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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
  
**WILLIAM H. WAECHTER,**  
  
Lawyer (Bar No. 20602).

Proceeding No. 14#00076  
  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND HEARING OFFICER'S  
RECOMMENDATION

The undersigned Hearing Officer held the hearing on May 16, 2016 through May 18, 2016 under Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC). Respondent William H. Waechter appeared at the hearing with his lawyer, Samuel B. Franklin. Disciplinary Counsel Francesca D'Angelo appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association.

FORMAL COMPLAINT

The Formal Complaint charged Respondent with the following counts of misconduct:

- Count 1 - By removing funds from his trust account unrelated to any client authorization, Respondent converted funds for his own use and violated RPC 8.4(b) (by committing the crime of theft in violation of RCW 9A.56.010 et seq.), RPC 1.15A(b) and/or RPC 8.4(c).
- Count 2 - By converting portions of KH'S clients' settlement funds to his own use,

DWB

1 Respondent violated RPC 1.15A(b).

- 2 • Count 3 - By taking funds in the TW case that were due to third parties, Respondent  
3 converted the funds for his own use and violated RPC 8.4(b) (by committing the  
4 crime of theft in violation of RCW 9A.56.010 et seq.) and/or RPC 1.15A(b) and/or  
5 RPC 1.15A(f) and/or RPC 8.4(c) and/or RPC 8.4(i).
- 6 • Count 4 - By failing to maintain clients funds in trust in the TW, DR, CR and/or TJ  
7 matters, Respondent violated RPC 1.15A(c)(1).
- 8 • Count 5 - By disbursing funds on behalf of TW that exceeded the funds TW had on  
9 deposit matter, Respondent violated RPC 1.15A(h)(8).
- 10 • Count 6 - By misrepresenting to client TW that he took no fee in her personal injury  
11 matter and/or that he paid \$2,500 to State Farm and/or Premera, Respondent violated  
12 RPC 8.4(c).
- 13 • Count 7 - By failing to provide an accurate written accounting to his clients after  
14 distributing their funds held in trust in the TW and/or KH matters, Respondent  
15 violated RPC 1.15A(e) and/or RPC 1.4 and/or RPC 1.5(c)(3).
- 16 • Count 8- By failing to promptly pay clients and/or third parties funds which were  
17 due to them in the DR, KH and/or TW matters, Respondent violated RPC 1.15A(f).
- 18 • Count 9 - By failing to maintain a checkbook register for his trust account which  
19 included entries for all transactions and a new trust account balance after each  
20 receipt, disbursement, or transfer, Respondent violated RPC 1.15B(a)(1)(v).
- 21 • Count 10 - By failing to maintain individual client ledgers, Respondent violated RPC  
22 1.15B(a)(2).
- 23 • Count 11- By failing to reconcile his trust account records on a monthly basis,  
24 Respondent violated RPC 1.15A(h)(6).
- Count 12- By failing to inform Mr. Shrosbree of the receipt of funds from  
Encompass Insurance, Respondent violated RPC 1.4(a)(1) and/or RPC 1.4(a)(3)  
and/or RPC 1.4(b) and/or RPC 1.15A(d).
- Count 13 - By converting the funds received from Encompass Insurance to his own  
use, Respondent violated RPC 8.4(b) (by committing the crime of theft in violation  
of RCW 9A.56.010-050) and/or RPC 1.15A(b) and/or RPC 8.4(c) and/or RPC 8.4(i).
- Count 14 - By signing Mr. Shrosbree's name on the Encompass Insurance check  
and/or by depositing the Encompass Insurance check into his trust account, knowing  
that the check contained a false signature and/or by presenting the signature on the  
Encompass Insurance check as true knowing it to be forged, Respondent violated

1 RPC 8.4(b) [by committing the crime of forgery in violation of RCW 9A.60.020]  
2 and/or RPC 8.4(c) and/or 8.4(i).

- 3 • Count 15 - By failing to provide a written accounting to Mr. Shrosbree after  
4 distributing the funds received from Encompass Insurance, Respondent violated  
5 RPC 1.15A(e).

6 Based on the pleadings in the case, the testimony, exhibits, and the pre-hearing  
7 stipulation entered into by the parties on May 13, 2016, the Hearing Officer makes the  
8 following:

9 FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 10 1. Respondent was admitted to the practice of law in 1991.

11 **A. Count 1**

12 *Findings of Fact*

- 13 2. Respondent maintained a trust account with Commerce Bank ending in 0307.  
14 3. On January 25, 2012, Respondent transferred \$100 from his trust account ending in  
15 0307 to his operating account ending in 0293.  
16 4. On March 13, 2012, Respondent transferred \$1,500 from his trust account ending  
17 in 0307 to his operating account ending in 0293.  
18 5. On May 4, 2012, Respondent transferred \$200 from his trust account ending in  
19 0307 to his operating account ending 0293.  
20 6. On July 27, 2012, Respondent wrote a \$3,000 check to himself from his trust  
21 account.  
22 7. On August 10, 2012, Respondent wrote a \$5,000 check to himself from his trust  
23 account.  
24 8. On March 12, 2013, Respondent wrote a check for \$500 to himself from his trust  
account.

