

FILED

Jun 13 201

Disciplinary
Board

Docket # 020

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

AARON JAMES KANDRATOWICZ,

Lawyer (Bar No. 44304).

Proceeding No. 18#00010

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

The undersigned Hearing Officer held a default hearing on June 13, 2018, under Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC).

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

1. The Formal Complaint (Bar File No.4) charged Aaron James Kandratowicz with misconduct as set forth therein. A copy of the Formal Complaint is attached to this decision.

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

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

1 **COUNT 1**

2 By using Ms. Hartwig's advance fees for his own use without entitlement, Respondent
3 violated RPC 1.15A(b), RPC 8.4(b) (by violating RCW 9A.56.020(1)(a) and RCW
4 9A.56.010(23)), and RPC 8.4(c).

5 **COUNT 2**

6 By withdrawing funds without giving notice of his intent to do so through a billing
7 statement or other document, Respondent violated RPC 1.15A(h)(3).

8 **COUNT 3**

9 By withdrawing funds to cash and not a named payee, Respondent violated RPC
10 1.15A(h)(5).

11 **COUNT 4**

12 By failing to refund any unearned fees to Ms. Hartwig, Respondent violated RPC
13 1.15A(f) and RPC 1.16(d).

14 **COUNT 5**

15 By failing to provide Ms. Hartwig with a written accounting after distributing her funds
16 from his trust account and/or annually, Respondent violated RPC 1.15A(e).

17 **COUNT 6**

18 By failing to maintain complete trust account records between September 2015 and
19 September 2017, Respondent violated RPC 1.15A(h)(2) and RPC 1.15B.

20 **COUNT 7**

21 By failing to reconcile his trust account records between September 2015 and September
22 2017, Respondent violated RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

1 **COUNT 8**

2 By failing to promptly respond to requests and inquiries during a grievance
3 investigation, and/or by failing to promptly comply with a subpoena, Respondent
4 violated RPC 8.1(b), 8.4(d), and 8.4(l) (by violating ELC 1.5, ELC 5.3(f), 5.3(g), and
5 5.3(h)(3), and 5.5(d)).

6 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**
7 **REGARDING RECOMMENDED SANCTION**

8 4. The following standards of the American Bar Association’s Standards for
9 Imposing Lawyer Sanctions (“ABA Standards”) (1991 ed. & Feb. 1992 Supp.) presumptively
10 apply in this case:

11 ***4.1 Failure to Preserve the Client’s Property***

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

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

16 ***5.1 Failure to Maintain Personal Integrity***

17 Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 18 5.11 Disbarment is generally appropriate when:
- 19 (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or

- 1 the intentional killing of another; or an attempt or conspiracy or
2 solicitation of another to commit any of these offenses; or
3 (b) a lawyer engages in any other intentional conduct involving dishonesty,
4 fraud, deceit, or misrepresentation that seriously adversely reflects on the
5 lawyer's fitness to practice.
6 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
7 criminal conduct which does not contain the elements listed in Standard
8 5.11 and that seriously adversely reflects on the lawyer's fitness to
9 practice.
10 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in
11 any other conduct that involves dishonesty, fraud, deceit, or
12 misrepresentation and that adversely reflects on the lawyer's fitness to
13 practice law.
14 5.14 Admonition is generally appropriate when a lawyer engages in any other
15 conduct that reflects adversely on the lawyer's fitness to practice law.

16 ***7.0 Violations of Duties Owed as a Professional***

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

- 24 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional with the intent
to obtain a benefit for the lawyer or another, and causes serious or
potentially serious injury to a client, the public, or the legal system.
7.2 Suspension is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional and causes
injury or potential injury to a client, the public, or the legal system.
7.3 Reprimand is generally appropriate when a lawyer negligently engages in
conduct that is a violation of a duty owed as a professional and causes
injury or potential injury to a client, the public, or the legal system.
7.4 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence that is a violation of a duty owed as a
professional, and causes little or no actual or potential injury to a client,
the public, or the legal system.

5. Respondent acted intentionally when he took funds from trust belonging to Ms.
Hartwig that he was not entitled to.

6. Respondent's conduct caused actual injury to Ms. Hartwig because she has been

1 deprived of funds to which she is entitled.

2 7. The presumptive sanction for Count 1 is disbarment under ABA Standard 5.11.

3 8. Respondent knew or should have known that he was not properly managing his
4 trust account as charged in Counts 2-3 and 6-7.

5 9. Respondents conduct caused potential injury to his client by failing to adequately
6 track client funds.

7 10. The presumptive sanction for Counts 2-3 and 6-7 is suspension under ABA
8 Standard 4.12.

9 11. Respondent acted knowingly in failing to return Ms. Hartwig's unearned funds to
10 her.

11 12. Respondent's conduct caused actual injury to Ms. Hartwig because she has been
12 deprived funds to which she is entitled.

