

APR 11 2017

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RICHARD D. BURNS,

Lawyer (WSBA No. 5561)

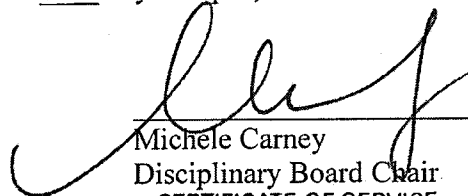
Proceeding No. 16#00077

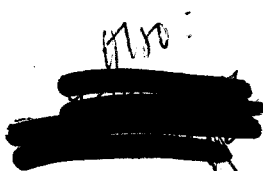
DISCIPLINARY BOARD ORDER
DECLINING *SUA SPONTE* REVIEW AND
ADOPTING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On March 23, 2017, the Clerk distributed the attached decision to the Board.

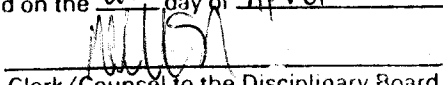
IT IS HEREBY ORDERED THAT the Board declines *sua sponte* review and adopts the Hearing Officer's decision¹.

Dated this 10th day of April, 2017.


Michele Carney
Disciplinary Board Chair
CERTIFICATE OF SERVICE



I certify that I caused a copy of the Order declining sua sponte review to be delivered to the Office of Disciplinary Counsel and to be mailed to Richard Burns Respondent/Respondent's Counsel at PO Box 820 Peninsula WA 98147 by Certified/first class mail, postage prepaid on the 10th day of April, 2017


Clerk/Counsel to the Disciplinary Board

¹ The vote on this matter was 14-0. The following Board members voted: Carney, Silverman, Denton, Louvier, Andeen, Startzel, Byerly, Smith, Graber, Cottrell, Patneau, Myers, Cornelius and Rawlings.

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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.

24

1 **CONCLUSIONS OF LAW**
2 **REGARDING RECOMMENDED SANCTION**

3 15. ODC's declarations proved by a clear preponderance of evidence that Burns
4 violated RPC 8.4(I), ELC 1.5, ELC 5.3, and ELC 5.5(d) by failing to cooperate with ODC's
5 investigation of the grievance opened on Burns and by failing to appear at the deposition
6 scheduled by ODC,

7 16. The following standards of the American Bar Association's Standards for
8 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) apply to Burns'
9 violations in this case:

10 **7.1 Disbarment is generally appropriate when a lawyer knowingly engages in**
11 **conduct that is a violation of a duty owed as a professional with the intent to obtain**
a benefit for the lawyer or another, and causes serious or potentially serious injury
to a client, the public, or the legal system.

12 **8.1 Disbarment is generally appropriate when a lawyer:**

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

15 17. Burns knowingly failed to cooperate with ODC's investigation with intent to
16 benefit himself by preventing ODC from completing its investigation of Burns' apparent
17 misconduct in handling his trust account while he was suspension.

18 18. Burns' noncooperation with ODC's investigation caused actual and potential
19 serious harm to the lawyer discipline system.

20 19. Disbarment is the presumptive sanction for Burns' misconduct under ABA
21 Standard 7.1.

22 20. Burns has been previously suspended for the same or similar misconduct when the
23 he was suspended for two years on June 5, 2014 for, among other things, noncooperation with
24

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).

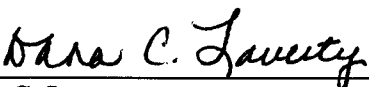
19 25. No mitigating factors identified in ABA Standard 9.32 are applicable.

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 certify that I caused a copy of the FOI Act in HO's Recommendation
to be delivered to the Office of Discipline and Sanctions to be mailed
to Richard Burns at PO Box 620, Parkton, MD 21120
by Certified Mail on the 2nd day of Feb, 2017

[Signature]
Clerk/Counselor to the Disciplinary Board

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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re	Proceeding No. 16#00077
RICHARD DUANE BURNS,	FORMAL COMPLAINT
Lawyer (Bar No. 5561).	

Under Rule 10.3 of the 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 Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent Richard Duane Burns (Respondent) was admitted to the practice of law in the State of Washington on October 25, 1974. As described below, Respondent has been suspended from practice since June 14, 2013.

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1 **FACTS REGARDING COUNT 1 [ODC Grievance]**

2 Prior Suspensions

3 2. On June 14, 2013, the Supreme Court entered an order of interim suspension under
4 ELC 7.2(a)(3) suspending Respondent from the practice of law for failing to cooperate with
5 ODC's investigations of two grievances. Respondent was suspended pending his cooperation
6 with ODC's investigations.

7 3. After the order of interim suspension was entered, Respondent failed to cooperate
8 with ODC's investigations, and Respondent's interim suspension was not been terminated.

