

FILED

Jun 15 2018

Disciplinary  
Board

Docket # 016

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**DAVID E. VIS,**  
Lawyer (Bar No. 20599).

Proceeding No. 18#00014

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

The undersigned Hearing Officer held a default hearing on June 15, 2018 under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint (Bar File No. 2) charged David E. Vis with misconduct as set forth therein. A copy of the Formal Complaint 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 each of the violations charged in the Formal Complaint is admitted and established as follows:

4. Count 1: By failing to diligently represent Zinngrabe, Respondent violated RPC

1 1.3.

2 5. Count 2: By failing to keep Zinngrabe reasonably informed about the status of his  
3 matter, Respondent violated RPC 1.4.

4 6. Count 3: By failing to take reasonable steps to protect Zinngrabe's interests upon  
5 termination, including but not limited to promptly disbursing unearned fees to Respondent  
6 violated RPC 1.15A(f), and RPC 1.16(d).

7 7. Count 4: By failing to provide Zinngrabe and/or other clients with written  
8 accountings of funds held in trust at least annually, Respondent violated RPC 1.15A(e).

9 8. Count 5: By failing to promptly disburse funds to clients and/or third persons who  
10 were entitled to receive them, Respondent violated RPC 1.15A(f), and RPC 1.16(d).

11 9. Count 6: By disbursing funds on behalf of BT Trust that exceeded the amount of  
12 funds BT Trust had on deposit and/or by failing to safeguard client funds held in Respondent's  
13 IOLTA account, Respondent violated RPC 1.15A(h)(8).

14 10. Count 7: By failing to cooperate with ODC's investigation of the grievance,  
15 and/or by failing to maintain a check register for his trust, Respondent violated RPC 8.4(I), ELC  
16 1.5, ELC 5.3(f), ELC 5.3(g), ELC 5.5(d), and RPC 1.15B(a).

17 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
18 **REGARDING RECOMMENDED SANCTION**

19 11. The following standards of the American Bar Association's Standards for  
20 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively  
21 apply in this case.

22 12. Presumptive Sanction for Count 1 and Count 2. ABA Standard 4.4 is  
23 applicable to the violations of RPC 1.3, and RPC 1.4 in Counts 1 and Count 2:  
24

1        **4.4 Lack of Diligence**

2        4.41 Disbarment is generally appropriate when:

- 3            (a) a lawyer abandons the practice and causes serious or potentially serious  
4            injury to a client; or  
5            (b) a lawyer knowingly fails to perform services for a client and causes  
6            serious or potentially serious injury to a client; or  
7            (c) a lawyer engages in a pattern of neglect with respect to client matters and  
8            causes serious or potentially serious injury to a client.

9        4.42 **Suspension is generally appropriate when:**

- 10           (a) **a lawyer knowingly fails to perform services for a client and causes  
11           injury or potential injury to a client, or**  
12           (b) **a lawyer engages in a pattern of neglect and causes injury or  
13           potential injury to a client.**

14        4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act  
15        with reasonable diligence in representing a client, and causes injury or potential  
16        injury to a client.

17        4.44 Admonition is generally appropriate when a lawyer is negligent and does not act  
18        with reasonable diligence in representing a client, and causes little or no actual or  
19        potential injury to a client.

20        13. Respondent knowingly failed to perform services for Zinngrabe and engaged in a  
21        pattern of neglect and non-communication in three matters resulting in actual and potential  
22        financial injury to Zinngrabe.

23        14. Suspension is the presumptive sanction for Respondent's misconduct in Count 1  
24        and Count 2 under ABA Standard 4.42(a) and (b).

25        15. ABA Standard 8.0 applies to cases where the lawyer has been previously  
26        disciplined for similar misconduct, and provides as follows:

27        **8.0 Prior Discipline Orders**

28        8.1 Disbarment is generally appropriate when a lawyer:

- 29            (a) intentionally or knowingly violates the terms of a prior disciplinary order  
30            and such violation causes injury or potential injury to a client, the public,  
31            the legal system, or the profession; or  
32            (b) has been suspended for the same or similar misconduct, and intentionally  
33            or knowingly engages in further similar acts of misconduct that cause  
34            injury or potential injury to a client, the public, the legal system, or the profession.

