BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION

In Re: JAMES D. PIRTLE, Respondent Lawyer WSBA No. 37422	PUBLIC NO. 13 #00115 CORRECTED 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), a hearing was held before the undersigned Hearing Officer on May 18 and 19, 2015 with additional evidence received on June 8, 2015. Disciplinary counsel Randy Beitel appeared for the Association and the Respondent, James Pirtle appeared through his counsels of record, M. Varn Chandola and Joseph A. Evans.

The Respondent was charged by Formal Complaint dated July 2, 2014 with five counts of violation of the rules of professional conduct. On April 24, 2015 the Association filed a Corrected Formal Complaint. It charged Respondent with violation of the rules of professional conduct as follows:

COUNT I- By converting client funds to his own use, Respondent violated RPC 1.15A(b) and/or RPC 8.4(c) and/ or RPC 8.4(b) by violating RCW 9A.56.030(first degree theft.

COUNT 2- by failing to maintain a check register for his IOLTA trust account on a current basis that included all transactions in the account, Respondent violated RPC 1.15A(h)(2) by

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violating RPC 1.15B(a)(1).

COUNT 3- by failing to maintain individual client ledgers for his IOLTA trust account on a current basis Respondent violated RPC 1.15A(h)(2) by violating RPC 1.15 B(a)(2).

COUNT 4- by failing to reconcile his check register balance for his IOLTA trust account to the bank statement balance and/or reconcile the check register balance to the combined total of all client ledger records, Respondent violated RPC 1.15A(h)(6).

COUNT 5- by dispersing more funds on behalf of clients than the individual clients had on deposit in his IOLTA trust account, Respondent violated RPC 1.15A(h)(8).

Based upon the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following facts were established by a clear preponderance of the evidence:

I. FINDINGS OF FACT

In his Answer to Formal Complaint (date unknown), the Respondent admitted the following:

1. During the period from October 1, 2011 through March 31, 2013, the Respondent maintained the IOLTA trust account ending in 1884 at Key Bank for the deposit of client funds.

2. On or about January 30, 2013, the Respondent dispersed check number 1124 from his IOLTA trust account in the amount of $7,500 payable to his operating account. He then endorsed and deposited that check into his operating account on approximately that same date.

3. This disbursement to the Respondent's operating account was not related to the interest of any client whose funds Respondent was holding in his IOLTA account. Respondent wrongfully and without authorization or entitlement and with the intent to deprive the owners of the $7,500 of their funds, remove the funds from his IOLTA account.

4. The Respondent used the $7,500 he deposited into his operating account to pay business and/or personal expenses unrelated to the client whose funds he had taken.

5. On or about March 21, 2013, Respondent deposited $7,500 of his own funds to

his IOLTA Trust account. The Respondent made this deposit with intent to restore the funds he had removed from his IOLTA trust account on or about January 30, 2013.

6. By converting client funds to his own use, the Respondent violated RPC 1.15A(b) and/ or RPC 8.4(c) and/ or RPC 8.4(b) by violating RCW 9.A.56.030 (first degree theft).

7. During the period from January 30, 2012 through March 26, 2012, the Respondent failed to maintain a check register that included all transactions for IOLTA trust account ending in 1884 at Key Bank.

8. During the period from January 30, 2012 through March 26, 2012, the Respondent failed to maintain a check register with the running balance on a current basis for IOLTA trust account ending in 1884 at Key Bank.

9. During the period from January 30, 2012 through March 26, 2012, the Respondent failed to maintain individual client ledgers on a current basis as described in RPC 1.15B (a) (2) for each client with funds in his IOLTA trust account ending in 1884 at Key Bank.

10. During the period from January 30, 2012 through March 26, 2012, the Respondent failed to prepare reconciliations from the bank statement to the check register for his IOLTA trust account ending in 1884 at Key Bank. During that period he also failed to prepare reconciliations from the check register to the combined total of his client ledgers for his IOLTA Trust account ending in 1884 at Key Bank.

11. On one or more occasions during the period from January 30, 2012 through March 26, 2012 the Respondent dispersed more funds on behalf of clients than the clients had on deposit in his IOLTA trust account ending in 1884 at Key Bank.

12. By failing to maintain a check register for his IOLTA trust account on a current basis that included all transactions in the account, Respondent violated RPC 1.1 5A (h) (2) by violating RPC 1.15B(a)(1).

13. By failing to maintain individual client ledgers for his IOLTA trust account on a

current basis, Respondent violated RPC 1.15A(h)(2) by violating RPC 1.15B(a)(2).

14. By failing to reconcile his check register balance for his IOLTA trust account to the bank statement balance and/or reconcile the check register balance to the combined total of all client ledger records, Respondent violated RPC 1.15A(h)(6).

15. By disbursing more funds on behalf of clients than the individual clients had on deposit in his IOLTA trust account, the Respondent violated RPC 1.15A(h)(8).

16. The Respondent began practicing law in the State of Washington on May 24, 2006.

17. In the hearing on this matter on May 18, 2015, the Respondent confirmed his admission of the above allegations. In addition to the allegations admitted by the Respondent, additional facts were established through the witness testimony and exhibits presented at the hearing.

18. Respondent Pirtle initially started his own practice under the name of Law Office of James D. Pirtle. In approximately March of 2010, he took on a partner, Matthew Hale, and together they formed Sentinel Law Group. That partnership practiced under the name Sentinel Law Group as well as under the name Northwest Law Group, PLLC.

19. Initially, Mr. Pirtle handled personal injury and criminal defense matters. Starting in 2011, while still in a partnership with Mr. Hale, he began doing international human rights work in Africa.

20. On approximately April 11, 2011, an overdraft notice was issued to the Sentinel Law Group by Wells Fargo Bank, where Sentinel Law Group maintained a pooled IOLTA trust account. As Respondent Pirtle's name was on the trust account, WSBA sent the Respondent a letter requesting an explanation for the overdraft to be accompanied by certain documentation.

21. The Respondent responded and on April 26, 2011, after receiving requested bank/ accounting records from the Respondent, WSBA sent Respondent Pirtle a detailed letter

advising that his practices appeared to violate RPC 1.15A(h)(7) and RPC 1.15(A)(h)(8) as he did not permit checks deposited to clear before making disbursements from those funds. Additionally, he was advised that his recordkeeping practices did not comply with the requirements of RPC 1.15(B)(a)(2). Specifically, his "disbursal sheets" or "trust accountings" did not include the date on which funds were received or disbursed, did not include a new client fund balance after each transaction, and the statements appeared to be prepared at the time of disbursal rather than contemporaneously. He was advised that those practices violated at minimum, RPC 1.15A(h)(7) and (8), and RPC 1.15B(a).

