

**FILED**

JUN 28 2013

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**DIANE BEALL,**  
Lawyer (Bar No. 41091).

Proceeding No. 12#00067

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

In accordance with Rule 10.6(3) of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held a default disciplinary hearing on April 26, 2013. The hearing was conducted by telephone. Disciplinary Counsel Scott Busby appeared for the Washington State Bar Association. Respondent Dianne Beall did not appear. The Order of Default entered March 18, 2008, is incorporated herein as though fully set forth. The Hearing Officer, Amanda Lee, now makes the following findings of fact, conclusions of law, and recommendation.

**FINDINGS OF FACT REGARDING PROCEDURAL  
ISSUES AND CHARGED VIOLATIONS**

1. The Formal Complaint (Bar File No. 2, attached) charged Respondent Diane Beall with four counts of professional misconduct.

1           2.    The Formal Complaint and Notice to Answer were filed on November 16, 2012.

2           3.    On the same day, Disciplinary Counsel sent the Formal Complaint and Notice to  
3 Answer by certified mail to Respondent's address on file with the Washington State Bar  
4 Association (hereafter "the Association" or "WSBA"), as well as to a second address associated  
5 with Respondent.

6           4.    The Association received a certified mail return receipt for the documents mailed  
7 to Respondent's address on file with the Association, indicating that the letter was received.  
8 However, the printed and signed name on the return receipt does not appear to be that of the  
9 Respondent.

10          5.    On December 17, 2012, not having received a response or Answer from  
11 Respondent, Disciplinary Counsel sent an email message to Respondent's email address on file  
12 with the Association. This email advised Respondent that her Answer was overdue and that  
13 Counsel would be filing a motion for default shortly.

14          6.    On December 18, 2012, in order to be sure that Respondent had actually received  
15 the pleadings, Disciplinary Counsel sent the Formal Complaint, Notice to Answer, and Notice  
16 of Default Procedure to a process server with instructions to serve Respondent personally.

17          7.    On January 18, 2013, the process server personally delivered the pleadings to  
18 Respondent at a residence in California. The process server returned a sworn affidavit of service  
19 to the Association.

20          8.    On February 20, 2013, the Association moved for an Order of Default and served  
21 Respondent by certified mail at both her address on file with the Association and the address  
22 where she had previously received personal service of process.

1           9. An Order of Default was entered against the Respondent on March 11, 2013 and  
2 was served by certified mail the same date. As required by ELC 10.6(a)(4), the Order of  
3 Default advised the Respondent, among other things, that “the allegations set forth in the  
4 Formal Complaint have been deemed admitted and discipline may be imposed or  
5 recommended” based on those admissions, and that Respondent has “lost the opportunity to  
6 participate further in these proceedings unless and until the order of default is vacated” on a  
7 timely motion under the Rules for Enforcement of Lawyer Conduct. The Order states that  
8 Respondent “will receive no further notices” regarding the proceedings.

9           10. A telephonic hearing on the Formal Complaint was held on April 26, 2013. The  
10 Association appeared through Disciplinary Counsel Scott Busby. The Association did not notify  
11 Respondent of the hearing date and time, and Respondent did not appear.

12           11. During the hearing, Disciplinary Counsel advised the Hearing Officer that  
13 Respondent contacted the WSBA Regulatory Services department by email on March 28, 2013.  
14 According to Disciplinary Counsel, the email concerned an issue related to an overdue payment  
15 for Respondent’s license renewal, and also indicated Respondent’s interest in vacating or setting  
16 aside the Order of Default.

17           12. Respondent’s email message was forwarded by Regulatory Services to  
18 Disciplinary Counsel, who sent a reply to Respondent on April 1, 2013. In this reply email,  
19 Counsel directed Respondent’s attention to ELC 10.6(c), which sets forth the process by which  
20 a Respondent may seek to set aside an Order of Default.

21           13. As of the date of the hearing in this matter, Respondent had not filed an Answer to  
22 the Formal Complaint, a response to the Motion for an Order of Default, or a Motion to Set  
23 Aside the Order of Default. Respondent was served both by certified mail and in person, and  
24

1 received additional direct notifications from the Association of these proceedings. Respondent  
2 has failed to take any action to respond.

3 14. Accordingly, pursuant to ELC 10.6(a)(4), the Hearing Officer finds that each of the  
4 facts set forth in the Formal Complaint is admitted and established.

