.1 and/or RPC 3.1.

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Count 11. By failing to hold the $2,500 he received for a rescission notice and complaint in a trust account, Respondent violated RPC 1.15A(c).

Count 12. By taking the $2,500 for his own use, Respondent violated RPC 1.15A(b).

FINDINGS OF FACT

The Hearing Officer considered the pleadings in the record, the testimony of the witnesses, the exhibits that were admitted into evidence, and the written and oral arguments of Respondent and the Association. Based on the foregoing, the Hearing Officer makes the findings of fact on attached Exhibit A as to the Alexander Grievance, and on attached Exhibit B as to the Arnett/Morehouse Grievance.

CONCLUSIONS OF LAW AND PRESUMPTIVE SANCTIONS

Based on the foregoing Findings of Fact, the Hearing Officer makes the following conclusions of law and presumptive sanctions. With respect to Respondent's violations of the Rules of Professional Conduct, the Hearing Finds that those violations were proven by a clear preponderance of the evidence.

Alexander Grievance

Count 1. The Association contends that Respondent by filing and prosecuting the Alexander 2 lawsuit violated RPC 3.1 and/or RPC 1.1. There is nothing in the record to suggest that Respondent did not have the knowledge, skill, thoroughness and preparation reasonably necessary to represent the Alexanders in that type of litigation as required by RPC 1.1. The focus in the analysis of the allegations in this count will not be whether Respondent was competent, but rather whether the claims that he brought on behalf of the Alexanders were meritorious. The RPC 1.1 violation charge is dismissed.

By filing and prosecuting frivolous claims, i.e. claims not well grounded in fact or law, in the Alexander 2 lawsuit Respondent violated RPC 3.1 which provides in part, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

The lawsuit included a variety of claims: the Chevy Chase loan had been securitized; Capital One was not the owner of the note being foreclosed; wrongful foreclosure; fraudulent manipulation of the non-judicial foreclosure statute; slander of title; negligence; criminal profiteering; and violations of the Washington Deed of Trust and Consumer Protection Acts.

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Although one witness (Lori Gileno) on whom Respondent had relied to provide evidence that the loan may have been securitized admitted in her February 7, 2014, deposition that she had no such evidence, Respondent continued to push his securitization argument. Respondent offered no credible prima facie evidence in support of any of the claims in the complaint in response to the Capital One's March 26, 2014, dismissal motions. Because Capital One in Alexander 1 had addressed and responded to similar claims that the Alexanders had made in that lawsuit, and Respondent had reviewed the Alexander 1 case, Respondent was aware when he filed Alexander 2 of the evidence and arguments that Capital One would present in response to the Alexander 2 claims. Respondent pursued no investigation or discovery after being aware of the Capital One defenses to Alexander 1 to determine whether there might be any credible evidence to support similar claims that he would be filing in Alexander 2. Further, Respondent's opposition to the Alexander 2 dismissal motions in part was based on unqualified experts (Kelley; Wood) who were engaged in junk science according to the trial court.

Comments to RPC 3.1 are instructive:

> [1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedures.
>
> [2] The filing of an action…for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable…to make a good faith argument on the merits of the action taken…

Comment [2] provides some slack to a lawyer who expects to develop evidence in support of the lawyer's contentions through discovery. Respondent is not entitled to that type of slack—not only did he as far as the record is concerned not have a basis in fact or law to support the various allegations when he filed the complaint, he failed or was not able to develop after the complaint was filed supporting vital evidence through investigation and/or discovery, and/or develop supporting credible legal arguments through additional research. The Hearing Officer concludes that a lawyer of ordinary competence would recognize that the claims and arguments pursued by Respondent in Alexander 2 lacked merit.

Respondent knew what he was doing when he filed the lawsuit, i.e. throwing up a number of barriers to Capital One's efforts to complete its foreclosure and take possession of

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the home. Respondent may argue that he did not know that his efforts were wrongful, i.e. in violation of the RPC. His conduct caused injury to Capital One and the other defendants in the lawsuit, i.e., requiring investment of time, effort and resources to defend the lawsuit, and delays in exercising their rights under the note and deed of trust to foreclose and take possession of the property, and injury to the legal system, i.e., unnecessary consumption of time, effort, expense, and other judicial resources.

The Hearing Officer makes no finding whether Respondent's misconduct caused injury to his clients, the Alexanders, notwithstanding that the Alexanders ultimately paid money to satisfy the frivolous claims sanctions, and attorney fee, awards against both them and Respondent. Mr. Alexander in his testimony was supportive and complimentary of Respondent, having no complaints about his services or the fees that they paid.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to expedite litigation or bring a meritorious claim. ABA Standard 6.22 applies to the Count 1 violations: knowing violation of court orders or rules causing injury to a client or party, or causing interference with legal proceedings. The presumptive sanction is suspension.

Count 2. The Association contends that Respondent's failure to comply with the RAP in the Alexander 2 appeal (failure to include citations to the trial court record in his opening brief) violates RPC 1.1, RPC 3.4(c), and/or RPC .8.4(d). The contention that Respondent violated RPC 1.1 is dismissed for the same reasons discussed under Count 1 above. Respondent acknowledged that he was aware of the RAP briefing citation requirements, however offered excuses for his non-compliance, including a hope that the court would give him an opportunity to correct the omissions.

The title for RPC 3.4 is, Fairness to Opposing Party. The focus of the various sections of the rule, and of the comments to the rule, is that a lawyer should not engage in conduct that that would be unfair or prejudicial to a lawyer's opposing party. Respondent did violate his obligation under RPC 3.4(c) not to disobey the rules of a tribunal when he failed to include the required citations in his opening brief. However, that violation under the circumstances did not appear to be unfair or prejudicial to Capital One, the opposing party. As the court pointed out, the egregious violation of RAP was fatal to the success of Respondent's appeal, an outcome that arguably was beneficial to Capital One. The RPC 3.4(c) violation charge is dismissed.

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Respondent's failure to include the required citations to the record increased the burden of time, effort, expense and other resources that the Court of Appeals would have to invest to review and evaluate the merits of the Alexanders' appeal, and in that respect was prejudicial to the administration of justice in violation of RPC 8.4(d). The record reflects that Respondent was aware of his failure to comply with the RAP, i.e. that he knew what he was doing.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to obey the obligations of the rules of a tribunal. ABA Standard 6.22 applies to the Count 2 violations: knowing violation of court orders or rules causing injury or potential injury to a client or other party, or causing interference or potential interference with a with legal proceedings. The presumptive sanction is suspension.

Count 3. The Association contends that Respondent violated RPC 1.7 by appealing the Alexander 2 trial court sanction award against Respondent but not appealing the trial court sanction and fee awards against the Alexanders. RPC 1.7(a)(2) Provides that a lawyer shall not represent a client if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer unless the lawyer satisfies the conditions of RPC 1.7(b) including obtaining informed written consent from the client.

Before proceeding with the appeal, Respondent discussed with Mr. Alexander whether to appeal the trial court awards against the Alexanders as well as the trial court sanctions against Respondent. Mr. Alexander, out of concern that the Alexanders might not prevail on the appeal in which case they might be exposed liability for additional sanctions and fees, decided not to include the awards against the Alexanders in the appeal. Mr. Alexander, who had faith in and trusted Respondent, did not follow Respondent's suggestion that the Alexanders consult with another attorney regarding the sanction appeal issue. These discussions between Respondent and Mr. Alexander were verbal, and not reduced to writing.

Respondent was following Mr. Alexander's instructions when he did not include the trial court sanction and fee awards against the Alexanders in the appeal. In that respect, there was no conflict between the Alexanders and the personal interests of Respondent. The Alexanders were not injured because the awards against them were not included in the appeal. The RPC 1.7 violation charge is dismissed.

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Count 4. The Association contends that Respondent violated RPC 1.1 and/or RPC 3.1 and/or RPC 3.3(a) by asserting frivolous claims and/or issues in the unlawful detainer cases and/or the Integrity Trust Bankruptcy case.

The RPC 1.1 violation charge is dismissed for the same reasons discussed under Count 1 above.

Respondent in his answers and affirmative defenses filed in the unlawful detainer cases (Kent on February 27, 2015, Exhibit No. A-503; Seattle on October 12, 2015, Exhibit No. A-605) raised a number of the same issues that previously had been raised in Alexander 1, and decided adversely to the Alexanders in Alexander 2, namely that Capital One owned the home, held the note, and had authority to foreclose the note on the home. Respondent further claimed that Integrity Trust had not been given notice of the foreclosure sale although the notice to Integrity Trust was evident on the face of the trustee's notice, and without any supporting evidence claimed that the Alexanders had rescinded the note per the terms of the Federal Truth in Lending Act (FILA).

On the eve of a hearing scheduled on a motion for writ of restitution of the home by Capital one, Respondent filed a bankruptcy petition for Integrity Trust causing the trial court to stay the unlawful detainer action. The bankruptcy court dismissed the filing promptly on Respondent's failure to pay the filing fee or provided an IEN number.

By asserting claims and defenses in the unlawful detainer lawsuits that were frivolous, i.e., not well-grounded in fact or law, and by filing the Integrity Trust bankruptcy without having a basis in fact or law for doing so, Respondent violated RPC 3.1. Again, Respondent knew what he was doing with respect to the objectives of his actions. His actions caused the type of injury to other parties and administration of justice as described in Count 1 above.

It is a close call whether the evidence supporting a determination of a violation of RPC 3.1 also supports a determination of a violation of any or all of the RPC 3.3(a) subsections. The title for this rule is, Candor Toward the Tribunal. It is true that Respondent made a number of assertions to tribunals under circumstances when he was not able to present credible evidence in support of his arguments, however the record does not reflect that Respondent made false statements of fact, or offered evidence known to be false, to a tribunal—the Hearing Officer is making a distinction between presenting a frivolous claim in a pleading (RPC 3.1 violation) and

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offering false evidence, e.g. in a sworn statement or oral testimony. The RPC 3.3(a) violation charge is dismissed.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to expedite litigation or bring a meritorious claim. ABA Standard 6.22 applies to the Count 4 violations: knowing violation of court orders or rules causing injury to a client or party, or causing interference with legal proceedings. The presumptive sanction is suspension.

Count 5. The Association contends that Respondent by unreasonably delaying and/or prolonging the unlawful detainer cases, for example, by filing the Integrity Trust bankruptcy, violated RPC 3.2, RPC 4.4(a) and/or RPC 8.4(d).

RPC 3.2 Provides, "A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client." Comment 1 to the rule is instructive:

> [1] Dilatory practices bring the administration of justice into disrepute. … it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not [a] legitimate interest of the client.

Capital One as the owner of the note and deed of trust was entitled to foreclose on the Alexander home (obtain rightful redress in terms of the comment to the rule) due to the Alexanders' long-standing delinquency at the time in 2012 when Respondent first began to assist the Alexanders in delaying or avoiding turning over their home to Capital One following the foreclosure. Respondent's efforts for the Alexanders violated RPC 3.2.

RPC 4.4 provides in part, "(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to … delay, or burden a third person." In representing the Alexanders, Respondent used means that had no purpose other than delaying, and imposing burdens on, Capital One with respect to its rights to foreclose and take possession of the Alexander home. Respondent's efforts for the Alexanders violated RPC 4.4(a).

Respondent's conduct in asserting frivolous claims, and in unreasonably delaying the right of Capital One to foreclose and take possession of the Alexander home, in the unlawful detainer cases, and by filing the Integrity Trust bankruptcy, was prejudicial to the administration

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of justice in volition of RPC 8.4(d). Again, Respondent knew what he was doing with respect to the objectives of his actions, causing the type of injury to the other parties and administration of justice as described in Count 1 above.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to expedite litigation or to bring a meritorious claim. ABA Standard 6.22 applies to the Count 5 violations: knowingly causing injury to a client or other party, or causing interference with legal proceedings. The presumptive sanction is suspension.

Count 6. The Association contends that Respondent by filing the Integrity Trust v. Capital One litigation in order to enjoin or restrain the unlawful detainer actions violated RPC 8.4(a), and/or RPC 4.4(a) and/or RPC 8.4(d).

RPC 8.4(a) provides in part that it is misconduct for a lawyer to violate the Rules of Professional Conduct. The Hearing Officer in the Alexander Grievance has determined that Respondent violated a number of specific rules, including RPC 3.1, RPC 3.2, RPC 4.4(a) and RPC 8.4 (d), and consequently deserves an appropriate sanction. Arguably a violation of any specific rule also would be a violation of RPC 8.4(a), however in the Hearing Officer's opinion stacking an 8.4(a) violation on top of other rule violations is excessive, and would have no impact on the recommendation for an appropriate sanction. A finding of an RPC 8.4(a) violation might be appropriate in circumstances in which no violations of other rules are evident, e.g. as mentioned in the rule when a lawyer assists or induces another to violate a rule. The RPC 8.4(a) violation charge is dismissed.