1 9. These disbursements were not related to the interests of any client whose funds  
2 Respondent was holding in his trust account.

3 10. Respondent was not entitled the funds.

4 11. Respondent knew that he was not entitled to the funds when he disbursed the funds  
5 from his trust account to himself.

6 12. Respondent used the funds for his own benefit.

7 13. Respondent had no rational explanations for the withdrawals.

8 14. Respondent's claims that he had no conscious awareness of making the  
9 withdrawals and that the withdrawals were the result of bad accounting are not credible.

10 15. Respondent's claims that he thought he was entitled to the funds that he took were  
11 not credible. Respondent knew that he was not entitled to the funds.

12 16. Respondent converted the funds knowingly and intentionally with the intent to  
13 deprive his clients or third parties of their funds for a period of time.

14 17. Respondent took the funds because his operating accounts were short of money.  
15 Respondent needed the money because his legal practice was not making money.

16 18. Respondent calculated the amounts needed to cover shortages in his operating  
17 account and then withdrew the amounts needed from the trust account.

18 ***Conclusions of Law***

19 19. Count 1 has been proven by a clear preponderance of the evidence. Respondent's  
20 conduct violated RPC 8.4(b) (by violating RCW 9A.56.010), RPC 1.15A(b) and RPC 8.4(c).

21 **B. Counts 2-7**

22 ***Findings of Fact***

23 **Tori Weisel**

1 20. Respondent represented Tori Weisel in a personal injury matter.

2 21. Respondent's fee agreement with Ms. Weisel provided for a contingency fee of  
3 33% of the gross settlement.

4 22. On October 12, 2012, Respondent settled Ms. Wiesel's case for \$7,250.

5 23. Respondent deposited the funds into his trust account.

6 24. On November 2, 2012, Respondent took a fee of \$2,000 from the trust account for  
7 Ms. Weisel's case.

8 25. Respondent did not give notice to Ms. Weisel of his intent to take the fee through a  
9 billing statement or other document.

10 26. Respondent did not provide Ms. Weisel with a written accounting to reflect the  
11 \$2,000 disbursal.

12 27. On December 12, 2012, Respondent wrote Ms. Weisel and told her that he was in  
13 the process of negotiating with the subrogation interest holders, State Farm and Premera Blue  
14 Cross (Premera).

15 28. In the same correspondence, Respondent stated that he would waive his fee in her  
16 case. Respondent knew that this statement was untrue.

17 29. Respondent had already disbursed \$2,000 to himself as attorney's fees, but did not  
18 inform Ms. Weisel of this fact.

19 30. On January 17, 2013, Respondent sent Ms. Weisel an email with an accounting of  
20 the costs and fees in the case.

21 31. The accounting stated that Respondent's fees would be -0-, that he would pay a  
22 total of \$2,500 to State Farm and Premera and that costs would be \$101.42.

23 32. Respondent knew that the accounting was false and misleading since he had  
24

1 already taken \$2,000 as his fee and that Ms. Weisel did not have sufficient funds remaining in  
2 his trust account to pay State Farm or Premera.

3 33. Respondent disbursed the \$2,000 of the funds that he represented would be paid to  
4 State Farm and Premera to himself for his own benefit when he took that sum as a fee.

5 34. Respondent converted the funds owed to State Farm and Premera intentionally,  
6 with the intent to deprive State Farm and/or Premera of their funds for some period of time.

7 35. Respondent did not provide Ms. Weisel an updated settlement statement or  
8 otherwise account to Ms. Weisel for the \$2,500 that should have been paid to State Farm and  
9 Premera.

10 36. Ms. Weisel was injured in that she was deceived as to the amount of fees taken by  
11 Respondent, was not given an opportunity to object to the handling of her settlement funds,  
12 and was deceived as to the amount of funds she was entitled to receive.

13 37. Respondent did not make payment to State Farm until October 2014 and did not  
14 make a payment to Premera.

15 38. On March 25, 2013, Respondent issued Ms. Weisel a check for \$4,648.58.

16 39. On March 25, 2013, Respondent's trust account did not have sufficient funds  
17 remaining from Ms. Weisel's settlement to cover the check because Respondent had disbursed  
18 her funds on behalf of other clients and to himself.

19 40. Respondent used other clients' funds to cover the March 25, 2013 check issued to  
20 Ms. Weisel.

