

FILED

Nov 4, 2022

**Disciplinary
Board**

Docket # 014

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7 **DISCIPLINARY BOARD**
 WASHINGTON STATE BAR ASSOCIATION

8
9 In re

10 **MERWIN MOE SPENCER,**
11 Lawyer (Bar No. 40963).

Proceeding No. 22#00022

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

12
13 The undersigned Hearing Officer held a default hearing, on written submission, on
14 October 14, 2020 under Rule 10.6 of the Washington Supreme Court's Rules for Enforcement of
15 Lawyer Conduct (ELC).

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

18 1. The Formal Complaint (Bar File No. 22#00020) charged Merwin Moe Spencer with
19 misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.

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

22 3. Under ELC 10.6(a)(4), the Hearing Officer concludes that each of the violations
23 charged in the Formal Complaint is admitted and established as follows:
24

1 **COUNT 1**

2 By failing to deposit Green's advance fees into Respondent's trust account, Respondent
3 violated RPC 1.15A(c)(2).

4 **COUNT 2**

5 By charging an unreasonable fee and failing to refund unearned fees at the end of the
6 representation, Respondent violated RPC 1.5(a) and RPC 1.16(d).

7 **COUNT 3**

8 By practicing law with a suspended license, Respondent violated RPC 5.5(a)
9 (unauthorized practice of law) and RPC 5.8(a) (engaging in the practice of law while suspended
10 for any cause).

11 **COUNT 4**

12 By failing to respond to the grievance, Respondent violated RPC 8.1(b) and RPC 8.4(l)
13 by violating Respondent's duties under ELC 1.5, 5.3(f) and 5.3(g).

14 **COUNT 5**

15 By failing to prosecute Humphreys's lawsuit diligently, failing to respond to Halsan's
16 motions, and failing to appear for properly scheduled court dates, Respondent violated RPC 1.3
17 and RPC 3.2.

18 **COUNT 6**

19 By failing to keep Humphreys reasonably informed about the status of Humphreys's case
20 and by failing to promptly comply with Humphreys's reasonable requests for information,
21 Respondent violated RPC 1.3 and RPC 1.4.

22 **COUNT 7**

23 By failing to provide information responsive to the opposing party's discovery requests
24 and failing to make efforts to have Humphreys appear at a properly scheduled deposition,

1 Respondent violated RPC 8.4(d) and RPC 3.4(d).

2 **COUNT 8**

3 By making one or more misrepresentations to Humphreys, Respondent violated RPC
4 8.4(c) and RPC 1.4.

5 **COUNT 9**

6 By failing to surrender Humphreys's client file to Humphreys or Humphreys's new lawyer
7 upon termination of representation, Respondent violated RPC 1.16(d).

8 **COUNT 10**

9 By failing to respond to the grievance, Respondent violated RPC 8.1(b) and RPC 8.4(l)
10 by violating Respondent's duties under ELC 1.5, 5.3(f), and 5.3(g).

11 **COUNT 12¹**

12 By failing to produce records and/or attend the deposition, it appears that Respondent
13 violated RPC 8.1(b) and RPC 8.4(l) by violating Respondent's duties under ELC 1.5 and 5.5(d).

14
15 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
16 **REGARDING RECOMMENDED SANCTION**

17 4. The following standards of the American Bar Association's Standards for Imposing
18 Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively apply in this
19 case:
20
21
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23

24 ¹ There is no count 11.

1 **4.1 Failure to Preserve the Client's Property**

2 Absent aggravating or mitigating circumstances, upon application of the factors set out in
3 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve
4 client property:

- 5 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
6 client property and causes injury or potential injury to a client.
- 7 4.12 Suspension is generally appropriate when a lawyer knows or should know
8 that he is dealing improperly with client property and causes injury or
9 potential injury to a client.
- 10 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
11 with client property and causes injury or potential injury to a client.
- 12 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing
13 with client property and causes little or no actual or potential injury to a
14 client.

15 **4.4 Lack of Diligence**

16 Absent aggravating or mitigating circumstances, upon application of the factors set out in
17 Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act
18 with reasonable diligence and promptness in representing a client:

- 19 4.41 Disbarment is generally appropriate when:
- 20 (a) a lawyer abandons the practice and causes serious or potentially serious
21 injury to a client; or
- 22 (b) a lawyer knowingly fails to perform services for a client and causes serious
23 or potentially serious injury to a client; or
- 24 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury
or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes injury or potential
injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client.