The filing by Respondent of the Integrity Trust v. Capital One lawsuit based on assertions that were frivolous in order to enjoin or restrain the unlawful detainer actions, had no substantial purpose other than to delay or burden Capital One, and was prejudicial to the administration of justice. This filing was especially egregious because it was the third time that Respondent had pursued nearly identical and unsuccessful claims. Capital One was entitled to take possession of the Alexander home in 2012 following the non-judicial foreclosure sale; as a result of Respondent's conduct, Capital One's possession was deferred until 2017.

The unnecessary time, effort and expense suffered by Capital One and the other parties involved in the foreclosure process and related litigation was substantial, with Respondent responsible for a significant portion of that burden.. The Hearing Officer does recognize that the Alexanders by themselves, and without Respondent's approval, did engage in some

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sanctionable conduct. Respondent himself was directly involved in conduct that interfered with the administration of justice, i.e., unnecessarily consuming time, effort and other resources, for at least two state trial courts (Alexander 2 and Seattle unlawful detainer), one state court of appeals (Alexander 2 appeal), one federal trial court (Integrity Trust v. Capital One), one federal court of appeals (Integrity Trust v. Capital One appeal), and one bankruptcy court (Integrity Trust).

Respondent violated RPC 4.4(a) and RPC 8.4(d). Again, Respondent knew what he was doing with respect to the objectives of his actions. The Hearing Officer again concludes that a lawyer of ordinary competence would recognize that the claims and arguments pursued by Respondent in Integrity Trust v. Capital One lacked merit.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to expedite litigation or to bring a meritorious claim. Although arguably based on the above history ABA Standard 6.21 recommending disbarment could apply, the Hearing Officer has determined that ABA Standard 6.22 is appropriate for the Count 6 violations: knowingly causing injury to a client or other party, or causing interference with legal proceedings. The presumptive sanction is suspension.

Arnett/Morehouse Grievance

Count 7. Although Respondent directly, or indirectly through his staff, did communicate with the Homeowners from time-to-time between November, 2015, and February, 2016, about the services he had agreed to provide to them, Respondent failed to convey to the Homeowners information about the status of their case, and to explain adequately the strength of their claims and options, as frequently, and as completely, as they desired, and as they deserved under RPC 1.4. In this respect, Respondent violated RPC 1.4.

Respondent's failure to communicate properly with the Homeowners was negligent rather than intentional. The Homeowners suffered little or no actual or potential injury as a result of Respondent's communication failures: They engaged him to issue a Notice of Rescission on their behalf to U.S. Bank, and to file a complaint against U.S. Bank in the event service of the Notice was not effective; there is nothing in the record in this proceeding to suggest that the engagement objectives would have been successful had Respondent been more diligent and complied with his communication obligations under RPC 1.4.

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ABA Standard 4.44 is applicable to this violation—when a lawyer is negligent and does not act with reasonable diligence when representing a client, and causes little or no actual or potential injury to the client. The presumptive sanction is an admonition.

Count 8. Withdrawn.

Count 9. By intentionally disclosing the Morehouse's confidential bank account number to a third party without the Morehouse's consent, Respondent violated RPC 1.6(a). ABA Standard 4.12 is applicable to this violation considering that Respondent's action was intentional, and that the disclosure caused injury to the Morehouses, i.e. they were concerned about their bank account being compromised, and had to go through the process of closing that account and opening a new account. The presumptive sanction is a suspension.

Count 10. The Association contends that Respondent by filing and prosecuting the Pierce County Complaint (Exhibit No. A-1503) violated RPC 1.1 and/or RPC 3.1. There is nothing in the record to suggest that Respondent did not have the knowledge, skill, thoroughness and preparation reasonably necessary to represent the Homeowners in that type of litigation as required by RPC 1.1. The focus in the analysis of the allegations in this count will not be whether Respondent was competent, but rather whether the claims that he brought on behalf of the Homeowners were meritorious. The claim that Respondent violated RPC 1.1 is dismissed.

Judge Rothstein's October 14, 2014, Memorandum Decision and Order (Exhibit No. A-1519), issued without oral argument, is strikingly similar to the conclusions reached by other trial judges in the Alexander 2 and Integrity Trust lawsuits, and by the Division I panel in the Alexander 2 appeal. She concluded that Respondent had not presented evidence or credible legal arguments in support of the various claims including: Breach of obligations to deal with the Homeowners in good faith; violation of duties under the Deed of Trust Act; engaging in unfair or deceptive acts or practices under the CPA; slandering the title to Homeowners' property; knowingly presenting false, material facts damaging the Homeowners; entitlement to quiet title for the home; relief on behalf of Ms. Morehouse; U.S. Bank's lack of right or standing to foreclose the Note; collection of the note and foreclosure barred by the statute of limitations.

Although Respondent may have disagreed with Judge Rothstein's decision, and advised the Homeowners that he would appeal on their behalf, Respondent did nothing to perfect an

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appeal after filing a Notice of Appeal with the Ninth Circuit Court of Appeals. That court appropriately dismissed the appeal for lack of prosecution; Judge Rothstein's dismissal decision stands as written.

Respondent violated RPC 3.1 when he filed and prosecuted the Pierce County lawsuit under circumstances when his allegations had no basis in fact or law. As pointed out in Count 1 of the Alexander Grievance, comments to this rule are instructive:

> [1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedures.
>
> [2] The filing of an action…for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable…to make a good faith argument on the merits of the action taken…

Comment [2] provides some slack to a lawyer who expects to develop evidence in support of the lawyer's contentions through discovery. Respondent is not entitled to that type of slack—not only did he as far as the record is concerned not have a basis in fact or law to support the various allegations when he filed the complaint, he failed or was not able to develop after the complaint was filed supporting vital evidence through investigation and/or discovery, and/or develop supporting credible legal arguments through additional research.

The Hearing Officer concludes again that a lawyer of ordinary competence would recognize that the claims and arguments pursued by Respondent in the Pierce County lawsuit lacked merit.

Respondent's conduct with respect to filing and prosecuting the lawsuit was intentional. This conduct caused injury to the defendants in the lawsuit (requiring investment of time, effort and resources to defend the lawsuit, and delays in exercising their rights under the note and deed of trust, and injury to the legal system, i.e., unnecessary consumption of time, labor, expense, and other judicial resources.

The Hearing Officer makes no finding whether Respondent's misconduct caused injury to his clients, the Homeowners—they testified that he had done a good job for them considering that the pending foreclosure had been put on hold while the lawsuit was pending. However by filing and prosecuting that lawsuit he created potential injury for them in the form of financial

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exposure for awards of attorney fees and costs to defendants under the loan documents, and/or under applicable court rules and other laws for filing frivolous claims (lacking foundations in fact and law). The Hearing Officer does understand that none of the defendants pursued reimbursement of attorney fees and costs against the Homeowners, and that Judge Rothstein did not impose sanctions on Respondent or the Homeowners, or initiate any misconduct charges against Respondent.

The sanctions under ABA Standard 6.2 Abuse of the Legal Process apply to cases involving a lawyer's failure to expedite litigation or bring a meritorious claim. ABA Standard 6.22 applies to the Count 10 violations: knowing violation of court orders or rules causing injury to a client or party, or causing interference with legal proceedings. The presumptive sanction is suspension.

Counts 11 and 12. Although the Receipt prepared by Respondent (Exhibit No. A-1702) describes (in general terms) the services he agreed to provide to the Homeowners for a fixed fee of $2,500, the text of the Receipt did not comply with the requirements of RPC 1.5(f)(2). In the absence of a written agreement between a lawyer and the lawyer's client that complies with RPC 1.5(f)(2), all advance payments are presumed to be deposits against future services and costs and must, until the fee is earned or costs incurred, be held in a trust account pursuant to Rule 1.15A(c)(2). *See* Washington Comments [12] and [14] to RPC 1.5.

The $2,500 deposit as discussed above was client property held by Respondent. Respondent did not have the right to withdraw any earned fees from that deposit without complying with the RPC 1.15A(h)(3) requirements that a lawyer may withdraw earned fees only after giving reasonable notice to the client of intent to do so through a billing statement or other document. Respondent did not provide reasonable or any notice to the Homeowners of his plans to withdraw any earned fees from the deposit.

Respondent by placing the $2,500 payment in his general account rather than in his trust account violated RPC 1.15A(c). Respondent by taking the $2,500 deposit for his own use violated RPC 1.15A(b).

Respondent's violations injured his clients: delay in obtaining a refund of the $2,500 deposit, and investing the time and going to the trouble of filing their grievance with the Association in order to try to expedite the refund process.

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The sanctions under ABA Standard 4.1 apply to cases involving a lawyer's failure to preserve client property causing injury. Respondent's failure to prepare a flat-fee agreement that complies with RPC 1.5(f)(2) was negligent; the presumptive sanction under ABA Standard 4.13 is a reprimand. Respondent's withdrawal of the deposit for his own use was intentional. The presumptive sanction under ABA Standard 4.12 is suspension.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

ABA Standard 9. 1 provides that the following circumstances may be considered in deciding what sanctions to impose:

9.22 Aggravation Factors.

(a) Prior Disciplinary Offenses. Respondent received reprimands in 2007 (for taking a loan from a client in violation of RPC 1.8(a)), and in 2010 (improper withdrawal in a bankruptcy case within minutes of an arbitration statement submittal deadline in violation of former RPC 1.15(b)(d), currently RPC 1.16(b)(d).

(c) A Pattern of Misconduct. There was a pattern of misconduct across both grievances, i.e., Respondent asserting claims and arguments that were frivolous, i.e. not well-grounded in fact or law, in order to delay or avoid foreclosure of his clients' homes.

(d) Multiple Offenses. Respondent violated a number of the RPC: 3.1, 3.2, 4.4(a), and 8.4(d) in the Alexander Grievance, and 1.4, 1.6(a), 3.1, 1.15A(b) and 1.15A(c) in the Arnett/Morehouse Grievance.

(g) Refusal to Acknowledge Wrongful Nature of Misconduct. Respondent did acknowledge his non-compliance with the RAP in the Alexander 2 appeal, his non-compliance with the fixed fee and trust account rules in the Arnett/Morehouse Grievance, and his breach of his obligation to protect client confidences in the Arnett/Morehouse Grievance. Respondent, however, did not acknowledge that his frivolous assertions causing unreasonable time-consuming and expensive delays to lenders in exercising their foreclosure rights in the Alexander litigation and in the Arnett/Morehouse litigation was wrongful.

(i) Substantial Experience in the Practice of Law. Respondent has been licensed to practice law in the State of Washington, and has had an active practice, since 1977.

9.32 Mitigation Factors:

(b) Absence of a Dishonest or Selfish Motive. Respondent's motivation with respect to both grievances was to assist his clients in delaying or avoiding foreclosure of their homes.

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He had no financial interests in those representations other than receipt of some fees for his services. The record reflects that the fees he charged in a number of instances were very low; the Hearing Officer does not doubt Respondent's statement that much of the work that he did for these clients was *pro bono* or without any compensation.

(c) Personal or Emotional Problems. The record reflects that Respondent's daughter in the spring of 2013 had a suicidal episode and was going through drug rehabilitation, spending several weeks in a hospital. Respondent spent time with her on a daily basis, and was involved with her counseling for several months. This circumstance may have explained some of the communication delays complained of in the Arnett/Morehouse Grievance. There is nothing in the record, however, to suggest that any of the subsequent misconduct described in this proceeding was related to Respondent devoting time and emotional support to his family.

(e) Full and Free Disclosure to Disciplinary Board or Cooperative Attitude Toward Proceedings. Respondent has been very cooperative with both ODC and the Hearing Officer throughout this proceeding.

(g) Character or Reputation. Two witnesses, Yakima client Nathan Gaub, and Yakima fellow attorney William Pickett, the current president of the Association, testified to Respondent's honesty and character. Mr. Gaub testified that in Respondent's work for his family Respondent took the high road, the honest road, was above board, and gave them the right advice. He was proud to call Respondent the family's friend and attorney. Mr. Picket has known Respondent in practice for about 20 years, the closest during the last 10 years. He considers Respondent a friend, and a colleague who is larger than life, hard charging, pushes boundaries, creative, and willing to take controversial cases. He has never known Respondent to be untruthful.

(h) Physical Disability. In his opening statement, Respondent said that he was taking heavy heart medication which affects his memory. During the hearing Respondent testified that in 2014 or 2015 he received a closed head injury knocking him unconscious from a fall on ice, requiring a trip to a hospital emergency room. He reported that his practice slowed down for about four months. He also testified about a subsequent heart attack, and in a post-hearing submission said that he is suffering from ischemic heart disease and congestive heart failure, and that he is winding down his practice. There is nothing in the record, from a qualified

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professional or otherwise, however, to suggest that any of the misconduct described above was related to, or the result of, any health condition of Respondent.

