

OCT 17 2013

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JOHN JOSEPH BAKER,
Lawyer (Bar No. 22951).

Proceeding No. 13#00056

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

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),
the undersigned Hearing Officer held a default hearing on October 16, 2013.

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

1. The Formal Complaint (Bar File No. 3) charged John Joseph Baker with
misconduct as set forth therein.
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 violations charged in the
Formal Complaint (Bar File No. 3) is admitted and established as follows:
4. By keeping \$6,434.62 from Ms. Skulec's settlement, despite the fact that the funds

019

1 belonged to Ms. Skulec, Respondent violated RPC 1.15A(b) and RPC 8.4(b) (by committing
2 Theft as defined by RCW 9A.56.020).

3 5. By failing to keep complete trust account records as required by Rule 1.15B,
4 Respondent violated RPC 1.15A(h)(2) and RPC 1.15B.

5 6. By failing to deposit and hold client funds in his trust account, separate from his
6 own property, until such time as he was authorized to remove them, Respondent violated RPC
7 1.15A(c)(1).

8 7. By withdrawing cash from his trust account, Respondent violated RPC
9 1.15A(h)(5).

10 8. By failing to respond to numerous requests for documents related to the WSBA
11 grievance, and by failing to cooperate with the Association's investigation of the WSBA and
12 Skulec grievances, Respondent violated RPC 8.4(I), through a violation of ELC 1.5, ELC 5.3(e)
13 and ELC 5.3(f).

14 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
15 **REGARDING RECOMMENDED SANCTION**

16 9. The following standards of the American Bar Association's Standards for
17 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively
18 apply in this case:

19 10. ABA Standard 4.1 is most applicable to the duty to preserve client property and to
20 cases involving conversion of client property (violations of RPC 1.15A and RPC 1.15B).

21 11. ABA Standard 5.1 is most applicable to the cases involving theft (violations of
22 RPC 8.4(b)).

23 12. ABA Standard 7.0 is most applicable to the duty to cooperate with the
24 investigation of a grievance (violations of RPC 8.4(I)).

1 13. Respondent acted knowingly and intentionally in converting for his own use the
2 \$6,434.62 that belonged to Ms. Skulec.

3 14. Respondent caused serious injury to Ms. Skulec.

4 15. Respondent acted knowingly in failing to comply with the rules relating to IOLTA
5 account records and maintenance of client funds.

6 16. Respondent knowingly failed to cooperate with the Association's investigation.

7 17. Respondent caused injury to clients, whose funds were delayed or not provided to
8 them at all.

9 18. Respondent caused actual injury to the lawyer discipline system as a whole, which
10 depends on lawyer cooperation and honesty to function.

11 19. Respondent caused actual harm to the Office of Disciplinary Counsel in the form
12 of increased effort and costs.

13 20. The presumptive sanction for Count 1 is disbarment.

14 21. The presumptive sanction for Count 2 is suspension.

15 22. The presumptive sanction for Count 3 is suspension.

16 23. The presumptive sanction for Count 4 is suspension.

17 24. The presumptive sanction for Count 5 is suspension.

18 25. The "ultimate sanction imposed should at least be consistent with the sanction for
19 the most serious instance of misconduct among a number of violations." In re Disciplinary
20 Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA
21 Standards at 6).

22 26. The following aggravating factors set forth in Section 9.22 of the ABA Standards
23 apply in this case:
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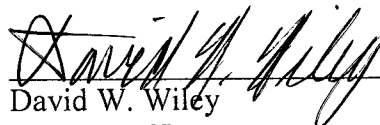
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency [failure to file answer to formal complaint as required by ELC 10.5(a)]¹;
- (i) substantial experience in the practice of law [Respondent was admitted to practice in 1993]; and
- (j) indifference to making restitution.

27. No mitigating factors apply in Section 9.32 of the ABA Standards.

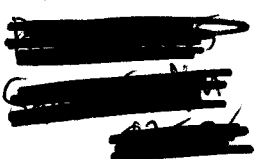
RECOMMENDATION

28. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent John Joseph Baker be disbarred. Respondent should be ordered to pay \$6,434.62 in restitution to Sara Skulec.

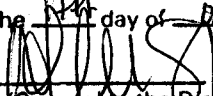
DATED this 16 day of October, 2013.


 David W. Wiley
 Hearing Officer

CERTIFICATE OF SERVICE

Also Sent to:


I certify that I caused a copy of the FOF COL & Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to John Baker Respondent/Respondent's Counsel at PO BOX 414 Placita, NM 87005, by Certified/first class mail postage prepaid on the 14 day of Oct., 2013


 Clerk/Counsel to the Disciplinary Board

¹ ELC 10.5(a) provides: "Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6." See In re Righter, 992 P.2d 1147, 1149 (Colo. 1999) (lawyer's "total nonparticipation in these proceedings demonstrates a bad faith obstruction of the disciplinary process").