1 **4.6 Lack of Candor**

2 Absent aggravating or mitigating circumstances, upon application of the factors set out in
3 Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages
4 in fraud, deceit, or misrepresentation directed toward a client:

5 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client
6 with the intent to benefit the lawyer or another, and causes serious injury or
7 potential serious injury to a client.

8 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client,
9 and causes injury or potential injury to the client.

10 4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a
11 client with accurate or complete information, and causes injury or potential injury
12 to the client.

13 4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance
14 of negligence in failing to provide a client with accurate or complete information,
15 and causes little or no actual or potential injury to the client.

16 **6.2 Abuse of the Legal Process**

17 Absent aggravating or mitigating circumstances, upon application of the factors set out in
18 Standard 3.0, the following sanctions are generally appropriate in cases involving failure to
19 expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules
20 of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

21 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
22 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
23 serious injury or potentially serious injury to a party or causes serious or
24 potentially serious interference with a legal proceeding.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is
violating a court order or rule, and causes injury or potential injury to a client or a
party, or causes interference or potential interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with
a court order or rule, and causes injury or potential injury to a client or other party,
or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance
of negligence in complying with a court order or rule, and causes little or no actual
or potential injury to a party, or causes little or no actual or potential interference
with a legal proceeding.

1 **7.0 Violations of Duties Owed as a Professional**

2 Absent aggravating or mitigating circumstances, upon application of the factors set out in
3 Standard 3.0, the following sanctions are generally appropriate in cases involving false or
4 misleading communication about the lawyer or the lawyer's services, improper communication
5 of fields of practice, improper solicitation of professional employment from a prospective client,
6 unreasonable or improper fees, unauthorized practice of law, improper withdrawal from
7 representation, or failure to report professional misconduct.

8 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
9 that is a violation of a duty owed as a professional with the intent to obtain a benefit
10 for the lawyer or another, and causes serious or potentially serious injury to a
11 client, the public, or the legal system.

12 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
13 that is a violation of a duty owed as a professional and causes injury or potential
14 injury to a client, the public, or the legal system.

15 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
16 that is a violation of a duty owed as a professional and causes injury or potential
17 injury to a client, the public, or the legal system.

18 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
19 of negligence that is a violation of a duty owed as a professional, and causes little
20 or no actual or potential injury to a client, the public, or the legal system.

21 5. Respondent knew or should have known that Respondent was required to deposit
22 Green's advance fees into Respondent's trust account, but failed to do so in violation of RPC

23 1.15A(c)(2). Green was harmed because Green's money was not protected or preserved in trust.

24 The presumptive sanction for Count 1 is suspension under ABA Standard 4.12.

6. Respondent knowingly failed to refund Green's advanced fees, causing actual harm to
Green, who has been deprived of money Green paid to Respondent for work that was never
performed. The presumptive sanction for Count 2 is suspension under ABA Standard 7.2.

7. Respondent knowingly practice law while Respondent's license was suspended,
causing actual harm to Respondent's client and potential injury to the justice system. The
presumptive sanction for Count 3 is suspension under ABA Standard 7.2.

8. Respondent knowingly failed to cooperate with the disciplinary investigation related
to grievances filed by Dasse and Humphreys. Respondent's conduct caused actual harm by
preventing ODC from fully investigating these grievances. The presumptive sanction for Counts

1 4 and 10 is suspension under ABA Standard 7.2.

2 9. Respondent knowingly failed to diligently prosecute Humphrey's lawsuit, knowingly
3 failed to respond to Halsan's motion, knowingly failed to respond to discovery requests, and
4 knowingly failed to appear for properly scheduled court dates. Respondent's conduct caused
5 actual harm to Humphreys who was deprived of the ability to move forward with the case against
6 Halsan, and is liable for a \$6,158.50 judgment. The presumptive sanction for Count 5 is
7 suspension under ABA Standard 4.42(a).

8 10. Respondent knowingly failed to communicate with Humphreys, causing actual harm
9 to Humphreys. The presumptive sanction for Count 6 is suspension under ABA Standard 4.42(a).

