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JUL 15 2010

DISCIPLINARY BOARD

BEFORE THE DISCIPLINARY BOARD  
OF THE WASHINGTON STATE BAR ASSOCIATION

In Re:

THOMAS KAMB,  
Lawyer (Bar No. 16944)

PUBLIC FILE NO. 09#00018  
HEARING, FINDINGS OF FACT;  
CONCLUSIONS AND SANCTION  
RECOMMENDATION

**I. HEARING**

**1.1 DATES:** This matter came on for hearing before Donald W. Carter, the undersigned hearing officer on the 22<sup>nd</sup> day of June 2010.

**1.2 APPEARANCES:** The Bar Association (hereinafter Association) appeared through special disciplinary counsel, Spencer Hall. The Respondent appeared personally and through counsel, Christon Skinner.

**1.3 TESTIMONY/EVIDENCE:** The Grievant, Honorable David Svaren, Judge, Skagit County District Court, testified. In addition, Marina Espinoza, Deblynne Whittlesey, Clerks of the Skagit District Court testified, as did the Skagit County District Court Administrator, Pamela Skinner. Skagit County Deputy Prosecuting Attorney, Sloan G.

HEARING, FINDINGS OF FACT; CONCLUSIONS  
AND SANCTION RECOMMENDATION

ORIGINAL

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1 Johnson, testified. Lori Provoe, Washington State Department of Licensing Hearing Officer  
2 also testified at the hearing. Respondent Thomas Kamb testified on his own behalf.

3 **1.4 PURPOSE:** The hearing was held to determine if Respondent, Thomas Kamb,  
4 had violated the Rules of Professional Conduct as alleged in Associations Formal Complaint  
5 dated April 10, 2009, and if a determination was made that such violations had occurred, to  
6 then determine the appropriate sanctions under the ABA Guidelines to assess against the  
7 Respondent.  
8

9 **II. FORMAL COMPLAINT**

10 **2.1.** Formal Complaint dated April 10, 2009 with three counts of violating the rules  
11 of professional conduct. Those violations were set forth as follows:  
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13 **COUNT 1:** By misrepresenting to Hearing Officer Lori Provoe that a judge had signed  
14 an order suppressing Monica Magnuson's BAC test, when no such order existed, and/or  
15 by failing to correct his material a false statement to Hearing Officer Provoe that a  
16 signed BAC Suppression Order existed in the Magnuson court case, Respondent  
17 violated RPC 3.3 (a) (1).  
18

19 **COUNT 2:** By writing "BAC suppressed not a knowing and voluntary decision to  
20 take test" on the previously filed "green sheet order" without authority, Respondent  
21 violated RPC 8.4(b) (by violating RCW 46.16.010), RPC 8.4 (c) and/or RPC 8.4 (d).  
22

23 **COUNT 3:** By failing to discuss suppression of the BAC test with Deputy  
24 Prosecutor Johnson while negotiating Monica Magnuson's plea to a lower offense,  
25 and/or by failing to obtain an order suppressing Magnuson's BAC test before  
26 Magnuson's DOL hearing, Respondent violated RPC 1.3.  
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**III. FINDINGS OF FACT**

Based upon the testimony of the witnesses; the exhibits admitted into evidence; the following facts were found based upon a clear preponderance of evidence:

**3.1 ADMISSION TO PRACTICE:** Thomas Ryan Kamb was admitted to practice law in the state of Washington on June 1, 1987.

**3.2 LENGTH OF TIME IN PRACTICE:** At the date of the hearing, Respondent Thomas R. Kamb had practiced law for 23 years.

**3.3 ATTORNEY CLIENT RELATIONSHIP:** On March 19, 2008 Monica Magnuson was arrested for driving under influence in Skagit County Washington. Her first and second BAC readings provided samples of .092 and .104. Ms. Magnuson, a waitress at Applebees, retained Respondent Thomas Kamb to represent her for the charge of driving under the influence.

**3.4 PLEA BARGAIN NEGOTIATIONS:** In May 2008 one of Deputy Prosecuting Attorney Sloan Johnson's job duties was to prosecute defendants charged with the crime of driving under the influence in Skagit County District Court whose names started with the letter M. Sloan Johnson was the prosecuting attorney designated to handle the Magnuson case. In DUI cases, Mr. Johnson's normal practice was to fax letters to the defense attorney offering the opportunity to plead their client to a lesser charge if certain conditions were met. In cases involving first offenders with relatively low breathalyzers, the plea arrangement Mr. Johnson usually offered was to reduce the charge of DUI to Negligent Driving, First Degree. It was not Prosecutor Johnson's practice to offer to suppress the evidence of the BAC results.

**3.5 KAMB/JOHNSON RELATIONSHIP:** The Respondent, Thomas R. Kamb,

1 and the prosecuting attorney, Sloan Johnson, had an amicable working relationship and a  
2 personal friendship.

3 **3.6 SPECIFIC SUPPRESSION DISCUSSIONS:** There were no discussions of  
4 suppressing the BAC results in the Magnuson case until the afternoon of May 13, 2008.

