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APR 01 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RUSSELL K. JONES,
Lawyer (Bar No. 10887).

Proceeding No. 11#00065

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on August 21, 2012 through August 24, 2012. The hearing was then continued to December 3, 2012 and concluded on December 6, 2012. Respondent Russell Kenneth Jones appeared through his counsel, Kurt M. Bulmer. Disciplinary Counsel Francesca D'Angelo appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Respondent with the following counts of misconduct:

Count 1 – By failing to make a reasonably diligent effort to comply with one or more

1 | legally proper discovery requests served on him by Jeffrey and Peter's lawyers during the
2 | course of pre-trial litigation, Respondent violated RPC 3.4(c) and (d).

3 | Count 2– By filing motions for relief, vacation or revision of judgment, disqualification,
4 | and/or neutral judge that were frivolous, Respondent violated RPC 3.1 and/or RPC 8.4(d).

5 | Count 3 – By filing appeals that were frivolous, Respondent violated RPC 3.1 and/or
6 | RPC 8.4(d).

7 | Count 4 –By seeking to inflate the value of the piano in retaliation against Jeffrey and/or
8 | valuing the estate house at only \$126,000 despite having and/or knowing of appraisals that
9 | valued the house at \$155,000 or more, Respondent violated RPC 8.4(c) and/or RPC 8.4(d).

10 | Respondent sought clarification in the nature of a statement of specifics from the
11 | Association regarding which pleadings were at issue in connection with Counts 2 and 3 alleging
12 | the filing of frivolous pleadings. Pursuant to an Order herein, these pleadings were identified
13 | by an exchange of letters between counsel. One was from Respondent's counsel dated August
14 | 30, 2012, and one was from the Association dated November 6, 2012. Both letters were filed in
15 | this proceeding. As a result of this process, this proceeding was tried on the basis that five
16 | groups of pleadings and exhibits were at issue in regard to Counts 2 and 3 as follows:

17 | **Group 1** – Assertion, based on paragraph 39 of the Formal Complaint, that Russell
18 | Jones filed frivolous pleadings in connection with a CR 60(b) motion when he moved
19 | for relief from the trial court's 2001 judgment seeking appraisals of the house and the
20 | piano and challenging his removal as personal representative.

21 | The pleadings identified by the WSBA and which were at issue for this group were:

- 22 | Exhibit A-39 - Jones Motion for Appraisal – August 16, 2004
- 23 | Exhibit A-47 - Jones Motion for Appraisal – February 14, 2005
- 24 | Exhibit A-48 - Jones Brief on Appraisal – February 14, 2005
- Exhibit A-51 - Jones Motion for Witness Testimony – March 1, 2005
- Exhibit A-52 - Jones Motion for Relief from Judgment – March 1, 2005
- Exhibit A-55 - Jones Brief on Relief From Judgment – March 7, 2005
- Exhibit A-61 - Jones Reply Brief on Appraisal – March 11, 2005

1 Exhibit A-63 - Jones Reply Brief on CR 60(b) – March 11, 2005

2 **Group 2** – Assertion, based on paragraphs 42, 43, and 44 of the Formal Complaint that
3 Russell Jones filed frivolous pleadings when he filed motion to disqualify Judge Baker
4 which was denied, filed another motion to disqualify, coupled with a motion for a
neutral judge which was denied and filed a third motion to disqualify Judge Baker and a
second motion for a neutral judge which was denied.

5 The pleadings identified by the WSBA and which were at issue for this group were:

6 Exhibit A-38 - Jones Motion for Disqualification – August 3, 2004
7 Exhibit A-46 - Jones Motion for Neutral Judge – February 14, 2005
8 Exhibit A-49 - Jones Motion Second Motion for Disqualification –
February 14, 2005
9 Exhibit A-50 - Jones Brief on Disqualification – February 14, 2005
10 Exhibit A-64 - Jones Second Motion for Disqualification – March 14, 2005
11 Exhibit A-67 - Jones Second Motion for Neutral Judge – April 4, 2005
12 Exhibit A-68 - Jones Third Motion for Disqualification – April 4, 2005
13 Exhibit A-76 - Jones Reply Brief on Presentation – April 13, 2005

14 **Group 3** – Assertion, based on paragraphs 46, 47, 49, and 51 of the Formal Complaint,
15 that Russell Jones filed frivolous appeals when he petitioned Division III for
16 discretionary review of the orders denying his motions and the trial court's denial of his
17 motion for reconsideration; when he appealed an August 2005 order authorizing the sale
18 of the house; when he later appealed an April 2006 summary judgment that authorized
19 immediate possession of the estate house by the new personal representative; and when
20 he abandoned his CR 54(b) arguments on appeal and instead argued that he was entitled
21 to seek revision of the trial court's orders under CR 54(b).