9 4. On June 5, 2014, the Supreme Court issued an order under ELC 11.12(g)
10 suspending Respondent from the practice of law for 24 months for, among other things, failing
11 to cooperate with ODC's investigation of the two grievances referenced above. Reinstatement
12 from Respondent's disciplinary suspension was conditioned upon, among other things,
13 providing a complete accounting in two legal matters Respondent handled, reconstruction of his
14 financial records, and proof that Respondent paid funds to those persons who are owed funds.

15 5. Respondent has not fulfilled these conditions, and has not been reinstated from his
16 disciplinary suspension.

17 Facts Relating Current Matter

18 6. On July 3, 2015, Columbia Bank issued a trust account overdraft reflecting that
19 Respondent presented a check for \$2,350 against his trust account ending in 6169, which had an
20 available balance of \$1,342 at the time.

21 7. On July 10, 2015, ODC opened a grievance in the name of ODC against
22 Respondent under ELC 5.3(a).

23 8. On July 16, 2015, ODC sent a letter requesting that Respondent produce certain

1 documents relating to the trust account ending in 6169, including bank statements, deposit slips,
2 cancelled checks, the check register, and client ledgers for the month in which the overdraft
3 occurred and the preceding month.

4 9. Respondent received ODC's July 16, 2015 letter.

5 10. On August 18, 2015, ODC sent Respondent a "10-day letter" under ELC 5.3(h)
6 requiring him to respond to the July 16, 2015 letter.

7 11. Respondent received the August 18, 2015 letter.

8 12. On August 31, 2015, Respondent sent a short response to the grievance, but
9 knowingly failed to provide any of the documents requested in ODC's July 16, 2015 letter.

10 13. On September 29, 2015, ODC sent a letter requesting that Respondent produce the
11 documents requested in ODC's July 16, 2015 letter. This letter was returned marked
12 "undeliverable."

13 14. On February 4, 2016, ODC's September 29, 2015 letter was re-sent to Respondent
14 by email. ODC did not receive a response to the email.

15 15. In February 2016, ODC subpoenaed records from Respondent's bank for two trust
16 accounts covering the period from May 31, 2013 through February 29, 2016.

17 16. As of June 14, 2013, Respondent's trust account ending in 3868 contained
18 \$74,868.84.

19 17. As of February 29, 2016, Respondent's trust account ending in 3868 contained
20 \$53,656.84.

21 18. As of June 14, 2013, Respondent's trust account ending in 6169 contained
22 \$26,726.99.

23 19. As of February 29, 2016, Respondent's trust account ending in 6169 contained

1 | \$359.33.

2 | 20. Respondent's trust account ending in 6169 reflected substantial activity, including
3 | the deposit of \$161,561.90 on March 10, 2015, and a number of disbursements after that date.

4 | 21. During the period from August 2015 through March 2016, Respondent moved
5 | from Pomeroy, Washington to Tacoma.

6 | 22. On March 21, 2016, ODC sent a letter to Respondent's Tacoma address requesting
7 | certain information relating to the activity in his trust accounts that occurred after he was
8 | suspended on June 14, 2013.

9 | 23. Respondent received ODC's March 21, 2016 letter.

10 | 24. Respondent knowingly failed to respond to ODC's March 21, 2016 letter.

11 | 25. On April 27, 2016, ODC sent a "10-day letter" to Respondent requiring him to
12 | respond to ODC's March 21, 2016 letter.

13 | 26. Respondent received ODC's April 27, 2016 10-day letter.

14 | 27. Respondent knowingly failed to respond to ODC's April 26, 2016 10-day letter.

15 | 28. On May 17, 2016, ODC caused Respondent to be personally served with a
16 | subpoena duces tecum to attend a deposition scheduled for May 31, 2016 and to produce certain
17 | records relating to his trust accounts.

18 | 29. With the intent to frustrate and delay ODC's investigation, Respondent knowingly
19 | failed to appear at the deposition scheduled for May 31, 2016.

20 | 30. With the intent to frustrate and delay ODC's investigation of the grievance,
21 | Respondent knowingly failed to produce any of the records subpoenaed by ODC.

22 | 31. Due to Respondent's non-cooperation, ODC has been unable to complete the
23 | investigation of the grievance.

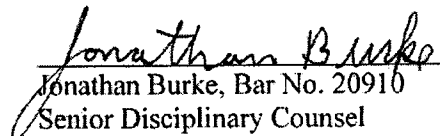
1 32. Respondent's conduct caused actual or potential serious harm to ODC's
2 investigation and to the lawyer discipline system.

3 **COUNT 1**

4 33. By failing to cooperate with ODC's investigation, and/or by failing to comply with
5 ODC's investigatory subpoena, Respondent violated RPC 8.4(I), ELC 1.5, ELC 5.3, and/or ELC
6 5.5(d).

7
8 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for
9 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,
10 restitution, and assessment of the costs and expenses of these proceedings.

11 DATED this 1st day of September, 2016.

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14 Jonathan Burke, Bar No. 20910
15 Senior Disciplinary Counsel
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