22. The letter described specific problems with the record keeping practice and included the publication "Managing Client Trust Accounts: Rules, Regulations, and Common Sense." Although WSBA dismissed the matter, WSBA articulated the expectation and recommendation that the Respondent reconstruct his trust account records to bring both his records and handling of client funds into compliance with the RPC to avoid future disciplinary action.

23. Respondent Pirtle and Mr. Hale dissolved their partnership on approximately January 1, 2012. Although Mr. Hale was no longer a participant in The Sentinel Law Group which continued to operate as of the time of this hearing, they continued to share some financial interests on a number of cases. However, the Respondent had sole control of the Wells Fargo trust account associated with The Sentinel Law Group.

24. Shortly after Mr. Hale departure, the Respondent took on a new partner, Alex Ferguson. The new partnership continued to use Key Bank IOLTA account #1884 associated with Northwest Law Group, however, the Respondent and Mr. Ferguson began practicing under the name of Pirtle Ferguson. After Mr. Hale's departure, the Respondent was the sole person in charge of both the Key Bank trust account #1884 and the Wells Fargo trust account under the name of The Sentinel Law Group which was devoted to the Respondent's human rights work.

Mr. Ferguson never had involvement with the trust accounts. The partnership with Mr. Ferguson dissolved on July 1, 2013.

25. The Respondent received and read the publication "Managing Client Trust Accounts" sent to him by WSBA on April 26, 2011. However, the respondent did not believe he had an obligation to comply with RPC 1.15B in regards to personal injury matters.

26. After January 1, 2012, his partner Alex Ferguson handled personal injury matters for the firm and the Respondent focused exclusively on international human rights work. As the human rights work performed was exclusively pro bono, the only income received by the firm was through the personal injury work performed by Mr. Ferguson.

27. Beginning in 2011 when the Respondent became involved in his pro bono human rights work, he began losing revenue. He was devoting considerable time to his pro bono work and he was not getting referrals for paying clients. In addition to the drop in income, he used financial resources to travel to Africa twice and on one occasion, in February or March of 2013, he assisted his partner and co-counsel in Uganda, Francis Onyango, to travel to America.

NOTICE OF NON SUFFICIENT FUNDS AND INVESTIGATION BY WSBA

28. On April 4, 2012, Key Bank sent the Washington State Bar Association notice of non-sufficient funds in the IOLTA account for Pirtle Ferguson, PLLC account #1884.

29. On April 19, 2012, WSBA's audit manager sent a letter to the Respondent advising that a grievance file was opened against him and additionally requesting a full explanation of the cause of the overdraft and how the overdraft was corrected. The auditor requested:

1) bank statements for the month in which the overdraft occurred,
2) deposit slips, canceled checks, deposit items and checks that were returned by the bank, and/or other withdrawals for the month in which the overdraft occurred;
3) check register for the month in which the overdraft occurred;
4) ledgers for any client matter on which there was activity or a balance during the month in which the overdraft occurred;
5) his reconciliation between the bank statements and the check register for the month in which the overdraft occurred and the preceding month;

6) his reconciliation between the check register and the client ledgers for the month in which the overdraft occurred and the preceding month; and
7) record supporting his explanation of how the overdraft was corrected.

30. On April 23, 2012, the Respondent provided

1) a two-page Internet printout of account transactions for the IOLTA account in question,
2) a copy of his IOLTA checkbook registry for the period from January 30, 2012 through March 27, 2012,
3) eight (8) trust accounting ledgers for clients for the months of October 2011, and January, February and March 2012 with copies of checks associated with the ledgers.

31. On April 24, 2012, the Respondent provided a letter from Key Bank explaining that no checks were returned and that all checks were honored and all overdraft fees refunded.

32. On May 4, 2012, the WSBA auditor wrote to the Respondent and indicated that not all requested records were provided. In particular, they requested:

1) an explanation of how the overdraft occurred as the Key Bank letter stating no checks were returned was insufficient;
2) bank statement for the month in which the overdraft occurred as the account transaction printout was insufficient;
3) ledgers for any client matter on which there was activity or a balance during the month in which the overdraft occurred as he provided a document called "trust accounting" but not client ledgers;
4) his reconciliation between the bank statements and the check register for the month in which the overdraft occurred and the preceding month;
5) his reconciliation between the check register and the client ledgers for the month in which the overdraft occurred and the preceding month; and
6) record supporting his explanation of how the overdraft was corrected.

The auditor provided the Respondent a copy of the WSBA publication "Managing Client Trust Accounts."

33. On May 7, 2012, the Respondent replied and advised the WSBA auditor that the "Trust Account" ledgers he provided complied with RPC 1.15(a)(2) [sic]. Additionally, he provided the April 2012 bank statement which showed an ending balance of $620.46, an email between he and Key Bank indicating Key's Bank's intent to provide a writing verifying there was a system error which resulted in the April 3, 2012 overdraft notice.

34. On May 17, 2012, the Respondent verified in a telephone call that he had no client ledgers (other than the documents provided), and that he did not have client ledger reconciliations or bank reconciliations.

35. On May 18, 2012, the Respondent indicated he did not know who the $620.76 held in the IOLTA account belonged to. He speculated it was an amount disputed with another lawyer although he could not recall on what case. He promised to research the issue and get back to the auditor prior to a schedule trip out of town on May 25, 2012.

36. On May 24, 2012, the Respondent sent the WSBA auditor a letter. He indicated he was mistaken about the ownership of the $620.76 held in trust. He indicated his firm held $38.78 of their funds in the account for administrative costs. Additionally, he described a series of errors or irregularities including

1. A check was written in the amount of $1000.00 to CDI, a client's provider, on November 2, 2011 which had never cleared;
2. Overpayments of $8.41 and $308.50 to clients and/ or providers on February 15, 2012 and approximately February 22, 2012 respectively,
3. A check of $141.84 to L& I for a client but where the client held no funds in trust.

37. The Respondent apologized for the errors. He proposed to move $379.54 from his operating account to the business account and resubmit a payment of $1,000.00 to CDI to satisfy the balance owed to them. He indicated an intent to consult with his accountant in order to strictly adhere to WSBA trust record requirements, and to have him/ her review all trust deposits and disbursals to prevent future accounting errors.