(l) Remorse. Respondent during the hearing, and in his post-hearing submissions, expressed remorse to the Morehouses for disclosing their confidential checking account information to another person, and also acknowledged his non-compliance with the applicable trust account and fixed fee RPC's. He also acknowledged that he did not comply with the RAP when he filed his opening brief in the Alexander 2 appeal. Respondent did not disagree with the history of the action described in this proceeding that he took to assist the Alexanders, and the Arnetts and Morehouses, in their efforts to delay or avoid foreclosures of their homes. Respondent does disagree that he was pursuing frivolous claims or seeking unjustified foreclosure delays for them, or otherwise violated any Rules of Professional Conduct, with respect to his efforts on their behalf.

(m) Remoteness of Prior Proceedings. Respondent's prior discipline (two reprimands) are remote in time, and unrelated in substance, to the current proceeding,

9.4 Factors Neither Aggravating nor Mitigating.

(b) Agreeing to Client's Demand for Certain Improper Behavior or Result. This circumstance was present in the Alexander Grievance, especially.

(f) Failure of Injured Client to Complain. Mr. Alexander appreciated and had no complaints about the services Respondent provided to his family notwithstanding that the Alexanders ended up paying tens of thousands of dollars in attorney fees and costs, and sanctions, as a result of action taken by Respondent on their behalf. Respondent's relationship with the Arnett/Morehouse families was mixed: they appreciated his original efforts in avoiding a pending foreclosure; they complained about not receiving services, and his lack of communications, regarding the services he agreed to provide in the $2,500 Receipt; and the Morehouses complained about his releasing confidential financial information to a third party.

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RECOMMENDED SANCTION

The Hearing Officer respects the work that Respondent has done during his career, especially taking on difficult and controversial cases for clients who may have limited resources or otherwise been disadvantaged. And the Hearing Officer is mindful that after a long career, Respondent is winding down his practice for health, emotional, and other reasons. The Hearing Officer concluded, however, that in pursuing claims that were not well-grounded in fact and law, repeatedly in the Alexander Grievance, and having no purpose other than to avoid or delay lenders in exercising their loan default rights, Respondent crossed the line between being a zealous advocate pursuing ethically plausible factual and legal claims for his clients, and engaging in professional misconduct.

The fact that Respondent may be closing his practice in the near future does not justify a reduction in an otherwise applicable sanction—lawyer discipline goals include protection of the public and administration of justice, preservation of integrity and maintenance of public confidence in the legal profession, and deterrence of other lawyers as well as the offending lawyer from unethical conduct. In recommending a particular sanction, the Hearing Officer concluded that several factors were especially significant: Respondent's pattern of misconduct, multiple offenses, and his refusal to acknowledge the wrongful nature of his misconduct.

In a grievance proceeding in which a lawyer has committed multiple violations of the Rules of Professional Conduct, the sanctions imposed for all of the violations together should be no less than the appropriate sanction for the most serious violation. In Re Disciplinary Proceeding Against Miller, 149 Wn.2d 262, 66 P.3d 1069 (2003). The Hearing Officer recommends an 18 month suspension.

DATED this 17th day of August, 2018.

H. E. STILES, II, WSBA 00680
Hearing Officer

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EXHIBIT A

ALEXANDER GRIEVANCE FINDINGS OF FACT

1. Gary and Diane Alexander owned a lot fronting on Lake Sammamish in Redmond, Washington, that they had purchased for $730,000.
2. The Alexanders on March 30, 2007, borrowed $3,000,000 from Chevy Chase Bank (Chevy Chase) on an adjustable rate note secured by a deed of trust on the lot. Mr. Alexander, who was a mortgage broker at the time, obtained the loan through his own mortgage company.
3. The Alexanders used the Chevy Chase loan, plus about $1,000,000 of their own funds, to build a home on the lot which is located at 2222 West Lake Sammamish Parkway Northeast. The home has around 13,000 square feet (7,500 square foot house sitting on top of a 5,000 square foot basement which contains a swimming pool and half of a basketball court). The loan by its own terms changed from a construction loan to a permanent loan on completion of construction.
4. The Alexanders with their children moved into the home following construction. Their plans were to live in the home until their children completed high school and college, and then to sell the home.
5. Chevy Chase merged into or was acquired by Capital One, N.A. (Capital One) in 2009. Capital One succeeded Chevy Chase as the owner of the note and deed of trust on the Alexander home. Capital One began to send its own loan payment statements to the Alexanders.
6. The Alexanders ceased making payments on the Capital One loan in October, 2009. As Mr. Alexander described their circumstances, his income had gone down, and the family had substantial credit card and other unsecured debt—in his words, he had gotten, "…financially messed up." The Alexanders at the time also owned about 24 properties (duplexes and fourplexes) in Kennewick, Washington, and another home on Lake Sammamish (their current residence).

7. The Alexanders continued to live in the home, however without making payments to Capital One on the loan. Capital One issued a notice of default to the Alexanders in May, 2012.[1] When the Alexanders did not cure the default, Capital One notified the Alexanders, and Integrity Trust (entity established by the Alexanders that may have been in record title to the home), that the home would be sold in a non-judicial foreclosure sale.

8. The Alexanders filed a *pro se* complaint against Capital One and other parties for wrongful foreclosure, fraud, quiet title and declaratory relief in King County Superior Court on November 21, 2012, (Alexander 1), but did not seek to enjoin the foreclosure sale. Exhibit No. A-102. The Alexanders stated that they were the owners of the home, and attached to the complaint copies of the 2007 Chevy Chase note and deed of trust that they had signed. There were no allegations in the complaint suggesting that the note and deed of trust were not authentic, or that the Alexanders had not received the loan funds from Chevy Chase. The Alexanders alleged that the note had been securitized[2] and that none of the defendants, including Capital One, owned or otherwise had the right to foreclose the loan. Among other requests, the Alexanders asked the court to declare the deed of trust 'null and void' based on an allegation that the note had been assigned to third parties without an assignment of the deed of trust to the same parties.

9. Capital One purchased the home at the foreclosure sale on November 30, 2012, at a time when the Alexanders were in default of over $500,000 on the loan. The trustee issued and recorded a deed confirming Capital One's ownership of the home.

10. On January 11, 2013, Capital One moved for a summary judgment in Alexander 1, submitting evidence that Capital One acquired and merged with Chevy Chase Bank, thereby becoming the owner and holder of the 2007 note and deed of trust, and that the note had not been securitized.[3] Exhibit No. A-103. Capital one also submitted evidence and arguments in opposition to each of the Alexanders' other claims including fraud, quiet

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[1] Capital One issued the notice through a trustee. For the purpose of this proceeding, references will be limited to Capital One only, i.e. not including other parties acting as deed of trust beneficiaries, trustees, etc.

[2] I.e., that Capital One had pooled or conveyed the note to a real estate mortgage investment conduit trust, and could not establish that it was the party entitled to foreclose.

[3] Capital One also submitted authority to the effect that even if the note had been securitized, Capital One would have the right to proceed with its foreclosure.

title, and request for declaratory relief. Capital One also requested that a *Lis Pendens* recorded against the property be cancelled.

11. While Alexander 1 was pending, Mr. Alexander on a referral contacted Respondent in Yakima, Washington, to try to come up with a plan to save the Alexander properties. They reached agreement on a fee of $5,000 per month for Respondent's services; that arrangement continued for four or five months.

12. Mr. Alexander informed Respondent that Mr. Alexander had been consulting with people he described as, "shysters," and one in particular as a, "charlatan" in an effort to save the Alexander home and other properties from foreclosure.

13. Mr. Alexander provided to Respondent the significant volume of paperwork that one of the consultants had prepared for the Alexanders to sign to try to save their properties from foreclosure, complaining that the consultant had recorded some of the signed documents without Mr. Alexander's approval—in Mr. Alexander's words, he filed a, " … bunch of stuff … anyway." Respondent told Mr. Alexander that Respondent was, " … highly, highly suspicious … " of the consultant, stating in essence that the documents were fraudulent. Respondent recommended that they (he and the Alexanders), "Disavow, disown, distance ourselves … " from the documents.

14. Respondent informed Mr. Alexander that there would be an extended fight to try to save the home. Respondent assisted Mr. Alexander in putting up a battle for some time to try to save the Kennewick properties, including going to court a couple of times, however ultimately concluding that the battle was unwinnable. The Alexanders lost those properties to foreclosure.

15. The Alexanders filed for Chapter 11 Bankruptcy protection on April 19, 2013, prior to the scheduled hearing on Capital One's motion for summary judgment on Alexander 1. Exhibit No. A-202. One objective for the Alexanders in the filing was to see if they could challenge the non-judicial foreclosure of their home. Respondent, who was providing some consultation to the Alexanders regarding the Chapter 11 proceedings, informed Capital One of the Chapter 11 filing, and that an automatic stay was in effect.

16. On July 16, 2013, the bankruptcy court granted Capital One's motion to release it from the automatic stay so that Capital One could proceed with its efforts to evict the Alexanders and obtain possession of the home.

17. The focus of the bankruptcy proceedings after the court lifted the stay for Capital One, and converted the proceedings to a Chapter 7, was dealing with the Alexander debts that were not secured by real property. They had approximately $180,000 to $190,000 of credit card debt which they had incurred for construction of the home. They also had a second mortgage obligation of about $330,000. The court eventually converted the proceeding from a Chapter 11 to a Chapter 7 on October 9, 2013. The Alexanders through the Chapter 7 proceedings ultimately were relieved of over half a million dollars of debt.[4] The Alexanders received a discharge on May 20, 2015.

18. On July 30, 2013, Respondent filed a second complaint on behalf of the Alexanders against Capitol One for wrongful foreclosure, fraud, slander of title, declaratory relief, negligence, violation of the Unfair Business Practices Act (Chapter 19.86 RCW), money laundering, and criminal profiteering, requesting injunctive relief, attorney fees and costs, and money and treble damages (Alexander 2). Exhibit A-302. Among other requests, the Alexanders asked for declarations that there was no legitimate deed or trust or note evidencing a debt from the Alexanders to Capital One, and that the note, deed of trust, and trustees' deed are void. The essence of this complaint, and similar to the Alexander 1 complaint, was that Capital One was not the holder of the original note and lacked standing to enforce it.

19. The Alexanders voluntarily dismissed Alexander 1 in August, 2013.

20. Respondent consulted with and used the services of loan investigator Lori Gileno in representing the Alexanders as well as the Arnetts and Morehouses, relying on her report that the notes had been securitized. Ms. Gileno did not hold up well when deposed on February, 7, 2014, in Alexander 2,—testifying first that she had a firm belief that the note had been securitized, however also acknowledging that she had no evidence to support that belief. Respondent concluded that Ms. Gileno in the deposition lost any credibility that she otherwise might have had as a live expert. This deposition took place less than a

[4] Mr. Alexander's hearing testimony. The bankruptcy petition estimated debts between $1,000,000 and $10,000,000.

month after Respondent had filed a complaint for Arnett and Morehouse. Respondent decided that he could not use Ms. Gileno as a live witness in the future, however continued to rely on her reports that the notes had been securitized in support of assertions that Respondent would be making.

21. On February 26, 2014, Capital One filed a motion to dismiss and for summary judgment in Alexander 2, providing evidence again (similar to the evidence it provided in Alexander 1) that Capital One owned the note, and that it had not been securitized. Capital One, as it had done in Alexander 1, also submitted evidence and arguments in opposition to each of the Alexanders' other claims and requests, including the additional claims and requests that were included in Alexander 2, and repeated its request that the *Lis Pendens* be cancelled. Exhibit No. A-310.

22. In response to Capital One's motion, Respondent filed an opposition memorandum, and declarations from Mr. Alexander, James Madison Kelley, and mortgage document examiner Michael Wood. Respondent did not submit a declaration or other evidence from Ms. Gileno.

23. Superior Court Judge Regina Cahan agreed with Capital One's motion concluding that the Alexanders failed to present admissible evidence creating genuine factual issues as to each element of any of their claims, entering an order on April 18, 2014, granting the motion to dismiss and motion for summary judgment. Exhibit No. A-315. In the order she also granted Capital One's motions to strike the declarations of Dr. Kelley and Mr. Wood.

24. In her June 16, 2014, Order granting Defendants' Motion for Attorneys' Fees and Sanctions (Exhibit No. A-319), Judge Regina Cahan said:

> ...
>
> 7. Plaintiffs were made aware of the fact that Capital One owned the Note and that the Note had not been securitized when defendants filed an affidavit of a Capital One representative in support of their motion for summary judgment in January 2013 in [Alexander 1].
>
> 8. ... Mr. Sandlin and plaintiffs ignored the evidence presented in the first lawsuit and failed to make a reasonable inquiry into whether evidence existed to rebut the evidence presented by defendants before plaintiffs filed [Alexander 2] on July 30, 2013.
>
> ...
>
> 12. Plaintiffs' opposition to defendants' motion for summary judgment focused on the opinions of their alleged "experts" and on whether

"global assignments" of deeds of trust are valid, even though Capital one obtained plaintiffs' Loan through a merger and not an assignment. Plaintiffs made no attempt in their opposition to establish a prima facie case for any of their seven causes of action, even though each of them was addressed in detail in defendants' motion.

