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MAY 30 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

TAMARA MARIE CHIN

Lawyer (WSBA No. 23062).

Public No. 11#00089

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

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on April 16 and 17, 2013, and on May 8, 2013. Respondent Tamara Marie Chin appeared at the hearing and was represented by Stephen C. Smith of Hawley Troxell Ennis & Hawley LLP. Disciplinary Counsel Natalea Skvir appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT

The Formal Complaint filed by the Association was divided into two categories. First, Counts 1 through 8 pertained to the "WSBA grievance," and second, Counts 9 through 15 pertained to the "Don-A Wills grievance."

WSBA Grievance:

1 Count 1 – By failing to maintain in her trust account funds that she was obligated to hold in trust
2 for her clients, Respondent violated RPC 1.15A(c)(1).

3 Count 2 – By failing to deposit unearned fees into her trust account, Respondent violated RPC
4 1.15A(c)(1) and/or RPC 1.15A (c)(2).

5 Count 3 – By disbursing funds on behalf of clients in amounts that exceeded the amounts being
6 held in trust for those clients, Respondent violated RPC 1.15A (h)(8).

7
8 Count 4 – By making cash withdrawals from her trust account, Respondent violated RPC
9 1.15A(h)(5).

10 Count 5 – By failing to maintain a running balance in her trust account check register,
11 Respondent violated RPC 1.15B(a)(1).

12 Count 6 – By failing to include the name of the payor and/or the payee and/or the purpose for
13 each transaction and include a running balance in her client ledgers, Respondent violated RPC
14 1.15B(a)(2).

15 Count 7 – By failing to reconcile her trust account bank statement balance to her check register
16 balance and her client ledger balances to her check register on a monthly basis, Respondent
17 violated RPC 1.15A(h)(6).

18
19 Count 8 – By failing to retain the monthly bank statements for her trust account, Respondent
20 violated RPC 1.15B(a)(7).

21 **Don-A Wills Grievance:**

22 Count 9 – By failing to deposit Ms. Wills' advance fee deposit into her trust account,
23 Respondent violated RPC 1.15A(c)(2).
24

1 Count 10 – By failing to respond to Ms. Wills’ communications, Respondent violated RPC
2 1.4(a).

3 Count 11 – By failing to provide Ms. Wills an accounting of the fee she had paid, Respondent
4 violated RPC 1.15A(e).

5 Count 12 – By failing to promptly refund Ms. Wills’ fee after her services had been terminated,
6 Respondent violated RPC 1.15A(f).

7
8 Count 13 – By failing to take reasonable action to safeguard her former client’s confidential
9 information from unauthorized disclosure or removal, Respondent violated RPC 1.6(a).

10 Count 14 – By failing, upon termination of the representation, to surrender papers and property
11 to which Ms. Wills was entitled and/or failing to refund an advance fee that she had not earned,
12 Respondent violated RPC 1.16(d).

13 Count 15 – By failing to ensure the security of the documents to be returned to Ms. Wills,
14 Respondent violated RPC 1.6(a).

15
16 **THE HEARING**

17 The hearing began at approximately 9:00 am on April 16, 2013 and continued to April
18 17, 2013. Due to a family emergency that required the immediate attention of Respondent’s
19 Counsel, the hearing was suspended in the afternoon of April 17 and all parties agreed to
20 reconvene on May 8, 2013. Exhibits were admitted into evidence. Witnesses were sworn in
21 and gave testimony. The Hearing Officer requested that closing arguments be submitted in
22 written form of no more than 10 pages. The Hearing Officer also requested counsel to either
23 work together or separately provide a timeline of the events. The deadline for closing
24

1 arguments was set for May 17, 2013, the same date the official transcript would be available.

2 On May 16, the Association submitted its closing argument and the timeline. On May 17,

3 Respondent submitted its closing argument, but no timeline.

4 **FINDINGS OF FACT**

5 **WSBA Grievance: Non-cooperation and Trust Account**

- 6
- 7 1. Respondent was admitted to the practice of law in the State of Washington on November
- 8 10, 1993.
- 9 2. Respondent worked at the Snohomish County Prosecuting Attorney's Office from 1993
- 10 to 1998. (TR 278:3)
- 11 3. Respondent started a solo practice in 1999 in Seattle. Her practice was primarily
- 12 guardianship and family law. A trust account was opened.
- 13 4. Respondent moved the practice to an office in Edmonds, Washington in 2001.
- 14 5. Respondent stopped practicing law in 2001 to 2002 in order to deal with family issues.
- 15 6. Respondent worked primarily from home in 2002 to 2004. The practice consisted of
- 16 guardian ad litem work and uncontested divorces.
- 17 7. From 2005 to 2006, Respondent took over the entire office space at her brother's law
- 18 office in Lynnwood.
- 19 8. Respondent joined a Seattle law firm in 2007, but then resumes practice at home after
- 20 her husband left the home in 2007.
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- 22
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- 1 9. In 2008, Respondent moved the practice to 555 Dayton St, Edmonds where she
2 remained until 2012. The office then moved to its present location in Lynnwood.
- 3 10. During the entire time, Respondent maintained both a trust account and an operating
4 account.
- 5 11. On August 16, 2010, the Washington State Bar Association (WSBA) received a notice
6 from Bank of America dated August 12, 2010, informing it that Respondent's trust
7 account was overdrawn. The amount of the overdraft was \$94.24. (Exh A200).
- 8 12. A grievance was opened against Respondent and on August 18, 2010, the Association's
9 Audit Manager, Rita Swanson, sent Respondent a letter asking for an explanation of the
10 overdraft as well as supporting documentation due within two weeks. (Exh A201).
- 11 13. Respondent apparently did not respond to this letter.
- 12 14. On September 27, 2010, Marsha Matsumoto, the Senior Disciplinary Counsel, sent
13 another letter to Respondent asking her to file a written response explaining the
14 overdraft, and the response was due in 10 days or on October 11, 2010. (Exh A202).
- 15 15. Respondent sent a letter dated October 19, 2010 responding to the letter and explaining
16 that an accounting error had occurred. Enclosed with the letter were a copy of a \$195.00
17 check written to a certain George Nervik and a copy taken online of the Bank of
18 America trust account activity covering the period between August 9 and August 13,
19 2010. (Exh A203).
- 20 21
- 22 16. Rita Swanson sent Respondent a letter (dated October 25, 2010) requesting the
23 production of certain specified trust account documents covering the periods of July,
24

1 August and September 2010. These were due on November 8, 2010. In addition,
2 Swanson enclosed the WSBA publication "Managing Client Trust Accounts, Rules,
3 Regulation, and Common Sense." (Exh A204).

4 17. Respondent sent Swanson an email on November 16, 2010 (Exh A205) and attached 16
5 pages of documents, most of which were printouts from Bank of America (Exh A206);
6 copies of deposit slips (Exh A207); handwritten pieces of paper, one with "Client
7 ledgers" on top (Exh A208); more handwritten pieces of paper with "Check Register" on
8 top (Exh A209) and "Iolita Acct – Reconcil" (Exh A210); and finally a court docket (Exh
9 A211).

10 18. Three months later, on February 18, 2011, Swanson sent Respondent a letter asking for
11 answers to more specific questions regarding the documents attached to the November
12 email. (Exh A212). It also asked for additional information, including billing statements
13 for certain clients and inquiring about two separate cash withdrawals. (Exh A212).

14 19. Respondent apparently did not respond to Swanson's letter since Disciplinary Counsel,
15 Natalea Skvir, wrote Respondent a letter on March 28, 2011 asking Respondent to
16 respond and comply by April 11, 2011. (Exh A213).

17 20. Due to no response from Respondent to the March 28 letter, Disciplinary Counsel issued
18 a subpoena duces tecum for Respondent to appear for a deposition on May 5, 2011. The
19 subpoena asked for trust account records covering the period January 1, 2010 to March
20 31, 2011. (Exh A214).

21 21. Respondent failed to appear at the May 5 deposition testifying that she forgot. (TR
22 xxxxx).

1 22. Respondent appeared at the re-scheduled deposition on May 10, 2011. Respondent
2 brought along documents that included trust account bank statements from January 2010
3 to March 2011 (Exh A215); handwritten "Client ledgers" for four clients (Exh A216);
4 handwritten "Check Acct Register - June" (Exh A217); handwritten "Iolita Acct -
5 Reconcil" for "June," "July," and "August 2010" (Exh A218); handwritten piece of
6 paper with "2010" written on the top (Exh A219); several invoices (Exh A220).

7 23. On May 11, 2011, Disciplinary Counsel sent Respondent a letter listing all the
8 documents that still needed to be produced and that they were to be produced by May
9 31, 2011. (Exh A221).