21 41. Respondent knew that Ms. Weisel's funds were no longer in trust and that he was  
22 using other client funds to cover her payment.

23 42. There was injury to the clients whose funds were used to pay Ms. Weisel and to  
24

1 Ms. Weisel whose funds had been depleted by other disbursements.

2 43. On August 6, 2013, Respondent disbursed \$601.42 to himself as costs related to  
3 Ms. Weisel's matter.

4 44. Respondent was not entitled to \$500 of the amount disbursed to himself as costs  
5 related to Ms. Weisel's matter. According to Respondent's settlement statement, the \$500  
6 should have been paid to State Farm and/or Premera.

7 45. Respondent used the funds for his own benefit.

8 46. In October 2014, Respondent paid \$1,500 to State Farm when they contacted him  
9 about their unpaid claim.

10 47. At some point thereafter, Respondent learned that Premera had waived their  
11 \$1,000 subrogation.

12 48. On May 2, 2016, two weeks before his disciplinary hearing, Respondent issued a  
13 check to Ms. Weisel for \$1,000.

14 49. State Farm was injured in that its payment was delayed. Ms. Weisel was injured in  
15 that she did not receive the funds that were due her until May 2016.

16 Karen Huster

17 50. Respondent represented Karen Huster in a personal injury matter.

18 51. Respondent's fee agreement with Ms. Huster provided for a contingency fee of 33  
19 1/3% of the gross settlement.

20 52. In or around February 2012, Ms. Huster's case settled for \$55,000.

21 53. Respondent agreed to take his contingency fee on \$50,000 of the settlement.

22 54. Respondent prepared a settlement statement that stated his fees would be  
23 \$16,665.00 and that \$1,602.87 would be paid to Regence Blue Shield (Regence) for  
24

1 subrogation.

2 55. On February 10, 2012, Respondent disbursed \$16,655.00 to himself as fees.

3 56. On June 5, 2012, Regence agreed to reduce its subrogation to \$1,067.25.

4 57. On June 6, 2012, Respondent issued a check to Regence in the amount of  
5 \$1,067.25.

6 58. On or about June 6, 2012, Respondent issued a check to himself in the amount of  
7 \$535.62, without Ms. Huster's knowledge or permission.

8 59. Respondent knew or should have known that he was not entitled to the \$535.62.

9 60. Respondent used the funds for his own benefit.

10 61. Respondent did not issue an accounting to Ms. Huster or otherwise inform her of  
11 the \$535.62 that he had taken.

12 62. Ms. Huster was actually injured in that she did not receive the funds to which she  
13 was entitled until May 2016, was deceived as to the amount of funds taken by Respondent and  
14 the amount that she was entitled to receive, and was not given an opportunity to object to the  
15 handling of her settlement funds.

16 63. On May 2, 2016, Respondent issued a check to Ms. Huster in the amount of  
17 \$535.62.

18 64. Ms. Huster was injured in that she did not receive the funds to which she was  
19 entitled in a timely manner.

20 Client DR

21 65. Respondent represented DR in a personal injury matter.

22 66. Respondent's fee agreement with DR stated that he would receive a contingency  
23 fee of 33 1/3% of the gross recovery.

24



1 67. In February 2012, DR's case settled for \$55,000.

2 68. Respondent prepared a settlement statement stating that his fees would be  
3 \$18,331.50.

4 69. The settlement statement listed \$8,249.35 as the amount that would be paid for  
5 medical subrogation liens. The subrogation lien was owed to The Department of Labor and  
6 Industries (L&I).

7 70. In October 2012, L&I agreed to reduce its lien to \$4,496.39.

8 71. On October 19, 2012, Respondent paid L&I's reduced lien from DR's funds in  
9 trust.

10 72. Respondent did not disburse the \$3,752.96 difference to DR until August 6, 2013.

11 73. Respondent knew or should have known that he was not paying the funds owed to  
12 DR in a timely manner.

13 74. DR was injured in that he was not paid the funds due him in a timely manner.

14 75. Between October 19, 2012 and August 6, 2013, Respondent failed to maintain all  
15 of DR's funds in his trust account.

16 76. Respondent knew or should have known that he was not treating DR's funds  
17 properly. DR was potentially injured in that his funds were not protected.

18 Client CR

19 77. Respondent represented CR in a personal injury matter.

20 78. Respondent's fee agreement with CR stated that he would receive a contingency  
21 fee of 33 1/3% of the gross recovery.

22 79. In March 2013, CR's case settled for \$11,000.

23 80. Respondent agreed to reduce his fee to \$2,000.

1 81. On March 13, 2013, Respondent disbursed a check to himself for \$2,000 as  
2 attorney's fees in CR's case.

3 82. On March 14, 2013, Respondent paid costs in the amount of \$203.86 for CR's  
4 case.