38. On April 4, 2012, had CDI attempted to negotiate the check written to them six months earlier on November 2, 2011, there would have been insufficient funds.

39. In May 2012, WSBA issued a Subpoena to Key Bank and received production in June 2012.

40. On February 27, 2013, the WSBA auditor spoke with Respondent Pirtle by telephone and indicated she would be sending him a request for 3 months of records and on

February 28, 2013, the letter was sent requesting records for November and December 2012, plus January 2013 by March 18, 2013.

41. The Respondent did not provide the records by the requested date. After receiving the request, he consulted with his professional responsibility professor at Seattle University who recommend that he secure an extension in order to make sure that the trust account was healthy before reporting his transgression. Subsequently, he left a voice message for the WSBA auditor requesting an extension.

42. On March 27, 2013, WSBA auditor spoke to the Respondent telephonically and asked why he needed an extension to provide bank records for the period from November 2012 through January 2013. Respondent indicated he wanted to provide records through March of 2013. The auditor indicated she did not request that timeframe and again asked that he provide the requested records. The Respondent then stated that he was running short on funds to pay operating expenses so he "borrowed" money from the trust account in January. He wanted to provide the records through March so that he could show that the funds were paid back. He wanted to try to get the records to the WSBA auditor by April 10, 2013.

43. On March 28, 2013, the Respondent provided records. In his accompanying letter to WSBA auditor, he stated "I transgressed on January 30th of this year and loaned the firm $7,500.00 before paying subrogation on one of the cases." He pointed out that the records being provided substantiated that he replaced the funds and that all providers were paid.

44. The records showed that a deposit of $7,500.00 was made to the IOLTA trust account on March 21, 2013.

45. On April 24, 2013, the Respondent spoke on the telephone with Marsha Matsumoto of Office of Disciplinary Counsel. He indicated that he did not yet have an accountant handling his trust account records and that his accountant only handled his taxes. In response to a question regarding the maintenance of ledgers, he stated that he maintains "Client Ledger"

documents as shown in the material produced for client D.A. as he learned that his "Trust Accounting" documents were not compliant. However, he stated he did not maintain one for D.D. although he received funds for her. He explained that with a PI practice, money comes in and quickly goes out. He indicated that he creates the "Client Ledger" around the time the funds are paid out. The Respondent also indicated that approximately 6 months prior, he began maintaining his bank reconciliations on the back of the bank statements.

46. On April 24, 2013, in response to further questions by ODC, the Respondent explained that the $7,500.00 removed from the IOLTA account by him belonged to M.B. He was aware that the funds were available in the account as a check to Puget Parks Chiropractor had been written for $8,073.10 but not yet sent. He indicated that he replaced the $7,500.00 with his personal money and that Puget Parks Chiropractic had now been paid. When asked what he did with the $7,500.00, he stated that he used it to keep the firm "afloat". He said it was a "desperate and stupid thing to do."

47. On April 24, 2013, ODC requested a copy of trust documents for M.B. and the Respondent provided them on that same day. Although the "Client Ledger" dated October 15, 2012 itemized the checks paid, including the check number, the date of check, the amount of check, and the payee with purpose of payment, it did not indicate on what dates deposits were received into the trust account nor the amounts of each deposit. It also did not contain the new client fund balance after each receipt, disbursement or transfer.

48. The Respondent's prior partner, Alex Ferguson, testified that he typically dealt with the client relations, as well as communications and negotiations with adjusters. The Respondent handled the financial side, including working with the bank information. Upon conclusion of a case, a Settlement Disbursal Sheet was ordinarily prepared detailing the disposition of all funds received in the case. This disbursal sheet as well as the final letter to the client was prepared from a boiler plate form, could have been prepared by either he or the

Respondent, and bore his electronic signature. He did not recall in this case whether he personally prepared the disbursal sheet and final letter to client dated October 8, 2012. However, he indicated that he would have been the person to review the content with the client prior to requesting their approval on final documents settling the case. He would have discussed with Ms. B. the sum of $8,073.10 detailed on the Settlement Disbursal Sheet to be paid for medical charges.

49. Mr. Ferguson could not state whether he or the Respondent prepared a letter dated October 15, 2012 to Puget Park Chiropractic Clinic providing a check for $8,073.10, but he indicated that the Respondent would have prepared the check. He was not aware of any negotiations with Puget Park Chiropractic Clinic regarding the amount of their bill. He had no discussions with Ms. B. regarding delaying payment to Puget Park and he was not aware of any delays in paying their bill. Although he testified it was routine to try to negotiate fees with medical providers, he had no recollection of any efforts to negotiate down the medical fees in Ms. B.'s case.

50. Other than writing the check and eventually mailing it, the Respondent had no communications with Puget Park Chiropractic Clinic. He at no time had any communications with Ms. B. and he never disclosed to Mr. Ferguson that he had delayed in sending payment of $8,073.10 to Puget Park Chiropractic Clinic.

51. Respondent was candid during his May 18, 2015 testimony that he does not prepare monthly reconciliations. For his personal injury matters, the Respondent maintained the print outs provided by the bank for the IOLTA account, a check register for the IOLTA account. At the conclusion of a case, the Respondent prepared a Settlement Disbursal Sheet and a "Client Ledger." He acknowledged that in Ms. B.'s case, $4,700.00 in funds were first received and deposited to IOLTA trust on September 17, 2012. A check in the amount of $1,566.67 was written on September 24, 2012 for legal fees in her case and on October 9, 2012, additional

funds of $11,000.00 were deposited to IOLTA trust for Ms. B. Although additional checks were written on October 12, 2012 and October 15, 2012, he was steadfast in his position that contemporaneous client ledgers were not required which either maintained a running balance after deposits and/ or disbursals and that reconciliation with other bank records was not required.

52. The Respondent was adamant in his testimony that contingency cases such as the personal injury matters handled by his law firm do not have the same record keeping requirements as work performed in other areas of law.

53. The Respondent told Witness Nunes, his girlfriend with whom he cohabitated from Fall of 2012 until approximately May 2013, that he had removed funds from his IOLTA account for his own use as he was having financial difficulties. She did not know when this occurred.