5 **3.7 COURT APPEARANCE MAY 13, 2008:** On May 13, 2008 Thomas R. Kamb  
6 and his client, Monica Magnuson, appeared before the Honorable David Svaren in the matter of  
7 State of Washington/County of Skagit vs. Monica Magnuson, case number C731068. On the  
8 green colored form titled "Motion to Dismiss, Amend, Reduce, and/or Post and Forfeit Bail and  
9 Order on Motion", Respondent Thomas R. Kamb handwrote in blue pen that the plaintiff and  
10 defendant were moving the court to amend the charge of DUI to "Neg Driving First Degree".  
11 Mr. Johnson did not write on the form but signed at the appropriate signature line indicating his  
12 agreement. After the order was prepared by Mr. Kamb and consented to by Sloan Johnson, it  
13 was handed up to Judge Svaren who granted the motion to reduce the charge and signed the  
14 order during the 8:30 am calendar on May 13, 2008. There was no mention in the order that  
15 the results of the two BAC samples from Ms. Magnuson would be suppressed and there was  
16 nothing on the record of the proceedings to indicate that the BAC results would be suppressed.  
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20 **3.8 RESPONDENT'S CALENDAR:** According to Mr. Kamb's calendar, on May  
21 13, 2008 he had at least fifteen separate matters set for the 8:30 am calendar in Skagit District  
22 Court; four matters on the 11:00 am calendar at Mount Vernon Municipal Court and one matter  
23 on the 1:00 pm Island County calendar at Oak Harbor.  
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25 **3.9 FAILURE TO REPRESENT CLIENT:** Mr. Kamb failed to negotiate the  
26 suppression of the BAC results; failed to prepare an order suppressing the BAC results; and  
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1 failed to request a suppression of the evidence at the court hearing on the morning of May 13,  
2 2008. Mr. Kamb testified that he did not give any thought to including the suppression  
3 language in the order because of his busy schedule.

4 **3.10 LACK OF DILIGENCE:** At the hearing on May 13, 2008 in the Skagit  
5 County District Court, Respondent Kamb failed to act diligently in the advocacy on Ms.  
6 Magnuson's position. That lack of diligence and competency resulted in Respondent's failing  
7 to include the suppression of the BAC results in the order on the plea agreement.  
8

9 **3.11 DOL HEARINGS:** The Respondent had two DOL hearings set for the  
10 afternoon of May 13, 2008, however, Mr. Kamb testified he could not remember which DOL  
11 hearings were scheduled for that day immediately before their commencement.  
12

13 **3.12 DOL HEARING:** At 2:00 pm on May 13, 2008 a Department of Licensing  
14 Hearing of the suspension of Monica Magnuson's driver's license was scheduled to begin. The  
15 telephonic hearing was to be conducted by Lori Provoe, a Hearing Officer with the Department  
16 of Licensing. Mr. Kamb did not submit a brief before the hearing.  
17

18 **3.13 REPRESENTATION EXISTENCE OF SUPPRESSION ORDER:** During  
19 the DOL hearing Respondent Kamb attempted to argue that the arresting officer had not  
20 properly certified the records under RCW 9A.72.085 relating to Ms. Magnuson's arrest. This  
21 argument was rejected by the Hearing Officer at which time the following exchange occurred:  
22

23 **Hearing Officer:** Uh, Counsel, will your client be testifying today?

24 **Counsel:** No, your honor. I do, uh, have an exhibit that I want to send you, and it is a  
25 copy of an order from the District Court suppressing the breath test in this case.  
26

27 **Hearing Officer:** Okay, what's the basis for this suppression?  
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1 **Counsel:** The basis is lack of foundation.

2 **Hearing Officer:** And that's all it says?

3 **Counsel:** No. It goes on to say that the, (pause) that uh (pause) the breath test lacks a  
4 foundation and that the decision to take the test was not at all a voluntary decision.

5 **Hearing Officer:** Okay, um, uh, well I'll have you go ahead and fax it to me following  
6 the hearing, and I'll take a look at that and consider that. I'll go ahead and mark that as  
7 Exhibit No. 3, as I don't have it in front of me to read the language on it, so I don't –

8 **Counsel** (interrupting): We filed it this morning with the Court. I forgot to take a copy  
9 so I'm gonna probably fax it in to you until tomorrow if that's okay.

10 **Hearing Officer:** Oh, that's fine, and it does have the Judge's signature on it?

11 **Counsel:** It does.

12 **Hearing Officer:** Okay then I'll just go ahead and mark it as Exhibit 3 since I don't  
13 have it in front of me to establish its sufficiency, um then I will just take it under  
14 advisement pending receipt of that. And so, with that, do you have any arguments for  
15 the record?  
16

17 **Counsel:** Probably this argument that the 4<sup>th</sup> prong hasn't been met, that the 3<sup>rd</sup> prong  
18 hasn't been met because of the rulings of the Court this morning.

19 **Hearing Officer:** Okay. (*Emphasis added*)

20  
21 **3.14 KAMB'S INTENT RE: PRESENTATION:** From that exchange, the only  
22 conclusion to be drawn is that it was Mr. Kamb's intent to cause Hearing Office Provoe to  
23 believe that a signed valid suppression order did in fact exist at the time the 2:00 pm DOL  
24 hearing was conducted on May 13, 2008. When the hearing was declared concluded, the  
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1 record was left open for the sole purpose to allow Mr. Kamb to file the suppression order he  
2 represented was entered that morning; Mr. Kamb had another hearing scheduled with Ms.  
3 Provoe at 3:00 pm at the conclusion of the 2:00 pm hearing. Hearing Officer Provoe believed  
4 that such judge-signed suppression order existed.

5  
6 **3.15 COLLATERAL ESTOPPEL:** Under the law of Washington State a  
7 suppression order regarding the BAC results must be entered by a court of competent  
8 jurisdiction prior to the DOL suspension hearing in order for the doctrine of collateral estoppel  
9 to be invoked preventing the suspension of the licensee's driver's license and driving  
10 privileges. Mr. Kamb practiced in the area of criminal law, and specifically DUI related law  
11 for most, if not all, of his career and was well aware that a valid BAC suppression order had to  
12 be entered prior to the DOL hearing for the doctrine of collateral estoppel to be applied.

