

APR 25 2013

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**JEREMY D. BENSON,**  
Lawyer (Bar No. 34163).

Proceeding No. 12#00075

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND HEARING OFFICER'S  
RECOMMENDATION

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),  
the undersigned Hearing Officer held a default hearing on April 23, 2013.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint, BF 3 (attached), charged Respondent Jeremy D. Benson  
with misconduct as set forth therein.

2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the  
Formal Complaint is admitted and established.

3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the  
Formal Complaint is admitted and established as follows:

4. By failing to diligently pursue a civil resolution of Mr. Lysiak's dispute with Picatti

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1 and by failing to represent Mr. Lysiak diligently in the criminal matter after charges were filed,  
2 Respondent violated RPC 1.3 (Count 1).

3 5. By failing to keep Mr. Lysiak reasonably apprised of information pertinent to his  
4 legal matter, by failing to respond promptly to Mr. Lysiak's requests for information, and by  
5 failing to tell Mr. Lysiak that he was leaving the office for medical reasons and that there were  
6 medical limitations on his ability to represent Mr. Lysiak diligently, Respondent violated RPC  
7 1.4(a) and 1.4(b) (Count 2).

8 6. By failing to withdraw from Mr. Lysiak's matter when he was unable to represent  
9 him for medical reasons, Respondent violated RPC 1.16(a)(2) (Count 3).

10 7. By accepting legal fees from Mr. Lysiak to represent him with respect to his criminal  
11 matter but failing to complete the representation, and by failing to refund any fees when the  
12 representation was terminated, Respondent violated RPC 1.5(a) and RPC 1.16(d) (Count 4).

13 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
14 **REGARDING RECOMMENDED SANCTION**

15 8. Respondent acted negligently with respect to Counts 1-2.

16 9. Respondent acted knowingly with respect to Counts 3-4.

17 10. Mr. Lysiak suffered serious injury because criminal charges could have been  
18 avoided if Respondent had promptly pursued a civil settlement as instructed, he was unaware  
19 that Respondent was unavailable due to a medical leave and had to scramble for legal  
20 representation, and he paid for services he did not receive and lost use of his funds for a  
21 prolonged period of time.

22 11. The presumptive sanction for the violations charged in Counts 1-2 is reprimand  
23 under ABA Standard 4.43:

24 4.43 **Reprimand** is generally appropriate when a lawyer is negligent and does  
not act with reasonable diligence in representing a client, and causes injury or

1 potential injury to a client.

2 12. The presumptive sanction for the violations charged in Counts 3-4 is suspension  
3 under ABA Standard 7.2:

4 7.2 **Suspension** is generally appropriate when a lawyer knowingly engages in  
5 conduct that is a violation of a duty owed as a professional and causes injury or  
6 potential injury to a client, the public, or the legal system.

7 13. In the case of multiple ethical violations, the “ultimate sanction imposed should at  
8 least be consistent with the sanction for the most serious instance of misconduct among a  
9 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,  
10 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

11 14. The following aggravating factors set forth ABA Standard 9.22 apply:

- 12 ~~(b) dishonest or selfish motive [regarding the fee];~~  
13 ~~(d) multiple offenses; and~~  
14 ~~(e) bad faith obstruction of the disciplinary proceeding by intentionally~~  
15 ~~failing to comply with rules or orders of the disciplinary agency [failure~~  
16 ~~to file answer to formal complaint as required by ELC 10.5(a)].<sup>1</sup>~~

17 15. The following mitigating factors set forth in ABA Standard 9.32 apply:

- 18 (a) absence of a prior disciplinary record; and  
19 (c) personal or emotional problems [medical problems].

20 16. On balance, the aggravating and mitigating factors do not provide cause to deviate  
21 from the presumptive sanction of suspension.

22 17. The length of a suspension is based on the aggravating and mitigating factors. In re  
23 Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 493, 998 P.2d 833 (2000). A six-  
24 month suspension is the presumptive starting point. In re Disciplinary Proceeding Against

<sup>1</sup> ELC 10.5(a) provides: “Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6.” See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer’s “total nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process”).

*No allegation of failure to cooperate with the bar investigation appeared in the Complaint, so there can be no finding of total non-participation.*

1 | Conteh, 175 Wn.2d 134, 154, 284 P.3d 724 (2012). “The minimum suspension is appropriate  
2 | in cases where there are both no aggravating factors and at least some mitigating factors, or  
3 | when the mitigating factors clearly outweigh the aggravating factors.” In re Disciplinary  
4 | Proceeding Against Cohen, 149 Wn.2d 323, 339, 67 P.3d 1086 (2003).