22 The pleadings identified by the WSBA and which were at issue for this group were:

23 Exhibit A-66 - Jones Motion for CR 54(b) Finding – April 4, 2005
24 Exhibit A-84 - Jones Notice for Discretionary Review to Court of Appeals,
Division Three, filed by attorney Michael Schein – June 6, 2005
Exhibit A-88 - Jones Notice of Appeal to Division Three, Court of Appeals,
Filed by attorney Michael Schein – September 13, 2005
Exhibit A-98 - Jones Notice of Appeal – April 20, 2006

Group 4 – Assertion, based on paragraph 54 of the Formal Complaint that Russell Jones
filed a frivolous Petition for Discretionary Review at the Supreme Court.

The pleadings identified by the WSBA and which were at issue for this group were:

Exhibit A-122 – Order of Court – September 3, 2008

Group 5 – Assertion, based on paragraph 57 of the Formal Complaint, that Russell

1 Jones filed a frivolous motion when on July 28, 2010, just prior to a hearing before the
2 trial court on the personal representative's motion for final approval of an accounting
3 and distribution of the estate and a hearing set by Jeffery and Peter for a charge of
4 attorney fees against the estate, Respondent presented a motion to the trial court seeking
5 relief or vacation of the 2001 judgment under CR 60(b), challenging his removal as
6 personal representative, and challenging the valuations of the estate house and piano.

7 The pleadings identified by the WSBA and which were at issue for this group were:

- 8 Exhibit A-140 – Jones Objection to Final Accounting – July 23, 2010
- 9 Exhibit A-141 – Jones motion for Relief from Judgment – July 23, 2010
- 10 Exhibit A-142 – Jones Affidavit of Russell Jones – July 23, 2010

11 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
12 Officer finds that the following facts were established by a clear preponderance of the evidence:

13 FINDINGS OF FACT

14 1. Respondent, Russell Jones, was admitted to the practice of law in the State of
15 Washington on September 18, 1980.

16 2. Respondent's mother, Marcella Jones, died testate on September 2, 1995, with
17 property in Spokane, Washington.

18 3. Marcella's will left everything equally to Respondent and his three brothers,
19 David, Jeffrey and Peter.¹

20 4. The will was admitted to probate in late September 1995. Respondent was named
21 as personal representative.

22 5. Respondent was living with Marcella in the family home (the estate house) when
23 she died.

24 6. After her death, Respondent continued to live in the estate house and operate his
law office from there, but he did not pay any rent.

¹ Respondent's brothers, Jeffrey Jones, Peter Jones, and David Jones are referenced by their first names to avoid confusion.

1 7. In October 1995, Peter asked Respondent for a copy of the will, or a summary of
2 its terms.

3 8. Respondent refused to provide these documents.

4 9. Sometime in November 1995, Respondent had two appraisals done on the estate
5 house. The "Ciszek" appraisal set the appraised value at approximately \$155,000.

6 10. The other appraisal, performed by "Meenach" has never been produced by
7 Respondent in any of the proceedings.

8 11. Respondent did not give either Peter or Jeffrey a copy of either appraisal,
9 notwithstanding their requests.

10 12. Respondent also hired an independent appraiser to value the estate's personal
11 property. The appraiser placed a \$5,000 value on Marcella's piano.

12 13. In May 1996, all of the brothers met at the estate house to divide the property.

13 14. At the meeting, Respondent allowed Jeffrey to pick some personal property as part
14 of his distribution.

15 15. Jeffrey picked the piano at its appraised value of \$5,000.

16 16. Respondent told Peter and Jeffrey that he had an appraisal stating the house was
17 worth \$155,000 less defects, but did not show them the appraisal.

18 17. Respondent's testimony that he showed the appraisal to Peter at this meeting was
19 not credible.

20 18. Peter offered to purchase the house, but Respondent didn't respond.

21 19. When Peter insisted on asking questions of Respondent, he called the police and
22 had Peter removed from the property.

23 20. On September 19, 1996, Peter wrote to Respondent and again offered to purchase
24

1 the estate house and real property.

2 21. Peter assumed that the purchase price would be \$155,000 based on what
3 Respondent had told him at the May meeting.

4 22. Respondent did not respond. Instead, he quitclaimed the house to himself for
5 \$125,866.27, but did not record the deed. Respondent did not tell his brothers that he had made
6 this partial distribution at the time.

7 23. On September 20, 1996, Respondent wrote to Jeffrey, confirming that he had
8 selected the piano as part of his distribution at \$5,000.

9 24. Jeffrey arranged to have the piano moved to his home in Dallas at a cost of \$1800.

10 25. Once the piano arrived in Dallas, Jeffrey had it refinished, spending an additional
11 \$2,000.

12 26. Respondent made some periodic distributions from the estate to his brothers.
13 During this time, he lived in the estate house rent-free without the knowledge of his brothers.

14 27. From February 1996 through December 1997, the estate paid all of the utilities on
15 the estate house and real property.