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14 **3.16 KAMB'S KNOWLEDGE OF FALSE REPRESENTATION:** Based upon  
15 his actions following the DOL hearing, the only plausible inference to be drawn is that at the  
16 time of making the representation to Ms. Provoe that the suppression order had been signed,  
17 Respondent Thomas Kamb knew that the order on the plea had been entered that morning  
18 without the language suppressing the BAC results.

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20 **3.16.1 KAMB'S ACTIONS POST DOL HEARING:** Following the adjournment of  
21 the DOL hearing Respondent Thomas Kamb went to the clerk's office and requested the court  
22 file from Court Clerk, Stephanie Esparza, who in turn went to Marina Espinoza, one of the  
23 clerks authorized to deliver the court files to the front counter. Ms. Espinoza retrieved the  
24 Magnuson file from the disposition desk and brought it to Mr. Kamb.

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26 **3.16.2** The original green sheet order had been written by Mr. Kamb with blue pen.  
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1           **3.16.3** Ms. Espinoza handed Respondent Thomas Kamb the file, while he was standing  
2 at the front counter. Instead of opening the file at the front counter, Respondent Kamb moved  
3 to his right, turning at an oblique angle to a position at the side counter in front of the mail  
4 slots. He was observed during this period of time by Ms. Espinoza, as she had been trained to  
5 do when files were not in the possession of the clerk's staff. Ms. Espinoza stood four paces  
6 away from the mail slots and observed Mr. Kamb write on the order. Mr. Kamb has admitted  
7 that he wrote "BAC Suppressed not a knowing and voluntary decision to take test" with a blue  
8 pen at that time.

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10           **3.16.4** After writing on the order, Mr. Kamb requested that Ms. Espinoza make a copy  
11 of the altered order for him. He did not state the purpose for which the copy was requested.  
12 Ms. Espinoza, who had seen Mr. Kamb write on the order instead went straight to Deblyne  
13 Whittlesey and explained to her what had occurred. Ms. Espinoza told Ms. Whittlesey that she  
14 did not feel that it would be appropriate to give Mr. Kamb a copy of the order after he had  
15 made the alterations.  
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18           **3.16.5** After speaking with Ms. Espinoza, Clerk Deblyne Whittlesey contacted Sloan  
19 Johnson at the Prosecuting Attorney's Office before speaking with Mr. Kamb. Ms. Whittlesey  
20 had been in the 8:30 am hearing and did not recall that the suppression of the BAC results had  
21 been addressed at the Magnuson plea hearing. In their conversation, Prosecutor Johnson told  
22 Ms. Whittlesey he had not agreed to an order suppressing the BAC. Deputy Prosecutor  
23 Johnson stated that Kamb would have to come to his office to discuss the suppression order.  
24 Following her call to Prosecutor Johnson, Ms. Whittlesey advised Mr. Kamb that he would  
25 have to go to Mr. Johnson's office.  
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1           **3.16.6** Thomas Kamb went to Sloan Johnson's office, where Mr. Johnson agreed to  
2 sign an order suppressing the BAC although no order had been agreed to by him before that  
3 afternoon. Prosecutor Johnson subsequently sent an email authorizing Ms. Whittlesey to give  
4 Mr. Kamb a copy of the order. Mr. Kamb had led Mr. Johnson to believe that the DOL license  
5 suspension hearing was coming up and that he, Mr. Kamb, had a time constraint. Mr. Kamb  
6 did not disclose that the DOL hearing for Ms. Magnuson had already taken place.  
7

8           **3.16.7** Mr. Kamb returned to the clerk's office at approximately 3:10 and once again  
9 requested the copy of the altered order from the file. The court administrator, Pam Skinner,  
10 referred him to Judge Svaren's chambers where Judge Svaren confronted him about his actions.  
11

12           **3.17 KAMB'S KNOWLEDGE OF PROPER PROCEDURE:** Thomas Kamb  
13 knew that writing on the original order was not the proper procedure and that the correct  
14 procedure would be to obtain a separate amended order. However, Respondent Kamb was  
15 aware that this would take time, would be on a different form than the plea, and would also  
16 have a date later than the DOL hearing date.  
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18           **3.18 SKAGIT COUNTY STANDARD OF PRACTICE:** The Skagit County  
19 standard of practice in the District Court is not to amend orders by handwriting on the order  
20 after the judge has signed the original order. Never before had Judge Svaren, Prosecutor Sloan  
21 Johnson, or Pam Skinner, the Court Administrator or the court clerks witnessed a lawyer  
22 writing on a court order after a judge had signed that order. In fact, they had never heard of this  
23 practice ever occurring before in any Skagit County courts. Although the custom practice in  
24 Skagit County among lawyers is to be collegial, the standards of practice and the rules of  
25 procedures are as strictly followed as in other jurisdictions. Pam Skinner, the Court  
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1 Administrator, is a known “stickler” for the rules.

2 **3.19 STRIKING OF ALTERED PHRASE:** Upon learning that the original order  
3 had been altered, Judge Svaren crossed out the language inserted by Thomas Kamb “BAC  
4 suppressed – not a knowing and voluntary decision to take test”. Judge Svaren spoke with  
5 Prosecuting Attorney Johnson on May 14, confirming that there had never been a discussion  
6 between prosecutor Johnson and Thomas Kamb for the suppression of the BAC results before  
7 their meeting after the DOL hearing at approximately 3:00 pm on May 13, 2008 (after  
8 Respondent Kamb wrote on the signed entered order, “BAC suppressed ...”).

