

FILED

Jul 22, 2021

Disciplinary
Board

Docket # 023

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**DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION**

9 In re

10 **DOUGLAS HOLMES PRESTRUD,**

11 Lawyer (Bar No. 29913).

Proceeding No. 20#00041

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

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13 The undersigned Hearing Officer held a default hearing on July 20, 2021 by written
14 submission under Rule 10.6(b)(3) of the Washington Supreme Court's Rules for Enforcement of
15 Lawyer Conduct (ELC).

16 With its written submission in this matter, the Office of Disciplinary Counsel (ODC)
17 offered as Exhibit 1 a Declaration of Disciplinary Counsel Sachia Stonefeld Powell and Exhibit
18 2 an Order Denying a Motion for Reconsideration. Exhibits 1 and 2 are hereby admitted.

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

1. The Formal Complaint (Bar File No. 3) charged Respondent Douglas Holmes
Prestrud with misconduct as set forth therein. A copy of the Formal Complaint is attached to
this decision.

1 2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in
2 the Formal Complaint is admitted and established.

3 3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations
4 charged in the Formal Complaint is admitted and established as follows:

5 **Count 1:** By failing to deposit fees paid in advance into a trust account,
6 Respondent violated RPC 1.15A(c)(2).

7 **Count 2:** By failing to file the motion for reconsideration timely, failing to file
8 the motion electronically, and/or by basing the motion for reconsideration on
9 improper grounds, Respondent violated RPC 1.1 and RPC 1.3.

10 **Count 3:** By failing to promptly respond to a request for a response to the
11 grievance, and/or by failing to provide a full and complete response to
12 disciplinary counsel's inquiries and/or subpoena duces tecum for information
13 relevant to a grievance, Respondent violated RPC 8.4(l) (by violating ELC 5.3(f),
14 ELC 5.3(g), and ELC 5.5(d)).

15 **Count 4:** By failing to maintain a copy of the fee agreement, Respondent
16 violated RPC 1.15B(a)(3).

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

19 4. Respondent knew or should have known that Respondent was failing to properly
20 handle client funds by not depositing CP's advance fees into an IOLTA account.

21 5. Respondent acted negligently in failing to file the motion for reconsideration
22 timely, failing to file the motion electronically, and by basing the motion for reconsideration on
23 improper grounds.

24 6. Respondent acted knowingly by failing to promptly respond to a request for a
response to the grievance, by failing to provide a full and complete response to disciplinary
counsel's inquiries for information relevant to a grievance, and by failing to produce complete
records in response to a subpoena duces tecum.

 7. Respondent knew or should have known that Respondent failed to maintain a copy

1 of the fee agreement.

2 8. Respondent's conduct in failing to deposit fees paid in advance into a trust account
3 caused injury or potential injury to CP.

4 9. Respondent's conduct in failing to file the motion for reconsideration timely,
5 failing to file the motion electronically, and basing the motion for reconsideration on improper
6 grounds caused little or no actual or potential injury to CP.

7 10. Respondent's conduct in failing to promptly respond to CP's grievance and failing
8 to provide a full and complete response to disciplinary counsel's inquiries for information
9 relevant to a grievance caused injury to the legal system.

10 11. Respondent's conduct in failing to fully respond to a subpoena duces tecum caused
11 injury to the legal system.

12 12. Respondent's conduct in failing to maintain a copy of a fee agreement caused
13 injury or potential injury to CP.

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

17 **Count 1**

18 ***4.1 Failure to Preserve the Client's Property***

19 4.12 Suspension is generally appropriate when a lawyer knows or should
20 know that he is dealing improperly with client property and causes injury
or potential injury to a client.

21 **Count 2**

22 ***4.5 Lack of Competence***

23 4.54 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in determining whether he or she is
competent to handle a legal matter, and causes little or no actual or
potential injury to a client.

24 ***4.4 Lack of Diligence***

1 4.44 Admonition is generally appropriate when a lawyer is negligent and does
2 not act with reasonable diligence in representing a client and causes little
or no actual or potential injury to a client.

3 **Count 3**

4 *7.0 Violations of Duties Owed as a Professional*

5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
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.

6 **Count 4**

7 *4.1 Failure to Preserve the Client's Property*

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

9 14. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846
10 P.2d 1330 (1993), the “ultimate sanction imposed should at least be consistent with the sanction
11 for the most serious instance of misconduct among a number of violations.”

12 15. The following aggravating factors set forth in Standard 9.22 of the ABA Standards
13 apply in this case:

- 14 (d) multiple offenses; and
15 (i) substantial experience in the practice of law: Respondent was admitted in
2000.

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

18 17. The following mitigating factor set forth in Standard 9.32 of the ABA Standards
19 applies to this case:

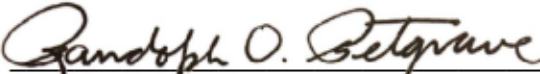
- 20 (a) absence of a prior disciplinary record.

21 **RECOMMENDATION**

22 18. Based on the ABA Standards and the applicable aggravating and mitigating
23 factors, the Hearing Officer recommends that Respondent Douglas Holmes Prestrud be
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1 suspended for six months.

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3 DATED this 22d day of July, 2021.

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6 Randolph O. Petgrave III, Bar No. 26046
7 Hearing Officer

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11 CERTIFICATE OF SERVICE

12 By order of Washington Supreme Court Order No. 25700-B-609, I certify that I
13 caused a copy of the Findings of Fact, Conclusion of Law and Hearing Officer's
14 Recommendation to be emailed to the Office of Disciplinary Counsel and to
15 Respondent Douglas Holmes Prestrud, at doug@prestrud.com, on the 22nd day of
16 July, 2021.