10 24. Respondent responded on May 31, 2011 with a letter of explanation and more
11 documents. The letter states that she had been reviewing the records with Cynthia
12 Roberts, a bookkeeper she engaged to help sort out the bookkeeping situation. She
13 wrote that she "intentionally kept my practice small so that I can (as a single parent) care
14 for my sons, one who suffers from severe autism and the other, who is moderate-severe
15 ADHD with splinter characteristics of autism, and still be able to make a living to
16 support them without any financial support from the other parent." She described how
17 Ms. Roberts "instructed me about the differences between a general accounting for
18 individual bank accounts and the correct methods necessary to keep a trust
19 account/business account, even when the use of such account is not in high volume."
20 After expressing regret at the inconvenience caused, she wrote "I have now stepped up
21 my practice of record keeping with Ms. Roberts logging and reconciling the account on
22 a monthly basis. It is my intention to continue a serious effort to maintain correct and
23 accurate accounting records." (Exh A222).

1 25. The May 31, 2011 letter was accompanied by a mind boggling number of documents,
2 both handwritten and otherwise, but mostly the former. See Exh A223 to A231.

3 26. The WSBA (presumably Rita Swanson) reconstructed the Respondent's IOLTA account
4 (Exh A232) as well as a spreadsheet of Respondent's operating account transactions
5 with a running balance for the period October 29, 2010 through December 20, 2010
6 (Exh A233) and finally a check register for the period January 2, 2010 to March 31,
7 2011. (Exh A234).

8 **Witness Cynthia Roberts**

9
10 27. As a result of a pretrial motion filed by the Association seeking to exclude the testimony
11 of Ms. Cynthia Roberts, the Hearing Officer ordered the Respondent to produce client
12 ledgers, check registers and reconciliations for the period of April 1, 2011 to the present
13 time. (TR 421:11). A thumbdrive was given to the Association and a reconstruction was
14 made of its contents. (Exh A235(a) and TR 421:11).

15 28. It is not clear when Cynthia Roberts was engaged to help clear up the financial mess, but
16 it had to have been prior to May 31, 2011 when Respondent wrote about how she was
17 called in to help. (Exh A222 and TR 466:14). Ms. Roberts first met Respondent when
18 Respondent took over her daughter's custody case. She ended up doing some work for
19 Respondent. (TR 466:12).

20 29. Ms. Roberts did not recall when she was called in to help, but remembers that it was
21 after Respondent was having issues with the Association over the trust account. She
22 testified that the financial documents were a "mess" and that she had never seen
23 anything messier. (TR 466:24).

1 30. Ms. Roberts testified that Respondent, at the time, was disorganized, distracted and
2 unfocused. (TR 467:9).

3 31. Ms. Roberts looked at the few records Respondent kept, called the bank, signed up for
4 online banking and gave Respondent some instruction on what to do with checks and
5 deposits. (TR 467:19).

6 32. Seeing the Association deadline for subpoenaed documents, Ms. Roberts called the Bar
7 Association to ask for more time. The Bar expressed regret, but that it would not give
8 her more time. (TR 468:24).

9 33. Ms. Roberts sat down with the Respondent's numerous pieces of paper, figured out the
10 different clients, sorted through deposits, receipts, bank statements and eventually got
11 things as straightened out as possible. She left these documents with Respondent, who
12 copied them and sent them to the Association. (TR 469:9, 23).

13 34. During both direct examination and cross examination, Ms. Roberts consistently
14 maintained that Respondent had no concept of bookkeeping, did not understand the
15 concept of reconciliation, did not understand the importance of keeping a check register
16 and a client ledger, and did not even understand a running balance. (TR 470:13,23).

17 35. Ms. Roberts indicated at cross examination that she recalled getting asked in "early
18 2011" for about a week to straighten things out.

19 36. When asked whether Respondent stole client money, her response was "no, not at all."
20
21 (TR 486:13).

1 37. When asked why she thought Respondent's books were in such disarray, she said that
2 Respondent simply did not understand much about proper bookkeeping to begin with
3 and her life stresses made things worse. (TR 478:16, 479:4).

4 **Witness Sally Hasslacher**

5 38. Sally Hasslacher was an intern at Respondent's office in the Spring of 2010, working
6 Monday to Friday from 8:00 am to noon. (TR 83:21).

7
8 39. Respondent would go into the office around 10:00 am or 10:30 am, and that left little
9 time for them to discuss her duties or to get much work done. Ms. Hasslacher
10 characterized the internship as "unsatisfactory" and left that position a very short time
11 later. (TR 84:5, 85:11).

12 40. Ms. Hasslacher was an intern at another law firm for "6-8 months" until she finished her
13 paralegal degree. (TR 87:18). Despite the "unsatisfactory" experience with Respondent,
14 Hasslacher went back to work at that office as a paralegal around May or June 2011.
15 (TR 88:25).

16 41. She was a contract employee for 6 months and was paid \$2500 per month. Her duties
17 included putting Respondent's office in order; however, she was not involved in
18 financial bookkeeping. She made bank deposits, but was told where to put the checks.
19 (TR 90:5).

20
21 42. On direct examination, she testified that Respondent did not seem involved with the day-
22 to-day running of the office, that she was focused on a particular client, and that the
23 practice was small, not very busy, and consisted mostly of old client cases. (TR 92:2,
24 92:18, 93:1).

1 43. On August 30, 2011, Ms. Hasslacher wrote a letter to the law firm Jeppesen Gray Sakai
2 and enclosed a cashier's check for \$4000.00 made out to "Don-A Wills." The check
3 was dated August 26, 2011. (Exh A118).

4 44. Ms. Hasslacher prepared a document called "Billing Statement" dated September 28,
5 2011 and regarding "Estate of Robert Wills." It showed total attorney fees to be
6 \$3,318.00. (Exh A122).

7 45. Respondent told her the story of what happened with Ms. Wills and the mistakes she
8 made in that case. Respondent dictated the dates and hours spent on the Wills case to
9 Ms. Hasslacher. (TR 101:9, 102:11, 103:15).

10 46. Ms. Hasslacher admitted to receiving money in addition to her regular salary. She
11 received \$40 for gas and mileage. (Exh A227 and TR 105:16).

12 47. Ms. Hasslacher had a meeting with Respondent about her dissatisfaction and frustration
13 working for Respondent. She complained that she expected Respondent to be present
14 more, that she was not receiving any professional development, and that she was placed
15 in an unfair situation with clients. (TR 107:3, 22; TR 108:5).

16 48. Six to eight months after commencing work, she resigned by sending Respondent an
17 email. Ms. Hasslacher denied that she was "ascerbic" and maintained that she resigned
18 because the 6 months employment contract had ended. (TR 108:18, 118:13).

19
20
21 **Witness Rita Swanson**

22 49. Rita Swanson is the WSBA's Audit Manager and has held that role for about 5 years.
23 Her primary responsibility is to audit lawyer trust accounts. (TR 125:9, 19).

1 50. Ms. Swanson testified that RPC 1.15A governs this portion of lawyer conduct and it is
2 reproduced as follows (TR 130:17):

3 **RPC 1.15A**
4 **SAFEGUARDING PROPERTY**

5 (a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in connection with
6 a representation and (2) escrow and other funds held by a lawyer incident to the closing of any real estate
7 or personal property transaction. Additionally, for all transactions in which a lawyer has selected,
8 prepared, or completed legal documents for use in the closing of any real estate or personal property
9 transaction, the lawyer must ensure that all funds received or held by the Closing Firm incidental to the
10 closing of the transaction, including advances for costs and expenses, are held and maintained as set forth
11 in this rule or LPORPC 1.12A. The lawyer's duty to ensure that all funds received or held by the Closing
12 Firm incidental to the closing of the transaction are held and maintained as set forth in this rule or
13 LPORPC 1.12A shall not apply to a lawyer when that lawyer's participation in the matter is incidental to
14 the closing and (i) the lawyer or lawyer's law firm has a preexisting client-lawyer relationship with a buyer
15 or seller in the transaction, and (ii) neither the lawyer nor the lawyer's law firm has an existing client-
16 lawyer relationship with the Closing Firm or an LPO participating in the closing.

(b) A lawyer must not use, convert, borrow or pledge client or third person property for the lawyer's own
17 use.

(c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.

(1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h)
18 of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, a
19 lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be
20 withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer must identify, label and appropriately safeguard any property of clients or third persons other
21 than funds. The lawyer must keep records of such property that identify the property, the client or third
22 person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven
23 years after return of the property.

(d) A lawyer must promptly notify a client or third person of receipt of the client or third person's
24 property.

(e) A lawyer must promptly provide a written accounting to a client or third person after distribution of
property or upon request. A lawyer must provide at least annually a written accounting to a client or third
25 person for whom the lawyer is holding funds.

(f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or third person the
property which the client or third person is entitled to receive.

