

FILED

Dec 04 2018

Disciplinary
Board

Docket # 106

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

JOHN ROLFING MUENSTER,

Lawyer (Bar No. 6237).

Proceeding No. 16#00008

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

The undersigned Hearing Officer held the hearing on April 23 through 26, 2018 under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). The hearing consolidated two grievances against Respondent John Rolfing Muenster (Respondent): the first was opened by ODC upon receipt of information that Respondent's trust account was overdrawn, and the second was filed by his client, Douglas Myser. Respondent appeared, pro se, for the first three days of hearing during which testimony was elicited, but did not appear on the fourth day.¹ Disciplinary Counsel Natalea Skvir and Debra Slater appeared

¹ Closing arguments were scheduled to be heard telephonically on the afternoon of the fourth day. That morning, Respondent emailed his closing argument to the Hearing Officer and Disciplinary Counsel and later confirmed that he was waiving his right to be present for Disciplinary Counsel's closing argument.

1 for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

2 FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

3 The First Amended Formal Complaint filed by Disciplinary Counsel charged Mr.
4 Muenster with the following counts of misconduct:

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

7 Count 2 - By failing to maintain individual client ledgers, Respondent violated RPC
8 1.15A(h)(2) and/or RPC 1.15B(a)(2).

9 Count 3 - By failing to reconcile, on a monthly basis, his check register balance with the
10 balance shown on his trust account bank statement, and his check register balance with the
11 combined total of all client ledgers, Respondent violated RPC 1.15A(h)(6).

12 Count 4 - By failing to maintain copies of reconciliations between his check register and
13 his trust account bank statement, Respondent violated RPC 1.15B(a)(8).

14 Count 5 - By commingling his own funds with client funds in his trust account,
15 Respondent violated RPC 1.15A(h)(1).

16 Count 6 - By failing to give clients reasonable notice of his intent to withdraw fees from
17 his trust account, through a billing statement or other document, before disbursing such funds to
18 himself, Respondent violated RPC 1.4 and/or RPC 1.15A(h)(3).

19 Count 7 - By using and/or converting \$25,000 or more of Mr. Myser's fee payments by
20 November 30, 2014, without entitlement to the funds, Respondent violated RPC 1.5(a) and/or
21 RPC 1.15A(b) and/or RPC 1.15A(c)(1) and/or RPC 1.15A(c)(2).

22 Count 8 - By failing to deposit all funds advanced for costs and expenses into his trust
23 account, Respondent violated RPC 1.15A(c)(1) and (2).

24 Findings of Fact, Conclusions of Law and
Hearing Officer's Recommendations --
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1 Count 9 - By using and/or converting \$21,000 or more of the funds that Mr. Myser had
2 advanced for costs and expenses, when he was entitled to no more than \$967.50 of those funds
3 as of November 30, 2014, Respondent violated RPC 1.15A(b) and/or RPC 1.15A(c)(1) and/or
4 RPC 1.15a(c)(2).

5 Count 10 - By withdrawing fees from his trust account without first advising Mr. Myser
6 in writing of his intent to do so, Respondent violated RPC 1.15A(h)(3).

7 Count 11 - By failing to provide Mr. Myser a written accounting of his funds after
8 distributing funds from trust and/or when requested to provide an accounting and/or an annual
9 basis, Respondent violated RPC 1.4(a) and/or RPC 1.4(b) and/or RPC 1.15A(e).

10 Count 12 - By failing to maintain a complete and/or accurate client ledger, on a
11 contemporaneous basis, for funds received and disbursed in connection with his representation
12 of Mr. Myser in the fraud-on-the-court case, Respondent violated RPC 1.15A(h)(2) and/or RPC
13 1.15B(a)(2).

14 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
15 Officer makes the following:

16 FINDINGS OF FACT

17 ***Trust Account***

18 1. Respondent was admitted to the practice of law in the State of Washington on
19 November 6, 1975. During the period addressed in this proceeding, late 2011 through early
20 2015, Respondent conducted a solo practice out of his home on Bainbridge Island, without the
21 assistance of any staff, and focused his practice primarily on civil rights cases. Tr. 1: 83-84, 86-

1 | 89, 91.²

2 | 2. Respondent maintained a trust account ending in 0340 at Key Bank for the deposit
3 | of client funds. During at least part of the period, Respondent also had a checking account
4 | (operating account) for his practice at Sterling Savings Bank. Tr. 1:97-99.

