

FILED

Jun 14, 2024

Disciplinary
Board

Docket # 020

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

LEE HOWARD ROUSSO,

Lawyer (Bar No. 33340).

Proceeding No. 24#00004

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

The undersigned Hearing Officer held a default hearing on the pleadings under Rule 10.6(b)(3) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct ("ELCs"). The Hearing Officer's findings of fact, conclusions of law, and recommendation are set forth herein.

FORMAL COMPLAINT

1. On January 30, 2024, the Washington State Bar Association, Office of Disciplinary Counsel ("ODC") charged Respondent Lee Howard Rouso ("Respondent"), Bar No. 33340, by Formal Complaint with acts of misconduct under the Washington Supreme Court's Rules of Professional Conduct ("RPCs"). Bar File No. 1. A copy of the Formal Complaint is attached to this decision.

FINDINGS OF FACTS

2. Respondent was admitted to practice law in Washington in 2003.

1 3. The Formal Complaint alleged that, on June 13, 2023, the King County
2 Prosecuting Attorney charged Respondent by a third amended information with three counts, as
3 set forth below:

- 4 a. Count I: Assault in the First Degree, in violation of RCW 9A.36.011(1)(a);
- 5 b. Count II: Felony Stalking, in violation of RCW 9A.46.110(1) and (5)(b); and
- 6 c. Count III: Felony Stalking, in violation of RCW 9A.46.110(1) and (5)(b).

7 4. The third amended information also alleged the following sentencing
8 enhancements, *see* Declaration of Kathy Jo Blake (“Blake Decl.”), Exhibit 1:

- 9 a. that Respondent committed the offenses charged in Counts I and II while
10 armed with a deadly weapon, to wit: a knife, in violation of RCW 9.94.825
11 and 9.94A.533(4); and
- 12 b. that Respondent committed the offenses charged in Counts I and II against a
13 public official or officer of the court in retaliation of the public official’s
14 performance of his or her duty to the criminal justice system.

15 5. The Formal Complaint further alleged that, on June 29, 2023, a jury made the
16 following findings:

- 17 a. Respondent was guilty of Assault in the Second Degree, a lesser included
18 offense of that charged in Count I;
- 19 b. Respondent was guilty of Felony Stalking, as charged in Counts II and III;
- 20 c. as to Counts I and II, Respondent was armed with a deadly weapon other
21 than a firearm at the time of the commission of the crime; and
- 22 d. Respondent committed the offenses charged in Counts I and II “against an
23 officer of the court in retaliation of the officer’s performance of his or her
24 duty to the criminal justice system.”

1 6. As set forth in the third amended information, a necessary element of Felony
2 Stalking is to act with intent. In convicting Respondent of the offenses charged Counts II and
3 III, the jury found that Respondent acted intentionally.

4 7. Additionally, Respondent acted intentionally in committing the offense charged in
5 Count I.

6 8. In advance of sentencing, the following individuals submitted impact statements:

- 7 a. Neil M. Fox, the victim of Counts I and II, *see* Blake Decl., Exhibit 3;
- 8 b. Eve Soffer, the spouse of Neil Fox, *see* Blake Decl., Exhibit 4;
- 9 c. Lena Fox, the adult child of Neil Fox, *see* Blake Decl., Exhibit 5; and
- 10 d. Lennel Nussbaum, the victim of Count III, *see* Blake Decl., Exhibit 6.

11 9. The impact statements Neil Fox, Eve Soffer, Lena Fox, and Lennel Nussbaum are
12 credible, and Respondent's criminal conduct, of which he was convicted, injured each of these
13 individuals.

14 10. The Formal Complaint further alleged that, on December 1, 2023, Respondent
15 was sentenced to serve a total of 202 months in prison.

16 11. Respondent was sentenced to 108 months on Count I, 70 months on Count II, and
17 17 months on Count III. The court ordered the sentences for Counts I and II to run consecutive
18 to each other but concurrent with Count III. Counts I and II each also carried a 12-month
19 deadly weapon enhancement that the court ordered run consecutive to each other and with the
20 base sentences imposed on Counts I–III, for a total of 202 months of confinement. *See* Blake
21 Decl., Exhibit 2.