16 28. Upset about Respondent's use of the estate house and real property, and his refusal
17 to provide estate financial information, Peter and Jeffrey hired Spokane attorney Frank
18 Gebhardt and his law firm to see if they could help them get basic information about the estate.

19 29. Mr. Gebhardt contacted Respondent in January 1998 and asked to see check
20 registers for the bank accounts of the estate.

21 30. Respondent never gave them to Mr. Gebhardt. Respondent's testimony that he
22 attempted to give the check registers to Mr. Gebhardt, but that Mr. Gebhardt refused them is not
23 credible.

1 31. In January 1998, After Mr. Gebhardt contacted Respondent, Respondent stopped
2 paying his expenses out of the estate account.

3 32. In February 1998, Respondent contended for the first time that the piano needed to
4 be re-appraised.

5 33. Respondent's purpose in stating that the piano needed to be re-appraised was to get
6 back at Jeffrey for siding with Peter in questioning Respondent's administration of the estate.

7 34. In June 1998, Peter and Jeffrey filed a petition to require Respondent to provide
8 basic estate information.

9 35. Respondent fought this petition, and when a commissioner ordered that he provide
10 the information and documents, he successfully moved to revise the order.

11 36. By November 1998, Peter and Jeffrey had still not received any of the requested
12 estate documents from Respondent.

13 37. In November 1998, Peter and Jeffrey petitioned for a judicial proceeding to
14 remove Respondent as personal representative.

15 38. Peter and Jeffrey also filed a complaint for use by personal representative of estate
16 assets for personal benefit and for breach of fiduciary duty.

17 39. Respondent filed responses in both actions stating that he had occupied the estate
18 house since May 1996 as his private property "as agreed among all the heirs."

19 40. These statements were false.

20 41. Respondent knew these statements were false.

21 42. On December 30, 1998, Respondent filed a Declaration of Completion, swearing
22 that he had completed the administration of the estate and that it was ready to be closed.

23 43. In January 1999, Peter and Jeffrey petitioned for an accounting.
24

1 44. The actions were consolidated for a trial set for September 2001.

2 45. In May 2001, Peter and Jeffrey, by that time represented by lawyer Robert Greer,
3 one of Mr. Gebhardt's law partners, sent interrogatories and requests for production to
4 Respondent.

5 46. Respondent responded, signing the answers under oath.

6 47. Mr. Greer relied on these answers.

7 48. One of the Requests asked that Respondent produce copies of all documents that
8 showed that he had paid the utility bills for the residence from September 25, 1995 to date of the
9 response to the request.

10 49. Respondent responded that "Russell Jones paid \$4,084.25 for all utilities from 6/96
11 to 11/98, or from 5/4/96 meeting of heirs to declaration of completion."

12 50. Respondent signed this response under oath.

13 51. This answer was knowingly false.

14 52. In fact, the estate paid the taxes, insurance and utilities as to the estate house and
15 real property throughout 1996 and 1997.

16 53. Request for Production No. 5 requested copies of all documents evidencing
17 payment by the Estate of any real estate taxes for the estate house.

18 54. In Response, Respondent stated "Russell Jones paid all property taxes after 5/96."

19 55. Respondent signed this response under oath.

20 56. This answer was knowingly false.

21 57. In fact, the estate paid the property taxes for the last half of 1996 and for the year
22 1997.

23 58. The Request for Production asked for copies of all ledgers, journals, or other
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1 documents evidencing entries made by Respondent for the estate bank accounts.

2 59. This request clearly encompassed the estate checkbook and the estate check
3 register.

4 60. Respondent did not provide the check registers and checkbook.

5 61. Respondent's failure to provide the check registers and checkbook was knowing
6 and with the intent to conceal relevant information from Peter, Jeffrey, and their lawyers.
7 Respondent admitted in testimony at the hearing that his failure to provide these records was for
8 the purpose of preventing Peter from getting this information.

9 62. The check registers would have revealed that Respondent's statements that he had
10 been paying the taxes, insurance, and utilities were false.

11 63. Respondent's conduct caused injury to Peter, Jeffrey, and their attorney Mr. Greer,
12 who relied on his statements.

13 64. In June 2001, the parties attended mediation with retired Judge Harold Clarke II.

14 65. The mediation was unsuccessful.

15 66. In July 2001, Respondent sent Judge Clarke an accounting of the distributions that
16 he had made from the estate, purportedly to show that the distributions that he had made as
17 personal representative were equal.

18 67. This is the first time that Peter and Jeffrey learned that Respondent had distributed
19 the house to himself for \$125,866.27.

20 68. In this document, Respondent also stated for the first time that he claimed the
21 value of the piano was \$14,950.

22 69. Respondent's purpose in retroactively increasing the value of the piano was to get
23 back at Jeffrey for joining Peter in challenging his administration of the estate.

1 70. The trial took place in October 2001 before Judge Rebecca Baker in Spokane
2 County Superior Court. Prior to the trial, Mr. Greer requested that Respondent to provide him
3 with a copy of the appraisal on the estate home.