5 **CONCLUSIONS OF LAW**  
6 **REGARDING CHARGED VIOLATIONS**

7 15. Pursuant to ELC 10.6(a)(4), the Hearing Officer concludes that each of the  
8 violations charged in the Formal Complaint is admitted and established as follows:

9 **COUNT 1**

10 16. By failing to deposit into a trust account the \$6,000 that Ms. April Rucker paid in  
11 advance for legal fees and expenses, Respondent violated RPC 1.15A(c)(2).

12 **COUNT 2**

13 17. By withdrawing and using the \$6,000 that Ms. Rucker paid in advance before  
14 Respondent had earned or incurred \$6,000 in fees or expenses, Respondent violated RPC  
15 1.15A(b).

16 **COUNT 3**

17 18. By failing to provide a written accounting to Ms. Rucker after distributing the  
18 \$6,000 that Ms. Rucker paid in advance, and by failing to provide a written accounting upon  
19 request, Respondent violated RPC 1.15A(e).

20 **COUNT 4**

21 19. By making false statements to attorney Seth Rosenberg about the nature of the fee  
22 arrangement and the disposition of Ms. Rucker's \$6,000 payment, and by making false  
23 statements to Disciplinary Counsel about the nature of the fee arrangement, Respondent violated  
24 RPC 8.4(c).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING RECOMMENDED SANCTION**

1  
2           20. Respondent was admitted to practice in New York in 1974, in California in 1979,  
3 and in Washington in 2009.

4           21. Respondent has no prior history of discipline.

5           22. In committing the violations alleged in Counts 1-3, Respondent knew or should  
6 have known that she was dealing improperly with client property, and she caused injury or  
7 potential injury to a client. Respondent did not deposit Ms. Rucker's advance fee payment into  
8 a trust account. By withdrawing all of those funds three days later, without notice to Ms.  
9 Rucker and without having earned \$6,000 in fees or expenses, Respondent caused actual injury  
10 to Ms. Rucker. Respondent caused further injury by failing to provide any accounting for the  
11 use of the funds and by refusing to refund any amount to Ms. Rucker.

12           23. In committing the violation alleged in Count 4, Respondent acted knowingly and  
13 caused injury or potential injury to a client, the public, and the legal system. Respondent told  
14 Mr. Rosenberg that the fee arrangement between herself and Ms. Rucker was a "true retainer,  
15 not an hourly," and that she had deposited the funds into a trust account, when she knew that  
16 neither of those assertions were true. Later, Respondent falsely stated to Disciplinary Counsel  
17 that she had never taken a fee for her representation of Ms. Rucker, and that she had "donated"  
18 her time to Ms. Rucker in exchange for Ms. Rucker's donation to Respondent's ministry.

19           24. Respondent failed to file an Answer to the Formal Complaint as required by ELC  
20 10.5(a), which is itself a basis for discipline under ELC 1.5 and RPC 8.4(l), as well as an  
21 aggravating factor under the ABA *Standards*.

1           25. *Standards* 4.1, 4.6, and 7.0 of the American Bar Association’s *Standards for*  
2 *Imposing Lawyer Sanctions* (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) apply in this  
3 case. These standards provide as follows:

4           Standard 4.1 – Failure to Preserve the Client’s Property

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

- 8           4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
9 client property and causes injury or potential injury to a client.
- 10          4.12 Suspension is generally appropriate when a lawyer knows or should  
11 know that he is dealing improperly with client property and causes injury  
12 or potential injury to a client.
- 13          4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing  
14 with client property and causes injury or potential injury to a client.
- 15          4.14 Admonition is generally appropriate when a lawyer is negligent in  
16 dealing with client property and causes little or no actual or potential  
17 injury to a client.

18           Standard 4.6 – Lack of Candor

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

- 22          4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a  
23 client with the intent to benefit the lawyer or another, and causes serious  
24 injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a  
client, and causes injury or potential injury to the client.
- 4.63 Reprimand is generally appropriate when a lawyer negligently fails to  
provide a client with accurate or complete information, and causes injury  
or potential injury to the client.
- 4.64 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in failing to provide a client with accurate  
or complete information, and causes little or no actual or potential injury  
to the client.

1        Standard 7.0 – Violations of Duties Owed as a Professional

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

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

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

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

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

23                    26.        The presumptive sanction for the violations charged in Counts 1, 2, and 3 of the  
24                    Formal Complaint is suspension under ABA *Standards* std. 4.12.

                      27.        The presumptive sanction for the violation charged in Count 4 is suspension under  
                      ABA *Standards* stds. 4.62 and 7.2.