22 12. The base sentences for Counts I and II were exceptional sentences above the
23 standard range imposed pursuant to RCW 9.94A.535(3). The court imposed the exceptional
24 sentences because the jury found Respondent committed those offenses against an officer of the

1 court in retaliation of the officer's performance of his or her duty to the criminal justice system.
2 Blake Decl., Exhibit 2.

3 13. The Formal Complaint charged Respondent with three counts, as set forth below:

4 a. Count 1: By committing the crime of Assault in the Second Degree,
5 Respondent violated RPC 8.4(b) and RPC 8.4(i);

6 b. Count 2: By committing the crime of Felony Stalking as charged in Count II
7 of the Third Amended Information, Respondent violated RPC 8.4(b) and
8 RPC 8.4(i); and

9 c. Count 3: By committing the crime of Felony Stalking as charged in Count
10 III of the Third Amended Information, Respondent violated RPC 8.4(b) and
11 RPC 8.4(i).

12 14. Respondent, after being served with a notice to answer as provided in ELC 10.4,
13 failed to file an answer to the Formal Complaint.

14 15. On April 19, 2024, the Hearing Officer entered an Order of Default.

15 16. Pursuant to ELC 10.6(a)(4), the allegations in the Formal Complaint are deemed
16 admitted and established for the purpose of imposing discipline.

17 17. Respondent's conduct also caused harm to the public and to the legal system.

18 18. Respondent's conduct seriously adversely reflects on the Respondent's fitness to
19 practice law.

20 CONCLUSIONS OF LAW

21 19. Pursuant to ELC 10.6(a)(4), the violations in the Formal Complaint are deemed
22 admitted and established for the purpose of imposing discipline.

23 20. By committing the crime of Assault in the Second Degree against a public official
24 or officer of the court in retaliation of the public official's performance of his or her duty to the

1 criminal justice system, a lesser included offense to that charged in Count I of the Third
2 Amended Information, Respondent violated RPC 8.4(b) and RPC 8.4(i), as charged in Count 1
3 of the Formal Complaint.

4 21. By committing the crime of Felony Stalking against a public official or officer of
5 the court in retaliation of the public official's performance of his or her duty to the criminal
6 justice system, as charged in Count II of the Third Amended Information, Respondent violated
7 RPC 8.4(b) and RPC 8.4(i), as charged in Count 2 of the Formal Complaint.

8 22. By committing the crime of Felony Stalking, as charged in Count III of the Third
9 Amended Information, Respondent violated RPC 8.4(b) and RPC 8.4(i), as charged in Count 3
10 of the Formal Complaint.

11 23. The Washington Supreme Court requires the hearing officer to apply the
12 American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 ed. & Feb. 1992
13 Supp.) (ABA *Standards*) in all lawyer discipline cases. *In re Disciplinary Proceeding Against*
14 *Halverson*, 140 Wn.2d 475, 492, 998 P.2d 833 (2000); *Johnson*, 114 Wn.2d at 745. Applying
15 the ABA Standards, the Court engages in a two-step process. The first step is to "determine a
16 presumptive sanction by considering (1) the ethical duty violated, (2) the lawyer's mental state
17 and (3) the extent of the actual or potential harm caused by the misconduct." *In re Disciplinary*
18 *Proceeding Against Dann*, 136 Wn.2d 67, 77, 960 P.2d 416 (1998). The second step is to
19 consider any aggravating or mitigating factors that might alter the presumptive sanction. *Id.*

20 24. The following ABA *Standards* presumptively apply to violations of RPC 8.4(b):
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22
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24

1 **5.1 Failure to Maintain Personal Integrity**

2 5.11 Disbarment is generally appropriate when:

- 3 (a) a lawyer engages in serious criminal conduct, a necessary
4 element of which includes intentional interference with
5 the administration of justice, false swearing,
6 misrepresentation, fraud, extortion, misappropriation, or
7 theft; or the sale, distribution or importation of controlled
8 substances; or the intentional killing of another; or an
9 attempt or conspiracy or solicitation of another to commit
10 any of these offenses; or
11 (b) a lawyer engages in any other intentional conduct
12 involving dishonesty, fraud, deceit, or misrepresentation
13 that seriously adversely reflects on the lawyer's fitness to
14 practice.

15 5.12 Suspension is generally appropriate when a lawyer knowingly
16 engages in criminal conduct which does not contain the elements
17 listed in Standard 5.11 and that seriously adversely reflects on the
18 lawyer's fitness to practice.

