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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RICHARD DUANE BURNS,
Lawyer (Bar No. 5561).

Proceeding No. 16#00077

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

The undersigned Hearing Officer held a default hearing on January 25, 2017, under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING DEFAULT PROCEEDINGS**

1. The Formal Complaint (Bar File No. 2) charged Richard Duane Burns with misconduct as set forth therein. A copy of Bar File No. 2 is attached to this decision.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that the violations charged in Bar File No. 2 are admitted and established as follows:

Count 1: By failing to cooperate with [the Washington State Bar Association Office of

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1 Disciplinary Counsel's] ODC's investigation and/or by failing to comply with ODC's
2 investigatory subpoena, Respondent [Richard Burns] violated [Rule of Professional
3 Conduct] (RPC) 8.4(I), ELC 1.5, ELC 5.3, and ELC 5.5(d).

4 FINDINGS OF FACTS

5 1. The declarations filed by ODC independently establish the following findings of
6 fact, conclusions of law, and recommendation.

7 2. Richard Burns (Burns) has been suspended from the practice of law since June 14,
8 2013. On June 14, 2013, Burns was interim suspended by the Supreme Court for failing to
9 comply with a subpoena issued by ODC in connection with a grievance investigation of Burns.

10 3. On February 5, 2014, the Hearing Officer in Washington State Bar Association
11 (WSBA) Formal Proceeding Number 13#00086 entered findings of fact and conclusions of law
12 in a default hearing finding, among other things, that Burns knowingly failed to cooperate with
13 ODC's investigation of two grievances against him.

14 4. The Hearing Officer concluded that suspension was the applicable sanction for
15 noncooperation in both counts under ABA Standard 7.2. The Hearing Officer's
16 recommendation also conditioned Burns' reinstatement on determining whether any funds are
17 owed to clients and third parties and providing a complete accounting and/or reconstruction of
18 his trust account records.

19 5. On June 4, 2014, the Supreme Court entered an order adopting the hearing
20 officer's findings of fact and conclusions of law and recommendation, and suspending Burns for
21 24 months. The Supreme Court's order also provided that "Richard Burns is also placed on
22 probation for a period of one year following reinstatement and should promptly comply with all
23 requests from the WSBA." Burns did not comply with the conditions for reinstatement and
24 never sought to be reinstated from suspension.

1 6. On or about July 10, 2015, ODC opened a grievance after receiving notice from
2 Columbia Bank of an overdraft from Burns' trust account.

3 7. On July 16, 2015, ODC sent a letter requesting Burns to produce certain
4 documents relating to one of his trust accounts. Burns sent a short response to the grievance,
5 but did not produce the bank records requested by ODC.

6 8. In February 2016, ODC subpoenaed records from Columbia Bank for Burns' two
7 trust accounts covering the period from May 31, 2013 through February 29, 2016.

8 9. The bank records for Burns' trust account ending in 3868 reflected that the account
9 contained \$73, 668.84 on June 14, 2013 and \$53,656.84 as of February 29, 2016.

10 10. The bank records for Burns' trust account ending in 6169 reflected that the account
11 contained \$26,726.99 on June 14, 2013 and \$359.33 on February 29, 2016. The bank records
12 for Burn's trust account ending in 6169 reflected substantial activity, including the deposit of
13 \$161,561.90 on March 10, 2015, and a number of disbursements after that date.

14 11. On March 21, 2016, ODC sent a letter to Burns requesting information regarding
15 the activity in his trust accounts during the period that he was suspended. Burns did not respond
16 to the March 21, 2016 letter.

17 12. On April 27, 2016, ODC sent a "10-day letter" to Burns requiring him to respond
18 to ODC's March 21, 2016 letter. Burns did not respond to the April 27, 2016 letter.

19 13. On May 17, 2016, ODC caused Burns to be personally served with a subpoena
20 duces tecum to attend a deposition scheduled for May 31, 2016, and to produce certain records.
21 Burns did not appear at the deposition and did not produce any of the records subpoenaed.

22 14. Due to Burns's non-cooperation, ODC was unable to complete the investigation of
23 the grievance.

1 ODC's investigation of grievances against Burns.

2 21. Burns intentionally engaged in further acts of noncooperation causing harm and
3 potential harm to the lawyer discipline system.

4 22. Disbarment is the presumptive sanction for Burns' misconduct under ABA
5 Standard 8.1(b).

6 23. The following aggravating factors set forth in Section 9.22 of the ABA Standards
7 apply in this case:

8 (a) prior disciplinary offenses [In 2014, Burns was suspended for 24 months for multiple
9 acts of non-cooperation in connection with several of ODC's grievance
10 investigations, failing to comply with a court order to file an accounting, and failing
11 to provide a client with their client file];

12 (c) a pattern of misconduct [Burns failed to cooperate with ODC's investigation of this
13 grievance, and failed to cooperate with ODC's investigation of at least two prior
14 grievances]; and

15 (i) substantial experience in the practice of law [Burns was admitted to practice in
16 1974].

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

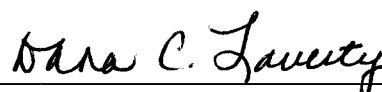
19 25. No mitigating factors identified in ABA Standard 9.32 are applicable.

20 26. The aggravating factors further warrant a sanction of disbarment.

21 RECOMMENDATION

22 27. Based on the ABA Standards and the applicable aggravating and no mitigating
23 factors, the Hearing Officer recommends that Respondent Richard Duane Burns be disbarred.

24 DATED this 30th day of January, 2017.



Dana C. Laverty
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the FOI 100 in HO's Recommendation
to be delivered to the Office of Discipline of the State of Michigan
to Richard Burns at PO Box 620 Piquette, MI 49607 by Certified Mail of the State of Michigan
and the postage prepaid on the 2nd day of Feb, 2017

[Signature]
Clerk, Counsel to the Disciplinary Board