(g) If a lawyer possesses property in which two or more persons (one of which may be the lawyer) claim
26 interests, the lawyer must maintain the property in trust until the dispute is resolved. The lawyer must
27 promptly distribute all undisputed portions of the property. The lawyer must take reasonable action to
28 resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) A lawyer must comply with the following for all trust accounts:

(1) No funds belonging to the lawyer may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

29 ii) funds belonging in part to a client or third person and in part presently or potentially to the lawyer must
30 be deposited and retained in a trust account, but any portion belonging to the lawyer must be withdrawn at
31 the earliest reasonable time; or

32 (iii) funds necessary to restore appropriate balances.

(2) A lawyer must keep complete records as required by Rule 1.15B.

(3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer may withdraw earned
33 fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or
34 other document.

(4) Receipts must be deposited intact.

1 (5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by
check or by bank transfer.

2 (6) Trust account records must be reconciled as often as bank statements are generated or at least
quarterly. The lawyer must reconcile the check register balance to the bank statement balance and
3 reconcile the check register balance to the combined total of all client ledger records required by Rule
1.15B(a)(2).

4 (7) A lawyer must not disburse funds from a trust account until deposits have cleared the banking process
and been collected, unless the lawyer and the bank have a written agreement by which the lawyer
personally guarantees all deposits to the account without recourse to the trust account.

5 (8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit.
The funds of a client or third person must not be used on behalf of anyone else.

6 (9) Only a lawyer admitted to practice law may be an authorized signatory on the account.

7 (i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than
notice periods that are required by law or regulation and meet the requirements of ELC 15.7(d) and ELC
15.7(e). In the exercise of ordinary prudence, a lawyer may select any financial institution authorized by
the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c). In selecting the type of trust
8 account for the purpose of depositing and holding funds subject to this Rule, a lawyer shall apply the
following criteria:

9 (1) When client or third-person funds will not produce a positive net return to the client or third person
because the funds are nominal in amount or expected to be held for a short period of time the funds must
be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or
10 IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be
administered by, the Legal Foundation of Washington in accordance with ELC 15.4 and ELC 15.7(e).

11 (2) Client or third-person funds that will produce a positive net return to the client or third person must be
placed in one of the following two types of non-IOLTA trust accounts, unless the client or third person
requests that the funds be deposited in an IOLTA account:

12 (i) a separate interest-bearing trust account for the particular client or third person with earned interest paid
to the client or third person; or

13 (ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest
earned by each client or third person's funds with the interest paid to the appropriate client or third person.

14 (3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in
paragraph (i)(2), a lawyer must consider only whether the funds will produce a positive net return to the
client or third person, as determined by the following factors:

15 (i) the amount of interest the funds would earn based on the current rate of interest and the expected period
of deposit;

16 (ii) the cost of establishing and administering the account, including the cost of the lawyer's services and
the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and
17 (iii) the capability of financial institutions to calculate and pay interest to individual clients or third
persons if the account in paragraph (i)(2)(ii) is used.

18 (4) The provisions of paragraph (i) do not relieve a lawyer or law firm from any obligation imposed by
these Rules or the Rules for Enforcement of Lawyer Conduct.

19
20 51. Ms. Swanson testified that RPC 1.15B governs the records a lawyer is required to keep
on a trust account. It is reproduced as follows (TR 128:22):

21
22 **RPC 1.15B**
REQUIRED TRUST ACCOUNT RECORDS

23 (a) A lawyer must maintain current trust account records. They may be in electronic or manual form and
must be retained for at least seven years after the events they record. At minimum, the records must
24 include the following:

- 1 (1) Checkbook register or equivalent for each trust account, including entries for all receipts,
disbursements, and transfers, and containing at least:
2 (i) identification of the client matter for which trust funds were received, disbursed, or transferred;
(ii) the date on which trust funds were received, disbursed, or transferred;
3 (iii) the check number for each disbursement;
(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and
(v) the new trust account balance after each receipt, disbursement, or transfer;
4 (2) Individual client ledger records containing either a separate page for each client or an equivalent
electronic record showing all individual receipts, disbursements, or transfers, and also containing:
5 (i) identification of the purpose for which trust funds were received, disbursed, or transferred;
(ii) the date on which trust funds were received, disbursed or transferred;
(iii) the check number for each disbursement;
6 (iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and (v) the
new client fund balance after each receipt, disbursement, or transfer;
7 (3) Copies of any agreements pertaining to fees and costs;
(4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds
to them or on their behalf;
8 (5) Copies of bills for legal fees and expenses rendered to clients;
(6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust
9 account;
(7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;
10 (8) Copies of all trust account client ledger reconciliations; and
(9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of
the financial transactions pertaining to them.
11 (b) Upon any change in the lawyer's practice affecting the trust account, including dissolution or sale of a
law firm or suspension or other change in membership status, the lawyer must make appropriate
12 arrangements for the maintenance of the records specified in this Rule.

13 52. Lawyers in the State can find the rules in a number of places: the Rules of Professional
14 Conduct, attending Continuing Legal Education courses, reading the pamphlet entitled
15 "Managing Client Trust Accounts" or calling the WSBA itself. (TR 131:20).

16 53. Using Quickbooks, Ms. Swanson was able to reconstruct Respondent's trust account and
17 financial situation. In particular, she was able to generate a check register, client ledgers
18 and reconcile the account. (TR).

19 54. The reconstruction revealed both major and minor gaps in Respondent's records
20 pertaining to certain clients. Overall, however, it showed that Respondent did not keep
21 records as required and had a very poor grasp and understanding of basic accounting
22 rules and procedures. (Exh A229 and Exh A232 for example).

1 55. RPC 1.5(f)(2) allows a lawyer to charge a flat fee for specified legal services. However,
2 the agreement has to be in writing and signed by the client. The flat fee is then the
3 lawyer's property when received and therefore should not be deposited into a trust
4 account. (See also WSBA pamphlet).

5 56. It was Ms. Swanson's opinion that Respondent's recordkeeping had improved somewhat
6 from the prior documents received. When asked, she testified that the improvement
7 came about likely as a result of getting help from her bookkeeper (Ms. Roberts). (Exh
8 A222 and TR 224:7).

9 57. Ms. Swanson also testified that in retrospect, Respondent was not keeping records that
10 were useful. (TR 232:21).

11
12 **Witness Marsha Matsumoto**

13 58. Marsha Matsumoto is the Senior Disciplinary Counsel at the WSBA and one of her
14 duties is to decide whether to open a grievance against a lawyer for having an overdraft
15 in the trust account. (TR 245:11).

16 59. The threshold amount is \$25. In other words, when the WSBA receives notification that
17 a lawyer has an overdraft in the trust account by that amount or more, the decision is
18 likely to open a grievance. (TR 247:11).

19
20 60. The RPC, however, does not specify a nominal amount. (TR 246:22).

21 **Witness Dr. Ken Muscatel**

22 61. Dr. Ken Muscatel, PhD is a psychologist whose practice is in forensic and
23 neuropsychology evaluations. He received his doctorate in 1979 at the University of
24

1 Washington, followed by a postdoctoral fellowship and a stint in the anger management
2 program at Harborview Medical Center. (TR 316:19).

3 62. Dr. Muscatel met with Respondent three (3) times:

- 4 • September 13, 2012 for a psychological test (TR 318:14)
- 5
- 6 • January 4, 2013 for a session in which Respondent told her story “in her own
7 words.” (TR 320:3)
- 8 • March 13, 2013 when Respondent talked about a variety of issues, but they were not
9 related to this particular hearing. (TR 326:8)

10 63. In 2009, 2010 and 2011, Respondent was under tremendous personal distress as a result
11 of two autistic children, and this apparently put her into a clinical depression state with
12 anxiety features. (TR 321:1, 12)

13 64. Respondent reported to Dr. Muscatel that she had no financial support from her husband,
14 who left the family sometime in 2007, and was overwhelmed by the difficult family
15 situation. Dr. Muscatel further testified that he did not think Respondent could
16 appreciate the severity of her situation and that it was only later on when she realized
17 she was not functioning properly. (TR 322:24. 324:11).

18 65. An MMPI test was conducted. This test is not an “x-ray to the soul,” but does give a
19 clinician a snapshot of how a patient is doing. The test revealed that Respondent felt
20 overwhelmed, felt anxiety, depression, experienced stress in somatic terms, feelings of
21 disconnect and alienation. (TR 325:18).

1 66. There was no clear diagnosis except for “depressive symptoms and conversion
2 secondary to anxiety.” Respondent was underestimating her stress levels and having
3 difficulty with alienation, feelings of disconnect and interpersonal relationships. (TR
4 325:11, 25).