19 5.13 Reprimand is generally appropriate when a lawyer knowingly
20 engages in any other conduct that involves dishonesty, fraud,
21 deceit, or misrepresentation and that adversely reflects on the
22 lawyer's fitness to practice law.

23 5.14 Admonition is generally appropriate when a lawyer engages in
24 any other conduct that reflects adversely on the lawyer's fitness
 to practice law.

25 25. Both Assault in the Second Degree, the lesser included offenses of that charged in
26 Count I of the Third Amended Information, and Felony Stalking, as charged in Counts II and
27 III of the Third Amended Information, are felonies, and thus constitute "serious criminal
28 conduct" within the meaning of *ABA Standard 5.11(a)*.

29 26. With respect to Counts I and II, the Third Amended Information charged, and the
30 jury unanimously found, that Respondent committed such offenses against a public official or
31 officer of the court in retaliation of the public official's performance of his or her duty to the
32 criminal justice system. This is a statutory "aggravating circumstance" to be considered by the
33 jury, as set forth in RCW 9.94A.535(3)(x), for which the court may impose an exceptional
34 sentence above the standard range, pursuant to RCW 9.94A.537.

1 27. The legislative notes for RCW 9.94A.537 state that the “legislature intends to
2 conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v.*
3 *Washington*, 542 U.S. 296 (2004).” Under *Blakely*, its predecessor cases, including *Apprendi v.*
4 *New Jersey*, 530 U.S. 466 (2000), and its progeny, including *Alleyne v. United States*, 570 U.S.
5 99 (2013), where an “aggravating fact produced a higher [sentencing] range, . . . the fact is an
6 element of a distinct and aggravated crime. It must, therefore, be submitted to the jury and
7 found beyond a reasonable doubt.” *See, e.g., State v. Allen*, 192 Wn.2d 526, 538-39 (2018)
8 (citations omitted). Accordingly, the “aggravating circumstance” set forth in RCW
9 9.94A.535(3)(x) was a “necessary element,” within the meaning of ABA *Standard* 5.11(a), of
10 each of the aggravated crimes of which Respondent was convicted in Counts I and II.

11 28. Additionally, “an attack on an official for performing his duties not only threatens
12 the victim but also jeopardizes the functioning of the criminal justice system itself” *State*
13 *v. Chance*, 105 Wn. App. 291, 297-298 (2001). Accordingly, where an offense includes such an
14 “aggravating circumstance,” a necessary element of the offense “includes intentional
15 interference with the administration of justice,” within the meaning of ABA *Standard* 5.11(a).

16 29. Therefore, the presumptive sanction for the RPC 8.4(b) violations charged in
17 Counts 1 and 2 is disbarment under ABA *Standard* 5.11(a).

18 30. Because Count 3 of the Formal Information arises out of Count III of the Third
19 Amended Information, which did not include the “aggravating circumstance” set forth in RCW
20 9.94A.535(3)(x) and does not otherwise meet the criteria set forth in ABA *Standard* 5.11, the
21 presumptive sanction for the RPC 8.4(b) violation charged in Count 3 is suspension under ABA
22 *Standard* 5.12.

23 31. The following aggravating factors set forth in Section 9.22 of the ABA *Standards*
24 apply in this case:

- a. a pattern of misconduct;
- b. multiple offenses; and
- c. substantial experience in the practice of law.

32. It is an additional aggravating factor that Respondent failed to file an answer to the Formal Complaint as required by ELC 10.5(a).

33. The following mitigating factors set forth in Section 9.32 of the ABA Standards apply to this case:

- a. absence of a prior disciplinary record.

34. The four aggravating factors greatly outweigh the one mitigating factor, and justify an upward departure from the presumptive sanction of suspension for the violation of RPC 8.4(b) as charged in Count 3, resulting in a recommended sanction of disbarment.

35. Additionally, even if the presumptive sanction for the RPC 8.4(b) violations charged in Counts 1 and 2 was suspension under ABA *Standard* 5.12, the four aggravating factors greatly outweigh the one mitigating factor, and would justify an upward departure from the presumptive sanction of suspension for those violations, resulting in a recommended sanction of disbarment.