5 83. After making these disbursements, Respondent should have had \$8,796.14 of CR's  
6 funds remaining in his trust account.

7 84. Respondent failed to maintain CR's funds in his trust account.

8 85. Respondent knew or should have known that he was not treating CR's funds  
9 properly. CR was injured in that his funds were not protected.

10 86. On April 8, 2013, Respondent disbursed \$8,751.79 to CR by check.

11 87. On April 8, 2013, there were insufficient funds in Respondent's trust account to  
12 cover the check to CR and, when the check was presented, the account was overdrawn.

13 88. On April 8, 2013, Respondent deposited \$3,000 into his trust account to cover the  
14 shortage. On April 8, 2013 the check to CR was paid.

15 Client TJ

16 89. Respondent represented TJ in a personal injury matter.

17 90. In or around January 2013, TJ's case settled for \$40,000.

18 91. On or around February 13, 2013, Respondent properly disbursed a total of  
19 \$38,238.21 to TJ, to himself, and to others on TJ's behalf.

20 92. After making these disbursements, Respondent should have had \$1,761.79 of TJ's  
21 funds in his trust account.

22 93. Between February 13, 2013 and May 2, 2013, Respondent failed to maintain the  
23 \$1,761.79 balance of TJ's funds in his trust account.

1 94. Respondent knew or should have known that he was not treating TJ's funds  
2 properly. TJ was potentially injured in that her funds were not protected.

3 95. On May 2, 2013, Respondent disbursed \$1,761.79 to TJ from his personal account.

4 ***Conclusions of Law***

5 96. Count 2 has been proven by a clear preponderance of the evidence. By converting  
6 portions of Ms. Huster's settlement funds to his own use, Respondent violated RPC 1.15A(b).

7 97. Count 3 has been proven by a clear preponderance of the evidence. By converting  
8 funds in Ms. Weisel's case that were due to third parties and/or Ms. Weisel without  
9 entitlement and with the intent to deprive the third parties and/or Ms. Weisel of their funds,  
10 Respondent violated RPC 8.4(b) (by committing the crime of theft in violation of RCW  
11 9A.56.010 et seq.), RPC 1.15A(b), RPC 1.15A(f) , RPC 8.4(c) and RPC 8.4(i).

12 98. Count 4 has been proven by a clear preponderance of the evidence. By failing to  
13 maintain Ms. Wiesel, DR, CR and TJ's funds in trust Respondent violated RPC 1.15A(c)(1).

14 99. Count 5 has been proven by a clear preponderance of the evidence. By  
15 disbursing funds on behalf of Ms. Weisel that exceeded the funds that Ms. Weisel had on  
16 deposit, Respondent violated RPC 1.15A(h)(8).

17 100. Count 6 has been proven by a clear preponderance of the evidence. By  
18 misrepresenting to Ms. Weisel that he took no fee in her personal injury matter and that he  
19 paid \$2,500 to State Farm and/or Premera, Respondent violated RPC 8.4(c).

20 101. Count 7 has been proven by a clear preponderance of the evidence. By failing to  
21 provide an accurate written accounting to his clients after distributing their funds held in trust  
22 in the Weisel and Huster matters, Respondent violated RPC 1.15A(e), RPC 1.4 and RPC  
23 1.5(c)(3).

1 102. Count 8 has been proven by a clear preponderance of the evidence. By failing to  
2 promptly pay clients and State Farm funds which were due to them in the DR, Huster and  
3 Weisel matters, Respondent violated RPC 1.15A(f).

4 **C. Counts 9-11**

5 103. By his Answer to the Formal Complaint, and the pre-hearing Stipulation signed  
6 by the parties, Respondent has admitted the violations contained in Counts 9-11.

7 ***Findings of Fact***

8 104. From January 1, 2012 through August 6, 2013, Respondent failed to maintain a  
9 check register that included all transactions for his IOLTA trust account and failed to maintain  
10 a check register for his trust account with a running balance after each transaction.

11 105. From January 1, 2012 through August 6, 2013, Respondent failed to maintain  
12 individual client ledgers for his client trust account.

13 106. From January 1, 2012 through August 6, 2013, Respondent failed to reconcile his  
14 bank statements to his trust account records.

15 ***Conclusions of Law***

16 107. Count 9 has been proven by a clear preponderance of the evidence. By failing to  
17 maintain a check register that included all transactions for his IOLTA trust account and by  
18 failing to maintain a check register for his trust account with a running balance after each  
19 transaction, Respondent's violated RPC 1.15B(a)(1)(v).

20 108. Count 10 has been proven by a clear preponderance of the evidence. By failing to  
21 maintain individual client ledgers for his client trust account, Respondent violated RPC  
22 1.15B(a)(2).

23 109. Count 11 has been proven by a clear preponderance of the evidence. By failing to  
24

1 reconcile his bank statements to his trust account records, Respondent violated RPC  
2 1.15A(h)(6).