13. The day before the hearing on the defendants' motion for summary judgment, plaintiffs untimely filed a motion under CR 56(f) to attempt to delay.

...

15. Plaintiffs also filed the following, with the assistance of their counsel Mr. Sandlin, for the improper purpose of causing delay:

> a. Plaintiffs admitted that they filed for bankruptcy in order to prevent eviction. The filed for bankruptcy one business day before the scheduled hearing on defendants' summary judgment motion, resulting in cancellation of the hearing.
>
> b. Plaintiffs repeatedly claimed that Capital One did not own the Note and that the Note had been securitized, but made no investigation and conducted no discovery to determine whether their claims were correct.
>
> ...
>
> e. Plaintiffs' summary judgment opposition was based on experts who were unqualified and engaged in junk science, as evidenced by the fact that the Court excluded both of plaintiffs' experts from consideration.
>
> f. Plaintiffs also spent considerable time arguing about whether the signatures on various original documents were genuine when, in fact, the plaintiffs admitted in the first lawsuit [Alexander 1] signing the Note and they attached a copy to their Verified Complaint, and thus whether plaintiffs signed the Note was not in dispute and whether Capital One possessed the original Note was not a material fact.
>
> ...

16. Plaintiffs have benefitted from their own delay in an amount exceeding $900,000 for the four years and seven months that have elapsed since they defaulted on the Note and have continued to reside at the Property without making Loan Payments.

...

Judge Cahan also said that the complaint was not well-grounded in fact, and was not warranted by existing law or a good faith argument for the extension of existing law; that Alexander's counsel [Respondent] did not make a reasonable inquiry to determine whether the claims were well grounded in fact and warranted by law as required by CR 11; that Respondent's lack of investigation was not reasonable given the evidence already presented in the first lawsuit showing that Capital One owned the Note and the Loan was not securitized; that Respondent did not conduct a reasonable inquiry into the factual and legal basis of the claims in the Complaint because if he had he would have known that (1) Capital One owned the Note; (2) the Note had not been securitized; and (3) even if it had been securitized, Capital one would still be entitled to enforce the Note; and that the entirety of plaintiffs' lawsuit against the defendants was frivolous and advanced without reasonable cause because it could not be supported by any rational argument on the law or facts.

In its order the court awarded defendants $79,865.26 for reimbursement of their reasonable attorney fees and costs incurred in defending the lawsuit against both Respondent and the Alexander marital community. The award was based on CR 11 sanctions against both Respondent and the Alexanders for filing a baseless lawsuit, against the Alexanders under the terms of the deed of trust, and against the Alexanders for filing a frivolous lawsuit under RCW 4.84.185.

25. On July 11, 2014, Judge Cahan entered an order denying Respondent's Motion for Reconsideration re Order Granting Sanctions Against Plaintiff and Counsel. Exhibit No. A-321.

26. The Alexanders authorized Respondent to appeal the trial court's decisions. During Mr. Alexander's discussions with Respondent about the appeal, Respondent advised Mr. Alexander that an appeal would include the risk that additional sanctions might be imposed. Mr. Alexander agreed that the appeal would include the award of attorney fees and costs against Respondent, however that the appeal would not include the award of attorney fees and costs against the Alexanders. Mr. Alexander did not think that they would get a, " … fair shot" on the appeal, and that, " … they [the court] would just throw on more sanctions." Respondent recommended that the Mr. Alexander consult with an outside attorney on the question whether the appeal should include the award against

Respondent but not the award against the Alexanders. Mr. Alexander who trusted Respondent did not feel the need to get an outside opinion. This communication between Respondent and Mr. Alexander was verbal, i.e. not reflected in a written agreement or written waiver.

27. On August 8, 2014, Respondent filed an appeal of the Alexander 2 trial court decisions with Division I of the Court of Appeals. His appeal included the award of CR 11 sanctions against him personally, but did not include appeal of the trial court's award of attorney fees and costs against the Alexanders under the frivolous action statute and the deed of trust.

28. On January 30, 2015, Capital One filed an unlawful detainer action in King County Superior Court in the Kent division—it should have been filed in the Seattle division.

29. On February 27, 2015, Respondent filed an answer and affirmative defenses to the unlawful detainer complaint on behalf of unnamed defendant Integrity Trust as well as on behalf of the Alexanders. Exhibit No. A-503. Among other allegations and defenses, Respondent denied that Capital One owned and was entitled to possession of the home, and alleged that the non-judicial foreclosure action was null and void, that the trustee's deed to Capital One was void for fraud, that Capital One presented a counterfeit note and deed of trust to the court, that Capital One had no standing to pursue the unlawful detainer, and that the rights of the Alexanders as tenants of the home were superior to any rights of Capital One. Respondent further argued that this action should be stayed pending final resolution of the Alexander 2 appeal. Respondent withdrew from this lawsuit on March 25, 2015; Mr. Alexander *pro se* removed the case to federal court on April 6, 2015.

30. On August 27, 2015, Capital One filed a second unlawful detainer action, this time in the Seattle division of King County Superior Court. Exhibit No. A-602.

31. On October 12, 2015, Respondent filed an answer and affirmative defenses to the Seattle complaint, again on behalf of unnamed defendant Integrity Trust as well as on behalf of the Alexanders. Exhibit No. A-605. Respondent raised substantially the same defenses and arguments that he raised in the first unlawful detainer case, and in addition alleged that Capital One was in violation of the federal Truth in Lending Act (TILA) by failing to comply with the Alexanders' timely mailed notice of rescission of the loan. On October 15, 2015, Respondent filed his notice of intent to withdraw effective November 3, 2015.

32. On November 2, 2015, The Alexanders acting *pro se* filed their amended answer to the Seattle unlawful detainer complaint raising many of the same defenses, and concluding again that Capital One had no right to bring the action with a request that the action be dismissed due to illegal foreclosure. Exhibit A-607. The Alexanders also acting *pro se* removed this case to federal court.

33. On November 30, 2015, in an unpublished opinion (Exhibit No. A-406), the Court of Appeals affirmed the Alexander 2 trial court decisions on several grounds:

- Although the record in the appeal contained nearly 2,000 pages of clerk's papers, Respondent's opening brief did not contain a single citation to the record contrary to the requirements of RAP 10.3(a)(5). His failure to cite to the record was in the court's words, " … an egregious violation of the rules and is fatal to the appeal."
- Notwithstanding Respondent's failure to comply with the RAP, the Court of Appeals said that the Alexanders' arguments did not warrant relief.
- The trial court properly excluded the opinions of the Alexanders' alleged experts, finding the experts were not qualified, one's declaration contained inadmissible speculation and legal opinions, and the other's methods were not accepted in the scientific community. As a result, the Alexanders had no evidence with which to challenge Capital One's evidence that it acquired and held the note through its merger with Chevy Chase and had every right to foreclose on the Alexanders' property after they defaulted on their debt.
- The Alexanders challenged the trial court's imposition of sanctions against Respondent under CR 11. They did not challenge the trial court's imposition of sanctions against the Alexanders under the frivolous action statute and under the terms of the deed of trust. In his challenge to the CR 11 award, Respondent offered no citations to the record, and no assignment of error to the trial court's findings and conclusions; the Court of Appeals said, " … the briefing is inadequate and precludes review." Further, that the Alexanders,' " … principal argument against CR 11 sanctions—i.e., that they reasonably relied on the 'experts' opinions—ignores the glaring deficiencies in the experts' qualifications and declarations." The Court of Appeals upheld the CR 11 sanctions award.
- The Court of Appeals further granted Capital One's and MERS's request for attorney fees and costs on appeal under the fee provision in the deed of trust.

34. On January 12, 2016, the federal court remanded the Seattle unlawful detainer action to state court.

35. On April 12, 2016, Capital One moved for a writ of restitution in the Seattle unlawful detainer case, with a hearing set for April 28, 2016.

36. On April 27, 2016, Respondent filed for bankruptcy protection for Integrity Trust, and then reappeared in the Seattle unlawful detainer case to notify the court of the pending bankruptcy. That court stayed the unlawful detainer action. The bankruptcy court dismissed the Integrity Trust bankruptcy on May 12, 2016, for failure of Respondent to pay the fling fee and provide an employee identification number for the trust. Exhibit A-704.

37. On June 17, 2016, Respondent filed a lawsuit in federal court on behalf of Integrity Trust against Capital One to enforce TILA rescission rights, and claiming violation of the federal Fair Debt Collection Practices Act, violation of the Washington Unfair Business Practices Act, and wrongful foreclosure. This complaint included many of the same claims that had been raised and decided in Alexander 2, concluding with requests for declaratory relief, monetary damages (trebled), and attorney fees and costs. Exhibit No. A-805 (Integrity Trust v. Capital One).

38. On June 22, 2016, Respondent filed a motion requesting the federal court to restrain Capital One from continuing collection and property restitution proceedings in the Seattle unlawful detainer case. Exhibit No. A-803.

39. On June 23, 2016, federal judge Robert Lasnik *Sua Sponte* entered an order in Integrity Trust v. Capital One denying Respondent's motion on the authority of the federal Anti-Injunction Act (28 U.S.C. Section 2283) which prohibits a federal court from enjoining state court proceedings, subject to certain inapplicable exceptions. Exhibit A-808. Judge Lasnik commented that Respondent in his motion had not addressed the effect of that act.

40. On January 20, 2017, Judge Lasnik entered an order granting Capital One's motion to dismiss the Integrity Trust v. Capital One lawsuit. Exhibit A-820. The judge reviewed the history of Alexander 1, Alexander 2, and the Alexander 2 appeal, pointing out that the current lawsuit closely resembles the prior two with Integrity Trust substituted as plaintiff. The operative facts were the same, but Respondent included several new causes of action: to effect rescission under the TILA, and claims of violation of the FDCA and CPA. Judge

Lasnik concluded his analysis with a finding that Integrity Trust is an alter-ego of the Alexanders, and ruling that Integrity Trust's claims against Capital One are barred by the doctrine of claim preclusion based on the final judgment in Alexander 2.

41. On January 30, 2017, Capital One moved for sanctions under Rule 11, and attorney fees under the terms of the deed of trust and the frivolous action statute. Exhibit No. A-822. Respondent replied on behalf of Integrity Trust on February 15, 2017 (Exhibit No. A-825), and filed a notice of appeal of the summary judgment order two days later.

42. On March 31, 2017, Capital One moved to reopen the Seattle unlawful detainer case to obtain a writ or restitution that would direct the sheriff to evict the Alexanders from the home. Respondent on behalf of the Alexanders objected to the issuance.

43. On April 5, 2017, Judge Lasnik entered an order in Integrity Trust v. Capital One granting Capital One its motion for Rule 11 sanctions and attorney fees under the terms of the deed of trust, and RCW 4.84.185. Exhibit No. A-830. In the order, the judge pointed out that Respondent, " ... does not refute Defendants 'claim that a competent inquiry would have revealed this lawsuit to be legally baseless." The judge further commented that, "Plaintiff and Mr. Sandlin have essentially conceded that they intentionally wasted the Court's time by filing – and then litigating rather than voluntarily dismissing - a frivolous lawsuit. Such conduct is hardly the 'essence of good faith.'"

44. On April 19, 2017, the King County Superior Court entered an order granting Capital One's motions to reopen the Seattle unlawful detainer case, to issue a writ of restitution, to terminate the Alexanders' current occupancy of the home, and to evict the Alexanders from the home. Exhibit No. A-626.

45. On April 25, 2017, Judge Lasnik entered an order dismissing the Integrity Trust v. Capital One lawsuit, awarding Capital One reimbursement of $55,693.02 for fees and costs, and imposing sanctions in the same amount against Integrity Trust and Respondent as, " ... appropriate to deter Integrity Trust, the Alexanders, and Mr. Sandlin from filing a fourth frivolous lawsuit. See Fed. R. Civ. P. 11(c)(4)." Exhibit No. A-832.

46. On May 5, 2017, Respondent filed a notice of appeal of the court's April 5, 2017, order granting Capital One's motion for sanctions and fees in Integrity Trust v. Capital One. Exhibit A-834. On the same day, Respondent filed a motion to reconsider the sanction

and fee award. Exhibit A-835. On May 19, 2017, Judge Lasnik entered an order denying the reconsideration motion. Exhibit No. A-836.

47. Integrity Trust, the Alexanders and Capital One negotiated a settlement providing for dismissal of the Integrity Trust v. Capital One lawsuit, dismissal of the pending appeal, and satisfaction of the sanction and fee awards against Respondent and the Alexanders. The Alexanders paid the sanction and fee awards, negotiating a reduction of the Alexander 2 to $15,000, and paying the Integrity Trust v. Capital One award in full.

