

FILED

JAN 02 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

WILLIAM MICHAEL HANBEY,

Lawyer (Bar No. 7829).

Proceeding No. 12#00106

RESIGNATION FORM OF WILLIAM
MICHAEL HANBEY (ELC 9.3(b))

I, William Michael Hanbey, being duly sworn, hereby attest to the following:

1. I am over the age of eighteen years and am competent. I make the statements in this affidavit from personal knowledge.

2. I was admitted to practice law in the State of Washington on November 16, 1977.

3. I was served with a Formal Complaint and Notice to Answer in this matter on July 16, 2013.

4. After consultation with my counsel, Kenneth Kagan, I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule for Enforcement of Lawyer Conduct (ELC) 9.3.

5. Attached hereto as Exhibit A is the Formal Complaint in this matter filed on July 3,

1 2013, which constitutes Disciplinary Counsel's statement of alleged misconduct for purposes of
2 ELC 9.3(b). I am aware of the alleged misconduct stated in disciplinary counsel's statement but
3 rather than defend against the allegations, I wish to permanently resign from membership in the
4 Association.

5 6. I am submitting with this affidavit a check in the amount of \$3,114 made out to the
6 Washington State Bar Association as payment for expenses and costs. I agree to pay any
7 restitution or additional costs that may be ordered by a Review Committee under ELC 9.3(g).

8 7. I have paid restitution of \$19,773.52 to the beneficiaries of the estate of Anne M.
9 Thomas and have paid restitution of \$4,619.62 to Beryl Fernandes.

10 8. I understand that my resignation is permanent and that any future application by me
11 for reinstatement as a member of the Association is currently barred. If the Supreme Court
12 changes this rule or an application is otherwise permitted in the future, it will be treated as an
13 application by one who has been disbarred for ethical misconduct, and that, if I file an
14 application, I will not be entitled to a reconsideration or reexamination of the facts, complaints,
15 allegations, or instances of alleged misconduct on which this resignation was based.

16 9. I agree to (a) notify all other states and jurisdictions in which I am admitted, of this
17 resignation in lieu of discipline (b) seek to resign permanently from the practice of law in any
18 other jurisdiction in which I am admitted; and (c) provide disciplinary counsel with copies of
19 this notification and any response(s). I acknowledge that the resignation could be treated as a
20 disbarment by all other jurisdictions.

21 10. I agree to (a) notify all other professional licensing agencies in any jurisdiction from
22 which I have a professional license that is predicated on my admission to practice law of this
23 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)

1 provide disciplinary counsel with copies of any of these notifications and any responses.

2 11. I agree that when applying for any employment or license, I will disclose the
3 resignation in lieu of discipline in response to any question regarding disciplinary action or the
4 status of my license to practice law.

5 12. I understand that my resignation will become effective on January 2, 2014 upon
6 disciplinary counsel's endorsement and filing of this document with the clerk.

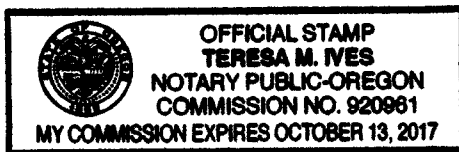
7 13. When my resignation becomes effective, I agree to be subject to all restrictions that
8 apply to a disbarred lawyer.

9 14. Upon filing of my resignation, I agree to comply with the same duties as a disbarred
10 lawyer under ELC 14.1 through ELC 14.4.

11 15. I certify under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct.

13
14 4 December 2013 William Michael Hanbey
Date and Place Summit, OR William Michael Hanbey, Bar No. 7829

15 SUBSCRIBED AND SWORN to before me this 4 day of Dec., 2013.



16
17 [Signature]
NOTARY PUBLIC for the state of
18 Oregon, residing at La Pine
19 My commission expires: 10/13/17

20 ENDORSED BY:
21 [Signature]
Kevin M. Bank, Senior Disciplinary Counsel
22 Bar No. 28935

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5 BEFORE THE
6 DISCIPLINARY BOARD
7 OF THE
8 WASHINGTON STATE BAR ASSOCIATION

