

FILED  
NOV 30 2015  
DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**RYAN D. WHITAKER,**  
  
Lawyer (WSBA No. 21688)

Proceeding No. 13#00026  
  
DISCIPLINARY BOARD ORDER  
DECLINING *SUA SPONTE* REVIEW AND  
ADOPTING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On November 5, 2015, the Clerk distributed the attached decision to the Board.

**IT IS HEREBY ORDERED THAT** the Board declines *sua sponte* review and adopts the Hearing Officer's decision<sup>1</sup>.

Dated this 30<sup>th</sup> day of November, 2015.

*Stephanie Bloomfield*

Stephanie Bloomfield  
Disciplinary Board Chair Pro Tem

CERTIFICATE OF SERVICE

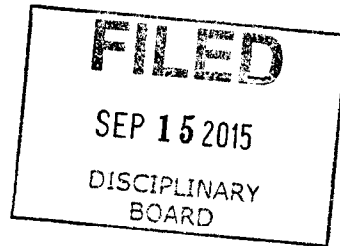
Also sent to:

[Redacted]

I certify that I caused a copy of the ~~Decision Declining Sua Sponte Review & Adopting~~ *His Decision* to be delivered to the Office of Disciplinary Counsel and to be mailed to *Ryan Whitaker*, Respondent/Respondent's Counsel at *1210 Main St - 455 VANCOUVER, WA 98101*, Certified *first class mail*, postage prepaid on the *30<sup>th</sup>* day of *November*, *2015*

*[Signature]*

<sup>1</sup> The vote on this matter was 14-0. The following Board members voted: Bloomfield, Carney, Davis, Denton, Coy, Fischer, Startzel, Andeen, Berger, Cottrell, Smith, Myers, Egeler and Silverman.



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BEFORE THE  
DISCIPLINARY BOARD  
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In re  
Ryan D. Whitaker  
  
Lawyer (Bar No. 21688).

Proceeding No. 13#00026

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

The undersigned Hearing Officer held the hearing on August 28, 2015 under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Ryan D. Whitaker (Respondent) did appear at the hearing. Disciplinary Counsel Marsha Matsumoto appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

**FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL**

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

By committing acts that resulted in felony convictions for two counts of first degree child molestation, Respondent violated RPC 8.4(b) (by violating RCW 9A.44.083 and/or RPC 8.4(i).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following:

**FINDINGS OF FACT**

duf

1           1.       Respondent was admitted to the practice of law in the State of  
2 Washington on June 22, 1992.

3           2.       On July 23, 2013, the Supreme Court of Washington entered an order  
4 suspending Respondent from the practice of law, under ELC 7.1(e)(1), pending the  
5 disposition of disciplinary proceedings. The suspension was based on Respondent's  
6 felony convictions of two counts of Child Molestation in the First Decree, violation  
of RCW 9A.44.083.

7           3.       During the period January 1, 2001 through August 31, 2011,  
8 Respondent was a Sunday school teacher at the St. John's Ward of the Church of  
Jesus Christ of Latter-Day Saints (LDS) in Vancouver, Washington.

9           4.       Respondent's Sunday school class was made up of eight and nine-  
10 year old boys and girls.

11          5.       One of the children in Respondent's Sunday school class was M.L.S.,  
12 an eight-year-old girl.

13          6.       As a Sunday school teacher, Respondent: 1) taught a Sunday school  
14 class for the eight and nine-year olds, and 2) accompanied and monitored his class  
15 during "sharing time", which was held in a larger classroom with children of various  
ages from other Sunday school classes.

16          7.       Respondent often had M.L.S. sit next to him in the back row of the  
17 "sharing time" classroom. On at least one such occasion, Respondent massaged  
18 M.L.S.'s vagina and buttocks with his hand both over her tights and under her  
19 clothing, on her skin. When Respondent touched M.L.S., he used his jacket to hide  
his actions, either by putting the jacket across their laps or behind M.L.S.

20          8.       On another occasion, Respondent asked M.L.S. to stay behind in the  
21 smaller classroom to run an errand for him. When they were alone, Respondent  
22 knelt in front of M.L.S. and asked her why she wasn't wearing any tights that day.  
23 Respondent proceeded to massage M.L.S.'s vagina with his hand over her dress.  
Respondent asked M.L.S. if it made her feel uncomfortable when he touched her.

1 This incident promoted M.L.S. to tell her mother, in August 2011, about  
2 Respondent's actions.

3 9. Respondent had no legitimate reason to touch M.L.S.'s vagina or  
4 buttocks.

