

FILED

AUG 11 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

**WALTER MARLAND
HACKETT, JR.,**

Lawyer (Bar No. 1055).

Proceeding No. 13#00102

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

The undersigned Hearing Officer held a hearing on July 30, 2014 under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent Walter Marland Hackett, Jr. appeared at the hearing, *pro se*. Disciplinary Counsel Craig Bray appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association).

I. FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Formal Complaint filed by Disciplinary Counsel charged Mr. Hackett with the following counts of misconduct:

Count 1 – By failing to timely pay the costs and expenses ordered in connection with Proceeding No. 05#00003 (the 2005 admonition), Respondent violated RPC 8.4(*l*) (by violating ELC 13.9(i) and/or (j)).

Count 2 – By failing to timely pay the costs and expenses ordered in connection with

1 Proceeding No. 05#00042 (the 2005 reprimand), Respondent violated RPC 8.4(I) (by violating
2 ELC 13.9(i) and/or (j)).

3 Based on the pleadings in the case, the testimony of witnesses and exhibits admitted at
4 the hearing, the Hearing Officer makes the following:

5 II. FINDINGS OF FACT

6 1. Respondent was admitted to the practice of law in the State of Washington on
7 November 22, 1968.

8 2. Respondent has been a solo practitioner for approximately 35 years.

9 A. Findings of Fact Regarding Count 1

10 3. On February 9, 2005, a Review Committee of the Disciplinary Board ordered that
11 Respondent receive an admonition in Proceeding No. 05#00003.

12 4. Respondent did not protest the admonition.

13 5. On May 16, 2005, the Chair of the Disciplinary Board entered an order assessing
14 costs and expenses requiring Respondent to pay the Association \$1,104.39 in costs and
15 expenses related to Proceeding No. 05#00003. Exhibit (EX) A-2.

16 6. Respondent knew he had been ordered to pay costs and expenses related to
17 Proceeding No. 05#00003.

18 7. Respondent contacted ODC on March 11, 2005, and entered into a periodic
19 payment plan that provided he would pay the \$1,104.39 in costs and expenses in two equal
20 payments of \$552.20, with the first payment due on May 17, 2005 and the second payment due
21 on June 17, 2005.

22 8. Respondent made the first payment of \$552.20 on May 17, 2005.

23 9. Respondent did not make the second payment.

1 10. On September 27, 2005, the Washington Supreme Court entered a judgment
2 against Respondent in the principal amount of \$552.20, plus interest in the amount of \$11.04
3 (July 25 through September 25, 2005), and bearing interest at the rate of 12% per annum.

4 11. As of the time of hearing, Respondent had not made any further payment toward
5 the principal or the interest remaining owing in Proceeding No. 05#00003.

6 **B. Findings of Fact Regarding Count 2**

7 12. On August 30, 2005, Respondent entered into a Stipulation to Reprimand in
8 Proceeding 05#00042.

9 13. Respondent agreed as part of the stipulation that he would be required to pay
10 attorney fees and administrative costs of \$500 under ELC 13.9(i) if the stipulation was
11 approved. EX A-5 at ¶ 42.

12 14. The Stipulation also required that Respondent pay \$564 in restitution to his former
13 client.

14 15. On September 8, 2005, a hearing officer entered an order approving the Stipulation
15 to Reprimand. EX A-6.

16 16. Respondent satisfied his \$564 restitution obligation to his former client.

17 17. On October 7, 2005, the Association notified Respondent of his obligation to pay
18 the Association \$500 in attorney fees and administrative costs under ELC 13.9(i), and that
19 payment was due on or before October 11, 2005.

20 18. Respondent did not pay the fees and costs ordered in Proceeding No. 05#00042 by
21 October 11, 2005.

22 19. On January 11, 2006, the Washington Supreme Court entered a judgment against
23 Respondent in the principal judgment amount of \$500.00, plus interest in the amount of \$10.00
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1 (October 11 through December 11, 2005), and bearing interest at the rate of 12% per annum.

2 20. As of the time of hearing, Respondent had not made any payment toward the costs
3 and expenses owing in Proceeding No. 05#00042.

4 **C. Findings of Fact Regarding Both Counts 1 and 2**

5 21. In 2013, ODC noted that some Washington lawyers on active status had been
6 ordered to pay costs and expenses related to disciplinary proceedings, but had not paid.
7 Respondent was one of those lawyers.

8 22. On April 2, 2013, ODC sent Respondent a letter regarding his failure to pay the
9 outstanding costs and expenses related to the 2005 admonition and the 2005 reprimand.

10 23. The letter indicated that unless the matters were resolved with payment, ODC
11 would open a grievance against Respondent.

12 24. In response, on May 2, 2013, Respondent called the ODC and said he needed
13 additional time to pay the outstanding costs and expenses.

14 25. ODC agreed to give Respondent until May 10, 2013.

15 26. Respondent did not pay the outstanding costs and expenses by May 10, 2013.

16 27. ODC opened a grievance against Respondent on July 2, 2013, and requested a
17 response.

18 28. On July 3, 2013, Respondent telephoned ODC and said he intended to pay the
19 outstanding costs and expenses owed in the two disciplinary matters by the end of the week.

20 29. ODC told Respondent that if he did not pay the monetary amounts owing, he
21 should provide a written response to the grievance.

