

FILED

May 01 2019

Disciplinary
Board

Docket # 002

ORIGINAL

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

WALTER O. PEALE III,
Lawyer (Bar No. 7889).

Proceeding No. 19#00014

ODC File No 18-00774

STIPULATION TO ADMONITION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Admonition is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Jonathan Burke and Respondent lawyer Walter O. Peale III (Respondent)

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to

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1 avoid the risk, time, and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November
4 18, 1977.

5 **II. STIPULATED FACTS**

6 2. In approximately November 2014, Wayne DuBois (DuBois) hired Respondent to
7 represent him in filing a personal restraint petition (PRP) in In re Personal Restraint of Wayne
8 DuBois, Jr., Court of Appeals No. 74289-2-1.

9 3. DuBois' mother met with Respondent and hired him to represent DuBois, and paid a
10 \$5,000 flat fee to Respondent for the representation.

11 4. Under RCW 10.73.090(3)(b), the deadline for filing a PRP expires one year after the
12 date that an appellate court issues its mandate disposing of a timely direct appeal from
13 conviction.

14 5. In DuBois' case, the deadline for filing a PRP expired on August 6, 2015, one year
15 after the Court of Appeals issued its mandate on DuBois' appeal from conviction.

16 6. Respondent drafted the PRP, but filed it on August 11, 2015, five days after the one-
17 year deadline expired.

18 7. On November 12, 2015, the prosecutor filed a response to the PRP claiming it had
19 to be dismissed because it was untimely filed under RCW 10.73.090.

20 8. On November 25, 2015, Respondent sent a letter to DuBois explaining the
21 prosecutor's position and providing DuBois with several options regarding the PRP.

22 9. In his letter, Respondent admitted that he was to blame for filing the PRP untimely
23 and offered to provide DuBois with separate advice regarding his options.

1 10. On December 14, 2015, Respondent filed a reply to the prosecutor's response to the
2 PRP.

3 11. On December 28, 2015, Respondent filed a motion to amend the PRP. Respondent
4 argued to the Court of Appeals a different deadline to timely file the PRP applied, claiming
5 actual innocence. The Court of Appeals rejected this assertion.

6 12. On June 6, 2016, the Court of Appeals entered an order dismissing DuBois' PRP as
7 untimely.

8 13. The court indicated that the PRP would have been denied on the merits even if it had
9 been timely filed.

10 14. Respondent sent all of the pleadings to DuBois and advised him to consult with a
11 lawyer to see if there were remedies for him due to Respondent's conduct.

12 15. Respondent also informed DuBois that he could raise the issue with ODC and
13 provided him with ODC's contact information.

14 16. Respondent discussed with DuBois seeking review by the Supreme Court, but
15 DuBois decided not to seek review.

16 17. On December 9, 2016, the personal restraint proceedings ended.

17 18. After the case was closed, DuBois consulted with Respondent on several other legal
18 matters unrelated to the PRP, including his financial obligations, his sentence, what he could do
19 when released, and legal matters concerning his mother and family.

20 19. Respondent told DuBois that his mother was entitled to a refund.

21 20. The issue regarding the refund was not resolved prior to DuBois' filing a grievance
22 with ODC.

23 21. Respondent was hesitant to pay the refund to DuBois because he was uncertain

1 whether the refund should go to DuBois' mother or DuBois, who is currently incarcerated.

2 22. DuBois contended the \$5,000 paid by his mother was actually his money and that he
3 was entitled to his "money back or at least half of it back."

4 23. On November 30, 2018, Respondent reached an agreement to refund \$5,000 to
5 DuBois.

6 24. On December 31, 2018, Respondent refunded \$5,000 to DuBois consistent with
7 DuBois's request.

8 25. During the pendency of the investigation of this grievance, Respondent hired Pete
9 Roberts to assist him in improving his law office organization and management skills to remedy
10 the problems exemplified by this grievance.

11 26. In his response to the grievance, Respondent admitted that he was at fault for
12 missing the deadline for filing the PRP.

13 III. STIPULATION TO MISCONDUCT

14 27. Respondent stipulates that he negligently violated RPC 1.3 and RPC 3.2 by failing to
15 timely file DuBois's PRP.

