BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re ROBERT JACKSON Lawyer Bar No. (18945)	Public No. 10#00018 FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION **AS REDACTED PURSUANT TO PROTECTIVE ORDER**

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), a hearing was held before the undersigned Hearing Officer from April 4, 2011 to April 18, 2011. The Association was represented by Ms. Christine Gray and Ms. Francesca D'Angelo. The Respondent was present and was represented by Mr. Leland Ripley. The parties agreed to waive the 20 day requirement for filing of Findings of Fact and Conclusions of Law and Recommendations. The parties also provided multiple post hearing briefing on legal issues that arose during the hearing.

I. FACTUAL SUMMARY

This complex case was heard over a period of two weeks and involves thousands of

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pages of exhibits. Therefore, to allow the reader to understand specific factual findings in context, a factual summary has been included setting forth the general facts and the issues in dispute. This introduction should be used only for context. The specific findings contained in the individually numbered paragraphs constitute this Officer's official Findings of Fact.

A. The Bankruptcy Dispute: Counts 1-5

Counts 1-5 involve the Respondent's activities providing legal advice to Douglas Simonson while representing Michael & Rowan Levenhagen, Mark & Sylvia Laing, and David Laning & Nancy Laning.[1]

Although Simonson first consulted Respondent in April 2005, the events pertinent to this hearing began with Simonson's activities the year before. In 2004, Douglas and Karen Simonson owned a residence at 11609 Holmes Point Drive, Kirkland and a related rental property at 11615 Holmes Point Drive. Attorney Kevin Magorien represented Simonson at this time. On Simonson's behalf, Magorien filed a petitioned for bankruptcy in April 2004. Magorien then filed a motion seeking abandonment of the real property by the trustee in July 2004. Based on representations that the properties had little or no value above the secured loans, Magorien persuaded the bankruptcy court to abandon the properties. In August 2004, Simonson received a discharge of all his debts.

Simonson worked for a company called Global Financial Services (GFS). This company structured creative real estate investments that paired investors with good credit with investment properties. Subsequent to the order granting the motion to abandon, Simonson conducted a number of transfers of relating to the Holmes Point Drive property using the buying

[1] Douglas Simonson did not appear at this hearing, although a great number of the exhibits and testimony pertained to his financial problems and Respondent's role in them.

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partner format. Only the first of these transactions involved GFS.

In June and July 2004, GFS was in negotiations with Michael and Rowan Levenhagen as potential purchasers of the property. Simonson conducted those negotiations. On July 13, 2004, the bankruptcy court entered an order of abandonment of the property, freeing it from the control of the bankruptcy court. On or about November 24, 2004, Simonson sold his residence to Michael and Rowan Levenhagen for $200,000 more than the value Simonson had placed on it in his affidavit to the bankruptcy court. At the time of the purchase, the Levenhagens believed they were contracting with GFS. Douglas Simonson was their contact point with GFS. The arrangement involved use of the Levenhagens' credit for a fixed fee. Douglas Simonson negotiated that fee. The Levenhagens understood that cash payouts obtained from the new loans would be used to fund the buying partnership fee and mortgage payments on the loans until final disposition of the property.

The Levenhagens encountered substantial performance issues with GFS. GFS failed to pay the buying partnership fee and failed to make payments on the mortgages that the Levenhagens had entered into as part of the purchase of Simonson's property. Mike Levenhagen contacted Simonson. Simonson blamed GFS for all of the issues and cast himself as a fellow victim of GFS, asserting that it had engaged in an equity skimming scam.

Simonson drafted a new scheme involving additional transfers of the property using the same buying partner model. Mark and Sylvia Laing and David Laning are individuals who were involved in these subsequent transfers of Simonson's properties. Like the Levenhagens, their transactions involved buying agreements that exposed them to liability on the mortgages but vested control of the properties in Simonson and/or his associates.

Beginning in April 2005, Simonson retained Respondent to assist in various real estate

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transactions and disputes with GFS. Respondent's first assignments included drafting many of the documents that ultimately were used in transactions with the Levenhagens, Laings and Lanings. His firm served as trustee on a deed of trust that allowed Simonson to obtain a third loan on the property in June of 2006. An escrow firm, in which Respondent shared profits, handled the escrow for this and other transactions.

Late in 2005 and early in 2006, the Simonsons' activities regarding their tax liabilities and the Holmes Point properties came under the scrutiny of the bankruptcy trustee. The bankruptcy trustee learned first that Simonson had transformed a huge tax liability into a major tax refund, using a tax shelter to retroactively grant a tax refund. This transaction involved a company called Merendon Mining. The trustee retained attorney Denice Moewes to conduct further investigation into the Simonsons' financial dealings.

Moewes discovered a 2004 appraisal for the 11609 Holmes Point Drive property that predated the filing of the petition for bankruptcy. She reviewed county records and learned that the process of obtaining a boundary line adjustment and short plat had probably begun before the bankruptcy petition. Those transactions and the tax shelter scheme caused Moewes to suspect that Simonson had fraudulently obtained the initial order of abandonment. This conclusion thus made any subsequent transfer of the properties suspect as well.

The investigation led the trustee to file two actions involving Simonson's assets. Moewes filed the first action [hereafter "first adversarial proceeding."] against Simonson in January 2006. This proceeding involved the allegedly fraudulent tax shelter agreement with Merendon Mining. Immediately upon filing the action, Moewes sought a series of restraining orders to prevent Simonson from dissipating any funds that might eventually be used to repay his creditors.

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Respondent's high school friend, Greg Cavagnaro, was Simonson's attorney of record in the first adversarial proceeding. The Association alleged, however, that Respondent was the person Simonson relied upon for coordinating his defense. Respondent disputed the nature and extent of his representation of Simonson. Those disputes involved: 1) the role Respondent played, if any, in assisting Simonson in the adversarial actions arising from the bankruptcy proceeding, 2) his knowledge of various orders entered by the court and 3) his role, if any, in helping Simonson evade restraining orders. The most serious of these disputes involved the charge that Respondent used his business and personal accounts to funnel money to Simonson after the bankruptcy judge entered the various restraining orders.

Respondent denied he assisted in a bankruptcy fraud. He testified that he did not know of the restraining orders at the time of the transfers and alleged that the transfers were not of the type precluded by the order. Findings 33 to 161 trace the various issues associated with the bankruptcy fraud allegations and this officer's resolution of the underlying factual disputes.

After tracking the real estate transactions, Ms. Moewes filed a second proceeding, [hereafter "second adversarial proceeding]. Ms. Moewes filed this action in April 2006, against a number of individuals and entities that participated in the real estate transactions after Simonson obtained his discharge. Simonson was not named as an individual defendant in this proceeding until September 2006. However, Michael and Rowan Levenhagen, Mark and Sylvia Laing, and David and Nancy Laning were all named in the first complaint filed in this proceeding. There was evidence that Simonson and his business partner, Kenny North, directed these couples to Respondent in order to control their defense and ensure that it was compatible with Simonson's interest in the matter.

The Association alleged that Respondent had conflicts of interest that precluded him

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from representing these individuals. The allegations arising from the representation of these individuals involved Respondent's role in the production of documents and questions of conflicts of interest arising out of the dual representation of Simonson and the three couples who were victims of his fraudulent activity.

The findings of fact as to these counts, track the specific events and issues raised by the charges. The findings dealing with the conflicts of interest are Findings 162 to 250. The findings discussing the discovery violations are contained in Findings 251 to 297.

B. The Dainard Grievance: Counts 6-14

A second set of charges involve Respondent's business and professional dealings with a couple who had been both his friends and his clients. Rob and Claire Dainard had consulted Respondent about a number of legal issues through the years. In late 2005, the Dainards located an investment property at 115 Webster, Chelan Washington. The Dainards put $25,000 down as earnest money on the property and a plan was developed between the couples that involved joint ownership of the property through a limited liability company, RPC Enterprises LLC. Factual disputes exist regarding whose idea it was to enter into this arrangement. It is undisputed that Respondent organized that entity that he and his wife were members of the LLC with the Dainards, and that, at least for some purposes, Respondent provided some legal services to the LLC.

The property at 115 Webster sits between two other prime lots, the "Mack" property and the "duplex" property or lot. The issues in the second set of charges relate to various real estate transactions involving these three properties. The Association contended Respondent was acting on his own behalf and to benefit another client, Kenny North. Counts 8-14 raise conflict of interest issues that allegedly arose when Respondent entered into certain transactions relating to

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the 115 Webster property and these two neighboring parcels. Respondent defended these charges primarily by contending that he was not acting as the attorney for RPC Enterprises but rather acting as one of its members. He also denies that he was engaged in self-dealing in entering into the various real estate transactions. He asserts that his actions were taken to benefit the company and with knowledge and consent of the Dainards. Findings 330 to 391 resolve the factual issues relating to the conflicts of interest.

In June of 2006, Respondent and his wife purchased the 115 Webster property and signed mortgage papers to fund the purchase. Counts 6 and 7 raise issues regarding the documents executed in connection with that loan. Findings 298 to 329 resolve the factual issues relating to those issues.

II. FORMAL COMPLAINT

The Association charged Respondent with multiple violations of the Rules of Professional Responsibility arising from his activities in connection with various business clients. These charges are divided between transactions associated with the bankruptcy of Douglas Simonson and those associated with the business dealings between Respondent and his clients, Robert and Claire Dainard.

As to the Simonson matter, the Association alleged five counts of misconduct.

COUNT 1 alleged that Respondent signed a real estate excise tax affidavit on which he represented that he had authority to sign the document as an agent of Michael Levenhagen. The Association asserted that Respondent was not Levenhagen's agent and did not have authority to sign the document. The Association charged that by falsely representing that he was Levenhagen's agent when signing the excise tax affidavit, Respondent violated RPC 8.4(c).[2]

[2] The RPC's were amended effective September 1, 2006. The Formal Complaint charges Respondent with violating the RPC in effect as of the date of the alleged conduct.

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The Respondent admitted that he signed the challenged document but denied that he did so without authority.

Count 2 alleged that Respondent transferred money belonging to Simonson into Respondent's business and personal accounts and then disbursed it according to Simonson's instructions at a time when Simonson's funds were subject to a restraining order entered in the bankruptcy court. The Association charged that the Respondent knew of the restraining order and worked with Simonson to evade its terms. The Association alleged this conduct violated RPC 8.4(b) (by violating Title 18, United States Code, Section 152 and/or Title 18, United States Code, Section 2), RPC 8.4(c), RPC 8.4(d), and/or RPC 8.4(j). Respondent denied that he knew of the restraining order and/or its terms at the time he transferred funds on Simonson's behalf.

Count 3 alleged a specific violation of the bankruptcy court's orders involving the repayment of a loan Respondent had made to Simonson in early 2006. Respondent admitted that he loaned Simonson $50,000 in February 2006. At the time, the restraining order was in place. Later in the year, the bankruptcy court ruled that Simonson's attorneys, including Respondent, were required to disclose all financial transactions during the applicable period. Respondent filed the required report, but did not disclose to the bankruptcy trustee and the court that he had transferred $55,000 of Simonson's funds from an escrow account to his wife, Patti Jackson. The $55,000 repaid the original $50,000 loan and paid Respondent and his wife an additional $5,000 as a loan fee and interest. The Association alleged this conduct violated former RPC 3.3(a), RPC 8.4(c), RPC 8.4(d), and/or RPC 8.4(j).

COUNT 4 alleged that the Respondent engaged in wholesale discovery violations that involved intentionally withholding highly relevant documents and deliberate redaction of

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documents responsive to specific discovery requests. The Association charged that Respondent was motived by a desire to conceal his role in the alleged fraud on the court. The Association alleged this conduct violated current RPC 3.4(a), RPC 8.4(c) and/or RPC 8.4(d). Respondent denied that he intentionally redacted or omitted documents.

COUNT 5 charged misconduct based on Respondent's representation of the Levenhagens, the Laings and the Lanings in the second adversarial proceeding. The Association alleged the existence of conflicts of interest between those of the Levenhagens, Laings and/or Lanings and the Respondent's personal interests and/or his responsibilities to Simonson. The Association also alleged Respondent failed to provide the Levenhagens, the Laings and the Lanings with the information they needed to assess and consent to said conflicts. The Association contended Respondent's conduct in representing these individuals violated former RPC 1.7(b), and/or current RPC 1.7(a).

Respondent defended this charge primarily by asserting that the interests of Simonson, the Levenhagens, Laings and Lanings were not adverse and therefore, there was no significant risk of an improper conflict of interest. Respondent also contended that he fully informed these clients of the potential conflicts and obtained their written consent prior to his firm entering a notice of appearance.

Dainard Grievance

The second set of grievances arise from Respondent's business dealings with Robert and Claire Dainard and his conduct relating to the purchase of property located at 115 Webster, Chelan Washington. As part of this transaction, Respondent and his wife entered into a joint venture with the Dainards as equal owners in RPC Enterprises, LLC. At the time of that transaction, Respondent was representing Claire Dainard in a personal injury matter. The

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Association alleged that Respondent acted in such a way as to place his interests in conflict with those of the LLC and/or the Dainards.

COUNT 6 alleged that Respondent made a false statement on a mortgage application regarding 115 Webster and/or on a second home rider regarding 115 Webster. The Association alleged that this conduct violated RPC 8.4(b) (by violating Title 18, United States Code, Section 1344) and/or RPC 8.4(c). Respondent denied the existence of the necessary mental state for fraud and denied his conduct violated the law.

COUNT 7 alleged that Respondent failed to inform the Dainards and RPC Enterprises of the false statements made on his mortgage application and related documents. The Association alleged that this conduct limited the ability of RPC Enterprises to develop the property and that, therefore, Respondent violated former RPC 1.4(b). The Respondent denied these allegations.

COUNT 8 alleged a violation of the rules pertaining to business transactions with or adverse to a client. The Association alleged that Respondent used RPC Enterprises to enter into a purchase and sale agreement for the "Mack property" which he then assigned to Chelan Landing, LLC, a company in which he held an interest. The Association alleged that the terms of the assignment were not fair and reasonable to RPC Enterprises and that the transaction was not fully disclosed to RPC Enterprises and/or the Dainards. The Association alleged that this conduct violated RPC 1.8(a). Respondent admitted that he assigned the purchase and sale agreement but denied the Dainards were not aware of his conduct. He also denied that his conduct violated RPC 1.8(a).

COUNT 9 alleged an additional count of conflicts associated with business transactions adverse to a client. In this count, the Association alleged that Respondent acquired an interest

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in the duplex property that bordered the 115 Webster property owned by RPC Enterprises. The Association alleged that Respondent had an ownership interest in Jackson-Field, the company that entered into agreement to purchase the duplex. It alleged specifically that Respondent acquired this interest in the duplex on terms that were not fair and reasonable to RPC Enterprises and that he did not disclose the transaction to RPC Enterprises and/or the Dainards. The Association alleged this conduct violated RPC 1.8(a). Respondent denied this allegation.

COUNT 10 alleged that the Respondent used information that he learned during his representation of RPC Enterprises and/or the Dainards to the disadvantage of RPC Enterprises and/or the Dainards. The Association alleged that this conduct violated RPC 1.8(b).

COUNT 11 alleged a conflict of interest with concurrent clients. The Association alleged that the Respondent violated current RPC 1.7(a) by representing RPC Enterprises in making an offer for the sale of 115 Webster in March and April 2007, and/or in considering an offer from Chelan Landing for the sale of 115 Webster in September 2007 at a time when there was a significant risk his representation would be materially limited by his personal interests and/ or his responsibilities to Chelan Landing and/or Kenny North. The Association further alleged that Respondent could not reasonably believe that he would be able to provide competent and diligent representation to RPC Enterprises and that he did not obtain the required informed consent to the conflicts from either RPC Enterprises or the Dainards.

Count 12 alleged Respondent violated RPC 1.7(a) when he entered into a purchase and sale agreement for the Mack property in the name of RPC Enterprises and transferred the purchase and sale agreement for the Mack property. The Association alleged this was done at a time when there was a significant risk that the representation would be materially limited by his personal interest and/or his responsibilities to Chelan Landing and/or North. The Association

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alleged that Respondent could not reasonably believe that he would be able to provide competent and diligent representation to RPC Enterprises and that he did not obtain informed consent in writing of RPC Enterprises and/or the Dainards.

COUNT 13 alleged that Respondent violated the duty to keep his clients informed. The Association alleged Respondent violated RPC 1.4 and/or RPC 8.4(c) by failing to inform RPC Enterprises and/or the Dainards that he was entering into a purchase and sale agreement for the Mack property in the name of RPC Enterprises. It asserted further that he violated this rule by failing to inform RPC Enterprises and/or the Dainards that he was assigning RPC Enterprises' purchase and sale agreement for the Mack property to Chelan Landing. Finally, the Association alleged that Respondent failed to inform RPC Enterprises and/or the Dainards of the extent of his involvement with North and/or Chelan Landing.

COUNT 14 alleged Respondent violated RPC 8.4(c) by making one or more misrepresentations to the Dainards regarding and during various transactions.

III. HEARING & PROCEDURAL MATTERS

A. Motion to Continue Hearing

Approximately 6 weeks before the hearing, Respondent moved for a 60 Day continuance of the hearing date of April 4, 2011. This date had been selected by mutual agreement of the parties in November 2010. Respondent's motion contended that necessary witnesses, including his wife, Patti Jackson, and Clay Terry were not available during the hearing. This motion was denied pursuant to ELC 10(1) (c). The declarations filed in support of the motion did not establish good cause for the continuance and failed to support the contention that the Respondent would be prejudiced if the hearing proceeded on the scheduled date.

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Witness Clay Terry was available to testify by telephone, however, Respondent eventually elected not to have him testify. Respondent's wife was present and testified.

B. ELC 10.13 Issues

On March 24, 2011, the Association filed and served its Revised ELC 10.13(c) Demand for Documents to be produced the first day of the disciplinary hearing, April 4, 2011. That demand required Respondent to produce, among other things:

1. Any and all original client ledgers for clients whose funds were in his IOLTA account;
2. The original check register for 2006 transactions in the IOLTA account;
3. Any document in which Respondent notified the clients of the fact that the sum of $14,017.05 had been received;
4. Any documents that the clients had authorized the disbursement of the above funds;
5. Any document that established that Respondent had notified one or more of the clients of the above disbursement.

This document, Exhibit A-293, also requested documentation regarding billing statements and time entries for several clients and a Uniform Residential Loan Application.

During the hearing, Respondent was questioned concerning the above items. As to item one, he indicated that the records were in storage and that he was not able to retrieve them. [RP 822]. This officer directed Respondent to produce the items.

As to item #2, Respondent asserted the records were in electronic format and that he could not retrieve them from his computer. [RP 832]. Ultimately this issue was resolved by an order for Respondent to produce his desktop computer. Upon inspection by the Association staff, the records were located.

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As to items 2, 4, and 5, the Respondent asserted no such documents existed. [RP 295-296].

C. Attorney/Client Privilege Issues

A large number of the exhibits submitted in this case involve attorney/client communications between Douglas Simonson, Respondent's firm and Gregory Cavagnaro, the other attorney representing Mr. Simonson. Privileges associated with these communications have not been waived. In addition, a factual dispute existed regarding whether Respondent was acting as an attorney in his dealings with Kenny North. Respondent asserted that he was not Kenny North's attorney, and therefore there was no need to consider communications between he and Mr. North as privileged. Mr. North did not testify at the hearing. Based on the documents, testimony and legal authority presented on this issue, this Officer resolves this issue against Respondent.

Consequently, in the public document, the findings that discuss the contents of those exhibits have been redacted. Where those redactions occur, the original finding of fact number appears with the designation that it is subject to the Protective order. The exhibits pertaining to those communications are also being filed under seal. The parties are directed to cooperate in determining which portions of the transcripts must also be filed under seal.

D. Hearing

The hearing in this matter began April 4 and concluded April 18, 2011. Witnesses were sworn and presented testimony, and numerous exhibits were admitted into evidence. Having considered the evidence and argument of counsel, the Hearing Officer makes the following findings of facts, conclusions and recommendations.

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IV. FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence. ELC 10.4 (b).

A. Findings Identifying Participants & Relationship to Case

1. Respondent Robert B. Jackson was admitted to the practice of law in the State of Washington on November 16, 1989. Respondent has had no prior discipline.

2. At the time of the events alleged in the complaint, Respondent practiced in a firm known as Herman, Recor, Araki, Kaufman, Simmerly & Jackson, PLLC, located at 2100 116th Ave. N.E., Bellevue, Washington.

3. This firm is a liability sharing PLLC. Its members share expenses but do not share income. Each lawyer maintains their own individual trust account.

4. The majority of Respondent's practice involves business and real estate matters.

5. Stephen T. Araki is a member of this group and practices at this location. In addition to his law practice, Mr. Araki runs Araki Escrow Services. For some of the matters processed by Araki Escrow Services, Respondent and Mr. Araki share fees earned. At the time of the hearing, a disciplinary case arising from Mr. Araki's role in these events had been ordered to hearing.

6. Beginning at a date uncertain, but no later than September 15, 2004, Robert Jackson was the registered agent for Global Financial Solutions, LLC. [Hereafter "GFS".] This company was instrumental in a number of the transactions discussed below. Sometime in 2005, Respondent appeared on behalf of this company. Respondent resigned as registered agent for GFS on May 3, 2006.

7. In 2004, attorney Kevin Magorien filed a petition for bankruptcy and other documents in that proceeding on behalf of Douglas Simonson.

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8. Douglas Simonson became Respondent's client on April 20, 2005. Respondent provided legal advice on various business entities, drafted documentation for the formation of a number of companies and assisted in settlement negotiations on disputed matters.

9. Gregory Cavagnaro is Respondent's high school friend and a lawyer. Respondent directed Mr. Simonson to Mr. Cavagnaro for legal advice in subsequent bankruptcy proceedings. Although Gregory Cavagnaro was the attorney of record for these proceeding, the overwhelming evidence established that Simonson relied upon Respondent to be the primary attorney providing legal advice to him in all phases of his dispute with the bankruptcy trustee. The evidence also established that the Respondent was the primary attorney drafting legal pleadings for the two adversarial proceedings arising from Simonson's disputes with the bankruptcy trustee.

10. Douglas Simonson was an agent of Global Financial Services, a company that paired investors and real property opportunities through "buyer partnership agreements."

11. Tiffany Doty was an agent of Global Financial Services and an associate of Simonson. Ms. Doty also owned a company called Manna Funding. Ms. Doty did not appear at the hearing.

12. Dave Langford was another agent of Global Financial Services. Mr. Simonson blamed many of the events on the conduct of Mr. Langford. Mr. Langford did not appear at the hearing.

