

**FILED**

Oct 9, 2023

**Disciplinary  
Board**

**Docket # 130**

**DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION**

**In re**

**PAUL ARNOLD WALLSTROM,**

**Lawyer (Bar No. 8605).**

**Proceeding No. 20#00058**

**AMENDED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDED SANCTION**

This disciplinary proceeding was heard by Hearing Officer H. E. Stiles, II on August 16, 17, 18, and 19, 2022, under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC) in the offices of the Washington State Bar Association (the Association) in Seattle. Paul Arnold Wallstrom appeared personally, and was represented by Kurt Bulmer, at the hearing; Disciplinary Counsel Francesca D'Angelo appeared for the Office of Disciplinary Counsel (ODC).

**PROCEDURAL HISTORY**

On November 18, 2022, the Hearing Officer entered Findings of Fact, Conclusions of Law, and Recommended Sanction recommending that Respondent be disbarred. Bar File (BF) 87. Neither party filed a motion to modify, amend, or correct the decision under ELC 10.16(c). On December 9, 2022, Respondent filed a notice of appeal. On June 14, 2023, following the appeal, the Disciplinary Board entered an order remanding this matter "to the Hearing Officer for

1 revision, to determine and state a presumptive sanction analysis for each ethical violation found.”  
2 BF 104. On August 7, 2023, following remand, the Hearing Officer issued Appendix A to the  
3 November 18, 2022 decision and specified that the “Decision of the Hearing Officer” for purposes  
4 of ELC 10.16 consisted of the November 18, 2022 decision and Appendix A. BF 113. On August  
5 21 and 22, 2023, Respondent filed a two-part motion to modify, amend, or correct the decision  
6 under ELC 10.16(c). BF 115; BF 116. On August 31, 2023, ODC, filed a response. BF 117. On  
7 September 7, 2023, Respondent filed a reply. BF 126. On September 21, 2023, after considering  
8 the motion, response, and reply, the Hearing Officer issued a letter detailing the decisions on the  
9 motion and the various issues raised by the parties. BF 119. Consistent with the decisions set  
10 forth in that letter, the Hearing Officer issues these Amended Findings of Fact, Conclusions of  
11 Law, and Recommended Sanction.

#### 12 FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

13 The Formal Complaint filed by the Office of Disciplinary Counsel charged Paul Arnold  
14 Wallstrom with the following counts of misconduct:

15 **Count 1.** By using and/or converting client and/or third person funds, Respondent  
16 violated RPC 1.15A(b) and/or RPC 8.4(b) and/or RPC 8.4(c) and/or RPC 8.4(i).

17 **Count 2.** By failing to maintain client and/or third person funds in a trust account,  
18 Respondent violated RPC 1.15A(c).

19 **Count 3.** By disbursing more funds than clients had on deposit and/or by using one  
20 client’s funds on behalf of another, Respondent violated RPC 1.15A(h)(8).

21 **Count. 4.** By failing to promptly pay and/or deliver funds that clients and/or third persons  
22 were entitled to receive, Respondent violate RPC 1.15A(f).

**Count 5.** By failing to maintain a complete, accurate, and/or current check register and/or client ledgers, Respondent violated RPC 1.15A(h)(2) and/or RPC 1.15B(a)(1) and or RPC 1.15B(a)(2).

**Count 6.** By failing to reconcile a trust account check register to the bank statements and/or by failing to reconcile a trust account check register to the sum of the client ledgers, Respondent violated RPC 1.15A(h)(6) and/or RPC 1.15B(a)(8).

**Count 7.** By making false entries in Respondent's QuickBooks records before submitting them to ODC and/or by submitting false records to ODC during a grievance investigation, Respondent violated RPC 8.4(l) and/or ELC 1.5 and/or ELC 5.3(g) and/or RPC 8.1(a) and/or RPC 8.4(c).

**Count 8.** ODC dismissed this count at the commencement of the hearing.

## FINDINGS OF FACT

The Hearing Officer considered the pleadings in the record, the testimony of the witnesses, the exhibits that were admitted into evidence, and the written and oral arguments of ODC and Respondent. Based on the foregoing, the Hearing Officer makes the following Findings of Fact:

1. Respondent is 69 years old. Respondent grew up in the Seattle area, graduating from the University of Washington with an undergraduate degree in 1975, and from Willamette University with a law degree in 1978.

2. Respondent was admitted to practice in Washington in October 1978, and in Oregon in 1979. Respondent's Oregon license is inactive.

3. Respondent is married to Charlotte, a second marriage for each. They have two children, a son born in 1986, and a daughter born in 1989.

4. After admission to the Washington State Bar, Respondent worked as an associate at

1 Ryan, Swanson, a Seattle law firm, for about three and one-half years, primarily involved in  
2 business and contract practice, with some litigation. Respondent developed clients while there.

3 5. Respondent left Ryan, Swanson in 1984 or 1985 to practice in association with a group  
4 of other attorneys, involved primarily in a business practice initially. Although those attorneys  
5 held themselves out as the Mosler, Schermer, Wallstrom firm ("Mosler firm"), they did not share  
6 income, with each attorney responsible for managing the attorney's individual bookkeeping and  
7 trust account records, and for paying the attorney's share of common expenses.

