

FILED
JUN 24 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

LIAM ANEURIN MCCANN,

Lawyer (Bar No. 30865).

Proceeding No. 15#00027

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

The undersigned hearing officer makes the following findings of fact, conclusions of law, and recommendation under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC). In accordance with ELC 10.6(b)(3), at the discretion of the hearing officer and following the entry of an Order of Default on June 8, 2015, these proceedings were conducted by written submissions. As additional evidence, Disciplinary Counsel presented Exhibit 1, the Declaration of Disciplinary Counsel re Prior Disciplinary Action and Appendix A thereto.

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

1. The Formal Complaint (Bar File No. 3) charged Respondent Liam Aneurin McCann with misconduct as set forth therein.

2. Following entry of the Order of Default, the Hearing Officer finds that each of the

1 facts set forth in the Formal Complaint is admitted and established in accordance with ELC
2 10.6(a)(4).

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 for the purpose of imposing
5 discipline as follows:

6 4. Count 1: By failing to deposit funds from his client May Ann Sun in a trust
7 account, Respondent violated RPC 1.15A(c).

8 5. Count 2: By failing to inform Ms. Sun of a decision or circumstance with respect
9 to which her informed consent was required, by failing to reasonably consult with her, by failing
10 to keep her reasonably informed, by failing to promptly comply with reasonable requests for
11 information, and by failing to explain matters to her, Respondent violated RPC 1.4.

12 6. Count 3: By failing to act with reasonable diligence and promptness in
13 representing Ms. Sun, Respondent violated RPC 1.3.

14 7. Count 4: By charging and collecting money from Ms. Sun for expenses that were
15 not incurred or paid, Respondent violated RPC 1.5(a), 8.4(c), and 8.4(i).

16 8. Count 5: By converting funds from his client Ms. Sun for his own use, Respondent
17 violated RPC 1.15A(b), 8.4(c), and 8.4(i).

18 9. Count 6: By failing to comply with pretrial deadlines, by failing to respond to
19 communications from opposing counsel and the court, by failing to appear for trial, and by
20 moving to dismiss Ms. Sun's case on the date set for trial, Respondent violated RPC 3.2 and
21 8.4(d).

22 10. Count 7: By moving to dismiss Ms. Sun's case without her consent and without
23 consulting her, Respondent violated RPC 1.2(a).

1 11. Count 8: By failing to inform Ms. Sun that he was abandoning her case, by failing
2 to inform her that her case had been dismissed, and by failing to advise her when the statute of
3 limitations would expire, Respondent violated RPC 1.16(d).

4 12. Count 9: By failing to return Ms. Sun's client file, and by failing to return the
5 funds she had paid for expenses not incurred, Respondent violated RPC 1.15A(f) and 1.16(d).

6 13. Count 10: By failing to respond to Ms. Sun's request for an accounting,
7 Respondent violated RPC 1.15A(e).

8 14. Count 11: By failing to cooperate fully and promptly with a grievance
9 investigation relating to his representation of Ms. Sun, Respondent violated RPC 8.4(d) and
10 8.4(l).

11 15. Count 12: By knowingly making false statements of material fact in connection
12 with a disciplinary matter relating to his representation of Ms. Sun, Respondent violated RPC
13 8.1(a) and 8.4(c).

14 16. Count 13: By failing to reasonably consult with his client George Peters, by failing
15 to keep him reasonably informed, and by failing to promptly comply with reasonable requests
16 for information, Respondent violated RPC 1.4.

17 17. Count 14: By failing to act with reasonable diligence and promptness in
18 representing Mr. Peters, Respondent violated RPC 1.3.

19 18. Count 15: By allowing Mr. Peters' case to be dismissed as "abandoned," and by
20 failing to respond to communications from the court, Respondent violated RPC 3.2 and 8.4(d).

21 19. Count 16: By failing to promptly deliver to Mr. Peters the check that he was
22 entitled to receive, Respondent violated RPC 1.15A(f).

