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

In re

**RUSSELL JAMES JENSEN JR,
Lawyer (WSBA No. 40475)**

Public No. 15#00098

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

The undersigned Hearing Officer held the hearing on July 11, 2016 under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Russell James Jensen Jr. did not appear at the hearing. Disciplinary Counsel Erica Temple appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association. Sabrina Layman, Therese Jensen and James Brown testified. ODC submitted the declarations of Daniel Olson and Stanford Hill under ELC 10.13(b)(2).

I. FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Respondent Russell James Jensen Jr. with the following counts of misconduct:

Count I - By failing to comply with court orders regarding the sale of the Mukilteo home and/or obstructing the sale, Respondent violated RPC 8.4(d) and/or RPC 8.4(j).

043

1 Count II - By repeatedly filing frivolous and/or vexatious motions and appeals relating to
2 the sale of the Mukilteo home, Respondent violated RPC 3.1 and/or RPC 8.4(d).

3 Count III By requesting the \$50,000 pay-off from the first purchasers, Respondent
4 violated RPC 8.4(c) and/or RPC 8.4(d).

5 Count IV- By making false statements to the court about not obstructing the sale of the
6 Mukilteo home, Respondent violated RPC 3.3(a)(1) and/or RPC 8.4(c).

7 Count V- By making false statements to the court about the sale of the Savage property,
8 Respondent violated RPC 3.3(a)(1) and/or RPC 8.4(c).

9 Count VI- By contacting Ms. Jensen and/or Mr. Brown directly about the subject of
10 litigation, even though he knew they were represented by counsel, Respondent violated
11 RPC 4.2.

12 II. FINDINGS OF FACT

13 1. Respondent was admitted to the practice of law in the State of Washington on October
14 27, 2008.

15 2. Respondent was aware of the hearing date and willfully failed to attend his disciplinary
16 hearing.

17 Prior Discipline

18 3. In 1985 Respondent was admitted to practice in Minnesota.

19 4. In 1991 the Minnesota Supreme Court issued a reprimand against Respondent for his
20 conduct during the litigation of a dissolution case, finding that Respondent had engaged in
21 misconduct by mishandling money held in trust, disobeying a court order to return funds, violating
22 procedural rules of appeal, disobeying Court of Appeals orders, making ex parte communications
23 with Court of Appeals judges, and incompetently representing a client. In re Disciplinary Action
24 Against Jensen, 468 N.W.2d 541 (1991). EX A-102.

1 5. In 1995, Respondent received an admonition for abusive behavior toward a
2 complainant in response to the complainant's filing of an ethics complaint. Appeal of Admonition
3 Regarding A.M.E., 533 N.W.2d 849 (1995). EX A-103.

4 6. In 1996 the Minnesota Supreme Court suspended Respondent indefinitely for his
5 conduct involving assertions of frivolous claims, making false statements to a tribunal, disobeying
6 obligations under the rules of the tribunal, conduct involving misrepresentations, and conduct
7 prejudicial to the administration of justice. In re Disciplinary Action Against Jensen, 542 N.W.2d
8 627 (1996). EX A-105.

9 7. Respondent was reinstated in Minnesota in 1999. EX A-106.

10 Litigation in Washington State

11 8. On August 15, 2013, Therese Jensen filed for dissolution from Respondent in
12 Snohomish County Superior Court No. 13-3-02117-1 (the Superior Court). EX A-204.

13 9. Respondent and Ms. Jensen (the Jensens) had previously lived together in a home
14 they owned in Mukilteo, Washington (the Mukilteo home).

15 10. Ms. Jensen was diagnosed with multiple sclerosis. At the time she filed for
16 dissolution, she was severely disabled and totally dependent on Respondent for care. She moved
17 from the home she shared with Respondent (the Mukilteo home) to Omaha, Nebraska to be closer
18 to her family, including her brother, James Brown.

19 11. The Jensens owed debts to Mr. Brown that were addressed in the dissolution
20 proceeding.

21 12. There were multiple business entities to award, real estate in three different states, and
22 debts to family and third party lenders.

23 13. Lawyer Sabrina Layman represented Ms. Jensen in the dissolution proceedings.

1 14. Ms. Layman has handled many dissolution cases in Snohomish County over her 20
2 year career and is familiar with the standards of practice there.