13. [Subject to Protective Order]. [Ex. A-16].

14. Douglas Simonson owned Moss Bay Partners, a company that offered buying partnership agreements. Certain funds were transferred to Moss Bay Partners.

15. Douglas Simonson owned, at various times, Network Builders, LLC. Network

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Builders was used as a company to transfer Simonson's residence and to obtain hard money loans.

16. Network Builders, Douglas Simonson and KC North Family Trust—Kenney North, formed Cedar Hollow Development in July 2005. Respondent drafted the formation documents and served as its attorney. [Ex. A-21]. Cedar Hollow Development, LLC, was one of the main companies used to transfer funds from Kenney North to Douglas Simonson in early 2006. [Ex. A-33].

17. In May and June 2006, the firm of Herman, Recor, Araki, Kaufman, Simmerly & Jackson, PLLC formed attorney/client relationships with Michael and Rowan Levenhagen, David and Nancy Lanning, and Mark and Sylvia Laing in order to represent these individuals in an second adversarial proceeding filed in the Simonson bankruptcy matter. On July 17, 2006, Stephen Araki entered a notice of appearance on behalf of these individuals in U.S. Bankruptcy Court #06-1235-MLB,

18. Although Mr. Araki was the attorney of record, the evidence established that Respondent was responsible for drafting the majority of the pleadings and making tactical decisions regarding the direction the defense would take.

19. Beginning in 2000 and continuing through 2007, Respondent was the for Robert and Claire Dainard. During this period of time, Respondent worked on a number of different matters on behalf of the Dainards. The Dainards, Respondent and Patricia Jackson, Respondent's wife, became friends during this period.

20. On November 11, 2005, Respondent entered into a business relationship with the Dainards through the formation of a limited liability corporation, RPC Enterprises, LLC. [Ex. 353]. Respondent was listed as the organizer of this company, a manager and as the registered

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agent for the LLC. His office address was also the registered office for RPC Enterprises LLC.

21. On June 12, 2006, RPC Enterprises LLC held an organizational meeting. Documents drafted by Respondent listed Respondent Robert Jackson as the company's attorney. Robert Dainard was listed as the President/CEO. Ownership of the company was divided into two 50% shares. Robert and Patricia Jackson owned 50% of the company and Rob and Claire Dainard owned the other 50% share. [Ex. 362].

22. On January 17, 2006, Respondent participated in the formation of Jackson-Field Enterprises, LLC. Respondent was the organizer of this LLC, its registered agent, and one of its two managers. [Ex.354]. The first organizational meeting of this LLC was January 25, 2006. According to the organizational minutes, Respondent was both the President/CEO of the LLC and the LLC's attorney. Ownership of Jackson-Field Enterprises was vested 50% in Respondent and his wife Patricia Jackson and 50% in the name of Morgan and Desiree Field. [Ex. 355].

23. Jackson-Field Enterprises entered into various real estate transactions that form the basis of the charges relating to the Dainards, including an attempted purchase of the duplex property adjacent to 115 Webster, owned by RPC Enterprises, LLC.

24. Beginning at a date uncertain, Respondent formed an attorney client relationship with Kenny North and his business enterprises. At hearing, Respondent denied such a relationship existed with Mr. North but did admit he represented one or more of North's companies. This Hearing Officer resolves this issue against the Respondent. The exhibits document numerous incidents of Respondent drafting documents for Mr. North and/or his companies, providing advice to Mr. North and maintaining funds that belonged to Mr. North in Respondent's Trust Account. These activities would create a reasonable belief on the part of

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Mr. North that Mr. Jackson was his attorney.[3]

25. On April 11, 2007, Respondent participated in the formation of Chelan Landing, LLC. Respondent was the registered agent and organizer of this company. His company, Jackson-Field Enterprises, LLC, was a member of the Chelan Landing, LLC and entitled to participate in its management. The other member/manager of Chelan Landing, LLC, was KC-Family Trust—Kenny North. [Ex. A-390].

26. Chelan Landing, LLC, participated in the purchase of the Mack property. This property also adjoined that owned by RPC Enterprises, LLC.

B. General Credibility Findings

27. Respondent testified extensively regarding the facts of the various charges. His testimony was supported primarily by the testimony of his wife, Patti Jackson. Much of his testimony was directly contradicted by the Association's witnesses and the available exhibits.

28. This officer found neither Respondent nor Patti Jackson to be credible witnesses. Before reaching this conclusion, this officer extensively examined the hundreds of exhibits submitted in this matter. In order to better understand the timing of events, information pertaining to each of the exhibits was placed in a master table and sorted by date. Added to this master table were dates of events gleaned from Respondent's billing records and trust accounts. The documents and dates were then compared to each witness's testimony in the transcript. On numerous occasions, the documents directly contradicted one or both of the sworn statements of these two witnesses. Specific examples of these contradictions will be discussed throughout these findings.

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[3] Unlike the cases cited in Respondent's post hearing brief, Respondent provided legal advice to multiple legal entities owned in whole or part by Mr. North and was active in forming new companies as the need arose. These and other facts lead this Officer to conclude that the scope of representation went beyond the individual North companies.

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29. Finally, this officer also evaluated the testimony of the Association's witnesses against the dates and facts established by the exhibits and timeline of events. The testimony of those parties who might be inferred to have an interest in the outcome of this hearing was consistent with the exhibits, the timing of events established by those exhibits, and with the testimony of witnesses who could have no vested interest in the outcome of this hearing.

C. Findings Relating to Cooperation With Investigation

30. Throughout the hearing, Respondent resisted attempts by the Association to obtain pertinent records, including ledgers associated with his trust accounts. During the hearing, this officer ordered the Respondent to comply with the Association's request. Respondent first claimed that the documents were in storage and that he could not retrieve them because he did not have a correct index of the records in storage. [RP 822-826; 831]. After determining that Respondent had made no real effort to retrieve the documents from storage, this officer ordered Respondent to do so and provided a time certain for complying with the request. [RP 842]. The physical records were finally delivered to the hearing room and the Association during the second week of the hearing.

31. The Association's demand included records that Respondent stated he could not retrieve from his computer accounting program. [RP 827; 832-33]. Respondent first provided a disk of the materials that did not contain records of the year in question. [RP 1170]. Respondent was ordered to produce the computer itself. [RP 1171]. The computer was produced at the hearing. With Respondent and his counsel supervising the access, the pertinent records were located as an attachment to Respondent's email. [RP 1795].

32. The Association located at least one inculpatory document after Respondent was forced to comply with the ELC 10.13(c) demand.

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V. Facts Tracing Simonson Real Estate Transactions

33. In early 2004, Douglas and Karen Simonson owned property at 11609 Holmes Point Drive N.E. in Kirkland Washington. On April 27, 2004, an appraisal was done on this property, listing an appraised value of 1.1 million dollars. The appraisal notes that it was being done for a sale on July 30, 2004. [Ex. 284].

34. Two days later, on April 29, 2004, the Kevin Magorien filed a petition for bankruptcy on behalf of the Simonsons in the U. S. Bankruptcy Court, Western District of Washington, Cause Number 04-15846.

35. In June 2004, Michael Levenhagen was solicited by a firm called "Nexidis" located in Utah. The Levenhagens discussed real estate investments with Nexidis and shortly thereafter Nexidis handed the Levenhagens off to its affiliate, Global Financial Solutions [GFS]. Working as an agent of GFS, Douglas Simonson contacted the Levenhagens about GFS's Buying Partner Program. The Buying Partner Program paired investors with sound credit with real property investments.

36. Simonson had substantial involvement in GFS's Buying Partner Program. He actively promoted GFS's Buying Partner Program both for purposes of his own real estate transaction and as a representative of GFS in other transactions.

37. Kevin Magorien filed a motion to abandon property in Simonson's bankruptcy proceeding on June 30, 2004. [See Docket entries on Ex. 294]. The subject property was Simonson's Lake Washington waterfront home located at 11609 Holmes Point Dr. N.E. Kirkland Washington and the related rental property at 11615 Holmes Point Drive N.E. The motion for abandonment argued that the property had no equity beyond the secured loans and was therefore of no value to the remaining creditors.

38. Based on these representations, the bankruptcy court entered an order

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abandoning the property on July 13, 2004. [See docket entry on Ex. 294].

39. Two weeks later, (July 29, 2004) Simonson sent Levenhagen an email that detailed GFS's Buying Partnership program and the specific property that was being offered. [Ex. 163, p. 1]. That email described the property as a "very nice Lake Washington waterfront home." There was no reference to the fact Simonson owned and resided in the property in question. There is no reference to the fact the property had recently been part of Simonson's bankruptcy.

40. Simonson informed Levenhagen that the property had an appraised value of 1.1 million "or more," that the proposed loan would be for 1 million dollars, that GFS would cover "100%" of the costs of ownership, and that GFS paid "all closing costs commissions etc. upon sale of the home to a new end buyer." [Ex. A-163, p. 1]. Simonson signed the email "Doug Simonson, Partner, Income Property Zone, a GFS Company."

41. The buying partnership agreement provided that GFS would pay a fee in return for the use of the Levenhagens' credit for the transaction. Simonson negotiated the amount of the fee on behalf of GFS. [RP p. 48, lines 21-25; p. 49, line 1].

42. Mike Levenhagen expressed concerns about the loan to value ratio involved in the transaction. Simonson then arranged to have the buying partnership fee increased. [RP 49, lines 10-19]. Based on Simonson's representations and the increased fee, the Levenhagens agreed to purchase the property.

43. Simonson did not inform Levenhagen that the property had been in bankruptcy, that it was Simonson's home, that Simonson intended to remain in the home and buy it back and/or that GFS would be taking equity out of the home after arranging a short sale with the lender. Simonson did not reveal that he was receiving a commission as a result of the

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agreement. [RP 51-52].

44. Simonson forwarded the GFS buying partner agreement to the Levenhagens for their signature. He requested that the agreement be returned by fax to his attention. Again, Simonson signed the email "Doug Simonson, Partner, Income Property Zone, A GFS Company." [Ex. 163, p. 2].

45. On July 30, 2004, Simonson faxed a copy of a "Specific Buying Partner Agreement" and the Purchase and Sale agreement for the house located at 11609 Holmes Point Drive N.E. The fax cover sheet indicated the documents were coming from GFS. [Ex. A-163, p. 3].

46. On August 4, 2004, Simonson's remaining financial obligations were discharged in the bankruptcy proceeding. [Ex. A-294].

47. Additional correspondence between Levenhagen and Simonson showed that Simonson acted on behalf of GFS from the initial approach to Levenhagen through November 10, 2004. Simonson's activity included offering Levenhagen an increase in the amount of the Buying Partnership fee in return for the Levenhagens' agreement to sign a loan with a higher loan to value. [Ex. 163, p. 9].

48. The sale to the Levenhagens was originally scheduled to close on July 30, 2004. The parties agreed to extend this date. Throughout this time, Levenhagen understood that Simonson was a part of GFS and that GFS was selling the property.

49. The sale closed in November 2004. The Levenhagens, residents of Minnesota, signed documents in front of a local notary and returned the documents via UPS. [RP p. 53].

50. As part of this transaction, GFS/Simonson arranged for the prior loan to be paid off in a short sale. Two new loans, one for $800,000, and one for $200,000, were placed on the

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property so that cash would come back on the transaction. Levenhagen believed that the agreements he had signed required that the loan proceeds be held in a secure account to pay his buying partnership agreement and to fund the loan payments for the 18 months he might be required to hold the property. [RP pp. 50-51].

51. Levenhagen did not receive any proceeds from the second mortgage. The papers he had signed, however, made him responsible for both loans. It is unclear as to whether Simonson [4] or GFS, or a combination thereof, received the proceeds of the second mortgage. Neither Simonson nor the closing agent testified in this proceeding and no exhibits track the movement of the funds following the closing.

52. The Levenhagens first learned that Simonson was the seller of the property when they received their copies of the signed agreements in the mail a week or two after the closing. [RP p. 53, lines 19-23].

53. GFS did not honor its agreement with Levenhagen. It did not pay Levenhagen the buying partnership fee within the required time. [RP p. 54, lines 17-24]. It did not make payments on the loans. [Id.]

54. Concerned about his investment, Levenhagen traveled to Washington to view the property and to meet with GFS and Simonson. At that time, Simonson revealed that the property was his residence and that it had been in Simonson's bankruptcy proceeding. [RP 55, lines 2-19]. Levenhagen and Simonson met with a principal in GFS, Dave Langford, who assured Levenhagen that both the buying partnership fee and the mortgage payment issues

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would be addressed. [RP p. 55, lines 22-25; p. 56, lines 1-10].

55. At this point, Levenhagen was concerned enough about the situation that he and his wife began exploring other possible solutions. The Levenhagens considered moving to Seattle to occupy the house and/or selling it. Simonson convinced Levenhagen, however, that the property did not have value over and above the 1 million dollars in combined loans and that he had a plan to solve the problem.

56. Levenhagen relied upon Simonson's representation regarding the value of the property and his assertion that Simonson was also a victim of GFS. To protect his own credit rating, Levenhagen made the loan payments when it appeared that neither GFS nor Simonson were going to do so. During this entire period of time, Simonson and his family continued to reside in the house.

57. During the first portion of 2005, Simonson and Levenhagen exchanged emails concerning the situation. These emails contain multiple references to Simonson and his dispute with GFS. The general theme of the emails was that Simonson was simply another victim of GFS and Dave Langford's misconduct. [See e.g., Ex. A-163, pp. 13-28].

58. Simonson suggested that the property boundaries of the two properties be adjusted and then a short plat be done in order to obtain an additional lot. In fact, Simonson had actually begun this process prior to his initial petition for bankruptcy.

59. Simonson retained Respondent on April 20, 2005. Although there was no specific written agreement regarding the scope of representation, it appears that Simonson

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[4] Respondent has consistently argued that Simonson was a victim of GFS, and therefore the interests of Simonson and Levenhagen were not adverse. **See Respondent's Post Hearing Brief Re: Fraudulent Transfers & Defenses**. Although Respondent presented hearsay evidence regarding statements from a party involved in the initial closing, this evidence did little to resolve the issue. Circumstantial evidence suggests that even if the proceeds did not go directly to Simonson, it may have come to him indirectly in

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consulted Respondent in order to obtain his legal expertise in handling real estate and business matters, including those specific to transactions relating to Michael and Rowan's ownership of his residence.

60. [Subject to Protective Order]. [Ex. A-2, p. 1].

61. [Subject to Protective Order].

62. On June 7, 2005, Simonson sold Levenhagen his ownership in a limited liability company known as Network Builders. [Ex. A-9]. This document was not recorded.

63. On June 9, 2005, the Levenhagens signed a quit claim deed that transferred their ownership interest in 11609 Holmes Point Drive to Network Builders LLC. [Ex. A-11]. Levenhagen testified that he returned the quit claim deed and other documents directly to Respondent. [RP 77; lines 4-19].

64. [Subject to Protective Order].

65. On June 9, 2005, Respondent prepared a real estate excise tax affidavit documenting the sale of the 11609 property from the Levenhagens to Network Builders LLC. [Ex. A-12]. This document was necessary in order for the quit claim deed to be recorded as part of the plan to obtain the third loan on 11609 Holmes Drive N.E. Upon completion of the real estate excise tax affidavit, Respondent signed, under penalty of perjury, that he was the Levenhagens agent. On June 10, 2005, Respondent arranged to have the quit claim deed and the real estate excise tax affidavit recorded.

66. Respondent completed the box on the quit claim deed that specified where the recorded document was to be sent. Rather than putting the Levenhagen's Minnesota address on the document, Respondent completed the form so that it would be returned to 11609 Holmes

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the same fashion as he constructed other transactions. Given his behavior relating to other transactions, this officer cannot conclude that Simonson was an innocent victim of GFS/Langford.

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Point Drive N.E., where Simonson was residing.[5]

67. [Subject to Protective Order]. [Ex. A-13].

68. On June 13, 2005, Simonson, as manager of Network Builders, LLC, signed a deed of trust securing a third loan against 11609 Holmes Drive N.E. The loan, from Daniels Capital was in the amount of $167,775.56.

69. Respondent testified that Daniels Capital prepared the deed of trust. [RP 1532, lines 5-6.

70. In fact, Respondent either drafted the deed of trust document for the loan or provided the form which was used to draft it. Respondent's law firm was the trustee the final deed. [Ex. A-14]. Araki Escrow, the company in which he shared profits, did the escrow paperwork for the loan and the transfer of funds. [RP 1532, lines 1-12]. Simonson received the proceeds of this loan.

71. [Subject to Protective Order]. [Exhibit A-13, p. 1].

72. The Levenhagens did not consent to Simonson using 11609 Holmes Drive N.E. as collateral for a third loan. Neither Simonson nor Respondent informed the Levenhagens of the proposed loan. No copies of the deed of trust or any other document relating to this loan were sent to the Levenhagens. [See generally RP 85-86].

73. This officer rejects Respondent's contention that the Levenhagens were aware of the transactions and consented to the loan. Mr. Levenhagen provided the more credible testimony on this issue. His testimony was also consistent with the contemporaneous emails relating his concern about when the transactions would close. ***See e.g.,*** Ex. A-20; A-163, p. 78.

[5] At hearing, Respondent testified that he couldn't remember why he completed the form in this manner. [RP 1527; lines 24-25].

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74. Respondent knew that as of the date of the loan the property on which the loan was being taken belonged to Michael and Rowan Levenhagen, not Douglas Simonson. Respondent acted intentionally to benefit Simonson.

75. On June 16, 2005, the Levenhagens transferred Network Builders LLC back to the Simonsons. [Ex. A-18]. Simonson informed Levenhagen that this transfer was necessary because Kenny North wanted the Simonsons to be the seller to a new buying partner. [Ex. A-163, p. 40]. The Levenhagens agreed to this proposal based on their understanding that the documents would be held until it was time to close on the sale of the property to a new buyer who would release the Levenhagens from the mortgages. [RP 97-98]. They understood that this transaction was to occur very soon after the transfer back to Simonson.

76. [Subject to Protective Order]. [Ex. A-17].

77. Email correspondence between Simonson and Levenhagen established that Simonson did not inform Levenhagen of the loan and, in fact, concealed that information. Throughout his correspondence with Levenhagen, he continued to tell Levenhagen that the closing on loans would occur sometime in the future. Simonson led Levenhagen on in this matter from mid June 2005 until arrangements were finally made for sale of the property to new buying partners in late 2005.

78. During this time, Simonson repeatedly represented to Levenhagen that he had no funds to pay the loan payments on the first two mortgages. The Levenhagens were forced to make the payments in order to protect their credit rating. Michael Levenhagen testified that because of the length of time the proposed sale was taking, he borrowed money to make the payments. [RP 101; lines 22-24].

79. Respondent was aware of the harm caused by the delay in selling the property.

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Levenhagen testified about multiple contacts with Respondent regarding the updating of escrow instructions to reflect his additional loan payments and his concern about the timing of closing. [RP 102, lines 1-6; 106; lines 16-19]. Respondent's testimony established that he was aware of the Levenhagens' financial stresses and the fact that they were making mortgage payments on the property. [RP 1526, lines 4-12; 1531, lines 8-14].

80. On August 10, 2005, Simonson sold Network Builders LLC to Mark Laing of Cody, Wyoming. [Ex. A-22]. This sale was part of a plan to use Laing's credit to arrange a sale of the property at 11609 Holmes Point Drive. Mark Laing also signed a Specific Buying Agreement dated October 22, 2005. Laing understood that he was simply a straw buyer who would be paid a fee for the use of his credit. The property was to be controlled by Kenny North who would divide it into two, demolish the home that was on the lot, and build two new residences. The documents provided that the LLC would hold title to the property and that the LLC would then be purchased by Simonson. Any proceeds from the refinance of the property were to payable to Laing and Simonson and then assigned to Simonson. [Ex. A-26; RP 261].

81. Mr. Laing also signed a second set of buying agreements. On October 11, 2005, he signed a General Buying Agreement with New Century Builders, a Kenny North Company. [Ex. A-177, pp. 302-307]. That same day he signed a specific buying agreement with the same company. [Ex. A-177, p. 308].

82. A second set of buying partnership agreements were created between another Kenny North company, Lake Front Development and David and Nancy Laning, Illinois residents. [Ex. A-200, pp. 6-11]. These agreements allowed funding of construction loans for the newly created lot.

83. [Subject to Protective Order]. [Ex. A-2, pp. 2-3].

84. [Subject to Protective Order]. [Ex. A-28].

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85. In December 2005, Simonson sold Network Builders to Mark Laing ("Laing") and his wife, Sylvia, pursuant to the documents described above. Laing then refinanced the residence and ceded control of the residence to New Century Builders ("New Century"), a company owned by Simonson's business partner, Kenny North ("North").

86. During this transaction, one of the title companies insisted upon a hold back of the loan proceeds pending resolution of a title issue.

87. In December 2005, Network Builders quitclaimed the new lot to David Laning ("Laning") who then obtained a construction loan in his name and ceded control of the new lot to New Century.

88. Also in December 2005, Levenhagen was repaid for the mortgage payments that he had made pursuant to irrevocable escrow agreements drafted by Respondent. Levenhagen assumed that the business transaction was completed with this repayment of the mortgage payments he had made on the 11609 property.

E. Findings Relating to False Representations on Excise Tax Affidavit

89. Count one relates to the June 9, 2005 real estate excise tax affidavit, Exhibit A-12 described further in Finding 65. As noted therein, Respondent prepared and recorded the document as part of the sale of the 11609 property from Levenhagen to Network Builders LLC and the plan to get the loan from Daniels Capital to Simonson. [Ex. A-12]. Upon completion of the real estate excise tax affidavit, Respondent signed, under penalty of perjury, that he was Levenhagen's agent.

90. The Levenhagens did not receive a copy of the excise tax affidavit and the other documents relating to the loan Simonson took out on the 11609 property. [RP 81-82; 97, lines 13-22]. Levenhagen did not authorize Respondent to sign Exhibit A-12 or any other documents

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on his behalf. [RP 80, lines 10-20].

91. Respondent testified at the Hearing that he did have authority, as someone handling the escrow of these transactions, to sign the excise tax affidavit.[6] He also testified that "we talked about it before it was even sent. . . ." [RP 1528, line 15].

92. This Officer concludes that Respondent was not being truthful during his testimony at the hearing. His testimony is contradicted by that of Michael Levenhagen[7] and is not supported by any documentation. No emails exist establishing that these conversations took place. There are no entries on his Timeslips at this time indicating a telephone conference with Michael Levenhagen. [See Ex. A-2]. Finally, Levenhagen's version of events is supported by other testimony and exhibits.