9 In re

10 **WILLIAM MICHAEL HANBEY**

11 Lawyer (Bar No. 7829).

12 Proceeding No. 12#00106

13 ASSOCIATION'S DECLARATION OF
14 COSTS AND EXPENSES (ELC 9.3(b))

15 Costs and expenses associated with Respondent's disciplinary matter are:

16 Costs per ELC 13.9(b):

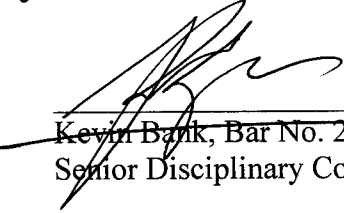
17 Preparation of Audit \$2,114.00

18 Expenses per ELC 9.3(f):

19 Expenses per ELC 9.3(f) \$1,000.00

20 TOTAL \$3,114.00

21 Dated this 2nd day of January, 2014.

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23
24


Kevin Bank, Bar No. 28935
Senior Disciplinary Counsel

EXHIBIT A

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6 BEFORE THE
7 DISCIPLINARY BOARD
8 OF THE
9 WASHINGTON STATE BAR ASSOCIATION

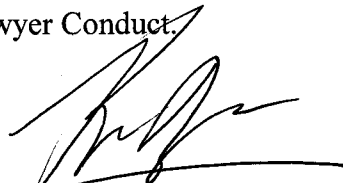
10 In re

11 WILLIAM MICHAEL HANBEY
12 Lawyer (Bar No. 7829)

13 Formal Proceeding No. 12#00106

14 STATEMENT OF ALLEGED
15 MISCONDUCT

16 The attached formal complaint, filed on July 3, 2013 in Formal Proceeding No.
17 12#00106, constitutes Disciplinary Counsel's statement of alleged misconduct under Rule
18 9.3(b) of the Rules for Enforcement of Lawyer Conduct.

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25 Kevin Bank, Bar No. 28935
26 Senior Disciplinary Counsel

FILED

JUL 03 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

WILLIAM MICHAEL HANBEY,

Lawyer (Bar No. 7829).

Proceeding No. 12#00106

FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the 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 William Michael Hanbey was admitted to the practice of law in the State of Washington on November 16, 1977.

FACTS RELATING TO ALL COUNTS

2. Between March 2007 and November 2012, Respondent maintained a trust account at Evergreen Direct Credit Union.

3. Respondent's trust account had three separate components: a savings account, a checking account, and, as of August 2012, a money market account.

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1 4. Between March 2007 and November 2012, all three accounts were reported on the
2 same monthly statement.

3 5. Respondent personally made all deposits to and withdrawals from his trust
4 account.

5 6. Respondent personally maintained all records for his trust account.

6 **FACTS RELATING TO COUNTS 1-7**

7 7. In the spring of 2004, Beryl Fernandes consulted with Respondent regarding an
8 on-going employment problem she was having with her employer, the Department of Ecology
9 (DOE).

10 8. Ms. Fernandes stayed in contact with Respondent from 2004 to 2007.

11 9. In July 2007, Ms. Fernandes decided to proceed with an employment
12 discrimination case against the DOE.

13 10. On or around July 13, 2007, Respondent provided Ms. Fernandes with a fee
14 agreement for her signature.

15 11. The fee agreement states that Ms. Fernandes was retaining Respondent on a
16 contingent fee basis based upon the amount of the recovery.

17 12. The fee agreement states in paragraph 2(b) that Respondent's contingent fee would
18 be one third of the gross amount of the recovery, minus out of pocket expenses paid by the
19 client or subrogation.

20 13. The fee agreement further states in paragraph 2(d):

21 If the matter proceeds to litigation, the Client shall pay a retainer of \$7,500 (Seven
22 Thousand and Five Hundred Dollars and No Cents). The initial period of representation
23 related to filing the claim and potential negotiation of the claim shall not be subject to
24 sub-paragraph (b), above.

14. The fee agreement does not define the term "retainer."

1 15. On or around August 20, 2007, Respondent filed a notice of claim on behalf of Ms.
2 Fernandes with the Washington State Office of Financial Management (OFM).

3 16. State law requires the filing of a notice of claim at least 60 days prior to filing a
4 lawsuit against the state.

5 17. In August 2007, Respondent asked Ms. Fernandes for \$7,500.

