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

**In re**  
  
**DENNIS XAVIER GOSS**  
  
**Lawyer (WSBA No. 33628)**

**Public No. 15#00053**  
  
**AMENDED**  
  
**FINDINGS OF FACT, CONCLUSIONS  
OFLAW AND HEARING OFFICER'S  
RECOMMENDATION**

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was held before the undersigned Hearing Officer on October 17-18, 2016 in the Hearing Room at the offices of the Washington State Bar Association, Seattle, Washington. Respondent Dennis Xavier Goss ("Goss") appeared at the hearing, pro se. Disciplinary Counsel Kathy Jo Blake appeared for the Washington State Bar Association Office of Disciplinary Counsel ("ODC").

**FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL**

The First Amended Formal Complaint filed by the ODC charged Goss with the following counts of misconduct:

Count 1 - By committing the crime of False Swearing, RCW 9A.72.040, Mr. Goss violated RPC 8.4(b), 8.4(c), 8.4(d) and/or 8.4(i).

Count 2 - By knowingly submitting false statements and/or evidence to a tribunal, Mr. Goss violated RPC 3.3(a)(1) and/or 3.3 (a)(4).

Count 3 - By representing a client when the representation involved a concurrent conflict of interest, Mr. Goss violated RPC 1.7.

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1 Based on the pleadings in the case, the testimony and exhibits received into  
2 evidence at the hearing, the Hearing Officer makes the following:

3 **AMENDED FINDINGS OF FACT**

4 1. The Respondent was admitted to the practice of law in the State of  
5 Washington on June 12, 2003.

6 2. Tyler Williams ("TW") was arrested on or about May 1, 2013, on a felony  
7 charge and held in custody in the Kitsap County jail.

8 3. Sometime after May 1, 2013 and prior to May 8, 2013, TW's spouse, Angela  
9 Williams ("AW") contacted Goss to discuss hiring Goss to represent TW on the felony  
10 charge.

11 4. After the initial telephone contact between Goss and AW, Goss and AW met  
12 at Moondogs Too, a restaurant and bar in Port Orchard.

13 5. Goss found AW attractive.

14 6. Goss and AW became flirtatious, well documented by their text "chats."

15 7. Goss was seeking to engage in a sexual relationship with AW, seeking to  
16 spend the night together and telling her he wanted to "make love" to her on May 11, 2013.

17 8. From the record it is difficult to establish exactly when an attorney client  
18 relationship was formed between Goss and TW. Financial records that would have  
19 documented when Goss was first paid would have been evidence of that fact. After formal  
20 request from the ODC, Goss failed to disclose those financial records. It is reasonable to  
21 assume the records would have been adverse to Goss' position and would have  
22 documented establishment of the attorney client relationship between Goss and TW  
23 during the time Goss was actively pursuing a relationship with AW.  
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1           9.       Goss began to take active steps to represent TW during the time he was  
2 seeking to pursue a sexual relationship with TW's wife AW.

3           10.       Goss formed an attorney-client relationship with TW no later than May 9,  
4 2013.

5           11.       Goss did not obtain TW's informed consent, confirmed in writing, to the  
6 conflict of interest created by Goss's efforts to engage in a sexual relationship with AW.

7           12.       During the time Goss was representing TW and during the time Goss was  
8 pursuing a relationship with AW, AW and TW had multiple telephone calls while TW was  
9 incarcerated in the Kitsap County jail. All calls are recorded and monitored by jail staff.

10          13.       During the telephone calls, AW told TW about Goss' advances towards her  
11 and his desire to have a sexual relationship with her.

12          14.       Bremerton City Police detectives reviewed these calls and became  
13 concerned about Goss seeking a relationship with the spouse of one of his clients. The jail  
14 staff brought this to the attention of the Kitsap County Prosecuting Attorney's office.

15          15.       The Kitsap County Deputy Prosecuting Attorney's office filed a motion to  
16 disqualify Goss as counsel for TW based on this conflict of interest.