93. Moreover, had Respondent been acting on behalf of Levenhagen, he would have had a duty to disclose the full nature of his relationship to Simonson regarding that transaction. There is no evidence that any type of disclosure took place. To the contrary, there is evidence that shortly after this transaction Levenhagen requested that Jackson provide him with information and copies of the signed agreements. Instead of sending the documents, all of which were in his possession both as the attorney and as part of the in house escrow file, Respondent stated that Simonson would send him the documents. [Ex. A-15].

F. Findings Relating To Bankruptcy Fraud

94. Cedar Hollow Development Company is a company that Respondent and Simonson used to conceal disbursement of funds on behalf of Douglas Simonson.

95. In July 2005, Respondent assisted Simonson in in the formation of three entities. Cedar Hollow Development LLC was one of these entities. This company was formed on July

[6] RP 1529, lines 4-11.

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19, 2005. Respondent was listed as the registered agent for Cedar Hollow. The members of this LLC were Network Builders LLC, Doug Simonson, and KC North Family LLC—Kenny North. Douglas Simonson signed the documents as the organizer. Respondent notarized that signature. [Ex. A- 21].

96. [Subject to Protective Order]. [Ex. A-2, pp. 4-5].

97. On January 19, 2006, the bankruptcy trustee instituted an adversary proceeding against Simonson based on activity associated with his obtaining a tax refund. The following day, the attorney representing the trustee obtained a temporary restraining order prohibiting Simonson, Network Builders LLC, and anyone acting on their behalf from assigning, conveying, transferring, using, modifying, or taking any action with respect to any and all of the debtors' assets. [Ex. A-35; RP 333].

98. [Subject to Protective Order].

99. Based on the totality of the evidence, inconsistencies with Respondent's testimony, his manner and demeanor during testimony, along with other circumstantial evidence, this officer concludes that Respondent learned of the bankruptcy court's orders regarding Simonson's assets on or about January 20, 2006.

100. [Subject to Protective Order [Ex. A-2, p. 5] [Ex. A-36].

101. On January 27, 2006, the bankruptcy court held a hearing and concluded that the temporary order should be made permanent, pending the outcome of the adversarial proceeding. [Ex. 291].

102. [Subject to Protective Order]. [Ex. A-37].

103. [Subject to Protective Order]. [Ex. A-37, p.3]. [Ex. A-39]. [See also Ex. A-40.]

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[7] RP 80, lines 10-20.

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104. [Subject to Protective Order]. [Ex. A-41]. [Emphasis added.]

105. Following this email, $170,488.86 was transferred from the Cedar Hollow closings escrow accounts (held by Araki Escrow) directly into Respondent's IOLTA Trust Account. [Ex. A-33, pp. 38; 41; 44][Ex. A-44].

106. [Subject to Protective Order]. [Ex. A-37].

107. On February 14, 2006, $55,000 from the Cedar Hollows closings was directed to Patti Jackson. [Ex. A-33, p. 38].

108. Respondent testified that this transaction represented repayment of a $50,000 loan he and his wife had made to Simonson. [Ex. 46, p. 109]. This money was apparently advanced for Mr. Simonson's benefit on February 7, 2007 through use of one of the Jacksons' personal accounts. [Ex. A-45]. A week later it was returned to the Jacksons with an additional $5,000, apparently as "interest and loan fees." [Ex. A-35][Ex. A-46, p. 109, lines 18-22]. Respondent said that he wired the money to "somebody I didn't know to exercise an option on behalf of one of the companies in which I understood Mr. Simonson had an interest." [RP 1556, lines 9-18]. Respondent did not have a promissory note documenting this transaction. *Id.*

109. On February 17, 2006, the bankruptcy judge signed a formal restraining order. This order froze Simonson's banking accounts, thus restricting his access to approximately $67,000 in cash. The court ordered the financial institutions who held the funds to forward

110. The order provided that until the outcome of the adversarial proceeding, Simonson could use his assets only in the ordinary course of business, and stated that he could draw only $4,000 per month for his personal use. [Ex. A-43]. Network Builders was to provide the Trustee with copies of all bank statements and canceled checks within two days of their receipt by Network Builders. [Ex. A-43, p. 3]. Finally, the court ruled: "Ordered that the debtors, Network Builders, LLC., and any other entities in which the debtors have a controlling

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interest or anyone acting on their behalf, are enjoined from assigning, conveying, transferring, using, modifying, or taking any action in respect to any and all of the debtors [sic] assets or the assets of any entity in which the debtor has a controlling interest." [Ex. A-43, p. 3].

111. Respondent testified that he became "aware" of the February 17, 2006 order "probably about a month later, if I remember correctly." [RP 1562; lines 10-14; lines 19-24].

112. Respondent's testimony is not credible. From April 2005 on, Simonson consulted Respondent frequently, and in depth, regarding multiple business transactions involving the subject companies and assets. Simonson relied upon Respondent to provide the name of an attorney to handle the bankruptcy case. Emails and time records after the January 19th hearing are consistent with Respondent being aware of the orders. Moreover, a reasonable attorney, learning that his client was having bankruptcy issues which required referral to a bankruptcy attorney, would be suspicious of any attempt to use trust accounts to transfer large sums of money on behalf of the debtor. Nonetheless, On February 17, 2006, the same day that the bankruptcy court entered the permanent restraining order, $170,488.86 was deposited into Respondent's trust account. [Ex. A-44; RP 1557].

These funds were disbursed as follows:

113. On 2/27/2006 Respondent issued a check in the amount of $4,000 to Velma Timmons and a $2,000 check to Simonson's son. [Exhibits A-49; A-50].

114. [Subject to Protective Order]. [Ex. A-53].

115. On the same day, Respondent disbursed $4,000 directly to Simonson. [Ex. A-51].

116. [Subject to Protective Order] [Ex. A-54].

117. The next day, March 3, 2006, Respondent issued two IOLTA checks on

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Simonson's behalf to Encompass and two checks in the amount of $5,000 each to Simonson. [Exhibits A-55; A-56; A-57; A-58].

118. The bankruptcy court's restraining order had placed a monthly limit of $4,000 for Simonson. [Ex. A-43]. Nonetheless, on March 6t, Respondent issued two checks to Simonson. Each of those checks exceeded the monthly limitation contained in the restraining order.

119. The use of Respondent's IOLTA account allowed the payments to Simonson and those made on his behalf, to go undetected[8] by the trustee.

120. Despite his knowledge of the restraining order, on March 8, 2006, Respondent issued an IOLTA account check to Key Bank to purchase a cashier check. The check was in the amount of $79,057.45 and was payable to Merendon Mining. This company was the tax shelter that was the apparent source of Simonson's retroactive tax refund.

121. On the same day, Respondent purchased a second certified check in the amount of $34,056.50, also payable to Merendon Mining. The funds to purchase both checks originated in the Araki Escrow account as a result of closings associated with Kenny North's company, Cedar Hollow. The funds were deposited in Respondent's trust account and then used to purchase the cashier's checks on Simonson's behalf.

122. [Subject to Protective Order]. [Ex. A-2, p. 6].

123. [Subject to Protective Order]. [Ex. A-70].

124. [Subject to Protective Order]. [Ex. A-71].

125. On March 9, 2006, Respondent issued an IOLTA check for $8,341.67 to the Ritchie Group. The memo line stated that it was for "Manna Funding." [Ex. A-72].

[8] The order required that Simonson provide copy of bank statements and any checks received within two days of their receipt. [Ex. A-43].

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126. On March 10, 2006 Respondent issued an IOLTA check in the amount of $5,000 for payment of the retainer for Greg Cavagnaro. [Ex. A-73]. Five days later he cut a check to Simonson's son in the amount of $7,000. [Ex. A-74].

127. Respondent paid himself $5,000 in fees from the IOLTA account on the same day, using the check to pay one of his credit cards. [Ex. A-75].

128. At the same time these transactions were occurring, Araki Escrow was paying itself substantial fees for escrow services. Respondent was also receiving $1,000 in fees for each closing. There are a total of 27, $1,000 payments to Respondent from this account. [Ex. A-33].

129. Respondent acknowledged the above transactions but claimed that he followed the court's orders once he learned of them. He stated that he informed the closing person that "as anything relates to Mr. Simonson, you can't close any transactions, release any monies or do anything basically without first speaking with his bankruptcy counsel, Mr. Cavagnaro, to make sure that he was in compliance . . . ." [RP 1563, lines 1-6]. As noted above, Respondent learned of the restraining orders on or about January 20, 2006. Respondent's testimony suggesting compliance with the orders is rejected as not credible.

130. On March 27, 2006, the bankruptcy trustee's lawyer, Denice Moewes, wrote Cavagnaro expressing her concern that Simonson had violated the court's order by transferring $113,080 to Merendon Mining following the February order. [Ex. A-78]. Moewes stated her intent to seek an immediate contempt hearing. She also requested that Cavagnaro have his client "bring all records indicating where the money came from and whose account it was in and out of which account the cashier's checks were issued." *Id.*

131. [Subject to Protective Order]. [Ex. A-78].

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132. On March 28, 2006, Moewes filed "Trustee's Emergency Motion for Immediate Hearing on Trustee's Motion for Contempt and Order Freezing All Bank Accounts." [Ex. A-79].

133. On the same day, additional checks were issued from the Cedar Hollow closing accounts. Two checks totaling $11,000 were issued to Simonson. [Ex. A-35, check numbers 3757; 3758]. A third check was issued for attorney's fees to Respondent. Still another check was issued to Araki Escrow Services. [Ex. A-33, p. 71].

134. Respondent issued a fifth check in the amount of $21,119.63, to Moss Bay Partners LLC. [Ex. A-35, check #3760]. Moss Bay Partners LLC was a Simonson company.

135. Following the hearing on this matter, the bankruptcy court issued a "Second Restraining Order" on March 30, 2006. [Ex. A-81]. In this order, the court reserved ruling on the question of whether or not the funds Respondent disbursed on behalf of Simonson would be brought back into the estate. Again the order enjoined any actions regarding Simonson's assets and liabilities.

136. On May 10, 2006, the bankruptcy court issued a letter ruling in the first adversarial proceeding relating to Simonson's use of the tax refund. The court ruled that Simonson had violated the February 16, 2006 restraining order by borrowing money, having the money deposited in his attorney's trust account and then disbursed. [Ex. A-88].

137. The court ruled that Simonson was required to return the proceeds of the tax refund, that he was in contempt of court by violating the restraining order, and that attorneys Jackson and Cavagnaro were to turn over "all funds in their possession paid to them after the entry of the Agreed Restraining Order on account of the debtors and from whatever source." [Emphasis added.] The court also noted that "it appears that Cavagnaro received funds from the

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debtors that he knew or should have known would not comply with the terms of the Agreed Restraining Order." The court ordered Cavagnaro to file a report indicating what date he received the funds and how much he received.

138. [Subject to Protective Order]. [Ex. A-89].

139. [Subject to Protective Order]. [Ex. A-94].

140. At the beginning of June, 2006, the bankruptcy court directed Respondent and his firm to account for any funds that had been deposited in accounts on behalf of Simonson. The order directed Respondent to create a report "setting forth the date and amount of each and every payment he has received from the debtors, their entities, or from any other party on behalf of the debtors or for the benefit of the debtors, since January 20, 2006" and directed Jackson to turnover to the trustee all funds he had in his possession or control that "belong to the debtors, that are within the control of the debtors, or any entity in which the debtors have an interest." [Ex. A-95]. [Emphasis added]. This order did not limit the disclosure to funds in Respondent's trust account.

141. On June 12, 2006, Respondent sent a letter, an accounting and a trust account check in the amount $7,985.74 to the trustee. [Ex. A- 97]. The accounting did not reveal that the Jacksons had made a $50,000 loan on behalf of Simonson and that in return they had been repaid $55,000 a week later. Respondent intentionally concealed this information in order to hide his involvement in the fraud being perpetrated on the bankruptcy court.

142. On June 21, 2006, Respondent's wife issued a check from an account in the name of RPC Enterprise to Manna Funding, LLC. The testimony at the hearing established that RPC Enterprises did no business with Manna Funding and that Manna Funding was a Tiffany Doty entity. Tiffany Doty was another person to whom Respondent directed funds on

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Simonson's behalf.

143. On August 11, 2006, Respondent disbursed a total of $14,017.05 from his trust account from funds that had been held back by the title company in the Laing transaction. The money was disbursed as follows:

a. $4,000 to Stephen Araki for attorney fees

b. $3,000 to Spec's Ltd for expert retainer fees

c. $1,500 to Robert Jackson for reimbursement

d. $5,517.05 to Robert Jackson for attorney's fees.

[Ex. A-280].

144. The trustee learned of the existence of the money in early 2008 and subpoenaed the records. In response, Respondent sent the checks and the above information. The cover letter stated that "we were authorized by Mr. Laing to disburse the funds . . . ." [Ex. 280, p. 1].

145. That statement was false. Laing testified that no one notified him that there was money belonging to him in Respondent's trust account and that he did not authorize anyone to make the above disbursements.[9] He also testified that it was his understanding that he would not be charged for the legal services and that to his knowledge he did not owe attorney's fees to Robert Jackson.[10] Finally, Respondent could produce no documents in response to the Association's ELC 10.13(c) demand that notified Laing of the existence of the money or established that Laing consented to having it disbursed in that manner.

146. These funds were in fact being disbursed on behalf of Simonson for fees being incurred by Simonson and as part of the scheme to conceal expenditures of funds on his behalf. Respondent knew that these funds belonged to Simonson because he had participated in

[9] RP 293-294.

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structuring the sales agreements and escrow accounts in which the transaction occurred.

147. Respondent knowingly and intentionally violated the January 19, 2006 and February 16, 2006 restraining orders by agreeing to deposit $170,488.86 into his IOLTA account as an advance from the Cedar Hollow closings on behalf of Douglas Simonson. Respondent accepted this money with full knowledge that his conduct was prohibited by a valid restraining order. He then disbursed the funds pursuant Simonson's specific directions, again with full knowledge that the disbursals of the funds violated the restraining order.

148. Respondent acted willfully and intentionally to benefit himself and his client.

149. On November 2, 2006, Respondent colluded with Simonson to further violate the restraining order.[11]

150. [Subject to Protective Order]. [Ex. A-170]. [Ex. A-170, p. 2]

151. [Subject to Protective Order]. [Ex. A-170, p. 2].

152. [Subject to Protective Order]. [Ex. A-170, p. 1].

153. The day after Respondent and Simonson colluded to hide additional funds from the bankruptcy court by having Jackson borrow the funds, the attorneys filed a response to the trustee's motion for summary judgment on the issue of whether Simonson's 2004 discharge should be revoked. [Ex. A-172]. On page 3 of that document, Simonson's counsel asserted that revocation was improper because there was no evidence that Simonson's lack of compliance with the order was "willful and intentional." [Ex. A-172, p. 3]. Counsel argued "Trustee cannot meet its burden since the Debtors have testified that any actions in which they engaged in borrowing money were not done to willfully and intentionally violate the Court's

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[10] [RP 286-87].

[11] This conduct is not part of the charges brought by the Association. Nonetheless, it is being included as additional information relevant to Respondent's credibility and other appropriate ER 404(b) considerations.

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February 16, 2006 Order."

154. [Subject to Protective Order]. [Ex. A-173].

155. [Subject to Protective Order]. [Ex. A-174].

156. Although it is not clear from the evidence what became of the transactions discussed in these emails, Respondent's willingness to participate in these discussions illustrates a total contempt for his obligations as an officer of the court.

157. This officer concludes that Respondent actively and intentionally participated in the fraud on the bankruptcy court, using multiple accounts, to conceal the trail of money. Respondent's conduct harmed the judicial system and the creditors of Douglas Simonson. Funds rightfully belonging to the estate were diverted to Douglas Simonson.

158. The bankruptcy trustee's lawyer spent a substantial amount of time attempting to protect the assets by repeated motions before the bankruptcy court based on the facts as she discovered them. Had Respondent not chosen to use his trust account and personal accounts to hide these funds, neither the court not the attorney representing the bankruptcy trustee would have had to invest the time and effort necessary to halt Simonson's fraudulent transactions.

159. In actively and intentionally participating in the fraud on the bankruptcy court, Respondent violated 18 U.S.C., Section 152.

160. Based on the totality of Respondent's demeanor during his testimony, the contradictions between his testimony and the exhibits, and the testimony of other, credible witnesses, this Officer concludes that Respondent intentionally provided false testimony during the hearing relating to his knowledge of the restraining orders in order to conceal his role in perpetrating the fraud on the bankruptcy court.

161. That false testimony included: 1) his denial that he knew the of the existence of the various bankruptcy orders; 2) his denial of the role he played as the chief attorney in the

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Simonson's bankruptcy action; and 3) his denial that he transferred funds with knowledge of the existence of the orders.

G. Facts Relating to Conflicts of Interests

162. During late 2005 and early 2006, the trustee's attorney was attempting to obtain information regarding the real property transactions associated with the 11609 Holmes Point Drive property and actively investigating the specific property transfers involving Mike and Rowan Levenhagen, the Laings and the Lanings. The conflict of interest charges arise from Respondent's conduct in relationship to these individuals and his relationship with Simonson.

163. Exhibit A-37 and other emails established that Respondent was Simonson's primary legal advisor, for all issues, including those relating to his bankruptcy.[12]

164. [Subject to Protective Order]. [Ex. A-2, p. 5]. [Ex. A-38.] [Ex. A-2, p. 5].

165. [Subject to Protective Order]. [Ex. A-59].

166. [Subject to Protective Order]. [Ex. A-2, p. 6]. [Ex. A-60].

167. [Subject to Protective Order]. [See exhibits A-62; 65; 66; 67].

168. [Subject to Protective Order]. [Ex. A-2, p. 7].

169. [Subject to Protective Order].

170. [Subject to Protective Order]. [Ex. A-82]. [Ex. A-82, p. 2].

171. [Subject to Protective Order]. [Ex. A-2, p. 7].

173. On April 29, 2006, Moewes formally filed what has been referred to as the "Second Adversarial proceeding." This lawsuit named a number of individuals and entities who had played some role in the property transfers. Of concern to this hearing is the fact that this complaint named Global Financial Systems Inc., Michael and Rowan Levenhagen, David and

[12] It is thus not believable that given this reliance, Simonson and/or Cavagnaro did not discuss the court's order. This fact also contributed to this officer finding that Respondent gave false testimony regarding his knowledge of the orders.

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Nancy Lanning, and Mark and Sylvia Laing.

174. At the time this complaint was filed, Respondent was the registered agent for Global Financial Systems, Inc. He continued as its registered agent until May 3, 2006.[13]

175. [Subject to Protective Order]. [Ex. A-90].

176. On May 16, 2006, Mike Levenhagen contacted Respondent. His email stated that he had been given a heads up regarding the fact that he was being named in the lawsuit and that Simonson had recommended Jackson as the best one for the job. Levenhagen expressed concerns about the potential for conflicts of interest. Levenhagen informed Respondent that "I do have a concern about any conflict of interest you might have with Doug or any other party involved in this. I know, however, that Doug has separate representation for his bankruptcy proceedings." [Ex. A-91].

177. Respondent did not inform Levenhagen that he had actively participated in defending Simonson in the first adversarial proceeding. He did not inform Levenhagen that he and his firm had been the subject of various demands for documentation regarding allegedly fraudulent transfers of funds.

178. The Laings and the Lanings also conferred with Respondent regarding representation. Again, Respondent failed to inform these potential clients of his role in the first adversarial proceeding.

179. On June 21, 2006, Respondent and another member of his firm, Stephen Araki, sent a letter to the Levenhagens, Lanings and Laings discussing potential conflict issues. [Ex. A-108]. The letter nominally set out the applicable Rules of Professional Conduct and discussed their applicability.

[13] It is not clear why Respondent remained as GFS's registered agent during the 2005 disputes Simonson and Doty were having with this company and David Langford.

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180. This letter did not comply with the terms of RPC 1.7(b). Repeatedly, the letter referred to the fact that the firm did not believe that there were conflicts. The letter stated that "We do not believe that any of the issues presented in this lawsuit create any conflicts with respect to Mr. Simonson or Network Builders . . . ." [Ex. A-108, p. 1]. The letter stated that it "appears as though there are no claims that are likely to develop between you or any other client. . . ." [Ex. A-108, p. 2]. The letter further reassured the reader that "we believe that our representation of each of you will not be adversely affected by our representation of the other party because, to the extent that conflicts are possible, there are only potential conflicts at this time and we do not see that a real conflict is likely." [Ex. A-108, p. 3]. These statements were false.

181. As of the date of this letter, Robert Jackson had actual conflicts that precluded him and his firm from accepting representation of the Levenhagens. The facts discussed above and the others established by the exhibits and testimony support the conclusion that an irreconcilable conflict existed between the interests of the Levenhagens on one hand and those of Respondent and Simonson on the other. These conflicts created a significant risk that the representation would be limited by his personal interest and/or his responsibilities. As of June 21, 2006, these facts precluded representation:

a. Respondent had fraudulently signed paperwork representing that he was an agent of Levenhagen in June of 2005 when he was not an agent and was not authorized to sign that document;

b. Respondent failed to inform the Levenhagens that he had signed the above document.

c. Respondent drafted documents on behalf of Doug Simonson that allowed Simonson to obtain additional funds using the property owned by Levenhagen. Levenhagen neither knew of this transaction nor received any benefit from it.

d. Respondent's firm held the deed of trust on the above loan and Respondent had

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an interest in the fees generated by the in house escrow firm that handled this escrow and subsequent transactions.

e. Respondent had assisted and participated in Simonson's attempts to defraud the bankruptcy court by concealing the movement of funds in violation of valid orders of the bankruptcy court and by using his trust account as a vehicle of the fraudulent activity.

f. Respondent had personally benefited by the payment of fees and a usurious interest on the $50,000 loan made on behalf of Douglas Simonson.

g. Respondent had been acting as the attorney in fact, if not name, for Douglas Simonson in all matters relating to his bankruptcy as of January 2006. The activities associated with this representation were inconsistent with the interests of the Levenhagens.

h. The Levenhagens had valid potential claims against both Simonson and Robert Jackson.

182. Even assuming that the above facts did not create an irreconcilable conflict, neither Respondent nor members of the firm could move forward on the representation until such time as they had fully informed the Levenhagens of the above facts and obtained their written consent to waive those conflicts. None of this information was provided to the Levenhagens. To the contrary, the actual conflict letter summarily and inaccurately dismissed the notion that any conflicts existed.