4 71. Respondent refused.

5 72. Respondent's refusal to provide the appraisal was without basis and was a further
6 effort to conceal reasonable and necessary information from the heirs.

7 73. Respondent's testimony that he had tried to give one or more appraisals to Peter
8 and/or his lawyer, Frank Gebhardt, who refused it, was not credible. There was no reason for
9 Mr. Gebhardt to refuse. On cross examination during the Disciplinary Hearing, Respondent
10 testified that he could not remember if he attempted to give Mr. Gebhardt a copy of the
11 appraisal.

12 74. A trial was held in September 2001.

13 75. Respondent did not produce either of his appraisals at trial because he did not
14 believe that they would help him.

15 76. The trial Judge Rebecca Baker issued her decision on October 2, 2001. In her
16 decision, she clearly set the values for the estate house and the piano and stated that she
17 intended these decisions to have preclusive effect.

18 77. Judge Baker found that the value of the piano was \$5,000 and that the value of the
19 house was \$159,000.

20 78. Judge Baker concluded that Respondent had breached his fiduciary duties and
21 removed him as personal representative.

22 79. Judge Baker appointed independent lawyer James Woodard as the new personal
23 representative.

1 The First Appeal.

2 80. On November 9, 2001, Respondent appealed the trial court's ruling to the
3 Washington Court of Appeals, Division III.

4 81. Respondent was required to pay \$250 per month in rent for the estate house during
5 the pendency of the appeal.

6 82. Division III reversed the trial court.

7 83. Jeffrey and Peter appealed that decision to the Washington Supreme Court.

8 84. The Supreme Court reversed Division III and reinstated the trial court's rulings.

9 85. The Supreme Court found the Respondent breached his fiduciary duty by, inter
10 alia, failing to use the fair market value of the house during distribution and by failing to pay
11 rent, utilities, property taxes and insurance while residing in the estate house.

12 86. As to the piano, the court found Respondent's attempted revaluation of the piano
13 was questionable.

14 87. The Court concluded that "Russell committed several egregious breaches of his
15 fiduciary duty which are supported by the record and constitute valid and sufficient grounds for
16 his removal."

17 88. The Supreme Court affirmed the appointment of Mr. Woodard as personal
18 representative.

19 89. The Supreme Court remanded for a final accounting and award of attorney fees to
20 Jeffrey and Peter.

21 90. Respondent did not move for reconsideration of any part of the Supreme Court's
22 decision and the case was mandated on August 2, 2004.

23 91. During the pendency of the appeal, Respondent stopped paying rent for the estate
24

1 house which he continuously occupied.

2 Litigation after the First Appeal.

3 92. Beginning in August 2004, Respondent began filing numerous, repetitive motions,
4 seeking to introduce new evidence and additional testimony on issues that had already been
5 litigated, tried and affirmed on appeal.

6 93. On August 2005, Respondent moved to have Judge Baker disqualified based on
7 "actual bias."

8 94. This motion was frivolous.

9 95. Respondent also moved to have the piano re-appraised.

10 96. This motion was frivolous.

11 97. Judge Baker denied both of Respondent's motions.

12 98. On November 19, 2004, Judge Baker entered orders awarding additional attorney's
13 fees and costs to Jeffrey and Peter against Respondent at the trial court level and on appeal.

14 99. On February 14, 2005, Respondent filed more motions.

15 100. The first was a motion for a neutral judge.

16 101. This motion was frivolous.

17 102. Respondent also filed a second motion for appraisal of the piano.

18 103. This motion was frivolous.

19 104. Respondent also brought a second motion for disqualification against Judge Baker.

20 105. In the motion, Respondent argued that several of the discretionary decisions that
21 Judge Baker had made, and which had been affirmed on appeal, showed that she was biased
22 against him.

23 106. Respondent also argued that he had overheard Judge Baker negatively reference
24

1 him at a reception during the trial. Respondent had not raised this issue at the time that it
2 allegedly occurred. Respondent's allegations were not credible.

3 107. All of these arguments were frivolous.

4 108. On or about March 1, 2005, Respondent filed a Motion for Relief from Judgment
5 under CR 60(b).

6 109. The motion and brief that accompanied it were frivolous.

7 110. Respondent also brought a Motion for Witness Testimony, seeking to bring in
8 evidence of the value of the estate house.

9 111. This motion was frivolous.

10 112. On March 14, 2005, Respondent filed a second "Second Motion for
11 Disqualification" of Judge Baker. This motion was nearly identical to the previous "Second
12 Motion for Disqualification."

13 113. This motion was frivolous.

14 114. On April 5, 2005, Respondent filed another batch of motions including a motion
15 for a CR 54(b) finding, a second motion for a neutral judge, and a third motion for
16 disqualification.

17 115. These motions were frivolous.

18 116. The trial court denied all of Respondent's motions, finding them to be "once again,
19 frivolously made."

20 117. Judge Baker awarded Peter and Jeffrey sanctions against Respondent.