FACTS PERTAINING TO RESPONDENT'S EMOTIONAL/PSYCHOLOGICAL FUNCTIONING

54. The Respondent sought mental health treatment through the Veteran's Administration where he had an initial assessment on April 15, 2013. Previously, he and his girlfriend, Witness Nunes, had begun cohabitating in Fall of 2012. She saw him transition from an outgoing person, to being reclusive, down, worried, irritable, sleeping long hours, drinking more than she believed was healthy, and showing little desire to socialize. She believed he was responding to financial stressors and she urged him to seek counseling to address what she believed to be signs of depression as well as alcohol misuse.

55. At his initial assessment, the Respondent reported experiencing depression and anxiety for the prior couple years. He had been prescribed Citalopram, an antidepressant, the prior week by his referring doctor.

56. He began treatment with Dr. Greenberg on April 23, 2013 and saw her a total of 7 times between April 23, 2013 and July 19, 2013, then again once on October 24, 2013. At his initial session, he described apathy malaise, lack of motivation, and feeling overwhelmed by his

professional responsibilities and financial struggles. Generally, he slept too much and had difficulty getting up in the morning. He described drinking too much intermittently, such that he was making an effort to cut back. He had previously seen a therapist a few times but did not find it helpful so had not continued.

57. During the course of treatment, he described his existential crisis. Since beginning his human rights work two years prior, he no longer found personal injury work meaningful. He wished to continue doing this work but he had not received remuneration and did not see any way to make human rights work lucrative. As of April 29, 2013, he had stopped taking the antidepressant prescribed as he did not notice a difference. He continued to show low mood, lethargy, and irritability. During his treatment, he discussed his past and current relationships with women, his role as a caretaker in relationships, and his sense of lethargy and feeling depleted from giving so much and not getting anything in return.

58. On July 19, 2013 visit, the Respondent reported feeling ready to finish working on depression. He had a potential human rights teaching position in Oregon for which funding could become available. He was feeling much better and wanted to focus on professional goals. He did not feel the need for services but agreed to seek services if needed in the future.

59. On October 24, 2013, he was seen a final time. He described his mood as worsening since the WSBA had found out about something that might involve a disciplinary action. He requested a letter outlining his treatment dates and setting forth a diagnosis. Throughout his treatment in 2013, his judgment and insight appeared intact. His thoughts were logical and linear. There was no evidence that he had, at any time during treatment, disclosed to his treatment provider than he had removed and converted funds from his IOLTA account for his own personal use.

CHARACTER EVIDENCE AND CONTRIBUTIONS TO THE LEGAL COMMUNITY

60. The Respondent had three witnesses testify on his behalf regarding his character

and contributions to the legal community, Witness Nunes, Witness Dunlap, and Witness Keyes. These witnesses verified that the Respondent is an active volunteer in the legal community. He has devoted significant time to pro bono human rights work, moot court activities, and providing legal consultation and emotional support to his peers.

61. Witness Nunes met the Respondent while she was attending law school. They dated approximately 1.5 years and in the Fall 2012, which was her last year of law school, they began to cohabitate. They lived together approximately 8-9 months at which time, Witness Nunes relocated. She is presently a practicing attorney in Massachusetts.

62. Witness Nunes was aware that the Respondent had removed funds from his trust account to which he was not entitled. However, she was unaware of the details and she did not know when it occurred.

63. Witness Dunlap met the Respondent in approximately 2002 while classmates at Seattle University Law school. They remained in contact after graduation in 2005. She is a practicing lawyer and handles class action matters. She spoke highly of the Respondent's contribution to the legal community both in terms of his availability to provide consultation to his peers and his dedication to work in international human rights. She very recently learned that some action by the Respondent had subjected him to a disciplinary proceeding. However, the Respondent did not disclose to her what the alleged conduct was and she specifically did not know that he had removed funds from his IOLTA trust account to which he was not entitled.

64. Witness Keyes met the Respondent as a first year law student at Seattle University Law School. They were heavily involved in the management of Moot Court Honor Board during their third year and they maintained a relationship since then. Mr. Keyes presently does regulatory work with state utility commissions across the country. He spoke highly of the Respondent's ongoing volunteer involvement with Seattle University's moot court as well as his work in international human rights. Witness Keyes and Respondent had not discussed

Respondent's removal of funds to which he was not entitled. Witness Keyes had read the Respondent's Rebuttal Brief and so, was aware that ODC's allegations related to the removal of funds from trust.

65. The Respondent's work in the area of international human rights has been recognized by his peers. His work in this area was the subject of articles in Lawyer Magazine in 2011 and Seattle Weekly and Washington State Bar News in 2012. He has been identified as a Rising Star in Super Lawyers Magazine in the area of International Law.

66. The Respondent testified that he at all times had an intent to repay the $7,500.00 he removed from the IOLTA trust account.

67. The Respondent testified that his depression started in October of 2012. However, that testimony is not credible.

II. CONCLUSIONS OF LAW

COUNT 1

I.A. Violation of RPC 1.15A(b), RPC 8.4(c), and RPC 8.4(b).

It was established by a clear preponderance of evidence that the Respondent violated RPC 1.15A(b) by using, converting or borrowing his client's property for his own use; that he violated RPC 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and that he violated RPC 8.4(b) by committing the criminal act of theft (by embezzlement) which reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

Here, the Respondent was having financial troubles. On October 15, 2012, his firm wrote checks to disburse all final proceeds received in the M.B. matter. Of particular significance, on October 15, 2012, Respondent's firm wrote a letter to Puget Park Chiropractic Clinic advising that a check in the amount of $8,073.10 was enclosed for them in full settlement of M.B.'s outstanding balance. Although the check was also prepared, neither the check nor the letter to

Puget Park were sent.

Without notice to his partner, M.B. or Puget Park Chiropractic Clinic, the Respondent withheld the letter and check and kept the funds totaling $8,073.10 in his pooled IOLTA account.

These were the sole funds in the trust account from October 18, 2012 until January 30, 2013 during which time the Respondent struggled financially.

On January 30, 2013, the Respondent wrote a check from the IOLTA account in the amount of $7,500.00 to his firm. He placed those funds in his operating account and used those funds for his own purposes to keep his firm "afloat."

1.B. 1. Presumptive Sanction: A violation of RPC 1.15A(b) violates ABA Standard 4.11.

Pursuant to ABA Standard at 4.1, *Failure to Preserve Client's Property*, disbarment is the presumptive sanction where a lawyer knowingly converts client property and causes injury or potential injury to a client.