183. As of the date of this letter, Robert Jackson had actual conflicts that precluded him and his firm from accepting representation of the Laings. The facts discussed above and the others established by the exhibits and testimony support the conclusion that an irreconcilable conflict existed between the interests of the Laings on one hand and those of Respondent and Simonson on the other. These conflicts created a significant risk that the representation would be limited by his personal interest and/or his responsibilities to Simonson. As of June 21, 2006, these facts precluded representation of the Laings:

a. Respondent had assisted and participated in Simonson's attempts to defraud the

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bankruptcy court by concealing the movement of funds in violation of valid orders of the bankruptcy court and by using his trust account as a vehicle of the fraudulent activity;

b. Respondent had personally benefited by the payment of fees and usurious interest on the $50,000 loan made on behalf of Douglas Simonson;

c. Respondent had been acting as the attorney in fact, if not name, for Douglas Simonson in all matters relating to his bankruptcy as of January 2006. The activities associated with this representation were inconsistent with the interests of the Laings;

d. The Laings had valid potential claims against both Simonson and Robert Jackson.

184. Even assuming that the above facts did not create an irreconcilable conflict, neither Respondent nor members of the firm could move forward on the representation until such time as they had fully informed the Laings of the above facts and obtained their written consent. In fact, this information was not provided to the Laings. To the contrary, the actual conflict letter summarily and inaccurately dismissed the notion that any conflicts existed.

185. As of the date of this letter, Robert Jackson had actual conflicts that precluded him and his firm from accepting representation of the Lanings. The facts discussed above and the others established by the exhibits and testimony support the conclusion that an irreconcilable conflict existed between the interests of the Lanings on one hand and those of Respondent and Simonson on the other. These conflicts created a significant risk that the representation would be limited by Respondent's personal interest and/or his responsibilities to Simonson. As of June 21, 2006, these facts precluded representation:

a. Respondent had assisted and participated in Simonson's attempts to defraud the bankruptcy court by concealing the movement of funds in violation of valid orders of the bankruptcy court and using his trust account as a vehicle of the fraudulent activity;

b. Respondent had personally benefited by the payment of fees and usurious interest on the $50,000 loan made on behalf of Douglas Simonson;

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c. Respondent had been acting as the attorney in fact, if not name, for Douglas Simonson in all matters relating to his bankruptcy as of January 2006. The activities associated with this representation were inconsistent with the interests of the Lanings;

d. The Lanings had valid potential claims against both Simonson and Robert Jackson.

186. Even assuming that the above facts did not create an irreconcilable conflict, neither Respondent nor members of the firm could move forward on the representation until such time as they had fully informed the Lanings of the above facts and obtained their written consent to waive the conflicts. In fact, this information was not provided to the Lanings. To the contrary, actual conflict letter summarily and inaccurately dismissed the notion that any conflicts existed.

187. Respondent acted knowingly and intentionally in securing the Levenhagens as clients in order to protect his own interests and the interests of Douglas Simonson.

188. Respondent acted knowingly and intentionally in securing the Laings as clients in order to protect his own interests and the interests of Douglas Simonson.

189. Respondent acted knowingly and intentionally in securing the Lanings as clients in order to protect his own interests and the interests of Douglas Simonson.

190. Despite the existence of these conflicts, between July 17, 2006 and June 8, 2007, Respondent represented the Levenhagens in the second adversary proceeding and purported to act on their behalf.

191. Despite the existence of these conflicts, between July 17, 2006 and June 21, 2007, Respondent represented the Lanings in the second adversary proceeding and purported to act on their behalf.

192. Despite the existence of these conflicts, between July 17, 2006 and June 21,

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2007, Respondent represented the Laings in the second adversary proceeding and purported to act on their behalf.

193. Simonson and/or North agreed to pay the attorney fees for the Levenhagens, the Laings and/or the Lanings regarding the second adversary proceeding.

194. During all or part of Respondent's representation of the Levenhagens, the Laings and/or the Lanings, there was a significant risk that Respondent's representation of the Levenhagens, the Laings and/or the Lanings would be materially limited by his personal interest and/or his responsibilities to Simonson.

195. During all or part of Respondent's representation of the Levenhagens, the Laings and/or the Lanings, it was not reasonable for Respondent to believe that he would be able to provide competent and diligent representation to the Levenhagens, the Laings, and/or the Lanings.

196. During Respondent's representation of the Levenhagens, the Laings, and/or the Lanings, Respondent did not obtain the informed consent in writing from the Levenhagens, the Laings, and/or the Lanings to any actual or potential conflict of interest regarding his representation of them in the second adversary proceeding.

197. After Respondent's firm entered a notice of appearance for the Levenhagens, the Laings and the Lanings, Attorney Stephen Araki's name appeared as the attorney of record. In fact, Respondent did the majority of the work associated with this representation. Respondent made decisions regarding the course of the defenses to be raised on behalf of the Levenhagens, Laings and Lanings based primarily on his own self-interest and those of his other client, Douglas Simonson.

198. During the approximately 10 months Respondent represented the Levenhagens,

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Laings and Lanings, Respondent's conduct of the defense created substantial damage to the Levenhagens, the Laings and the Lanings and interfered with their ability to obtain a cost effective and timely resolution of their individual disputes with the bankruptcy trustee. The following findings discuss some of the specific instances wherein the Respondent made choices regarding the representation of these clients that placed his interests and/or the interests of Douglas Simonson before that of these clients.

199. The complaint naming the Levenhagens/Laings/Lanings sought an order vacating the order of abandonment. Key to the issue of whether the abandonment order would be vacated was the question of whether or not the debtor, Douglas Simonson, had perpetrated a fraud on the court in order to obtain the abandonment.

200. On July 21, 2006, Araki filed a Motion to Dismiss Pursuant to FRCP 12(b)(6). [Exhibit A-118] on behalf of the Levenhagens, Laings and Lanings. In that motion, Araki argued that the case could not proceed because the 11609 property was not property of the estate since it had been abandoned by the trustee in 2004.

201. In September 2006, the bankruptcy court denied the 12(b) (6) motion and informed the parties that the first issue that needed to be addressed was whether the order of abandonment would be vacated based on the alleged fraud.

202. On September 6, 2006, Moewes filed a second amended complaint adding Simonson to the second adversarial proceeding. Despite the formal addition of Simonson to the proceeding, Respondent continued to representing the Levenhagens, Laings and Lanings as well as providing legal advice and drafting pleadings for Simonson.

203. [Subject to Protective Order]. [Ex. A-2, p. 18].

204. On October 3, 2006, Michael Levenhagen sent Respondent an email describing the facts associated with his ownership of the 11609 property. [Ex. A-143]. This document

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was intended to be used in his defense. That summary included the information that Doug Simonson was one of Levenhagen's initial contacts and that the Levenhagens worked with Simonson as a representative of GFS during the acquisition. Levenhagen informed Respondent that at the time they purchased the property, they "had no knowledge of the history or prior ownership of the property." Levenhagen described how he learned about Simonson's bankruptcy after the purchase in late December 2004.

205. Levenhagen's email contained a summary of the transfers in June of 2005 and detailed how the Levenhagens had made all the loan payments from August 2005 to November 2005. It is obvious from this email, that Levenhagen had no knowledge of the third mortgage Simonson had placed on the property in June of 2005 with Respondent's assistance.

206. On October 5, 2006, Cavagnaro filed Simonson's answer to the second amended complaint. That Answer included cross claims against GFS, David Langford and Hodges and Associates. [Ex. A-146]. The Answer alleged facts suggesting that Simonson was simply a victim of an equity skimming scheme developed by the GFS, Langford and Hodges and asserted that Simonson had not perpetrated any fraud upon the court.

207. Respondent worked on the answer and affirmative defenses for the Levenhagens, Laings and Lanings on October 6, 2006. At this time, Respondent had in his possession information that could, and should, have been used to protect the interests of these clients.

208. On October 16, 2006, Mr. Araki filed a document entitled Answer, Affirmative Defenses, Cross claims and Counter Claim. Like the Simonson Answer, this document contained allegations that GFS/Langford engaged in an equity skimming scheme and asserted that Simonson was an innocent victim. The factual statements supporting these assertions were untrue and inconsistent with the factual claims that should have been asserted in order to protect the rights of the Levenhagens, the Laings and the Lanings.

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209. Respondent knew that the facts asserted in the Levenhagen/Laing/Laning Answer regarding Simonson's status as a victim were untrue. The Answer also did not contain the pertinent facts regarding Simonson's involvement with GFS outlined in Levenhagen's October 3, 2006 email to Respondent.

210. Respondent knowingly coordinated the facts in both Answers in order to protect Simonson. In doing so, Respondent concealed the real facts from the bankruptcy court, prolonged the litigation against the Levenhagens/Laings/Lanings and caused them harm.

211. At the time that this document was filed, valid claims existed against both Simonson and Robert Jackson. None of the clients were advised of the existence of these claims. No claims were brought against Simonson or Robert Jackson.

212. On October 13, 2006 the Herman Racor firm filed Defendants' Motion for Summary Judgment on behalf of the Levenhagens/Laings/Lanings. This motion was supported, in part, by the declarations of Michael Levenhagen, David Laning and Mark Laing.

213. [Subject to Protective Order [Ex. A-147].

214. Levenhagen neither knew of, nor consented to, the act described above. [RP 144-45].

215. [Subject to Protective Order]. [Ex. A-149].

216. Laing neither knew of, nor consented to, the act described above.

217. [Subject to Protective Order]. [Ex. A-150].

218. Laning neither knew of, nor consented to, the act described above.

219. [Subject to Protective Order].

220. On September 26, 2006, the trustee's attorney sent Requests for Production to the Herman Racor firm requesting documents from Levenhagen, Laing and Laning. The

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requests specifically demanded documents that mentioned Douglas or Karen Simonson and Network Builders. By its terms, the request included emails. [Exhibits A-139; 140; 141 (at page 5 on each)].

221. These requests were forwarded on to the clients.

222. On October 30, 2006, Michael Levenhagen sent Respondent, via Federal Express, a packet of materials. Contained in that packet were multiple emails responsive to the trustee's request. [Ex. A-163]. Levenhagen understood that these emails were to be delivered to the trustee in response to the request for production.

223. The emails Levenhagen sent to Respondent to be turned over to the trustee established, inter alia, that 1) Douglas Simonson was actively involved in the original sale of the 11609 Holmes Point Drive property to Levenhagen in 2004; 2) Simonson was acting as an agent of GFS at the time; 3) Simonson portrayed himself as a victim of GFS and Levenhagen relied upon that representation; 4) Levenhagen did not know about the June 2005 loan Simonson obtained from Daniels Capital; and 5) Respondent was actively involved in many of the transactions.

224. Earlier in 2006, Respondent had requested that Levenhagen provide copies of materials that related to the subject of the lawsuit. [Ex. A-283; p. 2]. After receiving that request, Levenhagen went through his records and produced copies of the documents that related to the original purchase of the property. These documents were sent via Federal Express to Respondent. Included in these documents was a copy of the Global Financial Solutions Buying Partner General agreement upon that Levenhagen had written the name of Doug Simonson on the Global Financial Solutions signature line. Levenhagen placed Simonson's name on this document because Simonson was his contact at Global Financial

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Solutions. This document, with the name of Doug Simonson in that section, was provided to Herman Recor on June 23, 2006.

225. On November 7, 2006, Herman Recor produced documents it said was responsive to the requests for production. A clear preponderance of the evidence established that these responses were completed primarily by Respondent although they were electronically signed by Stephen Araki. The responses contained only a limited number of documents, most of that were available from public records.

226. The responses contained no emails.

227. The response did not include the General Partner Agreement Levenhagen that had provided to Herman Recor on June 23, 2006 that listed to Doug Simonson as the person representing GFS.

228. The emails contained in Exhibit A-163, had they been provided, would have helped to establish that Levenhagen was a victim, not a party to the bankruptcy fraud. Similarly, the General Buying Agreement with Simonson's name on it would have assisted the trustee and court in understanding that Simonson was an agent of GFS.

229. A number of other highly relevant documents that exculpated Levenhagen, but implicated Simonson and/or Respondent, were withheld from this and subsequent requests for production. These documents included the June 6, 2005 LLC Purchase and Sale agreement [Ex. A-9]; the Deed of Trust on the Daniels Capital loan showing that Herman Recor was the trustee in that transaction [Ex. A-14]; and the second LLC Purchase and Sale Agreement that transferred Network Builders back to the Simonsons [Ex. A-18].

230. Instead of providing these documents, Respondent intentionally withheld them in order to conceal his role in the transactions and the culpability of Douglas Simonson.

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231. Respondent did not inform Levenhagen that he was withholding the documents. Levenhagen did not consent to the documents being withheld. Respondent did not indicate on the requests for production that other documents, responsive to the production requests were being withheld.

232. Respondent acted knowingly and intentionally in withholding these documents.

233. To a lesser extent, Respondent also failed to produce documents provided to him by the other clients. As with Levenhagen, the failure to produce these documents benefited Respondent and/or Simonson but impaired a proper defense of these clients.

234. On October 25, 2006, Respondent requested documents from Mark Laing. [Ex. A-158]. Laing sent 10 emails to Respondent on October 27, 2006. One of those emails was dated March 4, 2006. Laing commented on this specific email, telling Respondent that this was "the first knowledge I had of his (Simonson's) bankruptcy. Had I known the details of all this I would never have gotten involved. I thought it was just another 'buying partner program' that Kenny North was offering to me." [Ex. A-158].

235. The emails provided by attachment to exhibit A-158 were not provided at the time to the trustee. Had those emails been provided in a timely fashion they would have assisted in providing Laing with the defense that he too was a victim of Simonson.

236. Respondent did not inform Laing that he was withholding emails that Laing had provided to him. Laing did not consent to the withholding of the documents.

237. On December 1, 2006, the bankruptcy court denied summary judgment motions filed on behalf of Levenhagen, Laing and Laning and ruled that Levenhagen was an initial transferee as to the 2004 sale of the property at 11609 Holmes Point. The impact of that ruling was to impose strict liability on Levenhagen for the transfer.

238. Unaware that Levenhagen was in fact a victim of Simonson's fraud, the court

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referred the case to the U.S. Attorney's office for investigation. She noted: "The documents that have been submitted, and the testimony that's been submitted by way of declarations describes criminal activity; criminal fraud, bank fraud, securities fraud. And I am required to refer this matter to the U.S. Attorney's office, which I will do, for investigation. That's a separate matter. When I see that kind of thing in the pleadings, I am required to do that." [Ex. A-206, p. 9].[14]

239. Neither Respondent nor Mr. Araki informed Levenhagen of the court's statement that it was referring the matter to the U.S. Attorney's office for investigation.

240. Michael Levenhagen was then, and is now, a pilot for a commercial airline. A federal criminal investigation, had one been started,[15] would have jeopardized his ability to remain in this position. Had the documents Levenhagen provided to Respondent been provided in response to the Trustee's First Request for Production, it is extremely unlikely that the Levenhagens would have been included in the court's referral. In failing to provide the documents that exonerated Levenhagen and inculpated Simonson and Respondent, Respondent caused substantial potential harm to Levenhagen.

241. Neither Respondent nor Mr. Araki informed the Laings or the Lanings of the court's statements regarding the criminal referral. Both Laing and Laning are responsible businessmen whose reputations would be substantially damaged by a criminal investigation. In failing to produce documentation that would have made the referral unlikely, Respondent caused substantial potential harm to the Lanings and Laings.

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[14] The court also commented that Respondent's firm name appeared on "many, many of the documents." Exhibit A-206, p. 9].

[15] It does not appear that the U.S. Attorney's Office followed through with the referral. That fact does not change the analysis, however, as the Respondent bears responsible for potential as well as actual harm. ABA Standard 4.31.

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242. On January 19, 2007, the bankruptcy court vacated Simonson's discharge, ruling that there had been a fraud in obtaining it. In its ruling, the court invited Araki to produce evidence that Levenhagens, Laings and/or Lanings had been also victimized by Simonson. The court informed Araki that "where your clients can demonstrate that they were also duped by the debtor, and that notwithstanding my abandonment—my vacating the order of abandonment, that I need to pay attention to what their rights are and what compensation they pay, what consideration they pay, etc." [Ex. A-220, p. 12, lines 6-11].

243. In subsequent discovery requests, Respondent continued to withhold relevant documents that would have benefited the defense of Levenhagen, Laning and Laing. [See exhibits A-237, 239; 241; 248; 254; 255]. A clear preponderance of the evidence established that Respondent was the person who prepared these responses.

244. Respondent knowingly and intentionally withheld relevant documents that would have assisted these clients in their defenses. Respondent was motivated by a desire to conceal his role in the fraud and the culpability of Douglas Simonson. Respondent thus placed his interest before those of these clients.

245. Respondent did not inform the Levenhagens, Laings and Lanings that actual or potential conflicts existed. The Levenhagens, Laings and Lanings did not agree to waive these conflicts.

246. Michael Levenhagen first learned of the criminal referral that had been made at his deposition on April 2, 2007 when the attorney for the bankruptcy trustee inquired as to whether he was going to exercise his 5th Amendment right to remain silent. The transcript of this proceeding, Ms. Moewes's testimony and the testimony of Mr. Levenhagen at this hearing established that the fact that his name had been referred to the U.S. Attorney's Office for a

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criminal investigation completely surprised Levenhagen. [***See, e.g.***, Ex. A-257].

247. Learning the information in this matter caused significant distress and other harm to Levenhagen. Ultimately he had to obtain the services of a criminal lawyer in order to advise him. He was substantially distressed by the information that a judge considered him to be a participant in fraudulent activity and was very concerned about the impact of an investigation on his career.

248. Had Respondent provided the documents and/or informed Levenhagen of the conflicts he had, Levenhagen would have been able to obtain legal counsel who protected Levenhagen's interests, not one who was acting on his own behalf and on behalf of a different client.

249. Respondent and Araki continued to represent the Levenhagens, Laings and Lanings in various hearings into May 2007. Throughout this time, Respondent conducted the defense of these individual clients in a manner consistent with his own self-interest and in a manner adverse to theirs. These actions included failure to file actions against Simonson when such actions were warranted, failure to raise defenses that would assist in their legal defense and the continued withholding of relevant documents. These clients neither knew of the conflicts nor consented to them.

250. By withholding the documents and not informing the clients of the conflicts of interests that he had that precluded Respondent from representing them, Respondent unnecessarily prolonged the litigation to the detriment of his clients and the legal system.

H. Additional Facts Relating to Specific Discovery Violations

Respondent's firm received three formal requests for production from the Levenhagens, the Laings and the Lanings. Pursuant to the federal rules governing the bankruptcy proceeding,

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Respondent had an obligation to respond to those requests honestly and accurately. The following findings discuss the Respondent's role in the deliberate withholding of relevant evidence properly requested by Attorney Denice Moewes in formal requests for production during the second adversarial proceeding.

251. On September 26, 2006, the trustee's attorney sent Requests for Production to the Herman Racor firm requesting documents from Levenhagen, Laing and Laning. The requests specifically demanded documents that mentioned Douglas or Karen Simonson or Network Builders. Specifically it requested: "any documents of any nature in your possession or under your control that relates to or mention Douglas or Karen Simonson or Network Builders or any other entity in that Douglas and Karen Simonson have any interest, including any and all emails, letters or other correspondence with said entities." [Exhibits A-139; 140; 141 (at page 5 on each)].

252. [Subject to Protective Order]. [Ex. A-2, pp. 21-23].

253. The clients also testified that they worked directly with Respondent regarding these discovery requests.

254. Respondent was aware that these requests required him to produce emails. Not only do the requests make that clear, but Respondent actually told his clients to forward emails to him. On October 25, 2006, Respondent corresponded with Mark Laing. His email states: "Finally, let me know if there were ever any letters or emails between you and Doug Simonson as they have requested copies of any correspondence." [Ex. A-158].

255. In response to this email, Laing forwarded 10 emails. [Ex. A-158. RP 300, lines 22-25; 301, lines 1-13]. Despite having these emails in his possession, Respondent did not provide a single email to the trustee in the initial production. [See Ex. A-177].

256. Exhibit A-163 is the packet of materials that Michael Levenhagen sent directly to Robert Jackson in an attempt to comply with the trustee's request for production. Despite

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having these emails in his possession, Respondent did not produce a single email in response to the Trustee's First Request for Production. [See Ex. A-178].

257. On February 28, 2007, Moewes sent Plaintiff's Third Request for Production of Documents to the Levenhagens, the Laings and the Lanings. [Exhibits A-237; A-239; A-241]. The request directed at the Levenhagens demanded production of "any and all correspondence, including emails, phone messages, letter or other communication documents between: 1) the Levenhagens and the debtors (Simonsons); 2) The Levenhagens and the debtors attorneys; 3) The Levenhagens and any other defendant to this proceeding; 4) The Levenhagens and any other defendant's legal counsel; 5) The Levenhagens or any entity acting on their behalf and any entity other than their counsel that relates to or mention this proceeding, the subject matter of this proceeding, any defendants named in this proceeding, the debtors, the debtors counsel, and the property which is referenced in the Complaint. [Ex. A-237 at page 5].

258. The request also required the Levenhagens to produce "any and all correspondence, including emails, phone messages, letter or other communication documents between the Levenhagens and Kenny North or other entity in which he has any interest, or any communication which references or mentions Kenny North or any entity in which he has any interest." [Ex. A-237, p. 6]. The requests to the Laings and Lanings contained similar language. [See Exhibits A-240; 241].

259. On February 26, 2007, Levenhagen received an email from a paralegal at Herman Racor attaching the requests for production. Levenhagen responded on February 26, 2007 agreeing to gather everything. On March 2, 2007, Levenhagen sent an email to Respondent and to Steve Araki in which he stated that he had previously sent all the emails from or to Doug. He also attached emails from Greg Cavagnaro and Kenny North. [Ex. A-

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383, p. 127].

260. The answers to these requests were returned on March 28, 2007. [Exhibits A-254; A-255].

261. [Subject to Protective Order]. [Ex. A-2, pp. 28-29].

262. On April 2, 2007, Levenhagen attended his deposition wherein the bankruptcy trustee attorney inquired about his intent to assert his 5th Amendment rights. After that deposition, Moewes asked Levenhagen if he had had any communications with Douglas Simonson after January 18, 2006 and asked if he could produce the additional emails to her.

263. On April 4, 2007, Levenhagen sent Respondent and Araki an email to which he attached the emails he received from Doug Simonson after the January 18, 2006 date. [Ex. A-259].

264. On April 6, 2007, Levenhagen had another email exchange with Respondent that specifically inquired about receipt of the emails. He wrote: "P.S. Did you get the emails and do we have to send them?" [Ex. A-260].

265. In April or May of 2007, Levenhagen met with a criminal attorney recommended by Respondent. Levenhagen paid this attorney $10,000 in fees. Respondent accompanied Levenhagen to the attorney/client conference. [RP 180-81].