23 20. Count 17: By failing to cooperate fully and promptly with a grievance
24

1 investigation relating to his representation of Mr. Peters, Respondent violated RPC 8.4(d) and
2 8.4(l).

3 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
4 **REGARDING RECOMMENDED SANCTION**

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

8 22. Count 1: ABA *Standards* std. 4.1 applies to Respondent's violation of RPC
9 1.15A(c) as charged in Count 1. In failing to deposit client funds from his client Ms. Sun in a
10 trust account on multiple occasions, Respondent knowingly failed to safeguard client funds and
11 caused injury to his client. Formal Complaint ¶¶ 6, 12-14, 20-22, 68. The presumptive sanction
12 is disbarment under ABA *Standards* std. 4.11.

13 23. Count 2: ABA *Standards* std. 4.4 applies to Respondent's violation of RPC 1.4 as
14 charged in Count 2. In failing to inform his client Ms. Sun of a decision or circumstance with
15 respect to which her informed consent was required, in failing to reasonably consult with her, in
16 failing to keep her reasonably informed, in failing to promptly comply with reasonable requests
17 for information, and in failing to explain matters to her, Respondent acted knowingly and
18 caused serious or potentially serious injury to his client. Formal Complaint ¶¶ 8, 44, 69. The
19 presumptive sanction is disbarment under ABA *Standards* std. 4.41.

20 24. Count 3: ABA *Standards* std. 4.4 also applies to Respondent's violation of RPC
21 1.3 as charged in Count 3. In failing to act with reasonable diligence and promptness in
22 representing Ms. Sun, Respondent acted knowingly and caused serious or potentially serious
23 injury to his client. Formal Complaint ¶¶ 10, 44, 70. The presumptive sanction is disbarment
24 under ABA *Standards* std. 4.41.

1 25. Count 4: ABA *Standards* std. 7.0 applies to Respondent's violation of RPC 1.5(a)
2 as charged in Count 4. In charging and collecting money for expenses that were not incurred or
3 paid, Respondent acted with the intent to benefit himself, and caused serious or potentially
4 serious injury to his client Ms. Sun. Formal Complaint ¶¶ 14, 22, 48, 71. The presumptive
5 sanction is disbarment under ABA *Standards* std. 7.1.

6 26. Count 5: ABA *Standards* std. 4.1 applies to Respondent's violation of RPC
7 1.15A(b) as charged in Count 5. Respondent knowingly converted client funds for his own use
8 and caused serious or potentially serious injury to Ms. Sun. Formal Complaint ¶¶ 14, 22, 48,
9 72. The presumptive sanction is disbarment under ABA *Standards* std. 4.11.

10 27. Count 6: ABA *Standards* std. 6.2 applies to Respondent's violation of RPC 3.2 and
11 8.4(d) as charged in Count 6. In failing to comply with pretrial deadlines, in failing to respond
12 to communications from opposing counsel and the court, in failing to appear for trial, and in
13 moving to dismiss the case of his client Ms. Sun on the date set for trial, Respondent acted
14 knowingly and caused injury to his client and interference with a legal proceeding. Formal
15 Complaint ¶¶ 26, 37, 73. The presumptive sanction is suspension under ABA *Standards* std.
16 6.22.

17 28. Count 7: ABA *Standards* std. 4.4 applies to Respondent's violation of RPC 1.2(a)
18 as charged in Count 7. In moving to dismiss Ms. Sun's case without her consent and without
19 consulting her, Respondent acted knowingly and caused serious or potentially serious injury to
20 his client. Formal Complaint ¶¶ 35, 74. The presumptive sanction is disbarment under ABA
21 *Standards* std. 4.41.

22 29. Count 8: ABA *Standards* std. 4.4 applies to Respondent's violation of RPC 1.16(d)
23 as charged in Count 8. In failing to inform Ms. Sun that he was abandoning her case, in failing
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1 to inform her that her case had been dismissed, and in failing to advise her when the statute of
2 limitations would expire, Respondent acted knowingly and caused serious or potentially serious
3 injury to his client. Formal Complaint ¶¶ 35, 44, 75. The presumptive sanction is disbarment
4 under *ABA Standards* std. 4.41.