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10 **3.20 KAMB’S STATE OF MIND: WILLFUL AND INTENTIONAL**

11 **ALTERATION OF COURT RECORD:** The only reasonable inference to be drawn from the  
12 acts of Respondent Kamb is that he knowingly, willfully, and intentionally altered the order on  
13 plea on May 13, 2008. It was not the act of negligence as dismissively portrayed in  
14 Respondent’s defense, but rather was an intentional, knowing act purposefully done to cover  
15 Mr. Kamb’s lack of diligence at the hearing on his client’s plea and his subsequent intentional  
16 misrepresentation to Ms. Provoe. The act of willfully altering the court records by Mr. Kamb is  
17 a violation of RCW 40.16.010, a class C felony.

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19 **3.21 FAILURE TO TIMELY DISCLOSE LACK OF ORDER:** When she did not  
20 hear from Mr. Kamb and the record had remained open for the sole purpose to allow the filing  
21 of the suppression order and she had not received the order, Ms. Provoe attempted to call Mr.  
22 Kamb. There was “phone tag” but at the very earliest, contact between Mr. Kamb and Ms.  
23 Provoe regarding the missing suppression order did not occur until June 2008. The lack of the  
24 suppression order was disclosed to the Hearing Officer Provoe only when she called Mr Kamb.  
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1 Subsequently an order suspending Monica Magnuson's license was entered September 2008.  
2 Ms. Magnuson's license was suspended until January 2008 when she was able to get it  
3 reinstated.

4 **3.22 PARTY/WITNESS CREDIBILITY:** Ms. Espinoza, Ms. Whittlesey, Ms.  
5 Springer, Ms. Provoe, Mr. Johnson, and Judge Svaren were all credible and consistent  
6 witnesses.  
7

8 The Respondent's version of the facts of how the events of May 13, 2008 unfolded  
9 lacked credibility, and at best can be described implausible.

10 **3.23 INJURY TO CLIENT:** Because Mr. Kamb was not diligent in his  
11 representation of Monica Magnuson, she suffered damages. Respondent Kamb failed to get an  
12 appropriate suppression order for the BAC results at the plea hearing, and had he obtained a  
13 properly worded order, there was a strong likelihood Ms. Provoe would not have suspended her  
14 license. Instead, Ms. Provoe, as the Hearing Officer, would have applied the legal principle of  
15 collateral estoppel essentially dismissing the matter.  
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18 **3.24 INJURY TO JUDICIAL AND ADMINISTRATIVE LAW SYSTEM:** The  
19 Respondent has insisted his actions did not injure the judicial system. Mr. Kamb damaged the  
20 integrity of the judicial process by his intentional, knowing misrepresentation to Hearing  
21 Officer Provoe. The statements he made on the record at the DOL hearing on May 13, 2008,  
22 clearly demonstrate his intent to mislead Hearing Officer Provoe. By those false statements  
23 and misleading statements he accomplishes his goal. Ms. Provoe allowed additional time for  
24 the filing of the suppression order, which never existed.  
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26 **3.25 KAMB'S DUTY ON DISCOVERY:** Respondent Kamb went to check whether  
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1 an order suppressing the BAC had been entered after the DOL hearing, upon discovery that the  
2 appropriate suppression order had not been included, he was then duty-bound under the RPCs  
3 to notify the Hearing Officer a false statement of facts had been made by him. Instead,  
4 Respondent Kamb took a blue pen in attempt to match his earlier writing, and altered the order.  
5 Mr. Kamb had no intent of clarifying the misrepresentation. It was a knowing, intentional  
6 violation of the RPCs not to inform Ms. Provoe.  
7

8 **3.26 RESPONDENT KAMB'S COMMISSION OF A FELONY:** By committing  
9 a felony, whether or not the felony is criminally charged; such commission of the crime  
10 adversely reflects on a lawyer's honesty and fitness to practice law. Here, Mr. Kamb  
11 committed a class C felony by his violation of RCW 40.16.010. Mr. Kamb engaged in conduct  
12 which was dishonest and involved knowing, willful misrepresentations. The conduct of  
13 willfully altering the order by Respondent Kamb prejudiced the District Courts administration  
14 of justice. For Respondent to now argue seemingly "no harm no foul" because "everyone does  
15 it in Skagit County" demonstrates arrogance and a willful disregard of the ethical requisites  
16 imposed upon all lawyers in their practice.  
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19 **3.27 PRIOR DISCIPLINARY ACTIONS:** On March 3, 2008 just two months  
20 before this matter arose on May 13, 2008, an admonition of Respondent Thomas Kamb was  
21 entered in by stipulation for his repeated failures to appear for court hearings in violation of  
22 former RPC 8.4 (d) (conduct prejudicial to the administration of justice). Respondent Kamb  
23 was placed on probation for a period of two years.  
24

#### 25 **IV. CONCLUSION OF LAW**

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27 Based upon the foregoing Findings of Fact, which again were made upon a clear  
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1 preponderance of the evidence, the Hearing Officer now makes the following conclusions of  
2 law:

3           **4.1    COUNT 1:**    The Respondent violated RPC 3.3 (a)(1) by intentionally  
4 misrepresenting to the DOL Administrative Hearing Officer, Lori Provoe, that a judge had  
5 signed an order suppressing the BAC test results, while knowing that no such order existed.  
6

7           Lawyers have “special duties” as officers of the court to avoid conduct that undermines  
8 the integrity of the adjudicative process (RPC 3.3 comment [2]). Further, the lawyer must not  
9 allow the tribunal to be misled by false statements of law or evidence that the lawyer knows to  
10 be untrue (Id).