10 11. Respondent knowingly failed to provide information responsive to the opposing
11 party's discovery requests, and knowingly failed to make efforts to have Humphreys appear at a
12 properly scheduled deposition causing actual harm to Humphreys and the judicial system. The
13 presumptive sanction for Count 7 under ABA Standard 6.22 is suspension.

14 12. Respondent knowingly misled Humphreys, causing actual injury to Humphreys. The
15 presumptive sanction for Count 8 is suspension under ABA Standard 4.62.

16 13. Respondent knowingly failed to surrender Humphreys client file to Humphreys,
17 causing actual injury. The presumptive sanction for Count 9 is suspension under ABA Standard
18 7.2.

19 14. Respondent knowingly failed to appear for Respondent's deposition in the Dasse,
20 Caggiano, and Humphreys grievances, causing actual harm to ODC and the discipline system.
21 The presumptive sanction for Count 12 under ABA Standard 7.2 is suspension.

22 15. Under In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d
23 1330 (1993), the "ultimate sanction imposed should at least be consistent with the sanction for
24

1 the most serious instance of misconduct among a number of violations.”

2 16. The following aggravating factors set forth in Section 9.22 of the ABA Standards
3 apply in this case:

- 4 (b) dishonest or selfish motive;
- 5 (c) pattern of misconduct;
- 6 (d) multiple offenses;
- 7 (g) refusal to acknowledge wrongful nature of conduct; and
- 8 (i) substantial experience in the practice of law.

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

11 18. The following mitigating factors set forth in Section 9.32 of the ABA Standards apply
12 to this case:

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

14 **RECOMMENDATION**

15 19. Based on the ABA Standards and the applicable aggravating and mitigating
16 factors, the Hearing Officer recommends that Respondent Merwin Moe Spencer be suspended for
17 a period of 3 years and pay restitution to Green in the amount of \$12,850 plus interest at a rate of
18 12% per annum beginning January 1, 2021 and to Humphreys in the amount of \$6,158.50 plus
19 interest at a rate of 12% per annum beginning November 1, 2020.

20 20. Respondent shall be subject to probation for a period of 24 months beginning on
21 the date Respondent is reinstated to the practice of law.

22 21. The conditions of probation are set forth below. Respondent’s compliance with
23 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary
24 Counsel (“Probation Administrator”). Failure to comply with a condition of probation listed
herein may be grounds for further disciplinary action under ELC 13.8(b).

1 Practice Monitor

- 2 a) During the period of probation, Respondent's practice will be supervised by a practice
3 monitor. The practice monitor must be a WSBA member with no record of public
4 discipline and who is not the subject of a pending public disciplinary proceeding.
- 5 b) The role of the practice monitor is to consult with and provide guidance to Respondent
6 regarding case management, office management, and avoiding violations of the Rules
7 of Professional Conduct, and to provide reports and information to the Probation
8 Administrator regarding Respondent's compliance with the terms of probation and
9 the RPC. The practice monitor does not represent the Respondent.
- 10 c) At the beginning of the probation period, the Probation Administrator will select a
11 lawyer to serve as practice monitor for the period of Respondent's probation.
- 12 i) Initial Challenge: If, within 15 days of the written notice of the selection of
13 a practice monitor, Respondent sends a written request to the Probation
14 Administrator that another practice monitor be selected, the Probation
15 Administrator will select another practice monitor. Respondent need not
16 identify any basis for this initial request.
- 17 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
18 practice monitor, Respondent believes there is good cause why that individual
19 should not serve as practice monitor, Respondent may, within 15 days of
20 notice of the selected practice monitor, send a written request to the Probation
21 Administrator asking that another practice monitor be selected. That request
22 must articulate good cause to support the request. If the Probation
23 Administrator agrees, another practice monitor will be selected. If the
24 Probation Administrator disagrees, the Office of Disciplinary Counsel will
submit its proposed selection for practice monitor to the Chair of the
Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also
provide the Chair with the Respondent's written request that another practice
monitor be selected.
- d) In the event the practice monitor is no longer able to perform the practice monitor's
duties, the Probation Administrator will select a new practice monitor at the Probation
Administrator's discretion.
- e) During the period of probation, Respondent must cooperate with the named practice
monitor. Respondent must meet with the practice monitor at least once per month.
Respondent must communicate with the practice monitor to schedule all required
meetings.
- f) The Respondent must bring to each meeting a current, complete written list of all
pending client legal matters being handled by the Respondent. The list must identify
the current status of each client matter and any problematic issues regarding each

1 client matter. The list may identify clients by using the client's initials rather than the
2 client's name.