2. Presumptive Sanction: A violation of RPC 8.4(b) and/ or RPC 8.4(c) violates ABA Standard 5.11.

Pursuant to ABA Standard at 5.1, *Failure to Maintain Personal Integrity*, disbarment is the presumptive sanction where a lawyer a) engages in serious criminal conduct , a necessary element of which includes ... misappropriation or theft; or b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

The Respondent asserts that he did not convert the property because he had no intent to deprive the owner of the funds. However, the Respondent's misappropriation of client trust funds constitutes embezzlement, In re the Disciplinary Proceeding Against Schwimmer, 153 Wn. 2d 752, 761, 108 P. 3d 761 (2005). Unlike theft by taking, embezzlement involves a violation of trust and does not require proof of an intent to permanently deprive the owner of the property taken.

1.C. Potential or Actual Injury due to Violation of RPC 1.15A(b), RPC 8.4(b), and/ or RPC 8.4(c):

Here, M.B.'s health provider, Puget Park Chiropractic, was harmed as they were deprived of the use of their funds for approximately five months, from approximately October 15, 2013 until some time between March 21, 2013 and April 1, 2013 when the check in the amount of $8,073.10 to Puget Park cleared the bank. The Respondent was struggling financially and had he not found the means to provide restitution, the harm to Puget Park would have been much greater. Public awareness of dishonest conduct by lawyers casts the legal profession into disrepute in the eyes of the public and harms the public's trust of the legal profession.

COUNT 2

2.A. Violation of RPC 1.15A(h)(2) by violating RPC 1.15B(a)(1).

It was established by a clear preponderance of evidence that the Respondent violated RPC 1.15A(h)(2) by failing to keep complete records as required by RPC 1.15(B)(a)(1). Pursuant to RPC 1.15(B)(a)(1), the Respondent was required to maintain a check book register or equivalent for each trust account , including entries for all receipts, disbursements, and transfers with a new trust account balance after each receipt, disbursal or transfer.

From April 10, 2012 through May 18, 2012, the Respondent had $620.76 in his IOLTA account with Key Bank but he did not know to whom it belonged. Upon researching the situation, he realized that there were a series of overpayments and irregularities in the trust account. In particular, one check in the amount of $1,000.00 written to CDI six months earlier on November 2, 2011 had not cleared.

Query where that check had been for the prior six months and why CDI had not tendered the check to the bank for payment. However, had the payee attempted to negotiate the check, on March 22, 2012 or between April 3, 2012 and April 10, 2012, there would have been insufficient funds in the trust account. The Respondent's lack of knowledge or unawareness of the deficiency establishes the Respondent's non-compliance by a clear preponderance of the

evidence.

2.B. Presumptive Sanction: Violation of RPC 1.15B(a)(1) violates ABA Standard 4.1.

Pursuant to ABA Standard at 4.1, *Failure to Preserve Client's Property*, suspension is the presumptive sanction when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

The Respondent asserts that he may not have been the person in charge of the trust account during his partnership with Matthew Hale. However, according to his own testimony, the partnership with Matthew Hale dissolved on January 1, 2012 and he took over and was the sole manager of the Key Bank trust account after January 1, 2012. By April 10, 2012 when the balance was only $620.76, he should have known that he was dealing improperly with client property.

2.C. Potential or Actual Injury due to Violation of RPC 1.15B(a)(1).

Here, there was potential harm to CDI in the amount of $1,000.00. Had they attempted to negotiate the check, there would have been insufficient funds and they would have been deprived of the use of the funds owed to them. If the Respondent had not been able to deposit the funds necessary to cover, the hardship to CDI would have been of longer duration.

COUNT 3

3.A. Violation of RPC 1.15A(h)(2) and RPC 1.15B(a)(2).

It was established by a clear preponderance of evidence that the Respondent violated RPC 1.15A(h)(2) by violating RPC 1.15B(a)(2) by failing to maintain individual client ledger records on a current basis containing either a separate page for each client or an equivalent client record showing all individual receipts, disbursements, or transfers containing specific information the date on which trust funds were received, disbursed or transferred.

The Respondent was unapologetic and emphatic in his testimony in regards to his past

and current position that contingency fee cases, such as personal injury matters, are exempt from the requirements of RPC 1.15B(a)(2) and that therefore, he did not maintain individual client ledgers in all cases.

However, not all client ledgers maintained were in compliance. On April 24, 2013, at the request of ODC, the Respondent provided ODC a copy of trust documents for M.B. He provided an individual client ledger record for M.B. dated October 15, 2012 which he identified as a "Client Ledger." It itemized the checks paid, including the check number, the date of check, the amount of check, and the payee with purpose of payment. However, it did not indicate on what dates deposits were received into the trust account nor the amounts of each deposit. It also did not contain the new client fund balance after each receipt, disbursement or transfer.

3.B. Presumptive Sanction: Violation of RPC 1.15B(a)(2) violates ABA Standard 4.1.

Pursuant to ABA Standard at 4.1, *Failure to Preserve Client's Property*, suspension is the presumptive sanction when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Here, the Respondent had responded to trust account inquiries by WSBA in April of 2011 in response to an overdraft notice received from Key Bank. Although WSBA exercised their discretion and dismissed the matter, on April 26, 2011, they sent a detailed letter describing the trust account violations. They provided him with the WSBA publication entitled "Managing Client Trust Accounts: Rules, Regulations, and Common Sense" and they recommended he reconstruct his trust account records to bring them in compliance and that he take other actions to comply with RPC 1.15.

On May 24, 2012, in response to another inquiry into his trust practices, he wrote a letter to WSBA setting out the irregularities he found, outlined steps he would take to correct the errors and balance the trust account, and indicated he would consult with his accountant "in order to

strictly adhere to the WSBA's trust requirements."

In light of the above, the Respondent clearly knows RPC 1.15B(a)(2) obligates him to maintain individual client ledgers in all matters, even contingency fee cases.

3.C. Potential or Actual Injury due to Violation of RPC 1.15B(a)(2).

Here, the potential harm as a result of a failure to maintain individual client ledgers is that the Respondent will not know if he has overpaid or underpaid a client or obligations on behalf of a client. If he overpays in one matter, and he does not have the funds to correct that mistake, then a client or their provider may be deprived of funds to which they are entitled. In the alternative, he would use another client's money to make the overpayment, thus depriving a client of use of his or her money while he used it for payment of others.