11           While Respondent Kamb argued artfully that he was “negligent” in making the  
12 misrepresentation to Ms. Provoe, the only reasonable inference to be drawn from all of the  
13 evidence surrounding the events of May 13, 2008 was that it was a knowing and intentional  
14 misrepresentation. Importantly,  
15

16           “An assertion purporting to be on the lawyer’s own knowledge, as in an affidavit  
17 by the lawyer’s own knowledge, as in an affidavit by the lawyer, or in a statement  
18 in open court, may properly only be made when the lawyer knows the assertion is  
19 true or believes it to be true on the basis of a reasonably diligent inquiry. (RPC 3.3  
20 comment [3]).

21           At best, in support of his claim of negligence, Thomas Kamb does admit that he was  
22 unsure whether or not the order had suppression of the BAC test language included when he  
23 assured the hearing officer of its existence at the DOL hearing. On the open record,  
24 Respondent affirmatively and quite positively asserts the suppression order exists. However,  
25 no “reasonable diligent inquiry” had been made by him. Respondent Kamb’s rushing to the  
26 District Court immediately after the hearing further evidences that he knew the court file did  
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1 not contain the suppression language necessary to have the DOL Hearing Officer rule that the  
2 Department was collaterally estopped from suspending Ms. Magnuson's license.

3 The intentional misrepresentation was also a violation of RPC 8.4 (b) and (c) as the  
4 conduct involved both the making of the intentional misrepresentation and the actions were  
5 prejudicial to the administration of justice.  
6

7 **4.2 COUNT 2:** Respondent Thomas Kamb violated RPC 8.4(b) by willfully and  
8 intentionally altering the green sheet order which had previously been signed by Judge Svaren  
9 and entered into the court file, by writing "BAC suppressed not a knowing and voluntary  
10 decision to take test", without either authority of the court, or even concurrence by opposing  
11 counsel Johnson. This was a violation of RCW 40.16.010. The actions of Respondent in his  
12 altering the order violated RPC 8.4 (b), (c) and (d).  
13

14 RPC 8.4 (misconduct) states: It is professional misconduct for a lawyer to:

- 15 (b) Commit a criminal act that reflects adversely on the lawyer's honesty,  
16 trustworthiness, or fitness as a lawyer in all other respects.  
17 (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.  
18 (d) Engage in conduct that is prejudicial to the administration of justice.

19 Again, the Respondent's well choreographed defense argues the violation of RCW  
20 40.16.010 was not charged criminally. This argument is faulty and contrary to the established  
21 principle that for a lawyer to be disciplined for a violation of RPC 8.4 there does not have to be  
22 a criminal proceeding against that lawyer for that violation.  
23

24 It has long been held by our courts that "violations of the law by lawyers contributes to  
25 the erosion of respect for legal institutions and the law". In Re: Disciplinary Proceeding  
26 Against Peterson, 120 W.2d, 833, 872, 846, P.3d 1330 (1993). In Re: Disciplinary Proceeding  
27 Against Curran, 115 W.2d 747, 762, 801, P.2d 962 (1990).  
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1 As found, there is no lower or lesser standard of practice in Skagit County. Not one of  
2 the witnesses for Mr. Kamb had ever seen previous orders, once signed, altered.

3 The circumstances surrounding the alteration of the order by Mr. Kamb does not point  
4 to any good faith belief on his part that the Magnuson order as entered earlier that day  
5 suppressed the BAC results. First he asked for a "blue pen" in order to match the writing on  
6 the order, before even asking for the file in order to review the orders contents and determine if  
7 he had included the suppression language.  
8

9 Upon receiving the file, Respondent Kamb moved from the main counter to his right,  
10 standing at an oblique angle to where the counter clerks are seated, before opening the file and  
11 writing on the order, "BAC suppressed not a knowing and voluntary decision to take test".  
12 Importantly, up to that point there was no argument with Deputy Prosecutor Johnson that the  
13 BAC results would be suppressed and there had been no prior discussion regarding the  
14 suppression of the BAC.  
15

16 At the time Respondent Kamb was altering the order in the court file, Clerk Espinoza  
17 was standing 3 to 4 steps away so she could view Kamb's actions. Based upon the testimony  
18 of the witness Espinoza, Respondent Kamb's actions were not open for all to see.  
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20 Following his willfully altering the original order, Respondent asked Clerk Espinoza  
21 for a copy of the altered order. No statement was made by Kamb that he wanted the copy to  
22 take to Deputy Prosecutor Johnson for signature or that he would be back to try to see the  
23 judge. Importantly, it was approximately 3:00 pm when this occurred, the time of his next  
24 scheduled DOL hearing with Hearing Officer Provoe.  
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26 The only reasonable inference that can be drawn from these facts is that after altering  
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1 the order Kamb intended to take the copy of the altered order back to his office and fax it to  
2 Hearing Officer Provoe with whom he had another 3:00 pm DOL hearing. The statement that  
3 he was planning to take the copy to Johnson for approval and then back to Judge Svaren  
4 requires the abandonment of common sense.

5 Respondent Kamb knew the procedures for obtaining an order modifying or amending  
6 a previously entered order. He had prepared such orders in the past. The problem that existed  
7 on May 13, 2008 at approximately 3:00 pm was that Respondent (A) knew that the suppression  
8 order had to be entered before the hearing in order to invoke collateral estoppel; (B) knew that  
9 a suppression order of the BAC results had not been entered prior to the DOL hearing at 2:00  
10 pm; (C) knew that he had made the representation that he "had the order", while knowing that  
11 the appropriate language suppressing the BAC results was not on the order; (D) knew that he  
12 had to fax the order to the Hearing Officer within a day; and (E) knew he had to be in his office  
13 for a 3:00 pm DOL hearing on another matter.