5 67. Dr. Muscatel examined medical records from Respondent’s personal physician, Dr.
6 Robert Morgan. These medical records showed that Dr. Morgan gave Respondent
7 prescriptions for anti-depressants and anti-psychotics during the 2004 to 2010 time
8 period. The medications include Welbutrin, Zoloft, Xanax and Ambien. (TR 331:19,
9 332:7).

10 68. The medical records for 2010 and 2011 showed Respondent visited Dr. Morgan for a
11 variety of medical conditions. In January 2010, it was for an upper respiratory infection
12 and depression. In June 2010, it was a walk in visit for shooting pain into left ear,
13 stabbing pain on left side, and throat pain. In May 2011, it was for a skin infection on
14 the arm. Dr. Muscatel testified that he could not see where Respondent discussed her
15 mental anxiety with Dr. Morgan during these visits. (TR 335:11, 335:25, 336:21).

16 69. Dr. Muscatel testified that Respondent was not reporting conversion problems or mental
17 health problems to Dr. Morgan, and that he did not know if the issues were resolved or
18 not. This did not mean that the symptoms abated, only that they were not reported to Dr.
19 Morgan. (TR 338:2, 340:14).

20 70. Dr. Muscatel used the DSM IV diagnosis of “depressive NOS (not otherwise stated)”
21 and left the diagnosis open because he was waiting for mental health records, which
22 were not available from Dr. Morgan. (TR 341:7, 349:8).
23
24

1 71. When asked whether the disorder (presumably the conversion) caused or contributed to
2 the Respondent's problems, Dr. Muscatel testified that it "definitely contributed," but
3 could not say that it caused them. (TR 350:9).

4 **Witness Mabel Chin**

5 72. Mabel Chin is Respondent's sister-in-law. She first met Respondent in 1981 even
6 before meeting and marrying Respondent's brother. (TR 403:19).

7
8 73. Ms. Chin testified as to the effect and impact Respondent's younger son, George, had on
9 Respondent's family life, personal relationships, professional life, mental and physical
10 condition. Even before the breakup of her marriage, Respondent was always the family
11 bread winner, taking care of her two sons, while practicing as a solo practitioner. (TR
12 404:14).

13 74. She herself had gone to Respondent's home to care for the sons, but found she could not
14 sleep because she had to watch them almost all the time. It was a stressful situation and
15 there was no help from the extended family, whose idea of "help" consisted of lecturing
16 Respondent about institutionalizing George. (TR 405:23, 406:1).

17 75. Ms. Chin described the Respondent she knew as very resourceful, a go-getter and on top
18 of things. (TR 407:1).

19
20 76. She did not always see Respondent on a daily basis, but would receive calls from her,
21 and these calls were about Respondent's insomnia. Despite the insomnia, she still went
22 to work because she still needed to be both lawyer and mother. (TR 407:13).

1 77. Ms. Chin testified that she had no personal observations of Respondent while at work
2 (i.e., in Court or dealing with clients) in 2010 and 2011. (TR 408:25, 409:10).

3 **Witness Jo Ann Caulkins**

4 78. Ms. Jo Ann Caulkins first met Respondent in 2000 and considers Respondent her
5 attorney and friend. (TR 412:10).

6
7 79. Respondent helped her first with a divorce proceeding, and after they struck up a
8 friendship, Respondent helped her with her house cleaning business. (TR 412:17)

9 80. Ms. Caulkins was present with Respondent in 2001 when George was diagnosed with
10 autism. She testified that Respondent was sad and cried a lot. George was very violent
11 and Ms. Caulkins was scared of him. She further testified that the worst times were
12 2009, 2010 and 2011. The last 9 months, however, George was better. (TR 413:7,
13 414:3, 415:22, 23).

14 81. In 2009 and 2010, she had occasion to stay overnight at Respondent's home. Since then,
15 however, she did not go there much. (TR 418:6).

16 82. In 2010 and 2011, she had occasion to wait for Respondent at the law office and testified
17 that she thought Respondent was "doing ok." (TR 419:5, 21).

18
19 **Witness Don-A Wills**

20 83. Ms. Don-A Wills filed a Bar complaint against Respondent on May 31, 2011.

21 84. Ms. Wills is the widow of one Robert Wills, who passed away on October 18, 2010 at
22 the age of 50. (TR 25:13).

1 85. Robert Wills was “best known for his ability to help others with whatever they need ... a
2 man of all trades. He is also known for his political views by his family and friends.”
3 (Exh A127).

4 86. Ms. Wills had never met Respondent before, but because of paperwork found in her late
5 husband’s effect, contacted Respondent to probate Robert’s Will. (TR 26:25, 27:17,
6 28:11).

7 87. On November 19, 2010, she met Respondent, bringing with her documents relating to
8 his various businesses, employees and creditors. (TR 27:24).

9 88. Ms. Wills gave Respondent a \$4,000 check. (Exh A100 and TR 31:12).

10 89. The \$4,000 check was deposited into what appears to be Respondent’s operating
11 account. (Exh A101).

12 90. There was no written agreement drawn up nor signed by Ms. Wills. There was no
13 discussion as to Respondent’s availability to do the work or the timing in which the
14 work would be done, or Respondent’s hourly rate. (TR 30:15, 19, 24).

15 91. A November 29, 2010 email had 9 different attachments of documents regarding Mr.
16 Wills. (Exh A105).

17 92. On December 22, 2010, Respondent received an email from one of the late Mr. Wills’
18 creditors. (Exh A106).

19 93. On December 22, 2010, Respondent replied to Ms. Wills that she “called pacific leasing
20 and it will (sic) taken care of. Thank you. Tamara.” (Exh A108).

1 94. On January 8, 2011, Ms. Wills sent Respondent an email requesting an appointment.
2 (Exh 108).

3 95. On January 11, 2011 at 5:39 pm, Ms. Wills sent Respondent another email notifying her
4 that her "services will not be needed as of today January 11, 2011. Please have available
5 on Thursday afternoon at your reception for me to pick up all the paperwork I have
6 provided during our initial visit. In addition, please provide a detailed expenditure
7 accountability of services completed up until the above date." (Exh A108, page 2).

8 96. At 6:45 pm of January 11, 2011, Respondent replied apologizing for any
9 misunderstanding and indicated that she would be in the office on Thursday. (Exh
10 A108, page 2).

11 97. On January 12, 2011 at 5:21 pm, Ms. Wills again sent Respondent an email reminding
12 her that she (Ms. Wills) would be stopping by to pick up the files around 3:15 pm the
13 following day. (Exh A108, page 2).

14 98. On January 13, 2011 at about 3:30 pm, Ms. Wills arrived at Respondent's office to find
15 an accordion folder in front of the closed door in the public hallway. The office door
16 was locked. The office was dark and did not appear to have anybody inside, although
17 she did not check the door nor called Respondent on her cell phone. (TR 40:8).

18 99. The folder contained files from Mr. Wills as well as at least one other person. Ms. Wills
19 took the file that belonged to Robert and left. (TR 40:24).

20 100. The final contact Ms. Wills had with Respondent was an email dated March 9,
21 2011 wherein Ms. Wills told Respondent she saw "no reason to meet." She again asked
22
23
24

1 for a billing statement of services as well as “all funds advanced to you on November
2 19, 2010.” (Exh A109, page 1).

3 101. At the end of January 2011, Ms. Wills searched for and engaged another
4 attorney, Eric Jeppesen of Jeppesen Gray Sakai, to represent her in the probate matter.
5 (TR 45:13, 17).

6 102. Mr. Jeppesen filed the probate case in Snohomish County Superior Court on
7 January 31, 2011. (Exh A128).

8 103. Ms. Wills felt that Respondent’s March 8, 2011 (at 6:13 am) email was
9 unprofessional and that it “pulled my purse strings.” In this email, Respondent had
10 expressed some personal sentiments about letting “Rob know that I am putting together
11 that group home we talked about over the past few years. It would make him happy to
12 know this.” (TR 69:11).

13 104. Ms. Wills filed a Bar complaint against Respondent on May 31, 2011.

14 105. On June 28, 2011, Respondent wrote Ms. Wills a letter (Exh A112) and enclosed
15 a cashier’s check for \$4,000 (Exh A110). The check was made out to “Re: Estate
16 Robert Wills.”
17

18 106. Ms. Wills spoke with Mr. Jeppesen and decided not to deposit it and ask
19 Respondent for another check that is made out to her personally. (TR x54:3, 61:10).
20

21 107. On July 1, 2011, Respondent sent an email to the WSBA in response to the
22 grievance filed against her. In this letter, she informed the Bar that she had returned the
23 \$4,000 to Ms. Wills by writing a check made out to “Robert Wills Estate.” (Exh A113).
24

1 108. The letter goes on to explain that Respondent had wanted to meet with Ms. Wills
2 to discuss the case, but Ms. Wills had terminated her services two months after the initial
3 (and only) meeting between the two. (Exh A113).