48. The Alexanders vacated the home, turning possession over to Capital One, in 2017. It took Capital One, however, until May of 2018 through a quiet title action to clear out the various recorded documents that had clouded the title to the home. These were the documents that Respondent had described as, "fraudulent" during an early meeting with Mr. Alexander—Respondent was not responsible for the cloud on the title caused by these documents.

49. Mr. Alexander testified that Respondent's representation caused no harm to the Alexanders.

50. At the conclusion of his testimony in response to questions by the Hearing Officer, Mr. Alexander acknowledged that: Chevy Chase Bank made the loan of $3,000,000 to the Alexanders in 2007; the Alexanders used that loan with some of their own money to construct the home; and, the Alexanders made some payments on the loan, but then the loan became delinquent. Respondent confirmed that the Alexanders' objective in the various state and federal civil proceedings, and in bankruptcy court, was to challenge the right of Capital One to foreclose the note and deed of trust on the Alexander home.

EXHIBIT B

ARNETT/MOREHOUSE GRIEVANCE FINDINGS OF FACT

1. In 2007 Autumn and Brent Arnett, and Daniel Morehouse, borrowed $370,000 from SBMC Mortgage in order to buy a home in Milton, Pierce County, Washington, signing a promissory note secured by a deed of trust on the home. Mortgage Electronic Registration System ("MERS") was the designated beneficiary on the deed of trust. Daniel's wife Jodean signed the note but not the deed of trust, ultimately quitclaiming any interest in the Home to Daniel. Both couples (the Homeowners[1]) lived in the home.
2. SBMC transferred and gave physical possession of the note to U.S. Bank in 2007. SBMC in July, 2007, by letter advised the Homeowners that it had assigned and transferred the note to U.S. Bank.
3. The Homeowners fell behind on their note payments in July, 2009. Their efforts to negotiate a permanent loan modification were not successful, with U.S. Bank ultimately withdrawing approval for a modification in August, 2012. U.S. Bank appointed Bishop White Marshal & Weibel ("BWMW"), as trustee under the deed of trust in March, 2013. BWMW served a notice of default on the Homeowners in May, 2013. When the Homeowners did not cure the default, BWMW notified them on September 25, 2013, of a pending foreclosure sale to be held on January 24, 2014.
4. The Arnetts attempted to avoid foreclosure by filing for bankruptcy protection with the assistance of lawyer Lakisha Morris. The bankruptcy filing, however, ultimately did not stop the pending foreclosure. When Ms. Morris moved to California, she recommended to the Homeowners that they contact Respondent for further assistance regarding the pending foreclosure.
5. The Homeowners hired, and paid $5,000 to, Respondent to attempt to stop the foreclosure. The payment was to cover filing fees for a lawsuit, hiring a loan investigator, and associated legal fees.

---

[1] Ms. Morehouse, although not one of the record owners of the home, is included as one of the Homeowners considering that she was a signatory on the note, lived in the home, and was an active participant in meetings and discussions with Respondent.

6. On January 22, 2014, Respondent filed a complaint in Pierce County Superior Court against U. S. Bank, MERS, BWMW, and others. The complaint included a challenge to the right or standing of U.S. Bank to foreclose the home, and allegations of violations of Washington's Unfair Business Practices Act (RCW 19.86), Slander of Title, and Fraud. The Homeowners asked for injunctive relief, a declaratory judgment, and quiet title to their home. Exhibit No. A-1503.

7. At the same time that Respondent was representing the Homeowners in the Pierce County lawsuit, Respondent also was representing the Alexanders in the proceedings described Alexander Grievance. Respondent, at the expense of the Homeowners, consulted with and used the services of loan investigator Lori Gileno, a consultant that he also used for the Alexanders. Ms. Gileno did not hold up well when deposed on February, 7, 2014, in Alexander 2, losing any credibility that she might otherwise have had as a live expert. Respondent informed the Homeowners that he could not use Ms. Gileno in court because she did not perform well and turned out to be untrustworthy.

8. The defendants removed the lawsuit from Pierce County Superior Court to the U. S. District Court, Western District of Washington, on April 4, 2017.

9. The defendants filed and joined in motions for summary judgment to dismiss the various claims against the various defendants. Federal judge Barbara Rothstein on October 10, 2014, and without oral argument, issued her Memorandum Decision and Order Granting defendants' motions. Exhibit No. A-1519. There were no disputed material facts. Among other findings and conclusions Judge Rothstein said:

> Plaintiffs present no facts or arguments that would demonstrate that BWMW violated its duty of good faith.
>
> …
>
> … Plaintiffs do not present any evidence or argument regarding how Defendant [BWMW] failed in its duty.
>
> …
>
> … BWMW is entitled to summary judgment as to Plaintiffs; claims that BWMW violated its duty under the Deed of Trust Act.
>
> …
>
> Plaintiffs do not allege, or present evidence, that BWMW has engaged in an unfair or deceptive act or practice with the capacity to deceive a

substantial portion of the public. Accordingly, Plaintiffs' CPA claim fails.

...

Plaintiffs present no evidence that BWMW maliciously published false words with reference to the pending sale or purchase of property, and further do not present evidence that BWMW caused them pecuniary loss or injury by defeating Plaintiffs' title. As such, Plaintiffs' slander of title claim fails.

...

Plaintiffs present no evidence that BWMW knowingly presented a false, material fact from which Plaintiffs suffered damage. Accordingly, Plaintiffs' fraud claim fails.

...

... BWMW makes no claim to ownership of the property at issue. As such, Plaintiffs' quiet title claim fails.

...

... Defendants argue that JoDean Morehouse lacks any interest in the Property. Plaintiffs do not respond to this argument ... Plaintiff JoDean Morehouse has no interest in the Property at issue, and therefore lacks standing. Accordingly, she is dismissed as a plaintiff.

...

... Plaintiffs have presented no evidence that creates a genuine issue of material fact as to USB's possession of the Note.

...

Plaintiffs do not allege or present evidence of an unfair or deceptive act or practice on the part of USB or Freddie Mac.

...

... Plaintiffs have failed to establish the MERS' action had a "causal link" to any injury they have suffered or are likely to suffer, such as foreclosure. ... Plaintiffs therefore cannot establish a causal link between wrongful action by MERS and injury to themselves. As such, Plaintiffs' CPA claim fails as to U.S. Bank Defendants.

...

Plaintiffs present no evidence that U.S. Bank Defendants have maliciously published false words with reference to the pending sale or purchase of the Property. As such, Plaintiffs' slander of title claim fails.

...

> … Plaintiffs have failed to present evidence that U.S. Bank Defendants presented a false, material fact from which Plaintiffs suffered injury. Accordingly, Plaintiffs' fraud claim fails.
>
> …
>
> … the statute of limitations has not run on the Note, and Plaintiffs have no basis on which to quiet title.
>
> …
>
> Because Plaintiffs have failed to support any of their claims against U.S. Bank Defendants, the Courts (sic) GRANTS Defendants … Motion for Summary Judgment.

10. Respondent with the Homeowners' approval appealed the dismissals to the Ninth Circuit Court of Appeals. That court dismissed the appeal for lack of prosecution on April 10, 2015, for failure of Respondent to comply with the court's November 10, 2014, order to file the appellants' opening brief by February 17, 2015. Exhibit No. A-1523.

11. Although the loan investigator's report turned out to have no value, although the Homeowners did not prevail on the merits of the lawsuit, and although Respondent did not perfect the appeal that he filed, the Homeowners nevertheless testified that they were satisfied with the services that they received from Respondent for the $5,000 payment—the pending foreclosure did not proceed while the lawsuit and appeal were pending. In their words, "He had done an all right job," and managed to stop the sale of the house. Those services were not the subject of the grievance that the Homeowners later filed with the Association.

12. The Homeowners entered into a loan modification with U. S. Bank after the appeal was dismissed, enabling them to be able to keep the home by making payments to the bank. They were not content, however, with the amount or terms of the loan. They were uncomfortable with the loan modification documents U.S. Bank sent to them in early November, 2015.

13. The Homeowners continued to consult with Respondent in an effort to obtain further relief from their loan obligation to U. S. Bank. One objective was to try to get the loan balance, "knocked down." Respondent recommended that they consider pursuing rescission of the loan by issuing a Notice of Rescission under the federal Truth in Lending Act (TILA), and then filing suit to enforce any rescission rights in the event issuing the Notice turned out

not to be successful, with the objective of having some leverage to negotiate with U.S. Bank a lower loan balance or other concessions.

14. The Homeowners entered into a new agreement with Respondent on November 5, 2015. On that day the Morehouses on behalf of the Homeowners gave Respondent a check for $2,500, and he prepared, signed and gave to them a hand-written receipt (Exhibit No. A-1702) which provides:

> Received $2,500.00 by way of retainer for preparation of Notice of Rescission and then preparation of summons and complaint to enforce TILA…rescission statutes. The preliminary issue shall include whether or not the 3-year statute for rescission is a "statute of repose" or "statute of limitations."
>
> (Receipt)

15. The Homeowners and Respondent agreed that he was to be provided the legal services described in the Receipt for a fixed fee of $2,500. The Receipt did not comply with the RPC 1.5(f)(2) requirements for a flat fee legal services agreement, i.e. it did not contain the substance of the sample text set forth in the rule. Respondent deposited the $2,500 in his general account rather than in his trust account.

16. Between November, 2015, and February, 2016, the Homeowners became very frustrated with their efforts to obtain information from Respondent about the status of the work that he had agreed to provide to them, and about their options. Among other complaints, the Homeowners said that Respondent did not return calls promptly or at all, did not participate in previously scheduled conferences, provided excuses such as needing further investigation, did not report on the results of any research that he said he had to do, and on occasion had to be reminded exactly what he had agreed to do for them.

17. The Homeowners felt that Respondent had done nothing for them during the months that had passed since they gave him the $2,500 deposit.

18. Respondent did not prepare a TILA Notice of Rescission, or file a TILA rescission complaint, for the Homeowners, however did recommend and encourage them to pursue modification of their loan.

19. Respondent had concluded that pursuing a TILA rescission at the same time that the Homeowners were pursuing a modification of their loan could end up not working in the

best interests of the Homeowners, i.e, if they obtained a favorable modification, it would not be in their best interests to try to have it rescinded.

20. Ultimately in March, 2016, the Homeowners asked Respondent for a refund of the $2,500 deposit. Respondent said that he may have to charge for some research, and would look into it and get back to them. Respondent informed the Homeowners at the end of the month that he had spent the deposit but was trying to raise the money and would need about five days. The Homeowners did not want to wait, informing Respondent that they needed the money for ongoing living expenses.

21. Not satisfied with the Respondent's lack of a satisfactory response to their requests, the Homeowners filed their grievance with the Bar Association on April 7, 2016.

22. Respondent after the grievance was filed said that he would have the refund deposited to the Morehouse bank account if Ms. Morehouse would give him the account number. This communication was oral, i.e., not contained in an email or letter. Ms. Morehouse gave Respondent the account number, and later received notice that a $2,500 deposit had been made to the account on April 13, 2016.

23. The Homeowners did express some understanding and sympathy when Respondent's attention that spring was focused on serious family issues for about a week.

24. Ms. Morehouse learned through her bank that the deposit to the account had been made by someone in California, i.e. not by Respondent. Respondent had given the Morehouse account number to another of Respondent's clients who owed fees to Respondent. That client made the deposit to the Morehouse account. Ms. Morehouse testified, and the Hearing Officer finds, that Respondent neither asked her for permission to provide the Morehouse account number to a third party, nor advised her that it would be someone other than Respondent who would be making the deposit.

25. The Morehouses were very upset to learn that Respondent had provided their bank account number to a third party, in particular concerned that their account might be compromised. They therefore went through the process of closing that account and opening a new account with their bank. Their original account did not end up being compromised, so they did not suffer any financial loss as a result of Respondent providing their account number to a third party.

26. The Homeowners ultimately negotiated a loan modification with U. S. Bank, and resumed making regular loan payments after the modification was completed. They continue to live in their home. Respondent was not involved with this modification.

27. The Homeowners allege that they were harmed during the time that they were consulting with Respondent because of the uncertainty regarding the status of the loan, including the possibility of foreclosure, which uncertainty was not removed until the loan was modified, and loan payments resumed, in 2016. They also acknowledged that they had suffered similar stress from the time that they quit making payments on the loan in 2009, several years before they had any contact with Respondent.

28. Respondent had no responsibility for the delinquent status of the Homeowners' loan obligation to U. S. Bank.

EXHIBIT 2

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re **J. J. SANDLIN,** Lawyer (Bar No. 7392).	Proceeding No. 17#00084 FORMAL COMPLAINT

Under Rule 10.3 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association charges the above-named lawyer with acts of misconduct under the Washington Supreme Court's Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent J. J. Sandlin was admitted to the practice of law in the State of Washington on May 13, 1977.