13 13. The presumptive sanction for Count 4 is suspension under ABA Standard 7.2.

14 14. Respondent negligently failed to provide Ms. Hartwig with a written accounting
15 after distributing her funds from trust and/or annually.

16 15. Respondent's conduct caused actual harm because Ms. Hartwig was denied
17 information regarding the handling of her funds to which she was entitled.

18 16. The presumptive sanction for Count 5 is reprimand under ABA Standard 7.3.

19 17. Respondent acted knowingly in failing to respond to ODC's written request for
20 documents.

21 18. Respondent acted intentionally in failing to appear for his deposition.

22 19. Respondent's failure to cooperate with the grievance investigation caused actual
23 harm by preventing ODC from fully investigating this grievance.

1 20. The presumptive sanction for Count 8 is suspension under ABA Standard 7.2.

2 21. 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;
- (d) multiple offenses;
- 5 (g) refusal to acknowledge wrongful nature of conduct; and
- 6 (j) indifference to making restitution.

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

9 23. The following mitigating factors set forth in Section 9.32 of the ABA Standards
10 apply to this case:

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


12 24. The aggravating and mitigating factors do not provide cause to deviate from the
13 presumptive sanction of disbarment.

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

18 RECOMMENDATION

19 26. Based on the ABA Standards and the applicable aggravating and mitigating
20 factors, the Hearing Officer recommends that Respondent Aaron James Kandratowicz be
21 disbarred, and pay restitution in the amount of \$14,000 with interest accruing at 12% per annum
22 beginning April 1, 2017, to Roxanne Hartwig.

1 DATED this 13 day of June, 2018.

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4 Linda Diane O'Dell,
5 Hearing Officer

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF, COL & HO's Recommendation
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Arden Kanda-HW LLC Respondent/Respondent's Counsel
at 12 N. Monroe St Spokane, WA 99201 by Certified/first class mail
postage prepaid on the 15th day of June, 2014

[Signature]
Clerk/Counsel to the Disciplinary Board

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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
AARON JAMES KANDRATOWICZ,
Lawyer (Bar No. 44304).

Proceeding No. 18#00010
FORMAL COMPLAINT

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

ADMISSION TO PRACTICE

1. Respondent Aaron James Kandradowicz was admitted to the practice of law in the State of Washington on November 22, 2011. On February 14, 2018, the Washington State Supreme Court suspended Respondent's license to practice law pending his cooperation with Ms. Hartwig's grievance.

1 **FACTS**

2 Trust Account Violations

3 2. Between September 2015 and December 2017 Respondent maintained a trust
4 account, ending in #1479, at U.S. Bank for the deposit of client funds. U.S. Bank provided
5 Respondent with bank statements each month.

6 3. Between September 2015 and September 2017, Respondent did not maintain
7 individual client ledgers or a trust account check register.

8 4. Between September 2015 and September 2017, Respondent did not reconcile a
9 check register to the bank statements each month.

10 5. Between September 2015 and September 2017, Respondent did not reconcile a
11 check register to a combined total of client ledgers each month.

12 6. Between September 2015 and September 2017 Respondent did not maintain any
13 record of required reconciliations.

14 7. Between September 4, 2015 and September 15, 2017, Respondent made 20 cash
15 withdrawals from his trust account.

16 8. Respondent cannot identify the client matters for which the cash was withdrawn or
17 his entitlement to use the funds.

18 9. Respondent knew or should have known that he was not properly managing his trust
19 account.

20 10. Respondent's conduct caused potential injury by failing to adequately track client
21 funds.

22 Theft and Conversion of Funds Held in Trust

23 11. In late summer 2015, Ms. Hartwig hired Respondent to provide Mr. Cunningham

1 with legal advice and representation in the preparation, filing, and argument in a Habeas Corpus
2 Petition in the U.S. District Court for the District of Idaho.

3 12. Respondent's fee agreement required an advance fee deposit of \$14,000 from Ms.
4 Hartwig, and an hourly rate of \$160.

5 13. On or about October 7, 2015, Respondent deposited \$2,000 from Ms. Hartwig into
6 his trust account bringing the trust account balance up to \$2,300

7 14. Between November 4, 2015, and April 20, 2016, Respondent withdrew \$1015
8 belonging to Ms. Hartwig.

9 15. Respondent did not inform Ms. Hartwig or Mr. Cunningham through a billing
10 statement or other document before withdrawing any earned fees.

11 16. On May 20, 2016, Respondent deposited \$12,000 from Ms. Hartwig into his trust
12 account.

13 17. On May 27, 2016, Respondent's trust account had a balance of \$14,485.

14 18. On September 5, 2016, Mr. Cunningham passed away.

15 19. Respondent never prepared or filed the Petition for Writ of Habeas Corpus in the
16 U.S. District Court for the District of Idaho.

17 20. Respondent learned of Mr. Cunningham's death shortly after he passed and knew
18 that he would be unable to complete the work and earn the \$14,000 advance fee.