3 15. Lawyers Stanford Hill and Daniel Olson represent Ms. Jensen and her brother, Mr.
4 Brown, in Minnesota, where Respondent currently resides.

5 Sale of the Family Home

6 16. On December 24, 2013, the Superior Court entered an order granting Ms. Jensen
7 control and authority to list the Mukilteo home for sale. EX A-206.

8 17. Respondent did not appear at this hearing, but he did continue to live in the Mukilteo
9 home.

10 18. Respondent was aware of this order and agreed that Ms. Jensen could sell the home,
11 and that he would not “get in the way.” EX A-207.

12 19. In 2014, Respondent took multiple actions to obstruct the sale of the Mukilteo home,
13 as described below.

14 20. In January 2014, Respondent refused a request by a Windemere Real Estate agent
15 to remove the “For Sale by Owner” sign that Respondent had placed in front of the Mukilteo
16 home.

17 21. Approximately a week later, when workers came to install the real estate broker’s
18 sign, Respondent became irate and tore the post out of the ground. EX A-209.

19 22. Respondent also left a post-it note on the front door of the Mukilteo home, stating,
20 “Buyer Beware Title is unlikely to be cleared for A sale- call 651-633-5050.” EX A-208.

21 23. This was Respondent’s phone number.

22 24. Respondent sent emails to Ms. Jensen and the listing agent, Leanne Finlay, telling
23 them they could not sell the home. EX A-210.

1 25. On January 24, 2014, Ms. Jensen filed a motion in the Superior Court to remove
2 Respondent from the Mukilteo home and sought terms against him for obstructing the sale
3 process. EX A-212.

4 26. On or about January 25, 2014, Ms. Jensen received a written offer to purchase the
5 Mukilteo home (the first purchaser's offer). EX A-213.

6 27. On February 10, 2014, the Superior Court entered an order finding that Respondent
7 had been "obstructing the listing and sale of the Mukilteo residence." At that court hearing,
8 Respondent agreed to stop his efforts to obstruct the sale. EX A-220.

9 28. The next day, Respondent filed a Motion for Revision. In a pleading he signed,
10 Respondent wrote that other than informing the parties that he was unwilling to sell the home for
11 its current listing, he had "made no effort of any kind to obstruct the petitioner's efforts" to list or
12 show the Mukilteo home. EX A-222.

13 29. This was a false statement. Respondent knew this was a false statement, as
14 evidenced by his actions described above.

15 30. As of February 12, 2014, Respondent's "for sale by owner" sign was still in the front
16 yard of the Mukilteo home. EX A-226.

17 31. On February 14, 2014, Respondent telephoned Phil Chumley, the agent for the first
18 purchasers of the Mukilteo home.

19 32. Respondent told Mr. Chumley that he was certain the sale of the Mukilteo home
20 would not go through. He stated that if the buyers wanted the sale to go through, he would be
21 willing to sign off on the sale if the buyer agreed to pay him \$50,000 outside the sale and escrow
22 process. He told Mr. Chumley not to tell anyone else about his offer. EX A-233.

23 33. Mr. Chumley declined Respondent's request.
24

1 34. On February 20, 2014, the court denied Respondent's Motion for Revision. EX A-
2 224.

3 35. Respondent's conduct in opposition to the sale of the Mukilteo home escalated and
4 he also began making threats to the real estate agents working with Ms. Jensen in Minnesota EX
5 A-227.

6 36. In a pleading filed in the Superior Court on March 6, 2014, Respondent wrote that
7 he had "made it abundantly clear that he [had] no intention of signing any sale documents for the
8 home..." EX A-243.

9 37. On March 7, 2014, the Superior Court entered an Order re: Sale of Mukilteo
10 Residence. The court approved the sale of the Mukilteo home. EX A-235.

11 38. The Superior Court order directed Respondent to "execute any and all necessary
12 documents to effectuate the closing of the sale of the Mukilteo Residence" or, in the alternative,
13 if Respondent failed or refused to sign, the court appointed Ms. Jensen to execute any documents
14 necessary to effectuate the sale.

15 39. Respondent refused to cooperate and allow the Mukilteo home to be sold.