16 IV. PRIOR DISCIPLINE

17 28. On December 11, 2017, Respondent stipulated to a reprimand and a two-year
18 probation term. He stipulated that by using funds belonging to clients in his IOLTA account, he
19 violated RPC 1.15A(c).

20 29. In the same December 11, 2017 stipulation, Respondent admitted that he violated
21 RPC 1.15A(h) and RPC 1.15(B)(a) by failing to maintain a current checkbook register and
22 client ledgers for the same IOLTA account, and by failing to reconcile trust account records.

1 **V. APPLICATION OF ABA STANDARDS**

2 30. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) applies to this case: ABA Standards std. 4.4.

4 31. Respondent acted negligently in failing to timely file the PRP for DuBois.

5 32. Respondent caused actual and/or potential injury in that his negligence resulted in
6 dismissal of DuBois' PRP.

7 33. The presumptive sanction is reprimand under ABA Standards std. 4.43, which
8 provides as follows:

9 Reprimand is generally appropriate when a lawyer is negligent and does not act with
10 reasonable diligence in representing a client, and causes injury or potential injury to a
11 client.

12 34. The following aggravating factors apply under ABA Standards std. 9.22:

13 (a) Prior disciplinary offenses [On December 12, 2017, Respondent received a
14 reprimand for failing to maintain a current checkbook register and client
15 ledgers for his trust account and by negligently using client funds];

16 (i) Substantial experience in the practice of law [Respondent was admitted to
17 practice in 1977].

18 35. The following mitigating factors apply under ABA Standards std. 9.32:

19 (b) Absence of a dishonest or selfish motive;

20 (d) Timely good faith effort to rectify consequences of misconduct [Respondent
21 made efforts to file responsive briefs in support of review of the PRP. He
22 timely informed DuBois about the issue and possible solutions. He made
23 efforts to rectify his conduct by hiring Pete Roberts to improve his
24 organization and management skills; and

(e) Remorse [Respondent timely expressed remorse for his conduct in his
November 25, 2015 letter to DuBois and took responsibility for his actions in
his response to the grievance. He has now fully refunded \$5,000 to DuBois].

36. Based on the factors set forth above, the presumptive sanction should be mitigated

to an admonition.

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1 **VI. STIPULATED DISCIPLINE**

2 37. The parties stipulate that Respondent shall receive an admonition for his conduct.

3 **VII. PROBATION**

4 38. **Practice Monitor Probation.** Respondent shall be subject to probation for a
5 period of 12 months beginning on the date of the final approval of this stipulation.

6 39. The conditions of probation are set forth below. Respondent's compliance with
7 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary
8 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
9 herein may be grounds for further disciplinary action under ELC 13.8(b).

10 40. **Provisions regarding Practice Monitor.** During the period of probation,
11 Respondent's practice will be supervised by a practice monitor. The practice monitor must be a
12 WSBA member with no record of public discipline and who is not the subject of a pending
13 public disciplinary proceeding.

14 41. The role of the practice monitor is to consult with and provide guidance to
15 Respondent regarding case management, and avoiding violations of the Rules of Professional
16 Conduct, and to provide reports and information to the Probation Administrator regarding
17 Respondent's compliance with the terms of probation and the RPC. The practice monitor does
18 not represent the Respondent.

19 42. At the beginning of the probation period, the Probation Administrator will select a
20 lawyer to serve as practice monitor for the period of Respondent's probation as follows:

21 (a) Challenges:

22 **Initial Challenge:** If, within 15 days of the written notice of the selection of a
23 practice monitor, Respondent sends a written request to the Probation Administrator
that another practice monitor be selected, the Probation Administrator will select

1 another practice monitor. Respondent need not identify any basis for this initial
2 request.

3 Subsequent Challenges: If, after selection of a second (or subsequent) practice
4 monitor, Respondent believes there is good cause why that individual should not
5 serve as practice monitor, Respondent may, within 15 days of notice of the selected
6 practice monitor, send a written request to the Probation Administrator asking that
7 another practice monitor be selected. That request must articulate good cause to
8 support the request. If the Probation Administrator agrees, another practice monitor
9 will be selected. If the Probation Administrator disagrees, the Office of
10 Disciplinary Counsel will submit its proposed selection for practice monitor to the
11 Chair of the Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and
12 will also provide the Chair with the Respondent's written request that another
13 practice monitor be selected.