5 30. Count 9: *ABA Standards* std. 4.1 applies to Respondent's violation of RPC
6 1.15A(f) and 1.16(d) as charged in Count 9. In failing to return Ms. Sun's client file, and in
7 failing to return the funds she had paid for expenses not incurred, Respondent acted with the
8 intent to benefit himself, and caused serious or potentially serious injury to Ms. Sun. Formal
9 Complaint ¶¶ 48, 76. The presumptive sanction is disbarment under *ABA Standards* std. 4.11.

10 31. Count 10: *ABA Standards* std. 4.1 applies to Respondent's violation of RPC
11 1.15A(e) as charged in Count 10. In failing to respond to Ms. Sun's request for an accounting,
12 Respondent acted with the intent to benefit himself, and caused serious or potentially serious
13 injury to Ms. Sun. Formal Complaint ¶¶ 48, 77. The presumptive sanction is disbarment under
14 *ABA Standards* std. 4.11.

15 32. Count 11: *ABA Standards* std. 7.0 applies to Respondent's violation of RPC 8.4(d)
16 and 8.4(l) as charged in Count 11. In failing to cooperate fully and promptly with a grievance
17 investigation relating to his client Ms. Sun, Respondent acted knowingly and caused injury to
18 his client, the public, and the legal system. Formal Complaint ¶¶ 67, 78. The presumptive
19 sanction is suspension under *ABA Standards* std. 7.2.

20 33. Count 12: *ABA Standards* stds. 5.1 and 7.0 apply to Respondent's violation of
21 RPC 8.1(a) and 8.4(c) as charged in Count 12. In making false statements of material fact in
22 connection with a disciplinary matter relating to his client Ms. Sun, Respondent intended to
23 deceive Disciplinary Counsel. Formal Complaint ¶¶ 56-60. Respondent's intentionally false
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1 and deceptive statements caused serious or potentially serious injury to the legal system, and
2 they seriously adversely reflect on his fitness to practice law. Formal Complaint ¶¶ 61, 79.
3 The presumptive sanction is disbarment under ABA *Standards* stds. 5.11(b) and 7.1.

4 34. Count 13: ABA *Standards* std. 4.4 applies to Respondent's violation of RPC 1.4 as
5 charged in Count 13. In failing to reasonably consult with his client Mr. Peters, in failing to
6 keep him reasonably informed, and in failing to promptly comply with reasonable requests for
7 information, Respondent acted knowingly and caused injury to his client. Formal Complaint ¶¶
8 104, 117. The presumptive sanction is suspension under ABA *Standards* std. 4.42.

9 35. Count 14: ABA *Standards* std. 4.4 also applies to Respondent's violation of RPC
10 1.3 as charged in Count 14. In failing to act with reasonable diligence and promptness in
11 representing Mr. Peters, Respondent acted knowingly and caused injury to his client. Formal
12 Complaint ¶¶ 104, 118. The presumptive sanction is suspension under ABA *Standards* std.
13 4.42.

14 36. Count 15: ABA *Standards* std. 6.2 applies to Respondent's violation of RPC 3.2
15 and 8.4(d) as charged in Count 15. In allowing Mr. Peters' case to be dismissed as
16 "abandoned," and in failing to respond to communications from the court, Respondent acted
17 knowingly and caused injury to his client and interference with a legal proceeding. Formal
18 Complaint ¶¶ 104, 119. The presumptive sanction is suspension under ABA *Standards* std.
19 4.42.

20 37. Count 16: ABA *Standards* std. 4.1 applies to Respondent's violation of RPC
21 1.15A(f) as charged in Count 16. In failing to promptly deliver to Mr. Peters the check that he
22 was entitled to receive, Respondent acted knowingly and caused injury to his client. Formal
23 Complaint ¶¶ 104, 120. The presumptive sanction is suspension under ABA *Standards* std.
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1 4.12.