FACTS REGARDING COUNTS 1, 2, and 3

2. Jose Guzman, then represented by another lawyer, sued the Washington State Department of Transportation (DOT) for ethnicity-based employment discrimination in Yakima

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County Superior Court under case no. 08-2-03805-9, filed September 29, 2008.

3. Mr. Guzman's lawyer withdrew from the case effective January 7, 2010.

4. DOT moved to dismiss Mr. Guzman's case for failure to prosecute on December 29, 2010.

5. Mr. Guzman hired Mr. Sandlin to represent him in the matter on January 9, 2011.

6. Mr. Guzman paid Mr. Sandlin $1,500.

7. Mr. Sandlin filed a Note for Trial on January 13, 2011.

8. DOT struck its motion to dismiss after the note for trial was filed.

9. On February 25, 2013, the Yakima County Superior Court Clerk's Office filed a notice of dismissal of Mr. Guzman's case for want of prosecution because there had been no activity of record on the matter for 12 months.

10. Mr. Sandlin responded on March 18, 2013, and objected to dismissal.

11. Mr. Guzman's case was not dismissed in 2013.

12. On April 24, 2014, the Yakima County Superior Court Clerk's Office filed another notice of dismissal of Mr. Guzman's case for want of prosecution because there was no activity of record on the matter after Mr. Sandlin filed his March 2013 objection.

13. The Clerk's April 24, 2014 notice of dismissal gave counsel 30 days to respond before the case would be dismissed.

14. The court sent Mr. Sandlin notice of the dismissal.

15. Mr. Sandlin received the notice of dismissal.

16. Mr. Sandlin did not respond to the Clerk's April 24, 2014 notice of dismissal.

17. On June 4, 2014, the court dismissed Mr. Guzman's case without prejudice.

18. Despite repeated requests for information from Mr. Guzman and his spouse

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throughout the rest of 2014, Mr. Sandlin did not promptly advise them of the dismissal of Mr. Guzman's case.

19. The Guzmans eventually learned of the dismissal in 2015 and began asking Mr. Sandlin about "reopening" the case.

20. Mr. Sandlin told the Guzmans that he and his staff were working on a motion to reopen.

21. Mr. Sandlin never filed anything on Mr. Guzman's behalf.

22. On February 24, 2016, Mr. Sandlin told the Guzmans that the motion might not work, and if not he would refund their money.

23. Mr. Sandlin did not provide a refund to Mr. Guzman.

24. Mr. Guzman filed a grievance against Mr. Sandlin on August 29, 2016.

25. In October 2016, Mr. Sandlin contacted the Attorney General's Office, which represented DOT, and asked if that office would agree to reopen Mr. Guzman's case.

26. The Attorney General's Office did not agree.

COUNT 1

27. By failing to act with reasonable diligence and promptness in pursuing Mr. Guzman's case, Mr. Sandlin violated RPC 1.3.

COUNT 2

28. By failing to keep Mr. Guzman informed about the status of his matter and/or failing to respond to his reasonable requests for information, Mr. Sandlin violated RPC 1.4

COUNT 3

29. By charging $1,500 for preparing a simple Notice of Trial Setting and/or by retaining Mr. Guzman's entire fee, Mr. Sandlin charged and/or retained an unreasonable fee in

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violation of RPC 1.5(a) and/or RPC 1.16(d).

THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include dismissal, disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

Dated this 6th day of September 2018.

M Craig Bray, Bar No. 20821
Disciplinary Counsel

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EXHIBIT B

EXHIBIT "B" (to resignation in lieu letter)

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BEFORE THE DISCIPLINARY BOARD
OF THE WASHINGTON STATE BAR ASSOCIATION

In re.	)	Proceeding No. 16#00084
J.J. SANDLIN	)	Respondent Sandlin's OPENING BRIEF for Board of Review Hearing
Lawyer (WSBA #7392)	)	

I. BACKGROUND

This is a disciplinary proceeding against Attorney J.J. Sandlin, WSBA 7392, based upon his representation of clients in two separate homeowner litigation matters. Ex. 501, Ex. A-302. Mr. Gary Alexander and Ms. Diane Alexander faced

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a nonjudicial foreclosure action and unlawful detainer action, and two families living together ("Arnetts and Morehouses," or "Morehouse"), who were facing nonjudicial foreclosure and unsuccessful loan modification. Respondent prosecuted actions in federal and state courts for both sets of clients. Ex. 501, Ex. A-1503. Litigation resulted in a successful loan modification for Morehouse and long-term possession of the distressed house for Alexander, despite the failures of all attempts to sell the Alexander home to realize a profit and pay off the distressed loan.

WSBA ostensibly commenced an investigation of the Alexander case based upon Division I's critical remarks about Respondent's failure to use the Clerk's Index to refer to the superior court record (although the appellate court decided on the merits of the case, based upon the Respondent's reconstruction of the trial court record). Ex. A-405, Ex. A-406. Respondent explained he could not find the Clerk's Index to timely file his opening brief, and that usually the appellate court clerk bounces back such a brief for correction, which did not occur this time. The intense participation of Capital One's litigator in the prosecution of the charges against Respondent belies the WSBA claims that this was an ethics complaint filed *sui generis* at the WSBA staff's behest. It appears to be a retaliation for the

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Respondent's aggressive litigation against Capital One for the Alexanders. The record clearly proves the Alexanders were pleased with Respondent's representation and bitterly opposed any ethical charges against him. RP 519:24-25; 520:1-8.

The Morehouse grievance occurred because the clients hoped for a free house. They felt the loan documents were falsified and that they should not have to pay off the loan they had obtained. Respondent advised them consistently that the litigation to prevent nonjudicial foreclosure would probably be ineffective, and that the best course of action was to re-apply for a loan modification, which they did do. Then the *Jesinoski*[1] opinion was published, and Justice Antonin Scalia's analysis of notice of rescission under TILA offered a potential opportunity to enforce statutory rescission, if the three-year statute was a statute of limitations and not a statute of repose. *But see* Appendix "B." Further research convinced Respondent that the loan modification should be obtained, and statutory rescission remedies should be abandoned. Appendix "B." Contra to the Hearing Officer's findings, Respondent did review the final loan modification offer and advised

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[1] *Jesinoski v. Countrywide Home Loans, Inc.,* 135 S. Ct. 790, 792 (2015).

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Zillah, Washington 98953

Morehouse to accept the loan modification, which they did. RP 123:4-23. Arnett and Morehouse have saved their home from foreclosure, and Respondent's efforts in pushing back against the mortgagee's foreclosure actions materially supported the lender's offer of a successful loan modification. RP 123:13-20. Even though Respondent had expended more time than necessary to justify payment of the $2500.00, Morehouse demanded repayment. The $2500.00 flat fee retainer was paid for the cost of Respondent's research and due diligence for determining whether or not remedies for statutory rescission under TILA were available. In the spirit of conciliation, Respondent advised Morehouse could have a cashier's check deposited in the Morehouse checking account, if Respondent was allowed to give the bank account number to one of his California clients. Despite Jo Morehouse denying this procedure for immediate payment at the hearing, this was the truth. RP 454:6-17. It was the only way Respondent could immediately repay Morehouse for the flat fee retainer. However, there is no available written communication of this procedure for payment[2], and the Respondent concedes he was negligent in failing to provide documentation for this approach. Respondent never intended to violate any confidentiality rules. Jo Morehouse suffered no bank defalcation.

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[2] The stale text messages were unavailable (JJS).

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However, Jo Morehouse closed her account and opened another checking account. Respondent did not learn of this issue until after WSBA had opened a grievance file and informed Respondent of the claim Morehouse now asserts. Respondent apologized to Jo Morehouse at the discipline hearing, and she accepted his apology. Aside from the inconvenience of opening a new bank account, there was no harm to the client. Ironically, Respondent had earned the $2500.00 flat fee retainer, and was not obliged to repay it to Morehouse. Repayment was Respondent's attempt to conciliate the Morehouse group.

The above overview summarizes the basis for the WSBA seeking disbarment, or alternatively suspension for three years. The Respondent agreed that he should have done better at documenting his representation, and suggested reprimand was a fair and reasonable resolution of the ethics charges. The Hearing Officer balanced the parties' arguments and recommended a maximum of eighteen months' suspension.

Now, the Respondent respectfully requests the Review Board adjust the Hearing Officer's discipline recommendation to reflect the Respondent's good faith advocacy for his clients, the lack of material harm to the clients for the Respondent's deficient documentation, the significant economic sanctions already

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imposed upon the Respondent by both state superior court and appellate court forums, and the imposition of harsh federal court sanctions[3]. Respondent respectfully suggests that he has been thoroughly disciplined, both punitively and for remediation (in the Alexander matters), and that further discipline runs afoul of the Double Jeopardy prohibition in cases affecting fundamental Constitutional rights, as are at issue here.

II. FACTS

Morehouse grievance

Autumn Arnett confirmed that Respondent had reviewed the Morehouse loan modification offer from lender and recommended acceptance of the loan modification, in lieu of any further litigation. March 27, 2018 Report of Proceedings, Volume I, at p. 32 (lines 14-25) and p. 33 (lines 1-21)[4]. The

---

[3] In the Integrity Trust (Alexander III) federal action Respondent asked the federal judge to note that the action was never commenced, because there had been no original service of process effected upon any defendant, and there was no jurisdiction to impose sanctions. FRCP 4(m). The trial judge found MERS should be dismissed because there had been no perfection of original service of process, and therefore the court lacked jurisdiction. The same facts existed for Capital One, since no original service of process had been perfected, and the same failure of jurisdiction existed, but the trial court ignored this. The lack of an actual lawsuit apparently was irrelevant to the federal trial judge.

[4] Citation henceforth shall be formatted as RP 32:14-25; 33:1-21.

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Zillah, Washington 98953

Morehouse group believed Respondent did an "all right job" in litigation against the lender, U.S. Bank, N.A. RP 43:21-25; 44:1-20. Jo Morehouse was the designated spokesperson for the Morehouse group. RP 48:3-17. The Morehouse litigation was eventually dismissed and the lender offered a loan modification, which was reviewed, approved, and recommended by Respondent. RP 54:17-24.

Before Respondent commenced representation of the Morehouse group, their first several loan modification applications were rejected by the lender. RP 62:2-13. Before the final loan modification was accepted by Morehouse group, Respondent reviewed it and explained it to the Morehouse group, and recommended execution of the final loan modification offer. RP 63:4-25; 64:4-19.

Jo Morehouse explained that they wanted a loan modification, so they had purposefully ceased making their house payments in year 2010. RP 82:17-25; 83:1-6. Jo Morehouse agreed that Respondent assisted Morehouse group by recommending they accept the final loan modification offer, while he researched the possibility of TILA statutory rescission. RP 90:19-25.

Jo Morehouse understood the retainer fee for investigation of a TILA statutory rescission was to be a flat fee, and no other fee would be required. Jo Morehouse described in her words the purpose of the retainer, and her description

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was the definition of a flat fee. RP 97:20-25; 98:1-11. Respondent apologized for the emotional stress the Morehouse group experienced because of the foreclosure litigation and stress involved with the loan modification decision. RP 101:5-7. However, the Morehouse group suffered years of stress, from 2010 through the acceptance of their successful loan modification, due to many factors not involving Respondent. RP 108:10-16.

Jo Morehouse, as the spokesperson for the Morehouse group, agreed that Respondent was actively involved in the successful loan modification efforts by Respondent. RP 123:4-23. The crux of the effective representation was summarized:

> Q "And that's after we blunted the attack against your house by U.S. Bank. The trustee's sales was (sic) dropped. And we got you some time, and now we're in the loan mod. And they're seriously looking at the loan mod finally. We got their attention. So they're not just going to pull the rug out from under you and go get a trustee's sale while you were applying."
> A "Absolutely." RP 123:13-20.

WSBA sought a conclusion that Respondent's litigation efforts for the Morehouse group were frivolous, but the deed of trust ("DOT") trustee's attorney opined otherwise:

> A "I would say not really. These arguments were being made quite a bit at this time, and we saw -- We saw cases

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Zillah, Washington 98953

similar to this.
I would say probably after this time period it became a little bit more well settled as to the validity of some of the arguments in this case; but at the time this case was going on, securitization claims, which were part of the allegations in the Complaint, that the loan had been securitized, and that affected the rights of the bank under the terms, those claims were not fully fleshed out in the courts at this time.
So I wouldn't say that they were frivolous then. It would have been a tough hurdle." RP 151:8-20 (emphasis added).