4 109. Respondent also explained to the Bar that a long drawn out trial and setbacks
5 involving her autistic child prevented her from fully completing her “work-related
6 responsibilities during this time.” (Exh A113).

7 110. On July 27, 2011, Respondent received a long letter from Disciplinary Counsel
8 asking no fewer than eight (8) questions, three (3) of which contained additional bullet
9 points of inquiry. Respondent was given two weeks to respond. (Exh A 114).

10 111. On August 12, 2011, Respondent sent her response to Disciplinary Counsel.
11 (Exh A115).

12 112. On August 18, 2011, Mr. Jeppesen returned the original cashier’s check to
13 Respondent, and asked for a new one to be made out payable to Ms. Wills. (Exh A116).

14 113. Mr. Jeppesen sent another letter on August 29, 2011 indicating that he was still
15 waiting for a replacement check. (Exh A117).

16 114. On August 30, 2011, Respondent’s paralegal, Sally Hasslacher, wrote a letter to
17 Mr. Jeppesen telling him he would find the new cashier’s check. (Exh A118).

18 115. On September 1, 2011, Mr. Jeppesen forwarded the check to Ms. Wills and sent
19 copies to Disciplinary Counsel. (Exh A119).

1 116. On September 12, 2011, Disciplinary Counsel sent Respondent another letter, but
2 this time there were only four (4) questions. Again, Respondent had two (2) weeks to
3 respond. (Exh A120).

4 117. On September 28, 2011, Respondent sent a response to Disciplinary Counsel
5 wherein she once again explained the personal challenges she had been facing the last
6 few years as a result of a divorce and her autistic son. She also admitted to
7 organizational problems which led her to employ a paralegal. She ended the letter by
8 saying that she is “in a much better mental and professional state and with procedures set
9 by my assistant, these errors should not occur again.” (Exh A121).

10 118. When asked how this episode affected her, Ms. Wills testified that she needed
11 information, needed someone helpful with financials. When pressed whether this
12 affected her financially, she testified “in some ways.” (TR 57:19).

13
14 **Respondent’s family situation and mental condition**

15 119. Respondent received her bachelor’s degree in 1985, worked and lived in Los
16 Angeles, attended graduate school in speech communications, received a law degree in
17 1993, passed the Bar, interned at the City of Seattle prosecutors office before being hired
18 at the Snohomish County Prosecutors Office. (TR 277:25)

19 120. She was the lead prosecutor during the Wittenbarger cases. She was at
20 Snohomish until 1998. (TR 278:19).

21 121. Respondent married her husband (John) in 1990. The first son, Joseph, was born
22 on [REDACTED], 1996. The second son, George, was born on [REDACTED], 1998.
23
24

1 122. Respondent moved her office to Edmonds in 2001, which was around the same
2 time as the autism diagnosis for George. (TR 284:17).

3 123. Respondent's husband went to law school, graduated in 2003, but could not pass
4 the Bar. He interned at SEED, an intellectual property firm, but dropped out of there in
5 order to help with the care of the children. (TR 286:4-25).

6 124. The husband refused to work and Respondent was forced back to private
7 practice. (TR 289:11).

8 125. At around this time, the first son was also diagnosed with autism, although of a
9 milder form. (TR 289:18).

10 126. The husband was homeschooling the boys, but Respondent testified he was also
11 abusing them. For example, the husband felt that spanking would be a good thing when
12 George would not follow instructions. (TR 290:5).

13 127. In the summer of 2007, the husband left the family. George did not take the
14 departure well and became aggressive starting the night his father left the home. George
15 bit Respondent over the eye, causing bleeding, and for the first time in his life, began a
16 long episode of swearing. (TR 294:21).

17 128. Respondent moved George to another school, but this made matters worse.
18 George started to run away from home, defecate and urinate everywhere and injured the
19 family dog. (TR 297:14).

20 129. Respondent testified that "life was falling apart." (TR 299:13).

1 130. On or about March 2010, in the "Safeway Incident," Respondent was in the car
2 with George sitting in the back seat when he suddenly grabbed Respondent's hair and
3 actually pulled off a piece of scalp. Respondent was bleeding profusely and she needed
4 stitches and medical intervention. (TR 299:25).

5 131. Around this time, Respondent's family talked with her about institutionalizing
6 George (and perhaps Joseph as well), but Respondent did not want to do that. (TR
7 302:2, 303:4).

8 132. Sometime in August 2010, Respondent and George were in Capital Hill to pick
9 up Joseph from the Film Forum. George went to a bike stand and began pushing and
10 pulling on it. A stranger shouted at George, and soon the two began struggling.
11 Respondent told the stranger that George was autistic and not to touch him. Respondent
12 inserted herself between the two. Respondent had to hold George in a certain way to
13 calm him down while preventing further injury to her or himself. The Seattle Police
14 Department was called, but the officers did not know what to do except watch. (TR
15 305:4).

16 133. Respondent testified that after this incident, she started having trouble getting out
17 of bed, she lost about 20 lbs, had a poor appetite, and was sleeping only 3 hours. (TR
18 308:5).

19 134. Respondent also testified about George's increasingly destructive behavior. This
20 included smashing computers and television sets around the house. Respondent could
21 do nothing to stop George. (TR 301:5).

1 135. Respondent testified that she was prescribed Xanax and Zoloft to help with
2 sleeping disorder. (TR 302:15).

3 136. There was no help from Respondent's immediate family since her father was 90
4 years old, her mother had passed away, and her siblings were all afraid of George. (TR
5 310:16).

6 137. Respondent felt like she was having an "emotional breakdown," but did not
7 consult with a psychiatrist. If she could not do something by rote, she would begin to
8 sweat and have panic attacks. (TR 311:15).

9 138. At work, she testified to having a shorter temper and missing little details. She
10 testified that she did not realize how dangerous her situation was and also failed to
11 realize how this affected her law practice. (TR 312:1).

12
13 **Respondent's attempts to fix the bookkeeping mess**

14 139. Respondent characterized her office bookkeeping as a "mess" and that she kept
15 information on scraps of paper. (TR 353:19, 362:9).

16 140. Her focus at the time was keeping her family together, taking care of clients and
17 taking care of her home. (TR 353:21).

18 141. When she received notification that the Bar Association had opened a grievance
19 on her and was asking for production of documents she did not have, she realized she
20 needed help and hired Ms. Cynthia Roberts. (TR 354:9).

1 142. Ms. Roberts apparently yelled at her, declared everything was a mess, and she
2 would help straighten things out so that Respondent could properly respond to the Bar
3 and thereafter keep the required records. (TR 355:3).

4 143. Ms. Roberts worked on the bookkeeping around February 2011 on and off for a
5 couple months.

6 144. Respondent testified that after the Bar complaint, she resorted to online banking
7 and tried her best to keep better records including a running balance. (TR 359:2).

8 145. By this time, Respondent was doing mostly flat fee work and did not use the trust
9 account much, if at all. (TR 359:18).

10
11 **The non-cooperation issue**

12 146. The summer of 2010 was particularly difficult for Respondent. That was the
13 same time the Bar opened a grievance case regarding the trust account. (TR 361:1).

14 147. By this time, Respondent was really disorganized and could not function well.
15 She was having difficulty getting the documents asked for by the Bar. When she
16 realized she could not do so on her own, she sought the help of Ms. Roberts. (TR 361:8).

17 148. Respondent testified that she was not trying to obstruct the Bar and that she had
18 nothing to hide. (TR 361:23).

19 149. Respondent did not show up for the first deposition on May 5, 2011 because she
20 forgot. (TR 365:8).

21 150. Respondent did show up for the re-scheduled deposition on May 10, 2011. (TR
22 365:14).

1 **The Wills Grievance**

2 151. The late Mr. Robert Wills had hired Respondent to handle 3-4 cases.

3 Respondent considered him a friend as well as a client. (TR 366:17).

4 152. Respondent believed that she would probate Mr. Wills' estate for a flat fee of
5 \$4,000, mainly because most of Mr. Wills' other cases had been on a flat fee basis, and
6 also because Respondent felt that this case was a straight forward probate case. (TR
7 368:12).

8 153. There was no written agreement as required by RPC 1.5(f)(2), but Respondent
9 testified that Ms. Wills had to leave and that she would return to sign the written
10 agreement. (TR 369:1).

11 154. Respondent knew that a flat fee agreement had to be in writing. (TR 369:10).

12 155. Respondent placed the \$4,000 into the operating account because she believed
13 the money was for a flat fee. (TR 370:4,7).

