

FILED

DEC 29 2011

DISCIPLINARY BOARD

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

In re

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

Proceeding No. 11#00010

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

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

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

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

COUNT 1

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

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

2 **COUNT 2**

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

6 **COUNT 3**

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

9 **COUNT 4**

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11 practicing law and would no longer represent them, Respondent violated RPC 1.4(b).

12 **COUNT 5**

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

16 **COUNT 6**

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

19 **COUNT 7**

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

22 **FINDINGS OF FACT**

23 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
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1 Officer makes the following Findings of Fact:

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

5 **The Zimcosky Matter**

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

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

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

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

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

18 14. On June 18, 2010, Respondent appeared in Auburn Municipal Court. According
19 to the prosecuting attorney, Harry Boesche, Respondent displayed exceedingly odd behavior.
20 (22:24-23:9; 24:4-7; 25:18-27:17). He was loud and disheveled. He engaged in "karate moves,"
21 quickly paced around the courtroom, showed prosecutors the inside of his mouth, flipped his tie
22 over his shoulder, and tucked and un-tucked his shirt. (141:9-143:23; 150:11-152:4).
23 Respondent denied he had acted strangely. The hearing officer found clear and convincing
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1 evidence from the various witnesses that testified on this subject that Respondent acted
2 inappropriately as noted in paragraph 16.

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

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

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

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

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

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

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

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

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

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

20 25. The following Monday, July 26, 2010, he left another message, which stated in
21 part: "Dan Heid, I've called you several times to tell you about what's going on and now I know
22 why you didn't call back because you're in bed with them. You're all a pawn and play a certain
23 role in a common scheme or plan. Yeah, Stacy Krantz, yeah, Harry Boesche, he's the main
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1 (unintelligible-?). It's all about numbers Dan, you need me to say numbers and dates, he's got to
2 say numbers and dates, he's got to act stupid, the judge has got to act stupid." He then went on
3 to say: "Dan, soon you will have my claim and it's going to be so outlandish you can't pay it
4 because you see I don't want money, this isn't about money, I can't be bought. Dan, I want your
5 personal assets, retirement, whatever your wife, children – I don't want – I don't want, I want
6 you guys to sit in a jury trial with all your pollutant lawyers, 'cause then you'd see how fun
7 when then had their (unintelligible –a rambling list of names) challenge to me. You know, these
8 days - these last – and Dan, your just part of the plan." Ex A-135. (80:21-81:10; 81:25-83-22;
9 84:6-85:18).

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

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

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

21 29. Respondent continues to allege that there was a conspiracy on the part of the
22 Auburn police and the city prosecuting attorney's office to delete portions of the recording of
23 Respondent's cross examination of the police officer examined by Respondent at the initial CrR
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1 3.5/3.6 hearing on June 18, 2010. Respondent's "expert" on this point, Loren Grytness, was
2 allowed to testify because of the relaxed rules of evidence that apply to these proceedings.
3 However he would not, without additional testimony, have passed the Frye/ER 702 test. The
4 testimony did not address any of the specific Counts in the Formal Complaint.

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

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

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

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

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

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

21 36. On August 20, 2010 the Association sent a copy of the Grievance and Request for
22 Response to Respondent at his address of record with the Association. On August 31, 2010 the
23 mail was returned, "UNCLAIMED." Respondent's son explained that while they were "on the
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1 run” no one was monitoring mail or voicemail messages. (396:1–397:17).

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

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

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

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

16 **The Ballard Matter**

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

23 42. Mr. Ballard went to Respondent’s office on June 21, 2010 to meet with
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1 Respondent and give him a retainer. Although Respondent was at his nearby home at the time,
2 he sent his teenage son, Carter Wickersham ("C. J."), to the office to meet Mr. Ballard. Mr.
3 Ballard gave C. J. \$2,700 in cash, \$2,500 for a retainer and \$200 to set a hearing with the DOL.
4 Mr. Ballard received a receipt from C. J. (244:19-245:21). Respondent never did meet Mr.
5 Ballard in person. (250:17-19).

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

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

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

20 46. Respondent excused his failure to represent Mr. Ballard regarding the DUI and the
21 DOL hearing based on his interpretation of the phone conversation noted above, to wit, he had
22 been fired. (248:12-17). However, Mr. Ballard did not have that understanding concerning his
23 representation by Respondent. In any event, Respondent left town prior to the August 26, 2010
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1 hearing without alerting Mr. Ballard. (128:9–129:3).