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Clerk to the Disciplinary Board

FILED

Feb 3, 2021

Disciplinary
Board

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

DOUGLAS HOLMES PRESTRUD,

Lawyer (Bar No. 29913).

Proceeding No. 20#00041

FORMAL COMPLAINT

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

ADMISSION TO PRACTICE

1. Respondent Douglas Holmes Prestrud was admitted to the practice of law in the State of Washington on May 25, 2000.

FACTS REGARDING COUNTS 1 THROUGH 4

2. In early 2017 CP hired Respondent to represent CP in a modification of a parenting plan.

3. Respondent and CP entered into a "flat fee" agreement for Respondent to provide

1 representation through the end of trial for a total of \$5,000.

2 4. The fee agreement was not reduced to writing and signed by CP.

3 5. CP paid Respondent \$5,000.

4 6. During Respondent's representation of CP, Respondent did not maintain an Interest
5 on Lawyers' Trust Accounts (IOLTA) account for the deposit of client funds.

6 7. Respondent did not deposit the \$5,000 into a trust account.

7 8. Despite their agreement that all services would be covered with the \$5,000 fee,
8 Respondent subsequently requested an additional \$200 from CP.

9 9. CP paid Respondent the additional \$200.

10 10. Respondent did not deposit the \$200 into a trust account.

11 11. On September 26-28, October 6, October 11, and October 13, 2017, the parenting
12 plan modification trial was held.

13 12. On November 3, 2017, the court entered a Final Order and Findings on the Petition
14 to Change a Parenting Plan, Residential Schedule or Custody Order (the Final Order).

15 13. In the Final Order, the court made changes to the existing parenting plan by
16 changing the child's primary residence to the father's residence and reducing the amount of
17 visitation time for CP.

18 14. Respondent filed a motion for reconsideration on CP's behalf on the basis of newly
19 discovered evidence.

20 15. The purported newly discovered evidence was a mental health evaluation of CP by
21 Dr. Christen Carson, PhD.

22 16. Dr. Carson's evaluation was done without permission of the court.

23 17. Dr. Carson's evaluation was done without notice to the guardian ad litem or the

1 opposing party.

2 18. Dr. Carson did not interview the father as required by previous court order prior to
3 issuing the report.

4 19. Dr. Carson's evaluation was prepared after the commencement of the trial.

5 20. Respondent prepared the motion for reconsideration but failed to file it within 10
6 days of the entry of the final order.

7 21. On November 13, 2017, Respondent emailed a copy of the motion for
8 reconsideration to the court.

9 22. Under King County Local General Rule 30, Respondent was required to file the
10 motion electronically.

11 23. Respondent did not file the motion electronically.

12 24. On November 28, 2017, the court denied the motion for reconsideration.

13 25. In January 2018, CP filed a grievance against Respondent.

14 26. On February 2, 2018, ODC mailed Respondent a copy of the grievance and a request
15 that Respondent provide a written response to the grievance within 30 days.

16 27. Respondent did not provide a written response.

17 28. On March 8, 2018, ODC sent Respondent a written notice under ELC 5.3(h)(1)
18 requiring Respondent's written response within ten days.

19 29. Respondent failed to provide a written response.

20 30. On March 21, 2018, Respondent called ODC to explain that Respondent intended to
21 write a response to the grievance.

22 31. On March 22, 2018, ODC called Respondent and informed Respondent that a
23 written response was due by March 26, 2018 and that Respondent would be subpoenaed for a

1 deposition if Respondent did not provide a response.

2 32. Respondent did not provide a written response by March 26, 2018.

3 33. On March 27, 2018, Respondent emailed ODC stating that Respondent would
4 provide a response that day.

5 34. Respondent did not provide a written response on March 27, 2018.

6 35. On March 28, 2018, ODC served Respondent with a subpoena duces tecum for a
7 deposition on April 18, 2018.

8 36. On April 18, 2018, Respondent appeared at the deposition with some, but not all, of
9 the records required by the subpoena duces tecum.

10 37. Respondent agreed to provide the outstanding documents by April 30, 2018.

11 38. Respondent did not provide the outstanding documents by April 30, 2018.

12 39. During the deposition, Respondent testified that there was an unsigned written “flat
13 fee” agreement that CP failed to sign.

14 40. As of today’s date, Respondent has not provided ODC with a copy of any written fee
15 agreement for CP’s matter.

16 **COUNT 1**

17 41. By failing to deposit fees paid in advance into a trust account, Respondent violated
18 RPC 1.15A(c)(2).

19 **COUNT 2**

20 42. By failing to file the motion for reconsideration timely, failing to file the motion
21 electronically, and/or by basing the motion for reconsideration on improper grounds,
22 Respondent violated RPC 1.1 and/or RPC 1.3.

1 **COUNT 3**

2 43. By failing to promptly respond to a request for a response to the grievance, and/or by
3 failing to provide a full and complete response to disciplinary counsel's inquiries and/or
4 subpoena duces tecum for information relevant to a grievance, Respondent violated RPC 8.4(l)
5 (by violating ELC 5.3(f), ELC 5.3(g) and/or ELC 5.5(d)).

6 **COUNT 4**

7 44. By failing to maintain a copy of the fee agreement, Respondent violated RPC
8 1.15B(a)(3).

9
10 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for
11 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,
12 restitution, and assessment of the costs and expenses of these proceedings.

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14 Dated this 3rd day of February, 2021.

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17 Chris Chang, Bar No. 54808
18 Disciplinary Counsel