

FILED

DEC 04 2012

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

In re  
**DAVID A. STIRBIS,**  
Lawyer (WSBA No. 26037)

Proceeding No. 11#00094  
**DISCIPLINARY BOARD ORDER  
MODIFYING HEARING OFFICER'S  
DECISION**

This matter came before the Disciplinary Board at its November 2, 2012 meeting, on automatic review of Hearing Officer Lawrence R. Mills' May 15 2012 decision recommending a four-month suspension.

The Board reviews the hearing officer's finding of fact for substantial evidence. The Board reviews conclusions of law and sanction recommendations de novo. Evidence not presented to the hearing officer or panel cannot be considered by the Board. ELC 11.12(b).

Having reviewed the materials submitted by the parties, and considered the applicable case law and rules;

**IT IS HEREBY ORDERED THAT** the Board modifies the Hearing Officer's decision as follows<sup>1</sup>: The finding that Respondent's conduct was caused by his alcoholism is modified to conform to the evidence in the record; the sanction recommendation is increased to a minimum 1 year suspension. The Board split between recommending a 1 year suspension (7 votes), a 3-year suspension (2) votes and disbarment (3 votes).

<sup>1</sup> The vote on this matter was 7-2-3. Those voting for a 1 year suspension were: Bray, Broom, Carrington, Dremousis, Evans, Ivarinen and Mesher. Those voting for a 3 year suspension were: Butterworth, and McInville. Those voting for disbarment were: Coy, Neiland and Ogura. Note that all of the nonlawyer members participating in this matter voted for disbarment.

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1 FINDING 43

2 Paragraph 43(i) is amended as follows:

3           There is medical evidence that Stirbis was affected by alcoholism and his misconduct  
4           was related to his alcoholism. Stirbis' recovery from alcoholism is demonstrated by a  
5           meaningful and sustained period of successful rehabilitation. Stirbis has refrained  
6           from alcohol use for over three years and a recurrence of the misconduct is unlikely.<sup>2</sup>

7           The expert testified that "based on the information I had available, it was my opinion that his  
8           misconduct was related to his alcoholism." TR 156, line 22. There is no evidence in the  
9           record to support a finding that the misconduct was caused by alcoholism.

10 SANCTION RECOMMENDATION

11           The recommended sanction is increased as follows: Seven board members voted for a 1-year  
12           suspension; two board members voted for a 3-year suspension and 3 board members voted for  
13           disbarment.

14 **RPC 8.4(b) VIOLATION**

15           The Board agrees with the Hearing Officer that suspension under *ABA Standard 5.12* is the  
16           presumptive sanction for Respondent's RPC 8.4(b)<sup>3</sup> violation. Respondent pled guilty to 2  
17           gross misdemeanors – assault in the 4<sup>th</sup> degree with sexual motivation (RCW 9A.36.041) and  
                  furnishing liquor to a minor with sexual motivation (RCW 66.44.270). Such intentional<sup>4</sup>  
                  criminal acts reflect adversely on his honesty, trustworthiness and fitness as a lawyer. The  
                  lawyer discipline system should impose sanctions for criminal conduct when there "is a nexus  
                  between the conduct and those characteristics relevant to the practice of law." *See e.g. In re*

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15 <sup>2</sup> Original paragraph 43(j) stated: There is medical evidence that Stirbis was affected by alcoholism and his  
16           alcoholism caused the misconduct. Stirbis' recovery from alcoholism is demonstrated by a meaningful and  
17           sustained period of successful rehabilitation. Stirbis has refrained from alcohol use for over three years and a  
                  recurrence of the misconduct is unlikely

16 <sup>3</sup> 8.4(b): It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's  
17           honesty, trustworthiness or fitness as a lawyer in other respects.

17 <sup>4</sup> Mr. Stirbis described his conduct as follows in his Statement of Defendant on Plea of Guilty: "On 9-16-08,  
                  Washington State I intentionally assaulted SCJ for sexual motivation, and on said date I gave her alcohol [sic] in the  
                  commission [sic] of the assault. She is under the age of 21." EX 5.