Notably, the Morehouse bank litigation pleadings were similar in nature and timing with the Alexander pleadings. However, in Alexander the Respondent was castigated by both state and federal courts, being harshly sanctioned with severe economic sanctions (*over $160,000.00*) that went much further than remediation, and were substantially punitive by operation. Neither the state nor the federal court contemplated remediation or punitive sanctions as a result of the Respondent's aggressive litigation approach in the Morehouse lawsuit. RP 153:21-25; 154:1-3.

WSBA's witness, the Morehouse DOT trustee's legal counsel, agreed with Respondent that after Judge Rothstein's SJM decision, that the likelihood of a successful federal court appeal to the Ninth Circuit was highly unlikely. RP 168:15-18. The appeal was abandoned.

WSBA initiated grievance (Alexander)

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WSBA called Attorney Manish Borde, a bankruptcy attorney, to establish that Respondent caused the Alexanders to file a bankruptcy action to delay Capital One's attempts to gain possession of the contested real property. However, Attorney Borde did not prove the bankruptcy filing was frivolous. RP 197:20-25; 198:1-25; 199:1-12. "…**Judge Dore entered the order, that there was some basis for the Chapter 7**." RP 199:10-12.

WSBA called Attorney John Knox, who represented Capital One and MERS, in state and federal court litigation involving Alexander, *pro se*, and subsequently represented by Respondent, after the Alexander *pro se* lawsuit was abandoned. RP 207:15-23. While *pro se*, the Alexanders had filed a Clarence Roland-drafted lawsuit against Capital One and MERS, but Alexanders failed to seek injunctive relief. This allowed the DOT trustee's sale of the Alexander contested property to be consummated on November 30, 2012. Capital One was a successful credit bidder[5] at approximately $2.5 million. RP 217:3-25; 218:1-14. Capital One's bankruptcy lawyers successfully moved to lift the BK automatic stay in order to proceed with its SJM against Alexander's *pro se* lawsuit. RP 225:5-16.

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[5] A credit bidder is one who bids its debt rather than offering cash. Only a legitimate debt holder can submit a credit bid at a DOT trustee's sale.

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Respondent filed a CR 41 notice of dismissal of Alexander's *pro se* lawsuit against Capital One, and on July 30, 2013 filed a lawsuit for Alexanders that eliminated several troublesome false claims Respondent had found in the *pro se* lawsuit. (The Alexanders' *pro se* lawsuit had been prepared by a shady character, Clarence Roland, and had included inappropriate claims based upon Clarence Roland's unlawful documentation. Respondent properly advised Alexanders of these matters and proceeded to repair the damage done by the charlatan, Clarence Roland. RP 217:19-25; 218:1-4; RP 226:14-25.)

Capital One moved for summary judgment in the second Alexander lawsuit, (Respondent's initial complaint filed in King County Superior Court) and it was granted. Concurrently, Respondent's CR 56(f) motion for continuance, due to challenges against the Alexanders' expert witnesses, was denied. RP 248:6-25; 249:1-9. The Alexanders' experts were not considered by the trial judge. RP 249:2-9.

The trial judge sanctioned Respondent for filing a frivolous lawsuit, in the sum of approximately $80,000.00, pursuant to CR 11. RP 252:24-25; 253:1-5. Respondent filed notices of appeal. RP 254:2-8.

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Zillah, Washington 98953

The Division I appeal was unsuccessful, and another sanction award against Respondent was entered in the sum of approximately $30,000.00. Respondent's sanctions have been satisfied. RP 259:6-24.

Capital One then proceeded to seek a writ of restitution through an unlawful detainer action. Attorney Gregory Morphew testified for WSBA. Capital One erroneously filed two unlawful detainer actions. RP 335:25; 336:1-25; 337:1-15. Capital One's motion for writ of restitution was stayed pending resolution of a bankruptcy action filed by Integrity Trust, the possessor of the contested property. RP 346:8-25; 347:1-9. After the bankruptcy action was dismissed, for over one year Capital One deferred seeking a writ of restitution, despite having a clear pathway to immediately taking possession of the contested property. Respondent's client, Integrity Trust, filed an unsuccessful federal action seeking to prevent the loss of possession of the contested real property. RP 349:19-25; 350:1-4. Capital One elected to hold in abeyance any further attempts to take possession of the contested property, ostensibly pending resolution of the federal court Integrity Trust lawsuit. The superior court dismissed the unlawful detainer action for failure to prosecute. RP 350:21-25; 351:1-16.

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Zillah, Washington 98953

The federal court Integrity Trust lawsuit (referred to as "Alexander III" by WSBA) was the second major attempt by Respondent to obtain an evidentiary hearing on the claims asserted by Integrity Trust and Alexanders. It was met with the same fate before Judge Lasnik as was handed to Alexanders and Respondent in King County Superior Court. The briefing is of record and is self-explanatory. Pursuant to CR 11 Respondent was sanctioned in the amount of $55,693.02, by order dated April 25, 2017. All sanctions and fees have been satisfied, and Respondent owes nothing further.

Eventually Capital One reactivated the unlawful detainer action, and successfully obtained a writ of restitution that required Integrity Trust to surrender possession of the contested property. Capital One took possession uneventfully. RP 353:11-25; 354:1-5.

Respondent provided character witness evidence

Mr. Nathan Gaub, a Yakima businessman, testified in favor of Respondent's character, describing Respondent as honest and truthful. RP 413:13-25; 414:1-25; 415:1-7. Mr. Gaub provided concrete examples of why he believes Respondent is a person of integrity and truthfulness, citing personal injury case management and civil litigation. RP 416:15-25; 417:1-25; 418:1-13.

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Zillah, Washington 98953

Attorney William Pickett, currently the WSBA president, testified in favor of Respondent's character, having known the Respondent for the last twenty years. RP 444:8-14. Attorney Pickett has observed Respondent's conduct as a colleague, as co-counsel, and in a social environment at Respondent's home in the Naches Valley, sufficient to testify about the Respondent's character. RP 445:3-25; 446:1-13. Attorney Pickett testified:

A(*by Pickett*):"…you're kind of a larger than life figure. In Yakima everybody knows who J.J. is. That you've been doing throughout your career a lot of litigation that's been in my estimation highly contested and contentious. You're familiar with that arena. And that I have never experienced or come across anything that you have done in any of my dealings with you or that have been beyond or of -- subject to character."
Q (*by Sandlin*): "Okay. From your personal knowledge of me and my professional practice and my personal life, have you had an opportunity to draw a conclusion as to whether or not I respect the rule of law?"
A(*by Pickett*): "I would say yes. Sure. I could -- Yeah, I think you respect the rule of law. Yes. I've not had any -- I've not had any encounter with you where you've shown me anything other than that."
Q "Likewise, have you observed whether or not I have ever pushed the boundaries of the law for seeking creative new remedies for clients?"
A "You're a boundary pusher. Yes, you are."
Q "What does that mean to you?"
A "What I mean by that is you're not afraid to take something, a case on that's controversial and push it and push it hard. Yeah, that's what it means. Does that clarify?"
Q "It does, thank you."
A "Okay. And that doesn't make you the most popular person in town."
Q "With banks and law enforcement?"

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Zillah, Washington 98953

A "I suspect that to be the truth, yeah. Correct."
Q "Have you ever known me to be untruthful?"
A "Nope. No."
Q "Have you ever known me to attempt to pervert the rule of law?"
A "No, I have not."
Q "But that's not to say that I have pushed the boundary of the rule of law to see if there are creative remedies for a client within the bounds of the law?"
A "I think everybody in town would say you are creative and that you're a hard charger, and that you'll push the boundary, yes." RP 446:17-25; 447:1-25; 448:1-8.

Gary Alexander testified on behalf of Respondent

Mr. Alexander sought representation from the Respondent, because he had two distressed properties on Lake Sammamish and approximately twenty-four distressed properties in Benton County, Washington. RP 515:4-17. He had been a mortgage broker with a monthly income varying between twenty and thirty thousand dollars, net before taxes. RP 515:20-25; 516:1-11. The distressed house involved in the state and federal litigation in this instance was subject to an unlawful detainer action when Respondent first began working for the Alexanders. Respondent's client was "very pleased" with the Respondent's representation. RP 519:24-25; 520:1-8.

The Alexanders invested $1,000,000.00 of their own cash into the construction of the contested property, then borrowed $3,000,000.00, ostensibly[6]

[6] Credible evidence suggests the Chevy Chase Bank loan was actually a table-funded loan, which according to TILA is per se illegal, where the actual funder

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Zillah, Washington 98953

from Chevy Chase Bank. RP 521:4-12. Mr. Alexander had known the Chevy Chase Bank employee for years, and Mr. Alexander negotiated the bank loan directly with his Chevy Chase Bank contact. RP 521:13-25.

Mr. Alexander had worked in the mortgage industry for eighteen years, so he knew the protocol for jumbo loans such as the one he obtained. RP 523:4-12. His loan could not be funded by Chevy Chase Bank, and had to be sold to an investor, unknown to the Alexanders. RP 523:13-25; 524:1-5.

Mr. Alexander confirmed the Respondent identified Clarence Roland's fraudulent mortgage loan documents that had to be disavowed by Alexander, and Alexander complied with Respondent's advice. RP 528:6-25; 529:1-4.

Gary Alexander sought Chapter 11 bankruptcy ("BK") protection to reorganize his debts. RP 529:20-25. The BK was converted to a Chapter 7, and the Alexanders discharged over $500,000.00 of bad debt. RP 531:20-25; 532:1-6.

After Respondent dismissed "Alexander I" because of Clarence Roland's fraudulent claims, Respondent prepared "Alexander II" for filing in King County

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remains undisclosed. To date, no actual funder has ever been identified in the Alexander litigation. No financial trail (e.g. bank ledger transfers, wire transfers, cashier's check, etc.) was ever proved by Capital One, merely hearsay documentation of unreliable origin. Respondent in good faith prosecuted the Alexanders' defenses.

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Zillah, Washington 98953

Superior Court. RP 533:8-17. Mr. Alexander testified he knew that when Capital One claimed it had the original note and deed of trust ("DOT"), that this was impossible. RP 533:18-25; 534-536. Alexander testified with specificity about the signatures and their falsity. This was powerful, credible testimony that Respondent relied upon during his entire representation of the Alexanders (NB: *Respondent also saw the smudged note*):

> Q (*by Sandlin*): "Okay. And did you have any factual basis to determine that the note that Capital One had was not an original note?"
> A (*by Alexander*): "Sure did."
> Q "What was that fact?"
> A "Well, the first hint was when they showed me the note it was -- the ink was in black. I signed all notes in blue. Anybody in the industry signs everything in blue. Most escrow companies won't even have black ink pens in the business because with photocopies it's so easy to see if it's the original or a photocopy if the ink is blue -- or not black, but blue became the industry standard.
> So no one signs notes in black ink. This note they presented had black ink, and the signature was smudged. It was an obvious fake." RP 534:9-24.

Respondent contends he did not intentionally violate the ethics rules in these two grievances, and respectfully requests this Board of Review ameliorate the draconian punishment requested by the WSBA and the actual discipline recommended by the Hearing Officer (Respondent acknowledges the Hearing Officer rejected the WSBA's requested discipline, but the recommended eighteen-

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month suspension remains a harsh punishment). Respondent requests this Board of Review issue an order reprimanding Respondent for his negligent failure to observe ethics rules.

Points and Authorities

The ABA "Standards for Imposing Lawyer Sanctions" as amended February 1992 is provided in Appendix "A" to this Opening Brief. Those standards offer an excellent guideline for this reviewing authority to consider any appropriate discipline. An analysis suggests reprimand is the appropriate discipline in this instance. Consider the following ABA mitigating circumstances:

(a) absence of a prior disciplinary record; Respondent received two prior reprimands that were distant in time and inapposite on the facts: one was for incorrectly receiving a loan from a client without documentation of the actually proved advice given to consult alternative counsel—rejected by the client--and then the loan was timely repaid; the other was Respondent's refusal to file clients' perjurious declaration in federal bankruptcy court; however, Respondent left a voice mail to clients but failed to request additional time to file the clients' declaration with alternate counsel. Both cases were settled without hearing. Also, see 12 F.3d 861 (9th CCA, 1993) where the Washington State Supreme Court ruled 9-0 in favor of Respondent and refused to impose reciprocal punishment. The dissent, commencing at page 870, was ten years later justified when the federal court reporter filed an action (represented by the Spellman law firm) against the federal judge for the same claims asserted by Respondent.

(b) absence of a dishonest or selfish motive; The record is clear that Respondent is not dishonest, nor has he illustrated a selfish motive in representing these homeowners. Alexander explained why his sanction was not appealed--to

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Zillah, Washington 98953

minimize exposure to additional sanctions. The tactic worked. Most of the work for these homeowners was *pro bono*, and there was no personal benefit sought by Respondent for his aggressive advocacy for these homeowners. The Hearing Officer agreed.