19 21. Respondent knew he must return the unearned portion of the advanced fee to Ms.
20 Hartwig but took no action to do so.

21 22. Respondent continued to make cash withdrawals from his trust account after learning
22 of Mr. Cunningham's passing.

23. 23. On September 21, 2016, Respondent withdrew \$600 in cash from his trust account,

1 bringing the balance to \$13,195.

2 24. On September 23, 2016, Respondent withdrew \$250 in cash from his trust account.

3 25. On November 9, 2016, Respondent withdrew \$750 in cash from his trust account.

4 26. On March 13, 2017, Respondent withdrew \$2,641.80 in cash from his trust account,
5 bringing the balance to \$9,553.20.

6 27. Respondent was not entitled to at least \$2,000 of the funds he withdrew from Ms.
7 Hartwig's advanced fee.

8 28. Respondent knew he was not entitled to the funds when he withdrew them.

9 29. Respondent used the funds for his own benefit and/or the benefit of others.

10 30. Respondent used the funds with intent to deprive Ms. Hartwig of the funds.

11 31. Respondent never provided Ms. Hartwig with an annual accounting of her funds held
12 in trust.

13 32. Respondent never refunded unearned fees to Ms. Hartwig.

14 33. Respondent acted intentionally when took funds from trust belonging to Ms. Hartwig
15 that he was not entitled to.

16 34. Respondent's conduct caused actual injury.

17 35. Ms. Hartwig was harmed because she has been deprived of funds to which she is
18 entitled and was denied information regarding the handling of her funds.

19 Non-cooperation

20 36. On March 29, 2017, Ms. Hartwig filed a grievance with ODC, and specifically
21 requested a refund of \$14,000 from Respondent.

22 37. On April 3, 2017, ODC sent Respondent a letter requesting that he respond to the
23 grievance.

1 38. Respondent did not respond.

2 39. On May 9, 2017, ODC sent Respondent a letter warning that ODC would issue a
3 deposition subpoena under ELC 5.3(h) unless the requested response was provided within 10
4 days.

5 40. Respondent did not respond.

6 41. On August 9, 2017, Respondent was served with a subpoena for deposition and
7 subpoena duces tecum requiring his appearance at a deposition on September 15, 2017.

8 42. The subpoena further required Respondent to bring Mr. Cunningham's client file and
9 all financial records relating to Mr. Cunningham's representation.

10 43. On September 15, 2017, Respondent appeared for his deposition. He provided ODC
11 with the client file but not with the requested financial records.

12 44. Respondent did little to no work on Mr. Cunningham's case.

13 45. At the conclusion of his deposition, Respondent agreed to provide ODC with the
14 requested financial records, a copy of the record of application for admission to the Idaho State
15 Bar, and time invoices for Mr. Cunningham, no later than September 30, 2017.

16 46. Respondent did not provide the records or documents by September 30, 2017.

17 47. On October 10, 2017, ODC sent Respondent a letter warning him that ODC would
18 issue another subpoena for his deposition if the records were not provided on or before October
19 24, 2017.

20 48. Respondent did not provide the financial records or documents by October 24, 2017.

21 49. On November 1, 2017, Respondent was personally served with a subpoena duces
22 tecum requiring Respondent to appear for a deposition on November 16, 2017, and to produce
23 certain documents.

1 50. After being deposed on his trust account practices in September 2017 and being
2 served with the subpoena for the November 2017 deposition, Respondent made a \$1,315.67
3 cash withdrawal from his trust account, bringing his balance to \$9,226.40.

4 51. Respondent did not appear for the November 16, 2017 deposition.

5 52. As of the date of this Formal Complaint, Respondent has not provided ODC with the
6 requested financial records and documents.

7 53. As of the date of this Formal Complaint, Respondent has not refunded Ms. Hartwig
8 any portion of the unearned advanced fee deposit.

9 54. Respondent acted knowingly in failing to respond to ODC's written request for
10 documents.

11 55. Respondent acted intentionally in failing to appear for his deposition.

12 56. Respondent's conduct caused actual harm by preventing ODC from fully
13 investigating this grievance.

14 **COUNT 1**

15 57. By using Ms. Hartwig's advance fees for his own use without entitlement,
16 Respondent violated RPC 1.15A(b), RPC 8.4(b) (by violating RCW 9A.56.020(1)(a) and RCW
17 9A.56.010(23)), and/or RPC 8.4(c).

18 **COUNT 2**

19 58. By withdrawing funds without giving notice of his intent to do so through a billing
20 statement or other document, Respondent violated RPC 1.15A(h)(3).

21 **COUNT 3**

22 59. By withdrawing funds to cash and not a named payee, Respondent violated RPC
23 1.15A(h)(5).

1 Dated this 5th day of March, 2018.

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4 Kathy Jo Blake, Bar No. 29235
5 Managing Disciplinary Counsel
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