8 6. Over time Respondent started doing more plaintiff personal injury and employment  
9 work, representing individuals in their claims against insurance companies and large corporations,  
10 a practice Respondent enjoyed. Respondent's business practice at the firm was good, but  
11 Respondent's personal injury practice was not as successful as Respondent had hoped it would  
12 be.

13 7. Respondent left the Mosler firm in 2009, moving to an office in Ballard to share space  
14 with another attorney, and engaged in solo practice. Respondent remains in solo practice at the  
15 Ballard office, with personal injury cases constituting about 80% of Respondent's work.

16 8. Respondent had no involvement with the firm's accounting practices while working  
17 as an associate at Ryan, Swanson.

18 9. Respondent was responsible for managing Respondent's own law practice financial  
19 affairs and records, including business banking and trust accounts, while associated with the  
20 Mosler firm. Respondent used the QuickBooks program for accounting, and the Time Slips  
21 program for billing. Although Respondent took some trial practice courses while working in that  
22 firm, Respondent did not take any bookkeeping accounting courses.

23 10. Respondent was the only person who had signature authority for, or who had signed,  
24

Respondent's trust account checks.

11. When Respondent left the Mosler firm in 2009 to transition to a solo practice, Respondent transferred and continued to use the QuickBooks records, and business and trust bank accounts, that Respondent used at the Mosler firm.

12. Respondent has taken no trust account management classes. Respondent has understood that Respondent needed to reconcile Respondent's trust account check register to Respondent's trust account bank statements. Respondent did not understand, apparently until after this disciplinary proceeding was commenced, that Respondent also was required to reconcile the trust account check register to the client trust ledgers as required by RPC 1.15A(h)(6), and maintain records accordingly as required by RPC 1.15B(a)(8). Respondent testified at the hearing that, "...I am still not clear on exactly what that second step is, except that I believe it means to match – it is to match the ledger entries with the bank statement."

**A. Trust Account Overdrafts and Trust Account Records**

13. Between February 28, 2017 and April 2, 2018, Respondent over-drafted Respondent's trust account three times. EX A-104; EX A-108; EX A-109.

14. On February 28, 2017, Respondent presented a \$347.12 trust account check made out to Respondent against insufficient funds. The bank honored the check, causing an overdraft of <\$285.46>. EX A-104. ODC opened a grievance to investigate. Transcript [TR] at 74.

15. Respondent initially explained that the overdraft occurred because Respondent wrote the \$347.12 check on the trust account instead of the business account as intended. EX A-105. Days later, Respondent revised this explanation and said that it was a \$584.20 check that Respondent erroneously wrote on the trust account. EX A-107.

16. At the time of the first overdraft, Respondent's trust account should have contained

1 \$6,367.01 in client funds. Instead, the account was negative <\$285.46>. EX A-213.

2 17. On September 15, 2017, Respondent presented a \$2,215.86 trust account check against  
3 insufficient funds, triggering a second overdraft of <\$2,024.53>. The check was dishonored. EX  
4 A-108.

5 18. On April 2, 2018, Respondent presented a trust account check for \$1,000 against  
6 insufficient funds. The bank honored the check, resulting in a third overdraft of <\$169.86>. EX  
7 A-109.

8 19. At the time of the third overdraft, Respondent's trust account should have contained  
9 \$1,039.99 in client funds. Instead, the account was negative <\$169.86>. EX A-212.

10 20. ODC audited Respondent's trust account for the period of January 1, 2014 through  
11 January 31, 2019. TR 39.

12 21. Between January 1, 2014 and January 31, 2019, Respondent did not keep complete  
13 or accurate check register and client ledgers. Respondent did not properly reconcile the check  
14 register to the bank statements or reconcile Respondent's check register to the client ledgers. TR  
15 59, 61, 64-66.

16 22. Although Respondent appeared to be reconciling the trust account check register to  
17 the bank statements, Respondent stopped regularly reconciling the check register to the bank  
18 statements in March 2017, around the time of the first overdraft. EX A-206 at p. 4.

19 23. Respondent's check registers included inaccurate reconciliation adjustments that  
20 added to the check register balance, showing that Respondent was not properly reconciling the  
21 check register to the trust account bank balance, since these adjustments did not represent actual  
22 transactions. EX A-206, p.4; EX A-209; TR 61-65.

23 24. Respondent was not reconciling the trust account check register to the check ledgers.

1 Reconciling the check register to the check ledgers would have been impossible for Respondent  
2 without first reconciling the check register to the bank statements. TR 65-66, 434.

3 25. After Respondent overdrew the trust account for the first time in February 2017,  
4 Respondent altered the check register by changing the check numbers and amounts for three  
5 checks. These alterations made the check register balance appear greater than it was. EX A-106  
6 at p. 3; EX A-205.

7 26. Respondent randomly adjusted larger checks to lower them so that the account would  
8 appear to balance. TR 439.

9 27. Respondent submitted these altered records to ODC on March 10, 2017. EX A-106.