1 injury or potential injury to a client, the public, the legal system, or the  
2 profession.

3 **8.2 Suspension is generally appropriate when a lawyer has been reprimanded**  
4 **for the same or similar misconduct and engages in further similar acts of**  
5 **misconduct that cause injury or potential injury to a client, the public, the**  
6 **legal system, or the profession.**

7 **8.3 Reprimand is generally appropriate when a lawyer:**

- 8 (a) negligently violates the terms of a prior disciplinary order and such  
9 violation causes injury or potential injury to a client, the public, the legal  
10 system, or the profession; or
- 11 (b) has received an admonition for the same or similar misconduct and  
12 engages in further similar acts of misconduct that cause injury or  
13 potential injury to a client, the public, the legal system, or the profession.

14 **8.4 An admonition is generally not an appropriate sanction when a lawyer violates the**  
15 **terms of a prior disciplinary order or when a lawyer has engaged in the same or**  
16 **similar misconduct in the past.**

17 16. ABA Standard 8.0 is applicable because in 2006, Respondent received a reprimand  
18 for similar misconduct, including (1) violating RPC 1.3 by failing to appear at a hearing on a  
19 motion for default and failing to otherwise adequately represent a client, and (2) violating RPC  
20 1.4 by failing to inform a client regarding a collection action and failing to provide notice of the  
21 motion for default.

22 17. Respondent's misconduct in failing to appear in connection with the motion for  
23 default in Zinngrabe case in violation of RPC 1.3, and failing to keep Zinngrabe informed about  
24 the matter and default motion in violation of RPC 1.4 is similar to the misconduct that resulted  
in Respondent's reprimand in 2006.

18 18. Suspension is the presumptive sanction for Count 1 and Count 2 under ABA  
19 Standard 8.2.

20 19. Presumptive Sanctions For Count 3, Count 4, Count 5, and Count 6. ABA  
21 Standard 4.1 applies to trust account violations in Counts 3, 4, 5, and 6, which provides

1 as follows:

2 4.0 *Violations of Duties Owed to Clients*

3 4.1 Failure to Preserve the Client's Property

4 4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
5 client property and causes injury or potential injury to a client.

6 **4.12 Suspension is generally appropriate when a lawyer knows or should  
7 know that he is dealing improperly with client property and causes injury or  
8 potential injury to a client.**

9 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing  
10 with client property and causes injury or potential injury to a client.

11 4.14 Admonition is generally appropriate when a lawyer is negligent in  
12 dealing with client property and causes little or no actual or potential injury to a  
13 client.

14 20. Count 3. Respondent knowingly failed to return unearned fees to Zinngrabe  
15 resulting in harm or potential harm to his client. Suspension is the presumptive  
16 sanction under ABA Standard 4.12.

17 21. Count 4. Respondent knowingly failed to provide Zinngrabe, other clients, and  
18 other former clients/third parties with written accountings of funds being held by  
19 Respondent, resulting in harm or potential harm to clients. Suspension is the  
20 presumptive sanction under ABA Standard 4.12.

21 22. Count 5. Respondent knowingly failed to return unearned fees to clients and  
22 former clients/third parties resulting in actual financial harm. Suspension is the  
23 presumptive sanction under ABA Standard 4.12.

24 23. Count 6. Respondent knowingly disbursed funds on behalf of BT Trust that  
belonged to other clients without their knowledge or authority causing potential  
harm. Suspension is the presumptive sanction under ABA Standard 4.12.

1 24. Presumptive Sanction for Count 7. ABA Standard 7.0 applies to violations for  
2 noncooperation in Count 7.

3 **7.0 *Violations of Duties Owed as a Professional***

4 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
5 conduct that is a violation of a duty owed as a professional with the intent  
6 to obtain a benefit for the lawyer or another, and causes serious or  
7 potentially serious injury to a client, the public, or the legal system.

8 7.2 **Suspension is generally appropriate when a lawyer knowingly  
9 engages in conduct that is a violation of a duty owed as a professional  
10 and causes injury or potential injury to a client, the public, or the  
11 legal system.**

12 7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
13 conduct that is a violation of a duty owed as a professional and causes  
14 injury or potential injury to a client, the public, or the legal system.