21 118. Peter and Jeffrey were harmed by Respondent's filing of multiple frivolous
22 motions in that they were required to pay their attorney to respond to them. Although they were
23 awarded sanctions against Respondent, Respondent did not pay the sanctions.

1 119. The estate was harmed because the successor personal representative, Mr.
2 Woodard, was required to review the motions and respond to them. The personal representative
3 appropriately billed the estate at his attorney rate, rather than the lower administrative rate that
4 he charged as a personal representative, when he was compelled to perform legal work such as
5 answering motions made by Respondent.

6 The Second Appeal.

7 120. On June 6, 2005, Respondent petitioned Division III for discretionary review of
8 Judge Baker's orders.

9 121. On August 26, 2005, Judge Baker authorized the sale of the estate house.
10 Respondent appealed this order, too.

11 122. On April 12, 2006, Judge Baker entered an order authorizing immediate possession
12 of the estate house by the new personal representative, and ejecting Respondent from the
13 premises.

14 123. Respondent appealed this order.

15 124. All of the appeals were consolidated for review.

16 125. The appeals were frivolous and were filed for the purpose of delaying the
17 proceedings and Respondent's eventual ejection from the estate house.

18 126. While the appeal was pending, Jeffrey and Peter attempted to collect on the
19 sanctions and fees that had been awarded to them.

20 127. On March 28, 2006, the court entered an order allowing them to enforce their
21 orders and pursue garnishment.

22 128. Respondent moved for reconsideration, which was denied.

23 129. Respondent was ordered to appear for an oral examination and produce financial
24

1 information.

2 130. On April 14, 2006, attempting to block the order, Respondent made a motion to
3 “enjoin change of record on review.”

4 131. This motion was frivolous.

5 132. This motion was filed for the sole purpose of delaying execution of the judgments
6 entered against Respondent.

7 133. Division III denied the motion finding it “so devoid of merit that it constitutes a
8 frivolous filing warranting the imposition of sanctions.”

9 134. Peter and Jeffrey were awarded sanctions against Respondent for his conduct in
10 filing the motion.

11 135. In August 2007, Division III affirmed Judge Baker’s orders, finding that
12 Respondent’s appeal was without factual or legal justification, and therefore frivolous.

13 136. In November 2007, Respondent petitioned the Supreme Court for discretionary
14 review.

15 137. The Petition for Review was frivolous.

16 138. The Petition for Review was denied on September 3, 2008.

17 139. The case was mandated a second time in March 2009.

18 140. Peter and Jeffrey were harmed by Respondent’s conduct in filing this frivolous
19 appeal and the Petition for Review in that they incurred additional attorney’s fees in having to
20 respond to them.

21 141. The estate was harmed because Respondent’s actions delayed his ejection for
22 three years. During that time, the estate lost the opportunity to sell the estate house when they
23 could have sold it for a higher price.

1 Litigation After the Second Appeal.

2 142. In March 2009, Respondent was ejected from the estate house.

3 143. In February 2010, the estate house was sold.

4 144. In February 23, 2010, Respondent filed a separate action against Jeffrey and Peter
5 in Spokane County, (cause number 10-2-00744-4), requesting relief from the October 23, 2001
6 judgment.

7 145. The Complaint alleged that Judge Baker had acted without jurisdiction, and that
8 Jeffrey and Peter had made misrepresentations regarding the value of the estate house, notice
9 regarding the piano re-appraisal, the discovery, and the taxes and insurance.

10 146. Respondent never served this complaint on either Peter or Jeffrey.

11 147. This complaint was filed without any proper purpose.

12 148. This complaint was frivolous.

13 149. On June 30, 2010, Mr. Woodard filed a Final Accounting and Petition for
14 Distribution.

15 150. In a pleading entitled "Objection to Final Accounting," Respondent again argued
16 that Mr. Woodard had wrongfully valued the estate piano at \$5,000.

17 151. Respondent argued that Division III had reversed Judge Baker's finding on this
18 issue and that the Supreme Court did not reinstate it.

19 152. This argument was contrary to Division III's clear ruling that the issue of the value
20 of the piano had been decided and was res judicata.

21 153. This argument was frivolous.

22 154. Just prior to a hearing on the Petition for Distribution, Respondent presented a
23 motion to Judge Baker seeking relief from her October 23, 2001 order under CR 60(b).
24

1 155. In the affidavit accompanying the motion. Respondent argued that there were no
2 grounds to remove him as personal representative.

3 156. Respondent argued again that res judicata did not apply to the issue of the
4 valuation of the estate house and that the piano was undervalued.

5 157. These arguments were frivolous.

6 158. Respondent's actions in continuing to make arguments about issues that had been
7 decided by the trial court, affirmed by the Supreme Court, held to be precluded by Division III,
8 and were not made for any proper purpose.

9 159. Respondent's sole purpose in filing these motions was to harass his brothers and
10 run up their incurred legal fees.