6 18. Respondent did not explain to Ms. Fernandes what the \$7,500 would be used for.

7 19. Ms. Fernandes felt pressured by Respondent to make the payment.

8 20. On or around August 24, 2007, Ms. Fernandes wrote Respondent a check for
9 \$7,500.

10 21. On August 28, 2007, Respondent deposited the \$7,500 check into his trust account.

11 22. On October 30, 2007, Respondent filed a lawsuit against the State of Washington
12 on Ms. Fernandes's behalf.

13 23. Between October 30, 2007 and May 2008, Respondent did not make any disbursements
14 from his trust account on behalf of Ms. Fernandes.

15 24. In the spring of 2008, Ms. Fernandes became frustrated with Respondent's
16 performance.

17 25. By letter dated May 13, 2008, Ms. Fernandes terminated Respondent's legal
18 services and requested a copy of her client file and a billing statement.

19 26. On May 22, 2008, Respondent withdrew from the case.

20 27. Although Respondent returned his client file to Ms. Fernandes shortly after
21 withdrawing, he did not at that time provide Ms. Fernandes with the billing statement she
22 requested.

23 28. Respondent did not return the \$7,500, or any part thereof, to Ms. Fernandes, nor
24

1 did he provide an accounting regarding the funds at that time.

2 29. In July 2008, a lawyer representing Ms. Fernandes, Darrel Cochran, contacted
3 Respondent and demanded that he return the \$7,500.

4 30. On July 15, 2008, Respondent wrote a letter to Mr. Cochran in which he refused
5 to refund the \$7,500 fee.

6 31. In April 2009, another attorney representing Ms. Fernandes, David Hancock,
7 wrote a letter to Respondent expressing ethical concerns regarding Respondent's fee agreement
8 with Ms. Fernandes.

9 32. Mr. Hancock demanded that Respondent return the \$7,500 fee.

10 33. On May 1, 2009, Respondent wrote back to Mr. Hancock.

11 34. Respondent enclosed a billing statement with his letter.

12 35. The billing statement is dated May 1, 2009.

13 36. The billing statement lists \$2,508 in "fees" and \$396.38 in "costs" purportedly
14 incurred on behalf of Ms. Fernandes, \$24 of which Ms. Fernandes was listed as having
15 previously reimbursed.

16 37. The billing statement has an entry reflecting a \$7,500 "payment to trust for
17 retainer" dated August 24, 2007.

18 38. The billing statement states that the "Ending Trust Account Balance" is \$7,500.

19 39. The billing statement does not reflect any withdrawals from trust on behalf of Ms.
20 Fernandes.

21 40. According to Respondent's billing, he was entitled to keep \$2,880.38 of the \$7,500
22 paid by Ms. Fernandes.

23 41. Therefore, Respondent owed Ms. Fernandes at least \$4,619.62.

24

1 42. As of the date of this complaint, Respondent has not returned any funds to Ms.
2 Fernandes.

3 43. Between August 24, 2007, the date Ms. Fernandes made her \$7,500 payment, and
4 November 30, 2012, Respondent's trust account fell below \$4,619.62 on multiple occasions.

5 44. The lowest balance was \$2,069.31 between May 9 and May 16, 2010.

6 45. Whenever Respondent's balance went below \$4,612.62, Respondent converted
7 and/or borrowed Ms. Fernandes's funds for his own purposes.

8 46. Respondent was not authorized by Ms. Fernandes to use these funds for his own
9 purposes.

10 **COUNT 1**

11 47. By converting funds belonging to Ms. Fernandes for his own use, Respondent
12 violated RPC 1.15A(b).

13 **COUNT 2**

14 48. By failing to hold Ms. Fernandes's funds in his trust account, Respondent violated
15 RPC 1.15A(c).

16 **COUNT 3**

17 49. By failing to promptly provide a written accounting to Ms. Fernandes after
18 distribution of her trust funds, and/or upon her request, Respondent violated RPC 1.15A(e)
19 and/or RPC 1.4(a) and/or 1.4(b).

20 **COUNT 4**

21 50. By failing to promptly deliver to Ms. Fernandes property which she was entitled
22 to receive, Respondent violated RPC 1.15A(f).