22 30. Respondent did not provide a written response to the grievance nor did he pay the
23 outstanding costs and expenses.

1 31. ODC referred the matter to a Review Committee of the Disciplinary Board with a
2 recommendation that the matter be ordered to hearing.

3 32. Respondent was advised that disciplinary counsel had authority to remove the
4 matter from the Review Committee agenda and dismiss it if he paid.

5 33. Respondent did not pay the outstanding costs and expenses prior to Review
6 Committee ordering the matter to hearing.

7 34. As of the time of hearing, Respondent had not paid the outstanding costs and
8 expenses owing in the two 2005 disciplinary matters.

9 35. Respondent earned limited income from his law practice between 2005 and the
10 present, which hampered his ability to pay the outstanding costs and expenses in full at any one
11 time.

12 36. Respondent was overdue on other bills and had liabilities for unpaid taxes.

13 37. In 2009, Respondent began receiving \$22,800 per year in Social Security income.

14 38. Respondent used funds he received from Social Security to catch up on other
15 overdue bills, but did not allocate any of these funds to payment of the outstanding costs and
16 expenses owed to the Association.

17 39. Respondent never sought to enter into another payment plan with ODC.

18 40. While Respondent's limited income affected his ability to fully pay the monetary
19 amounts owing in the two disciplinary matters in a timely manner, he was nevertheless capable
20 of paying some portion of the amounts owed to the Association during the past nine years.

21 41. The total amount of principal and interest owing as of July 2014 is \$2,184.20.

22 42. Respondent's conduct in failing to pay the costs and expenses ordered in the two
23 2005 disciplinary matters was knowing.

1 43. Respondent's conduct caused injury in the following ways: (a) the Association has
2 not been reimbursed for the costs and expenses expended in pursuing the two 2005 disciplinary
3 matters against Respondent; (b) ODC was required to expend limited resources pursuing
4 payment of the outstanding costs and expenses; (c) ODC was required to expend additional
5 limited resources in bringing this disciplinary proceeding against Respondent; and (d) the
6 lawyer discipline system is undermined when lawyers disregard orders issued in connection
7 with disciplinary proceedings.

8 44. Respondent has two prior disciplinary offenses.

9 45. Respondent has substantial experience in the practice of law (over 45 years).

10 46. Respondent was suspended from the practice of law in Washington effective June
11 19, 2014, for nonpayment of annual membership fees.

12 III. CONCLUSIONS OF LAW

13 A. Violations Analysis

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

16 47. Respondent failed to timely pay costs and expenses ordered in connection with
17 Proceeding No. 05#00003, in violation of RPC 8.4(*l*) (by violating ELC 13.9(i) and (j)).

18 48. Respondent failed to timely pay costs and expenses ordered in connection with
19 Proceeding No. 05#00042, in violation of RPC 8.4(*l*) (by violating ELC 13.9(i) and (j)).

20 B. Sanction Analysis

21 49. A presumptive sanction must be determined for each ethical violation. In re
22 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
23 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
24

1 Feb. 1992 Supp.) are presumptively applicable in this case:

2 50. The presumptive ABA Standards for Counts 1 and 2 are

3 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
4 violating a court order or rule, and causes injury or potential injury to a client
or a party, or causes interference or potential interference with a legal
5 proceeding.

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

8 51. 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
9 number of violations.” In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

10 52. Based on the Findings of Fact and Conclusions of Law and application of ABA
11 Standards 6.22 and 7.2, the presumptive sanction is suspension.

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

- 14 (a) prior disciplinary offenses [Admonition in Proceeding No. 05#00003;
15 Reprimand in Proceeding No. 05#00042];
16 (i) substantial experience in the practice of law [admitted to the practice of
law in Washington in 1968].

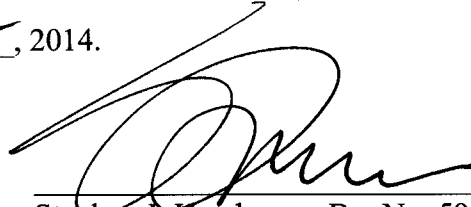
17 54. There are no applicable mitigating factors.

18 **IV. Recommendation**

19 55. Based on the ABA Standards and the applicable aggravating factors, the Hearing
20 Officer recommends that Respondent Walter Marland Hackett, Jr. be suspended for a period of
21 10 days, with reinstatement conditioned on payment of the outstanding costs and expenses
22 owing in the two 2005 disciplinary matters, including interest. As of July 2014 the total amount
23 is \$2,184.20.

1 56. The Hearing Officer recognizes that 10 days is shorter than the generally accepted
2 minimum suspension and makes this recommendation because Respondent's limited financial
3 means affected his ability to pay the costs due to the Association and because the Hearing
4 Officer believes the primary goal here is to obtain compliance with the previous disciplinary
5 orders.

6 Dated this 8th day of August, 2014.



8
9 Stephen J. Henderson, Bar No. 5998
Hearing Officer

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16 **CERTIFICATE OF SERVICE**

17 I certify that I caused a copy of the FOX 106 by HO's Recommendation
18 to be delivered to the Office of Disciplinary Counsel and to be mailed
to Walter Rickett, Respondent/Respondent's Counsel
at 501 4th St. #44 Broomfield, CO 80521 by certified/first class mail,
19 postage prepaid on the 11th day of August, 2014

20 _____
Clerk/Counsel to the Disciplinary Board