                      28.        The following aggravating factors set forth in ABA *Standards* std. 9.22 apply in  
this matter:

- (d)        multiple offenses;
- (e)        bad faith obstruction of the disciplinary proceeding by intentionally  
                      failing to comply with rules or orders of the disciplinary agency  
                      (failure to provide requested billing and trust account records and  
                      false and misleading statements to Disciplinary Counsel);

1 (g) refusal to acknowledge wrongful nature of conduct;

2 (i) substantial experience in the practice of law.

3 29. The following mitigating factor set forth in ABA Standards std. 9.32 applies in this  
4 matter:

5 (a) absence of a prior disciplinary record.

6 30. "A period of six months is generally the accepted minimum term of suspension."  
7 *In re Cohen*, 149 Wn.2d 323, 339 (2003). "The minimum suspension is appropriate in cases  
8 where there are both no aggravating factors and at least some mitigating factors, or when the  
9 mitigating factors clearly outweigh the aggravating factors." *Id.*

10 31. Here, the aggravating factors significantly outweigh the mitigating factors. That  
11 alone does not dictate a particular period of suspension, however.

12 32. In cases involving certain factual elements similar to the charges in this matter,  
13 such as making false statements during the Association's investigation or mishandling client  
14 funds, or both, the period of suspension ultimately imposed has varied substantially. *See, e.g.,*  
15 *In re Cramer*, 165 Wn.2d 323 (2008) (eight-month suspension for an attorney who mishandled  
16 client funds, but without harming the client, and made a "more than negligent but not knowing"  
17 false representation during the disciplinary investigation); *In re Poole*, 164 Wn.2d 710 (2008)  
18 (one-year suspension for attorney who, while on probation for prior disciplinary actions, failed  
19 to comply with his duty to cooperate with the Association's requests for information, and  
20 mishandled client funds); *In re Dann*, 136 Wn.2d 67 (1998) (one-year suspension for attorney  
21 who engaged in a pattern of switching lawyers' initials on billing statements, thus misleading  
22 clients about who was providing services on their legal matters); *In re Hicks*, 166 Wn.2d 774  
23 (2009) (two-year suspension for attorney who mismanaged client funds, admitted making  
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1 | misrepresentations in a letter to the Association, and submitted inaccurate and incomplete  
2 | information to the Association in order to avoid detection of his trust account violations).

3 |         33. The Association requests that Respondent be suspended for two years, in light of  
4 | the combination of aggravating and mitigating factors. The Association relies on *In re Hicks*,  
5 | *supra*, to support its argument that two years is the appropriate sanction.

6 |         34. There are obvious similarities between these two factual situations, but Hicks  
7 | misled the Association into dismissing a pending grievance, and it was not until a subsequent  
8 | audit was performed that the true extent of his misconduct and non-cooperation was revealed.  
9 | *Hicks*, 166 Wn.2d at 778-780. At the hearing, Hicks admitted making multiple false statements  
10 | to the Association and to submitting inaccurate and incomplete information to avoid detection  
11 | of his trust account violations. *Id.* at 780.

12 |         35. Here, in contrast, the extent of Respondent's mishandling of client funds is more  
13 | narrow, involving a single client. And although the aggravating factor of bad faith obstruction  
14 | applies to Respondent's conduct prior to the filing of the Formal Complaint, the record sheds no  
15 | light on the reasons for Respondent's default, making it difficult, if not impossible, to conclude  
16 | Respondent's failure to file an Answer and otherwise respond has been done in bad faith. A  
17 | two-year suspension is excessive under all of the circumstances here.

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1 **RECOMMENDATION**

2 36. Based on the ABA Standards and the applicable aggravating and mitigating  
3 factors, the Hearing Officer recommends that Respondent Diane Beall be suspended for one  
4 year.

5 DATED this 20th day of June, 2013.

6  
7  
8 Amanda E. Lee  
Amanda E. Lee, WSBA #19970  
9 Hearing Officer

10  
11 **CERTIFICATE OF SERVICE**

12 I certify that I caused a copy of the FOI COL by HO's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
13 to Diane Beall, Respondent/Respondent's Counsel  
at 247 Esplanade Blvd #125 Second Floor CA 94015 by Certified/first class mail,  
14 postage prepaid on the 20th day of June, 2013

15 [Signature]  
Clerk/Counselor to the Disciplinary Board

16 Also Sent to:

17 [Redacted]  
18 [Redacted]