16 40. On March 18, 2014, the Superior Court denied Respondent's motion to revise and
17 ordered him to vacate the Mukilteo home on March 19, 2014. EX A-242.

18 41. Instead, on March 19, 2014, Respondent filed an emergency request with the Court
19 of Appeals to stay the trial court's order. EX A-244.

20 42. The Court of Appeals required Respondent to post a \$10,000 superseadeas bond.
21 EX A-248.

22 43. Respondent posted the bond at the Superior Court.

23 44. The parties filed multiple briefs and attended two emergency hearings, in additional
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1 to oral argument, at the Court Appeals. TR 52-53.

2 45. On April 17, 2014, the Court of Appeals entered a ruling terminating review. The
3 court found that Respondent had consented to the sale of the Mukilteo home, that there was no
4 basis for discretionary review, and awarded Ms. Jensen attorney fees. EX A-253.

5 46. Because of Respondent's litigation threats, the first purchasers backed out of the
6 sale. TR 54. Ms. Jensen was devastated. The stress of the litigation adversely impacted her
7 health. TR 55-56.

8 47. Shortly thereafter, another buyer made an offer on the home.

9 48. On May 14, 2014, before the scheduled closing on the Mukilteo home sale,
10 Respondent signed a CR2A Agreement awarding the Mukilteo home to Ms. Jensen and agreeing
11 to transfer real property to her without further litigation, delay, appeal or clouding of title. EX A-
12 254.

13 49. Respondent agreed to stop the litigation and cooperate. TR 60. Respondent
14 breached this agreement and continued with the litigation and obstructive conduct.

15 50. Respondent transferred his interest in the Mukilteo home to Ms. Jensen by quit claim
16 deed, filed on June 5, 2014. EX A-255.

17 51. But the title insurance company closing the sale discovered that the initial title had
18 been placed under Respondent's nickname, "Jamie Jensen," rather than "Russell James Jensen,
19 Jr."

20 52. Respondent refused the title insurance company's request that he approve the closing
21 documents, and threatened to sue the title company. TR 67.

22 53. On June 30, 2014, after a motion by Ms. Layman, EX A-256, the Superior Court
23 entered an order directing Respondent to "execute the closing documents... by 5:00 p.m. on June
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1 30, 2014” and providing that \$500 per day would be assessed if he failed to sign the documents.

2 EX A-257.

3 54. Respondent did not comply with the Superior Court’s order.

4 55. Ms. Layman, using the Superior Court’s orders, and an indemnification agreement
5 signed by Ms. Jensen, was able to convince the title company to allow the sale to proceed. The
6 sale of the home closed on July 3, 2014. EX A-258.

7 56. On July 9, 2014, the Superior Court entered an order with findings that Respondent
8 “failed to cooperate in closing the sale of the Mukilteo Property,” and his actions “created further
9 litigation and delay.” The court sanctioned Respondent \$4,500. EX A-259.

10 57. In August 2014, after the sale had closed, Respondent wrote letters to both the buyers
11 of the Mukilteo home and the mortgage company, claiming that the sale paperwork was void and
12 that he might still own the residence. EX A-260 and A-261.

13 58. On September 23, 2014, the Superior Court entered a decree of dissolution. EX A-
14 268.

15 59. On October 17, 2014 Respondent filed an appeal with the Court of Appeals,
16 requesting that the court overturn all Superior Court orders that led to the sale of the Mukilteo
17 home, including the final decree. EX A-273.

18 60. Respondent’s appeal was frivolous and vexatious.

19 61. On December 1, 2014, the Superior Court entered a judgment of \$91,290.55 against
20 Respondent. This represented attorneys’ fees and outstanding debts owed to Ms. Jensen. EX A-
21 276.

22 62. Respondent has not paid this judgement.

23 63. On May 18, 2015, Ms. Layman filed a motion to prevent Respondent’s further
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1 vexatious litigation. EX A-289. She did this to stop the harassment by Respondent towards her
2 and her staff, and Ms. Jensen and her family. This was an unusual action that she had never taken
3 before.

4 64. On July 10, 2015, the Superior Court entered an order finding that Respondent had
5 initiated "vexatious litigation" against Ms. Jensen. Respondent was required to post a cash bond
6 of \$10,000 before filing any future pleadings. EX A-293.