15 7.4 Admonition is generally appropriate when a lawyer engages in an  
16 isolated instance of negligence that is a violation of a duty owed as a  
17 professional, and causes little or no actual or potential injury to a client,  
18 the public, or the legal system.

19 25. Respondent knowingly failed to cooperate with ODC's investigation of the  
20 grievance causing harm or potential harm to the public and legal system.

21 26. Suspension is the presumptive sanction for Count 7 under ABA Standard 7.2

22 27. Presumptive Sanction. Under In re Disciplinary Proceeding Against Petersen, 120  
23 Wn.2d 833, 854, 846 P.2d 1330 (1993), the "ultimate sanction imposed should at least be  
24 consistent with the sanction for the most serious instance of misconduct among a number of  
violations."

25 28. Here, suspension is the presumptive sanction for the most serious instance of  
26 misconduct.

27 29. Aggravating and Mitigating Factors. The following aggravating factors set forth in  
28 Section 9.22 of the ABA Standards apply in this case:

- 1 (a) prior disciplinary offenses [In 2006, Respondent received a reprimand for  
2 failing to appear at a hearing on a motion for default, failing to otherwise  
3 adequately represent a client, and failing to provide the client with  
4 information regarding the collection action];
- 5 (b) a pattern of misconduct [Respondent engaged in a pattern of trust account  
6 violations over a period of 11 years];
- 7 (c) multiple offenses [Respondent violated a number of RPC];
- 8 (i) substantial experience in the practice of law [Respondent has been  
9 admitted to practice law since 1991]; and
- 10 (j) indifference to making restitution [Respondent has demonstrated an  
11 indifference to paying restitution to clients for many years].

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

14 31. No mitigating factors identified in ABA Standard 9.32 apply.

15 32. The number and weight of the applicable aggravating factors and lack of  
16 mitigating factors warrants a lengthy suspension of 24 months.

#### 17 RECOMMENDATION

18 Based on the ABA Standards and the applicable aggravating factors, the Hearing Officer  
19 recommends that Respondent David E. Vis be suspended for 24 months and that his  
20 reinstatement be conditioned upon his demonstrating fitness to practice law. In addition, the  
21 Hearing Officer recommends that Respondent's reinstatement be conditioned on demonstrating  
22 to the satisfaction of disciplinary counsel that Respondent has demonstrated that he has paid as  
23 restitution all funds belonging to clients, former clients, and/or third parties along with interest,  
24 which will accrue at the rate of 12 percent per annum starting on the date that Respondent's  
discipline becomes final.

The Hearing Officer further recommends that upon reinstatement, Respondent should be placed  
on probation for a period of two years with periodic reviews under ELC 13.8 of his trust

1 account practices, and must comply with the specific probation terms set forth below:

- 2 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC  
3 1.15B, and shall carefully review the current version of the publication, Managing  
4 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 5 b) For all client matters, Respondent shall have a written fee agreement signed by the  
6 client, which agreements are to be maintained for least seven years (see RPC  
7 1.15B(a)(3)).
- 8 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and  
9 Review Report," Respondent shall review the trust-account records detailed on the  
10 form report, review the completed report, and sign and date the completed report.
- 11 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-  
12 account records for the time period to be reviewed by ODC's audit staff and  
13 disciplinary counsel for compliance with the RPC:
- 14 i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the  
15 commencement of probation, Respondent shall provide the trust account  
16 records from the date of commencement of probation to the end of the third  
17 full month.
- 18 ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
19 commencement of probation, Respondent shall provide the trust account  
20 records from the end of the previously provided quarter through the end of  
21 month six.
- 22 iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
23 commencement of probation, Respondent shall provide the trust account  
24 records from the end of the previously provided quarter through the end of  
month nine.
- iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth month after  
the commencement of probation, Respondent shall provide the trust  
account records from the end of the previously provided quarter through  
the end of month twelve.
- v) Months 13– 15. By no later than the 30<sup>th</sup> day of the sixteenth month after  
the commencement of probation, Respondent shall provide the trust  
account records from the end of the previously provided quarter through  
the end of month fifteen.
- vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth month after  
the commencement of probation, Respondent shall provide the trust  
account records from the end of the previously provided quarter through  
the end of month eighteen.