5 | 3. Respondent handled all bank deposits, stamping checks on the back for deposit into
6 | his trust account, filling out a deposit slip, and taking them to Key Bank in person. Tr. 1:185-
7 | 86, 190.

8 | 4. Respondent personally maintained a handwritten check register for his trust
9 | account. Answer at 4; EX. A-4; Tr. 1:54-55, 57, 61. It did not consistently include a running
10 | balance after each transaction, or attribute each disbursement to a named client or case name.
11 | EX. A-4; Tr. 3:96-97, 107-09, 123-24, 157-61. It also included entries that were not made
12 | contemporaneously, but at a later date to correct errors or change attributions. Tr. 3:35-43, 106-
13 | 10.

14 | 5. During this period, Respondent did not maintain individual client ledgers or
15 | equivalent records for each client that identified the purpose for which the client's funds were
16 | received, disbursed, or transferred, the date of each transaction, the check number for each
17 | disbursement, the payor/payee for each transaction, and a running balance, on a
18 | contemporaneous basis. Answer at 4-5; EX. A-5, EX. A-18; Tr. 1:208, 218-22, Tr. 3:110-16,
19 | 161-66, 178-79. Respondent provided ODC several documents he characterized as client
20 |

21 | ² References to supporting materials are as follows: "Answer" refers to Respondent's Answer to First
22 | Amended Formal Complaint; "EX." refers to exhibits admitted at hearing, with "A" designating ODC's
23 | exhibits and "R" designating Respondent's exhibits. "Tr. [number]:[page]" designates transcripts by the
first, second or third day of hearing and the page number in the transcript for that day. "Docket" refers to
the docket of the public file for this disciplinary proceeding.

1 ledgers, but some were created after the fact, not contemporaneously, and some were missing
2 required information or were inaccurate. Answer at 5; EX. A-5, EX. A-18; Tr. 1:218-22, Tr.
3 3:114, 147-48.

4 6. Respondent received monthly bank statements for his trust account at Key Bank.
5 Answer at 5; EX. A-1; Tr. 1:190-91.

6 7. Respondent did not reconcile his trust account check register balance to his bank
7 statements on a monthly basis. Answer at 5; Tr. 3:38, 118-20, 166-67, 178-79. On those
8 occasions when he did reconcile his check register to the bank statement, he did not keep copies
9 of his reconciliation reports. Answer at 5.

10 8. Respondent did not, and could not, reconcile his check register to the total of the
11 balances on his client ledgers because he did not maintain client ledgers for all his clients.
12 Answer at 4-5; Tr. 3:119-20, 166-67.

13 9. As a result of these deficiencies, Respondent could not always be certain that his
14 trust account actually contained the amount of money reflected in his check register, and one
15 could not readily identify whose funds were in the account at any given moment. Tr. 3:116-21,
16 161-67.

17 10. On December 17, 2013, Respondent deposited into his trust account a \$30,000
18 fee check he received at the conclusion of his representation of client Weber. Answer at 6; EX.
19 A-1, EX. A-4; Tr. 3:75-76. At that time, the entire fee had been earned and should not have
20 been placed in the trust account with client funds. EX. A-8; Tr. 3:142-43, 167-69.

21 11. From March 2014 through November 2014, Respondent wrote and negotiated
22 checks to himself from his trust account once or twice a week, in multiples of \$100 or \$1,000,
23 without first providing a client written notice of his intent to do so, through a billing statement

1 or other document. EX. A-2, EX. A-7; Tr. 1:89, 215, Tr. 3:169-72, 174-78, 185-86. Without
2 sending billing statements or other advance notice to a client, Respondent made these
3 withdrawals as he needed the funds, e.g., to pay bills. EX. 29; Tr. 3:15-18. The total of such
4 checks during the one-year period covered of the audit totaled approximately \$100,000. EX.
5 A-2, EX. A-8; Tr. 3:169-70, 174-78.

6 ***Myser Representation***

7 12. Respondent filed a §1983 excessive force case against Spokane County on
8 Douglas Myser's behalf in early 2006 in the U.S. District Court, Eastern District of Washington.
9 At the conclusion of a bench trial, the court rejected Myser's claim, and the decision was
10 affirmed on appeal in 2010. Answer at 9; EX. A-28; Tr. 1:99-109, Tr. 2:8-9, 11, 23-32, 38, 41-
11 43. Myser paid Respondent a total of \$220,000 for the representation. EX. A-16 at 1; Tr. 2:28-
12 31.