14 Mr. Kamb went to the Skagit County Prosecuting Attorney's Office to see Mr. Johnson  
15 only after being told by Clerk Whittlesey that Johnson wanted to see him. Based on the  
16 testimony, Respondent Kamb did not even get back to the front counter from Johnson's office  
17 until 3:10 pm when he was directed to Judge Svaren's chambers. The most credible scenario  
18 based on the facts was that after altering the order with a blue pen, and obtaining a black and  
19 white copy so it did not appear to have been altered, he would then fax it to Ms. Provoe  
20 without obtaining either Johnson's approval or the judge's signature on the altered order.

21 **4.3 COUNT 3:** Respondent Thomas Kamb violated RPC 1.3 (Lack of Reasonable  
22 Diligence) for failing to discuss suppression of the BAC test with Deputy Prosecutor Sloan  
23  
24  
25  
26  
27



1 Johnson when he was negotiating Monica Magnuson's plea to a lesser offense (Negligent  
2 Driving First Degree), and /or his failing to obtain an order suppressing Monica Magnuson's  
3 BAC test before the DOL hearing to suspend her license

4           RPC 1.3 provides that a lawyer shall act with reasonable diligence and promptness in  
5 representing a client.  
6

7           Respondent Kamb's defense was in part the fact he had a busy practice and he had to be  
8 in many different locales on May 13, 2008. He also testified that when he returned to his  
9 office for the DOL hearings at 2:00 pm and 3:00 pm on May 13, 2008 he did not know which  
10 clients the hearings were scheduled for.  
11

12           In his testimony Mr. Kamb stated that at the morning calendar before Judge Svaren he  
13 did not give the inclusion of the suppression of the BAC results any thought at all. A very  
14 important rule is that "a lawyer's workload must be controlled so that each matter can be  
15 handled competently." (Comment [2] to RPC 13)  
16

17           Two months prior to the events of May 13, 2008, Mr. Kamb had received an  
18 admonition for his failure to attend hearings. That grievance was filed by a Superior Court  
19 judge in Whatcom County after numerous failures by Respondent to appear. Kamb breached  
20 his obligation to his client to not take on more work than he could competently perform.  
21

22           It is one of the most basic ethical requirements that "a lawyer must also act with  
23 commitment and dedication to the interest of the client and with diligence in advocacy upon  
24 the client's behalf." (Comment [1] RPC 1.3) Mr. Kamb lacked both the commitment to  
25 adequately represent Ms. Magnuson by his lack of attention and preparation before both the  
26 District Court hearing and the DOL hearing. He also lacked professional diligence, as  
27  
28  
29

1 evidenced by his failure to either discuss the suppression of the BAC prior to the plea and/or to  
2 obtain the suppression order before the hearing with the DOL on May 13, 2008.

3 The defense attempted to argue that since there was no guarantee the DOL hearing  
4 officer would apply the principle of collateral estoppel in staying the suspension, Respondent  
5 Kamb's representation was appropriate. That argument is beyond the pale of arrogance in that  
6 it is akin to arguing that a zealous competent defense of a person charged with murder in the  
7 first degree is not necessary because normally those defendants get convicted anyway.  
8

9 Mr. Kamb owed Ms. Magnuson competent legal counsel in her representation,  
10 however, his actions evidenced that he was too busy, too distracted, and/or too negligent in his  
11 practices to provide her with the quality of representation she deserved. Every lawyer owes the  
12 client the duty to take whatever lawful and ethical measures are required to vindicate a client's  
13 cause or endeavor (Comment [1] RPC 1.3). A duty Mr. Kamb woefully failed to perform in  
14 his representation of Ms. Magnuson.  
15  
16

## 17 **V. PRESUMPTIVE SANCTIONS**

18 **5.1 ABA STANDARDS/FACTORS:** The Washington Supreme Court requires  
19 the Hearing Officer to apply the American Bar Association's Standards for Imposing Lawyer  
20 Sanctions in all cases involving the discipline of lawyers. In re Disciplinary Proceeding  
21 Against Halverson, 140 Wn.2d 475, 492, 998, P.2d 833 (2000); Johnson, 114 Wn.2d at 745.  
22

23 Generally, applying ABA Standards involves a two-step process. The first is to  
24 determine a presumptive sanction by considering (1) the ethical duty violated; (2) the lawyer's  
25 mental state, and (3) the extent of the actual or potential injury caused by the misconduct. In  
26 Re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 77, 960 P.2d 416 (1998). The  
27  
28  
29

1 second step is to consider any aggravating or mitigating factors that might alter the  
2 presumptive sanction. Id. The issues of the violations of Mr. Kamb's ethical duties have been  
3 examined previously. It is of consequence that his actions were knowingly made, and in the  
4 case of the alteration of the order, willfully made.

5 The violations of the RPC by Mr. Kamb were not through a series of innocent mistakes,  
6 but a series of knowing, intentional separate acts done out of self interest.

7 Turning to the "injury",

8 the term as used means harm to a client, the public, the legal system or the  
9 profession that results from a lawyer's misconduct. Injury may be actual or  
10 potential "[A] disciplinary proceeding does not require a showing of actual  
11 harm ... The rationale is the need for protection of the public and the  
12 integrity of the profession." Halverson, 140 Wn.2d at 486.