14 156. Respondent placed the file of Mr. Wills on the counter for Ms. Wills to pick up.
15 She then went into her office and stayed there till late that night. She testified that she
16 did not normally turn the lights off. She had no explanation for why Ms. Wills found the
17 file, alongside another person's file, out in the hallway. (TR 370:17).

18 157. After Ms. Wills asked for a refund of the \$4,000, Respondent wanted to speak
19 with her and work things out with her. Respondent had already spent the money and
20 was trying other sources to get the money together. (TR 372:5).

1 158. The cashier's check dated June 21, 2011 was made out to "Estate of Robert
2 Wills" by mistake. Respondent testified that she thought this was the correct way and
3 that it was the fastest way to get the money back to Ms. Wills. (TR 373:21, 374:5).

4 159. The first time she heard that the check was incorrect was from Disciplinary
5 Counsel. (TR 375:5, 378:4).

6 160. As soon as she realized it was wrong, she made out a new check, this time to Ms.
7 Wills herself. (Exh A118 and TR 375:18).

8 161. Respondent believed that Mr. Wills estate was solvent based on conversations
9 she had with Mr. Wills about how well the various businesses were doing. (TR 380:20).

10 162. As part of probate, Respondent made phone calls to creditors. She called
11 Financial Pacific and Green Tree. (TR 382:11).

12 163. Respondent testified she learned that it is easier to properly record things as they
13 happen instead of reconstructing them later. To help matters, she is deliberately limiting
14 the number of clients and having someone else (Mickey Reeves) do the books while she
15 concentrates on the practice of law. (TR 383:8).

16 164. Regarding her mental condition, Respondent testified she continues to take
17 medication, increasing the dosage by herself, getting acupuncture treatments, doing
18 stress reduction techniques, relaxation techniques, and going to Chinese pharmacies for
19 "bo tong." (TR 385:1).

22 CONCLUSIONS OF LAW

23 Violations Analysis

1 165. Count 1 – RPC 1.15A(c)(1) requires lawyers to deposit client money into the
2 trust account and allows lawyers to withdraw from the trust fees earned. Respondent
3 deposited into the trust account a \$10,000 check from Client H. (Exh A228, 229). An
4 invoice prepared for Client H showed fees earned in January 2010 of \$3,000.00; earned
5 in February of \$1,920.00; and earned in March of \$3,024.00. The invoice totaled this to
6 \$7,444.00. First of all, this is an error in addition as the total should be \$7,944.00.
7 Respondent’s client ledger, as well as the Association’s reconstruction of the ledger,
8 showed that Respondent disbursed a total of \$9,400.00 to herself as fees earned, which is
9 about \$1456.00 more than it should have been. This count is proven by a clear
10 preponderance of the evidence.

11 166. Count 2 – RPC 1.15A(c)(1) and (2) requires lawyers to deposit client money into
12 the trust account and may withdraw from it fees that are already earned. Respondent
13 received a \$2500.00 check from Client G, which was partly for fees already earned and
14 partly for costs. (Exh A222, page 2). This was deposited into the operating account.
15 Respondent later transferred unearned portions to the trust account. This is the opposite
16 of what Respondent should have done. According to this RPC, Respondent should have
17 deposited the check into the trust account and withdrew from it earned fees. This count
18 is proven by a clear preponderance of the evidence.

19 167. Count 3 – RPC 1.15A(h)(8) prohibits the disbursements on behalf of a client to
20 exceed the funds of that client on deposit. For Client H, Respondent wrote checks for
21 \$480.00 and \$70.00 for client costs in March 2010. Respondent also wrote another
22 \$25.00 check for costs, and another \$40.00 check for Sally Hasslacher. These various
23 disbursements resulted in Client H’s trust account to fall to negative \$6.26. (Exh A232).
24

1 For Client R, Respondent deposited a retainer of \$1000.00 into the operating account,
2 but disbursed \$1100.00 on behalf of this client. (Exh A227, page 5). This meant that
3 funds from other clients had to be invaded. On June 14, 2010, Respondent wrote a check
4 to herself for \$100.00 from Client G's account even though there was no money in that
5 account. (Exh 232). On March 15, 2010, Respondent wrote a check for \$200.00 to Dr.
6 Hung on behalf of Client SK even though there was no money in SK's trust account.
7 This count is proven by a clear preponderance of the evidence.

8 168. Count 4 – RPC 1.15A(h)(5) prohibits cash withdrawals from the trust account.
9 Respondent made four (4) cash withdrawals from the trust account in 2010. On January
10 26 for \$500 from Client H; on June 30 for \$100 from Client G; on July 15 for \$100 from
11 Client R; and on December 30 for \$32 from Client SK. Respondent admitted that she
12 was unaware of this RPC prohibition. This count if proven by a clear preponderance of
13 the evidence.

14 169. Count 5 – RPC 1.15B(a)(1)(v) requires a trust account record to include a new
15 trust account balance after each receipt, disbursement or transfer. Except for a
16 reconstruction by Cynthia Roberts (Exh 219), Respondent's trust account never had a
17 running balance. This count is proven by a clear preponderance of the evidence.

18 170. Count 6 – RPC 1.15B(a)(2) requires an individual client ledger to contain the
19 name of the payor or payee for or from which trust funds were received, disbursed or
20 transferred. The client ledgers Respondent produced for the Association early on in the
21 investigation did not always have the name or payor, payee or purpose. (Exh A 216).
22 The client ledgers produced on May 31, 2011 were an improvement, but they also did
23
24

1 not always contain the required data. (Exh A 227). This count is proven by a clear
2 preponderance of the evidence.

3 171. Count 7 – RPC 1.15A(h)(6) requires that trust account records must be
4 reconciled as often as bank statements are generated or at least quarterly. The lawyer
5 must reconcile the check register balance to the bank statement balance and reconcile the
6 check register balance to the combined total of all client ledger records. Respondent did
7 not keep a client ledger, check registers, or a running balance and therefore could not
8 have reconciled anything. Even after instruction from Ms. Swanson and Ms. Roberts,
9 Respondent still could not explain what it meant to reconcile trust account records, much
10 less actually reconcile records to bank statements. This count is proven by a clear
11 preponderance of the evidence.

12 172. Count 8 – RPC 1.15B(a)(7) requires a lawyer to retain copies of bank
13 statements, copies of deposit slips and cancelled checks or their equivalent. When
14 Respondent was asked by the Association to produce bank statements, she went online
15 to Bank of America and printed out copies of bank statements. She did not or could not
16 produce actual bank statements sent to her by the bank. Ms. Roberts testified at hearing
17 that when she asked Respondent for the statements, Respondent did not have them and
18 Ms. Roberts had to order them herself from the bank. (Exh A206). This count is proven
19 by a clear preponderance of the evidence.

20
21 173. Count 9 – RPC 1.15A(c)(2) requires a lawyer to deposit into a trust account legal
22 fees and expenses that have been paid in advance and to be withdrawn only as fees are
23 earned or expenses incurred. Ms. Wills testified that it was not her understanding that
24 the \$4,000 was a flat fee. (TR xx). Respondent, on the other hand, consistently

1 maintained that the \$4,000 payment was a flat fee and therefore could be deposited into
2 the operating account. Under RPC 1.5(f)(2), a lawyer may charge a flat fee for specified
3 legal services, but only if agreed to in advance in a writing signed by the client and in a
4 manner that can easily be understood by the client. The testimony was that there was no
5 such written agreement. This count is proven by a clear preponderance of the evidence.

6 174. Count 10 – RPC 1.4(a) requires a lawyer, among other things, to reasonably
7 consult with client about the means by which the client’s objectives are to be
8 accomplished, keep the client reasonably informed, promptly comply with reasonable
9 requests for information. In Ms. Wills’ grievance, she complained that Respondent was
10 not responding to her apparent urgent requests for action or information. On December
11 22, 2010 at 3:19 am, Ms. Wills sent an email to Jenny Rogers of Financial Pacific
12 Leasing informing her of Robert’s passing and that Respondent had been retained to
13 probate the estate. Four (4) hours later, at 7:12 am of the same day, Ms. Rogers sent
14 Respondent an email telling Respondent that Robert had two leases with Financial
15 Pacific and could Respondent find out from the family whether it would like to retain the
16 equipment or return it. (Exh A106). Three (3) hours later, at 10:15 am, Respondent sent
17 Ms. Wills an email that said “Called pacific leasing and it will (sic) taken care of. Thank
18 you. Tamara.” (Exh A108 and also Exh A122). There does not appear any further emails
19 from either side until January 8, 2011 when Ms. Wills sent Respondent an email asking
20 to schedule an appointment. (Exh A108). The next communication was a January 11,
21 2011 email from Ms. Wills informing Respondent that her “services will not be needed
22 as of today January 11, 2011.” (Exh A108, page 2). Ms. Wills testified that she did
23 receive at least one phone call from Respondent describing a high profile case that kept
24

1 Respondent busy. (TR xx). In general, Ms. Wills felt that Respondent had not been
2 responsive to her, but the evidence produced showed that Respondent replied to emails
3 and requests within a very short period of time. When she was not as quick to respond,
4 it was because she was on another case which required more of her time. This count is
5 NOT proven by a clear preponderance of the evidence.