7 65. This was effective in stopping Respondent's litigation in Washington, but he
8 continued his vexatious and frivolous litigation in Minnesota.

9 66. On September 9, 2015, Respondent sent Ms. Layman and ODC a letter detailing all
10 of the future litigation he intended to pursue in the Superior Court, Minnesota courts, and the
11 Washington State Supreme Court. EX A-297.

12 67. On September 21, 2015, the Court of Appeals issued an unpublished decision
13 holding that Respondent's arguments were without merit, and that the Superior Court did not err
14 by ordering the sale of the Mukilteo home. The Court of Appeals found that Respondent's appeal
15 was frivolous and granted Ms. Jensen's request for attorney's fees. EX A-298.

16 68. In response, Respondent wrote a haranguing letter to the Court of Appeals, EX A-
17 300, asking "Did any of you even read my appeal? Who is preparing your crap? Sabrina
18 Layman?"

19 69. As part of the CR2A agreement, Ms. Jensen received the \$10,000 bond that
20 Respondent posted when he filed his first appeal to the Court of Appeals.

21 70. Other than these funds, and some alimony enforced by the Minnesota court,
22 Respondent has never paid any money to Ms. Jensen.

23 71. Throughout the litigation, Respondent filed three motions for revision of the
24

1 Superior Court Orders, and two appeals to the Court of Appeals, that required briefing and oral
2 argument. These actions were highly unusual, even for contentious dissolution cases, and well
3 beyond the practice norms in Snohomish County. TR 103, 127.

4 False Statement to the Court

5 72. Prior to the dissolution, the Jensens owned the stock of Apollo Land Company
6 (Apollo), valued at approximately \$150,000.

7 73. Apollo's sole asset was a parcel of property located in Savage, Minnesota (the
8 Savage property).

9 74. On May 9, 2014 the Savage property was sold to the State of Minnesota to enforce
10 the payment of delinquent taxes. EX A-403.

11 75. Respondent had changed the mailing addresses so that notices of the delinquent
12 taxes were sent to him and not Ms. Jensen. TR 77-78.

13 76. As noted above, on May 14, 2014, the Jensens signed a CR2A agreement, which in
14 part awarded the Apollo stock to the Respondent. EX A-254.

15 77. On August 8, 2014, Respondent's lawyer, Gail Nunn, sent Ms. Layman a letter
16 claiming that Ms. Jensen had failed to pay taxes on the property, which she valued at \$130,000,
17 and that Respondent should be compensated for this loss by other means. EX A-402.

18 78. On August 20, 2014, the M.J. Scott Company registered with the Minnesota
19 Secretary of State. Respondent was the registered agent of the M.J. Scott Company. EX A-404.

20 79. On September 8, 2014, Respondent, through the M.J. Scott Company, repurchased
21 the Savage property from Minnesota for less than \$500. EX A-405.

22 80. On September 9, 2014, after Respondent's refusal to cooperate in executing
23 necessary documents, including his refusal to sign the final decree of dissolution, Ms. Layman
24

1 filed a motion in Superior Court to enforce the CR2A agreement. EX A-262.

2 81. In response, on September 19, 2014, Respondent filed a declaration stating that, in
3 regards to the Savage property:

4 The property was forfeited to the State of Minnesota for nonpayment of property
5 taxes at about the time of the signing of the CR2A agreement. It was not
6 discovered for several weeks. The stock is valueless. Respondent needs to be
7 compensated for the loss of that asset. [Ms. Jensen] took control of the property...
8 but failed to maintain the property or to pay the property taxes. Due to this
9 negligence the property was lost.

10 EX A-264.

11 82. Respondent signed this declaration.

12 83. Respondent failed to disclose the fact that he had purchased the Savage property
13 under another name.

14 84. By asserting that he had lost the value of the Apollo stock, and that Ms. Jensen had
15 taken control of the Savage property, Respondent knowingly made a false statement to the court.
16 Respondent knew this was a false statement, as evidenced by his actions described above.

17 85. Respondent attended the court hearing on Ms. Layman's motion on September 23,
18 2014 via telephone. He did not correct his false statements. After Ms. Layman alerted the court
19 to Respondent's false statement, the court declined to compensate him for the loss he claimed.
20 TR 84.