266. Shortly after this date, Respondent's firm withdrew from representing the Levenhagens, Laings and Lanings, citing conflicts brought on by the addition of an additional defendant. Levenhagen then hired attorney Marc Stern to represent him in the bankruptcy proceeding.

267. Levenhagen was deposed in October 2007. At that deposition he learned for the first time that a third mortgage had been placed on the 11609 property while he owned it. In

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addition, attorney Stern and Moewes discussed discovery issues. Stern indicated to Moewes that he had "a couple of boxes of stuff from Herman Recor." [RP 694, lines 11-17]. Moewes requested, and was granted, access to the materials.

268. In reviewing the files in Stern's possession, Moewes discovered a substantial number of emails and documents that were responsive to the requests for production that had not been provided to her. She also discovered documentation that the clients had provided those materials to Herman Recor in a timely fashion.

269. Further investigation revealed that some documents had been modified. Email strings that had multiple conversations had been redacted in such a way as to obscure the fact that there were more conversations taking place in the email string.

270. Ultimately, with the help of Stern and full access to the materials that had been sent to Herman Recor, Moewes was able to document numerous irregularities as part of a motion for sanctions she brought against the Herman Recor law firm. Exhibit A-284, consisting of over 1200 pages, contains the full description of the irregularities she discovered. Noted below is a partial list of her findings.

271. Moewes documented that on October 30, 2006, Levenhagen provided Respondent with an email dated 6/15/2005 at 7:22 p.m. [Ex. A-163, p. 41]. This email was not produced to the trustee. [Exhibits A-178; A-254]. An e-mail on the same day, at 3:44 pm was produced, however. [Ex. A-254, p. 63]. The omitted email that had been on the same page as the earlier email had two references to Respondent's involvement in the 2005 real estate transaction. [Ex. A-163, p. 41].

272. On October 30, 2006, Levenhagen provided to Respondent an email dated 6/17/2005 at 11:06 am. [Ex. A-163, p. 42]. That document was on the same page as an email

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dated June 15, 2005, at 3:44 pm. The document had the date of 10/28/2006 on the bottom. This is the date that Levenhagen printed the document in anticipation of sending it to Respondent. In response to the trustee's Third Request for Production, Respondent sent only that portion of the e-mail exchange dated 6/15/2005. [Ex. A-254, p. 63]. In the omitted portion, Simonson instructed Levenhagen to "Fed Ex back to Bob Jackson's office" the signed agreement associated with the 2005 sale of the property. [Ex. A-163, p. 42].

273. On October 30, 2006, Levenhagen provided Respondent with a copy of an email dated 11/1/2005 at 8:48 p.m. [Ex. 163, p. 64]. He provided that document on the same page as a document date 11/1/2005 at 11:59 p.m. Again the document contained a notation showing that it was printed on 10/28/2006. The email from earlier in the day was provided to the trustee. The 8:48 email was not provided to the trustee. [Ex. A-254, p. 79]. Again the omitted email referred to Respondent and the notation showing when it was printed had been eliminated.

274. On October 30, 2006, Levenhagen provided an email dated 11/4/2005 at 12:10 p.m. to Respondent. Again the document shows that it was printed on October 28, 2006. [Ex. A-163, p. 67]. Respondent provided a copy of an email on the same page dated 11/7/2005 and 11/6/2005. The email from 11/4/2005 referred to Simonson talking to Bob Jackson about the escrow. [Ex. A-163, p. 67]. Respondent provided a copy of this page of emails that omitted the printed date and omitted the 11/4/2005 email referring to Bob Jackson. [Ex. A-254, p. 107].

275. On October 30, 2006, Levenhagen provided Respondent with an email dated 11/18/2005 at 1:14 pm. This email also had the date 10/28/2006 printed on the bottom. [Ex. A-163, p. 74]. The email had three references to Simonson discussing an issue relating to the November 2005 sale with Bob Jackson. That email was never provided to the trustee. An email

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dated November 18, 2005 at 10:32 am, which had been on the same page, was provided. [Ex. A-254, p. 86].

276. On October 30, 2006, Levenhagen provided Respondent with an email dated 12/1/2005 at 3:28. The print date 10/26/2006 appeared on the bottom. [Ex. A-163, p. 86]. This document was not produced to the trustee. This page of Levenhagens' materials also contains an email of 12/1/2005 at 6:22 pm. The second email, (12/1/2005 at 6:22) was provided. The date stamp was removed from the document that was produced. [Ex. A-254, p. 98]. Again the omitted document referred to Bob Jackson.

277. In addition to the six redacted emails referred to above, Respondent withheld 31 emails that Levenhagen had provided to Respondent on either October 30, 2006 as part of exhibit 163, or in the additional materials he sent on March 2, 2007.

278. These emails contained relevant information that implicated Doug Simonson and/or Respondent but exonerated Levenhagen.

279. A number of the earliest documents demonstrated that Simonson was acting as an agent GFS. [See Ex. A-163, pp. 7-8].

280. Emails and attachments at Ex. A- 163, pp. 22-28 described Simonson's dispute with GFS, Dave Langford and Tiffany Doty.

281. A number of these emails mention Respondent. An email dated 6/8/2005, referred to Respondent's advice regarding the structure of the LLC agreement, the fact that Respondent "can handle all this at closing" and the fact that documents involved in the transactions were to be faxed directly back to Respondent.

282. In another omitted email, Levenhagen referred back to the 6/8/2005 email and

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Simonson's reference to Respondent handling the transaction. [16] An email omitted from page 65 again referred to Bob Jackson, as does the omitted page 78.

283. The email of November 20, 2005 expressed Levenhagen's concern that the LLC (and therefore the property) was in Simonson's name while Levenhagen was still responsible for the mortgages. Levenhagen attached a quit claim deed to this email and asked that Simonson return the LLC to him. The entire content of the email established that Levenhagen was a victim. Nonetheless, the document that would have most dramatically assisted in his defense, was never provided to the trustee.

284. All of the above emails were provided to Respondent for the purpose of being forwarded to the trustee to aid in the Levenhagens' defense. All of the above were provided to Respondent a full month before the bankruptcy court decided to make the referral to the U.S. Attorney's office. All of the above emails were omitted from the response to the request for production prepared by the Respondent.

285. The additional emails Levenhagen sent to Respondent on March 2, 2007, established that Simonson directed Levenhagen to Respondent, by falsely representing that Jackson was not his "bankruptcy attorney." [Ex. A-284, p. 1225]. They also established that Respondent and Simonson directed the litigation and did so in a manner to protect Simonson. [See Ex. A-284, p. 1227].

286. In addition to the emails discussed above, Moewes located transactional documents in the Herman Recor boxes that had been delivered to Respondent, but had not been produced in any of the productions. Those documents included the LLC Purchase and Sale Agreements dated June 6, 2005 (wherein Network Builders is sold to the Levenhagens), the

[16] The chances that both emails were accidentally omitted are slim to nonexistent.

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Quit Claim Deed (wherein the Levenhagens transfer the 11609 property to Network Builders) and the LLC Purchase and Sale Agreement dated June 16, 2005 (wherein Network Builders is sold to the Simonsons). Respondent drafted these documents. Nonetheless, these documents were not produced. [Ex. A-284, pp. 10-11].

287. Also not produced was the Deed of Trust held by Herman Recor on the 11609 property. Had this and the other documents been produced, Respondent's involvement in these transactions would have been discovered immediately.

288. The attorney for the trustee invested substantial time in tracking down the discovery issues in this case. In addition to simply withholding documents, many documents that were produced were only produced after repeated requests by Moewes. Productions, when they occurred, were timed so as to prevent Moewes from properly being able to prepare for various court proceedings and deposition. Because of the criminal referral, some of the depositions ended up being cancelled when the trustee learned that the parties had not been informed of the referral.

289. This matter came before the bankruptcy court for hearing on the Trustee's Motions for Sanctions against the Herman Recor firm on July 11, 2008.[17] The court allowed the parties to submit additional materials and allowed Herman Recor time to analyze and challenge the requested fees. In that proceeding, Herman Recor apparently acknowledged that at least $88,602.50 of the requested fees was reasonably related to its failure to provide discovery.

[17] The Court's ruling on the Motion for Sanctions was admitted for limited purposes. This Officer has independently resolved the issues relating to the discovery sanctions by comparing the documents that the Association established were in Respondent's possession to those actually produced in response to the formal requests for production. This task was assisted by demonstrative exhibits and summaries prepared by the Association. This Officer independently verified each of the entries on said exhibits before reaching the conclusions above.

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290. On October 27, 2008, the bankruptcy court issued a 47 page decision finding that Respondent's firm had withheld relevant documents. Ultimately, the court awarded the Trustee a total of $205,574.43 in fees against the firm of Herman Recor for the discovery abuses. This amount was subsequently compromised and Herman Recor paid a total of $185,000 for the discovery abuses found by the bankruptcy court. [RP 1605]. These funds came from Respondent and Stephen Araki.

291. At hearing, Respondent was unable to explain why the omitted documents had not been produced. He claimed that he had been hampered in his ability to defend the motion because Levenhagen's subsequent attorney had not provided complete access to the full files that Herman Recor had provided to him.

292. Respondent claimed that anywhere from six to ten boxes had been given to attorney Marc Stern. He described an elaborate, detailed scene where he carried boxes up to the front reception area because he was a "gentleman." [RP 1600, lines 12-18]. He testified further that his firm requested copies of what had been produced to them, but claimed that he had been given materials that comprised only one or two boxes without any of the key documents in them.

293. Respondent was not credible. This officer concludes he provided false testimony to support his defense of this charge. His testimony concerning how the file was turned over to Marc Stern and the amount of materials turned over was directly contradicted by the attorney of record on the file, Stephen Araki.

294. Araki testified that he turned over either one big box or two to three boxes. More specifically, he testified that he delivered the file directly to Marc Stern. He recalled transferring the file from the trunk of his car to Stern while in the parking lot at the bankruptcy

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court. [RP 770; lines 5-13].

295. Respondent intentionally and willfully abused the discovery process. The exhibits and testimony of Levenhagen, Laing and Laning establish that all three of these defendants willingly turned over documents requested during the discovery process. These individuals provided the documents directly to Respondent and his firm in a timely fashion whenever they received such requests.

296. Respondent, acting in his own self-interest and on behalf of Douglas Simonson, intentionally and repeatedly withheld highly relevant information that would have exonerated these clients but implicated Respondent and Simonson. [18]

297. Respondent's conduct caused harm to his clients, to the bankruptcy court and trustee, and to the public respect for the legal system.

I. Misrepresentations on Home Mortgage in the Dainard Matter

298. In October 2005, Rob and Claire Dainard were friends and clients of Respondent. They socialized frequently with the Jacksons. Respondent had represented them in a number of legal matters. At the time of the events associated with this grievance, Respondent was representing Claire Dainard in a personal injury action.

299. The Dainards have a number of investment properties. The testimony established that the Dainards were conservative in their investments. Up until the fall of 2005, they purchased property in their own name, put 20% down, avoided speculation and held their properties for extended periods of time. They had not worked with property that was intended to be "flipped" to a developer.

[18] This officer concurs with Judge Overstreet's conclusion that none of the missing documents were privileged and that had Respondent intended to withhold them on this basis, he had an obligation to inform the court and the parties that he was doing so and prepare the appropriate privilege log.

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300. Respondent, on the other hand, was actively and aggressively involved in complicated real estate transactions, including many associated with Douglas Simonson and Kenny North's companies. At the time of these events, Respondent had been working with Douglas Simonson and Kenny North for a number of months. Kenny North was heavily involved in real estate investments and developments.

301. In October 2005, the Dainards located property located 115 Webster Court in Chelan, County ("115 Webster"). The Dainards were interested in this property as an investment. The Dainards had multiple real estate investments in the area and were well qualified to obtain appropriate financing for investment property. The Dainard were not speculators and typically rehabilitated their purchased properties and held them for long term investments. Testimony at trial established that they were successful investors with sufficient credit to purchase the property on acceptable terms without needing to rely on the credit of the Jacksons. [19]

302. The property was zoned multi-family and had the potential, with two adjoining properties, to be developed into condominiums or apartments. The adjoining properties consisted of a property with a duplex ("hereafter duplex") and a property located at 113 Webster Court, known as the Mack property ("hereafter Mack property").

303. The Dainards realized the property had development potential, but were unsure as how to structure its purchase so as to allow it to be sold to a developer. They brought their concern to Respondent, who then in turn became interested in being involved financially in the project. Prior to the Dainards bringing this property to his attention, Respondent had no

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knowledge of the property or its investment potential.

304. On or about October 26, 2005, the Dainards signed a purchase and sale agreement for the property at 115 Webster and provided $25,000 in earnest money. On Respondent's advice, this contract also allowed for assignment of the purchase and sale agreement to another party. [RP 944, line 16].

305. Respondent also suggested that there be feasibility language in the agreement and gave the Dainards other advice regarding the transaction. Mr. Dainard incorporated this legal advice into his purchase agreement

306. About 10 days after the agreement was signed, Respondent suggested that he take a look at the property. Respondent then inquired as to whether the Dainards were interested in joining Respondent in on the property. Mr. Dainard informed Respondent that he had never had a partner and expressed concerns about not having control. Respondent assured Mr. Dainard that he would handle any legal issues that arose, and that Respondent's wife, Patti, could handle the accounting issues. [RP 951; 4-12].

307. Respondent convinced the Dainards to allow him and his wife to join in the investment. Respondent also advised them that the best format for the project was a limited liability company that Respondent, could create for the couples. The Dainards relied on the Respondent's legal expertise and advice in making decisions regarding the purchase of this property and in formation of the limited liability company.

308. In November 22, 2005, Respondent, Dainard, and their wives, Claire Dainard and Patricia Jackson, formed RPC Enterprises, LLC (RPC Enterprises). The purpose of RPC

[19] Respondent testified that the decision to allow the Jacksons to do the purchase was based on the fact the Dainards did not have a regular income. The Dainards testified that they had substantial investments and assets that allowed them to finance their purchases on good terms. The Dainards apparently also

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Enterprises was to acquire 115 Webster as an investment property.

309. Dainard was the president and Chief Executive Officer of RPC Enterprises. Respondent was the Vice President, the lawyer for RPC Enterprises, and its registered agent. Respondent and his wife owned 50 percent of RPC Enterprises. Rob Dainard and his wife Claire owned the other 50 percent. Respondent did the paperwork to form the LLC. The Dainards agreed to participate in the LLC after Respondent explained that if the property were in a LLC, the remainder of the Dainards assets would be protected if someone were injured or there was a lawsuit of some kind. [Ex. A-353].

310. The Dainards agreed to transfer the purchase and sale agreement for 115 Webster to Respondent and his wife. The Dainards agreed to this transfer because Respondent represented that he would be able to obtain better financing for the purchase of 115 Webster through his contacts with Bank of America. In turn, Respondent and his wife agreed to quitclaim 115 Webster to RPC Enterprises immediately after closing.

311. Neither party contemplated that the residence at 115 Webster would be used as a second or vacation home. [RP 955, lines 21-25; 956, lines 1-2]. Mr. Dainard would not have agreed to enter into the business relationship with Respondent had he stated an intention to use the house as a second home. [RP 956, lines 3-6]. Instead, the Dainards anticipated that they would rehabilitate the house and rent it until such time as an appropriate purchaser appeared.

312. On May 4, 2006, Respondent and his wife Patti Jackson signed a Uniform Residential Loan application for a loan to finance the purchase of the property at 115 Webster. [Ex. R-542]. The application stated on three separate pages, all of them signed by Respondent that the intended use of the property was residential. [See R-542, pp. 1, 4 and "Certifications,

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had the ability to buy the property outright. The Dainards presented the more credible testimony on this issue.

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Disclosures and Notices" pages].

313. Mr. Dainard believed, based on conversations with Respondent regarding the financing arrangements, that Respondent was financing the property through his own bank, Bank of America. On June 7, 2006, Mr. Dainard received a copy of correspondence between Respondent and Ancora Financial. [20] [Ex. A-358]. In that email, Respondent went through the good faith estimate for the loan, identified minor discrepancies apparently from a previous version and questioned why the discrepancies existed.

314. The Dainards had been working with a local title company and expected that escrow for the closing of the house would take place in Chelan. Without discussing that decision, Respondent had the escrow moved to Araki Escrow, an entity in which he shared certain profits. [Ex. A-359].

315. The actual transfer of the purchase and sale agreement from the Dainards to the Jacksons occurred on June 12, 2006, 39 days after Respondent signed the initial residential loan application that specified the property was to be used as a second residence. [Ex. A-361].

316. This transaction occurred at the LLC's organizational meeting held on June 12, 2006. [Ex. A-362]. There is no indication of any discussion during this meeting either of an issue with financing the property or the fact that the Respondent was seeking a residential loan for the property. Exhibit A-361 stated that the assignment was being done so that better financing could be obtained for the property. That document also stated that the parties would share equally in the repair or improvement of the property "as well as all loan costs associated with the acquisition of the property as well as the monthly loan obligation." [Ex. A-361].

317. Exhibit A-361 also documented the parties' intent regarding the power to sell or

[20] Dainard questioned Respondent about the change from Bank of America. Respondent informed him that Bank of America had not "worked out."

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transfer the property. It stated: "The parties further agree that any decision to sell or transfer the property shall be made by all four owners/members of the Company. . . ." A similar restriction is contained in the LLC's organizational minutes of June 12, 2006. [Ex. A-362]. Exhibit A-362 contains a resolution that "the signatures of all members are required to execute all agreements and transfer documents on behalf of the company." Testimony established that this restriction was included at the specific request of the Dainards.

318. On or about June 15, 2006, Respondent signed and submitted a mortgage application representing that 115 Webster would be used as his "secondary residence." This representation was false.

319. At the same time as the mortgage application was signed, Respondent signed a "Second Home Rider." [Ex. A-367]. The Second Home Rider, a two page document, stated in pertinent part: "**Occupancy.** Borrower shall occupy, and shall only use, the Property as Borrower's second home. Borrower shall keep the Property available for Borrower's exclusive use and enjoyment at all times, and shall not subject the property to any timesharing, or other shared ownership arrangement or to any rental pool or agreement that requires the Borrow either to rent the Property or give a management firm or any other person any control over the use of the Property." The rider informed the borrower that the borrower would be in default if any person gave "false, misleading or inaccurate information. . . . Material representations include, but are not limited to, representations concerning Borrower's occupancy as Borrower's second home." [Ex. A-367, p.1].

320. As part of the closing paperwork, an insurance binder was provided. Like the loan documents, the insurance binder provided that the property was to be used as a seasonal, owner occupied, dwelling.

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321. The Jacksons initialed this page and signed the following page with full knowledge that the information they were providing was false. Respondent intentionally made the misrepresentation in the mortgage application for the purpose of obtaining a mortgage loan on the more favorable residential home loan terms. This misrepresentation was made to American Mortgage Network, Inc. At the time, American Mortgage Network, Inc. was owned by Wachovia Bank, an institution insured by the Federal Deposit Insurance Corporation. [Ex. A-478].

322. Both Jacksons asserted that the financing was arranged by the Dainards, that they saw the second home rider language only at closing, and that they signed it only because they were concerned that if they did not the Dainards would lose their earnest money deposit. This testimony was false.

323. Respondent's testimony was directly contradicted by the loan officer who testified that he dealt only with Mr. Jackson. He testified that after he started working with Mr. Jackson, "I had no communication other than emails where I saw that Mr. Dainard was involved in the email." [RP 1219, lines 3-4].

324. The Jacksons' version of events is also directly contradicted by Exhibit R-542, the original loan application signed a full six weeks before the loan closed. That document, like the final mortgage application signed at closing, contained multiple references to the property being used as a second home

325. It is not credible that Respondent missed the references in the original application and did not see the second home rider on the final documents until the last minute. The evidence demonstrated that Respondent paid great attention to detail. His correspondence with the loan officer regarding the discrepancies in the good faith estimate demonstrated this

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attention to detail. In addition, his paralegal stated unequivocally that "it would be standard practice for Mr. Jackson to review any document he's putting his name on." [RP 1405, lines 15-16]. Finally, the Association produced evidence that the seller of the property had voluntarily agreed to extend the closing date. [Ex. A-441].

326. At the time Respondent signed the mortgage application and the rider, he remained the lawyer for RPC Enterprises. The Dainards were not informed of these false representations. They did not consent to the Jacksons falsely signing loan papers for property that was intended to be held jointly as an investment.

327. In signing the second home rider and falsely claiming the property as a second home, Respondent intentionally violated Title 18, United States Code, Section 1344. Respondent's purpose in signing this document was not to protect the Dainards' earnest money agreement, but rather to obtain a residential interest rate that otherwise would not have been available. Respondent and his wife had no intention of ever occupying this home. Rather, from the outset, Respondent was attempting to leverage this property into a successful real estate deal with Kenny North.

328. Respondent and his wife received the mortgage for 115 Webster from American Mortgage, Inc. On or about June 16, 2006, Respondent and his wife purchased 115 Webster. Robert Dainard did substantial work repairing the property. Unaware of the second home rider, the Dainards arranged for a tenant upon the completion of the remodel.

329. The false statements caused the Dainards substantial harm. The Dainards relied upon Respondent's representation that he could obtain better financing for the project from his bank. When they learned of the second home rider, the Dainards determined that they could no longer risk renting the property. As a result, the property remained empty for a period of time.

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J. Findings Regarding Additional Conflict of Interests with Dainards

330. Just before the property closed, the members of RPC Enterprises LLC met for its first organizational meeting. The minutes of that meeting refer to Jackson as the "company attorney" and "corporate counsel." [Ex. A-362]. At no time during the events described below, did Respondent ever inform the Dainards individually or RPC Enterprises LLC, that he was no longer the RPC's attorney. At no time did Respondent formally withdraw from representation.

331. At the request of the Dainards, the members discussed the issue of what signatures were required for transfer of any asset, including real property, belonging to the company. A resolution was passed that stated "the signatures of all members are required to execute all agreements and transfer documents on behalf of the company." [Ex. A-362]. The members also resolved that any member "may execute a contract for the benefit of the company."

332. Respondent did not immediately quitclaim 115 Webster to RPC Enterprises. However, the members of RPC continued to conduct business as if RPC Enterprises was the owner of the property. Rob Dainard immediately started the process of remodeling the home and Claire Dainard started looking for a tenant.

333. A banking account was set up for RPC Enterprises. Both couples deposited funds into this account to pay the mortgage and expenses associated with the property's rehabilitation. One of the initial transactions from this account was a deposit of $30,000 in April 2006 made by the Jacksons. Just after the closing, the Jacksons transferred $20,000 back to their personal accounts.