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

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

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

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

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

19 **The Griffin Matter**

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

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

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

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

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

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

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

22 59. Respondent's own testimony at the disciplinary hearing was that he was able to
23 contact all his existing clients before leaving town on August 23, 2010 to let them know he was
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1 | quitting his practice. "I've got a great memory and the files were in my home, so all that had to
2 | happen, if I wasn't sure, I would go to the box with my son and my son would have the – in-
3 | take there with the phone number and all the files were sitting right there under the kitchen
4 | table. (134:1-134:6)

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

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

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

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

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

23 | 65. Respondent failed to have any further contact with the court, never filed a notice of
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1 | intent to withdraw and was never acknowledged to have withdrawn by the court. (243:2)

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

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

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

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

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

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

15 | **Abandonment of Practice**

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

20 | 73. Respondent stated in part: "Hello, I am very sorry, but this office is now
21 | permanently closed. It is no longer at the direction of Joe Wickersham. Please be advised
22 | though Mr. Wickersham is in no trouble, has no problems with the Washington State Bar, and
23 | simply has now been afforded a wonderful opportunity to relocate and get into a much better
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1 | career.” He continued, “And throughout all of this, now I have learned a lot of bad things, and I
2 | know I was a target of a very, very, very, very horrible, intentional, calculated scheme and plan
3 | to have me locked up and take everything from me. But that ended when I called the police on a
4 | very early morning on the 22nd of July. Man, I told them not to come, but, and so I have to get
5 | out of the most unsafe county that I have ever been in, and that is the honest to God truth. Good
6 | luck here in King County with Sue Rahr. Boy, you ought to relocate in a big hurry.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 106. Respondent engaged in a pattern of misconduct.

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

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

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

12 110. No mitigating factors apply in this case.

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

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

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

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

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

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

7 CONCLUSIONS OF LAW

8 Violations Analysis

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

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

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

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

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

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

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

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

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

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

16 **Sanction Analysis**

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

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

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

1 126. The presumptive sanction is suspension.

2 127. **Count 2-** ABA Standard 7.0 applies to violations of RPC 1.16(d).

3 128. Respondent acted knowingly in abruptly ending his representation of clients. He
4 caused injury to Mr. Ballard, Mr. Griffin, Mr. Zimcosky, and the courts.

5 129. The presumptive sanction is suspension.

6 130. **Count 3-** ABA Standard 7.0 applies to violations of RPC 1.5(a).

7 131. Respondent acted knowingly. Mr. Ballard paid \$2,700 for work that was not
8 completed by Respondent.

9 132. The presumptive sanction is suspension.

10 133. ABA Standard 4.4 applies to violations of RPC 1.3.

11 134. Respondent knowingly abandoned his practice, failed to perform services for Mr.
12 Ballard, and engaged in a pattern of neglect. There was injury to the client and to the courts.

13 135. The presumptive sanction is suspension.

14 136. **Count 4-** ABA Standard 4.4 applies to violations of RPC 1.4(b).

15 137. Respondent engaged in a pattern of neglect when he failed to tell multiple clients
16 that he would no longer represent them and failed to file notices of withdrawal. There was
17 injury as described above.

18 138. The presumptive sanction is suspension.

19 139. **Count 5-** ABA Standard 6.0 applies to this violation of RPC 8.4(d).

20 140. ABA Standard 4.4 applies to violations of RPC 1.3.

21 141. The presumptive sanction is suspension.

22 142. **Count 6-** ABA Standard 4.5 applies to violations of RPC 1.1.

23 143. Respondent was at least negligent in failing to recognize that he was not able to
24

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

2 | 144. The presumptive sanction is a reprimand.

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

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

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

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

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

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

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

1 conclusion reached by the Hearing Officer.

2 **Recommendation**

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

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

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

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

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

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

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

1 to the active practice of law.

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

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

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

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

10 *Lish Whitson*
11 s/ Lish Whitson
12 Hearing Officer

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17 CERTIFICATE OF SERVICE

18 I certify that I caused a copy of the PDF, LOL & HO's Recommendation
19 to be delivered to the Office of Disciplinary Counsel and to be mailed
20 to Dr. Wickerham Respondent/Respondent's Counsel
21 at 1701 2nd Ave, Suite 210, Seattle, WA 98101 by Certified/first class mail,
22 postage prepaid on the 27th day of December, 2011

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