13 13. Myser approached Respondent in the fall of 2011 to discuss the possibility of
14 filing a new case in federal district court in Seattle, rather than Spokane. Answer at 10; Tr.
15 1:109-10, 161-63, Tr. 2:45-47, 50-53.

16 14. Myser was concerned about his ability to afford additional litigation. He opted
17 to utilize Respondent's services again, rather than to seek other counsel, because he thought
18 Respondent's familiarity with the issues would save time and cost him less than hiring a new
19 attorney who would have to "start from scratch." Tr. 2:51-52. However, Myser wanted a fee
20 agreement that allowed him to plan ahead and limit his financial exposure. After evaluating his
21 available resources, he proposed a "hybrid" fee agreement, one part of which would be a
22 specific maximum fee for handling the entire case and the other, a contingent fee for a
23 percentage of the amount recovered from the case. EX. A-16 at 2; Tr. 2:56-72.

1 15. Respondent and Myser ultimately executed a fee agreement on January 3, 2012.
2 EX. A-10, EX. R-12.

3 16. Because the fee agreement provided for the performance of specified legal
4 services for payment, it was not a "retainer" as defined by RPC 1.5(f)(1).

5 17. Because the agreement did not include the requirements set forth in RPC
6 1.5(f)(2), Myser's payments were not Respondent's property upon receipt.

7 18. Under RPC 1.5(f), RPC 1.15A(c)(2) and (h)(3). Respondent was required to
8 deposit and hold Myser's payments in trust until the fees were earned and billed, or the
9 expenses had been incurred.

10 19. Respondent failed to deposit and hold Myser's payments in trust until the fees
11 were earned and billed, or expenses had been incurred.

12 20. Not all of the checks Myser sent to Respondent were deposited into
13 Respondent's trust account. Answer at 14. Some of them were deposited into Respondent's
14 operating/savings account at Sterling Bank. EX. A-12, EX. A-13; Tr. 1:171, 182-83, Tr. 2:233-
15 35..

16 21. On September 21, 2015, Respondent claimed that he had just discovered a
17 \$6,000 check from Myser dated August 22, 2013 that was designated for legal expenses but
18 never deposited. Respondent returned the check to Myser after holding it for more than two
19 years. Answer at 16; EX. A-13, EX. A-16 at 11, EX. A-21; Tr. 1:177-80.

20 22. Respondent kept no client ledger to track Myser's funds.

21 23. Respondent provided Myser no billing statements, invoices, or other notice
22 during the representation to inform Myser that he was withdrawing Myser's advanced funds
23 from the trust account. Answer at 12, 14; Tr. 1:208-215, Tr. 2:124-28.

1 24. Myser believed that there would be significant costs and expenses associated
2 with bringing his case, such as expert fees, depositions, and travel. EX. A-16 at 2, 3. For this
3 reason, Myser sent Respondent separate checks specifically intended and designated as
4 advances toward costs and expenses of the litigation. Answer at 14; EX. A-11, EX. A-13, EX.
5 A-16 at 4, 5, EX. A-21; Tr. 2:95-100.

6 25. By November 30, 2013, Myser had sent Respondent a total of \$59,000 by check:
7 \$33,000 for advanced fees and \$26,000 for costs and expenses. EX. A-12, EX. A-13, EX. A-21;
8 Tr. 1:170-89, Tr. 2:83-90, 95-99. Respondent had not yet incurred any costs or expenses in
9 connection with the case. EX. A-14; Tr. 1: 211.

10 26. By November 30, 2013, Respondent's trust account had a balance of only
11 \$86.59. EX. A-1.

12 27. Of the \$59,000 Myser had paid to that date, Respondent had appropriated all but
13 \$86.59 to his own use. Tr. 1:194-97.

14 28. The timing and the amount of Respondent's withdrawals from his trust account
15 were determined, not by the amount of fees earned or expenses incurred, but by Respondent's
16 need for money. EX. A-21, EX. 29; Tr. 3:17, 62-63, 66.