6 175. Count 11 – RPC 1.15A(e) requires a lawyer to promptly provide a written
7 accounting to a client after distribution of property or upon request. A lawyer must
8 provide at least annually a written accounting to a client or third person for whom the
9 lawyer is holding funds. The January 11, 2011, 5:39 pm email in which Ms. Wills
10 terminated Respondent’s services also included “in addition, please provide a detailed
11 expenditure accountability of services completed up until the above date (January 11,
12 2011).” Respondent replied to that email a little over an hour later at 6:45 pm. In it, she
13 apologized for any misunderstanding and informed Ms. Wills she had the probate
14 petition ready to file. She also asked to meet with Ms. Wills to discuss her continued
15 representation. (Exh A108, page 2). Ms. Wills’ response to this was an email on
16 January 12, 2011 at 5:21 pm indicating that she would be at Respondent’s office the
17 following day to pick up the files. If Respondent did not believe her services had been
18 terminated when she received the 5:39 pm email, she apparently accepted that fact in her
19 7:32 pm reply back to Ms. Wills that she did not have a billing ready, but that it would
20 be done at the end of the month. (Exh A108, page 3). By the end of January, Ms. Wills
21 had engaged Mr. Jeppesen in the probate case. There is a billing statement for Ms. Wills
22 (Exh A122), but this is a reconstruction dictated by Respondent to Ms. Hasslacher and
23
24

1 completed on or about September 28, 2011. This count is proven by a clear
2 preponderance of the evidence.

3 176. Count 12 – RPC 1.15A(f) requires a lawyer to promptly pay or deliver to the
4 client or third person the property which the client or third person is entitled to receive.
5 Ms. Wills terminated Respondent on January 11, 2011. She asked for a refund of “all
6 funds” in a February 13, 2011 email (Exh A108, page 3) and again in a March 9, 2011
7 email (Exh A109). Respondent did not write a check for \$4,000.00 until June 12, 2011.
8 Respondent always believed, rightly or wrongly, that the \$4,000 was a flat fee and that
9 was why she deposited it into the operating account. Respondent eventually produced a
10 billing statement by dictating each line item to Ms. Hasslacher. (Exh A122). The
11 Association argues that the accuracy of this billing statement is not assured. However,
12 there are emails that directly correspond to each line item. Respondent did do work in
13 this case. Specifically, she performed 11.85 hours of work, and at her rate, she earned
14 \$3,318.00 of the \$4,000.00. If Ms. Wills was entitled to a refund, it would be for
15 \$682.00. Asking for the entire \$4,000 is not reasonable. Respondent believed that the
16 entire amount was her property and she therefore spent it so that by the time Ms. Wills
17 asked for a refund, the money was gone. Respondent testified that she had to look for
18 another source for money and eventually mailed Ms. Wills a check for the full \$4,000.00
19 even though she did do work on the case. By returning the entire amount, Respondent
20 essentially took on the case *pro bono*. This count is NOT proven by a clear
21 preponderance of the evidence.

22 177. Count 13 – RPC 1.6, comments 16 to 18, requires a lawyer to safeguard
23 information pertaining to the client against inadvertent or unauthorized disclosure, and
24

1 for the lawyer to take reasonable precautions to prevent the information from coming
2 into the hands of unintended recipients. Respondent testified that she left Mr. Wills'
3 files on a counter and went back into her office and closed the door. She stayed in her
4 office until late that night. (TR xx). Ms. Wills wrote in an email on January 14, 2011 at
5 3:28 am "I thought it strange to arrive and see that files were sitting in the hall
6 unattended. Not sure exactly where you were but there was someone in the hall walking
7 while I was there. I didn't have really any time to wait since I had to meet Miracle's
8 school bus." (Exh A108, page 3). At hearing, she testified that the office "was not
9 unlocked." (TR 40:22). Then she went on to testify that she did not check the door. (TR
10 41:12). She also testified that she waited for some period of time until she had to go
11 pick up a child from off a school bus. (TR 41:24). Ms. Wills testified that she did not try
12 to call Respondent on her cell phone. (TR 71:10). The Hearing Officer believes a
13 reasonable person, in the same situation as Ms. Wills, would have and should have done
14 more to try and locate Respondent, but Ms. Wills did not and was consistent in her
15 testimony that she found her late husband's files in an unsecured area. Respondent did
16 not deny that the files were in the hallway, except to say that it is not usual for her to
17 place files in that manner. This count is proven by a clear preponderance of the
18 evidence.

19 178. Count 14 – Under RPC 1.16(d), a lawyer shall takes steps to the extent
20 reasonably practicable to protect a client's interests, such as surrendering papers and
21 property to which the client is entitled and refunding any advance payment of fee that
22 has not been earned or incurred. Respondent was terminated on January 11, 2011. The
23 next day, she sent an email to Ms. Wills asking "do you want the documents I prepared
24

1 for filing?" (Exh A108, page 3). Ms. Wills did not reply. The Association argues that
2 Respondent should have included those pleadings "because she offered to do so in later
3 e-mails." (Association's Closing Argument, page 7). This argument fails since
4 Respondent returned the entire file, albeit leaving it in the hallway, and Ms. Wills by
5 then was looking for another attorney and reasonably did not care for nor want any of
6 Respondent's work. Ms. Wills believed that Respondent did not do any probate work.
7 Regarding the return of what even the Association describes as "unearned fee,"
8 Respondent returned the entire \$4,000.00, not just the unearned portion. Ms. Wills
9 suffered no harm. This count is NOT proven by a clear preponderance of the evidence.

10 179. Count 15 – this is a duplicate of Count 13 and the Association asks that it be
11 dismissed. It is dismissed.

12 180. The First Amended Complaint included an issue labeled as "Non-cooperation."
13 The Association apparently is attempting to argue that Respondent was not cooperating
14 with the Bar during its investigation into both the Trust Account and the Don-A Wills
15 grievance. However, a careful examination of the evidence shows that Respondent
16 almost always responded promptly to letters sent by the Association (Swanson,
17 Matsumoto and Skvir). For example, the Matsumoto letter was dated September 27,
18 2010 and Respondent replied on October 19, 2010. Swanson wrote a letter on October
19 25, 2010 and Respondent replied with the requested documentation on November 16,
20 2010. Disciplinary Counsel wrote a letter on May 11, 2011 and Respondent replied not
21 only with a letter but with a mind boggling number of documents. This is not evidence
22 of non-cooperation by any measure. On the other hand, the Bar Association showed an
23 appalling lack of sensitivity in expecting attorneys to drop everything, work on its many
24

1 and unrelenting requests for production, and given two weeks to do so. Respondent
2 wrote to the Bar that she was experiencing some personal difficulties. At hearing,
3 Respondent testified at great length to the personal, family and medical problems she
4 was facing at the time, but the Bar Association either did not care or did not appreciate
5 the heavy burden this placed on Respondent's ability to comply. Another important
6 point is that the Bar was asking for documents that, in hindsight, Respondent basically
7 did not have. It would have taken time to understand what the Bar wanted and to
8 produce them. Respondent may not have produced the requested documents right on or
9 before the deadline, but she produced them.

10 **Sanction Analysis**

11 181. A presumptive sanction must be determined for each ethical violation. In re
12 Anschell, 141 Wn2d 593, 69 P.2d 844, 852 (2003). The standards of the American Bar
13 Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed.
14 & Feb 1992 Supp.) are presumptively applicable in this case.

15
16 182. Counts 1 through 9, 11 and 12 relate to violations of RPC 1.15A and RPC 1.15B
17 which govern a lawyer's conduct in safeguarding client property and requirements of a
18 trust account. Counts 1 through 9 and count 11 were proven by a clear preponderance of
19 the evidence. The Respondent's trust account lacked all the basic information.
20 Respondent deposited into the business account funds that should have been deposited
21 into the trust account. Respondent failed to maintain funds in the trust account.
22 Respondent disbursed more funds to a client than the client had in trust. Respondent
23 made cash withdrawals from the trust account. Respondent did not maintain a client
24 register, a check register, nor was there any reconciliation performed. The check

1 register had no running balance. Transactions recorded in a later reconstructed check
2 register did not include the name of the payor/payee, nor did it include the purpose of the
3 transaction. Respondent did not retain bank statements as part of record keeping.
4 Respondent did not obtain a written flat fee agreement according to guidelines and
5 erroneously deposited a client check into the business account instead of the trust
6 account. Count 12 was NOT proven by a clear preponderance of the evidence.

