

FILED

Nov 2, 2021

Disciplinary
Board

Docket # 060

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re
Walter O. Peale III,
Lawyer (WSBA No. 7889)

Proceeding No. 20#00006

DISCIPLINARY BOARD CHAIR ORDER
DECLINING REFERRAL OF SUA SPONTE
CONSIDERATION ELC 11.3(b)

This matter came before the Chair of the Disciplinary Board for a determination whether to refer this matter to the full Board for consideration of sua sponte review pursuant to ELC 11.3(b). On November 1, 2021, the Clerk distributed the attached decision, ODC's Motion to Modify Decision, Bank 10/4/21 Email to Smith and Blake, and Order Modifying Hearing Officer's Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation to the Chair.

IT IS HEREBY ORDERED THAT the Chair declines to refer this matter to the full Board for *sua sponte* consideration.

DATED this 2nd day of November, 2021.



Elizabeth M. Rene, WSBA #10710
Disciplinary Board Chair

CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, I certify that I caused a copy of the Disciplinary Board Chair Order Declining Referral of Sua Sponte Consideration ELC 11.3(b) to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Kevin M. Bank, at kevin@kevinbanklaw.com, on the 2nd day of November, 2021.

A handwritten signature in black ink, appearing to read "Nell A", positioned above a horizontal line.

Clerk to the Disciplinary Board

FILED

Sep 21, 2021

Disciplinary
Board

Docket # 053

**BEFORE THE DISCIPLINARY BOARD OF THE WASHINGTON STATE BAR
ASSOCIATION**

In re

WALTER O. PEALE III,
Lawyer (Bar No. 7889).

Proceeding 20#0006

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

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), a hearing was held before the undersigned Hearing Officer on June 7 and 8, 2021. Disciplinary counsel Chris Chang appeared for the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association. Respondent Walter O. Peale III appeared and was represented by Kevin Bank.

I. FORMAL COMPLAINT

Respondent was charged by formal complaint dated March 9, 2020, with five counts of violations of the rules of professional conduct. Count 1 alleges the respondent failed to comply with the terms of his probation stemming from a prior disciplinary case. Count 2 alleges the respondent failed to fully, promptly, and completely respond to ODC's inquiries in this matter, including a subpoena duces tecum. Counts 3-4 allege the respondent failed to properly keep and

1 reconcile his trust account records. Count 5 alleges the respondent failed to deposit advance fees
2 into his trust account.

3 **II. HEARING AND PROCEEDINGS**

4 A hearing was conducted remotely, pursuant to applicable protocols, on June 7 and 8,
5 2021. A total of seven witness testified at the hearing, including the respondent. Various exhibits
6 were admitted into evidence as well. At the conclusion of the hearing, the undersigned Hearing
7 Officer announced a tentative decision that each of the five counts had been proven by a clear
8 preponderance of the evidence. The Hearing Officer invited the parties to submit additional
9 briefing, if desired, on the aggravating and mitigating factors that may apply and the appropriate
10 sanction. TR 483-84. The hearing transcripts were received in late June of 2021.

11 Subsequently, the respondent filed on July 12, 2021 a motion to reopen the hearing to
12 allow additional evidence related to the respondent's mental health and current caseload. In the
13 event this motion was denied, the respondent continued to argue he should be reprimanded rather
14 than suspended. ODC replied to the motion on August 2, 2021, and objected to reopening the
15 hearing and reiterated their request for a twelve month suspension as a sanction. The respondent
16 filed a reply brief on August 9, 2021. On September 1, 2021, the undersigned Hearing Officer
17 denied the motion to reopen the hearing.

18 **III. FINDINGS OF FACT**

19 Having considered the testimony of the witnesses and the admitted exhibits, and further
20 having reviewed the additional briefing filed by counsel, the Hearing Officer finds the following
21 facts were established by a clear preponderance of the evidence. ELC 10.14(b). The following
22 findings regarding Counts 1 through 5 are based upon the evidence presented at the hearing,
23 specific exhibits or testimony are cited as appropriate.

24 **A. Jurisdictional Facts**

- 25
26 1. Respondent was admitted to the practice of law in Washington on November 18, 1977.

1 **B. Findings of Fact Regarding Counts 1-2**

- 2 1. On December 11, 2017, the respondent entered a stipulation to a reprimand for violating
3 RPC 1.15A and RPC 1.15B. The respondent admitted he negligently used client funds
4 held in trust for personal use and failed to maintain a checkbook register, client ledger,
5 and to reconcile his trust account records. Ex. A-103.
- 6 2. As a result of this stipulation, the respondent was placed on probation for a two year
7 period and ordered, *inter alia*, to submit to monitoring of his trust accounts and fee
8 agreements by ODC. Ex. A-103, pg. 30-31.
- 9 3. This agreement included a requirement that the respondent provide various trust account
10 records by specific quarterly deadlines, as set forth in the stipulation and subsequent
11 communications with ODC staff. *Id.*
- 12 4. During the relevant period, the respondent maintained two trust accounts. The first was
13 with Chase Bank, with an account number ending in 8849. The respondent maintained
14 this account between December 11, 2017 and August 22, 2019.
- 15 5. On August 22, 2019, the respondent closed the Chase account and opened a new trust
16 account with Umpqua Bank with an account number ending in 3951.
- 17 6. The respondent admits he failed to comply in a timely manner with his probation
18 requirement to provide quarterly records for his trust accounts and fee agreements. Ex. A-
19 135; TR 88-89.
- 20 7. ODC Probation Administrator Thea Jennings communicated with the respondent in
21 writing on multiple occasions to advise him that his records were late or incomplete. Exs.
22 A-104-119; TR 23-64.
- 23 8. ODC's communications with the respondent over this issue lasted from April, 2018 to
24 May, 2019. *Id.* These communications included multiple warnings that failure to provide
25 the records could result in a grievance being filed.
- 26
- 27