17 29. In November 2011, while Myser and Respondent were discussing filing a fraud-
18 on-the-court complaint in the federal court for the Western District of Washington and the terms
19 of the fee agreement, Respondent told Myser he needed \$5000 right away because he had no
20 money to pay his mortgage. Respondent told Myser that it was "critical" that he receive the
21 \$5000 from Myser to pay his own mortgage. Myser sent Respondent a check for \$5000 in
22 November 2011. Tr. 2:54-55, 151, 231; Tr. 3:72-73.

23 30. At one point between April and June 2013, Respondent requested that Myser pay

1 Respondent's cell phone bill in the amount of \$388. Respondent told Myser that if he didn't
2 pay Respondent's cell phone bill, Respondent's phone would be cut off and he and Myser
3 would have difficulty communicating as a result. Myser paid the \$388 for Respondent's cell
4 phone bill. Tr. 2:87-88, 96-98, 103; Tr. 3:72-73.

5 31. By early March 2014, Myser had sent Respondent advance fee checks totaling
6 \$46,000, more than the \$45,000 required by the fee agreement. EX. A-10, EX. A-12, EX. A-21;
7 Tr.1:180-88, Tr.2:77-100. At this point, Respondent had not yet filed anything with the court.
8 EX. A-19.

9 32. Myser was concerned because Respondent was not returning his calls. Tr. 2:103-
10 05, 236, 238.

11 33. Myser could not afford to pay another lawyer to start the case anew. Tr. 2:104-
12 05. He decided to send Respondent additional payments, over and above the agreed fee, to
13 "incentivize" him into moving the case forward. Tr. 2: 105-07, 236-38.

14 34. Myser had also offered to increase Respondent's contingent fee percentage. EX.
15 A-16 at 4.

16 35. Myser did not intend to raise the \$45,000 fee that their fee agreement required
17 him to pay. Tr. 2:103-07, 236-38.

18 36. After receiving additional payments over and above the agreed fee, Respondent
19 finally filed the Complaint for Damages on April 23, 2014, in Myser v. Steven Tangen and
20 Spokane County, U.S. District Court No. 2:14-cv-00608-JLR (W. D. Wash.). EX. A-19.

21 37. From December 1, 2013 through November 30, 2014,³ Respondent received an
22

23 ³ This interval corresponded with the period of ODC's audit of Respondent's trust account records.

1 additional \$39,000 in checks from Myser: \$37,000 in advanced fees and \$2,000 for costs and
2 expenses. These brought the total for fees to \$70,000, and the total for costs and expenses to
3 \$28,000. Answer at 14; EX. A-12, EX. A-13, EX. A-16, EX. A-21.; Tr. 1:176-80, 188-89, Tr.
4 2:77-100. ‘

5 38. As of November 30, 2014, Respondent’s trust account had a balance of only
6 \$528.43. EX. A-1, EX. A-21.

7 39. Respondent was entitled, under the fee agreement, to a maximum fee of \$45,000.
8 EX. A-10.

9 40. Respondent had not informed Myser, in writing or otherwise, that he had earned
10 or would withdraw any of the money Myser had paid, a cumulative total of \$98,000. Tr. 2:124-
11 27.

12 41. By November 30, 2014, Respondent had withdrawn from his trust account and
13 appropriated nearly all of the funds Myser had paid.

14 42. Respondent had withdrawn the funds from his trust account by means of checks
15 he wrote to himself for large, round amounts between \$500 and \$2,000 to use for his own
16 purposes, as needed. EX. A-3, EX. A-7, EX. A-8; Tr.3:62-63.

17 43. The expenses Respondent incurred and paid in connection with Myser’s case
18 totaled \$1,330.14. EX. A-14, EX.A-21; Tr. 1:201-04, Tr. 3:28-30.

19 44. Of the \$28,000 Myser had sent him for costs and expenses, Respondent had used
20 \$1,330.14 for costs and expenses, held another \$6,000 check for two years before returning it,
21 and appropriated the remainder of over \$20,000.

22 45. Meanwhile, in Myser v. Steven Tangen and Spokane County, U.S. District Court
23 No. 2:14-cv-00608-JLR (W. D. Wash.), defendant Spokane County moved for judgment on the

1 pleadings and the court granted the motion, without prejudice, on September 9, 2014. EX. A-
2 19.

3 46. Respondent filed an Amended Complaint on September 24, 2014. EX. A-19.

4 47. On October 8, 2014, Spokane County moved that the case be dismissed for
5 failure to state a claim upon which relief can be granted. EX. A-19.