COUNT 4

4 A. Violation of RPC 1.15A(h)(6).

It was established by a clear preponderance of evidence that the Respondent violated RPC 1.15A(h)(6) by failing to reconcile his trust account records as often as bank statements are generated or at least quarterly and by failing to reconcile his check register balance to the bank statement balance and by failing to reconcile the check register balance to the combined total of all client ledger records required by RPC 1.15B(a)(2).

The Respondent had sole possession and control of all trust accounts after January 1, 2012. On May 17, 2012, he acknowledged that he did not maintain client ledger reconciliations and on May 18, 2012, he acknowledged that he didn't know who the funds of $620.46 belonged to. This was proof by a clear preponderance of the evidence that if he maintained client ledgers, they did not contain the required information and that he did not do the required reconciliations as, had he done so, he would have known the ownership of the funds. At the hearing, he

maintained that he did not always maintain client ledgers on personal injury matters as he did not believe it was required on contingency cases such as personal injury matters.

4.B. Presumptive Sanction: Violation of RPC 1.15A(h)(6) violates ABA Standard 4.1.

Pursuant to ABA Standard at 4.1, *Failure to Preserve Client's Property*, suspension is the presumptive sanction when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Although the respondent was emphatic that RPC 1.15A(h)(6) did not apply to contingency fee cases like personal injury matters, his position was not supported by any reason or objective fact or evidence. In 2011 and 2012, he had received and read the WSBA publication providing guidance on the proper maintenance of trust accounts, and on May 24, 2012, he had assured WSBA that he would consult with his accountant "in order to strictly adhere to the WSBA's trust requirements."

4.C. Potential or Actual Injury due to Violation of RPC 1.15A(h)(6).

The harm as a result of a failure to reconcile trust account records as often as bank statements are generated or at least quarterly is that the Respondent did not know whose money he held in trust, he overpaid some clients and contributed to his own financial distress, and he was unable to ensure that checks written to his client's providers timely received the funds to which they were entitled.

COUNT 5

5 A. Violation of RPC 1.15A(h)(8).

It was established by a clear preponderance of the evidence that the Respondent violated RPC 1.15A(h)(8) by, at times, disbursing more to clients than they had on deposit, and thereby, using one client's funds on behalf of another.

5.B. Presumptive Sanction: Violation of RPC 1.15A(a)(8) violates ABA Standard 4.1.

Pursuant to ABA Standard at 4.1, *Failure to Preserve Client's Property*, suspension is the presumptive sanction when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

5.C. Potential or Actual Injury due to Violation of RPC 1.15A(h)(8).

The harm as a result of the Respondent's disbursal to some clients of more funds than they had on deposit is that he deprived other clients of the use of their funds. He also contributed to his own financial distress as that made it more difficult for him to meet client obligations that should have been handled from a client's available trust funds.

II. Aggravating and Mitigating Factors

Mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed pursuant to ABA Standards 9.32.

Mitigating Factors

The following mitigating factors do or do not apply in this matter.

(a) Absence of a prior disciplinary offenses:

This is a mitigating factor. The Respondent has no prior disciplinary offenses.

(b) Absence of a dishonest or selfish motive:

Does not apply. Respondent had a dishonest and selfish motive.

(c) Personal or emotional problems:

Does not apply. The Respondent offered testimony by himself and at least one lay witness that he was having emotional problems, in particular, he testified feeling depressed. He also provided notes from his counseling sessions with Dr. Greenberg

who did not provide testimony. The counseling notes indicated that he had secured brief treatment in 2011, was prescribed a medication but stopped using it as he did not believe it helped. He began counseling again on April 23, 2013 with Dr. Greenberg and he was prescribed an antidepressant by his referring doctor a couple weeks earlier. However, he terminated its use after less than a month as he did not believe it was helping and it had other side effects he did not care for. Generally, he described apathy malaise, lack of motivation, and feeling overwhelmed by his professional responsibilities and financial struggles. He was irritable, slept too much and had difficulty getting up in the morning. He described drinking too much intermittently. His sessions focused on his disenchantment with personal injury work and disappointment that he was unable to be paid doing meaningful work in the area of human rights, and the financial problems he suffered as a result. He also focused on his past and current relationships with women, his role as a caretaker in relationships, and his sense of lethargy and feeling depleted from giving so much and not getting anything in return. Until a return session in October of 2013, there was no evidence or indication that he had disclosed his conversion of client funds to Dr. Greenberg.

Washington courts make it clear in a long line of cases that there must be a causal connection between the asserted problem and the misconduct, In Re Disciplinary Proceeding Against Hicks, 166 Wn. 2d 774, 788, 214 P. 3d 897 (2009), citing In Re Disciplinary Proceeding Against Holcomb, 162 Wn. 2d 563, 591, 173 P. 3d 898(2007), citing In Re Disciplinary Proceeding Against Christopher, 153 Wn. 2d 669, 684, 105 P. 3d 976 (2005); In Re Disciplinary Proceeding Against Curran, 115 Wn. 2d 747, 774, 801 P. 2d 962 (1990) citing In Re Disciplinary Proceeding Against Johnson, 114 Wn. 2d 737, 748, 790 P. 2d 1227 (1990).

In In Re Disciplinary Proceeding Against McLendon, 120 Wn. 2d 761, 845 P. 2d 1006 (1993), the Respondent borrowed just over $1 million from his clients without proper documentation and misappropriated other client funds and he spent it on extravagant personal endeavors ending in April of 1987. Not all funds borrowed were paid back. McLendon had suffered mood swings and depression for a period of years going from wired, grandiose, and angry to withdraw, totally down, and suicidal. In April of 1987, McLendon's behaviors had worsened to such a degree that he was involuntarily admitted to a psychiatric hospital for 43 days. He was diagnosed as suffering from bipolar disorder, which results in phases of mania and depression with impaired judgment. In that case, the testimony of the psychiatric experts was that during a manic stage, the ability to form an intent to the ability to know that they acted and be aware of consequences was severely impaired.

In our case, the Respondent's counseling notes all indicated that his judgment and insight appeared intact and that his thoughts were logical and linear. Although he may have experienced some depression, there is no evidence of a causal connection between emotional state and his depression. Likewise, there is no evidence that the Respondent acted out of an uncontrolled impulse or that he did not understand what he was doing. Unlike McLendon who openly borrowed or took funds and publicly made extravagant expenditures, the Respondent appeared purposeful in his planning and he concealed his use of funds. A record was created indicating that funds were being paid to a client's provider. Instead of permitting the funds to be paid, he secretly withheld the funds. When his financial woes did not ameliorate, he converted enough funds to be helpful without overdrawing the trust account. When the conduct was uncovered, he

again acted rationally and in his best interest by consulting with an expert in the area of professional responsibility to ascertain his best course of action.