13 See also, In Re Disciplinary Proceeding Against Anschell, 149 W.2d 484, 502, 69 P.3d  
14 844, 2003.

15 **5.2 COUNT 1: PRESUMPTIVE SANCTION: DISBARMENT.** The ABA  
16 Standard 6.0 Violation of duties owed to the Respondent's violations of RPC 3.3 candor  
17 toward the tribunal and specially RPC 3.3 (a)(1). Standard 6.0 provides in part:

18 **6.1 False Statements, Fraud, and Misrepresentation**

19 Absent aggravating or mitigating circumstances, upon application of the  
20 factors set out in Standard 3.0, the following sanctions are generally  
21 appropriate when a lawyer, with the intent to deceive the court, makes a  
22 false statement, submits a false document, or improperly withholds  
23 material information, and causes serious or potentially serious injury to a  
24 party or causes a significant or potentially significant adverse effect on the  
25 legal proceeding. (*Emphasis added*)

26 Here Respondent intentionally and unequivocally misrepresented the fact that an order  
27 suppressing the BAC results had already been signed before the DOL hearing. The

1 Respondent stated he would fax the order to the hearing officer expressing no reservation about  
2 its existence. From all of the surrounding facts, it is evident that the Respondent intended to  
3 submit the altered order that would have caused Hearing Officer Provoe to believe that a valid  
4 order had been entered prior to the DOL hearing. The end result would be her entry of an  
5 order staying Magnuson's license suppression on the altered order.  
6

7 These actions would have had an adverse effect on the administrative proceedings as  
8 the basis of Hearing Officer Provoe's actions would be the direct result of the Kamb's false  
9 representation and subsequent filing of a fraudulent order.  
10

11 Sanction 5.0 Violations of Duties Owed to the Public, and specifically 5.1 Failure to  
12 Maintain Personal Integrity would also apply to Respondent's intentional misrepresentations to  
13 the DOL Hearing Officer which led her to believe a suppression order existed. That portion of  
14 sanction pertaining to the particular violation provides:  
15

16 **5.1 Failure to Maintain Personal Integrity**

17 Absent aggravating or mitigating circumstances, upon application of the factors  
18 set out in Standard 3.0, the following sanctions are generally appropriate in cases  
19 involving commission of a criminal act that reflects adversely on the lawyer's  
20 honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with  
21 conduct involving dishonesty, fraud, deceit, or misrepresentation:  
22

23 5.11 Disbarment is generally appropriate when:  
24

25 (b) lawyer engages in any other intentional conduct involving dishonesty, fraud,  
26 deceit, or misrepresentation that seriously adversely reflects on the lawyer's  
27 fitness to practice.  
28

29 Making such false representations obviously adversely reflects on Kamb's fitness to  
practice and demonstrates a disdain for the judicial and administrative law system and the  
requisites of the Canons of Ethics.

**5.2 COUNT 2: PRESUMPTIVE SANCTION: DISBARMENT: Sanction 5.0**

1 Violations of Duties Owed to the Public would also apply to Mr. Kamb's violations of RPC 8.4  
2 (B) (and violation of RCW 40.16.101, RPC 8.4 (C) and RPC 8.4 (d). The specific provision is  
3 again:

4 **5.1 Failure to Maintain Personal Integrity**

5 Absent aggravating or mitigating circumstances, upon application of the factor set  
6 out in Standard 3.0, following sanctions are generally appropriate in cases  
7 involving commission of a criminal act that reflects adversely on the lawyer's  
8 honesty trustworthiness, or fitness as a lawyer in other respects, or in cases with  
9 conduct involving dishonesty, fraud, deceit, or misrepresentation:

10 **5.11 Disbarment Is Generally Appropriate When:**

- 11 (a) a lawyer engages in serious criminal conduct, a necessary element of  
12 which includes intentional interference with the administration of justice,  
13 false swearing, misrepresentation, fraud, extortion, misappropriation, or  
14 theft; or the sale, distraction or importation of controlled substances; or the  
15 intentional killing of another; or an attempt or conspiracy or solicitation of  
16 another to commit any of these offenses; or  
17 (b) a lawyer engages in any other intentional conduct involving dishonesty,  
18 fraud, deceit, or misrepresentation that seriously adversely reflects on the  
19 lawyer's fitness to practice. (Emphasis added)

20 The act of altering the order by the Respondent was willful and was done with the  
21 intent to mislead the DOL Hearing Officer in order to induce her to enter an order staying Ms.  
22 Magnuson's license from being suspended. At its core, is the very essence of intentional  
23 interference with the administration of justice. The willful, intentional, and knowing  
24 falsification of an order by alteration also is a significant and intentional interference with the  
25 administration of justice.

26 Under 5.11(b) Mr. Kamb's intentional conduct clearly involved dishonesty in his  
27 altering the order and served to compound his earlier misrepresentations to the hearing officer.  
28 The willful alteration of the order was a commission of a class C felony under RCW 40.16.010.  
29 When coupled with the earlier oral misrepresentation to the DOL Hearing Officer, Mr. Kamb

1 acts seriously adversely reflect on his fitness to practice law.