11 160. Judge Baker denied Respondent's CR 60(b) motion. Judge Baker ordered that
12 Respondent file no further motions pertaining to the issues of his removal as personal
13 representative, the house and piano appraisals, the taxes and utilities and/or discovery, and that
14 if he did, he would be ordered to appear and show cause why he should not be held in contempt
15 and/or be declared a vexatious litigant.

16 161. Respondent moved for reconsideration of Judge Baker's orders. In his motion, he
17 argued that "the piano value is not already decided."

18 162. This motion was frivolous.

19 163. Respondent also moved to take the deposition of Kirk Davis, a real estate
20 appraiser.

21 164. These motions were frivolous.

22 165. The court denied the motions, finding that both "rehash issues long since resolved
23 by this court and affirmed on appeal."

1 166. Peter and Jeffrey were harmed by Respondent's conduct in filing these frivolous
2 motions in that they incurred attorney's fees in having to respond to them. Even though
3 Respondent was sanctioned for his conduct, Respondent did not pay the sanctions.

4 167. The estate was harmed because Mr. Woodard was required to review and respond
5 to these filings. When responding to legal motions, Mr. Woodard appropriately billed the estate
6 at his attorney rate, rather than the lesser administrative rate that he charged as a personal
7 representative.

8 168. On August 24, 2010, less than a week after Judge Baker entered her order
9 threatening to declare Respondent a vexatious litigant, Respondent filed an Amended Complaint
10 in Spokane County Cause No. 10-2-00744-4.

11 169. In the amended lawsuit, Respondent abandoned the allegation that Judge Baker did
12 not have jurisdiction to enter her orders, but continued to argue about the court's valuation of
13 the house, the piano, and discovery.

14 170. Respondent did not serve either Jeffrey or Peter, the named defendants in the suit.

15 171. This lawsuit was frivolous.

16 The Third Appeal.

17 172. On September 16, 2010, Respondent appealed again, arguing about the value of
18 the estate house, the piano, the taxes/utilities, and pretrial discovery.

19 173. This appeal was frivolous.

20 174. Mr. Greer filed a motion on the merits, arguing that the appeal was precluded by
21 res judicata or claims preclusion.

22 175. On May 9, 2011, a Division III commissioner granted Mr. Greer's motion on the
23 merits, finding that Respondent's appeal was frivolous.

1 176. Peter, Jeffrey, and Mr. Woodard were awarded judgment against Respondent for
2 their attorney fees.

3 177. Respondent made a motion to modify the ruling, raising again the same issues.

4 178. This motion was frivolous.

5 179. The motion was denied.

6 180. Respondent petitioned for review.

7 181. The petition was frivolous.

8 182. The petition was denied and Jeffrey and Peter were awarded more attorney fees.

9 183. Respondent's actions in filing the third appeal harmed Peter and Jeffrey who
10 incurred attorney's fees in answering his various submissions. Although Peter and Jeffrey were
11 awarded sanctions against Respondent, Respondent did not pay them.

12 184. Respondent's actions in filing the third appeal harmed Mr. Woodard who
13 incurred attorney's fees in answering his various submissions. Although Mr. Woodard was
14 awarded sanctions against Respondent, Respondent did not pay them.

15 Litigation After the Third Appeal.

16 185. Respondent's disciplinary hearing was set to commence on August 21, 2012.

17 186. On May 14, 2012 the Association filed a witness list, naming Peter and Jeffrey as
18 witnesses for the Association.

19 187. On August 3, 2012, Respondent served a new lawsuit on Peter.

20 188. The suit named both Jeffrey and Peter as defendants.

21 189. The suit re-hashed the same arguments for which Respondent had been sanctioned
22 multiple times. In the suit, Respondent asked, once again, for relief from Judge Baker's
23 October 23, 2001 judgment.

1 190. The sole purpose in serving the lawsuit on Peter was to intimidate him as he
2 prepared to testify against Respondent in his disciplinary proceeding.

3 191. Respondent's actions in serving this suit on Peter prior to the hearing in this matter
4 served no proper purpose.

5 192. Respondent's conduct was in bad faith and intended to obstruct the disciplinary
6 process.

7 193. Respondent intends to continue to pursue litigation against his brothers and to
8 continue to attempt to vacate Judge Baker's October 23, 2001 order.

9 Failure to Pay Sanctions.

10 194. Throughout the litigation over his conduct in his mother's estate, Respondent has
11 been sanctioned multiple times by the Washington State courts at every level.

12 195. At the time of the hearing, he had amassed sanctions in the amount of \$138,881.68,
13 excluding interest.

14 196. Although some of the judgments were paid out of Respondent's share of the estate,
15 as of the date of the hearing Respondent owed Peter and Jeffrey \$123,901.93.

16 197. These sanctions have had no deterrent effect on Respondent.

17 198. Respondent has gone to great lengths to avoid paying the judgments against him.

18 199. To that end, he has hidden assets and violated court orders.