3 **D. Counts 12-15**

4 ***Findings of Fact***

5 110. Respondent represented Mr. Shrosbree in a personal injury lawsuit.

6 111. Mr. Shrosbree is the son of Respondent's sister, Colleen Waechter.

7 112. There was no fee agreement between Respondent and Mr. Shrosbree.

8 113. The case settled in January 2008 for \$90,000.

9 114. At the time of the settlement, Respondent, Mr. Shrosbree and his family agreed  
10 that Respondent's fee would be \$20,000.

11 115. Respondent accepted a fee of \$20,000 for his work on the case.

12 116. Four years later, by letter dated May 9, 2012, Encompass Insurance advised  
13 Respondent that they were sending him \$17,698.32 as an additional payment on Mr.  
14 Shrosbree's claim.

15 117. A few days later, Respondent received a check payable to John Shrosbree and  
16 Respondent for \$17, 698.32.

17 118. In May 2012, Respondent explained the situation to his sister Colleen Waechter.  
18 Ms. Waechter told Respondent to keep the money.

19 119. In May 2012, Mr. Shrosbree was 24 years old, married and a father.

20 120. Because Mr. Shrosbree was using drugs at the time, Respondent and Ms.  
21 Waechter did not discuss or even consider giving the money to Mr. Shrosbree. Ms. Waechter  
22 thought her son was addicted to drugs.

23 121. Respondent and Ms. Waechter did not discuss or consider any other alternatives  
24

1 such as putting the funds in trust or in a restricted bank account, petitioning for a  
2 guardianship, or giving the money to Mr. Shrosbree's wife.

3 122. The only subject discussed at the time was having Respondent keep the money.

4 123. Ms. Waechter had no authority to authorize Respondent to keep the money.

5 124. Ms. Waechter testified that Mr. Shrosbree signed a power of attorney in 2006 in  
6 favor of Ms. Waechter and Mr. Shrosbree's father. Mr. Shrosbree did not recall specifically  
7 signing a power of attorney to his mother and father to handle matters for the case.

8 125. Only an unsigned copy of a power of attorney was produced and admitted into  
9 evidence at hearing. Because the unsigned power of attorney admitted into evidence expired  
10 on June 1, 2008 and the personal injury case commenced by Mr. Shrosbree was settled before  
11 June 1, 2008, the hearing officer does not make a determination of whether the power of  
12 attorney actually existed in 2006.

13 126. There was no competent evidence that Ms. Waechter had an extended power of  
14 attorney from her son in 2012, when she told Respondent to keep the money from Encompass  
15 that arrived in May 2012.

16 127. Respondent knew that Ms. Waechter lacked authority to give him the money and  
17 knew he should advise and consult with his client, which he did not do.

18 128. Respondent did not inform Mr. Shrosbree of his receipt of the Encompass funds.

19 129. Respondent knew that the funds belonged to Mr. Shrosbree.

20 130. Respondent did not research whether there was a factual or legal basis for him to  
21 keep the money. Nor did he discuss the issue with any colleagues or seek professional advice.

22 131. On May 25, 2012, Respondent deposited the Encompass money into his trust  
23 account.

1           132. At the time of the deposit, Respondent forged Mr. Shrosbree's endorsement to  
2 the back of the Encompass check by copying Mr. Shrosbree's signature from another  
3 document.

4           133. Respondent forged Mr. Shrosbree's endorsement intentionally and knowingly,  
5 trying to make the endorsement look like Mr. Shrosbree's genuine signature.

6           134. Respondent signed Mr. Shrosbree's name without Mr. Shrosbree's knowledge or  
7 permission and with the intent to pass off Mr. Shrosbree's signature as genuine.

8           135. Respondent's forgery of the financial instrument was deliberate and intentional.

9           136. Respondent misrepresented to the financial institution, Commerce Bank of  
10 Washington, which held his trust account, about the bona fides of the deposit by presenting a  
11 check with the forged endorsement.

12           137. Between May 25 and June 6, 2012, Respondent removed the Encompass funds  
13 from his trust account without Mr. Shrosbree's knowledge or permission.

14           138. Respondent used the Encompass funds for his own purposes.

15           139. Respondent was not entitled to keep the Encompass money as an additional fee  
16 for Mr. Shrosbree's case as the case was settled four years earlier, and Respondent had  
17 accepted \$20,000 as his fee on the case.

18           140. Respondent did not have a written fee agreement with Mr. Shrosbree or his  
19 parents. He certainly did not have an agreement calling for a higher fee four years later.

20           141. Respondent was not entitled to the Encompass funds.

21           142. Respondent knew that he was not entitled to the Encompass funds.

22           143. Respondent's actions were a knowing and intentional conversion of client funds.

