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**FILED**

JUL 03 2012

**DISCIPLINARY BOARD**

BEFORE THE DISCIPLINARY BOARD OF THE  
WASHINGTON STATE BAR ASSOCIATION

In Re: )  
DAVID R. FOX, ) PUBLIC NO. 10 #00096  
Lawyer ) ORDER CORRECTING AND AMENDING  
WSBA No. 24317 ) FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The motion by the Washington State Bar Association to Modify, Amend, and/ or Correct the Hearing Officers Findings of Fact and Conclusions of Law and Recommendation filed on June 5, 2012 was heard without oral argument. The Respondent did not provide a response.

The motion by the Washington State Bar Association to correct a clerical error at page 1, lines 19-20 of the Findings of Fact is granted. It is found that Disciplinary Counsel charged Respondent with eleven counts of misconduct, not six counts.

The motion by the Washington State Bar Association to amend or modify the findings of Fact at page 24, line 22 to find that by intentionally committing a crime against his client involving fraud, Respondent violated both RPC 8.4 (c) and RPC 8.4 (b) is granted. The presumptive sanction for violation of RPC 8.4 (b) would be as is set out at page 24 line 24 through page 25,

**ORIGINAL**

1 line 2 . However, as both of those violations result from the same facts, it is the intent that only  
2 one sanction be imposed for that misconduct.

3  
4 The motion by the Washington State Bar Association to delete Illegal Conduct as an  
5 aggravating factor for the violation of RPC 8.4(b) at page 25, line 12-13 as the illegal conduct  
6 itself was the subject of the violation of the RPC is granted. Illegal Conduct as an aggravating  
7 factor is hereby deleted in regards to Count III.

8  
9 The motion by the Washington State Bar Association for clarification regarding criminal  
10 clients as an aggravating factor is granted. It is noted that although there is an inherent  
11 imbalance of power between a lawyer and his criminal client, criminal clients are not  
12 categorically vulnerable simply because they are criminal clients.

13 However, in Mr. Gilbertson's case, there were additional factors which contributed to his  
14 status as a vulnerable client. He was young, he had never been represented by a lawyer, and he  
15 was struggling with substance abuse. Although his family had withdrawn resources to avoid  
16 enabling his substance abuse, Mr. Fox was providing housing, employment, and legal  
17 representation. Those resources provided by Mr. Fox created significant dependency by Mr.  
18 Gilbertson on Mr. Fox, taking away some of Mr. Gilbertson free choice and further contributing to  
19 his vulnerability.

20 Mr. Mason was a vulnerable client because he was actually incarcerated and dependent  
21 on Mr. Fox for his freedom. Additionally, Mr. Fox's pro bono representation of Mr. Mason further  
22 increased Mr. Mason's vulnerability. Mr. Mason was of modest means and had been  
23 represented on multiple matters by the local public defenders office. Due to either dissatisfaction  
24 with representation by the P.D. or conflicts of interests within the P.D.'s office, Mr. Mason did not  
25 believe he could secure representation from the P.D. Office. As Mr. Mason risked having no

1 representation at all should Mr. Fox have withdrawn, Mr. Mason was more vulnerable to  
2 manipulations by Mr. Fox in the form of withholding of necessary work or loss of zeal for his case  
3 if overtures were rebuffed.

4  
5 The motion by the Washington State Bar Association for the Hearing Officer to state the  
6 ultimate sanction to be imposed as there were multiple findings of ethical violations is granted.

7 The Hearing Officer finds that the aggravating factors outweigh the mitigating factors.  
8 Even if the findings regarding Mr. Gilbertson or Mr. Mason as vulnerable clients /aggravating  
9 factors are not upheld, the aggravating factors still outweigh the mitigating factors. The sole  
10 mitigating factor is that Mr. Fox has no prior disciplinary offenses.

11 The overall ultimate sanction recommended by the Hearing Officer is disbarment.

12 Any and all other findings or conclusions in the June 1, 2012 (filed June 5, 2012) which  
13 are not inconsistent with this Order are confirmed.

14  
15 DATED THIS 30th DAY OF June, 2012.

16  
17 Law Office of F. Andrekita Silva

18 Andrekita Silva  
19 Andrekita Silva, WSBA NO. 17314  
20 Hearing Officer

21 CERTIFICATE OF SERVICE

22 I certify that I caused a copy of the Order Correcting & Amending PDF of COL  
23 to be delivered to the Office of Disciplinary Counsel and to be mailed  
24 to Daniel Fox Respondent/Respondent's Counsel  
25 at 101 W. Main Ave. Port Angeles, WA 98127, by Certified first class mail,  
postage prepaid on the 30th day of July, 2012

[Signature]  
Clerk/Counsel to the Disciplinary Board