

FILED

SEP 13 2017

DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**JOHN DAVID FERRELL,**

Lawyer (WSBA No.28922)

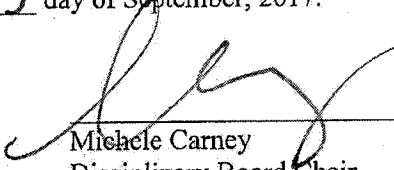
Proceeding No. 17#00025

DISCIPLINARY BOARD ORDER  
DECLINING *SUA SPONTE* REVIEW AND  
ADOPTING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board for consideration of *sua sponte* review pursuant to ELC 11.3(a). On August 31, 2017, the Clerk distributed the attached decision to the Board.

**IT IS HEREBY ORDERED THAT** the Board declines *sua sponte* review and adopts the Hearing Officer's decision<sup>1</sup>.

Dated this 13<sup>th</sup> day of September, 2017.

  
Michele Carney  
Disciplinary Board Chair

<sup>1</sup> The vote on this matter was 14-0. The following Board members voted: Carney, Silverman, Denton, Louvier, Byerly, Graber, Patneaude, Cornelius, Startzel, Andeen, Cottrell, Rawlings, Smith and Myers.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the DO Order Declining Sua sponte Review and Adoption  
to be delivered to the Office of Disciplinary Counsel and to be mailed HO's Decision  
to John Ferrell Respondent's Counsel  
at PO BOX 114 BURLEY WA 98912 by Certified first class mail  
postage prepaid on the 12th day of Sept., 2017

[Signature]  
Clerk/Counsel to the Disciplinary Board

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

The undersigned Chief Hearing Officer held a default hearing on July 7, 2017 under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

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

1. The Formal Complaint (Bar File No. 2) charged Respondent John David Ferrell with misconduct as set forth therein. A copy of Bar File No. 2 is attached to this decision.
2. Under ELC 10.6(a)(4), the Chief 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 Chief Hearing Officer concludes that each of the violations charged in the Formal Complaint is admitted and established as follows:

COUNT 1: By failing to promptly respond to an inquiry or request under the ELC, and by failing to comply with a request for records, Respondent violated RPC 8.4(l) (by violating ELC 5.3(f) and ELC 5.3(g)).

1 COUNT 2: By failing to deposit and hold client funds in a trust account,  
2 Respondent violated RPC 1.15A(c).

3 COUNT 3: By knowingly converting client funds to his own use, including the  
4 proceeds from the sale of BD's marital home, and by wrongfully obtaining or  
5 exerting unauthorized control over the funds of another with intent to deprive  
6 him or her of such funds, Respondent violated RPC 1.15A(b), RPC 8.4(b) (by  
7 committing the crime of theft as defined in RCW 9A.56.020), and RPC 8.4(c).

8 COUNT 4: By making disbursements from trust that exceeded the funds on  
9 deposit for the persons on whose behalf the disbursements were made, and by  
10 using the funds of a client on behalf of someone else, Respondent violated RPC  
11 1.15A(h)(8).

12 COUNT 5: By withdrawing earned fees from trust without giving reasonable  
13 notice to the client through a billing statement or other document, Respondent  
14 violated RPC 1.15A(h)(3).

15 COUNT 6: By disbursing client funds without promptly providing a written  
16 accounting to the client whose funds he disbursed, Respondent violated RPC  
17 1.15A(e).

18 COUNT 7: By failing to maintain complete trust account records, Respondent  
19 violated RPC 1.15A(h)(2) and RPC 1.15B.

20 COUNT 8: By failing to reconcile his trust account records as often as bank  
21 statements were generated or at least quarterly, Respondent violated RPC  
22 1.15A(h)(6).

23 COUNT 9: By making withdrawals from a trust account to cash and not to a  
24 named payee, Respondent violated RPC 1.15A(h)(5).

#### ADMISSION OF ADDITIONAL EVIDENCE

4. Under ELC 10.6(b)(3), the Declaration of Senior Auditor Cheryl M. Heuett, to  
which is attached her Final Audit Report, is admitted into evidence.