23 **COUNT 5**

24 51. By failing to distribute undisputed portions of Ms. Fernandes's funds in his trust

1 account to her, Respondent violated RPC 1.15A(g).

2 **COUNT 6**

3 52. By failing to adequately communicate to Ms. Fernandes the scope of his
4 representation and/or the basis and/or rate of his fee, Respondent violated RPC 1.5(b).

5 **COUNT 7**

6 53. By failing to return unearned fees to Ms. Fernandes on termination of
7 representation, Respondent violated RPC 1.16(d).

8 **FACTS REGARDING COUNTS 8 – 13**

9 54. On May 2, 2003, Anne Mauris Thomas executed a Last Will and Testament
10 (“Will”).

11 55. She named her friends Jim Pill and Jean Safstrom to serve as co-personal
12 representatives of her estate, to serve without bond.

13 56. On September 27, 2004, Ms. Thomas executed a codicil to the Will.

14 57. In the codicil, she substituted Respondent as co-personal representative in lieu of
15 Ms. Safstrom.

16 58. On March 4, 2007, Ms. Thomas died.

17 59. On March 7, 2007, Respondent filed a verified petition for probate of will and
18 related documents in Thurston County Superior Court.

19 60. On March 9, 2007, Respondent had himself appointed as Executor and Sole
20 Personal Representative of the estate.

21 61. The estate had seven different beneficiaries, all charities.

22 62. The assets held by the estate were valued at \$762,270.97.

23 63. Respondent used the savings account of his trust account for deposit of the Thomas
24 estate funds.

1 64. The most significant estate assets were a home and various Wells Fargo investment
2 and bank accounts. The value of these assets was approximately \$692,000.

3 65. In June 2007, Respondent liquidated the Wells Fargo accounts.

4 66. In early July 2007, Respondent distributed \$45,000 to each of the seven
5 beneficiaries.

6 67. On July 31, 2007, Ms. Thomas's house sold for \$270,000.

7 68. In September 2007, Respondent distributed \$40,000 to each of the seven
8 beneficiaries.

9 69. By October 2007, Respondent had completed the liquidation of almost all of the
10 estate's assets.

11 70. After October 31, 2007, Respondent made no other disbursements on behalf of the
12 Thomas estate until November 13, 2012.

13 71. After October 31, 2007, several pieces of jewelry belonging to the estate remained
14 to be liquidated.

15 72. Respondent was unable to find a buyer for the jewelry at a price close to the
16 appraised value.

17 73. On November 26, 2008, Respondent petitioned the court for an order authorizing
18 liquidation of the jewelry assets at a sum less than the appraised value.

19 74. On December 9, 2008, the court issued an order authorizing Respondent to
20 liquidate the estate jewelry at a sum less than the appraised value.

21 75. Respondent did not liquidate the jewelry until March 2013, even though the court
22 had authorized him to sell the jewelry for less than the appraised value.

23 76. On October 31, 2007, Respondent should have had \$113,186.48 in his trust
24

1 account belonging to the Thomas estate.

2 77. On that date, Respondent's total trust account balance was \$69,774.44.

3 78. Between October 31, 2007 and November 13, 2012, Respondent should have
4 continued to hold \$113,186.48 on behalf of the Thomas estate in his trust account.

5 79. On multiple occasions between October 31, 2007 and November 13, 2012,
6 Respondent's trust account balance fell well below \$113,186.48.

7 80. Respondent did not create a bill for the Thomas estate until December 17, 2012.

8 81. Respondent provided the bill to the Association.

9 82. The bill itemizes fees and costs purportedly incurred by the Thomas estate between
10 March 4, 2007 and December 12, 2012.

11 83. The bill shows a total of \$34,901.46 in fees and costs.

12 84. The bill lists \$33,891.25 in legal fees and \$1,010.71 in cost advances.

13 85. The bill includes charges at \$200 per hour for Respondent's services in removing
14 items from Ms. Thomas's home, taking refuse to a recycling and waste center and conducting
15 an estate sale.

16 86. Between March 4, 2007 and November 13, 2012, Respondent disbursed to himself
17 a total of \$140,441.89 from the estate funds.