14 43. In the event the practice monitor is no longer able to perform his or her duties, the
15 Probation Administrator will select a new practice monitor at his or her discretion.

16 44. During the period of probation, Respondent must cooperate with the named practice
17 monitor. Respondent must meet with the practice monitor at least once per month.
18 Respondent must communicate with the practice monitor to schedule all required
19 meetings.

20 45. The Respondent must bring to each meeting a current, complete written list of all
21 pending client legal matters being handled by the Respondent. The list must
22 identify the current status of each client matter and any problematic issues regarding
23 each client matter. The list may identify clients by using the client's initials rather
24 than the client's name.

46. At each meeting, the practice monitor will discuss with Respondent practice issues
that have arisen or are anticipated. In light of the conduct giving rise to the
imposition of probation, ODC recommends that the practice monitor and
Respondent discuss: whether Respondent is diligently making progress on each
client matter, whether Respondent is in communication with each client, whether
Respondent has promptly billed each client, whether Respondent's fee agreements
are consistent with the RPC and are understandable to the client, whether
Respondent needs to consider withdrawing from any client matters. Meetings may
be in person or by telephone at the practice monitor's discretion. The practice
monitor uses discretion in determining the length of each meeting.

47. The practice monitor will provide the Probation Administrator with quarterly
written reports regarding Respondent's compliance with probation terms and the
RPC. Each report must include the date of each meeting with Respondent, a brief
synopsis of the discussion topics, and a brief description of any concerns the
practice monitor has regarding the Respondent's compliance with the RPC. The

1 report must be signed by the practice monitor. Each report is due within 30 days of
2 the completion of the quarter.

3 48. If the practice monitor believes that Respondent is not complying with any of her
4 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
5 meeting, the practice monitor will promptly communicate that to the Probation
6 Administrator.

7 49. Respondent must make payments totaling \$1,000 to the Washington State Bar
8 Association to defray the costs and expenses of administering the probation, as
9 follows:

10 \$250 due within 30 days of the start of the probation;

11 \$250 due within 6 months of the start of the probation period;

12 \$250 due within 12 months of the start of the probation period; and

13 \$250 due within 18 months of the start of the probation period.

14 VIII. COSTS AND EXPENSES

15 50. Respondent shall pay attorney fees and administrative costs of \$500 in accordance
16 with ELC 13.9(c)(1). The Association will seek a money judgment under ELC 13.9(l) if these
17 costs are not paid within 30 days of approval of this stipulation.

18 IX. VOLUNTARY AGREEMENT

19 51. Respondent states that prior to entering into this Stipulation he had an opportunity to
20 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
21 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
22 Association, nor by any representative thereof, to induce Respondent to enter into this
23 Stipulation except as provided herein.

24 52. Once fully executed, this Stipulation is a contract governed by the legal principles
applicable to contracts, and may not be unilaterally revoked or modified by either party.

X. LIMITATIONS

53. This Stipulation is a compromise agreement intended to resolve this matter in

1 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
2 expenditure of additional resources by Respondent and ODC. Both Respondent and ODC
3 acknowledge that the result after further proceedings in this matter might differ from the result
4 agreed to herein.

5 54. This Stipulation is not binding upon ODC or Respondent as a statement of all
6 existing facts relating to the professional conduct of Respondent, and any additional existing
7 facts may be proven in any subsequent disciplinary proceedings.

8 55. This Stipulation results from the consideration of various factors by both parties,
9 including the benefits to both by promptly resolving this matter without the time and expense of
10 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
11 such, approval of this Stipulation will not constitute precedent in determining the appropriate
12 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
13 subsequent proceedings against Respondent to the same extent as any other approved
14 Stipulation.

15 56. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
16 his or her review become public information on approval of the Stipulation by the Hearing
17 Officer, unless disclosure is restricted by order or rule of law.

18 57. If this Stipulation is approved by the Hearing Officer, it will be followed by the
19 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
20 Enforcement of Lawyer Conduct will be made.

21 58. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
22 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
23 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil

1 | or criminal action.

2 | WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
3 | to Discipline as set forth above.

4 | Walter O. Peale III
5 | Walter O. Peale III, Bar No. 7889
6 | Respondent

Dated: April 25, 2019

7 | Jonathan Burke
8 | Jonathan Burke, Bar No. 20910
9 | Senior Disciplinary Counsel

Dated: 4/25/2019