6 48. By November 2014, Myser realized that his original estimate of the litigation
7 costs and expenses would be much lower than he had anticipated. EX. A-16 at 6; Tr. 2:108-11.

8 49. Myser called Respondent more than once to request that Respondent return some
9 of the funds, but he received no response. Tr. 2:109-11.

10 50. Myser sent Respondent a letter on December 16, 2014, asking Respondent to
11 return \$8,000 of the expenses he had advanced. Myser also requested an accounting of the
12 \$28,000 he had paid for costs and expenses. EX. A-16 at 6; Tr. 2:107-13.

13 51. Myser specifically requested the \$8,000 because he had health conditions that
14 needed to be addressed, had no health insurance, and wanted to sign up for health insurance
15 under the Affordable Care Act before the application period ended. Tr. 2:111-12. Myser
16 informed Respondent of his health concerns.

17 52. Respondent wrote to Myser on December 24, 2014, stating he would send
18 Myser \$28,000 and his "ledger." EX. A-16 at 7.

19 53. When he wrote this December 24, 2014 letter, Respondent knew he did not have
20 \$28,000, or even \$8,000, to return to Myser. Tr. 3:26-27.

21 54. Respondent never sent Myser the \$28,000 nor \$8,000, and the "ledger" he
22 promised to send did not arrive. Tr. 2:113.

23 55. Myser wrote to Respondent again on January 20, 2015, stating he did not need

1 the \$28,000, but he needed the \$8,000 he originally asked for. Respondent failed to reply and
2 the deadline to sign up for health insurance expired. EX. A-16 at 8-9; Tr. 2:113, 123-24.

3 56. On February 5, 2015, the court granted Spokane County's motion to dismiss
4 Myser's lawsuit. Myser's claims against Steven Tangen were later dismissed, as well. EX. 19;
5 Tr. 1:164, Tr. 2:136.

6 57. Respondent filed a Notice of Appeal on March 2, 2015. EX. 19; Tr. 1:165.

7 58. Myser terminated Respondent's services on or about March 23, 2015 and filed a
8 grievance against him. Answer at 17; EX. R-5, R-6; Tr. 1:166-69, Tr. 2:136, 244.

9 59. On May 31, 2015, Respondent sent ODC a letter in response to Myser's
10 grievance. EX. R-5. He maintained that, because Myser had terminated his services in March
11 2015, under their fee agreement he (Respondent) was entitled to his hourly rate of \$275 times
12 the number of hours he spent on the case. He claimed he had spent 355.9 hours on the case and
13 was therefore entitled to fees of \$97,872.50. This was approximately the total that Myser had
14 sent him (\$70,000 plus \$28,000).

15 60. In September and October 2015, Myser made further requests for Respondent's
16 billing records for his cases. EX. A-16 at 12-14; Tr. 2:123, 126-28. Respondent sent him the
17 same information he had forwarded to ODC several months earlier, claiming he was entitled to
18 receive \$97,872.50 from Myser. EX. A-16 at 10.

19 61. On February 2, 2016, a Review Committee of the Disciplinary Board ordered a
20 public hearing be conducted on the misconduct Myser had alleged. Docket #1.

21 62. On April 6, 2016, more than four years after the representation commenced,
22 Respondent finally sent Myser what purported to be a trust account ledger for the funds Myser
23 had sent him. EX. A-16 at 15-18.

1 63. That document was substantially inaccurate. It only covered transactions
2 between November 2012 and March 2015, it skipped large periods of the representation, it
3 failed to acknowledge \$13,000 that Myser had paid before November 2012, and it failed to
4 acknowledge \$42,000 in payments Myser made between April 19, 2013 and January 3, 2014.
5 EX. A-8, EX. A-11, EX. A-12, EX. A-13, EX. A-21; Tr. 1:218-23, Tr. 2:131-35.

6 64. By Respondent's calculations, there remained \$1,558.09 on deposit from Myser,
7 and Respondent enclosed a check for that amount with his cover letter to Myser. To date, he
8 has sent Myser nothing further.

9 65. At the time of his termination, Respondent had already appropriated all, or nearly
10 all, of the payments Myser had sent him.

11 66. Because Respondent failed to maintain accurate, contemporaneous records of
12 funds he received from or on behalf of his clients, and all disbursements made on their behalf,
13 those clients were potentially injured insofar as they could not be sure they received all funds
14 they were due.