10 28. Beginning around the time of the first overdraft, Respondent started recording  
11 inaccurate deposits in the check register, including a \$7,813.25 deposit, a \$5,417.85 deposit, a  
12 \$120 deposit, a \$10,862 deposit, and a \$21,688.83 deposit that never occurred. EX A-206 at p.  
13 4; EX A-217 at pp. 12-13; EX A-209.

14 29. Respondent entered wrong dates and wrong payees on client ledgers. For example,  
15 on client BF's ledger, Respondent listed a February 14, 2018 payment of \$5,417.85 to BF that  
16 was actually paid to Respondent. Compare EX A-325 and EX A-101 at p. 287.

17 30. As another example, Respondent's ledger for client GL contained entries with the  
18 wrong dates, transfers that did not occur, and a wrong payee. EX A-325; EX A-202 at p. 6.

19 31. On multiple ledgers, Respondent listed transfers from the trust account to  
20 Respondent's own accounts as fees, even though Respondent was not owed any fees. EX A-325;  
21 EX A-422; EX A-601.

22 32. Respondent from time-to-time would withdraw funds which he characterized as  
23 earned fees from his trust account, and transfer the funds to his business operating or personal  
24

1 account, although on numerous occasions Respondent did not have accurate and complete trust  
2 account records, client ledgers, and other records, to establish that he was entitled to withdraw  
3 such funds from his trust account. Respondent's counsel referred to this practice as "harvesting"  
4 fees from his trust account.

5 **B. SPECIFIC CLIENTS**

6 33. Over a three-year period, Respondent transferred \$34,780 from Respondent's trust  
7 account to Respondent's personal and business accounts without entitlement. These transfers  
8 occurred in relation to four client matters. EX A-210.

9 Client MM

10 34. Respondent represented MM in two personal injury matters. EX A-402; EX A-403.

11 35. Respondent's fee agreement with MM for each matter provided for a 33-1/3  
12 contingency fee for all sums recovered. EX A-402; EX A-403.

13 36. MM was insured by MetLife Auto and Home under a policy that included Personal  
14 Injury Protection (PIP) coverage. Metropolitan had a subrogation claim for reimbursement for  
15 the PIP benefits it had paid. Bar File (BF) 3<sup>1</sup> and 12 ¶¶ 80-81.

16 37. MM's first case settled on June 3, 2017, for \$50,000. EX A-406.

17 38. Respondent prepared a settlement statement for MM's case that stated that  
18 Respondent would receive \$20,233.08 in fees and costs, MM would receive \$25,682.30, and  
19 \$4,084.62, would be held back to pay a reimbursement claim to MetLife. EX A-405.

20 39. On June 8, 2017, Respondent paid Respondent \$20,233.08 and MM \$25,682.30.  
21 Respondent did not pay any money to MetLife on this date. EX A-401; EX A-408; EX A-409.

22 40. On July 20, 2017, Respondent transferred the \$4,084.62 that Respondent had  
23

24 <sup>1</sup> BF 3 references the Formal Complaint. BF 12 references the Answer.



1 withheld to pay MetLife to Respondent's operating account ending in 3214. EX A-410 at p. 3;  
2 EX A-411 at p. 3.

3 41. Respondent noted this transfer in MM's client ledger as "fees." EX A-401.

4 42. Respondent was not entitled to these funds, having been paid Respondent's full fees  
5 and costs on June 8, 2017. EX A-405; EX A-408.

6 43. Respondent's testimony during the hearing that Respondent transferred the  
7 \$4,084.62 by mistake is not credible.

8 44. Respondent transferred these funds to Respondent's operating account. EX A-410  
9 at p.3. At the time of the transfer, Respondent knew that Respondent was not entitled to the funds.

10 45. Respondent knowingly and intentionally used those funds for his own purposes, i.e.,  
11 payment for personal health insurance and mortgage obligations. EX A-410 at p. 3-4; EX A-  
12 411A.

13 46. MM's second case settled for \$100,000 on August 21, 2017. EX A-415.

14 47. Respondent restored the \$4,084.64 to the trust account by taking \$4,084.41 less than  
15 Respondent was owed as a fee from MM's second settlement. EX A-221; EX A-401; EX A-413  
16 at p. 5; EX A-416.

17 48. Respondent then distributed \$2,042 each to MetLife and MM. EX A-401; EX A-  
18 414; EX A-417.

19 49. On September 29, 2017, Respondent transferred \$999.73 from the trust account to  
20 Respondent's operating account ending in 3214. Respondent noted this transfer on MM's client  
21 ledger. After the transfer, MM's client ledger was negative <\$1,000>. EX A-401.

22 50. Respondent used other clients' funds to fund the \$999.73 transfer. TR 181.  
23  
24

Client GL

51. Respondent represented GL in a personal injury matter. EX A-301.

52. Respondent's fee agreement with GL provided for a contingency fee of 33-1/3%.  
EX A-301.

53. GL received medical and time loss benefits from King County Metro (King County),  
which is a self-insured employer. BF 3 and 12 at ¶ 32.

54. King County notified Respondent of its subrogation reimbursement claim in any  
settlement or judgment that GL obtained as a result of the accident. BF 3 and 12 at ¶ 33.