5 | 18. Here, in light of the aggravating factors and the serious injury to Mr. Lysiak, the  
6 | Hearing Officer recommends a one-year suspension.

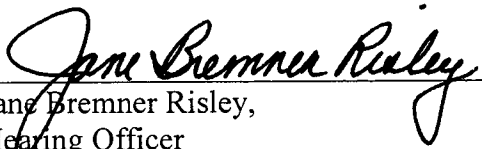
7 | 19. The Hearing Officer recommends that Respondent pay restitution to Mr. Lysiak  
8 | under ELC 13.7 of \$10,750, plus interest at a rate of 12% per annum beginning November 1,  
9 | 2011. This amount reflects the \$10,000 in legal fees paid by Mr. Lysiak for work that  
10 | Respondent did not perform and the \$750 in unnecessary costs Mr. Lysiak incurred for  
11 | travelling to a hearing at which Respondent failed to appear.

12 | 20. The Hearing Officer further recommends that, prior to reinstatement, Respondent  
13 | undergo and successfully complete a fitness to practice evaluation conducted by a provider  
14 | agreeable to the Office of Disciplinary Counsel

15 | **RECOMMENDATION**

16 | 21. As set forth above, based on the ABA Standards and the applicable aggravating  
17 | and mitigating factors, the Hearing Officer recommends that Respondent Jeremy D. Benson be  
18 | suspended for one year, pay restitution as listed herein, and undergo and successfully complete  
19 | a fitness to practice evaluation prior to reinstatement.

20 | DATED this 23<sup>rd</sup> day of April, 2013.

21 |   
22 | Jane Bremner Risley,  
23 | Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FDFJ COL in HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Jeremy Benson, Respondent/Respondent's Counsel  
at 1905 W Ash Blvd, Spokane, WA 99208, by Certified first class mail,  
postage prepaid on the 23<sup>rd</sup> day of April, 2017

[Signature]  
Clerk/Counsel to the Disciplinary Board

**FILED**

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**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**JEREMY D. BENSON,**  
Lawyer (Bar No. 34163).

Proceeding No. 12#00075  
FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent Jeremy D. Benson was admitted to the practice of law in the State of Washington on November 13, 2003.

**FACTS**

2. Until December 2009, Craig Lysiak worked for Picatti Brothers (Picatti) in Yakima as a financial controller, where he had access to a company credit card. After he left his employment he learned that Picatti accused him of making a series of unauthorized charges on the card.

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1           3. In January 2010, Mr. Lysiak hired the Cooney Law Offices in Spokane to represent  
2 him in the dispute with Picatti.

3           4. He signed a fee agreement providing for a \$5,000 flat fee to “commence felony  
4 investigation.” The fee agreement stated that the matter would be assigned to Respondent, the  
5 Cooney firm’s lead felony lawyer.

6           5. Mr. Lysiak paid the fee as required.

7           6. In February 2010, Picatti’s lawyer sent Mr. Lysiak a list of the alleged unauthorized  
8 charges and asked him to substantiate them.

9           7. Mr. Lysiak and Respondent met to discuss their response, which resulted in a March  
10 1, 2010 letter to Picatti’s lawyer with an offer to settle for approximately \$4,100.

11           8. On March 9, 2010, Picatti’s lawyer responded that his client needed more  
12 information before they could reach a settlement. He asked Respondent to specify what charges  
13 the \$4,100 covered.

14           9. Respondent waited until April 6, 2010 to transmit this information to Mr. Lysiak.

15           10. Mr. Lysiak instructed Respondent to settle with Picatti for any amount.

16           11. Respondent did not communicate this information to Picatti’s lawyer.

17           12. As a result, Picatti chose to move forward with criminal charges.

18           13. On or about April 13, 2010, the Union Gap police department advised Respondent  
19 that the theft allegation had been submitted to the prosecutor.

20           14. On May 5, 2010, Respondent finally responded to Picatti’s lawyer, asking if Picatti  
21 would be willing to settle if Mr. Lysiak paid restitution “as determined by Picatti Brothers.”

22           15. On or about July 22, 2010, Picatti’s lawyer called Respondent and advised that the  
23 prosecutor determined the amount in controversy to be approximately \$17,750.  
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1 16. Respondent did not communicate this information to Mr. Lysiak.

2 17. Respondent never contacted Picatti's lawyer again.

3 18. In approximately August 2010, Respondent left the Cooney firm.

4 19. On August 20, 2010, Respondent, Mr. Lysiak, and Mr. Cooney signed an addendum  
5 to the fee agreement referenced in ¶ 4, above. In the addendum, Mr. Lysiak agreed that the file  
6 would be transferred to Respondent to complete the legal representation, that the Cooney firm  
7 would take no further action on his behalf, and that remaining balances owed or new fees and  
8 costs would be paid directly to Respondent. The addendum specified that "all other terms and  
9 conditions of the original Retainer Agreement shall remain unchanged and binding on the  
10 parties hereto."