17          16.       In response to the motion, Goss prepared a Declaration for AW to sign. She  
18 had sent him an email from which he drew much of the material for the Declaration. Goss  
19 added several key statements to the material provided by AW. The Declaration contained  
20 false statements, both originated by AW and those additional statements authored by  
21 Goss. Goss knew that some of the statements were false at the time the Declaration was  
22 prepared and at the time it was submitted to the Court in response to the motion to  
23 disqualify him as TW's counsel.  
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1           17.     Goss prepared and submitted his own Declaration which argued that the  
2 Declaration of AW supported the allegation that there was no relationship between Goss  
3 and AW and that the motion should be denied.

4           18.     Goss' Declaration omitted the fact that he had actively sought to initiate a  
5 sexual relationship with AW on more than one occasion. Goss knew this omission would  
6 mislead the Court.

7           19.     By his actions in preparing and submitting these Declarations to the court,  
8 Goss intended to mislead and deceive the court.

9           20.     At the time the motion was argued to the Court, Goss knowingly made false  
10 statements to the court and by omission, otherwise knowingly mislead the Court.

11           21.     By making false statements to the Court, by submitting Declarations to the  
12 Court that he knew contained false statements and by omission of the truth with respect  
13 to his desire and overt acts seeking to establish a sexual relationship with AW, Goss  
14 allowed the Court to base its decision on the motion to disqualify Goss in reliance  
15 thereon.

16           22.     The Court denied the State's motion to disqualify Goss on June 6, 2013.

17           23.     TW terminated Goss' representation of him on or about November 12, 2013.

18           24.     AW met with the Bremerton Police in late December 2013 and advised them  
19 she had lied in her Declaration to the Court. She provided the cell phone text messages  
20 documenting her texting with Goss between May 8 and May 12, 2013 as well as voicemail  
21 message left by Goss on May 11, 2013. The texts and voicemail documented that Goss did  
22 in fact actively pursue a sexual relationship with AW.  
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1           2.       A motion to withdraw the guilty plea was denied.

2           3.       A court record of a conviction is conclusive evidence at a disciplinary  
3 hearing of the respondent's guilt of the crime and violation for that statute on which the  
4 conviction was based. ELC 10.14(c).

5           4.       The crime of False Swearing is a criminal act that reflects adversely on a  
6 lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

7           5.       By committing the crime of False Swearing Goss violated RPC 8.4(b).

8           6.       The crime of False Swearing is a criminal act that involves dishonesty and  
9 misrepresentation.

10          7.       By committing the crime of False Swearing Goss violated RPC 8(c).

11          8.       By committing the crime of False Swearing by submitting false declarations  
12 to the court, Goss engaged in conduct that is prejudicial to the administration of justice in  
13 violation of RPC 8.4(d).

14          9.       By committing the crime of False Swearing, Goss committed an act involving  
15 moral turpitude and an act which reflects disregard for the rule of law in violation of  
16 RPC 8.4(i).

17          10.      Count 1 is proven by a clear preponderance of the evidence.

18       **Count 2:**

19          11.      Goss's acts of submitting declarations that he knew to contain false  
20 statements of fact to the tribunal, and his failure to correct false statements of material fact  
21 made to the tribunal, violated RPC 3.3(a)(1). Goss's acts of offering evidence to the  
22 tribunal in the form of declarations that he knew to be false violated RPC 3.3(a)(4).

23          12.      Count 2 is proven by a clear preponderance of the evidence.



1 **Count 3:**

2 13. Goss' actions to seek to initiate a sexual relationship with AW at a time he  
3 was actively representing her spouse TW created a current conflict of interest.

4 14. There was significant risk that Goss' representation of TW would be  
5 compromised by his attraction to AW.

6 15. By representing a client when the representation involved a concurrent  
7 conflict of interest, Mr. Goss violated RPC 1.7.

8 16. Count 3 is proven by a clear preponderance of the evidence.