55. GL's case settled for \$50,000 on February 11, 2014. EX A-302.

56. Respondent's settlement statement stated that Respondent would receive a total of  
\$17,789.40 in fees and costs, that Respondent would pay GL \$16,105.30, and that Respondent  
would pay King County \$16,105.30. EX A-303 at p. 2.

57. On February 17, 2014, Respondent paid Respondent \$17,608.41. EX A-304.

58. On February 28, 2014, Respondent transferred \$180 from GL's funds in the trust  
account to Respondent's operating account. EX A-202 at p. 6.

59. As of February 29, 2014, Respondent's fees and costs were substantially paid.  
Respondent was due, at most, an additional 99 cents. EX A-303.

60. On March 13, 2014, Respondent transferred an additional \$7,100 from GL's  
settlement funds in the trust account to Respondent's personal checking account ending in 8870.  
EX A-202 at p. 6; EX A-305 at p. 3; EX A-306 at p. 3.

61. Respondent noted this transfer on the ledger for GL. EX A-325.

62. Respondent was not entitled to the \$7,100, having been paid Respondent's full fees  
and costs on February 28, 2014. All or part of these funds were designated for GL and/or King

County. EX A-303.

63. Respondent knew that Respondent was not entitled to the funds at the time that Respondent took them.

64. The following day, Respondent transferred \$1,600 back to the trust account and noted this transfer on GL's ledger. EX A-305 at p. 3; EX A-325.

65. Respondent transferred the remaining \$5,500 from Respondent's personal account to an account ending in 2288, which did not belong to GL or King County. EX A-305 at p. 3.

66. Respondent knowingly and intentionally used the funds for Respondent's own purposes. EX A-305 at p. 3.

67. Respondent needed the money at the time of the transfer; without the funds from GL's settlement, Respondent would not have had enough money to fund the \$5,500 transfer to account 2288. EX A-305 at p. 3.

68. On April 2, 2014, Respondent paid GL \$8,988.68 of the settlement funds. This was \$7,116.62 less than GL was entitled to under the settlement statement. EX A-307; EX A-303.

69. In July 2014, Respondent took an additional \$3,000 (in three, \$1,000 withdrawals) from GL's settlement funds in the trust account. EX A-202 at p. 6; EX A-325; EX A-308 at pp. 3-4.

70. Respondent kept track of the \$3,000 in withdrawals by listing them on GL's client ledger as "fees." EX A-325.

71. Respondent was not entitled to any part of the \$3,000, having already been paid Respondent's full fees and costs. EX A-303.

72. Respondent knew that Respondent was not entitled to the funds at the time that Respondent took them.

1        73. Respondent knowingly and intentionally used the \$3,000 for Respondent's own  
2 purposes, i.e., to cover personal bills and pay overdrafts and service fees for Respondent's  
3 operating account ending in 3214. EX A-308 at pp. 4-7.

4        74. On July 30, 2014, Respondent received a wire deposit of \$156,335.79 from the sale  
5 of Respondent's real property. EX A-308 at p. 4.

6        75. On July 30, 2014, Respondent transferred \$7,000 back into the trust account and put  
7 \$3,000 of these funds on the GL client ledger. Ex A-308 at p. 4; EX A-325.

8        76. On December 8, 2014, Respondent paid GL \$7,116.62, the balance of the funds that  
9 Respondent owed GL based on the settlement statement that Respondent provided to GL. EX A-  
10 202 at p. 6; EX A-303; EX A-311.

11        77. The same day, Respondent wrote a \$16,105.30 check to King County. EX A-312.

12        78. Because Respondent had taken \$10,100 to which he was not entitled, and paid back  
13 only \$4,600 of these funds, Respondent did not have sufficient funds to make the payment to  
14 King County Metro. As a result, GL's trust account ledger became negative <\$5,499.01>. EX  
15 A-202 at p. 6.

16        79. Respondent used other clients' funds to fund the disbursement to King County. TR  
17 153.

18        80. Throughout Respondent's representation of GL, Respondent, King County and the  
19 Department of Labor and Industries (DLI) used GL's case number, SE93806, in communicating  
20 about GL's case. EX A-308A; EX A-309; EX A-313; EX A-317; EX A-318; EX A-319; EX  
21 A-322; EX A-323.

22        81. On November 25, 2014, before Respondent issued a \$16,105.30 check to King  
23 County Metro, Respondent agreed with King County's attorney, Tylar Edwards, that GL's  
24

1 \$50,000 settlement would be divided in thirds, with Respondent and GL each receiving  
2 \$16,666.67, and King County receiving \$16,666.66. EX A-309.

3 82. Notwithstanding this agreement, on January 8, 2015, Respondent sent the December  
4 8, 2014 check for \$16,105.30 issued to King County. EX A-313. Respondent testified that the  
5 difference between the agreed amount of \$16,667.67 and the paid amount of \$16,105.30 was  
6 reimbursement to him for costs that Respondent had advanced. TR 480.

7 83. Although the check was issued to King County, Respondent sent the check to the  
8 Department of Labor and Industries (DLI) by mistake. DLI negotiated the check, also by mistake.  
9 EX A-310; TR 483-484.