2 38. Count 17: ABA *Standards* std. 7.0 applies to Respondent's violation of RPC 8.4(d)
3 and 8.4(I) as charged in Count 17. In failing to cooperate fully and promptly with a grievance
4 investigation relating to his representation of Mr. Peters, Respondent acted knowingly and
5 caused injury to his client, the public, and the legal system. Formal Complaint ¶¶ 116, 121. The
6 presumptive sanction is suspension under ABA *Standards* std. 7.2.

7 39. Exhibit 1, the Declaration of Disciplinary Counsel re Prior Disciplinary Action and
8 Appendix A thereto, is admitted.

9 40. The following aggravating factors set forth in Section 9.22 of the ABA *Standards*
10 apply in this case:

- 11 (a) prior disciplinary offenses (Respondent received a one-year suspension on
12 December 18, 2014, in Proceeding No. 14#00046);
13 (b) dishonest or selfish motive;
14 (c) pattern of misconduct (Respondent was sanctioned for similar misconduct in
15 Proceeding No. 14#00046);
16 (d) multiple offenses;
17 (i) substantial experience in the practice of law (Respondent was admitted to
18 practice in 2000);
19 (j) indifference to making restitution.

20 41. It is an additional aggravating factor that Respondent failed to file an answer to the
21 Formal Complaint as required by ELC 10.5(a) or otherwise participate in the disciplinary
22 proceeding.

23 42. None of the mitigating factors set forth in ABA *Standards* std. 9.32 applies in this
24 matter.

21 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
22 **REGARDING RESTITUTION**

23 43. On March 27, 2012, Mary Ann Sun paid Respondent \$250 for the filing fee in a
24 case that Respondent later dismissed without her knowledge or consent. Formal Complaint ¶¶

1 5, 33-36.

2 44. On August 1, 2012, Ms. Sun paid Respondent another \$600 for "medical bills"
3 even though Respondent never incurred any expenses for medical bills or paid any medical bills
4 on Ms. Sun's behalf. Formal Complaint ¶¶ 11-14.

5 45. On April 27, 2013, Ms. Sun paid Respondent another \$672 for deposition
6 expenses, even though Respondent never incurred more than \$192.40 in deposition expenses,
7 and never paid any deposition expenses. Formal Complaint ¶¶ 15-22.

8 46. An order of restitution for these amounts with interest is appropriate under ELC
9 13.7 because Ms. Sun was financially injured by Respondent's misconduct.

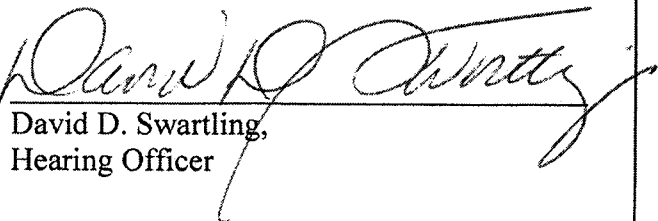
10 **RECOMMENDATION**

11 47. Where, as here, there are multiple ethical violations, the ultimate sanction imposed
12 should at least be consistent with the sanction for the most serious instance of misconduct. *In re*
13 *Disciplinary Proceeding Against Petersen*, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

14 48. Based on the ABA *Standards* and the applicable aggravating factors, the hearing
15 officer recommends that Respondent Liam Aneurin McCann be disbarred.

16 49. The hearing officer further recommends that Respondent be ordered to pay
17 restitution to Mary Ann Sun in the amount of \$1,522 plus interest at 12% per annum from April
18 27, 2013.

19 DATED this 24th day of June 2015.

20
21 
22 David D. Swartling,
23 Hearing Officer
24

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FDE, DL & this recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to WAM McLean Respondent/Respondent's Counsel
at 905 NE 110th St #2198 Kennesaw, GA 30144 Certified/first class mail
postage prepaid on the 24th day of June, 2015

[Signature]
Clerk of Counsel to the Disciplinary Board