19 200. Respondent been held in contempt four separate times for failing to provide
20 documentation as to his assets.

21 201. During the hearing, Respondent refused to answer questions about the extent of his
22 assets, even after the hearing officer ordered him to do so.

23 202. Respondent's refusal to answer relevant questions at hearing was a bad faith
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1 obstruction of the disciplinary process.

2 203. Respondent has consistently demonstrated no remorse and a defiant attitude. He
3 has acted as a vexatious, relentless litigant from 2007 to 2013.

4 CONCLUSIONS OF LAW

5 Violations Analysis

6 The Hearing Officer finds that the Association has established the following
7 Conclusions of Law by a clear preponderance of the evidence:

8 204. Count 1: By failing to make a reasonably diligent effort to comply with one or
9 more legally proper discovery requests served on him by Jeffrey and Peter's lawyers during the
10 course of the pre-trial litigation Respondent violated RPC 3.4(c) and (d).

11 205. Count 2: By filing motions for relief, vacation and revision of judgments,
12 disqualifications, and neutral judge that were frivolous, Respondent violated PRC 3.1 and RPC
13 8.4(d).

14 206. Count 3: By filing appeals that were frivolous, Respondent violated RPC 3.1 and
15 RPC 8.4(d).

16 207. Count 4: By seeking to inflate the value of the piano in retaliation against Jeffrey,
17 and by undervaluing the estate house despite knowing of appraisals that valued the house at
18 \$155,000 or more, Respondent violated RPC 8.4(c) and RPC 8.4(d).

19 Sanction Analysis

20 208. A presumptive sanction must be determined for each ethical violation. In re
21 Anschell, 149 Wn.2d 484, 69 P.3d 844 (2003). The following standards of the American Bar
22 Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb.
23 1992 Supp.) are presumptively applicable in this case.

1 209. ABA Standard 6.2 applies to Counts, 1, 2 & 3:

2 **6.2 Abuse of the Legal Process**

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

8 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a
9 court order or rule with the intent to obtain a benefit for the lawyer or
10 another, and causes serious injury or potentially serious injury to a party
11 or causes serious or potentially serious interference with a legal
12 proceeding.

13 6.22 Suspension is generally appropriate when a lawyer knows that he or she
14 is violating a court order or rule, and causes injury or potential injury to a
15 client or a party, or causes interference or potential interference with a
16 legal proceeding.

17 6.23 Reprimand is generally appropriate when a lawyer negligently fails to
18 comply with a court order or rule, and causes injury or potential injury to
19 a client or other party, or causes interference or potential interference
20 with a legal proceeding.

21 6.24 Admonition is generally appropriate when a lawyer engages in an
22 isolated instance of negligence in complying with a court order or rule,
23 and causes little or no actual or potential injury to a party, or causes little
24 or no actual or potential interference with a legal proceeding.

209. ABA Standard 5.1 applies to Count 4:

210 **5.1 Failure to Maintain Personal Integrity**

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

216 5.11 Disbarment is generally appropriate when:

- 217 (a) a lawyer engages in serious criminal conduct, a necessary element of
218 which includes intentional interference with the administration of justice,
219 false swearing, misrepresentation, fraud, extortion, misappropriation, or

1 theft; or the sale, distribution or importation of controlled substances; or
2 the intentional killing of another; or an attempt or conspiracy or
3 solicitation of another to commit any of these offenses; or
4 (b) a lawyer engages in any other intentional conduct involving dishonesty,
5 fraud, deceit, or misrepresentation that seriously adversely reflects on the
6 lawyer's fitness to practice.

7 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
8 criminal conduct which does not contain the elements listed in Standard
9 5.11 and that seriously adversely reflects on the lawyer's fitness to
10 practice.

11 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in
12 any other conduct that involves dishonesty, fraud, deceit, or
13 misrepresentation and that adversely reflects on the lawyer's fitness to
14 practice law.

15 5.14 Admonition is generally appropriate when a lawyer engages in any other
16 conduct that reflects adversely on the lawyer's fitness to practice law.

17 211. Based on the Findings of Fact and Conclusions of Law and application of the ABA
18 Standards, the appropriate presumptive sanction for each count is as follows:

19 212. As to Count 1, Respondent made knowingly false discovery responses and then
20 intentionally withholding discovery documents in order to conceal his false and dishonest
21 discovery responses. This course of misconduct was done with the intent to benefit Respondent
22 by avoiding detection of his violations of his fiduciary duty. The co-beneficiaries and the legal
23 system were harmed by Respondent's intentional discovery abuse. Under ABA Standard 6.21,
24 the presumptive sanction is suspension.

212. As to Count 2, Respondent repeatedly engaged in a series of knowingly frivolous
motions with the clear purpose and intent to further his vendetta against brothers Jeffrey and
Peter, co-beneficiaries, in an effort to intimidate them by the need to pursue and fund continuing
litigation. This misconduct frustrated and prejudiced the administration of justice by consuming
substantial amounts of judicial resources. Under ABA Standard 6.21, the presumptive sanction

1 is disbarment.