10 84. On February 19, 2015, DLI issued a check to Respondent in the amount of  
11 \$16,105.30. GL's name and case number SE93806 were printed as part of the Respondent's  
12 address on the check. EX A-316.

13 85. Respondent deposited the funds into the trust account on February 25, 2015 and  
14 recorded them on GL's client ledger. EX A-101 at p. 73; EX A-325.

15 86. Between February 27, 2015 and March 12, 2015, Respondent transferred all  
16 \$16,105.30 from the trust account into Respondent's operating account ending in 3214. After  
17 Respondent transferred these funds, Respondent's client ledger for GL was negative <\$5,499.01>.  
18 EX A-202 at p. 6.

19 87. Respondent testified that when he received the check from DLI for \$16,105.30, he  
20 did not know why DLI sent the check to him, or which case was involved. He had other cases  
21 involving DLI from time-to-time, and assumed that DLI must have owed him the money for one  
22 of this other cases. TR 495-7.

23 88. Respondent's testimony that Respondent lacked knowledge about what case the DLI  
24

1 check related to, and that DLI may have owed Respondent the money, is not credible and is  
2 contradicted by the following evidence: Respondent sent a check in the same exact amount to  
3 DLI for GL the prior month (EX A-313); GL's name and case number were printed as part of  
4 Respondent's address on the check (EX A-316); Respondent deposited the funds into the trust  
5 account and recorded them on GL's client ledger (A-101, p.73 and EX A 325); and Respondent  
6 had no records to establish that DLI owed Respondent money for services. Respondent knew  
7 when he transferred the trust funds to his operating account that he was converting funds  
8 belonging to a third party.

9 89. On February 26, 2015, DLI issued an order of notice reflecting Respondent's  
10 settlement agreement with King County. The order stated that GL's \$50,000 settlement would  
11 be divided in thirds, with Respondent and GL each receiving \$16,666.67, and King County  
12 receiving \$16,666.66. The order, like the check DLI had issued just one week prior, had GL's  
13 case number printed on its face. EX A-317.

14 90. Respondent was not entitled to all or any portion of the \$16,105.30 check; neither  
15 the settlement statement that Respondent issued to GL, nor DLI's February 26, 2015 order,  
16 permitted Respondent to take additional funds. EX A-303; EX A-317.

17 91. Respondent knowingly and intentionally used the \$16,105.30 for Respondent's own  
18 purposes. EX A-317A at pp. 3-7.

19 92. Respondent needed the money at the time of the transfers. Respondent's operating  
20 account was overdrawn in March 2015, and an overdraft fee was imposed the day before the last  
21 transfer. By March 19, 2015, Respondent had used all but \$890.94 of the funds taken. EX A-  
22 317A at pp. 3-7.

23 93. On March 13, 2015, a day after Respondent had transferred the last of the \$16,105.30  
24

1 to Respondent's operating account, King County sent a letter demanding payment of \$16,666.66  
2 pursuant to DLI's February 26, 2015 order. EX A-318.

3 94. On March 16, 2015, Respondent sent a letter to King County, stating that  
4 Respondent had already paid King County \$16,105.30, however omitting the fact that DLI had  
5 returned the funds to him, and that he had spent the money for his own purposes. With his letter  
6 Respondent sent a check to King County for \$531.36. That amount was \$30.00 less than the  
7 difference between the agreed settlement of \$16,666.66 and the \$16,105.30 Respondent said he  
8 had paid King County. EX A-319.

9 95. King County initially relied on Respondent's representation that Respondent had  
10 already paid King County. In 2020, Senior Torts Claims Investigator Brad Stuller was prompted  
11 to investigate the matter further after being contacted by ODC. TR 252-254.

12 96. On April 21, 2020, Stuller wrote to Respondent demanding that Respondent pay  
13 King County \$16,135.30—that amount plus the \$531.36 payment in 2015 would equal the agreed  
14 settlement of \$16,666.66. EX A-322.

15 97. On May 29, 2020, Respondent sent King County a letter with a check for  
16 \$16,135.30. Respondent acknowledged receiving the \$16,105.30 check from DLI in 2015 and  
17 attached a copy of the 2015 check. EX A-323.

18 98. As of January 31, 2019, the end of the audit period, Respondent had not paid Gary  
19 Lane the \$531.66 that Gary Lane was due under DLI's February 26, 2015 order. EX A-202 at p.  
20 6; EX A-317; EX A-327.

21 Client SE

22 99. Respondent represented SE in an hourly fee matter. TR at 509.

23 100. On April 22, 2015, Respondent deposited \$2,449.57 in earned fees into the trust  
24

1 account by mistake. Respondent removed the fees on May 8, 2015. As of May 8, 2015, SE had  
2 no funds in trust. EX A-501.

3 101. On April 18, 2015, Respondent transferred \$1,500 from the trust account to  
4 Respondent's personal account ending in 8870, then transferred it to Respondent's operating  
5 account ending in 3214. EX A-505 at p. 3; EX A-506 at p. 3.

6 102. Respondent noted the \$1,500 withdrawal on SE's client ledger. However,  
7 Respondent did not have any funds in trust for SE. EX A-501.