2 Disbarment is generally the appropriate sanction when a lawyer, with the intent to  
3 deceive the court, makes a false statement, submits a false document, or improperly withholds  
4 material information and causes serious injury to a party or causes a significant or potentially  
5 significant adverse effect on the legal proceeding. In Re Disciplinary Proceedings Against  
6 Christopher, 153 W.2d 669, 680, 105 P.2d 975 (2005).  
7

8 **5.3 COUNT 3: PRESUMPTIVE SANCTION: REPRIMAND.** Section 4.5

9 “Lack of Competence” would provide the sanction for Respondent Kamb’s violation of RPC  
10 1.3 diligence. The appropriate section reads:

11 **4.5 Lack of Competence**

12 Absent aggravating or mitigating circumstances, upon application of the factors  
13 set out in Standard 3.0, the following sanctions are generally appropriate in cases  
14 involving failure to provide competent representation to a client:

15 **4.53 Reprimand** is generally appropriate when a lawyer:

- 16 (a) demonstrates failure to understand relevant legal doctrines or procedures and  
17 causes injury or potential injury to a client.

18 Mr. Kamb demonstrated a disregard for his client and failed to appropriately represent  
19 her as found above. Ms. Magnuson sustained an injury as a result of her license being  
20 suspended. Mr. Kamb failed to preserve an argument for collateral estoppel after his first (and  
21 obviously weak) defense that the officer did not certify the report on page one. Mr. Kamb’s  
22 failure to suppress Ms. Magnuson’s BAC results took away all possibility of getting the stay of  
23 suspension.  
24

25 **VI. AGGRAVATION AND MITIGATION**

26 **6.1** ABA Standards Section 9 of the Standard provides “after misconduct has been  
27 established aggravating and mitigating circumstances may be considered in deciding what  
28

1 sanctions to impose.

2       **6.2 AGGRAVATING FACTORS:** In section 9.22 of the ABA Standards, a list  
3 of potential aggravating factors are delineated. As “factors which may be considered in  
4 aggravation, in this instance the following aggravating factors exist:

5       **(A) Prior disciplinary offenses:** Just two months prior to the commission of  
6 these violations set forth in Counts 1, 2, and 3 of the Formal Complaint Mr. Kamb  
7 entered into a stipulation for admonition arising from his failure to attend hearings  
8 in Whatcom County in a felony case. The Respondent stipulated that by his  
9 failure to appear for court hearings, he violated RPC 8.4(d) (Conduct prejudicial  
10 to the administration of justice). As a result of the admonishment Respondent  
11 Kamb was on probation on May 13, 2008.

12       **(B) Dishonest or selfish motive:** The motive here was clear. The Respondent  
13 was already subject to a disciplinary sanction and probation. He also could  
14 sustain another Bar complaint for his lack of candor.

15       **(C) Pattern of misconduct:** With regard to Count 3, viewing the prior  
16 discipline, it is clear that Respondent Kamb had a pattern of misconduct, i.e. lack  
17 of diligence in representing his clients, to their detriment, which was compounded  
18 by his misrepresentation and subsequent attempt to falsifying a court order.

19       **(D) Substantial experience in the practice of law:** Respondent Kamb had  
20 been practicing for over twenty-one (21) years when the incident of May 13, 2008  
21 occurred. His practice emphasized criminal law, and specifically DUI and license  
22 matters.

1 (E) **Refusal to acknowledge wrongful nature of conduct:** The defense  
2 appears to be that Skagit County is a backwater jurisdiction of old boys (and girls  
3 presumably) where court rules, statutes, and ordinances are regularly relaxed  
4 among the insiders. It is made out to be an ideal setting where mere “negligence”  
5 mishaps and “clerical” errors can and do occur when even serious breaches of the  
6 RPCs and state statutes should go unpunished if (after the fact) the perpetrators  
7 say they were not trying to be “sneaky” or underhanded, even though actions  
8 appear otherwise. Respondent by way of defense leaves a wholly implausible  
9 scenario to excuse his actions, admits nothing, and demonstrates no remorse.

10  
11 (F) **Illegal Conduct:** Mr. Kamb willfully and intentionally altered a court  
12 records in violation of RCW 40.16.010. Knowing it was improper, and also  
13 knowing that this was not the appropriate way to amend an order, Mr. Kamb  
14 violated RCW 40.16.010.

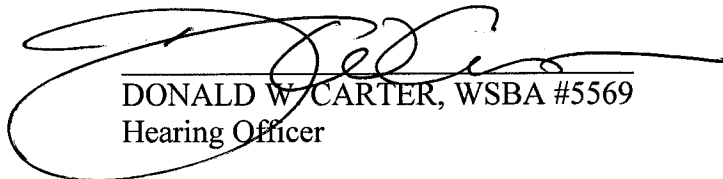
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17 **6.3 MITIGATION FACTORS:** There are not any mitigating facts under section  
18 9.3 of the standards.

19 **VII. RECOMMENDATION**

20 Our court has held that the ultimate sanction to be imposed should at least be consistent  
21 with the sanction for the most serious instances of misconduct among a number of violations.  
22 In Re Disciplinary Proceeding Against Peterson, 120 W.2d 833, 846, P.2d 1330 (1993). Here  
23 the most serious sanctions for Counts 1 and 2 are disbarment. Therefore, the Hearing Officer’s  
24 recommendation is that Respondent Kamb be disbarred.  
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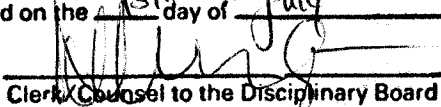


DATED this 14th day of July, 2010.

  
DONALD W. CARTER, WSBA #5569  
Hearing Officer

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the hearing, FOF, conclusions & Sanction Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Christen Skinner Respondent/Respondent's Counsel  
at 1500 University Way, Everett, WA 98201 by Certified/first class mail.  
postage prepaid on the 15th day of July, 2010.

  
Clerk/Counsel to the Disciplinary Board

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