23           144. Respondent converted the funds with the intent to deprive Mr. Shrosbree of the  
24

1 funds.

2 145. Respondent stole and converted the funds because he needed the money and his  
3 operating accounts were short. In 2012 respondent had experienced a bad year financially.  
4 He had lost cases involving substantial advancements for the clients, which could not be  
5 recovered.

6 146. Respondent did not consult with Mr. Shrosbree about receipt of the money or  
7 whether he was entitled to the additional fees. He did not tell Mr. Shrosbree he had received  
8 the extra money. This nondisclosure is guilty behavior, proving that he knew that he was  
9 secretly taking and converting the client's money.

10 147. Respondent did not provide a written accounting to Mr. Shrosbree or otherwise  
11 inform him of the distribution of the funds.

12 148. Respondent acted knowingly and with the intent to hide his own misconduct.

13 149. Mr. Shrosbree was injured in that he was not informed of the funds and his funds  
14 were misappropriated without his knowledge.

15 150. After two years and four months had passed following the conversion of the  
16 funds, Respondent finally advised Mr. Shrosbree about the Encompass funds. He did so  
17 because he learned that the Office of Disciplinary Counsel was investigating the Encompass  
18 situation and respondent realized that the true facts were about to be discovered and disclosed.

19 151. Respondent advised Mr. Shrosbree about the funds by letter in September 2014,  
20 after the Office of Disciplinary Counsel had questioned him about the subject in a deposition.

21 152. On September 19, 2014, Respondent mailed a check for \$17,500 payable to Mr.  
22 Shrosbree with a letter to Mr. Shrosbree stating that the money belonged to Mr. Shrosbree and  
23 not to respondent.



1 153. The letter was misleading because it said that the money arrived "some time ago"  
2 and it did not disclose that the money arrived over two years earlier and had been  
3 misappropriated by the Respondent.

4 154. The letter was also misleading because it said, "The money is part of our share of  
5 an attorney's fee that was part of a settlement of your case." The money was not part of  
6 Respondent's fee, which had been paid six years earlier.

7 155. The letter correctly stated that "As a matter of law, the money is yours, not  
8 mine."

9 156. In sending a check for \$17,500 to Mr. Shrosbree, Respondent shortchanged his  
10 client by \$198.32. Respondent has provided no explanation for his failure to deliver the  
11 \$198.32 to Mr. Shrosbree.

12 157. Respondent's conduct caused actual injury to his client.

13 ***Conclusions of Law***

14 158. Count 12 has been proven by a clear preponderance of the evidence. By failing  
15 to inform Mr. Shrosbree of the receipt of funds from Encompass Insurance, Respondent  
16 violated RPC 1.4(a)(1), RPC 1.4(a)(3), RPC 1.4(b), and RPC 1.15A(d).

17 159. Count 13 has been proven by a clear preponderance of the evidence. By  
18 converting the funds received from Encompass Insurance to his own use, Respondent violated  
19 RPC 8.4(b) by committing the crime of theft in violation of RCW 9A.56.010-050, RPC  
20 1.15A(b), RPC 8.4(c), and RPC 8.4(i).

21 160. Count 14 has been proven by a clear preponderance of the evidence. By signing  
22 Mr. Shrosbree's name on the Encompass Insurance check, by depositing the Encompass  
23 Insurance check into his trust account knowing that the check contained a false signature, and  
24

1 by presenting the signature on the Encompass Insurance check as true knowing it to be forged,  
2 Respondent violated RPC 8.4(b) (by committing the crime of forgery in violation of RCW  
3 9A.60.020, RPC 8.4(c), and RPC 8.4(i).

4 161. Count 15 has been proven by a clear preponderance of the evidence. By failing  
5 to provide a written accounting to Mr. Shrosbree after distributing the funds received from  
6 Encompass Insurance, Respondent violated RPC 1.15A(e).

7 **E. Presumptive Sanction**

8 162. Count 1: Respondent knowingly converted client property and committed the  
9 crime of theft. Respondent's conduct caused injury to the clients whose funds were in his  
10 trust account. The presumptive sanction is disbarment under ABA Standards 4.11 and 5.11.

11 163. Count 2: In the Huster matter, Respondent should have known that he was not  
12 entitled to keep the funds left over after Regence reduced its subrogation and that these funds  
13 belonged to Ms. Huster. There was actual injury to the client. The presumptive sanction  
14 under ABA Standard 4.12 is suspension.

15 164. Count 3: In the Weisel matter, Respondent knowingly converted funds and  
16 committed the crime of theft. State Farm was harmed in that its payment was delayed. Ms.  
17 Weisel was harmed in that she did not receive the funds that were due her until May 2016.  
18 The presumptive sanction under ABA Standards 4.12 is suspension.