8 103. Respondent used other clients' funds to fund the transfer. TR at 188.

9 104. Respondent knowingly and intentionally used the funds for Respondent's own  
10 purposes. EX A-506 at p. 3.

11 105. Respondent needed the money at the time of the transfer; Respondent used the funds  
12 to partially fund Respondent's mortgage payment. EX A-506 at p. 3.

13 Client SF

14 106. Respondent represented SF in a personal injury matter. BF 3 and 12 at ¶116.

15 107. SF's case settled in June 2014 for \$30,000. EX A-604; EX A- 606.

16 108. According to Respondent's settlement statement, Respondent was entitled to  
17 \$10,000 for fees and \$333.07 in costs. In the settlement statement, Respondent stated that  
18 Respondent would pay State Farm \$5,483.45 and SF \$14,283.48. EX A-605.

19 109. On June 11, 2014, Respondent paid Respondent, SF, and State Farm as set forth in  
20 the settlement statement. After those payments were made, Respondent did not have any funds  
21 in trust for SF. EX A-601.

22 110. On June 20, 2014, Respondent transferred \$2,000 from the trust account to  
23 Respondent's operating account ending in 3214. Respondent put the transfer on SF's client ledger  
24



1 and noted that the transfer was for "fees." EX A-601.

2 111. On June 23, 2014, Respondent transferred another \$2,000 from trust to Respondent's  
3 operating account ending in 3214. Respondent put this transfer on SF's client ledger and noted  
4 that the transfer was for "fees." EX A-601.

5 112. Respondent was not entitled to any additional fees from SF's settlement funds. EX  
6 A-605.

7 113. SF did not have any client funds in trust at the time of the transfers. EX A-601.

8 114. Respondent used other clients' funds to fund the transfers. TR 193.

9 115. Respondent knowingly and intentionally used the funds for Respondent's own  
10 purposes.

11 116. Respondent needed the money at the time that Respondent converted the funds. By  
12 June 30, 2014, Respondent had spent all but \$615.58 of the funds for Respondent's own purposes.  
13 EX A-603 at p. 5.

#### 14 Injury and Potential Injury

15 117. Respondent's conduct in taking funds to which Respondent was not entitled caused  
16 serious injury not only to the rightful owners of the converted funds, who lost the use of their  
17 funds and the ability to take advantage of investment opportunities, but also potential injury to  
18 the legal system to the extent that the public could lose trust and confidence in lawyers' trust  
19 accounts.

#### 20 Aggravating and Mitigating Factors

21 118. Respondent had an alcohol dependency as a young lawyer, quit drinking for about  
22 20 years and then resumed drinking about 2009 or 2010 when Respondent's wife and two children  
23 were experiencing serious health issues.

1 119. Respondent was not able to spend as much time as he should to maintain a  
2 successful law practice because of the time Respondent had to spend at home assisting his family  
3 with their health issues. Respondent described life for the next few years as a mess, living  
4 somewhat in a fog, confused, income dropping, and Respondent's law practice suffering. It was  
5 during this time that much of the misconduct occurred.

6 120. Respondent was not able to answer questions or explain particular trust  
7 transactions during this time due to Respondent's excessive drinking.

8 121. With intensive involvement with Alcoholics Anonymous, Respondent managed to  
9 stop drinking in July 2014, and has remained sober ever since.

10 122. Respondent testified that Respondent's memory has improved since Respondent  
11 quit drinking.

12 123. Respondent coped in part with his problems by becoming very active in his church  
13 for an extended period of time, but this activity had negative as well as positive consequences.  
14 The church activity was good for Respondent's mental condition but took time away from  
15 Respondent's law practice.

16 124. Respondent's problems impacted all aspects of Respondent's life including  
17 Respondent's law practice.

18 125. Respondent's problems did not cause the misconduct, particularly the  
19 misappropriation of trust funds or Respondent's persistent failure to keep accurate financial  
20 records and manage Respondent's trust account in compliance with the applicable rules.

21 126. Even during Respondent's difficult years, Respondent knew that when  
22 Respondent made inappropriate withdrawals from the trust account, Respondent would have to  
23 replace those funds.

127. Respondent knew right from wrong as far as preserving the integrity of trust funds.

## **CONCLUSIONS OF LAW**

### **Violations Analysis**

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

128. COUNT 1: By using and converting client and third person funds, Respondent violated RPC 1.15A(b), RPC 8.4(b), and RPC 8.4(c). Respondent acted knowingly and intentionally. Respondent's conduct involved serious criminal conduct and caused serious injury to the rightful owners of the converted funds and potential injury to the legal system. The presumptive sanction per ABA Standards 4.11 and 5.11(a) is disbarment. After consideration of the Aggravating and Mitigating Factors—ABA Standards 9.2 and 9.3 at Paragraphs 138-151—there is no reason to deviate from the presumptive sanction, so the recommended sanction is disbarment.