1 | *Day*, 162 Wn.2d 527, 541, 173 P.3d 915 (2007). The *Day* Court found: “there is a nexus  
2 | between *Day*’s conviction for child molestation and his unfitness to practice law because his  
3 | crime involved a profound violation of trust, a necessary component of the practice of law.”  
4 | *Day*, 162 Wn.2d at 542. It is important to note that although the victim in *Day* was a former  
5 | client, the Court did not rely on that fact in determining that *Day*’s conduct was related to a  
6 | characteristic important to the practice of law. The Hearing Officer correctly found that  
7 | Respondent’s conduct violated a trusting relationship he had developed with the victim and her  
8 | family. Trust is a necessary component of the practice of law. A suspension under *ABA*  
9 | *Standard* 5.12 is the appropriate presumptive sanction.

#### 7 | **RPC 8.4(i) VIOLATION**

8 | Nine Board members also find that suspension is the presumptive sanction for Respondent’s  
9 | RPC 8.4(i)<sup>5</sup> violation. The Board finds that Respondent’s conduct involved moral turpitude.  
10 | The Board also finds that *Kuvara*’s holding that his simple assault did not involve moral  
11 | turpitude is not applicable to the facts in this matter. The Court described *Kuvara*’s conduct as  
12 | follows:

12 | This incident occurred while *Kuvara* was watching a basketball game on television at  
13 | a Seattle restaurant. *Kuvara*’s view of the television screen was obstructed by the  
14 | man sitting beside him, who leaned forward in his seat to argue with his companion, a  
15 | man named *Foley*. *Kuvara* asked the man to sit back. The man spoke angrily to  
16 | *Kuvara*, and *Foley* stood up, shouted an obscenity at *Kuvara*, and approached him  
17 | menacingly. *Kuvara*, fearing a physical attack from *Foley*, lashed out at him with his  
18 | right hand. In his hand was a wine glass, which smashed against *Foley*’s face.  
19 | *Kuvara* claimed he had forgotten the glass was in his hand and the striking of *Foley*  
20 | was a reflex action in response to *Foley*’s threatening him. He was not affected by  
21 | alcohol at the time of the incident.


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16 | <sup>5</sup> 8.4(i): It is professional misconduct for a lawyer to commit any act involving moral turpitude, or corruption, or  
17 | any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be  
18 | committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony  
19 | or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary  
20 | action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding.

1        *Kuvara* at 744. In *Kuvara*, all participants were adults, they had no prior relationship,  
2        *Kuvara* was defending himself, and no alcohol was involved. The only similarity between  
3        these two cases is that both engaged in an assault outside the practice of law. Moral  
4        turpitude is determined based on “the inherent immoral nature of the act, rather than from  
5        the degree of punishment which the statute imposes.” *In re McGrath*, 98 Wn.2d 337, 341  
6        (1982), quoting *In re Hopkins* 54 Wash. 569, 572, 103 P. 805 (1909). Mr. Stirbis pled  
7        guilty to intentional conduct that was inherently immoral and constitutes moral turpitude.  
8        The Court found moral turpitude under similar facts in *Haley v. Medical Disciplinary*  
9        *Board*, 117 Wn.2d 720, 727, 818 P.2d 1062 (1991). Balancing the facts and sanctions in  
10        Day (disbarment for grooming and then molesting a former client), Heard (2 year  
11        suspension for sex with head injury client) and *Halverson* (1 year suspension for  
12        consensual sex with client), the Board recommends a one-year suspension. Respondent’s  
13        victim was not a client and the evidence did not establish grooming behavior or pre-  
14        planning. Based on these differences, the Board does not recommend disbarment. The  
15        most similar moral turpitude case is *Heard*. The two year suspension imposed by Heard is  
16        the appropriate presumptive sanction.

17        Respondent’s alcoholism and demonstrated sustained recovery mitigate the sanction  
18        from a 2-year suspension to a 1-year suspension. The Board recommends that the Court  
19        impose a 1 year suspension.

Dated this 4th day of December, 2012

  
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Nancy Ivarinen, Chair  
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the DE Order Modifying HO's Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to James Lawson Respondent/Respondent's Counsel  
at 701 5th Ave. #1010 Seattle WA 98104 by Certified/first class mail,  
postage prepaid on the 5<sup>th</sup> day of December, 2012

[Signature]  
Clerk/Counsel to the Disciplinary Board