- 3 g) At each meeting, the practice monitor will discuss with Respondent practice issues
4 that have arisen or are anticipated. In light of the conduct giving rise to the imposition
5 of probation, ODC recommends that the practice monitor and Respondent discuss
6 whether Respondent is diligently making progress on each client matter, whether
7 Respondent is in communication with each client, whether Respondent has promptly
8 billed each client, whether Respondent's fee agreements are consistent with the RPC
9 and are understandable to the client. Meetings may be in person or by telephone at
10 the practice monitor's discretion. The practice monitor uses discretion in determining
11 the length of each meeting.
- 12 h) The practice monitor will provide the Probation Administrator with quarterly written
13 reports regarding Respondent's compliance with probation terms and the RPC. Each
14 report must include the date of each meeting with Respondent, a brief synopsis of the
15 discussion topics, and a brief description of any concerns the practice monitor has
16 regarding the Respondent's compliance with the RPC. The report must be signed by
17 the practice monitor. Each report is due within 30 days of the completion of the
18 quarter.
- 19 i) If the practice monitor believes that Respondent is not complying with any of
20 Respondent's ethical duties under the RPC or if Respondent fails to schedule or attend
21 a monthly meeting, the practice monitor will promptly communicate that to the
22 Probation Administrator.
- 23 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
24 Association to defray the costs and expenses of administering the probation, as
follows:
- i) \$250 due within 30 days of the start of the probation;
 - ii) \$250 due within 6 months of the start of the probation period;
 - iii) \$250 due within 12 months of the start of the probation period; and
 - iv) \$250 due within 18 months of the start of the probation period.

All payments should be provided to the Probation Administrator for processing.

CLEs

- 21 a) During the probationary period, Respondent shall complete a minimum of 15 credit
22 hours of continuing legal education courses, at Respondent's own expense, in the
23 areas of client communication, practice management, time management, caseload
24 management, fee agreements, and billing practices.

- 1 b) Respondent shall provide evidence of attendance at such courses to the Probation
2 Administrator no later than 30 days after the conclusion of the course. Proof of
3 attendance shall include the program brochure, evidence of payment, and a written
4 statement that includes the date and time of attendance.

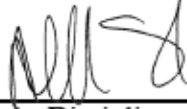
3 Ethics School

- 4 a) Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
5 obtaining the recorded product, and to pay registration costs of \$150 plus applicable
6 sales tax. Respondent will receive all applicable approved CLE credits for time in
7 attendance at the Ethics School.
- 8 b) Attendance at Ethics School is in addition to and shall not fulfill any continuing legal
9 education (CLE) requirements set out in this order.
- 10 c) Respondent shall contact the Ethics School Administrator, currently Chris Chang, at
11 (206) 727-8328 or chrisc@wsba.org, within 60 days of reinstatement to confirm
12 enrollment in Ethics School and related logistics.
- 13 d) Respondent shall complete the ethics school requirement by 120 days after
14 reinstatement.
- 15 e) Respondent shall provide evidence of completion of ethics school to the Probation
16 Administrator no later than 30 days after the conclusion of the course. Proof of
17 attendance shall include the program brochure, evidence of payment, and a written
18 statement that includes the date and time of attendance.
- 19 f) The Ethics School administrator may respond to inquiries from the Probation
20 Administrator regarding Respondent's compliance with these conditions.

21 DATED this 4 day of November, 2022.

22 
23 _____
24 William John Carlson,
Hearing Officer

I certify that I caused a copy of the Findings of Fact, Conclusions of Law and HO's Recommendation to be emailed to the Office of Disciplinary Counsel and to Respondent Merwin Moe Spencer, at moe.spencer101@gmail.com, on the 4th day of November, 2022.

A handwritten signature in black ink, appearing to be 'M. Spencer', written above a horizontal line.

Clerk to the Disciplinary Board