#### FINDINGS OF FACTS AND CONCLUSIONS OF LAW REGARDING RECOMMENDED SANCTION

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

6. ABA Standards std. 7.0 applies to duties owed as a professional, including the

1 | duties imposed by ELC 5.3(f), ELC 5.3(g) and RPC 8.4(l), and to the violation charged in Count

2 | 1.

3 |         7. In repeatedly failing to comply with requests for records relating to his handling of  
4 | client funds, Respondent acted knowingly and caused injury to a client, the public, and the legal  
5 | system.

6 |         8. The presumptive sanction for Count 1 is suspension under ABA Standards std. 7.2.

7 |         9. ABA Standards std. 4.1 applies to the failure to preserve client property and to the  
8 | violation charged in Count 3.

9 |         10. Respondent knowingly converted client property and caused injury or potential  
10 | injury to clients.

11 |         11. The presumptive sanction for Count 3 is disbarment under ABA Standards std.  
12 | 4.11.

13 |         12. ABA Standards std. 4.1 also applies to the violations charged in Count 2 and  
14 | Counts 4-9.

15 |         13. With respect to the violations of RPC 1.15A and 1.15B charged in Count 2 and  
16 | Counts 4-9, Respondent knew or should have known that he was dealing improperly with client  
17 | property, and he caused injury or potential injury to clients.

18 |         14. The presumptive sanction for Count 2 and Counts 4-9 is suspension under ABA  
19 | Standards std. 4.12.

20 |         15. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
21 | apply in this case:

- 22 |         (c) a pattern of misconduct;
- 23 |         (d) multiple offenses;
- 24 |         (i) substantial experience in the practice of law (admitted to practice in 1999).

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

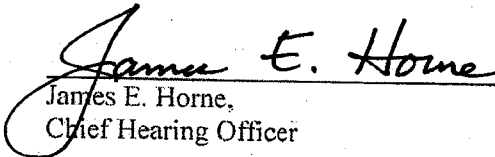
3 17. The following mitigating factor set forth in Section 9.32 of the ABA Standards  
4 applies to this case:

5 (a) absence of a prior disciplinary record.

6 **RECOMMENDATION**

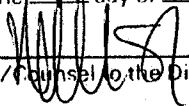
7 18. Based on the ABA Standards and the applicable aggravating and mitigating  
8 factors, the Chief Hearing Officer recommends that Respondent John David Ferrell be  
9 disbarred.

10 DATED this 7<sup>th</sup> day of July, 2017.

11  
12   
13 James E. Horne,  
14 Chief Hearing Officer

15 **CERTIFICATE OF SERVICE**

16 I certify that I caused a copy of the PDF, copy of recommendation  
17 to be delivered to the Office of Disciplinary Counsel and to be mailed  
18 to John Ferrell, Respondent/Respondent's Counsel  
19 at PO Box 321 Brierley, WA 98101 by Certified/first class mail,  
20 postage prepaid on the 7<sup>th</sup> day of July, 2017.

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22 Clerk/Counsel to the Disciplinary Board

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9 In re

10 **JOHN DAVID FERRELL,**

11 Lawyer (Bar No. 28922).

Proceeding No. 17#00025

12 FORMAL COMPLAINT

13 Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of  
14 Disciplinary Counsel (ODC) of the Washington State Bar Association charges the above-named  
15 lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth  
16 below.

17 **ADMISSION TO PRACTICE**

18 1. Respondent John David Ferrell was admitted to the practice of law in the State of  
19 Washington on June 10, 1999.

20 2. Since May 19, 2015, Respondent has been suspended from the practice of law  
21 under ELC 7.2(a)(3) for failing to cooperate with a grievance investigation.

22 **FACTS REGARDING COUNT 1 (Failure to Cooperate)**

23 3. In November 2014, ODC opened a grievance against Respondent in the name of

1 ODC based on the records, information, and deposition testimony received in the investigation  
2 of a different grievance. The records, information, and deposition testimony indicated that  
3 Respondent had failed to safeguard client property in accordance with RPC 1.15A.