2 214. As to Count 3, Respondent engaged in knowingly frivolous appeals with the clear
3 purpose and intent to further his vendetta against his co-beneficiaries in an effort to intimidate
4 them by the need to pursue and fund seemingly endless litigation. This misconduct frustrated
5 and prejudiced the administration of justice by consuming substantial amounts of judicial
6 resources. Under ABA Standard 6.21, the presumptive sanction is disbarment.

7 215. As to Count 4, Respondent made knowing misrepresentations to the co-
8 beneficiaries of the estate and to the court as to the value of the estate house and the value of
9 the estate piano, in an intentionally dishonest and deceitful scheme to attempt to defraud his co-
10 beneficiaries.

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

14 217. The following aggravating factors set forth in Section 9.22 of the ABA Standards
15 are applicable in this case:

16 (b) **dishonest or selfish motive.** Respondent’s actions in valuing the house at less
17 than its market value was intended to benefit himself disproportionately as one of the heirs to
18 his mothers’ estate. The frivolous filings and the misrepresentation as to the value of the piano
19 was motivated by the desire for retaliation against his two brothers, Jeffrey and Peter, for
20 challenging his administration of the estate. The multiple frivolous appeals served the purpose
21 of delaying the administration of the estate so that Respondent could avoid ejection from the
22 estate house.

23 (c) **a pattern of misconduct.** Respondent’s behavior was part of a pattern of
24

1 misconduct. In addition to misconduct charged in the Formal Complaint, Respondent filed
2 many other frivolous pleadings without basis that were sanctioned by the courts. These include
3 the motion to enjoin the record on review, the motion to dismiss the supplemental proceeding,
4 the motion to set aside register of foreign judgments, all of the filings supporting his third
5 appeal, the Complaint and Amended Complaint filed under Spokane County Cause No. 10-2-
6 00744 and the Complaint served on Peter just prior to the hearing in this matter. The
7 aggravating factor of pattern of misconduct applies here.

8 (d) **multiple offenses.** Respondent committed multiple acts of misconduct and
9 violated multiple RPC. In addition to the charged misconduct, Respondent lied in his pleadings
10 when he certified that he had taken the estate house by agreement of all of the heirs, willfully
11 violated multiple court orders resulting in four contempt findings, and used one of his frivolous
12 filings in attempt to avoid execution on a judgment in Canada. This aggravator of multiple
13 offenses applies here.

14 (e) **bad faith obstruction of the disciplinary proceeding by intentionally failing**
15 **to comply with rules or orders of the disciplinary agency.** Respondent served a frivolous
16 lawsuit on the Association's witness just three weeks before the hearing in a blatant attempt to
17 chill his testimony. During the hearing, Respondent refused to answer questions under oath
18 about his assets, even after being directed to do so by the hearing officer. This aggravating
19 factor applies.

20 (g) **refusal to acknowledge wrongful nature of conduct.** This aggravator applies.
21 Russell refuses to acknowledge the wrongful nature of his misconduct and testified that he
22 planned to continue his misconduct. The aggravating factor applies.

23 (i) **substantial experience in the practice of law.** Respondent was admitted to
24

1 practice in September 1980.

2 (j) **indifference to making restitution.** Respondent has not only shown indifference
3 to making restitution but has been defiant in his refusal, hiding assets and violating court orders
4 to avoid revealing the extent of his assets. This aggravating factor applies.

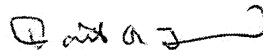
5 ABA Standards § 9.32 sets forth a list of mitigating factors. The following mitigating
6 factors apply in this matter:

7 (a) **absence of a prior disciplinary record.**

8 Recommendation

9 218. Based on the ABA Standards and the applicable aggravating and mitigating
10 factors, the Hearing Officer recommends that Respondent Russell Kenneth Jones be disbarred.
11 Any potential, future reinstatement should be contingent on full payment of all unsatisfied
12 judgments entered against Respondent.

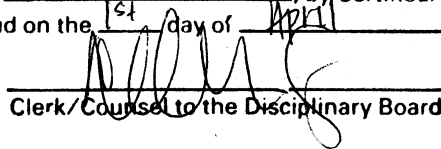
13 Dated this 1st day of April, 2013.

14 

15 _____
16 David A. Thorner, WSBA 4783
17 Hearing Officer

18 **CERTIFICATE OF SERVICE**

19 I certify that I caused a copy of the FOF COL & HO's Recommendation
20 to be delivered to the Office of Disciplinary Counsel and to be mailed
to KURT BULLOCK Respondent/Respondent's Counsel
at 140 BELMONT PL. #333 SEATTLE WA 98101 by Certified/first class mail,
21 postage prepaid on the 1st day of APRIL, 2013

22 
23 _____
24 Clerk/Counsel to the Disciplinary Board