The Respondent attempts to distinguish his case from In Re Disciplinary Proceeding Against Christopher, 153 Wn 2d 669, 683, 105 P.3d 976 (2005). There the court stated that "some depression was not a significant mitigating factor where an attorney stole client funds." Respondent argues he experienced Major Depressive Disorder and that he responded well to psychotherapy. However, there is no evidence that the Respondent treated his emotional problem with seriousness. He attended approximately 8 sessions in 2013, declined to take the medication given to him, and announced himself cured after a few short sessions. His treatment plan was general in nature and other than a promise to contact his counselor in the future should he feel the need, there was no planned follow up.

The Respondent's emotional problems are not a mitigating factor in this case.

(d) Timely good faith effort to make restitution or to rectify the consequences of misconduct.

Does not apply but is also not an aggravating factor.

Pursuant to ABA Standard 9.4(a), forced or compelled restitution is neither aggravating nor mitigating. Here, the Respondent converted funds and restitution was compelled.

The Respondent bears the burden of proof on mitigating factors pursuant to In Re Disciplinary Proceeding of Cramer, 168 Wn. 2d 220, 238, 225 P. 3d 881 (2010). There is no evidence that he attempted to secure loans of any size, either from friends or commercial institutions, in order to make payments of any size prior to March 21, 2013. Likewise, there is also no evidence that he attempted to take on business in areas of law he found undesirable in order to earn income in order to provide immediate restitution. Here, the Respondent provided restitution as soon as he believed he was able after he knew that discovery of the conversion was imminent. Although there is no evidence he attempted to evade restitution, as he had no choice but to provide restitution, restitution was compelled and there is insufficient evidence to overcome the language of ABA Standard 9.4 (a).

(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings:

Does not apply. The burden is on the attorney to establish that his disclosure or cooperation surpassed what is required from all attorneys, In Re Disciplinary Proceeding Against Conteh, 175 Wn. 2d 134, 151 – 52, 284 P. 3d 274 (2012). Here, in regards to COUNT 1, the Respondent disclosed his conversion of trust account funds after the WSBA auditor had requested his records and he knew that proof of his conversion was imminent. This diminishes the weight that might be given to this mitigating factor, and this factor does not apply.

In regards to his failure to properly maintain client trust account records, the Respondent has vacillated between insisting that the "client ledgers" he provides are compliant, acknowledging that he doesn't maintain client ledgers or do reconciliations, and insisting that RPC 1.15A and RPC 1.15B do not apply to personal injury matters. Although the

Respondent bears the burden of proof, he provided no expert testimony or legal citations to support his position that his interpretation is reasonable and/ or in good faith. Apart from his pro bono work in human rights, there was no evidence that he handled matters outside of contingent fee personal injury matters. As there was testimony that Respondent handled at least two fundraisers for his human rights work, query how proceeds from fundraisers were tracked or managed. The Respondent did not meet his burden of proof on this mitigating factor.

(f) Inexperience in the practice of law:

Does not apply but is also not an aggravating factor.

The respondent graduated from law school in 2006 and has been involved in private practice in Washington for most of the time since then. Although he provides consultation and assistance to his colleagues and new lawyers, at the time that these infractions occurred he had been practicing approximately 6-7 years. He has a moderate amount of experience in the practice of law.

(f) Character or reputation:

The respondent presented considerable evidence regarding pro bono work performed in the area of international human rights, with his alma mater's moot court honor board, and in general support to his colleagues. His colleagues spoke highly of his passion for human rights, the importance of his work, in addition to his positive support of others in the legal field. Additionally, he has been identified as a Rising Star in the area of human rights by Super Lawyers magazine.

The Respondent is to be commended for his pro bono work. However, one of his peers who testified on his behalf had no knowledge of Respondent's conversion of client trust account funds for his own use. Another knew the funds had been converted but did not know any details, including when it had occurred. Another had only the information contained in Respondent's rebuttal brief. His brief did not acknowledge any deficiencies in his recordkeeping but rather, cast blame on a prior partner.

Respondent failed to inform his own witnesses of either the facts of his conversion of trust funds or the deficiencies in his record keeping of trust accounts so they were limited in their ability to offer an opinion regarding certain aspects of the Respondent's character. This is, however, a mitigating factor as to COUNT 1.

The Respondent appears somewhat indifferent to his record keeping obligations. Were the only violations found to be on COUNTS 2-5, the positive evidence regarding the Respondent's contributions to the legal community and his reputation in the legal community would still be deemed a mitigating factor.

(h) Physical disability:

Does not apply.

(i) Mental disability or chemical dependency including alcoholism or drug abuse when:

1) there is medical evidence that the respondent is affected by chemical dependency or mental disability;
2) the chemical dependency or mental disability cause the misconduct;
3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation, and
4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

Although there was evidence that the Respondent experiences symptoms associated with depression,

1) there was no medical evidence that the Respondent has a mental disability.
2) As there was no evidence that Respondent's treatment provider was aware of the Respondent's conversion of client trust funds, there was no evidence that any emotional difficulties experienced caused the misconduct. Rather, the testimony and evidence was that it was his financial difficulties that precipitated the conversion of client funds. Presumably, had he not been under financial stress, he would not have converted the funds. There is no evidence at all that his emotional difficulties and/ or financial difficulties were related to his refusal to maintain proper trust account records.
3) There is no evidence of a meaningful and sustained period of successful rehabilitation. Although the evidence is that the Respondent last went to counseling in October of 2013, the Respondent testified that his emotional struggles are ongoing.
4) As the Respondent's emotional struggles are ongoing, as he is not in treatment, if they caused the misconduct, the likelihood is that the misconduct will recur.

This mitigating factor does not apply.

(j) Delay in disciplinary proceeding:

Does not apply.

(k) Imposition of other penalties or sanctions:

Does not apply.

(l) Remorse:

In regards to the conversion of client trust funds, the respondent provided restitution. However, there is not a preponderance of evidence that he feels remorse. The Respondent provided no apology to his former partner, Alex Ferguson, his client whose funds were used, or Puget Park Chiropractic who waited 6 months to receive the payment they should have received in October of 2012.