(c) personal or emotional problems; For the past several years the Respondent has worked to harmonize his solo practice with the demands of being a single parent of a teenage daughter who has been suicidal and in mental health therapy. The Respondent suffered a heart attack over three years ago, and for several years prior to these events he has been suffering from ischemic heart disease and congestive heart failure ("CHF"). He has been awarded 100% disability by the Veterans' Administration, and for several years he has been working to close his office. He has almost accomplished that task, with only a handful of cases remaining, including one case before Division III. These personal problems and emotional problems have been a challenge that previously distracted the Respondent, although he has aggressively received medical treatment for both his daughter and himself, and can now report he has no distractions due to his daughter's mental health stability, and the Respondent's understanding concerning CHF as it relates to law practice.

(d) timely good faith effort to make restitution or to rectify consequences of misconduct; Even though not required, Respondent repaid the Morehouse group the $2500.00 retainer, which was nonrefundable. This was Respondent's attempt to conciliate with the Morehouse group. The Respondent has accomplished payments of all sanctions in the Alexander matters—none are outstanding—and the Alexanders are protected from any retaliation by Capital One, N.A. The Respondent has diligently worked to ensure the clients have been protected from any bank action deleterious to the clients' best interests. The WSBA decision to discipline Respondent for his aggressive advocacy for Alexanders gives rise to multiple punishments for the same misconduct, for which Respondent has already served his discipline. Respondent respectfully suggests he is being subjected to Double Jeopardy in the Alexander matters.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; The Respondent has always welcomed input from the WSBA as to how to improve the Sandlin Law Firm's professionalism, and counts this

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P.O. Box 228

Zillah, Washington 98953

unfortunate proceeding as a positive aid in improving the Respondent's approach to the successful practice of law.

(f) inexperience in the practice of law; The Respondent has 41 years of law practice, almost all of it as a solo practitioner. The home mortgage foreclosure defense practice was something new and in a very difficult area of the law when representing homeowners. The Respondent is aware this area of trial practice is continuously changing. Justice Tom Chambers invited more growth in this area of the law, as per his footnote 11 in *Klem v. Washington Mutual Bank, et al.,* 176 Wn.2d 771, 295 P.3d 1179 (2013). Thus, even though the Respondent has 41 years of trial practice, this area of the law is fraught with trapfalls for the homeowners' counsel, and until there is legislative action to address existing due process of law issues in RCW 61.24 there shall be troubles galore.

(g) character or reputation; There was no issue concerning the Respondent's reputation, as evidenced by the forthright, credible testimony of the WSBA president, Attorney William Pickett, and one of the Respondent's clients, Mr. Nathan Gaub. The Respondent is of high moral character, illustrating honesty and integrity, and has established a professional reputation as being a strong litigator fully competent to successfully assist his clients, and to improve the legal profession's reputation.

(h) physical disability; The Respondent usually walks with a cane, is gravely obese, and suffers from ischemic heart disease and congestive heart failure, among other health issues, such as PTSD, cancer, sleep apnea, partial deafness, chronic depression, partial herniation of L3/L4 with concurrent chronic pain (recently had a cancerous tumor surgically removed and is pending further surgery for cancerous lesions; prostate cancer is also being considered for treatment). He is rated 100% disabled according to the Veterans Administration, and has agreed with his cardiologists that he must close his law practice. His physical disabilities demand he discontinue high stress litigation such as home mortgage foreclosure actions, and but for a case pending before Division III regarding the application of the 6-year statute of limitations and its enforcement against DOTs where the loan balance has been accelerated, there are no more home mortgage foreclosure cases in the

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Respondent's dwindling practice. Respondent is 73 years of age, and looks forward to the closure of his law practice—but not with the tragic, Carthaginian imposition of suspension or disbarment.

(i) mental disability or chemical dependency including alcoholism or drug abuse when:

(1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability; The mental health issues of Respondent's teenage daughter and his medical disability issues did cause him to be distracted during the time of these Arnett and Alexander cases.

(2) the chemical dependency or mental disability caused the misconduct; The mental health issues of Respondent's teenage daughter and Respondent's medical disability issues did cause him to be distracted during the time of these Arnett and Alexander cases, which contributed to Respondent's deficiencies in these cases.

(3) the Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; There have been no further occurrences of home mortgage foreclosure problems in Respondent's representation, and he has illustrated his competence before the Hearing Officer and before the Washington State Supreme Court in the recent wrongful death case of *Reyes, et al. v. Yakima Health District, et ux.,* Washington State Supreme Court No. 94679-5 dated June 21, 2018 (reconsideration denied).

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely; Respondent shall continue to close his files and move pending cases to other law firms, and refuses to accept any further home mortgage foreclosure cases. The Arnett retainer discrepancy was due to making a house call in Western Washington, not having the Respondent's fee agreement template available, and negligence in fully writing down the terms of the retainer. This one-time occurrence shall never be repeated. Further, the Respondent negligently took an agreed upon short-cut to reimburse the Arnetts their flat fee retainer, because they objected to a 20-day delay in having a California check clearing for availability of

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Zillah, Washington 98953

funds. This issue was subject to contested facts, but the Respondent accepts responsibility for his negligence in failing to clearly document the agreed upon procedure to his client. There is no likelihood there shall be any recurrence of the misconduct that caused these grievances to occur. Respondent never intentionally violated ethics rules here.

(j) delay in disciplinary proceedings; The Respondent did not cause delay in these proceedings, although the testimony of Alexander was delayed due to Alexander's unavailability. Respondent's aggressive advocacy caused consternation for trial judges, and their opinions illustrated their dislike of Respondent's advocacy. But (1) Respondent's clients were zealously served, (2) this area of the law is under constant change, and (3) the Capital One N.A. aggressive defenses protected the bank from the Alexanders' actions. Please note U.S. District Court Judge Lasnik ruled that he had no subject matter jurisdiction over defendant MERS, but ignored this failure of subject matter jurisdiction concerning Capital One. Also, Judge Lasnik erroneously ruled that there was privity between the Alexander sons' trust and the Alexanders, thus "claims preclusion" applied to the federal court Integrity Trust litigation, when at most it should have been a *res judicata* decision (momentarily setting aside the failure of subject matter jurisdiction). None of the substantive issues of the Integrity Trust federal action were considered. The interests of the public at large as well as the growth of the law are not well-served by this disciplinary action. Please do not misunderstand: Respondent readily agrees that this matter must be resolved in a fair-minded manner, and urges this Review Board to fashion discipline that is not draconian. In 41 years of aggressive advocacy in trial practice Respondent has never been suspended by the WSBA. See, also, Appendix "B," where another WSBA member illustrated a history of repetitive CR 11 sanctions far more egregious than Respondent's aggressive advocacy in the Alexander litigation, where there was no apparent WSBA discipline recorded.

(k) imposition of other penalties or sanctions; The Respondent suggests there are alternative means of sanctions that protect the public and further the best interests of the reputation of the bar association and its members. For example, (a) the Respondent could be prohibited from participating in any further home mortgage foreclosure litigation; (b) the Respondent could engage in enhanced

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Zillah, Washington 98953

CLE education concerning Rules of Professional Conduct; (c) the Respondent could engage in *pro bono* speaking engagements about "lessons learned" concerning the duty of "zealously representing the client within the bounds of the law" and the boundaries of that duty; (d) the Respondent could submit his template fee agreement for approval with the WSBA and make changes if necessary, to ensure the clients do not think their retainers are being deposited in a trust account, and to ensure the Respondent is in full compliance with RPC 1.5; the Respondent could regularly report to Attorney Craig Bray or another member of the bar concerning the progress of the orderly closure of the Sandlin Law Firm or other litigation supervision. The options are endless.

(l) remorse; Of course, the Respondent is remorseful. The Respondent has enjoyed a robust litigation practice, establishing a reputation as an aggressive, honest trial practitioner, with colleagues on both sides of the litigation bar having respect for the Respondent's integrity, honesty, and competence. The Respondent apologizes to the WSBA, the Hearing Officer, to his clients, and to the public at large for the Respondent's involvement in these matters. Most judges who know the Respondent consider the Respondent to be a lawyer who seeks the truth from his clients and his witnesses.

(m) remoteness of prior offenses. WSBA's two reprimands are remote in time and fact patterns. They are best described as inapposite to the instant matters.

Respectfully, Respondent urges the Board of Review to find none of the aggravating factors listed in Appendix "A" rise to the level of anything stronger than a reprimand. For example, items (b), (c), (d), (e), (f), (g), (j), and (k) are irrelevant because no competent evidence supports such aggravating factors. As for the remaining items:

1. item (a) "prior disciplinary offenses" relate to two reprimands so distant in time and relevance that the aggravation is either nonexistent or *de minimis*;

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Zillah, Washington 98953

2. item (h) "vulnerability of victim" does not significantly fit the factor for either the Morehouse group or Alexanders. As far as Capital One is concerned, it is one of the largest banks in the world, and it realized a tidy sum[7] when it sold the contested Alexander property. Specifically, the Morehouse group suffered little or no harm, and Mr. Alexander testified that he was "extremely pleased" with Respondent's advocacy. He resided in the contested home for over seven years and therefore recouped his initial $1,000,000.00 capital investment. Respondent's aggressive advocacy was met with similar advocacy by Capital One's litigator, and the body of law which was developed shall be of assistance to all litigators in future homeowner foreclosure cases. Neither the state nor the federal courts involved should claim that Respondent has impaired the orderly delivery of legal services, because the imposed sanctions certainly have punished the Respondent sufficiently to serve justice.

Double jeopardy

The Respondent has proved he is being subjected to multiple punishments for the same conduct. The federal and state courts imposed CR 11 sanctions of

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$3,658,844

Sold **Residential**

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Redmond, WA 98052

MLS #: 1158347

5 Beds **6.50** Baths, **13,210** Sq.Ft. Year Built **2008**

Stunning Lake Sammamish high bank waterfront home with sweeping views of the lake and Mt. Rainier.

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more than $160,000.00 against Respondent, for Respondent's aggressive advocacy in the Alexander litigation. The Respondent's CR 11 sanctions have all been discharged. WSBA now seeks to discipline Respondent for the same conduct, enhancing the punishment to include disbarment or suspension.

The double jeopardy clause of the Fifth Amendment to the U.S. Constitution protects against a second prosecution for the same offense, after conviction [*by state and federal courts*[8]]. *North Carolina v. Pearce,* 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969). In these situations, a second attempt by the State [*WSBA*[9]] to establish the defendant's guilt is unequivocally prohibited. *State v. Pascal,* 108 Wash.2d 125, 132, 736 P.2d 1065 (1987). The State, with all its resources, should not be allowed to repeatedly subject a person to the ordeal of trial, or by this method to enhance the possibility it will obtain the conviction of an innocent person. *Green v. United States,* 355 U.S. 184, 187-88, 78 S.Ct. 221, 223, 2 L.Ed.2d 199, 61 A.L.R.2d 1119 (1957); *Pascal,* 108 Wash.2d at 132, 736 P.2d 1065.

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[8] Here, Respondent defended against CR 11 sanctions, punitive in nature, and was convicted by both state and federal courts in the Alexander litigation. The harsh sanctions totaled over $160,000.00, all of which have been discharged.

[9] For purposes of Constitutional issues, WSBA is considered an arm of the state. *Eugster v. Washington State Bar Association,* No. C15-0375-JLR, 2015 WL.

P.O. Box 228

Zillah, Washington 98953

The Fifth Amendment to the United States Constitution declares, " no person shall ... be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Constitution, Amendment V. Jeopardy in this context refers to being subject to the potential of punishment for an act, not the actual punishment for the act. *See Price v. Georgia,* 398 U.S. 323, 326, 90 S.Ct. 1757, 26 L.Ed.2d 300 (1970) (quoting *United States v. Ball,* 163 U.S. 662, 669, 16 S.Ct. 1192, 41 L.Ed. 300 (1896)). On its face the double jeopardy clause prohibits the State [*i.e., state and federal courts, and WSBA*] from retrying an individual for an offense where jeopardy for that offense has attached and terminated. In this case, Respondent has been tried and convicted of frivolous filings, the essence of the WSBA ethics claims, and Respondent has discharged those harsh economic sanctions. Should the WSBA be entitled to now enhance those punitive sanctions for the same conduct? The exposure to Double Jeopardy would suggest not. Respondent's fundamental Constitutional rights are at risk here: the right to life, liberty, property, pursuit of happiness, and (implied in *Roe v. Wade*, 410 U.S. 113 (1973)) privacy. Respondent urges this Board of Review to consider double punishment here violates Respondent's due process rights. The Board of Review is respectfully requested to consider these issues in fashioning a fair and reasonable discipline.

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The appropriate sanction should be not more than reprimand.

Respectfully submitted this 30th day of November, 2018.

SANDLIN LAW FIRM
/s/ J.J. Sandlin .
J.J. SANDLIN, WSBA 7392, Respondent
Appearing *pro se*

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