129. COUNT 2: By failing to maintain client and third person funds in a trust account, Respondent violated RPC 1.15A(c). Respondent acted knowingly. Respondent's conduct caused injury to clients and third persons whose funds were not protected in a trust account. The presumptive sanction per ABA Standards 4.12 is suspension. After consideration of the Aggravating and Mitigating Factors—ABA Standards 9.2 and 9.3 at Paragraphs 138-151—there is no reason to deviate from the presumptive sanction, so the recommended sanction is suspension. A six-month suspension pursuant to ABA Standard 2.3 is the appropriate length of the suspension. Any suspension should be served at the same time as any other suspension which might be imposed.

130. COUNT 3: By disbursing more funds than clients had on deposit and by using one

client's funds on behalf of another, Respondent violated RPC 1.15A(h)(8). Respondent acted knowingly. Respondent's conduct caused injury to clients whose funds were used to fund payments to others. The presumptive sanction per ABA Standards 4.11 is disbarment. After consideration of the Aggravating and Mitigating Factors—ABA Standards 9.2 and 9.3 at Paragraphs 138-151—there is no reason to deviate from the presumptive sanction, so the recommended sanction is disbarment.

131. COUNT 4: By failing to promptly pay and/or deliver funds that clients and third persons were entitled to receive, Respondent violated RPC 1.15A(f). Respondent knew or should have known Respondent was failing to promptly pay or deliver funds. Respondent's conduct cause injury to clients and third persons who were deprived of funds they were entitled to receive. The presumptive sanction per ABA Standards 4.12 is suspension. After consideration of the Aggravating and Mitigating Factors—ABA Standards 9.2 and 9.3 at Paragraphs 138-151—there is no reason to deviate from the presumptive sanction, so the recommended sanction is suspension. A six-month suspension pursuant to ABA Standard 2.3 is the appropriate length of the suspension. Any suspension should be served at the same as any other suspension which might be imposed.

132. COUNT 5: By failing to maintain

- a) The check register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least the detail required by RPC 1.15B (a)(1)(i) through (v), and
- b) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing individual receipts, disbursements, or transfers, and containing the detail required by RPC

1 1.15B(a)(2)(i) through (v),

2 Respondent violated RPC 1.15A(h)(2), RPC 1.15B(a)(1), and RPC 1.15B(a)(2).  
3 Respondent's conduct caused injury to clients whose funds were not properly accounted for. The  
4 presumptive sanction per ABA Standards 4.13 is reprimand. After consideration of the  
5 Aggravating and Mitigating Factors—ABA Standards 9.2 and 9.3 at Paragraphs 138-151—there  
6 is no reason to deviate from the presumptive sanction so the recommended sanction is reprimand.

7 133. COUNT 6: By failing to reconcile his trust account check register to the bank  
8 statements and by failing to reconcile his trust account check register to his client ledgers,  
9 Respondent violated RPC 1.15A(h)(6) and RPC 1.15B(a)(8). Respondent acted negligently.  
10 Respondent's conduct caused injury to clients because Respondent was unable to identify and  
11 correct any discrepancies affecting client funds. The presumptive sanction per ABA Standards  
12 4.13 is reprimand. After consideration of the Aggravating and Mitigating Factors—ABA  
13 Standards 9.2 and 9.3 at Paragraphs 138-151—there is no reason to deviate from the presumptive  
14 sanction, so the recommended sanction is reprimand.

15 134. COUNT 7: ODC maintained that Respondent knowingly and intentionally made  
16 false entries in his financial records before submitting them to ODC, and submitted false records  
17 to ODC, during a grievance investigation. Based on the inadequacy of Respondent's trust  
18 accounting and other financial records, and confirmed by his own testimony about lack of  
19 understanding during his law practice career of trust account maintenance and record-keeping  
20 requirements, the Hearing Officer finds that the false entries and records he submitted to ODC  
21 were the result of Respondent's negligent and careless record keeping. ODC did not prove by a  
22 clear preponderance of the evidence that Respondent knowingly and intentionally made false  
23 entries in Respondent's QuickBooks records before submitting them to ODC or submitted false  
24

records to ODC during a grievance investigation. Count 7 is dismissed.

#### Sanction Analysis

135. A presumptive sanction per The American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003).

136. When multiple ethical violations are found, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993). In this case, the most serious misconduct carries the presumptive sanction of disbarment.

137. Based on the Findings of Fact and Conclusions of Law and application of the ABA Standards, the appropriate presumptive sanction is disbarment.

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

139. Dishonest or selfish motive, ABA Standard § 9.22(b). Respondent was using the trust account as a source of loans when Respondent needed to cover shortages or anticipated shortages in Respondent's business and personal bank accounts.

140. Pattern of misconduct, ABA Standard § 9.22(c). This proceeding did not involve a single, isolated conversion of trust funds, or a single, isolated circumstance of non-compliance with applicable trust account maintenance and disbursement rules. The misconduct, both conversion and trust account maintenance, was extensive, taking place over a number of years and involving a number of different engagements, clients, and third parties.

141. Multiple offenses, ABA Standard § 9.22(d). The misconduct proven in Counts 1 through 6 involves violation of a number of different Rules of Professional Conduct.

1           142.   Substantial experience in the practice of law, ABA Standard 9.22(i). Respondent  
2 was admitted to practice in 1978.