11 20. At about this time Respondent stopped contacting Mr. Lysiak.

12 21. On April 15, 2011, the Yakima County Prosecutor charged Mr. Lysiak with 26  
13 counts of second degree theft.

14 22. After charges were filed Mr. Lysiak contacted Respondent, who appeared on Mr.  
15 Lysiak's behalf.

16 23. On May 17, 2011, Respondent had Mr. Lysiak sign a new flat fee agreement for  
17 \$7,500 to cover representation in the criminal matter up to trial.

18 24. Mr. Lysiak gave Respondent three \$2,500 checks that day. Respondent cashed two  
19 of them.

20 25. Shortly thereafter, and until August 2011, Respondent became partners with lawyer  
21 Aaron Rasmussen.

22 26. In approximately August 2011, Respondent checked into a three-week in-patient  
23 medical facility.

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1           27. Respondent did not tell Mr. Lysiak that he would be absent from the office or  
2 otherwise unavailable to represent him.

3           28. Mr. Lysiak, who had since moved to Colorado, had an omnibus hearing scheduled in  
4 Yakima County Superior Court on August 25, 2011, but could not reach Respondent to discuss  
5 it.

6           29. Mr. Lysiak got through to Mr. Rasmussen the day before the hearing, while he was  
7 on his way to the airport. He then learned from Mr. Rasmussen that Respondent was on  
8 medical leave.

9           30. Mr. Rasmussen obtained a continuance of Mr. Lysiak's hearing to September 8,  
10 2011.

11           31. Respondent and Mr. Lysiak appeared at the September 8, 2011 omnibus hearing. At  
12 that time Respondent relayed to Mr. Lysiak the prosecutor's offer, which Mr. Lysiak rejected.

13           32. Up to that point, Respondent had not shown Mr. Lysiak any discovery so Mr. Lysiak  
14 did not know what evidence the State had against him.

15           33. The omnibus hearing was continued to October 13, 2011.

16           34. Between September 8, 2011 and October 13, 2011, Mr. Lysiak tried repeatedly to  
17 reach Respondent to discuss his case, with no success.

18           35. Mr. Lysiak travelled from Colorado to Yakima for the October 13, 2011 hearing, but  
19 Respondent did appear.

20           36. On or about On October 17, 2011, Mr. Lysiak wrote Respondent to obtain  
21 information about the plea offer so he could review it with a second attorney. He also asked for  
22 a refund of his legal fees and the of \$750 in travel expenses he incurred for the omnibus hearing  
23 for which Respondent failed to appear.  
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1 37. Approximately ten days later, Respondent replied that he would process the request  
2 for a refund as soon as possible.

3 38. Mr. Lysiak borrowed money to hire new counsel.

4 39. To date, Respondent has not refunded any money to Mr. Lysiak.

5 **COUNT 1**

6 40. By failing to diligently pursue a civil resolution of Mr. Lysiak's dispute with Picatti  
7 and/or by failing to represent Mr. Lysiak diligently in the criminal matter after charges were  
8 filed, Respondent violated RPC 1.3.

9 **COUNT 2**

10 41. By failing to keep Mr. Lysiak reasonably apprised of information pertinent to his  
11 legal matter, by failing to respond promptly to Mr. Lysiak's requests for information, and/or by  
12 failing to tell Mr. Lysiak that he was leaving the office for medical reasons and/or that there  
13 were medical limitations on his ability to represent Mr. Lysiak diligently, Respondent violated  
14 RPC 1.4(a) and/or 1.4(b).

15 **COUNT 3**

16 42. By failing to withdraw from Mr. Lysiak's matter when he was unable to represent  
17 him for medical reasons, Respondent violated RPC 1.16(a)(2).

18 **COUNT 4**

19 43. By accepting legal fees from Mr. Lysiak to represent him with respect to his criminal  
20 matter but failing to complete the representation, and/or by failing to refund any fees when the  
21 representation was terminated, Respondent violated RPC 1.5(a) and/or RPC 1.16(d).

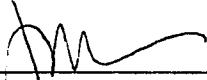
22  
23 **THEREFORE**, Disciplinary Counsel requests that a hearing be held under the Rules for  
24 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,

1 restitution, and assessment of the costs and expenses of these proceedings.

2 Dated this 10<sup>th</sup> day of December, 2012.

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Joanne S. Abelson, Bar No. 24877  
Senior Disciplinary Counsel

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