1           vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
2           after the commencement of probation, Respondent shall provide the trust  
3           account records from the end of the previously provided quarter through  
4           the end of month twenty-one.

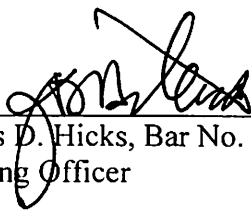
5           The trust account records Respondent provides to ODC for each quarterly review of  
6           his trust account will include: (a) copies of each completed “Monthly  
7           Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a  
8           complete checkbook register for his/her trust account covering the period being  
9           reviewed, (c) complete individual client ledger records for any client with funds in  
10          Respondent’s trust account during all or part of the period being reviewed, as well  
11          as for Respondent’s own funds in the account (if any), and (d) copies of all trust-  
12          account bank statements, deposit slips, and cancelled checks covering the period  
13          being reviewed. The ODC’s Audit Manager or designee will review Respondent’s  
14          trust account records for each period.

15          e) On the same quarterly time schedule set forth in the preceding paragraph,  
16          Respondent will provide ODC’s Audit Manager or designee with copies of any and  
17          all fee agreements entered into within the time period at issue.

18          f) The ODC’s Audit Manager or designee may request additional financial or client  
19          records if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B.  
20          Within twenty days of a request from ODC’s Audit Manager or designee for  
21          additional records needed to verify Respondent’s compliance with RPC 1.15A  
22          and/or RPC 1.15B, Respondent will provide ODC’s Audit Manager or designee the  
23          additional records requested.

24          g) Respondent will reimburse the Association for time spent by ODC’s Audit Manager  
        or designee in reviewing and reporting on Respondent’s records to determine his  
        compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.  
        Respondent will make payment within thirty days of each written invoice setting  
        forth the auditor’s time and payment due.

DATED this 15<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
James D. Hicks, Bar No. 36126  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF, LOL & HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to David Vis ~~Respondent~~ Respondent's Counsel  
at 711 Edison Blvd, Linden, NJ 07036 by Certified/first class mail  
postage prepaid on the 18th day of June, 2012

  
Clerk/Counsel to the Disciplinary Board

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**FILED**  
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DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**DAVID E. VIS,**  
Lawyer (Bar No. 20599).

Proceeding No. 18#00014  
FORMAL COMPLAINT

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 David E. Vis was admitted to the practice of law in the State of Washington on June 3, 1991.

**Zinngrabe Representation**

2. In or about 2011, Cory Zinngrabe (Zinngrabe) hired Respondent to assist him in resolving a number of outstanding debts. Under the terms of the fee agreement, Respondent

90 2

1 charged Zinngrabe a contingent fee for resolving debts based on the amount of reduced debt.

2 3. During Respondent's representation, Zinngrabe made a number of payments to  
3 Respondent for use in settling the debts and paying Respondent's contingent fee.

4 4. Respondent deposited payments from Zinngrabe into his IOLTA trust account and  
5 occasionally used some of them to resolve debts and pay fees.

6 5. As of April 2014, Zinngrabe owed \$3,210.40 plus interest to creditor Calvary SPV  
7 (Calvary).

8 6. On April 3, 2014, Calvary's lawyer sent an offer to Respondent to settle the debt  
9 for \$2,407.80.

10 7. Zinngrabe directed Respondent to make a counter offer.

11 8. Respondent did not relay the counter offer to Calvary.

12 9. On June 5, 2014, Calvary filed a lawsuit against Zinngrabe.

13 10. On June 30, 2014, Respondent filed a notice of appearance in Calvary's lawsuit  
14 against Zinngrabe.

15 11. Respondent failed to file an answer in the lawsuit.

16 12. On November 5, 2014, Calvary filed a motion for default.

17 13. Respondent prepared an answer to the complaint, dated November 20, 2014, and  
18 faxed it to Calvary's lawyer, but failed to file it with the court.

19 14. By the end of 2014, Respondent stopped working on Zinngrabe's matters.