334. An additional $10,000 check was written to Manna Funding. [Ex. A-442]. The

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memo line stated that this was for a loan for Tiffany Doty, the same individual involved with Kenny North and Doug Simonson. RPC Enterprises did no business with Manna Funding or Tiffany Doty.

335. [Subject to Protective Order

336. [Subject to Protective Order]. [Ex. A-153].

337. In the last quarter of 2006, Respondent told the Dainards that a developer named Kenny North was interested in developing 115 Webster along with the adjoining properties. Mr. Dainard specifically asked Respondent if he represented North. Respondent replied "No." [RP 990, lines 12-14].

338. These representations were false. Respondent knew they were false. In fact, North had been a client of Respondent's since 2005. Respondent was representing one of North's companies at that time. Respondent did not disclose this information to the Dainards.

339. [Subject to Protective Order [Ex. A-375].

340. The email contained in Exhibit A-375 was not copied to the Dainards. Respondent did not tell the Dainards anything about these negotiations. [RP 994, lines 21-22].

341. On January 24, 2007, Respondent corresponded with the seller of the Mack property, Steven Brown. Brown indicated that he would give Respondent and his partners first shot. [Ex. A-377]. The partners referred to in this email were most probably Kenny North as there is no credible evidence that Respondent informed the Dainards of these negotiations.

342. [Subject to Protective Order]. [Ex. A-376].

343. [Subject to Protective Order]. [Ex. A-378].

344. On February 9, 2007, Respondent discussed making an offer on the duplex

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property with Skip Boyd. [Ex. A-379]. Respondent instructed Boyd to write the deal under "Jackson-Field Enterprises or assigns." Respondent had a 50% ownership interest in this entity. The Dainards had none. RPC Enterprises LLC had no interest in this company.

345. The Dainards did not receive a copy of this email. Respondent did not inform the Dainards that he was making an offer on the property adjoining 115 Webster.

346. On March 1, 2007, Respondent acted to lock up the Mack property, the other property in adjoining that owned by RPC Enterprises LLC. To accomplish that, Respondent signed a purchase and sale agreement binding RPC Enterprises to purchase the Mack property for $1.2 million. Respondent did not inform the Dainards that he was making an offer on the Mack property in the name of RPC Enterprises. [RP 995, lines 8-9]. He did not have the authority to make this offer. [Ex. A-361].

347. On March 1, 2007, Respondent signed a promissory note, promising that RPC Enterprises LLC would pay $50,000 as part of the Purchase and Sale agreement. [Ex. A-381]. The note indicated that it would become due within 10 days of the removal of the contingencies.

348. The purpose of the purchase and sale agreement drafted in this manner was to allow Respondent and Kenny North to explore the full investment potential of the three properties. Critical to this plan was the ultimate sale of the 115 Webster property to Kenny North.

349. Respondent did not inform the Dainards that the Mack property was for sale. [RP 994, lines 15-22]. Respondent did not inform the Dainards that he was signing a promissory note and Purchase and Sale Agreement for the Mack property on behalf of RPC Enterprises LLC. [RP 995, lines 8-17]. Respondent did not have the authority to enter into that transaction. [Ex. A-361]. The Dainards would not have consented to the transaction had they

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been informed. [RP 995, lines 18-22].

350. On March 2, 2007, Respondent transmitted the Purchase and Sale agreement and the promissory note to the owners of the Mack property. [Ex. A-382]. The Dainards did not receive a copy of this email. [RP 997, lines 12-17]. The Dainards were unaware of the transaction, had not authorized it, and would not have authorized it had Respondent informed them of it. [RP 995-96]

351. [Subject to Protective Order]. [RP 998, lines 3-13]. [Ex. A-383].

352. [Subject to Protective Order]. [Ex. A-384].

353. Respondent did discuss selling 115 Webster to Kenny North with the Dainards during the first quarter of 2007. The Dainards were concerned that North was attempting to tie up property at the height of the market without any guarantee that he would actually close on the property. The Dainards decided to allow Respondent to convey a firm offer of $795,000 to North with the proviso that the sale had to close by the end of April. [Ex. A-385].

354. [Subject to Protective Order]. [Ex. A-386]. [RP 1009; lines 8-25; 1010, lines 1-2].

355. Respondent continued his efforts to secure the three properties for North. On April 11, 2007, Respondent formed Chelan Landing LLC. [Ex. A-390]. Respondent was the registered agent for this LLC. Jackson-Field Enterprises LLC was a 50% owner in the new LLC. KC North Family Trust, LLC was the other member. Respondent was the organizer of the LLC. Respondent, his wife and another couple owned Jackson-Field LLC, an entity whose stated purpose was to engage in the business of real property acquisition.

356. Respondent testified falsely that Jackson-Field had no ownership interest in Chelan Landing. [RP 1487, lines 6-8]. This testimony was contradicted by the contents of A-

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390 and by the testimony Jeffrey Soehren, an architect and owner of the Mack property.[21]

357. Respondent's purpose in forming Chelan Landing was to acquire the three properties: 115 Webster, the duplex, and the Mack property. Respondent and North then intended to develop the property into a single project. During the transactions relating to Chelan Landing, LLC, both North and Respondent acted on behalf of the company. [RP 1204, line 25; p. 1205, lines 1-7].

358. Respondent did not inform the Dainards of his involvement with North in Chelan Landing. In late March and April 2007, there was a significant risk that Respondent's representation of RPC Enterprises and/or the Dainards would be materially limited by his personal interest and his responsibilities to Chelan Landing and North.

359. Jackson-Field Enterprises, acting by and through Respondent, signed an offer to purchase the duplex on May 1, 2007. [Ex. A-389]. The Dainards did not know that Respondent, acting through another company, was purchasing the duplex. [RP 1003]. He did not provide the Dainards with a copy of the purchase and sale agreement. [RP 1003, lines 5-7]. Respondent did not obtain the informed consent of RPC Enterprises and/or the Dainards, confirmed in writing, to the duplex transaction.

360. In entering into the purchase and sale agreement for the duplex, Respondent used client information relating to his representation of the Dainards and/or RPC Enterprises. Respondent's purpose in entering into a purchase and sale agreement of the duplex on behalf of Jackson-Field was to acquire and develop that property, along with 115 Webster and the Mack property, in conjunction with North using Chelan Landing LLC as the nominal owner of the project.

[21] RP 1199, lines 20-25; RP 1200, lines 10-19; RP 1204-1205; 1206, lines 21-25, 1207, lines 1-2.

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361. Respondent did not tell the Dainards that he had represented North and that he had represented a North company, Cedar Hollow. [RP 1008, lines 13-19]. He did not tell the Dainards of that he had represented people in a bankruptcy proceeding that involved property in which North had an interest. [RP 1008, lines 20-23.]

362. The terms of the duplex transaction were not fair and reasonable to RPC Enterprises in that the transaction usurped the opportunity for RPC Enterprises to determine whether it wanted to purchase the property and/or it undermined any opportunity for RPC Enterprises to make an offer at a more advantageous price.

363. As of the end of April 2007, neither North nor Respondent had responded to the Dainards' proposal for the sale of 115 Webster. By the end of April 2007, the Dainards's offer to sell 115 Webster for $795,000 expired.

364. On May 7, 2007, Respondent wrote to the seller of the Mack property, stating that North would be depositing $50,000 into escrow to go forward with the deal. [A-398]. As of May 7, 2007, Respondent did not intend for RPC Enterprises to acquire and/or develop the Mack property.

365. [Subject to Protective Order]. [A-400].

366. On or about July 20, 2007, Respondent assigned the purchase and sale agreement for the Mack property to Chelan Landing. [Ex. A-411]. With this transaction, two of the three properties necessary Respondent and North's project, were under contract.

367. Respondent's actions were not authorized by the Dainards and/or RPC Enterprises. Respondent did not inform RPC Enterprises and/or the Dainards that he assigned the Mack property purchase and sale agreement to Chelan Landing or North. [RP 1018-19].

368. Respondent did not obtain the informed consent of RPC Enterprises and/or the

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Dainards, confirmed in writing, to the assignment of the purchase and sale agreement for the Mack property.

369. In assigning the purchase and sale agreement for the Mack property, Respondent used information relating to his representation of the Dainards and/or RPC Enterprises. Respondent's purpose in assigning the purchase and sale agreement for the Mack property was to acquire and develop that property, along with 115 Webster and the duplex, in conjunction with North.

370. The terms of assignment of the purchase and sale agreement for the Mack property were not fair and reasonable to RPC Enterprises in that RPC Enterprises received no compensation, received no concessions regarding the use of the Mack property and received no opportunity to negotiate regarding compensation and/or concessions.

371. Respondent did not advise RPC Enterprises and/or the Dainards in writing of the desirability of seeking independent counsel regarding RPC Enterprises' position regarding the assignment of the Mack property. At the time of the transaction, the Dainards believed Respondent was representing them. [RP 1019, lines 5-9].

372. On or about July 20, 2007, Chelan Landing purchased the Mack property. The sellers of the property dealt with Respondent on this transaction. [RP 1204, line 25; p. 1205, lines 1-7]. They did so because they understood from Respondent that he too had an interest in the project. [RP 1206, lines 21-25; p. 1207, lines 1-2].

373. On September 5, 2007, the Dainards offered to release the Jacksons from their obligations relating to the Webster property by in themselves on contract. [Ex. A-413].

374. In September 2007, Mr. Dainard had a major medical emergency. Respondent was aware of this medical emergency. [RP 1021;1023].

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375. On September 19, 2007, Respondent, through his wife, forwarded a written offer for 115 Webster to the Dainards. The written offer, made in the name of Chelan Landing, was to purchase 115 Webster for $950,000. [Ex. A-416]. Concerned about potential conflict of interests, Rob Dainard asked Respondent if he represented North. [RP 1025, lines 21-23]. Respondent denied to Dainard that he was representing North. [RP 1025; 1040]. Respondent did not disclose to the Dainards his involvement with Chelan Landing and/or North. [RP 1019-20].

376. Respondent did not disclose to the Dainards his actions with regard to the purchase or sale of the Mack property and/or the duplex. In forwarding an offer for the purchase of 115 Webster, Respondent used client information relating to his representation of the Dainards and/or RPC Enterprises.

377. On September 20, 2007, Kenny North made a presentation in Chelan at a winery. The focus of the presentation was the development that North planned for the 3 properties: the Mack property, the duplex and the property owned by the Dainards/Jacksons at 115 Webster.[22]

378. On the date of the presentation, the property at 115 Webster was in the name of the Jacksons although both couples had invested time and money in the property and although the intent had been to own it jointly through RPC Enterprises LLC.

379. The Dainards were not informed that 115 Webster was being included in a marketing presentation as a part of the Chelan Landing development. They did not consent to that representation.

380. The Dainards learned of the presentation on September 21, 2007. [Ex. A-418]. They informed the Jacksons at that time that they were not interested in doing business with

[22] There was testimony that Respondent attended this presentation although the Jacksons denied knowledge of it. [RP 1205, lines 21-25].

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Kenny North.

381. The Dainards told Respondent that they would not entertain any offers until Respondent quitclaimed 115 Webster to RPC Enterprises. On September 26, 2007, Respondent signed a quit claim deed drafted by a title company in Chelan. The quit claim deed incorrectly listed the grantee as RPC LLC rather than RPC Enterprises LLC.

382. On October 2, 2007, the Dainards informed Respondent of the terms under that they would sell their one half interest in the property. [Ex. A-424]. In that email, the Dainards indicated that they did not trust North.

383. [Subject to Protective Order

384. The Dainards decided not to accept the offer regarding 115 Webster. The Dainards' decision not to sell 115 Webster made it impossible for Respondent and North to proceed with their plan to develop 115 Webster along with the Mack property and the duplex. Even if they had accepted the offer, however, it is not likely that the project would have come to fruition. Mr. North was apparently a speculator who moved from property to property, tying up real estate while he determined whether or not a project was feasible to complete. The various transactions associated with Chelan Landing indicated that North's offers were largely illusory and constructed in such a way as to minimize risk to his companies and maximize his leverage. Chelan Landing subsequently lost the Mack property in a foreclosure action. [RP 1204, lines 20-24].

385. Respondent was aware that the offers made by North for the property at 115 Webster were constructed in such a manner as to maximize North's flexibility to walk away from the project without serious financial penalty. Respondent assisted in constructing the offers so that they served North's interest in maintaining that flexibility.

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386. Respondent acted intentionally in concealing the transactions associated with the proposed Chelan Landing LLC and his role in them, in order to benefit himself and Kenny North.

387. In structuring the purchase and sale agreements in such a way as to protect North and increase the risk to the seller, Respondent acted intentionally to benefit himself and to benefit Kenny North

388. Respondent intentionally attempted to conceal the nature of his relationship to Kenny North by resisting the Association's ELC 10.13 Demand for Documents. In resisting these legitimate demands for materials, Respondent intentionally provided false statements during the hearing regarding the location of the documents, the ability to retrieve the documents and the status of electronic files. When Respondent finally produced the materials, the Association was able to document the presence of Kenny North's funds in Respondent's trust account, a fact that substantially undercut his contention that Mr. North was not his client.

389. Respondent provided false testimony concerning his relationship with the Dainards. He testified that he acted with the knowledge of the Dainards and for their benefit.[23] None of the numerous emails concerning the three properties that were exchanged between sellers, Respondent and Kenny North were copied to the Dainards. There are no emails advising the Dainards that Respondent was engaged in these negotiations. The Dainards provided credible evidence that they did not have knowledge of Respondent's actions. Respondent's statements to the contrary were not credible given the totality of the evidence.

390. Respondent acted intentionally in providing false testimony concerning his relationship to Kenny North during the hearing.

[23] **See e.g.,** RP 1484, lines 22-25, p. 1485, lines 1-19; RP 1486, lines 5-25; p. 1487, lines 1-19.

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391. Respondent's actions concerning the attempted purchase of 115 Webster caused the Dainards substantial harm. RPC Enterprises LLC is currently the subject of a lawsuit seeking dissolution of the company and division of the asset. The Dainards invested substantial funds and sweat equity in the property at 115 Webster in order to further protect their investment, yet for large portions of the time the property could not be rented as the status of the second home rider was uncertain. Finally, the property's investment value has dropped dramatically since it was not sold during the peak of the real estate market. The property is currently for sale at a fraction of the prices available in the 2006-2007 timeframe.

VI. CONCLUSIONS OF LAW REGARDING CHARGED VIOLATIONS

Based on the foregoing Findings of Fact, the Hearing Officer makes the following conclusions of law:

Count 1: RPC 8.4(c) states that it is professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." This officer concludes that Respondent violated this rule by signing a real estate excise tax affidavit that falsely represented that he was an agent of Michael Levenhagen.[24]

Count 2: Count 2 involves the Respondent's misconduct in participating in the fraud on the bankruptcy court. This conduct violated Title 18, United States Code, Section 152 and/or Title 18, United States Code, Section 2. As recognized by Respondent, §152 prohibits concealment of the debtor's assets. **Respondent's Post Hearing Brief at 15.** Respondent acknowledged that this section can be violated by persons other than the bankrupt. ***Id.*** Respondent argued, however, that there was no evidence that he "made payments in knowing

[24] The RPC were amended effective September 1, 2006. The Formal Complaint charges Respondent with violating the RPC in effect as of the date of the alleged conduct.

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violation of any court order." **Respondent's Brief at 15, lines 2-3.** Respondent also "denied that he was aware his actions would violate any court order." ***Id*** at lines 8-9.

Respondent's testimony was not credible. As noted in the findings, the documents, the timing of events, and the substance of his communications with Simonson all rebut Respondent's claim that he acted without knowledge. By transferring funds into and out of his trust account in February and March 2006 to benefit Simonson, in contravention of the January 2006 bankruptcy restraining order, Respondent violated 18 U.SC. §152 and thereby violated RPC 8.4(b).

Because the conduct involved dishonesty, Respondent violated RPC 8.4(c). This conduct was prejudicial to the administration of justice in contravention of RPC 8.4(d). Finally, Respondent willfully violated the court's restraining order in contravention of RPC 8.4(j).

Count 3: The Association charged that Respondent's failure to account for the $55,000 paid to his wife, violated former RPC 3.3(a) and current RPC 8.4(c), RPC 8.4(d), and/or RPC 8.4(j).

Former RPC 3.3 (a) provided that a lawyer shall not knowingly

(1) Make a false statement of material fact or law to a tribunal.

(2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by rule 1.6;

(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) Offer evidence that the lawyer knows to be false.

The application of RPC 3.3(a) to Respondent's failure to disclose the $55,000 payment raises several issues. At first glance, former RPC 3.3(a) (1) appeared to require an affirmative

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false statement that arguably did not exist here. In interpreting a similar provision contained in RPC 4.1, our Supreme court declined to resolve the issue of whether a false statement could be made by omission. ***In re Disciplinary Proceeding of Carmick***, 146 Wn. 2d 582, 600, 48 P.3rd 311 (2002). Nonetheless, in the context of this case, this officer concludes Respondent's failure to include the $55,000 payment in a report which he intended the court to rely upon, should be considered either an affirmative statement under former RPC 3.3(a), or false evidence under former 3.3(a) (4).

Here, the bankruptcy court issued an order that was unequivocal about Respondent's duty to disclose every payment. It stated in pertinent part:

> ORDERED that Robert Jackson, attorney for the debtors, is (1) required to file with the court no later than June 2, 2006 a report setting forth the date and amount of <u>each and every</u> payment he has received from the debtors, their entities, or from any other party on behalf of the debtors, since January 20, 2006, the date of the entry of the Temporary Restraining Order; (2) required to turnover to the Trustee all funds he has in his possession that belong to the debtors, that are within the control of the debtors or any entity which the debtors have an interest.

[Ex. A-95]. The language of this order must be read in conjunction with the court's letter ruling of May 10, 2006. [Ex. A-88]. The Letter Ruling discussed and rejected Simonson's arguments that "borrowed funds" were not subject to the initial restraining order. [Ex. A-88, p. 5]. The court noted correctly that if Mr. Simonson truly believed this, he would have deposited the monies directly into his own accounts rather than into his attorney's trust account. [Ex. A-88, pp. 5-6]. [Subject to Protective Order]. [Ex. A-89].

Respondent sent an accounting to the Trustee that appeared to comply with this court order. [Ex. A-97]. However, Respondent limited the accounting to his trust account. He did not include the $55,000 payment to Patti Jackson for the loan Respondent made to Simonson. This officer concludes that where a court affirmatively orders a complete accounting, omission

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of an item can and should be considered a false statement to the court. Respondent therefore violated former RPC 3.3(a).

The Association also charged violations of 8.4 (c); (d) and (j). Each of these sections applies to this misconduct. As noted previously, RPC 8.4(c) prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. In failing to disclose the $55,000 payment, Respondent violated this provision because his failure to disclose was meant to conceal his own involvement in the fraud. By omitting this payment, Respondent misrepresented the total amount of the payments that he made on Simonson's behalf. Moreover, he cannot hide behind the attorney/client privilege because he had an affirmative duty to disclose pursuant to the court's order. Respondent knew this and complied with the order as to other payments. He simply omitted the one that led most directly back to him.

The order directed Respondent to create a report "setting forth the date and amount of each and every payment he has received from the debtors, their entities, or from any other party on behalf of the debtors or for the benefit of the debtors, since January 20, 2006. It directed Jackson to turn over to the trustee all funds he had in his possession or control that "belong to the debtors, that are within the control of the debtors, or any entity in which the debtors have an interest." [Ex. A-95]. This order did not limit the disclosure to funds in Respondent's trust account. Despite the broad language contained in this order, Respondent failed to reveal the payment in violation of RPC 8.4(j).

Respondent's conduct was extremely prejudicial to the administration of justice. Here, the bankruptcy judge and the trustee and the debtors' creditors had the right to rely on the proposition that an attorney will act honestly and will not file incomplete reports in direct contravention of the court's order. Respondent's conduct violated RPC 8.4(j).

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Count 4: Count 4 involved discovery abuses previously sanctioned by the bankruptcy court. This officer independently concludes that the conduct also violated the Rules of Professional Responsibility.

RPC 3.4(a) prohibits a party from "unlawfully obstructing another party's access to evidence" and prohibits alteration and destruction of documents. Respondent withheld numerous relevant documents and did so in an attempt to conceal his own involvement in the bankruptcy fraud.

This conduct is extremely prejudicial to the integrity of the judicial system. As noted by Judge Overstreet: "This case presents the most serious allegations of discovery misconduct the Court has encountered. When parties or their attorneys determine, independently of the rules of civil procedure, what should or should not be produced to their opponent, the adversary system breaks down." [Ex. A-287, p. 25].

By withholding documents responsive to the Requests for Production and by misrepresenting the scope of the documents being produced in response to the First Requests and/or the Third Requests from an attorney representing the bankruptcy trustee, and/or by providing redacted documents produced in response to the Requests, Respondent violated current RPC 3.4(a), RPC 8.4(c) and/or RPC 8.4(d).

Count 5: Count 5 charged violation of the Respondent's duty to avoid conflicts of interests under current and former versions of RPC 1.7.[25] The findings set out the numerous conflicts presented by Respondent's representation of Doug Simonson at the same time he participated in the representation of the Levenhagens, Laings and/or Lanings in the second

[25] Respondent represented these three couples beginning in June 2006. That representation continued until his firm's withdrawal in the early summer of 2007. This particular count is thus governed by both the current and former versions of RPC 1.7.

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adversary proceeding. As noted above, the actual conflicts were so numerous and so serious that Respondent could not accept representation. Nonetheless, Respondent accepted these three couples as clients and purported to act on their behalf. At every step in the proceedings, however, Respondent acted for his own benefit and for the benefit of Douglas Simonson thus violating both former RPC 1.7(b) and current RPC 1.7(a).

RPC 1.7 contains limited exceptions for those situations where the lawyer reasonably believes the representation will not be adversely affected and the clients consent in writing after full disclosure of the facts. There was evidence in this record [Exhibit A-108] that suggested that Respondent attempted to follow the procedure for obtaining informed consent to the conflicts. However, the disclosure contained in Exhibit A-108, while citing the applicable rule, does not comply with RPC 1.7.

Exhibit A-108, the conflicts letter, omitted material facts that were necessary for the clients to make informed decisions. Respondent failed to inform the clients that he was the attorney who drafted many of the documents that were involved in the underlying transactions. The letter did not inform the clients that Respondent provided legal advice to Douglas Simonson in the bankruptcy proceeding. The conflicts letter did not inform the Levenhagens of the fact that Respondent had falsely certified that he was the Levenhagen's agent on the real estate excise tax affidavit. These and other material facts discussed in Findings of Fact 162 through 250 needed to be disclosed in order for the clients to consent regarding representation.