7 183. ABA Standard 4.1 applies to Counts 1 through 9, 11 and 12. Standard 4.1
8 governs a lawyer's failure to preserve the client's property. Absent aggravating or
9 mitigating circumstances, the following sanctions are generally appropriate in cases
10 involving the failure to preserve client property:

11 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
12 client property and causes injury or potential injury to a client.

13 4.12 Suspension is generally appropriate when a lawyer knows or should
14 know that he is dealing improperly with client property and causes injury or
15 potential injury to a client.

16 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
17 with client property and causes injury or potential injury to a client.

18 4.14 Admonition is generally appropriate when a lawyer is negligent in
19 dealing with client property and causes little or no actual or potential injury to a
20 client.

21 There was minimal harm to clients when Respondent did not keep good records relating to
22 the trust account. The testimony at hearing was clear that Respondent had no knowledge of
23 accounting or bookkeeping. She knew enough to open a trust account and that was about it.
24 Her accounting and bookkeeping had been slovenly for years and would have stayed that way
until August 13, 2010 when the Bank of America notified the Bar Association that her trust
account was overdrawn by \$94.24. Her idea of bookkeeping was to write down the names of
the payee and the amount on pieces of paper. She did not keep a proper client register or check

1 register. She did not reconcile her records with bank statements because she did not even know
2 what reconciliation meant, and she never retained bank statements.

3 If she had kept good records (i.e., a running balance at the minimum), she would have
4 known the exact amount in the trust account and that she should not have written the \$195
5 check to George Nervik, but she did not have records, or at least good ones. Even the WSBA's
6 Ms. Swanson testified that "in retrospect, she did not keep records that were useful." When
7 informed by the bank of the error, she immediately deposited funds to the account.

8 There was no evidence presented that a client lost money. Ms. Wills may have been
9 unhappy with Respondent, but she received a full refund of her money even though Respondent
10 did work on her late husband's case. There was no intent to defraud clients or take money that
11 did not belong to her. What happened was a result of negligence, not deliberate conversion.

12 The presumptive sanction is reprimand.

13 184. ABA Standard 4.4 applies to Count 10. Standard 4.4 governs a lawyer's lack of
14 diligence when dealing with clients. Absent aggravating or mitigating circumstances,
15 the following sanctions are generally appropriate in cases involving a failure to act with
16 reasonable diligence and promptness in representing a client:

17 4.41 Disbarment is generally appropriate when:

18 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

19 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

20 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

21 4.42 Suspension is generally appropriate when:

22 (a) a lawyer knowingly fails to perform services for a client and causes or
potential injury to a client, or

23 (b) a lawyer engages in a pattern of neglect causes injury or potential injury
to a client.

1 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
2 not act with reasonable diligence in representing a client, and causes injury or
potential injury to a client.

3 4.44 Admonition is generally appropriate when a lawyer is negligent and does
4 not act with reasonable diligence in representing a client, and causes little or no
actual or potential injury to a client.

5 The Association failed to prove Count 10 by a clear preponderance of the evidence.

6 185. ABA Standard 7.0 applies to Counts 13 and 14. Standard 7.0 governs violations
7 of other duties owed as a profession. Absent aggravating or mitigating circumstances,
8 the following sanctions are generally appropriate in cases involving false or misleading
9 communication about the lawyer or the lawyer's services, improper communication in
10 fields of practice, improper solicitation of professional employment from a prospective
11 client, unreasonable or improper fees, unauthorized practice of law, improper
12 withdrawal from representation, or failure to report professional misconduct.

13 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
14 conduct that is a violation of a duty owed as a professional with the intent to
obtain a benefit for the lawyer or another, and causes serious or potentially
serious injury to a client, the public, or the legal system.

15 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
16 conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.

17 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
18 conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.

19 7.4 Admonition is generally appropriate when a lawyer engages in an
20 isolated instance of negligence that is a violation of a duty owed as a
professional, and causes little or no actual or potential injury to a client, the
public, or the legal system.

21 Regarding Count 13, Respondent failed to safeguard client files when Ms. Wills found
22 the files belonging to her late husband out in the hallway. Ms. Wills testified that the office was
23 dark and that it did not appear to her that anyone was around. She did not try the door, nor
24 called out, nor attempted to call Respondent on her cell phone. Respondent, at hearing, had no

1 explanation for why Ms. Wills found the file in the hallway. She explained that it was not her
2 usual way of doing things and that she placed the file on the counter. Putting aside for the
3 moment how the file got to the hallway and assuming that Respondent did put the file on the
4 counter inside the office, this is negligent conduct, particularly since she also testified that she
5 went back inside the office and stayed there till late at night, thus leaving a client file unsecured.
6 It was negligent for her to not somehow let Ms. Wills know where she might be so that she
7 could personally give the file to Ms. Wills. It was negligent for her to assume that Ms. Wills
8 would come into the office and ask Respondent for the file even though the message from Ms.
9 Wills was that she (Ms. Wills) would be stopping at the office at around 3:00 pm to pick it up.

10 The Association failed to prove Count 14 by a clear preponderance of the evidence.

11 The presumptive sanction is reprimand.

12
13 186. In a case of multiple acts of misconduct, when multiple ethical violations are
14 found, the "ultimate sanction imposed should at least be consistent with the sanction for
15 the most serious instance of misconduct among a number of violations." In re Petersen,
16 120 Wn2d. 833, 854, 846 P.2d 1330 (1993).

17 187. Based on the Findings of Fact and Conclusions of Law and the application of the
18 ABA Standards, the appropriate presumptive sanction is reprimand.

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

21 (i) Substantial experience in the practice of law.

22
23 189. The following mitigating factors set forth in Section 9.32 of the ABA Standards
24 are applicable in this case:

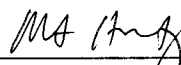
- (a) Absence of a prior disciplinary record;
- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) Remorse.

190. The mitigating factors far outweigh the aggravating factor. The factor that carries the most weight is (c) personal or emotional problems. Respondent gave enough uncontroverted testimony regarding her autistic sons, her broken marriage, her lack of help from family members, and the effect all this had on her personally and on her practice. In the midst of all this, her trust account was overdrawn, immediately bringing down on her the wrath of the Bar Association. The Association argues that Dr. Muscatel's testimony did not support her contention since he did not make a clear diagnosis. Dr. Muscatel did make a diagnosis. He testified that Respondent had the DSM IV diagnosis of "depressive NOS (not otherwise stated)" and conversion symptoms secondary to anxiety. He further explained that "conversion" was the tendency of a person to verbalize that things are ok, but in reality, this person has physical symptoms. He testified that Respondent was underestimating her stress levels and suffering from alienation and feelings of disconnect. Respondent herself testified to the exact same things at the hearing during a point in time when Dr. Muscatel was not present in the hearing room. Dr. Muscatel examined some medical records from Respondent's personal physician, Dr. Morgan. He noted that Dr. Morgan prescribed anti-depressants and anti-psychotic medications, and that these were consistent across the time period of 2004 to 2010. (TR 332:3). Dr. Muscatel indicated that Respondent was not reporting conversion symptoms and mental health problems to Dr. Morgan. However, this did not mean that the symptoms had abated, but just that Respondent was

1 not reporting them. Dr. Morgan is not a psychiatrist. Respondent testified that she kept
2 many of her own problems to herself. It is entirely reasonable that she did not share any
3 of the depressive or conversion symptoms with Dr. Morgan. The Hearing Officer is not
4 inclined to judge how Respondent chooses to deal with her problems or what she reports
5 to her own physician. The stresses of trying to raise a severely autistic son without help
6 from the spouse or family are ongoing. These stresses do not appear and disappear
7 suddenly like turning a light switch on and off. Respondent's other witnesses, Ms.
8 Mabel Chin and Ms. Jo Ann Caulkins all testified to what they personally saw
9 happening at Respondent's home with George. When they said that Respondent was
10 "doing better," they were expressing hope as any family and friend would do, and
11 comparing Respondent's current condition to what they had seen in the earlier days.
12 Neither is a medical professional. Their testimony on Respondent's mental state should
13 not be regarded as a diagnosis.

14 191. Based on the ABA Standards and the applicable aggravating and mitigating
15 factors, the Hearing Officer recommends that Respondent, Tamara Chin, be
16 reprimanded.

17
18 Dated this 30th day of May, 2013.

19
20 
21 _____
22 Octavia Y. Hathaway WSBA #28593
23 Hearing Officer
24

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF, COL & HD's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Stephen Smith, Respondent/~~Respondent's Counsel~~
at 877 Main St #1000 Boise ID 83702, by Certified (first class mail)
postage prepaid on the 20th day of May, 2017.

[Signature]
Clerk/Counsel to the Disciplinary Board