20 15. Respondent did not inform Zinngrabe, the opposing parties, or the court that he  
21 was no longer handling Zinngrabe's legal matters.

22 16. At the time Respondent stopped handling Zinngrabe's legal matters, Respondent  
23 was handling three legal matters for Zinngrabe, including the Calvary lawsuit.

1 17. Respondent failed to file a notice of withdrawal in the Calvary lawsuit.

2 18. Zinngrabe believed that Respondent was still representing him in all three pending  
3 legal matters.

4 19. On November 30, 2015, Zinngrabe had an outstanding balance of \$8,018.70 in  
5 Respondent's IOLTA account.

6 20. In early summer 2016, Respondent was employed full time in a non-legal position.

7 21. On June 30, 2016, Respondent moved his office out of his former law firm, and set  
8 up an office in his home for handling occasional legal matters.

9 22. Respondent did not notify current clients, the court, or opposing counsel of his new  
10 business address.

11 23. On July 14, 2016, Respondent opened a new IOLTA account and transferred  
12 \$194,988.29 in client funds from his former firm's IOLTA account to the new IOLTA account,  
13 including the \$8,018.70 belonging to Zinngrabe.

14 24. On October 14, 2016, Calvary filed a motion for a default judgment that was sent  
15 to Respondent at his former law firm's address.

16 25. Respondent failed to respond to the motion for default.

17 26. Respondent never informed Zinngrabe about Calvary's motion for default.

18 27. On November 4, 2016, the court entered a default judgment in the amount of  
19 \$3,348.40 against Zinngrabe in favor of Calvary.

20 28. Calvary pursued satisfaction of its judgment by garnishing Zinngrabe's bank  
21 account.

22 29. Zinngrabe did not know about the default judgment until he discovered that  
23 Calvary was garnishing his bank account.

1 30. In late 2016, Zinngrabe contacted Respondent regarding the status of his legal  
2 matters.

3 31. Respondent informed Zinngrabe that he would be working on the matters.

4 32. Respondent did not perform any additional work on Zinngrabe's legal matters.

5 33. In 2017, Zinngrabe was unable to reach Respondent by telephone.

6 34. Respondent did not return Zinngrabe's telephone messages.

7 35. During 2017, Respondent's voice mailbox was full and would not accept  
8 messages.

9 36. In October 2017, Zinngrabe was trying to personally resolve a debt with a creditor,  
10 but the creditor declined to discuss the matter because his records reflected that Zinngrabe was  
11 represented by Respondent.

12 37. Zinngrabe left a telephone message for Respondent requesting that Respondent  
13 inform the creditor that he no longer represented Zinngrabe.

14 38. Respondent did not respond to Zinngrabe's message.

15 39. Respondent knowingly failed to perform services for Zinngrabe.

16 40. Respondent knowingly engaged in a pattern of neglect and non-communication in  
17 Zinngrabe's three matters.

18 41. Respondent's conduct caused actual injury to Zinngrabe.

19 **Noncooperation and Trust Account Violations**

20 42. On April 20, 2017, Zinngrabe filed a grievance with ODC.

21 43. On April 26, 2017, ODC sent a letter to Respondent requesting a response to the  
22 grievance.

23 44. Respondent did not respond to the grievance.

1 45. Zinngrabe consulted with lawyer John Barry (Barry), who sent a letter to  
2 Respondent, dated May 22, 2017, requesting the return of Zinngrabe's \$8,018.70.

3 46. Respondent did not promptly respond to Barry's letter.

4 47. On May 31, 2017, ODC sent a 10-day letter to Respondent requesting a response  
5 to the grievance within 10 days.

6 48. Respondent did not respond to the 10-day letter.

7 49. On June 15, 2017, Respondent was personally served with a subpoena for  
8 deposition and subpoena duces tecum requiring him to appear for a deposition on July 16, 2017,  
9 and produce, among other things, his trust account records.

10 50. On July 5, 2017, Respondent issued a check for \$8,018.70 to Zinngrabe.

11 51. Respondent did not appear for the July 16, 2017 deposition.

12 52. Respondent's deposition was rescheduled for September 6, 2017.