5 10. At the time of these incidents, M.L.S. was eight or nine years old.

6 11. At the time of these incidents, Respondent was fifty-seven years old,  
7 more that 36 months older than M.L.S.

8 12. At the time of these incidents, M.L.S. was not married to, or in a  
9 state-registered domestic partnership with Respondent.

10 13. On January 30, 2013, the Clark County Prosecuting Attorney filed a  
11 Second Amended Information charging Respondent with one count of First Degree  
12 Child Rape (RCW 9A.44.073) and three counts of First Degree Child Molestation  
13 (RCW 9A.44.083).

14 14. Following a bench trial, Respondent was found guilty of two counts  
15 of First Degree Child Molestation (RCW 9A.44.083), a Class A felony.

16 15. Respondent was acquitted of the other counts charged in the Second  
17 Amended Information.

18 16. On April 5, 2013, Respondent was sentenced to a minimum term of  
19 confinement of 89 months and a maximum term of life.

20 17. Respondent filed an appeal and a personal restraint petition, which  
21 were consolidated and transferred to Division One of the Washington Court of  
22 Appeals. In an unpublished opinion, filed July 7, 2014, the Court of Appeals  
23 reversed the portion of Respondent's sentence that required him to undergo  
24 plethysmograph exams, but affirmed the judgment and sentence in all other respects.

25 18. Respondent petitioned for review to the Washington Supreme Court.  
On December 3, 2014, the Supreme Court denied Respondent's petition for review.

19. As of August 25, 2015, Respondent had not sought any further post-  
conviction relief.

1           20.    Where, as here, a disciplinary proceeding is based on a criminal  
2 conviction, "the court record of conviction is conclusive evidence at the disciplinary  
3 hearing of the respondent's guilt of the crime and violation of the statute on which  
4 the conviction was based." ELC 10.14(c).

5           21.    Respondent used a position of trust to facilitate these crimes. He  
6 gained access to the victim, M.L.S., because of the trust relationship. He also gained  
7 access to the location of the offenses, the Sunday school classrooms at St. John's  
8 Ward, because of the trust relationship.

9           22.    Respondent acted intentionally. Under the ABA Standards, the  
10 mental state of intent exists when a lawyer acts with the "conscious objective or  
11 purpose to accomplish a particular result." ABA Standards at 17. The crime of  
12 child molestation requires "sexual contact," which is defined as "any touching of the  
13 sexual or other intimate parts of a person done for the purpose of gratifying sexual  
14 desires of either party or a third party." RCW 9A.44.010 (2). Here, on two separate  
15 and distinct occasions, on or between January 1, 2011 and August 31, 2011,  
16 Respondent touched a sexual or intimate part of M.L.S. for the purpose of gratifying  
17 sexual desires of either of the parties. Exhibit (EX) 6.

18           23.    Injury to the child is inherent in the crimes Respondent committed.  
19 In addition, the evidence at the hearing established that M.L.S. and her family  
20 suffered great injury as a result of Respondent's conduct.

21           24.    M.L.S. experienced mood swings, insecurity, anxiety, difficulty  
22 sleeping and panic attacks. She went to counseling at a State-recommended  
23 counselor for more than one year. In addition, she asked for and received counseling  
24 from an LDS counselor who could help her deal with the abuse in the context of her  
25 faith.

          25.    M.L.S. also became self-conscious and extremely uncomfortable in  
school when the other children learned what happened. As a result, M.L.S.'s parents  
transferred her to a new school mid-term.

1           26.    During Respondent's criminal trial, M.L.S. was required to testify  
2 and was subjected to cross-examination by defense counsel. When the judge called  
3 a recess, M.L.S. was escorted out of the courtroom, where she burst into tears  
4 because she felt the attorney was calling her a "liar".

5           27.    The emotional and psychological injury to M.L.S. was caused by  
6 Respondent's improper and illegal conduct in molesting her.

7           28.    M.L.S.'s parents were advised by church leaders not to speak of  
8 Respondent's conduct with other church members, making it difficult for them to  
9 continue attending the same church and living in the same neighborhood.  
10 Furthermore, they did not want Respondent to know where they lived.  
11 Consequently, they moved to a different church, sold their home, moved to a new  
12 neighborhood and transferred M.L.S.'s three younger sisters to different schools so  
13 that they could make a fresh start.