4 4. On November 19, 2014, ODC sent Respondent a request under ELC 5.3 for certain  
5 records relevant to the ODC grievance under investigation.

6 5. Respondent received the request but failed to respond.

7 6. On January 14, 2015, ODC sent Respondent a notice under ELC 5.3(h) informing  
8 him (a) that he must provide the requested documents within ten days, and (b) that failing to  
9 cooperate might subject him to interim suspension.

10 7. Respondent received the notice but failed to respond.

11 8. On March 13, 2015, ODC served and filed a Petition for Interim Suspension under  
12 ELC 7.2(a)(3) based on Respondent's failure to respond to the November 19, 2014 request and  
13 the January 14, 2015 notice.

14 9. On March 16, 2015, ODC issued a subpoena to KeyBank requesting records for  
15 Respondent's trust account and operating account.

16 10. On March 19, 2015, the Supreme Court issued an Order to Show Cause and  
17 scheduled a hearing on May 14, 2015.

18 11. On March 26, 2015, the Order to Show Cause was personally served on  
19 Respondent.

20 12. On April 3, 2015, ODC received the records requested from KeyBank.

21 13. An audit could not be completed based on the records obtained from KeyBank,  
22 because the records requested but not received from Respondent were necessary to determine  
23 whose funds were deposited into and disbursed from his accounts, and whether the deposits and





1                   **FACTS REGARDING COUNTS 2-9 (Failure to Safeguard Client Funds)**

2           24. In January 2017, on the basis of the records and information Respondent belatedly  
3 provided, together with the records obtained from KeyBank via subpoena, the ODC Senior  
4 Auditor completed an audit of two accounts: Respondent's KeyBank trust account ending in  
5 8540, and Respondent's KeyBank operating account ending in 8334.

6           25. The period of review for the trust account was April 22, 2013, when the account  
7 was opened, through April 10, 2015, when it was closed.

8           26. The period of review for the operating account was June 15, 2012, when the  
9 account was opened, through September 30, 2014.

10          27. The ODC Senior Auditor's 290-page Final Audit Report, detailing the allegations  
11 set forth below, was sent to Respondent on January 24, 2017.

12                   **Failure to Deposit and Hold Client Funds in a Trust Account**

13          28. During the audit period, Respondent regularly deposited client funds into his  
14 operating account before he opened a trust account. Usually those funds were legal fees and  
15 expenses paid in advance.

16          29. Even after he opened a trust account in April 2013, Respondent continued to  
17 deposit client funds into his operating account, particularly when the account was overdrawn.

18          30. Between April 22, 2013, when he opened his trust account, and August 30, 2014,  
19 Respondent deposited into his operating account over \$28,000 in legal fees and expenses paid in  
20 advance.

21                   **Misappropriation of Client Funds**

22          31. During the audit period, both before and after he opened a trust account,  
23 Respondent knowingly misappropriated client funds to his own use and/or wrongfully obtained

1 or exerted unauthorized control over the funds of another with intent to deprive him or her of  
2 such funds.

3 32. Usually these funds were legal fees paid in advance that Respondent spent before  
4 earning. Respondent eventually earned some of these advance fees, but he also spent advance  
5 fees that he never earned.

6 33. On or about December 27, 2013, Respondent deposited into his trust account  
7 \$51,092 in client funds from the sale of a marital home on behalf of client BD.

8 34. On or about March 27, 2015, Respondent disbursed the full amount to BD.

9 35. In the interval, Respondent disbursed at least \$16,677 of BD's funds to himself and  
10 to other clients to whom Respondent owed refunds for unearned advance fees he had already  
11 spent.

12 36. Respondent was only able to disburse BD's funds to BD after borrowing \$12,795  
13 from family members.

#### 14 Disbursements Exceeding Funds on Deposit

15 37. During the audit period, Respondent disbursed funds from his trust account on  
16 behalf of clients who had no funds on deposit.

17 38. In many cases, the funds disbursed from trust were refunds to clients whose  
18 advance fees Respondent had deposited into his operating account and spent before they were  
19 earned.