13 53. Respondent appeared at the September 6, 2017 deposition, but did not produce all  
14 of the client ledgers and other requested information for his trust account.

15 54. Respondent produced bank records at the September 6, 2017 deposition revealing  
16 that he was holding a substantial amount of funds belonging to clients and/or third persons for  
17 years.

18 55. Respondent's records reflected that he had client funds in his trust account that had  
19 been there for over 10 years.

20 56. As of October 31, 2017, Respondent's IOLTA account contained \$93,180.69, and  
21 bank records reflected that he had failed to return unearned funds to clients and/or third persons.

22 57. Respondent knowingly failed to promptly return unearned fees to his clients and/or  
23 third persons.

1 58. Respondent's conduct caused serious injury to clients and/or third persons who  
2 were deprived of funds to which they are entitled.

3 59. During the period from 2006 through the end of 2017, Respondent failed to  
4 provide clients and/or third persons with funds held in trust with annual written accountings of  
5 monies held in trust.

6 60. Respondent acted knowingly in failing to provide written accountings to clients  
7 and/or third persons with funds held in trust at least annually.

8 61. Respondent's conduct caused actual harm to those clients and third persons.

9 62. Respondent's IOLTA account also contained funds belonging to BT<sup>1</sup> Trust, a trust  
10 in which he was the trustee.

11 63. Respondent made disbursements from the trust account on behalf of BT Trust that  
12 exceeded the amount of funds that BT Trust had on deposit.

13 64. Respondent knowingly used funds belonging to his clients and/or third persons  
14 with funds held in trust without their knowledge or authority to make disbursements for BT  
15 trust.

16 65. ODC repeatedly requested that Respondent produce certain trust account records  
17 for his IOLTA account, but Respondent knowingly failed to provide that information to ODC.

18 66. As of the date of this formal complaint, Respondent has knowingly failed to  
19 produce the trust account check register and a complete set of client ledgers for his IOLTA  
20 account as requested, and/or Respondent did not maintain a check register for his IOLTA  
21 account.

22 67. Respondent's conduct caused actual harm to the public and the legal system by  
23

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<sup>1</sup> Initials are used to protect confidentiality of a non-grievant.



1 preventing ODC from fully investigating this grievance.

2 **COUNT 1**

3 68. By failing to diligently represent Zinngrabe, Respondent violated RPC 1.3.

4 **COUNT 2**

5 69. By failing to keep Zinngrabe reasonably informed about the status of his matter,  
6 Respondent violated RPC 1.4.

7 **COUNT 3**

8 70. By failing to take reasonable steps to protect Zinngrabe's interests upon  
9 termination, including but not limited to promptly disbursing unearned fees to Respondent  
10 violated RPC 1.15A(f) and/or RPC 1.16(d).

11 **COUNT 4**

12 71. By failing to provide Zinngrabe and/or other clients with written accountings of  
13 funds held in trust at least annually, Respondent violated RPC 1.15A(e).

14 **COUNT 5**

15 72. By failing to promptly disburse funds to clients and/or third person who were  
16 entitled to receive them, Respondent violated RPC 1.15A(f) and/or RPC 1.16(d).

17 **COUNT 6**

18 73. By disbursing funds on behalf of BT Trust that exceeded the amount of funds BT  
19 Trust had on deposit and/or by failing to safeguard client funds held in Respondent's IOLTA  
20 account, Respondent violated RPC 1.15A(h)(8).

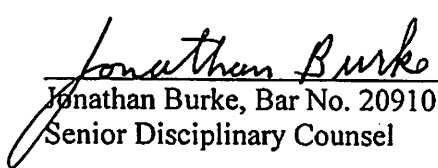
21 **COUNT 7**

22 74. By failing to cooperate with ODC's investigation of the grievance, and/or by  
23 failing to maintain a check register for his trust, Respondent violated RPC 8.4(f), and/or ELC  
1.5, and/or ELC 5.3(f), and/or ELC 5.3(g), and/or ELC 5.5(d), and/or RPC 1.15B(a).

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

Dated this 22<sup>nd</sup> day of March, 2018.

  
Jonathan Burke, Bar No. 20910  
Senior Disciplinary Counsel