In regards to Respondent's violations of his trust account record keeping obligations, not only is there no remorse, the Respondent refuses to acknowledge any wrongdoing and doggedly insists that his practice of law is exempt from the rules of professional responsibility. The Respondent's position does not appear based in good faith but rather appears to be an effort to avoid findings that he violated his trust account record keeping obligations.

(m) Remoteness of prior offenses.

Does not apply. Respondent has no prior disciplinary offenses.

Aggravating Factors

The following aggravating factors set forth at ABA Standards 9.22 do or do not apply in this matter in support of the ultimate sanction of disbarment or suspension.

(a) Prior disciplinary record:

Does not apply.

(b) Dishonest or selfish motive.

This is an aggravating factor in regards to the conversion of client trust funds (Count 1). The Respondent was motivated by dishonest or selfish motives. He was having financial problems but he did not want to practice in areas of law which he found mundane. His career was benefitting from the positive press he received for human rights work and he hoped that his pro bono work would lead to paid work. He converted his clients' funds to move him closer to his career goals rather than to cease doing work that he could not afford to do.

There was no dishonest or selfish motive in regards to his failure to properly maintain client trust account records, and so, it does not apply as to Counts 2-5.

(c) A pattern of misconduct:

There is no pattern of misconduct in regards to count 1 and so does not apply.

This is an aggravating factor in regards to counts 2 through 5. The respondent knowingly violated his trust account record keeping obligations despite multiple communications with the Washington state Bar Association advising him of his responsibilities.

(d) Multiple offenses:

This is an aggravating factor. The respondent has multiple offenses as all five COUNTS were proven by a clear preponderance of the evidence. COUNT 1 was clear and distinct from COUNTS 2-5 and required dishonesty. Although COUNTS 2-

5 all related to his trust account, COUNT 2 dealt with check book registry. COUNT 3 dealt with the maintenance of individual client ledgers for each client for whom he held trust funds, COUNT 4 required the balancing of his check register to his bank statement and his the reconciliation of a the combined total of all client ledgers with his trust account check register balance. Finally, COUNT 5 five prohibited him from disbursing more to clients than they had on deposit. With the exception of COUNT 5, a violation that would increase in probability if there was no reconciliation between individual client ledgers, trust register total and bank statements, all required actions that were a different aspect of record keeping. Violation of one would not necessarily result in violation of another. So, the Respondent committed multiple offenses.

(e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency:

Does not apply.

(f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process:

Does not apply.

(g) Refusal to acknowledge the wrongful nature of conduct:

In regards to Count 1, this is neither an aggravating nor mitigating factor. The Respondent acknowledged his wrongdoing. In light of the egregious nature of his conduct, a simple acknowledgment bears little weight.

(h) Vulnerability of victim:

Does not apply.

(i) Substantial experience in the practice of law:

Does not apply. The Respondent has moderate experience in the practice of law.

(j) Indifference to making restitution.

Does not apply.

(k) Illegal conduct, including that involving the use of controlled substances.

Does not apply. The Respondent has been found in violation of RPC 8.4 (b). A finding that this is an aggravating factor would be unwarranted and punitive.

IV. RECOMMENDATION

Where the Hearing Officer finds multiple ethical violations, the "ultimate sanction

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

Here, the Association proved COUNTS 1, 2, 3, 4, and 5 by a clear preponderance of the evidence. The most serious misconduct by the Respondent is COUNT 1, his violation of RPC 1.15A(b), RPC 8.4 (b), and RPC 8.4(c). The presumptive sanction for that violation is disbarment. Where a lawyer has failed to preserve the integrity of client funds, that leads to disbarment absent extraordinary mitigating circumstances, In re Disciplinary Proceeding Against Petersen, 120 Wash.2d 833, 854, 846 P.2d 1330 (1993). The question becomes whether there is any mitigating circumstance sufficient to warrant departure from the presumptive sanction of disbarment. In this case, in regards to COUNT 1, there were two mitigating circumstances, the absence of a prior record, and the Respondent's reputation in the legal community.

Here there are no extraordinary circumstances. Like forgery, the conversion of client trust funds is an inherently dishonest act. It is a breach of a client's trust and evidence of good reputation is not enough to outweigh the dishonest nature of the misconduct, In Re Disciplinary Proceeding Against Rodriguez, 117 Wn. 2d 872, 889, 306 P. 3d 898 (2013).

The Respondent has argued that it is callous not to acknowledge the good work the Respondent has done in the area of human rights. However, it is not for the Respondent to determine that his legal work is more worthy than the work of other lawyers. He has a fiduciary relationship with his clients, and upon accepting a client's funds into trust, he has a fiduciary obligation to safeguard those funds and not to convert those funds for his own use. His reputation and contributions to the legal community are not extraordinary such that a deviation from the presumptive sanction of disbarment is warranted.

Based on the ABA standards, even without the aggravating factors, the Hearing Officer recommends that Respondent, James D. Pirtle, be disbarred for his violation of COUNT 1.

SANCTION FOR LESSER COUNTS

If the Respondent had not committed the violations as set forth in COUNT 1, then he would be sanctioned for his violations of COUNTS 2, 3, 4, and 5. Each COUNT would carry its own separate sanction of suspension.

The hearing officer would recommend a one month suspension for each independent count.

The mitigating circumstances regarding Respondent's reputation and contributions to the legal community would be given more weight and his lack of prior disciplinary offenses would be given weight. However, the aggravating factors would be given considerable weight. Respondent's pattern of misconduct in regards to his record keeping and lack of remorse, including his refusal to acknowledge the wrongful nature of his conduct are a concern. Despite WSBA's efforts, the Respondent has refused to bring his record keeping practices into compliance and appears somewhat cavalier in his disregard for his record keeping obligations.

Given the ongoing nature of his record keeping violations, the hearing officer would recommend that his four- one month suspensions run consecutively for a four month suspension rather than concurrently. Again, the ultimate recommendation is for disbarment due to the violation of COUNT 1.

DATED this 15th day of September 2015.

andrekita silva

Andrekita Silva,
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the corrected FOF, COL & HOS Recommend ation to be delivered to the Office of Disciplinary Counsel and to be mailed to Manuel Chavarria 701 5th Ave #42 Seattle, WA 98104 Respondent/Respondent's Counsel by Certified/first class mail, postage prepaid on the 17th day of September 2015.

Clerk/Counsel to the Disciplinary Board

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