15 67. Myser was seriously injured financially by Respondent's handling of his funds.
16 Although Respondent provided time records which purported to show that he had earned almost
17 exactly what Myser had paid, Respondent had not timely provided Myser this information
18 before he appropriated all, or nearly all, of the funds. Had these time records been created at or
19 near the time of the work and had they accurately reflected the work Respondent did on behalf
20 of Myser, it is incongruous that Respondent would not merely have sent copies of the time
21 records to Myser to justify his fees. Had Myser known of Respondent's misappropriations at
22 the time they were made, he could have cut his losses and hired substitute counsel, and/or
23 refrained from sending Respondent additional fees in excess of those required by the fee

1 agreement.

2 68. Myser also experienced serious injury due to Respondent's failure to timely
3 return to him any of the funds that had been specifically earmarked for litigation costs and
4 expenses. This prevented Myser from obtaining the health insurance he needed. At the time of
5 the hearing, Myser's health problems were ongoing and he still had no insurance. Tr. 2:222-
6 =24, 242.

7 69. Respondent's misconduct also caused serious injury to the legal system by
8 abusing the trust his client placed in him and by failing to preserve the integrity of his trust
9 account, thereby exploiting the power and authority afforded him as a member of the Bar and
10 undermining public confidence in the legal profession.

11 12 CONCLUSIONS OF LAW

13 Violations Analysis

14 The Hearing Officer finds that ODC proved Counts 1 through 12 by a clear
15 preponderance of the evidence:

16 70. By failing to maintain a complete and accurate trust account check register,
17 Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a)(1).

18 71. By failing to maintain complete and accurate client ledgers, Respondent violated
19 RPC 1.15A(h)(2) and RPC 1.15B(a)(2).

20 72. By failing to reconcile, on a monthly basis, his trust account Respondent violated
21 RPC 1.15A(h)(6).

22 73. By failing to maintain copies of trust account reconciliations, Respondent
23 violated RPC 1.15B(a)(8).

1 74. By depositing into his trust account \$30,000 that he had fully earned for the
2 Weber representation, Respondent violated RPC 1.15A(h)(1).

3 75. By failing to give reasonable notice to clients of his intent to withdraw earned
4 fees from his trust account, through a billing statement or other document, before disbursing
5 such funds, Respondent violated RPC 1.4 and RPC 1.15A(h)(3).

6 76. By using and converting, prior to November 30, 2014, Douglas Myser's fee
7 payments that exceeded the \$45,000 fee called for in his fee agreement without entitlement to
8 the funds, Respondent violated RPC 1.5(a) and RPC 1.15A(b) and RPC 1.15A(c)(1) and RPC
9 1.15A(c)(2).

10 77. By failing to deposit all funds Douglas Myser advanced for fees and for costs
11 and expenses into his trust account, and by failing to hold such funds in trust until he was
12 entitled to withdraw them, Respondent violated RPC 1.15A(c)(1) and RPC 1.15A(c)(2).

13 78. By using for his own purposes and converting, prior to November 30, 2014,
14 \$20,669.86 of the funds Douglas Myser had advanced for costs and expenses, Respondent
15 violated RPC 1.15A(b) and RPC 1.15(c)(1) and RPC 1.15A(c)(2).

16 79. By withdrawing Douglas Myser's funds from trust without first advising him in
17 writing of an intent to do so, Respondent violated RPC 1.15A(h)(3).

18 80. By failing to promptly provide a written accounting to Douglas Myser upon his
19 request, and by failing to provide him an accounting at least annually, Respondent violated RPC
20 1.4(a) and RPC 1.4(b) and RPC 1.15A(e).

21 81. By failing to maintain a complete and accurate client ledger, on a
22 contemporaneous basis, for funds received and disbursed in connection with his representation
23 of Douglas Myser in Myser v. Steven Tangen and Spokane County, U.S. District Court No.

1 2:14-cv-00608-JLR (W. D. Wash.), Respondent violated RPC 1.15A(h)(2) and RPC
2 1.15B(a)(2).

3 **Sanction Analysis**

4 82. A presumptive sanction must be determined for each ethical violation. In re
5 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
6 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
7 Feb. 1992 Supp.) are presumptively applicable in this case:

8 83. ABA Standard 4.11 applies to Respondent's conversion of Douglas Myser's
9 excess advanced fees and funds designated to pay for costs and expenses. Respondent's
10 conversion was committed knowingly, and it caused injury to Mr. Myser. The presumptive
11 sanction is disbarment.