Moreover, exhibit A-108 contains a number of false statements concerning the existence of conflicts. The letter claimed there were no real conflicts, despite their obvious existence. The letter stated: "it appears as though there are no claims that are likely to develop between any of you to any other client or that have potential to result in a dispute." Repeatedly the letter

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emphasizes the alleged lack of conflicts, stating in another paragraph, that "there are only potential conflicts at this time, even though unlikely." [Ex. A-108, p. 2].

By accepting this representation at a time when there was a significant risk that the representation would be materially limited by his personal interest and/or his responsibilities to Simonson, without reasonably believing that he would be able to provide competent and diligent representation to the Levenhagens, the Laings and/or the Lanings, and/or without obtaining the informed consent in writing of the Levenhagens, the Laings and/or the Lanings, Respondent violated former RPC 1.7(b), and current RPC 1.7(a).

COUNT 6: Count 6 involved Respondent's actions regarding the loan application he signed for the property intended to be owned jointly by Rob and Claire Dainard. As established above, Respondent intentionally signed a sworn statement that he and his wife intended to use the property as a second home. Respondent had no such intent and signed the document for the sole purpose of obtaining a lower interest rate available only to residential property, rather than paying the higher rate associated with investment property.

Respondent argued that the Dainards, not the Respondent, obtained the financing. This argument is rejected. Respondent's testimony and that of Patricia Jackson, was contradicted by the testimony of other, credible, witnesses and by the exhibits. A clear preponderance of the evidence established instead that Respondent obtained the financing.

Respondent also argued that they signed the documents without the requisite intent to defraud because they were concerned the Dainards would lose their earnest money deposit. **Respondent's Post Hearing Brief at 8.** This argument is also rejected. Again, Respondent provided no credible testimony to support his version of the facts. The documents establish that Respondent signed the original loan application more than six weeks prior to the closing.

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The representation that 115 Webster was to be used as a second residence was present on this document as well as the documents signed at closing. There was also evidence that the closing could have been postponed if needed.

Respondent also argued that the Jacksons did not sign a lease on the property, that they obtained the approval of the lender, and that they had no intent to defraud the lender. **Respondent's Brief at 8**. These arguments are rejected. The evidence clearly established that the property was to be rented upon the completion of the remodel/rehab and that Respondent was aware of that fact. The only admissible evidence pertaining to the lender's consent to the arrangement placed that consent substantially after the disputes arose between the Dainards and the Jacksons and after the Dainards filed their grievance. This post grievance remedial act does not negate Respondent's original intent to defraud.

This officer concludes that by making false statements on a mortgage application regarding 115 Webster and/or on a second home rider regarding 115 Webster, Respondent violated Title 18, United States Code, Section 1344. Respondent knowingly executed the documents as part of his scheme to obtain a loan from a financial institution. In order to obtain the loan under the more favorable terms of a residential loan, Respondent fraudulently and falsely represented that he and his wife were going to occupy the house as a second home. Respondent's argument that he never intended to provide false information is rejected. As noted in the findings, Respondent's testimony on this issue was not credible. In committing this criminal act, Respondent violated RPC 8.4(b). Respondent's conduct also involved dishonesty, deceit and misrepresentations. Therefore, Respondent violated RPC 8.4(c) as well.

COUNT 7: As a joint investment with the Dainards, to be held by RPC Enterprises LLC, Respondent had a duty to advise the other members of the LLC of conduct that affected

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the value of its only asset. Because he was also the LLC's attorney, he had a duty to keep his client, the LLC and its management, informed of matters reasonably necessary to permit it to make informed business decisions regarding future courses of action. Had Respondent informed the Dainards of his intention to sign the second home rider before signing the documents, the Dainards could have chosen to either finance the property themselves and/or declined to enter into the joint venture with Respondent and his wife. Had Respondent informed them after the loan was obtained, the Dainards could have pursued other options. [26]

By failing to inform the Dainards and RPC Enterprises of the false statement contained on his mortgage application and that he had signed a second home rider regarding the subject property, Respondent violated former RPC 1.4(b).

COUNT 8: Count 8 involved Respondent making an offer to purchase the Mack property in the name of RPC Enterprises LLC and his subsequent assignment of that purchase and sale agreement to another entity, unrelated to the RPC. Respondent assigned this agreement to another client, Kenny North, for no consideration to RPC Enterprises, LLC. Indeed, the co-owners of RPC Enterprises, Inc., the Dainards, did not even know that their company had made such an offer. This transaction breached Respondent's duties under RPC 1.8. The Dainards were not informed of the transaction as required by RPC 1.8 (a) (1) either orally or in writing. The Dainards were not informed of the desirability of seeking independent counsel as required by RPC 1.8(a) (2). Neither the Dainards nor RPC Enterprises, LLC, gave their written consent.[27] By assigning a purchase and sale agreement for what is referred to as the "Mack

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[26] Respondent's failure to inform the Dainards of the second home rider undercuts his argument that the intent to defraud the bank element was not substantiated because he and his wife actually contemplated using the home as a second residence. **Respondent's Post Hearing Brief at 6.** To do so, they would have had to obtain the consent of the Dainards, the party whose earnest money they claimed they were protecting by signing the agreement. There was no evidence that the Jacksons had that discussion with the Dainards.

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property" to an entity known as Chelan Landing on terms that were neither fair and reasonable to RPC Enterprises LLC nor fully disclosed and transmitted in writing to RPC Enterprises and the Dainards, Respondent violated RPC 1.8(a).

COUNT 9: The same analysis applies to the transaction regarding the duplex property. In this case, Respondent was acting on his own behalf through another LLC, Jackson-Field, an entity that was unknown to his co-owners in RPC Enterprises LLC. This transaction raises the same issues of conflicts with current clients prohibited by RPC 1.8(a). Again, Respondent failed to inform the Dainards and RPC Enterprises, LLC and again he failed to obtain consent to the transaction. This Officer concludes Respondent violated RPC 1.8(a). He acquired an interest, through Jackson-Field, in an a duplex property adjoining the property owned by RPC Enterprises on terms that were not fair and reasonable to RPC Enterprises, and/or on terms that were not fully disclosed and transmitted in writing to RPC Enterprises and the Dainards. He did not advise RPC Enterprises and the Dainards in writing of the desirability of seeking independent counsel, and without obtaining the informed consent in writing of RPC Enterprises and the Dainards,

COUNT 10: RPC 1.8(a) precludes a lawyer from using information relating to a client's representation to the disadvantage of that client. Respondent's conduct in assisting Kenny North in the purchase of the neighboring properties and in discussing the potential sale of 115 Webster with North as part of the larger project involved disclosure of information that the Dainards and RPC Enterprises, LLC did not authorize to be disclosed. Consequently, by using information learned during his representation of RPC Enterprises and the Dainards to the disadvantage of RPC Enterprises and the Dainards, Respondent violated RPC 1.8(b).

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[27] Respondent was not authorized to enter into this transaction on behalf of RPC Enterprises LLC, so his knowledge cannot be imputed to the LLC.

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Count 11 & 12: In addition to breaching his duty to refrain from use of information obtained during representation, Respondent breached his duty to avoid the conflicts of interests raised by these transactions.

As to Count 11, this Officer concludes that Respondent was the attorney for RPC Enterprises at the time he made an offer for the sale of 115 Webster in March and April 2007 to North. He was also its attorney when he considered the offer from Chelan Landing for the sale of 115 Webster in September 2007. During these transactions, there was a significant risk that his representation of RPC Enterprises would be materially limited by his personal interest and his responsibilities to Chelan Landing and/or Kenny North. He could not reasonably believe that he would be able to provide competent and diligent representation to RPC Enterprises while dealing on both sides of these transactions. He did not obtain the informed consent in writing of RPC Enterprises and the Dainards. This conduct violated current RPC 1.7(a).

Likewise, as to Count 12, this Officer concludes Respondent violated RPC 1.7(a). He represented RPC Enterprises regarding the purchase and sale agreement for the Mack property and the transfer of the purchase and sale agreement for the Mack property. At this time, there was a significant risk that the representation would be materially limited by his personal interest and his responsibilities to Chelan Landing and North, Respondent could not reasonably believe that he would be able to provide competent and diligent representation to RPC Enterprises when he was taking a potential asset from one company he represented and transferring it to a company in which he had a financial interest. Moreover, he did not obtain the informed consent in writing of RPC Enterprises and the Dainards. Respondent violated RPC 1.7(a).

Count 13: Count 13 raised issues regarding the Respondent's duty to inform his clients of information needed for them to make appropriate decisions. Because Respondent

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concealed the information regarding the Mack property and his involvement with Kenny North and Chelan Landing, Respondent violated RPC 1.4 and RPC 8.4(c).

COUNT 14: An attorney must first and foremost be honest with his clients. During the course of his relationship with the Dainards and RPC Enterprises, LLC, Respondent misrepresented his relationship to North, the status of various transactions and his involvement in the September 2007 presentation by Chelan Landing LLC. He made other false statements regarding these transactions to the Dainards. Respondent therefore violated RPC 8.4(c).

VII. PRESUMPTIVE SANCTIONS

Determination of the appropriate sanction involves a two-step process applying ABA Standards for Imposing Lawyer Sanctions. ***In re Anschell***, 149 Wn. 2d 484, 69 P.3rd 844 (2003). The first step is to determine the presumptive sanction, considering the ethical duty violated, the lawyer's mental state, and the extent of the harm caused by the misconduct. ABA Std. 3; ***In re Whitt***, 149 Wn. 2d 707, 717, 72 P.3rd 173 (2003). The second step in the process is to consider whether aggravating or mitigating factors should alter the presumptive sanction. ***In re Johnson***, 118 Wn. 2d 693, 701, 826 P.2d 186 (1992).

COUNT 1: Count 1 involved dishonest conduct in violation of RPC 8.4(c). In falsely swearing under oath that he was Michael Levenhagen's agent, Respondent violated his duty to maintain his personal integrity as required members of the legal profession. ABA Standard 5.1 applies to this finding of misconduct.

ABA Standard 5.1 provides:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit or misrepresentation:
>
> 5.11 Disbarment is generally appropriate when:

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a. a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances, or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

b. a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

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

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

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

This officer concludes that ABA Standards 5.11 (b) applies to the facts of this case. Respondent acted intentionally in signing this affidavit in order to facilitate a loan for Douglas Simonson. The signing of this affidavit, without Levenhagen's knowledge, was critical to Simonson's obtaining funds from property he did not own at the time. Respondent signed this declaration, knowing at the time he signed it, that he was facilitating a loan on behalf of a borrower who did not have legal title to the property being used to secure the loan. Respondent falsely swore that he was Levenhagen's agent to facilitate a fraudulent transaction. ABA Std. 5.11 (b) applies to conduct which is not "serious criminal conduct" but is intentional conduct involving "dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to

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practice."[28]

The Washington Supreme court applied Standard 5.11 in ***In re Disciplinary Proceeding of Kuvara,***[29] 149 Wn. 2d 237, 66 P. 3rd 1057 (2003) to facts similar to these. In ***Kuvara***, the attorney prepared a quit claim deed to allow a surviving wife to transfer property long after her husband's death. ***Kuvera*** prepared the quit claim deed, had the wife sign her husband's name to it, notarized the signature and then recorded the deed. Applying ABA Standard 5.11, the court concluded disbarment was the presumptive sanction.

Here Respondent's intentional act seriously adversely reflects on his fitness to practice law. Moreover, the conduct caused significant potential and actual harm to the Levenhagens. Respondent's act allowed Simonson to seize $150,000 in equity from property that legally belonged to Levenhagen, thereby diminishing its net value. Disbarment is the presumptive sanction.

COUNT 2: Respondent violated 18 U.S.C. §152 by intentionally concealing Simonson's funds in his accounts.[30] This conduct violated Respondent' duty to maintain his personal integrity. It also implicated Respondent's duty to the court and the justice system.

As noted above, ABA Standard 5.11 applies to a lawyer's duty to maintain his personal

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[28] Had the Association charged this as criminal misconduct, sufficient evidence exists to conclude that ABA Standard 5.11 (a) would apply as well. While it might be argued that the false signature on a real estate excise affidavit is not the type of serious criminal conduct 5.11(a) contemplates, that rationale does not apply where the act furthers a larger criminal scheme. Here the signing of the affidavit cannot be viewed in isolation. Respondent's signature facilitated a greater scheme that allowed his client to remove $150,000 in equity from property legally owned by another.

[29] Actually, the facts in ***Kuvara*** are less egregious, because the intent of the transaction was simply to document formally a transaction that all parties agreed had taken place. Here, Respondent's action allowed his client to obtain something to which he had no legal right.

[30] The record supports additional transactions than those listed in the formal complaint. These uncharged acts do not form the basis for this hearing officer's conclusions or recommendations, however, but have been considered pursuant to **ER 404(b)** in evaluating issues of knowledge, plan, scheme, and credibility.

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integrity. Respondent's violation of 18 U.S.C. §152 is the type of "serious criminal conduct" contemplated by ABA Standard 5.11 (a). By definition, violation of this statute constitutes fraud. This activity occurred over an extended period of time, represented multiple incidents of misconduct and as established in the various emails discussed above, was done knowingly and intentionally. Respondent's conduct caused substantial injury to the integrity of the judicial process.

It is hard to imagine conduct more prejudicial to the administration of justice than an attorney who, using his trust account and attorney/client privilege, conspires with his client to conceal funds from a court in violation of a direct order. Here, in addition, Respondent stood to gain financially from the scheme. By allowing his client to conceal funds in Respondent's accounts, Respondent allowed the client to continue operating his businesses in a manner that could not be traced by the court or the bankruptcy trustee. Respondent received fees from those businesses, including 27 $1,000 payments from the same closing accounts that were being used to funnel the funds to Simonson. To the extent that monies were available to Simonson, those funds should have been retained for benefit of Simonson's creditors.

Pursuant to §5.11(a), disbarment is the presumptive sanction. ***See In re Discipline of Marshall***, 160 Wn. 2d 317, 343, n. 11, 157 P.3rd 859 (2007)["Standard 5.11(a) includes list of specific criminal conduct to which that standard applies.]

COUNT 3: Count 3 involves the Respondent's concealment of a $55,000 payment from his escrow account to his wife, Patti Jackson. As noted in the findings, Respondent and his wife lent Simonson $50,000 at the beginning of February 2006. Within a matter of days, this money was returned to the Jacksons with a $5,000 premium. Respondent transferred this money with full knowledge of the restraining order and with the intent of assisting Simonson. In return for

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this short term "loan" concealed from the bankruptcy trustee, Respondent's client rewarded him with a $5,000 bonus. This omission of a substantial payment that directly implicated Respondent cannot credibly be deemed accidental. The clear preponderance of the evidence establishes that this omission was made knowingly and intentionally.

Count 3 implicates the Respondent's duty to the refrain from conduct that is prejudicial to the administration of justice and his duty to comply with lawful orders of a court. ABA Standard 6.11 applies to these duties where the attorney acts with intent:

> Absent mitigating or aggravating factors, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate for cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation to a court:
>
> > 6.11 Disbarment is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

Respondent's intentional act caused serious injury and/or potentially serious injury to the trustee and a significant or potentially significant adverse effect on the bankruptcy proceeding. Because Respondent failed to disclose funds, the trustee was unaware that Simonson had even more funds available to him that rightfully belonged to his creditors. This in turn required the trustee's lawyer to expend additional time and resources in attempts to locate all the funds the debtor had concealed with Respondent's assistance. ABA Standard 6.11 applies to this count. Disbarment is the presumptive sanction.

COUNT 4: Count 4 involves Respondent's conduct during the discovery process in the second adversarial proceeding. This violation implicates Respondent's duty to maintain the integrity of the legal process. ABA Standard 6.2 applies to this count. Standard 6.2 provides:

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6.2 ABUSE OF LEGAL PROCESS

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

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

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

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

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

As established in FOF 251-297, Respondent intentionally abused the discovery process by withholding relevant documents and/or redacting those portions of certain documents that referred to Respondent. Respondent acted with knowledge and with the intent to conceal relevant information from the court and from the bankruptcy trustee in order to hide his role in the bankruptcy fraud and in order to protect Simonson's interests.

Respondent's conduct caused serious injury, and/or potentially serious injury to a party and a significant or potentially significant adverse effect on the legal proceeding.

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The most serious injury and/or potential injury, was to the Levenhagens.[31] As established by the testimony of the attorney for the bankruptcy trustee, the withheld documents tended to exculpate the Levenhagens and to a lesser extent, the Laings and Lanings. If Respondent had provided the documents, it is unlikely that the Levenhagens and the other two couples would have been the subject of a criminal referral by the bankruptcy judge. A criminal investigation, if one were initiated, could have significant consequences for Michael Levenhagen, a commercial airline pilot.

The referral itself caused serious injury to the three couples. Successful businessmen and respected members of the community, these individuals were implicated in a systematic fraud on a federal court. Learning that a referral had been made caused each couple significant emotional distress.[32] Levenhagen was forced to retain a criminal defense lawyer to provide him with advice and to defend his rights. Had Respondent provided the materials demanded in discovery, the trustee and the court would have known that Levenhagen was a victim, not an active participant in the fraud. There would have been no need for Levenhagen to hire a criminal lawyer. Finally, had the material been provided, the Levenhagens and Respondent's other clients, the Laings and the Lanings, would have resolved their cases with the court much earlier.

Substantial evidence also established that Respondent's conduct caused serious interference with the bankruptcy proceedings. The trustee's lawyer expended time and

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[31] ABA Standard 6.21 refers to injuries to "a party." This language raises the issue of whether the intent of the section is to apply only to an opposing party. Because there is no such express limitation, and because there exists a need to protect clients from the misconduct of their own lawyers, this officer concludes that "party" as used in this section should include the attorney's own clients as well as the opposing party.

[32] Michael Levenhagen first learned of the referral at the beginning of his first deposition, when the attorney for the bankruptcy trustee inquired as to whether or not he was going to assert his 5th Amendment right to remain silent.

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resources to track down the documents, and expended funds that rightfully should have been available to creditors. The failure to provide the material in a timely fashion impaired her ability to prepare for various motions and proceedings. The omitted materials caused the bankruptcy judge to draw false conclusions regarding the status of various parties and potential parties to the litigation. Most, if not all of this work would have been avoided had the Respondent provided the materials at the time they were initially requested.[33]

Standard 6.21 therefore applies to this count. Disbarment is the presumptive sanction.

COUNT 5: Count 5 involved conflicts of interest created by Respondent's simultaneous representation of Simonson, the Levenhagens, the Laings and the Lanings. ABA Standard 4.3 applies to Respondent's failure to avoid conflicts of interest.

Standard 4.3 FAILURE TO AVOID CONFLICTS OF INTEREST

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest.
>
> 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
>
> a. Engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
>
> b. Simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
>
> c. Represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information

[33] As established in FOF 251-297, a number of emails and documents were never provided by Respondent. The court and the trustee learned of their existence only after Respondent's firm had been replaced by attorney Marc Stern who provided access to the complete files.

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> relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

Here, Respondent's conduct breached his duties under all three of these standards. He represented the Levenhagens, Laings and Lanings knowing that their interests were adverse to his interest in concealing his involvement in the bankruptcy fraud. Moreover, he simultaneously represented Simonson and the Levenhagens, Laings and Lanings, knowing that the interests of the three couples were adverse to that of Simonson. His firm remained attorneys of record, even after Simonson was added as a party to the litigation.

[Subject to Protective Order].

Thereafter, Respondent drafted answers to the complaints on behalf of his clients which omitted essential counterclaims and defenses available to them because assertion of those claims would have impaired Simonson's position.

These acts were done without informing the Levenhagens, Laings and Lanings of his conduct and without obtaining their consent. Respondent's conduct benefited the Respondent by allowing his to continue to hide his role in the transactions. The conduct benefited Simonson by coordinating the defenses in such a way as to allow Simonson to continue his claim that he too was a "victim" of GFS, when in fact he was an active and willing participant in its equity skimming schemes. Simonson rewarded Respondent by additional fees and promises of future investment opportunities that would provide substantial financial rewards to both of them.

Finally, Respondent used the information he obtained through his representation of the Levenhagens, Laings and Lanings to benefit Simonson and to conceal his role in the proceedings.

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This conduct was done without the knowledge or consent of the Levenhagens, Laings and Lanings.

Respondent's breach of his duty under ABA Std. 4.31 resulted in serious injury to these couples. Those injuries include extending the litigation, referral to the U.S. Attorney's Office for criminal investigation, and other adverse consequences associated with the proceedings in the second adversarial action. Disbarment is the presumptive sanction for Count 5.

Count 6: Count 6 involves dishonest conduct in violation of RPC 8.4 (b) and (c). In making false statements on his residential loan applications and in signing the second home rider, Respondent violated the law and violated his duty to maintain his personal integrity as required of members of the legal profession. ABA Standard 5.1 applies to this finding of misconduct.

Respondent's conduct in fraudulently obtaining a residential loan on property that was intended to be an investment held jointly with the Dainards represents "serious criminal conduct" as contemplated in 5.1(a). Title 18 U.S.C. §1344, carries sanctions of up to $1,000,000.00 in fines and up to 30 years imprisonment. Clearly, Congress considered this a serious criminal offense. In addition, by its terms this criminal offense involves fraud and misrepresentation. Finally, Respondent signed the second home rider under penalty of perjury, thus implicating the prohibition on false swearing.

Our Supreme court applied 5.1 in similar circumstances in ***In re Disciplinary Proceedings of Miller***, 149 Wn.2d 262, 283, 66 P.3rd 1069 (2003). In ***Miller***, the lawyer completed a personal loan application without revealing a substantial loan he had obtained from a client. The court noted that the "submission of a signed loan application to Cheney Federal Credit Union knowing it contained false information satisfies the elements of Standard 5.11.

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Miller executed the loan application with a signed certification subject to punishment under 18 U.S.C. §1014, which makes it a federal crime, punishable by up to 30 years imprisonment, to knowingly make false statements in a document such as a loan application to a federally chartered and insured credit union." ***Miller***, 149 Wn.2d at 283.

Although the Association relied upon a different federal statute in the present case, the charged crime carries with it the same penalty as that involved in ***Miller***. Standard 5.1(a) applies to this charge.

Alternatively and/or in addition, Standard 5.1 (b) applies to Respondent's conduct. By falsely signing these loan documents, Respondent engaged in intentional conduct that involved dishonesty, fraud, deceit and misrepresentation. This conduct adversely reflects on his ability to practice law. Disbarment is the presumptive sanction for Count 6.