19 165. Count 4: Respondent knew or should have known that he was not treating Ms.  
20 Wiesel, DR, CR and TJ's funds properly when he did not maintain their funds in his trust  
21 account. The clients were injured in that their funds were not protected. The presumptive  
22 sanction under ABA Standard 4.12 is suspension.

23 166. Count 5: Respondent knew or should have known that he was not treating Ms.  
24

1 Weisel's funds properly when he disbursed funds to her that exceeded the funds that she had  
2 on deposit. There was injury to the clients whose funds were used to pay Ms. Weisel. The  
3 presumptive sanction under ABA Standard 4.12 is suspension.

4 167. Count 6: Respondent's conduct in misrepresenting to Ms. Weisel that he took no  
5 fee in her personal matter and that he had paid \$2,500 to State Farm and Premera was  
6 knowing. Ms. Weisel was injured in that she was deceived as to the amount of fees taken by  
7 Respondent and deceived as to the amount of funds that she was entitled to receive. The  
8 presumptive sanction under ABA Standard 4.62 is suspension.

9 168. Count 7: Respondent knew that his accountings to Ms. Huster and Ms. Weisel  
10 were inaccurate. Both clients were injured in that they were deceived as to the amount of fees  
11 taken by Mr. Waechter, were not given an opportunity to object to the handling of their  
12 settlement funds and were deceived as to the amounts they were entitled to receive. The  
13 presumptive sanction under ABA Standard 4.62 is suspension.

14 169. Count 8: Respondent acted knowingly in failing to pay clients and State Farm the  
15 funds that were due them. The clients and State Farm were injured in that they were deprived  
16 of the funds they were entitled to receive in a timely manner. The presumptive sanction under  
17 ABA Standard 4.12 is suspension.

18 170. Counts 9-11: Respondent knew that he was failing to maintain adequate trust  
19 records and failing to reconcile his trust account. There was injury to the clients whose funds  
20 were at risk and injury to the disciplinary system when ODC was required to expend time and  
21 resources in reconstructing these accounts. The presumptive sanction under ABA Standard  
22 4.12 is suspension. The presumptive sanction for Counts 2-11 is a two-year suspension.

23 171. Count 12: In failing to inform Mr. Shrosbree of the receipt of funds from  
24

1 Encompass Insurance, Respondent acted knowingly and with the intent to hide his own  
2 misconduct. Mr. Shrosbree was seriously injured in that he was not informed of the funds and  
3 his funds were misappropriated without his knowledge. The presumptive sanction under ABA  
4 Standard 4.6 is disbarment.

5 172. Count 13: Respondent acted knowingly in converting the funds received from  
6 Encompass Insurance to his own use and with the intent to deprive Mr. Shrosbree of his funds.  
7 The presumptive sanction under ABA Standards 4.11 and 5.11(a) is disbarment.

8 173. Count 14: Respondent acted knowingly in signing Mr. Shrosbree's name on the  
9 Encompass Insurance check, by depositing the Encompass Insurance check into his trust  
10 account knowing that the check contained a false signature, and by presenting the signature on  
11 the Encompass Insurance check as true knowing it to be forged. The crime of forgery  
12 involves fraud and deceit. The presumptive sanction under ABA Standards 4.11 and 5.11(a)  
13 is disbarment.

14 174. Count 15: Respondent acted knowingly and with the intent to hide his own  
15 misconduct in failing to provide a written accounting to Mr. Shrosbree after respondent  
16 received the funds from Encompass Insurance. Mr. Shrosbree was seriously injured in that he  
17 was not informed of the receipt of the funds, which allowed the funds to be misappropriated  
18 without his knowledge. The presumptive sanction under ABA Standard 4.6 is disbarment.

19 **F. Aggravating and Mitigating Factors**

20 175. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
21 are applicable in this case:

- 22 (b) dishonest or selfish motive: Respondent was acting with a dishonest or  
23 selfish motive when on several occasions he took money from his trust  
24 account without entitlement and endorsed the Encompass check,  
deposited the money in his trust account and took the funds;

- 1
- 2 (c) a pattern of misconduct; respondent committed multiple offenses  
evidencing a pattern.
- 3 (d) multiple offenses;
- 4 (i) substantial experience in the practice of law: Respondent was admitted to  
5 the practice of law in 1991.

6 The following mitigating factors set forth in Section 9.32 of the ABA Standards are  
7 applicable to this case:

- 8 (a) absence of a prior disciplinary record;
- 9 © Personal or emotional problems
- 10 (e) full and free disclosure to disciplinary board or cooperative attitude  
11 toward proceedings;
- 12 (g) character or reputation;
- 13 (i) mental disability
- 14 (l) remorse.

15 176. The hearing officer has considered Respondent's argument that he was suffering  
16 from personal or emotional problems and a mental disability (depression and vicarious  
17 traumatization) at the time of these offenses. The evidence presented on these issues was  
18 incompetent and insufficient.