21 86. Respondent's false statement caused potential injury to Ms. Jensen, especially if the
22 court had invalidated the CR2A agreement, as requested by Respondent, and the parties had to
23 start over and go to trial. TR 84-85.

24 Communication with Represented Parties

87. Respondent and Ms. Jensen owned property jointly with Mr. Brown, and owed debts
to him. These assets and debts were addressed in the dissolution proceedings.

1 88. Lawyers Stanford Hill and Daniel Olson represented Ms. Jensen and Mr. Brown in
2 Minnesota, where some of the marital property was located. The parties engaged in litigation
3 related to the Minnesota properties.

4 89. Respondent repeatedly wrote letters and emails directly to Ms. Jensen and Mr.
5 Brown, including those described below, about the dissolution and the property in Minnesota.

6 90. At the time he sent the correspondence, Respondent knew Ms. Jensen and Mr.
7 Brown were represented by counsel, as evidenced by the fact that he would usually copy their
8 lawyers in the emails and letters.

9 91. Examples of Respondent's direct correspondence with Ms. Jensen and Mr. Brown
10 about the litigation between them are found in EX A-502, A-503, A-504, A-505, A-506, A-509,
11 A-511, A-512, A-514, A-515, A-516, A-517, and A-518.

12 92. Respondent used the communications to harass both the parties and their lawyers.
13 For example, he called Mr. Olson a "shill" and referred to Ms. Layman as "dirtball scum." EX
14 A-508.

15 93. Respondent made threats to Ms. Jensen and Mr. Brown in his correspondence to
16 them; for example, that Mr. Brown would go to jail, TR 152, and he that if he were disbarred, Ms.
17 Jensen's alimony would be lowered, TR 144.

18 94. In response to Respondent's communications, Ms. Layman repeatedly requested
19 that Respondent cease contacting Ms. Jensen and her family directly. EX A-507, A-513.

20 95. In response to Respondent's communications, Mr. Olson and Mr. Hill also requested
21 that Respondent cease contacting Mr. Brown and Ms. Jensen directly. EX A-704 and EX A-
22 704.

23 96. Mr. Brown asked Respondent to stop communicating with him directly. EX A-510.
24

1 97. Neither Ms. Layman, Mr. Olson, nor Mr. Hill ever gave Respondent permission to
2 communicate with their clients directly.

3 Ongoing Vexatious Litigation

4 98. Respondent has continued to engage in litigation in Minnesota related to the marital
5 property. On April 28, 2015, the State of Minnesota District Court entered an order relating to
6 Respondent's actions during litigation in Minnesota. The court found that Respondent made
7 misrepresentations of fact in pleadings he filed with the court, that he acted in a "vexatious and
8 oppressive manner," and granted Ms. Jensen and Mr. Brown's motion for sanctions against
9 Respondent. EX A-601.

10 99. On June 2, 2015, the Minnesota court awarded sanctions of \$20,747.50 against
11 Respondent. EX A-602.

12 100. On June 16, 2016, the State of Minnesota District Court entered an order directing
13 Respondent not to have direct contact with Ms. Jensen or Mr. Brown. EX A-603.

14 101. On June 21, 2016, the State of Minnesota District Court entered an order finding
15 that Respondent had brought repeated motions wherein he misrepresented facts in his pleadings
16 and brought motions which had little or no basis in law. EX A-604.

17 Findings of Mental State and Injury

18 102. Respondent acted intentionally in all of the actions described above.

19 103. Respondent used his law degree to generate frivolous litigation, to cost Ms. Jensen
20 and her family money, and to harass them.

21 104. There were numerous examples presented of Respondent's intent to harass.
22 Respondent had his utility bill sent to Ms. Layman's address. EX A-271. Respondent was so
23 aggressive towards Ms. Layman at a court appearance in October 2014 that the court staff became
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1 concerned for her safety and escorted her out the back door. The court assigned a marshal to
2 attend every hearing. TR 104. Respondent threatened to sue Ms. Layman personally. TR 124.
3 Her family was worried about her safety. TR 126. Respondent sent a letter to Ms. Jensen's
4 parents, aged 99 and 96, requesting that they intervene in the litigation on his behalf. EX A-702.
5 This caused Ms. Jensen's mother to become very worried.