14           29.    These changes were difficult for M.L.S.'s younger sisters to  
15 understand, and the youngest sister started acting out and ultimately entered  
16 counseling.

17           30.    M.L.S.'s parents also experienced problems in their marriage,  
18 centering on conflicts over continued affiliation with the church, which prompted  
19 them to seek counseling for several months. In addition, M.L.S.'s mother, a people-  
20 person who lived by a moral code and expected others to do the same, lost trust in  
21 people.

22           31.    Respondent's conduct tarnished the legal profession and undermined  
23 public confidence in the legal system. Respondent's conviction was widely covered  
24 in the media, and the image of the profession suffers injury when a lawyer abuses a  
25 position of trust to gain access to a child for purposes of gratifying sexual desires.

          32.    Respondent does not have a record of prior discipline in Washington.

### CONCLUSIONS OF LAW

#### Violations Analysis

1           33.    The Hearing Officer finds that ODC proved the following by a clear  
2 preponderance of the evidence:

3           By committing the acts that resulted in his conviction of two counts of first  
4 degree child molestation, Respondent violated RPC 8.4(b) and RPC 8.4(i) as alleged  
5 by ODC in the Formal Complaint.

6           34.    Respondent's criminal conduct violated RPC 8.4(b) because first  
7 degree child molestation is a Class A felony (RCW 9A.44.083(2)), a "violent  
8 offense" by definition (RCW 9.94A.030(54)(a)(i)), and because Respondent's  
9 conduct reflects adversely on his trustworthiness and fitness as a lawyer.

10          35.    Respondent's conduct violated RPC 8.4(i) because, by committing  
11 first degree child molestation, Respondent committed acts of moral turpitude and  
12 unjustified acts of assault.

13          36.    First degree child molestation is a serious offense, punishable by a  
14 maximum term of life in prison (RCW 9A.20.021(1)(a)); it requires a purposeful act  
15 and therefore an intent to gratify the sexual desires of the perpetrator, the other party,  
16 or a third party (RCW 9A.44.010(2)); and the person must be substantially younger  
17 than the perpetrator (RCW 9A.44.083(1)).

18          37.    As a Sunday school teacher, Respondent was in a position of  
19 authority relative to the children in his class and was charged with providing  
20 religious, moral, and behavioral guidance. He was also entrusted with the safety and  
21 wellbeing of the children while they were in his care. Respondent abused his  
22 position to gain access to M.L.S. and to gain access to the Sunday school classrooms  
23 where he committed his crimes, violating the trust of M.L.S., her family, and the  
24 church.

#### 25    Sanction Analysis

          38.    A presumptive sanction must be determined for each ethical violation.  
          In re Anschell, 149 Wn.2d 484, 502, 69 P.3d 844 (2003). In this case, the  
          presumptive sanction depends on the RPC violated.

1           39.    When multiple ethical violations are found, the "ultimate sanction  
2 imposed should at least be consistent with the sanction for the most serious instance  
3 of misconduct among a number of violations". In re Peterson, 120 Wn.2d 833, 854,  
4 846 P.2d 1330 (1993).

5           40.    For Respondent's commission of first degree child molestation in  
6 violation of RPC 8.4(b), the following American Bar Association's Standards for  
7 Imposing Lawyer Sanctions (ABA Standards) (191 ed. & Feb. 1992 Supp.) is  
8 presumptively applicable:

9           **5.1 Failure to Maintain Personal Integrity**

10           Absent aggravating or mitigating circumstances, upon  
11 application of the factors set out in Standard 3.0, the following  
12 sanctions are generally appropriate in cases involving commission of a  
13 criminal act that reflects adversely on the lawyer's honesty,  
14 trustworthiness or fitness as a lawyer in other respects, or in the cases  
15 with conduct involving dishonest, fraud, deceit, or misrepresentation:

16           5.11 Disbarment is generally appropriate when:

- 17           (a) a lawyer engages in serious criminal conduct, a necessary  
18 element of which includes intentional interference with the  
19 administration of justice, false swearing, misrepresentation,  
20 fraud, extortion, misappropriation, or theft; or the sale,  
21 distribution or importation of controlled substances; or  
22 solicitation of another to commit any of these offenses; or  
23 (b) a lawyer engages in any other intentional conduct involving  
24 dishonesty, fraud, deceit, or misrepresentation that seriously  
25 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 reflects adversely on the lawyer's fitness  
to practice law.