19 177. Respondent presented the testimony of Marta Miranda, Psy. D., to testify as to  
20 whether "psychological factors could explain his poor judgment with regard to his practice as  
21 an attorney." Dr. Miranda's opinion was that "although his state of mind three years ago was  
22 not directly measured data collected in this evaluation suggests that this decisions were likely  
23 impacted by vicarious traumatization." Dr. Miranda said "vicarious traumatization is "known  
24

1 as compassion fatigue in some circles.” The hearing officer found Dr. Miranda’s opinions  
2 speculative and not credible .

3 178. Dr. Miranda first examined Respondent in December 2015. Dr. Miranda’s  
4 testimony suggesting that Respondent may have suffered from vicarious traumatization in  
5 2012 is unsupported by her 2015 examination and testing of Respondent. The various tests  
6 that she administered only address and speak to Respondent’s condition in late 2015. As  
7 admitted by Dr. Miranda the tests did not determine respondent’s state of mind or whether he  
8 was experiencing vicarious traumatization symptoms in 2012. On cross examination Dr.  
9 Miranda testified that respondent was aware of his ethical obligations regarding trust accounts  
10 and was aware that he should not have used trust accounts for his own expenses. Dr. Miranda  
11 also admitted on cross-examination that it was not possible for her to ascertain respondent’s  
12 “state of mind at the time he breached the standards of his profession.” Dr. Miranda did not  
13 have credible or persuasive opinions about Respondent’s vicarious traumatization at the  
14 relevant times.

15 179. There was no evidence that Respondent has in the past or is now undergoing  
16 counseling or any program to address the underlying causes of his misconduct.

17 180. Because there was no competent or sufficient evidence that Respondent was  
18 suffering from a mental disability at any relevant time, the mitigating factor of mental  
19 disability does not apply.

20 181. Nor does the mitigating factor of personal or emotional problems apply on the  
21 record in this case. To the extent that Respondent had personal or emotional problems, they  
22 were caused by normal adverse professional events such as losing litigated cases, the resulting  
23 financial setbacks and his need for funds following his professional reversals. None of these  
24

1 | circumstances justify conversion of client funds or Respondent's other violations of the RPC.

2 | The mitigating factor of personal or emotional problems does not apply.

3 | 182. The hearing officer has considered Respondent's argument that he made a timely  
4 | good faith effort to make restitution or rectify the consequences of his misconduct. Aside  
5 | from payments to the client "CR", none of Respondent's restitution efforts were made before  
6 | Respondent realized the Bar Association was investigating him. Restitution to Ms. Weisel and  
7 | Ms. Huster was not made until two weeks prior to the start of this hearing on May 16, 2016,  
8 | even though Respondent had been aware of these issues since August 2014. This mitigating  
9 | factor does not apply.

10 | 183. The mitigating factors that are present do not justify a reduction of the  
11 | presumptive sanction called for by the ABA Standards.

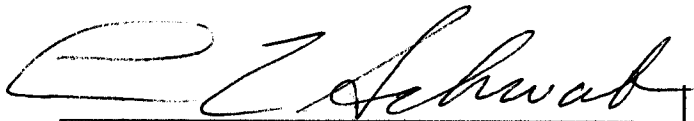
12 | RECOMMENDATION

13 | 184. Based on the ABA Standards and the applicable aggravating and mitigating  
14 | factors, the Hearing Officer recommends that Respondent William H. Waechter be disbarred.

15 | 185. Respondent should be required to pay restitution in the following amounts:

- 16 | • \$198.32 to Mr. Shrosbree, plus \$5,549, representing interest at the rate of 12  
17 | percent per annum on the \$17,500 from May 2012 through September 2014;  
18 | • \$488.53 to Ms. Weisel, representing interest at the rate of 12 percent per annum  
19 | from November 2012 to May 2016 on the \$1,000 wrongfully taken;  
20 | • \$298.28 to Ms. Huster, representing interest at the rate of 12 percent per annum  
21 | from June 2012 to May 2016 on \$535.62 wrongfully taken.

22 |  
23 | Dated this 5 day of July, 2016.

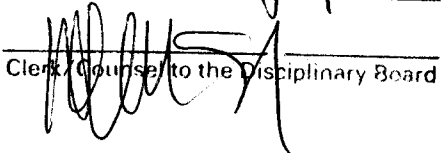


Evan L. Schwab  
Hearing Officer

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF COL & HD'S RECOMMENDATION  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to SAM FRANKLIN Respondent/Respondent's Counsel  
at 701 PINE ST #1200 SEATTLE WA 98101 certified/first class mail  
postage prepaid on the 6th day of JULY, 2016

  
Clerk/Counsel to the Disciplinary Board