6 105. Respondent caused actual serious injury to Ms. Jensen, who is disabled by Multiple
7 Sclerosis and confined to a wheelchair. Stress from the litigation adversely impacted her health.
8 She has borrowed money from her siblings to pay her legal fees. Mr. Brown has used his
9 retirement money to assist his sister.

10 106. Mr. Jensen's frivolous litigation cost Ms. Jensen approximately \$100,000 more in
11 legal fees, money that could have been used for her care.

12 107. Overall, Ms. Jensen's family has spent approximately \$400,000 in legal fees related
13 to responding to Respondent's frivolous and vexatious litigation, and attempting to enforce court
14 orders in Washington and Minnesota.

15 108. The courts were injured by expending scarce resources to address Respondent's
16 frivolous arguments.

17 109. Respondent caused injury to the profession and Ms. Jensen when he made false
18 statements to the court.

19 Aggravating and Mitigating Factors

20 110. The following aggravating factors apply:

21 111. Prior disciplinary offenses. See above.

22 112. Dishonest or selfish motive.

23 113. Multiple offenses.

1 114. Refusal to acknowledge wrongful nature of conduct. Respondent has never shown
2 remorse for his actions, and he continues to make threats. Respondent acts with callous disregard,
3 as if this matter were a “joke.” TR 157.

4 115. Vulnerability of victim. Ms. Jensen is physically disabled. For her to travel to
5 court appearances would be an unusual hardship. She relies on her family for economic
6 assistance.

7 116. Substantial experience in the practice of law. Respondent was admitted to practice
8 in Minnesota in 1985.

9 117. Bad faith obstruction of the disciplinary proceeding by intentionally failing to
10 comply with rules or orders of the disciplinary agency, because Respondent willfully failed to
11 attend his disciplinary hearing.

12 118. There are no mitigating factors.

13 III. CONCLUSIONS OF LAW

14 The Hearing Officer finds that ODC proved the following by a clear preponderance of the
15 evidence:

16 COUNT 1

17 119. By failing to comply with court orders regarding the sale of the Mukilteo home
18 and obstructing the sale, Respondent violated RPC 8.4(d) and RPC 8.4(j). Here, the Respondent
19 repeatedly took action to obstruct and circumvent the Superior Court’s orders to allow Ms. Jensen
20 to sell the Mukilteo home. Specifically, Respondent violated the Superior Court’s February 10,
21 2014 order to fully cooperate with the sale, and the June 30, 2014 order that Respondent execute
22 the closing documents.

23 COUNT 2

24 120. By repeatedly filing frivolous and/or vexatious motions and appeals relating to the

1 sale of the Mukilteo home, Respondent violated RPC 3.1 and RPC 8.4(d). The courts have
2 repeatedly and unequivocally rejected his arguments. Respondent's actions are not good faith
3 efforts seeking the extension, modification, or reversal of existing law or the establishment of
4 new law. Rather, they are and have been relentless attempts to harass, cause unnecessary delay,
5 and needlessly increase in the cost of legal proceedings for his ex-wife and her family.
6 Respondent's arguments and multiple filings were vexatious and frivolous.

7 COUNT 3

8 121. By requesting the \$50,000 pay-off from the first purchasers, Respondent violated
9 RPC 8.4(c) and RPC 8.4(d). Respondent acted dishonestly and deceitfully by threatening to
10 obstruct the sale of the Mukilteo home unless he was secretly paid off.

11 COUNT 4

12 122. By making false statements to the court about not obstructing the sale of the
13 Mukilteo home, Respondent violated RPC 3.3(a)(1) and RPC 8.4(c). Respondent falsely
14 represented to the Superior Court, both orally and in writing, that he was not standing in the way
15 of the sale of the Mukilteo home, while simultaneously taking actions to thwart the sale.

16 COUNT 5

17 123. By making false statements to the court about the sale of the Savage property,
18 Respondent violated RPC 3.3(a)(1) and RPC 8.4(c). Respondent's intentional and deceptive
19 actions in Minnesota, by forming a new corporation and purchasing the forfeited property, were
20 an attempted fraud upon both Ms. Jensen and the court.