Count 7: As the attorney for RPC Enterprises, LLC, Respondent had a duty to inform his the CEO of RPC Enterprises (Rob Dainard) and/or his co-owners, the Dainards, of information that impaired the health of the LLC. RPC Enterprises was formed for the sole purpose of holding the real property at 115 Webster. Respondent knowingly deceived RPC Enterprises and the Dainards about the status of the loan used to purchase the property.

ABA Standard 4.6 is applicable to cases where a lawyer engages in "fraud, deceit, misrepresentation directed toward a client."

ABA Standard 4.6 states in pertinent part:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:
>
> a. Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

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b. Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

c. Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.

d. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information and causes little or no actual or potential injury to the client.

Although no other ABA Standard deals with this type of conduct, the terms of ABA 4.6 are not a perfect fit with the facts pertaining to count 7. Respondent did not affirmatively misrepresent or deceive the Dainards or RPC Enterprises. Instead, he failed to disclose that he had signed the second home rider. Respondent's misconduct was by omission, rather than commission. Because standards 4.61 and 4.62 appear to require acts of commission directed to the client, this Officer concludes that they do not apply even though Respondent's conduct does meet the mental state requirement and other factors contained in these standards.

Standard 4.63 differs from 4.64 in two ways. Standard 4.64 speaks to an "isolated" incident. Arguably, the second home rider information could be classified as "isolated." However, 4.64, unlike 4.63, applies where the omission causes "little or no actual or potential injury to the client." Standard 4.63 applies when the omission causes injury.

On balance, this Officer concludes that Standard 4.63 is a better fit for the facts associated with Count 7. There is sufficient evidence of repeat behavior to take the conduct out of the "isolated" incident language of 4.64. Moreover, Respondent's conduct caused actual injury to the LLC and its co-owners. The issue of the second home rider, until it was resolved, required that the home remain empty. That fact denied the LLC rental income while still obligating it to paying the mortgage. Had the Respondent informed the LLC and the Dainards

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that he had signed the mortgage loan application with the rider language, the Dainards could have exercised their right to decline to go through with the assignment of their purchase rights to the LLC. Alternatively, they could have asked that Respondent repay them their $25,000 earnest money and assume ownership of the property.

Respondent's failure to provide the information thus caused injury. Absent aggravating or mitigating factors discussed below, Reprimand is the presumptive sanction.

Counts 8-12

Counts 8 through 12 raise issues relating to the Respondent's duty to avoid conflicts of interests. These five counts thus implicate ABA Standard 4.3.

Standard 4.3 FAILURE TO AVOID CONFLICTS OF INTEREST

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest.

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

a. Engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or

b. Simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or

c. Represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a

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conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

Count 8: The Association argues that 4.31 applies to Count 8 because there was injury to the Dainards when RPC Enterprises received no compensation for the assignment of the purchase and sale agreement from RPC Enterprises to Chelan Landing. This argument assumes that the right to purchase the Mack property had value. To reach that conclusion, this Officer would have to draw inferences from the meager evidence in the record concerning this issue. The Dainards did not know of the agreement. It appeared to be part of Respondent's larger plan with Kenny North for development of the three properties. The Dainards testified that they were not interested or able to participate in the type of project that Kenny North was contemplating. Thus it is unlikely that they would have been interested in the property for their own use. This officer concludes that ABA 4.31 does not apply.

For the same reason, the lack of an identifiable injury, this officer rejects application of 4.32 and 4.33. Again these standards require the presence of an actual or potential injury to the client. The record does not support that conclusion. Absent aggravating factors, admonition is the presumptive sanction pursuant to Standard 4.34.

Count 9: Like Count 8, the record does not support a finding of injury to the Dainards

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or RPC Enterprises. Standard 4.34 applies to this count. Absent aggravating factors, admonition is the presumptive sanction pursuant to Standard 4.34.

Count 10: The same analysis does not apply to Count 10. Count 10 involves the use of information Respondent learned from his representation of the Dainards and RPC Enterprises to further the development scheme he was working on with Kenny North. In this situation, Respondent acted with knowledge that his interests were adverse to that of the Dainards and RPC Enterprises. Respondent was motivated by his desire to gain financially through his participation in Kenny North's condominium project, Chelan Landing, LLC.

As to this count, Respondent's conduct caused serious and/or potentially serious injury to RPC Enterprises and the Dainards. Respondent and North attempted to tie up the property at 115 Webster while they determined whether the condo project was viable. Using his knowledge of the property, the finances of RPC Enterprises, and Robert Dainards's temporary medical issues, Respondent attempted to push the Dainards into a sales agreement that would tie up the property for little or no money down and allow Chelan Landing to walk away from the deal if it didn't suit Kenny North. The fact that the Dainards ultimately rejected the proposal, does not negate the potential injury to RPC Enterprises and/or the Dainards. Pursuant to Standard 4.31(a) disbarment is the presumptive sanction as to this count.

Count 11: This count involves concurrent conflict of interests pursuant to RPC 1.7(a).[34] As with count 10, this conduct is governed by Standard 4.31(a). Respondent was simply playing both sides in an attempt to obtain the financial benefits associated with working on Kenny North's condo project. As with Count 10, the Respondent acted with knowledge to benefit

[34] Count 11 and Count 12 differ in the underlying conduct charged. In Count 11, the Association cites the conduct relating to the sale of 115 Webster. In Count 12, the charged conduct involves the use of RPC Enterprises as a vehicle for obtaining purchase rights to the neighboring Mack property.

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himself and Kenny North. This Officer concludes that Respondent's conduct as to count 11 caused the same type of injury or potential injury as identified in Count 10. In addition, Respondent's conduct caused the Dainards to lose faith in lawyers and the legal system. Disbarment is the presumptive sanction applicable to Count 11.

Count 12: Count 12 involves a similar charge for Respondent's actions regarding the Mack property. Like Count 11, Respondent acted with the same knowledge and intent. As to this count, Respondent caused an additional injury. By binding his client, RPC Enterprises, to the unauthorized purchase and sale agreement for the Mack property, Respondent exposed the RPC to significant potential liability.[35] Respondent created a contractual relationship with the seller of the property, promising on behalf of RPC Enterprises to purchase the property for $1.2 million dollars. This contractual liability caused serious or potentially serious injury to RPC Enterprises. Had North walked away from the deal and/or refused to accept the subsequent assignment, there was a real danger that RPC Enterprises would have been forced into the purchase. Using a client's company as a mechanism for purchasing property on behalf of another client is the type of transaction that seriously undercuts the public's faith in the legal system. Because of the actual/potential injury to RPC Enterprises, the Dainards and the public, disbarment is the presumptive sanction pursuant to 4.31.

Count 13: Count 13 involved the Respondent's failure to inform the Dainards of the Mack transactions. The failure to provide information to clients implicates the lawyer's duty of candor towards clients as set out in ABA Standard 4.6. Count 13 raises the same legal issues regarding application of the standards as were raised in Count 7. Both counts involve the failure to provide information, rather than actual deception. For the reasons set out in count 7,

[35] Respondent testified that the promissory note and contingencies in the documents were standard and allowed the LLC to walk away from the deal if things didn't work out. RP 1483, lines 1-12.

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this officer concludes reprimand is the appropriate sanction under 4.63.

Count 14: The final count is governed by ABA Standard 4.61. Respondent actively deceived the Dainards (and RPC Enterprises by implication) regarding his relationship with Kenny North and his companies. Respondent acted knowingly with the intent to benefit himself and Kenny North. Respondent's actions caused serious injury and or potential serious injury. Although hindsight is said to be 20/20, the Dainards produced credible evidence that they would have acted differently at several points, had they known of the relationship between Respondent and Kenny North. Disbarment is the presumptive sanction pursuant to ABA Standard 4.61.

VIII. AGGRAVATING CIRCUMSTANCES

Aggravating factors or circumstances are any considerations that may justify an increase in the degree of discipline to be imposed. These factors apply to Respondent's conduct.

ABA Std. 9.22 (b) Dishonest or Selfish Motive

Although individual acts are charged in many of the counts, both sets of grievances involve individual parts of larger schemes to obtain personal benefit and/or benefit for two other clients, Douglas Simonson and Kenny North. The interrelationship of the conduct is particularly evident when the individual acts are put in a single timeline. Because of this interrelationship, this Officer concludes that Respondent had a dishonest and selfish motive for each of the acts charged in the 14 counts of misconduct. The purpose of the acts was to gain personal benefit by fostering business relationships with two individuals, Douglas Simonson and Kenny North, who would include him in their high stakes real estate ventures. Respondent personally benefited through increased fees and through access to investment opportunities.

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Certain counts, however, have the element of dishonesty inextricably interwoven into the violation and the applicable ABA presumptive sanction. Counts 1, 2, 3, 6, and 14 therefore are not subject to the dishonesty portion of this aggravating factor. The second factor, selfish motive, is not included in the presumptive sanction and therefore may be applied to aggravate the presumptive sanction.

The two counts involving failure to inform, Counts 7 and 13, were downgraded from the presumptive sanctions recommended by the Association based on this Officer's conclusion that the Association has not proven an injury sufficient to apply the harsher sanctions. Both of these counts involved intentional, dishonest acts prompted by Respondent's desire for personal gain either directly (Count 14) or indirectly through benefits to a valuable client. (Count 7). Both the dishonesty and selfish prongs of Standard 9.22 (b) apply to these counts.

ABA Std. 9.22(c) Pattern of Misconduct

This aggravating factor applies to all counts. One of the most disturbing aspects of Respondent's conduct is his total failure to appreciate a lawyer's duties to his clients and to the legal system. Reading the numerous emails presented in this case leaves one with the distinct impression of a lawyer whose main goal is to keep wheeling and dealing with big time investors. To get and retain those clients, unfortunately, Respondent repeatedly demonstrated that he was willing to sacrifice the interests of other "lesser" clients. He repeatedly used confidential information obtained through his representation of the "lesser" clients to his own advantage and to the advantage of the preferred clientele. This pattern warrants application of the aggravator contained in 9.22 (c).

ABA Std 9.22 (d) Multiple offenses

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Counts 2, 4, & 5 and involve multiple offenses. The most egregious examples involve the numerous transfers in violation of the bankruptcy orders (count 2),[36] the multiple examples of discovery abuse contained in count 4 and the multiple incidents of disregarding the interests of the Levenhagens, the Laings and the Lanings in an attempt to further his own interests and those of Douglas Simonson associated with count 5. Standard 9.22(d) applies to these three counts.

ABA Stds 9.22(e) Bad Faith Obstruction of Disciplinary Proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

Although the Association does not argue that this factor applies, this Officer concludes that it does. Of concern here is the Respondent's failure to comply with the Association's March 24, 2011 ELC 10.13 (c) demands for documents. That document, exhibit A-293, required that Respondent bring to court all original client ledgers for his IOLTA account for 2006, his original check register for this year and other documents.

Early in the proceedings, the Association inquired as to the status of these requests. Respondent offered convoluted, incredible explanations for why he had not brought the check register and client ledgers for his trust account. Ultimately, to obtain the documents, this Officer had to intervene and fashion orders that were sufficiently specific enough to circumvent Respondent's evasive behavior. Once the documents were produced, they revealed that funds belonging to Kenny North had in fact gone through Respondent's trust account. That evidence,

[36] As noted in the findings, there were additional transfers that were not part of the formal charges brought by the Association. These charges are not the basis for application of the multiple offense aggravator. They have been used only to establish issues relating to the credibility of Respondent.

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in turn, substantially undercut Respondent's claim that Kenny North was not his client.[37] Respondent's conduct concerning this demand justifies application of this additional aggravating factor.

ABA Std 9.22 (f) Submission of false evidence during the disciplinary process

"In addition to their duties to their clients, lawyers owe an ethical duty to the legal system, to the legal profession, and to the general public." ***In re Disciplinary Proceedings of Huddleston***, 137 Wn.2d 560, 573, 974 P.2d 325 (1999); ABA Standards at 5. The presentation of false testimony by the Respondent during the disciplinary process undercuts public confidence in the legal system in a way that no other misconduct can. As our courts have repeatedly recognized:

> Misrepresentations and fabrications during the disciplinary process reflect adversely on the lawyer's ability to practice law, the public perception of the legal system, and the judicial process as a whole. The foundation of the judicial system is truth and honesty. An attorney is expected to cooperate fully with the discipline process and should not be rewarded for "coming clean" after lying in the disciplinary proceedings.

In re Disciplinary Proceedings of Whitt, 149 Wn.2d 707, 721, 72 P. 3rd 173 (2003).

The Association seeks to apply this rule to false statements in Respondent's Answer and in the Response to Request for Admissions. Although not condoning allegedly false statements in the earlier pre-hearing pleadings, in an excess of caution, this aggravator is not being applied to those matters. Misstatements and/or unwarranted denials contained in pre-hearing matters may be the result of factors other than intentional dishonesty, including lack of

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[37] As noted in the findings, the Respondent spontaneously addressed this issue once it became clear that the Association was going to be able to access his records. This comment suggests strongly that Respondent was well aware of what the records would show at the time he was making excuses for why the records could not be produced as demanded.

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preparation and/or poor communication with counsel. These rationales, however, do not apply when a lawyer takes an oath to tell the truth and then intentionally lies.

This Officer concludes that the aggravating factor should be applied because of the multiple false statements Respondent made during the actual hearing. Unfortunately, there are numerous examples of Respondent intentionally providing false testimony during the hearing, including his claims that he was unable to access records requested by the Association; his statements regarding when he learned of the restraining orders, his claim that provided the Levenhagens, Laings and Lanings of information needed to consent to the conflicts of interests, and his claim that he signed the second home rider only to prevent forfeiture of the Dainards' $25,000 earnest money deposit.

More troubling than the individual false statements was the fact that that nothing this lawyer said could be trusted to be true and accurate. Admittedly Respondent had an innocent explanation for virtually everything that occurred. Frequently those explanations involved attacks on the integrity of other lawyers or suggestions of incompetence on the part of the bankruptcy court. Respondent's explanations were directly contradicted by the remaining evidence offered in the case. ABA Standard 9.22(f) applies to this case.

ABA Std. 9.22 (g) Refusal to Acknowledge Wrongful Nature of Conduct

Throughout these proceedings, Respondent has denied wrongdoing or attempted to justify his conduct. The Washington Supreme court has attempted to balance an attorney's right to defend himself against charges with the terms of this aggravator. ***See In re Disciplinary Proceedings of Kronenberg***, 155 Wn. 2d 184, 196, n.8, 117 P.3rd 1134 (2005). In ***Kronenberg*** the court questioned use of this aggravator, noting: "We are not persuaded that a lawyer's continuing to assert on appeal that alleged acts did not occur should have that assertion used

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against him or her." The ***Kronenberg*** court went on to observe that Kronenberg had admitted the conduct occurred but denied that it was wrongful. The court apparently considered application of the aggravator to be justified in such cases.

Other cases have attempted to define this point where an attorney's right to defend himself against charges crosses over the line to the type of intransigence that this aggravating factor was designed to sanction. In ***In re the Disciplinary Proceedings of Anschell***, 149 Wn. 2d 484, 513, 69 P.3rd 844 (2003), the court recited the lawyer's response to the charges and noted that as to at least one, "Earlier in these proceedings, his consistent position was that he never represented Mr. Doty[38], so there was no conflict. He plainly does not consider his conduct to be of any concern."

The next case, ***In re the Disciplinary Proceedings of Holcomb***, 162 Wn. 2d 563, 173 P.3rd 898 (2007), held that it was inappropriate to apply the aggravator to a case where the lawyer claimed he did not engage in the transactions forming the basis of the discipline. The court then distinguished *Kronberg* and *In re Disciplinary Proceedings of Dyan*, 152 Wn. 2d 601, 98 P. 3rd 444 (2204). Holcomb, the court reasoned, had denied the underlying conduct in contrast to *Dyan* and *Kronberg,* where the lawyers admitted to the conduct but either rationalized the acts or asserted that the conduct was not wrongful.

A more recent case, ***In re Disciplinary Proceedings of Ferguson***, 170 Wn.2d 916, 246 P.3rd 1236 (2011) suggests that the court will apply this factor in the appropriate situation, even where a lawyer challenges the underlying conduct. In *Ferguson*, the lawyer appeared ex parte before a superior court judge in a contested matter, failed to disclose all relevant facts and

[38] Here, Respondent took a similar approach. He denied that he represented Kenny North, stating only that he did some legal work for some of his companies. He acknowledged that he did some work for RPC Enterprises, Inc., but denied that that representation imposed any obligation on him regarding his dealings with Kenny North. In both cases, he refused to acknowledge the obligations that even the limited representation raised.

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obtained relief through misrepresentation and deceit. The court looked to two cases cited in the comment to this ABA standard, ***Greenbaum v. State Bar***, 15 Cal. 3rd 893, 544 P.2d 921, 126 Cal. Rptr. 785 (1976) and ***Stanley v. Board of Professional Responsibility***, 640 S.W. 2d 210 (Tenn. 1982).

These cases, noted the court, applied the standard where (i) the attorney appeared unrepentant and continued to maintain he was justified in his conduct, (ii) his claim was contrary to his own testimony and controverted by abundant evidence, and (iii) the attorney excused the violation as merely "technical" or an "an unfortunate labeling." ***Ferguson***, 170 Wn.2d at 945. The court concluded that the aggravator applied to Ferguson's conduct because Ferguson expressed no remorse, consistently denied she had done anything wrong, and lashed out at another attorney involved in the process. Ferguson remained unrepentant "in the face of abundant documentary evidence. Finally, Ferguson characterized her violations as unfortunate "labeling." ***Ferguson***, 170 Wn.2d at 946.

This officer concludes that this aggravating factor is appropriately applied to count 5.[39]

Count 5, the conflicts of interest associated with the representation of the Levenhagens, Laings and Lanings, falls under both the *Kronberg* and *Ferguson* rules. Here, respondent does not contest that he represented these three couples. He contests only that there were conflicts that precluded the representation and/or that he acted in such a way as to impair their rights. He also rationalizes his representation, arguing in a post-hearing brief, that the bankruptcy court improperly resolved legal issues relating to the fraudulent transfers.

[39] Good arguments could be made that the aggravator applies to all the counts. As Mr. Jackson's defenses differed with each count, this officer has erred on the side of leniency in determining which counts should be aggravated pursuant to ABA Std. 9.22 (g).

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This Officer has not resolved the legal issue[40] raised by the Respondent as it fails entirely as a defense to the charged misconduct. The most serious conflicts associated with this count involved the Respondent's personal involvement in the real estate transactions, his falsification of the real estate excise tax affidavit, his intentional withholding of discovery that would have assisted the trustee in resolving the question of the culpability of these three couples and his total failure to provide information sufficient regarding his relationship with Simonson sufficient to allow the clients to make informed decisions regarding the representation.

Respondent remains "unrepentant in the face of abundant documentary evidence." Respondent minimizes and rationalizes the transfers and seeks to blame others, including the bankruptcy judge and other lawyers, for much of what occurred. This pattern is indicative of Respondent's defenses generally. Respondent's total failure to appreciate the wrongful nature of representing these individuals thus justifies application of this aggravator.

ABA Std 9.22 (i) Substantial Experience in the Practice of Law.

Respondent was first admitted to practice in November 1989. Consequently, at the time of the events in question, Respondent had been practicing law for almost sixteen years[41]. Our Supreme Court has applied this aggravator to lawyers with much less experience. ***See In Re the Disciplinary Proceeding of Ferguson***, 170 Wn. 2d 246 P.3rd 1236 (2011). [Aggravator applied to attorney with 11 years general practice experience.]

[40] If resolution of the transferee status issue had been necessary, this Officer would rely upon the testimony on the trustee's attorney and that of Marc Stern, for the proposition that these legal defenses were without merit. To that is added, of course, the fact that a federal bankruptcy judge also rejected the argument.

[41] This assumes the first act of misconduct began with the June 2005 real estate transactions with Simonson and Michael Levenhagen.

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IX. MITIGATING CIRCUMSTANCES

ABA Std 9.32 (a) Absence of a prior discipline record.

Respondent has no prior disciplinary record. This mitigating factor is clearly applicable.

ABA Std 9.32 (g) Character or Reputation

Respondent produced credible evidence regarding his reputation as a lawyer and for charitable activities within the community. The testimony of these witnesses established the existence of this mitigating factor.[42]

ABA Std 9.32 (k) Imposition of Other Penalties or Sanctions

This factor applies only to count 4. The bankruptcy judge imposed a sanction in excess of $200,000 against Respondent's firm to compensate the trustee for the substantial time required to track down the information, cross check the different materials and bring the appropriate motions. [43] While these funds reimbursed the estate for the attorney's fees expended, the sanctions did nothing to restore trust in the legal system. While this mitigating factor technically applies, it does little to diminish the impact of the extreme discovery abuses that Respondent committed in an effort to hide his own involvement in the bankruptcy fraud.

X. RECOMMENDATION

Of the fourteen counts before this Officer, 10[44] carry with them the presumptive

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[42] Ironically, Respondent's charitable activities involved wheeling and dealing with high rollers, this time to raise money for a local children's hospital. While this does not diminish the applicability of this mitigating factor, it does much to explain the appeal of this type of community involvement.

[43] Exhibit A-284 illustrates the effort required to track the discovery misconduct. This exhibit consists of a 12 page Declaration of Counsel, with 1244 pages of documentation appended. Exhibit 45 to that declaration contains the bulk of the emails that were either not produced or produced in part. That particular attachment consists of 145 pages that are the result of checking and cross checking materials actually produced to those made available after Attorney Marc Stern appeared in the case.

[44] The remaining four, counts 7, 8, 9 and 13, involve sanctions of reprimand or admonition.

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sanction of disbarment. Ordinarily, the presumptive sanction should be imposed unless the aggravating or mitigating factors are sufficiently "compelling" to justify departure therefrom.[45] This Office also concludes that at least 7 aggravators apply to various counts. In contrast, three mitigating factors exist.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system and the legal profession. ABA Standards, §1.1. Respondent Robert Jackson is a lawyer who does not recognize his duties to his clients and to the legal system. Based on the ABA Standards and the applicable aggravating and mitigating factors, this Hearing Officer recommends that Respondent be disbarred.

DATED this 17th day of August 2011.

Bertha Baranko Fitzer,
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Redacted Findings, Conclusions + Rec to be delivered to the Office of Disciplinary Counsel and to be mailed to Leland Ripley, ~~Respondent~~/Respondent's Counsel at PO Box 1716, Duvall, WA 98019, by ~~Certified~~/first class mail, postage prepaid on the 17th day of August, 2011

~~Clerk~~/Counsel to the Disciplinary Board

[45] ***In re Disciplinary Proceedings of Cohen***, 149 Wn. 2d 323, 339, 67 P.3rd 1086 (2003).

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