18 87. At least \$105,000 of the \$140,441.89 Respondent disbursed to himself between
19 March 4, 2007 and November 13, 2012 is not attributable to fees and costs Respondent claimed
20 to have incurred in his December, 17, 2012 bill.

21 88. Respondent was not entitled to the \$105,000.

22 89. Respondent intentionally withdrew the \$105,000, knowing that he was not entitled
23 to the funds.

1 90. By converting the \$105,000, Respondent intended to deprive the beneficiaries of
2 those funds for some period of time.

3 91. On November 13, 2012, Respondent deposited \$105,000 into his trust account.

4 92. On the same day, Respondent distributed this amount in equal shares to the seven
5 beneficiaries.

6 93. On February 21, 2013, the clerk of Thurston County Superior Court issued a
7 motion for notice and closure of the estate for want of prosecution and set a court hearing for
8 March 29, 2013.

9 94. This was the third such motion issued by the court since 2009.

10 95. On March 28, 2013, Respondent filed a Petition for Decree of Completion of
11 Probate and Discharge of Personal Representative.

12 96. In the Petition, Respondent misrepresented to the court that he had distributed a
13 total of \$745,000 to the beneficiaries.

14 97. In truth and in fact, Respondent had distributed a total of \$700,000 to the
15 beneficiaries.

16 98. Respondent made the misrepresentation to the court knowingly.

17 99. Respondent made the misrepresentation to the court to conceal from the court that
18 Respondent had disbursed \$45,000 in estate funds to himself between March 7, 2007 and June
19 15, 2007.

20
21 **COUNT 8**

22 100. By converting to his own use funds belonging to the Thomas estate, Respondent
23 violated RPC 1.15A(b), RPC 8.4(b) (by committing the crime of first degree theft in violation of
24 RCW 9A.56.040), RPC 8.4(c) and/or RPC 8.4(i).

1 **COUNT 9**

2 101. By failing to maintain in a trust account funds belonging to the Thomas estate,
3 Respondent violated RPC 1.15A(c)(1).

4 **COUNT 10**

5 102. By failing to promptly distribute to the beneficiaries of the Thomas estate the full
6 amount of their bequests, Respondent violated RPC 1.15A(f).

7 **COUNT 11**

8 103. By failing to promptly liquidate assets and/or complete distributions and/or close
9 the Thomas estate, Respondent violated RPC 1.3.

10 **COUNT 12**

11 104. In charging lawyer rates for non-lawyer services, Respondent charged an
12 unreasonable fee in violation of RPC 1.5(a).

13 **COUNT 13**

14 105. In making misrepresentations to the court regarding estate distributions,
15 Respondent violated RPC 3.3(a)(1) and/or RPC 8.4(c) and/or RPC 8.4(d).

16 **FACTS REGARDING COUNTS 14 -16**

17 106. The Association conducted an audit of Respondent's trust accounts covering the
18 period March 1, 2007 through November 13, 2012.

19 107. During the audit period, Respondent did not maintain a separate checkbook
20 register for each of his three trust accounts at Evergreen Direct Credit Union.

21 108. During the audit period, Respondent maintained only one document titled "trust
22 register" for all three accounts.

23 109. During part of the audit period, from June 18, 2007 through April 1, 2008,
24 Respondent did not keep a running balance on his "trust register."

1 110. During part of the audit period, the "trust register balance" was inaccurate and did
2 not conform to the trust account bank statements.

3 111. During the audit period, Respondent did not keep accurate client ledgers for one or
4 more clients, including the Thomas estate.

5 112. During the audit period, Respondent did not properly reconcile his trust account
6 bank statements to his checkbook register and client ledgers.

7 **COUNT 14**

8 113. By failing to maintain an accurate checkbook register for funds in trust,
9 Respondent violated RPC 1.15(B)(a)(1).

10 **COUNT 15**


11 114. By failing to maintain accurate client ledgers for funds in trust, Respondent
12 violated RPC 1.15B(a)(2).

13 **COUNT 16**

14 115. By failing to reconcile his trust account records, Respondent violated RPC
15 1.15A(h)(6).

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

19
20
21 Dated this 3rd day of July, 2013.

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23 
24 _____
Kevin Bank, Bar No. 28935
Senior Disciplinary Counsel