21 COUNT 6

22 124. By contacting Ms. Jensen and Mr. Brown directly about the subject of litigation,
23 even though he knew they were represented by counsel, Respondent violated RPC 4.2.
24

1 125. A lawyer acting pro se is prohibited from contacting a party represented by
2 counsel in the matter, In re Disciplinary Proceeding Against Haley, 156 Wn.2d 324, 327, 126
3 P.3d 1262 (2006). Here, Ms. Jensen and Mr. Brown's lawyer repeatedly reminded Respondent
4 of his obligation not to directly contact them, but he chose to directly harass them anyway.

5 Sanction Analysis

6 126. A presumptive sanction must be determined for each ethical violation. In re
7 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
8 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
9 Feb. 1992 Supp.) are presumptively applicable in this case:

10 127. Because Respondent was suspended in 1996 for similar misconduct, ABA
11 Standard 8.0, involving prior discipline orders, applies:

12 8.1 Disbarment is generally appropriate when a lawyer:

13 (a) intentionally or knowingly violates the terms of a prior disciplinary order
14 and such violation causes injury or potential injury to a client, the public, the legal
15 system, or the profession; or

16 (b) has been suspended for the same or similar misconduct, and intentionally
17 or knowingly engages in further similar acts of misconduct that cause injury or
18 potential injury to a client, the public, the legal system, or the profession.

19 128. Respondent acted intentionally. There was actual serious injury to Ms. Jensen and
20 her family. There was injury to Ms. Layman, the courts, and the profession.

21 129. The presumptive sanction is disbarment.

22 130. ABA Standard 6.2 also applies to cases involving abuse of the legal process,
23 including violations of RPC 8.4(j), and RPC 3.1. (Counts 1 and 2). The presumptive sanction is
24 disbarment.

 131. ABA Standard 6.1 also applies to cases involving misrepresentations to the court,
including violations of RPC 3.3, RPC 8.4(c), and RPC 8.4(d). (Counts 1-5). The presumptive

1 sanction is disbarment.

2 132. ABA Standard 6.3 also applies to cases involving improper communications with
3 individuals in the legal system, violation of RPC 4.2. (Count 6). The presumptive sanction is
4 suspension.

5 133. When multiple ethical violations are found, the “ultimate sanction imposed should
6 at least be consistent with the sanction for the most serious instance of misconduct among a
7 number of violations.” In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

8 134. Based on the Findings of Fact and Conclusions of Law and application of the ABA
9 Standards, the presumptive sanction is disbarment.

10 135. The following aggravating factors set forth in Section 9.22 of the ABA Standards
11 are applicable in this case:

- 12 (a) prior disciplinary offenses [see above];
- 13 (b) dishonest or selfish motive;
- 14 (c) a pattern of misconduct;
- 15 (d) multiple offenses;
- 16 (e) bad faith obstruction of the disciplinary proceeding by intentionally failing
to comply with rules or orders of the disciplinary agency;
- 17 (g) refusal to acknowledge wrongful nature of conduct;
- 18 (h) vulnerability of victim.
- 19 (i) substantial experience in the practice of law [Respondent was admitted to
practice in Minnesota in 1985].

20 136. No mitigating factors set forth in Section 9.32 of the ABA Standards are applicable
21 to this case.

22 **IV. RECOMMENDATIONS**

23 137. Based on the ABA Standards and the applicable aggravating and mitigating
24 factors, the Hearing Officer recommends that Respondent Russell James Jensen Jr. be
DISBARRED.

138. As a condition of reinstatement from any suspension or disbarment, Respondent

1 shall pay any and all judgements owed by him to Therese Jensen, James Brown, and/or the
2 Therese Brown Jensen Trust.

5 DATED this 16th day of September, 2016

6
7 Randolph O. Petgrave
8 Randolph O. Petgrave, WSBA #26046
9 Hearing Officer

12 CERTIFICATE OF SERVICE

13 I certify that I caused a copy of the FOF, COC & HO'S Recommendation
14 Pickell Jensen delivered to the Office of Disciplinary Counsel and to be mailed
15 117 Downside - Eden Hills, MN 55122 Respondent/Respondent's Counsel
16 by Certified/first class mail,
17 postage prepaid on the 16th day of September, 2016

16 [Signature]
17 Clerk/Counsel to the Disciplinary Board