36. No ABA *Standard* applies to violations of RPC 8.4(i) (acts of moral turpitude).

37. The Washington Supreme Court has addressed the issue of sanction for acts of moral turpitude and found that the appropriate sanction for a lawyer convicted of second degree assault is disbarment. *In re Disciplinary Proceeding Against McGrath*, 98 Wn.2d 337, 342-43, 655 P.2d 232 (1982). In that matter, the Court articulated the following factors to be considered:

- a. seriousness and circumstances of the offense;
- b. avoidance of repetition;

- c. deterrent effect upon others;
- d. maintenance of respect for the honor and dignity of the legal profession; and
- e. assurance that those who seek legal services will be insulated from unprofessional conduct.

38. The Court concluded its analysis by stating: “[W]e find it repugnant to the basic standards of our legal profession to allow one who is serving a 10-year probation sentence for a felony conviction, for an act involving moral turpitude, to practice law and to represent clients in the courts of this state.” *McGrath*, 98 Wn.2d at 344-345

39. Respondent was convicted of three class B felonies, including Assault in the Second Degree—the offense of conviction in *McGrath*. Each is a serious offense. Moreover, Respondent chose his victims because of their roles in the criminal justice system. Respondent was given an “exceptional sentence” of 202 months in prison, significantly longer than the sentence given to the respondent in *McGrath*, in part because of his retaliation against public officers of the criminal justice system. Accordingly, the appropriate sanction for the RPC 8.4(i) violations in Counts 1–3 is disbarment.

40. Under *In re Disciplinary Proceeding Against Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993), the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” Here, disbarment is the appropriate sanction for at least one of the violations with which Respondent is charged.

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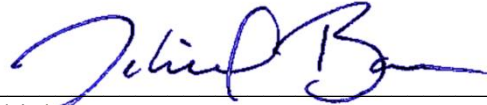
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1 **RECOMMENDATION**

2 41. Based on the case law, the ABA *Standards*, and the applicable aggravating and
3 mitigating factors discussed above, the Hearing Officer recommends that Respondent Lee
4 Howard Rousso be disbarred.

5 DATED this 14th day of June, 2024.

6 

7 _____
8 Jehiel Baer
Hearing Officer

, on the 14th day of June, 2024.

Clerk to the Disciplinary Board

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Jan 30, 2024

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DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

LEE HOWARD ROUSSO,

Lawyer (Bar No. 33340).

Proceeding No. 24#00004

FORMAL COMPLAINT

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

ADMISSION TO PRACTICE

1. Respondent Lee Howard Roussso was admitted to the practice of law in the State of Washington on January 29, 2003.

FACTS REGARDING COUNTS 1, 2, and 3

2. On June 13, 2023, the King County Prosecutor filed a third amended information charging Respondent with Count I: Assault in the First Degree (RCW 9A.36.011(1)(a), Count II: Felony Stalking (RCW 9A.46.110(1), (5)(b), and Count III: Felony Stalking (RCW

1 9A.46.110(1), (5)(b).

2 3. On June 29, 2023, as to Count I: a jury found the Respondent guilty of the lesser
3 included crime of Assault 2.

4 4. The jury also found the Respondent guilty of felony stalking as charged in Counts
5 II and III.

6 5. The jury also found, as to Counts I and II, the Respondent was armed with a deadly
7 weapon other than a firearm at the time of the commission of the crime and that the Respondent
8 committed the crimes “against an officer of the court in retaliation of the officer’s performance
9 of his or her duty to the criminal justice system.”

10 6. On December 1, 2023, the Respondent was sentenced to serve a total of 202
11 months in prison.

12 7. Assault in the second degree (RCW 9A.36.021) is a felony.

13 8. Felony Stalking (RCW 9A.46.110(1), (5)(b) is a felony.

14 **COUNT 1**

15 9. By committing the crime of Assault in the Second Degree, Respondent violated
16 RPC 8.4(b) and/or RPC 8.4(i).

17 **COUNT 2**

18 10. By committing the crime of Felony Stalking as Charged in Count II of the Third
19 Amended Information, Respondent violated RPC 8.4(b) and/or RPC 8.4(i).

20 **COUNT 3**

21 11. By committing the crime of Felony Stalking as Charged in Count III of the Third
22 Amended Information, Respondent violated RPC 8.4(b) and/or RPC 8.4(i).

THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

K Blake