3           143.   The following mitigating factors set forth in Section 9.32 of the ABA Standards  
4 are applicable in this case:

5           144.   Absence of a prior disciplinary record, ABA Standard 9.32(a). Respondent has no  
6 disciplinary history. However, this is not a significant mitigating factor when theft of trust funds  
7 is involved. Attorneys cannot shield themselves from the consequences of a serious ethical  
8 violation just because the violation happens to be a first offense . In re Schwimmer, 153 Wn.2d  
9 752, 763, 108 P.3d 761 (2005).

10          145.   Personal or emotional problems, ABA Standard 9.32(c). Alcoholism may be an  
11 extenuating circumstance but not an excuse for exploiting clients or third parties by taking their  
12 money. In Re Disciplinary Proceedings Against Rentel, 107 Wn.2d 276, 286, 729 P.2d 615  
13 (1986); In Re Disciplinary Proceedings Against Johnson, 114 Wn.2d 737, 753, 790 P.2d 1228  
14 (1990). Respondent's personal and emotional problems do not constitute an extraordinary  
15 mitigating factor with respect to the presumptive disbarment sanction and should otherwise be  
16 given little weight.

17          146.   Remorse, ABA Standard 9.32(l). Respondent acknowledges the inadequacy of  
18 Respondent's financial record keeping and noncompliance with rules related to maintenance of  
19 Respondent's trust account, and apologized for the mistakes. Respondent expressed guilt and  
20 apologized for making everyone go through this disciplinary proceeding because of Respondent's  
21 actions. This mitigator is applicable but is of little weight and does not constitute an extraordinary  
22 mitigating factor that would justify departure from the presumptive sanction of disbarment.

23          147.   Respondent did not meet the burden of proof to show that the following mitigating  
24

factors are applicable in this case:

148. Timely good faith effort to make restitution or to rectify consequences of misconduct, ABA Standard 9.32(d). Respondent acknowledged a number of circumstances of inappropriate withdrawals of trust funds. Respondent restored some of the misappropriated funds. Respondent's restoration of funds was not timely in several circumstances, and in the case of King County the restoration of funds was not voluntary. Respondent sent a check to King County only after it initiated a request. It is not a defense that Respondent may have intended to restore or repay misappropriated funds at some future time. This mitigator does not apply.

149. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings, ABA Standard 9.32(e). It is the duty of every lawyer to cooperate during an investigation; mitigation for ordinary compliance is not appropriate. This mitigator applies only when a lawyer's cooperation surpasses what is required of all attorneys. There is no evidence that Respondent's cooperation surpassed what is required of all attorneys. This mitigator does not apply.

150. Mental disability or chemical dependency, ABA Standard 9.32(i). Respondent offered no medical testimony to establish that alcoholism affected Respondent's moral judgment, caused Respondent bookkeeping problems, caused Respondent to misappropriate client funds, or caused any of the other misconduct. Further, Washington decisions have declined to find that alcohol dependence is an extraordinary mitigating factor in cases involving theft of client funds, even if an attorney did not recall taking the funds. In Re Disciplinary Proceedings Against Johnson, 114 Wn.2d at 753; In re Disciplinary Proceedings Against Fossedal, 189 Wn.2d 222, 234-235, 399 P.3d 1169 (2017). This mitigator does not apply.

151. Delay in disciplinary proceedings, ABA Standard 9.32(j). The time lapse in ODC's



1 commencement of its investigation, through the filing of the complaint, and continuing until the  
2 hearing was concluded, was due to ODC's need to reconstruct Respondent's trust account and  
3 client ledger records due to inadequacy of Respondent's financial record keeping, and two  
4 continuances requested and received by Respondent just prior to scheduled hearing dates.  
5 Respondent's burden of establishing this mitigating factor is more difficult to meet when  
6 Respondent plays a role in extending the length of the proceedings. Respondent further was late  
7 in filing his answer to the complaint, and his list of witnesses, although those particular delays  
8 did not affect the previously set hearing schedule. There was no prosecutorial delay by ODC and  
9 Respondent was not prejudiced unfairly by the length of the proceeding. This mitigating factor  
10 does not apply.

#### 11 **RECOMMENDED SANCTION**

12 152. Based on the ABA Standards and the applicable aggravating and mitigating  
13 factors, the Hearing Officer recommends that Respondent be disbarred and that Respondent be  
14 ordered to pay restitution to GL in the amount of \$531.66 with interest at 12 per cent per annum  
15 from December 8, 2014.

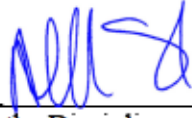
16 Dated this 9th day of October, 2023.

17 

18 Henry Edward Stiles  
19 Hearing Officer  
20  
21  
22  
23  
24

### **CERTIFICATE OF SERVICE**

I certify that I caused a copy of the Amended FOF, COL and Recommended Sanction to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Kurt M. Bulmer, at [kbulmer@comcast.net](mailto:kbulmer@comcast.net), on the 9<sup>th</sup> day of October, 2023.

A handwritten signature in blue ink, appearing to be "NLS", is written above a horizontal line.

---

Clerk to the Disciplinary Board