1           41. Respondent acted intentionally, his crimes involved a profound  
2 violation of trust, his victim was a young child, and his conduct injured the victim  
3 and her entire family. Respondent's conduct seriously adversely reflects on his  
4 fitness to practice law.

5           42. The presumptive sanction for Respondent's violation of RPC 8.4(b) is  
6 suspension under ABA Standards 5.12. See In re Day, 162 Wn.2d 527, 540, 173  
7 P.3d 915 (2007).

8           43. The presumptive sanction for Respondent's violation of RPC 8.4(i) is  
9 disbarment based on Washington case law. See Day, 162 Wn.2d at 547 ("the  
10 appropriate presumptive sanction for first degree child molestation, a Class A felony  
11 involving an act of turpitude, is disbarment.").

12           44. Respondent's argument that In re Day, 162 Wn.2d 527, 173 P.3d 915  
13 (2007) is distinguishable because that case involved harm to a client or past client,  
14 fails for lack of support. The Supreme Court specifically found that "there is a nexus  
15 between Day's conviction for child molestation and his unfitness to practice law  
16 because his crime involved a profound violation of trust, a necessary component of  
17 the practice of law". See Day, 162 Wn.2d at 546.

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

- 20           (b) selfish motive;  
21           (h) vulnerability of victim (M.L.S. was eight or nine years old, and was a  
22 student in Respondent's Sunday school class at the time the molestation occurred).

23           46. The mitigating factor set forth in Section 9.32 of the ABA Standards  
24 is applicable to this case:

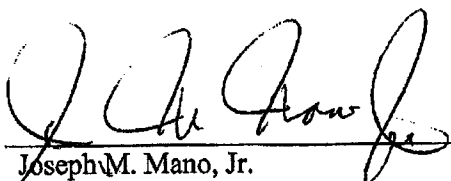
- 25           (a) absence of a prior disciplinary record.

          47. The mitigating factor of other penalties and sanctions (ABA  
Standards 9.32(k)), cited by Respondent with reference to his sentence and  
incarceration, does not apply here. The criminal justice system enforces the criminal  
code, while the lawyer discipline system "supplements the work of the criminal

1 courts in order to maintain respect for the integrity of the legal institutions." In re  
2 Perez-Pena, 161 Wn.2d 820, 835, 168 P.3d 408 (2007) (quoting In re Curran, 115  
3 Wn.2d 747, 771-72, 801 P.2d 962 (1990)); see also Day, 162 Wn.2d at 547-49  
4 ("[b]ecause the record supports not deviating from the sanction of disbarment and  
5 because Day's criminal conviction supports disbarment, we find no error with the  
6 finding of the hearing officer and the Board that the factor of other penalties and  
7 sanctions did not mitigate Day's sanction").

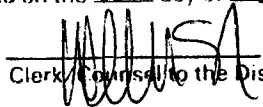
8 48. Based on the ABA Standards, the applicable aggravating and  
9 mitigating factors, and Washington case law, the Hearing Officer recommends that  
10 Respondent Ryan D. Whitaker be disbarred.

11 Dated this 15<sup>th</sup> day of September, 2015

  
\_\_\_\_\_  
Joseph M. Mano, Jr.  
Hearing Officer

16 CERTIFICATE OF SERVICE

17 I certify that I caused a copy of the FOF, COL & HO's Recommendation  
18 to be delivered to the Office of Disciplinary Counsel and to be mailed  
19 to Ryan Whitaker at 1220 Main St #455 Vancouver, WA 98660 Respondent's Counsel  
20 by certified first class mail  
21 postage prepaid on the 14<sup>th</sup> day of September, 2015

  
\_\_\_\_\_  
Clerk/Counsel to the Disciplinary Board

22 Also sent to:  
23 ~~XXXXXXXXXXXXXXXXXXXX~~  
24 ~~XXXXXXXXXXXXXXXXXXXX~~

## Allison Sato

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**From:** Joseph Mano <josephm@chehalislaw.com>  
**Sent:** Tuesday, September 15, 2015 3:54 PM  
**To:** Allison Sato  
**Subject:** Ryan Whitaker, Proceeding No. 13#00026  
**Attachments:** Whitaker FOF & COL.pdf

Dear Ms. Sato:

Attached, please find the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendations for this matter. If you wish the original to be mailed, please let me know.

Thank you,

Joe,  
Joseph M Mano Jr  
Mano, Mckerricher and Paroutaud, Inc, PC  
P.O. Box 1123  
Chehalis, Washington 98532  
Phone: 360-748-6641  
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