12 84. ABA Standard 4.12 applies to Respondent's failure to maintain current and
13 accurate trust account records for funds his clients entrusted to him, and his improper handling
14 of client funds. Having been in private practice for decades (Tr. 1:86-88), Respondent was well
15 aware of the necessity to account for client funds, and he knew or should have known that he
16 was dealing improperly with them. His failure to do so was knowing. For example, when he
17 realized he had attributed certain of his withdrawals to the Weber case and those withdrawals
18 far exceeded the Weber funds in trust for that matter, rather than replacing the funds he had
19 disbursed improperly, Respondent simply attributed the withdrawals to Myser and used Myser's
20 funds for withdrawals unrelated to his case. (EX. A-5, EX. A-8; Tr. 3:114) The presumptive
21 sanction is suspension.

22 85. ABA Standard 4.41(b) applies to Respondent's failure to communicate to his
23 clients an accounting of their funds, and particularly regarding his disbursements of them. His

1 failure caused serious injury to Douglas Myser, and potentially serious injury to other clients.

2 The presumptive sanction is disbarment.

3 86. ABA Standard 7.1 applies to Respondent's misappropriation of nearly all of the
4 funds he received from Myser, with the intent to obtain a benefit for himself. His misconduct
5 caused serious injury to his client and the legal system. The presumptive sanction is
6 disbarment.

7 87. When multiple ethical violations are found, the "ultimate sanction imposed
8 should at least be consistent with the sanction for the most serious instance of misconduct
9 among a number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).]

10 88. Based on the Findings of Fact and Conclusions of Law and application of the
11 ABA Standards, the presumptive sanction is disbarment.

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

- 14 (b) dishonest or selfish motive;
- 15 (c) a pattern of misconduct;
- 16 (d) multiple offenses;
- 17 (g) refusal to acknowledge wrongful nature of conduct;
- 18 (i) substantial experience in the practice of law: Respondent was admitted in
19 1975; and
- 20 (j) indifference to making restitution.

21 90. The following mitigating factor set forth in Section 9.32 of the ABA Standards is
22 applicable to this case:

- 23 (a) absence of a prior disciplinary record.

24 91. Remorse is not a mitigating factor. Although Respondent said he felt badly that
he was unsuccessful in litigating on Myser's behalf, he expressed no regret for his conversion of
Myser's funds and remained adamant that he was entitled to them.

1 **Recommendation**

2 92. Based on the ABA Standards and the applicable aggravating and mitigating
3 factors, the Hearing Officer recommends that Respondent John Rolwing Muenster be disbarred,
4 and that he be ordered to pay restitution in the amount of \$44,111.77,⁴ with 12% interest
5 calculated from the date Myser terminated Respondent's services, i.e., March 23, 2015.

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8 Dated this 3rd day of December, 2018.

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11 Terri R. Luken, Bar No. 19554
Hearing Officer

12
13 **Certificate of Service**

14 I certify that I caused a copy of the foregoing Findings of Fact and Conclusions of Law to be
15 sent to John Rolwing Muenster at 14940 Sunrise Dr. NE, Bainbridge Island, WA, 98110-1113 by
16 email to jmkk1613@aol.com, and to be emailed to Disciplinary Counsel Natalea Skvir at
17 ntaleas@wsba.org on December 3, 2018.

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19
20 

21 Terri R. Luken, WSBA #19554
Hearing Officer

22 ⁴ The restitution is calculated as follows: (a) \$25,000 for fees paid over and above the \$45,000 required
23 by the fee agreement; (b) \$28,000 advanced for costs and expenses, minus \$1,330.14 for expenses
24 actually incurred and paid, minus \$6,000 for the uncashed check Respondent returned to Myser, minus
the \$1,558.09 that Respondent returned to Myser in April 2016, leaving \$19,111.77 that should be
refunded to Myser. Thus, \$25,000 + 19,111.77= \$44,111.77 total restitution.

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF, W-4 to HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to John Mendenhall Respondent/Respondent's Counsel
at 14940 Sunrise Dr. No. 200 Cambridge, MA 02142 Certified first class mail,
postage prepaid on the 5th day of Dec, 2014

[Signature]
Clerk/Counsel to the Disciplinary Board