9 **SANCTION ANALYSIS**

10 17. A presumptive sanction must be determined for each ethical violation. *In re*  
11 *Anschell*, 149 Wn.2d 484, 69 P.2d 844, 852 (2003). Applying the Standards is a two-step  
12 Process: the first is to determine a presumptive sanction by considering (1) the ethical  
13 duty involved, (2) the lawyer's mental state, and (3) the extent of the actual or potential  
14 injury caused by the misconduct. The second step is to consider any aggravating or  
15 mitigating factors that might alter the presumptive sanction.

16 18. Where there are multiple ethical violations, the ultimate sanction imposed  
17 should at least be consistent with the sanction for the most serious instance of misconduct  
18 among a number of violations.

19 **PRESUMPTIVE SANCTION**

20 The following standards of the American Bar Association's Standards for Imposing  
21 Lawyer Sanctions ("ABA Standards") are presumptively applicable in this case:

22 19. ABA Standard 5.11 is most applicable to the duty to refrain from criminal  
23 acts that reflect adversely on the lawyer's honesty and trustworthiness, or involve  
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1 dishonesty or deceit. Disbarment is generally appropriate when a lawyer engages in  
2 serious criminal conduct, a necessary element of which includes intentional interference  
3 with the administration of justice, including false swearing. As such the presumptive  
4 sanction with respect to having been convicted of the crime of false swearing is  
5 disbarment.

6         20. ABA Standards 6.1 is generally applicable to cases involving conduct that is  
7 prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or  
8 misrepresentation to a court. Disbarment is generally appropriate when a lawyer engages  
9 in conduct intended to deceive a court or makes a false statement, submits a false  
10 document or improperly withholds material information and causes serious injury or  
11 potentially serious injury to a party or causes significant or potentially significant adverse  
12 effect on the legal proceeding. The presumptive sanction for Goss' actions involving  
13 conduct prejudicial to the administration of justice and/or involving dishonesty or  
14 misrepresentation to the court is disbarment.

15         21. ABA Standards 4.3 is most applicable in cases involving conflicts of interest.  
16 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does  
17 not fully disclose to a client the possible effect of that conflict and which causes injury or  
18 potential injury to the client. The presumptive sanction for the conflict of interest created  
19 by Goss' pursuit of a sexual relationship with AW while representing her spouse TW is  
20 suspension.

21                   **AGGRAVATING AND MITIGATION FACTORS**

22                   Aggravating and mitigating factors may support deviation from the presumptive  
23 sanction. ABA Standards 9.22 sets forth a list of aggravating factors.  
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1           22.    The following aggravating factors apply in this matter:

2           (b) Dishonest or Selfish Motive. Goss acted with a selfish motive when he  
3 intentionally submitted false evidence and intentionally mislead the court.

4           (d) Multiple Offenses. Goss has committed multiple offenses and the multiple  
5 offense aggravating factor is applicable.

6           (g) Refusal to acknowledge the wrongful nature of conduct. Respondent  
7 continues to blame everyone but himself for his conviction and actions surrounding his  
8 false swearing conviction, lack of candor to the court, and conflict of interest.

9           (i) Substantial experience in the practice of law. Respondent was admitted to  
10 practice on June 12, 2003.

11           ABA Standards 9.32 set forth the list of mitigating factors.


12           23.    The following mitigating factors apply in this matter:

13           (a) Absence of prior disciplinary record. Goss has no prior disciplinary record.

14           **RECOMMENDATION**

15           The presumptive sanction should be deviated from only if the aggravating and  
16 mitigating factors are sufficiently compelling to justify a departure. In this case the  
17 aggravating factors far outweigh the mitigating factors. Accordingly this Hearing Officer  
18 recommends that Respondent Dennis Xavier Goss be disbarred from the practice of law.

19           Dated this 20th day of December, 2016



20  
21           David B. Condon – WSBA 5578  
22           Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Foford's HR's Recommendation

to be served on the Office of the Clerk of the Court by Dennis Cross

Robert 1733 pert on chmcl wa  
983106 28th December, 2014

Acting Sherry Lindner