20 39. In all these cases, including the case of client BD described above, Respondent  
21 disbursed the funds of one client on behalf of another.

#### 22 Withdrawal of Earned Fees without Notice

23 40. During the audit period, Respondent often withdrew earned fees from trust without

1 giving reasonable notice to the client through a billing statement or other document.

2 41. Respondent's billing statements were often dated long after the fees for which he  
3 billed had already been withdrawn and spent.

4 **Failure to Provide a Written Accounting**

5 42. During the audit period, Respondent regularly disbursed client funds without  
6 providing a written accounting to the client whose funds he disbursed.

7 43. Sometimes the disbursements were to Respondent himself, and sometimes they  
8 were to a client other than the one whose funds he disbursed.

9 **Failure to Maintain Complete Records**

10 44. During the audit period, Respondent failed to maintain a checkbook register  
11 including entries for all receipts, disbursements, and transfers, and containing the information  
12 required under 1.15B(a)(1).

13 45. Respondent's check register had no running balance, it omitted many transactions  
14 altogether, and, for those transactions that were recorded, it omitted much of the information  
15 required under RPC 1.15B(a)(1)(i)-1.15B(a)(1)(v).

16 46. Respondent failed to maintain client ledger records.

17 47. Respondent failed to maintain bank statements, copies of deposit slips, and/or  
18 cancelled checks or their equivalent.

19 48. Respondent failed to maintain copies of trust account bank and client ledger  
20 reconciliations.

21 **Failure to Reconcile Trust Account Records**

22 49. During the audit period, Respondent failed to reconcile his trust account records as  
23 often as bank statements were generated or at least quarterly.

1 50. Respondent could not have reconciled the check register balance to the bank  
2 statement balance, because the check register had no running balance, and it omitted many  
3 transactions.

4 51. Respondent could not have reconciled the check register balance to the combined  
5 total of client ledger records, because Respondent failed to maintain client ledger records.

6 **Withdrawals Made to Cash**

7 52. On or about August 30, 2014, Respondent issued check #1016 for \$1,166 from his  
8 trust account payable to "cash" with a notation that the check was related to client RG.

9 53. The check caused RG's trust account balance to become negative <\$1,034>.

10 **COUNT 2**

11 54. By failing to deposit and hold client funds in a trust account, Respondent violated  
12 RPC 1.15A(c).

13 **COUNT 3**

14 55. By knowingly converting client funds to his own use, including the proceeds from  
15 the sale of BD's marital home, and/or by wrongfully obtaining or exerting unauthorized control  
16 over the funds of another with intent to deprive him or her of such funds, Respondent violated  
17 RPC 1.15A(b), RPC 8.4(b) (by committing the crime of theft as defined in RCW 9A.56.020),  
18 and/or RPC 8.4(c).

19 **COUNT 4**

20 56. By making disbursements from trust that exceeded the funds on deposit for the  
21 persons on whose behalf the disbursements were made, and/or by using the funds of a client on  
22 behalf of someone else, Respondent violated RPC 1.15A(h)(8).  
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COUNT 5

57. By withdrawing earned fees from trust without giving reasonable notice to the client through a billing statement or other document, Respondent violated RPC 1.15A(h)(3).

COUNT 6

58. By disbursing client funds without promptly providing a written accounting to the client whose funds he disbursed, Respondent violated RPC 1.15A(e).

COUNT 7

59. By failing to maintain complete trust account records, Respondent violated RPC 1.15A(h)(2) and/or RPC 1.15B.

COUNT 8

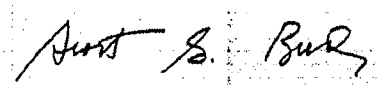
60. By failing to reconcile his trust account records as often as bank statements were generated or at least quarterly, Respondent violated RPC 1.15A(h)(6).

COUNT 9

61. By making withdrawals from a trust account to cash and/or not to a named payee, Respondent violated RPC 1.15A(h)(5).

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

Dated this 21<sup>st</sup> day of April, 2017.



Scott G. Busby, Bar No. 17522  
Senior Disciplinary Counsel