- 1 9. The respondent failed to timely and completely provide the requested records to ODC, as
2 required by his probation, from April, 2018 to May, 2019.
- 3 10. ODC provided the respondent multiple warnings and allowed him additional time beyond
4 what was strictly required. Even with these warnings and additional time, the respondent
5 still failed to provide the required documentation.
- 6 11. On May 14, 2019, ODC opened a new grievance against the respondent for these issues.
7 ODC sent a letter to the respondent requiring him to respond in written to the grievance.
8 Ex. A-120.
- 9 12. The respondent agrees he did not respond to this letter. Ex. A-135.
- 10 13. On June 18, 2019, ODC sent another letter to the respondent requiring a written response,
11 pursuant to ELC 5.3(h)(1), within ten days. ODC further advised that failure to respond
12 would result in him being subpoenaed for a deposition.
- 13 14. The respondent agrees he did not respond to this notice. Ex. A-135.
- 14 15. On July 18, 2019, ODC caused the respondent to be served with a subpoena duces tecum
15 to appear for a deposition on August 12, 2019. The respondent appeared for this
16 deposition with some of the requested records. However, the respondent failed to comply
17 fully with the subpoena as the records were incomplete.
- 18 16. The respondent agrees he did not fully comply with the subpoena duces tecum. Ex. A-
19 135.
- 20 17. The respondent's explanations for why he did not provide bank statements for his Chase
21 trust account are confusing and implausible.
- 22 **C. Findings of Fact Regarding Counts 3-4**
- 23 18. During the relevant period, December, 2017 to August, 2019, the respondent held
24 personal funds in his trust account.
- 25 19. During this time period, the respondent did not maintain complete and accurate trust
26 account records, to include client ledgers and a checkbook register. TR 165, 169.
- 27

1 20. Instead of maintaining an accurate and up to date checkbook register, the respondent
2 created a record of past transactions on August 11, 2019. This was the day before the
3 respondent's deposition with ODC. TR 198-205; Ex. A-129.

4 21. As noted by ODC's auditor, Cheryl Huett, this post-hoc "checkbook register" was
5 inaccurate and failed to correctly reflect what funds were personally owned by the
6 respondent. TR 205; Ex. A-130.

7 22. Similarly, the respondent failed to appropriately reconcile his trust account records
8 between December of 2017 and August 10, 2019.

9 23. The respondent did not attempt to reconcile his trust account records until the day prior to
10 his deposition, August 11, 2019, at which point he attempted to create an after the fact
11 "reconciliation" of his Chase trust account. TR 206-11.

12 24. This attempt to retroactively reconcile his trust accounts was still inaccurate, and was
13 necessarily an ineffective method of tracking his trust account balances on a monthly
14 basis.

15 25. Additionally, the respondent has admitted the conduct underlying Counts 3-4 in his
16 answer. Ex. A-135.

17 **D. Findings of Fact Regarding Count 5**

18 26. On January 26, 2018, the respondent entered into a written fee agreement with client CK
19 to represent him in a criminal matter pending in Snohomish County. The agreement
20 purported to be for a flat fee of \$45,000. Ex. A-131.

21 27. The CK fee agreement did not contain language explaining each of the following: (1) that
22 the fee would not be placed into a trust account, (2) that the fee agreement did not alter
23 the client's right to terminate the client-lawyer relationship, and (3) that the client may be
24 entitled to a refund of a portion of the fee if the agreed upon services had not in fact been
25 rendered. *Id.*

- 1 28. The CK fee agreement did include a provision explaining that the respondent maintained
2 a trust account and that funds held in trust remained the property of the payor. This
3 provision had the potential to be misleading as to whether the advance fees would
4 actually be held in trust. *Id.*
- 5 29. None of the fees paid by CK were deposited into the respondent's trust account. Ex. A-
6 109.
- 7 30. On or about March 27, 2018, the respondent entered into a written fee agreement with
8 client JD to represent him in a criminal matter pending in King County. The agreement
9 purported to be for a flat fee of \$10,000. Ex. A-132.
- 10 31. The JD fee agreement did not contain language explaining that that the client may be
11 entitled to a refund of a portion of the fee if the agreed upon services had not in fact been
12 rendered. *Id.*
- 13 32. None of the fees paid by JD were deposited into the respondent's trust account. Ex. A-
14 109.
- 15 33. Prior to May 11, 2018, the respondent entered into a written fee agreement with client AL
16 to represent him in a criminal matter pending in Snohomish County. The agreement
17 purported to be for a flat fee of \$40,000. Ex. A-133.
- 18 34. The AL fee agreement did not contain language explaining that that the client may be
19 entitled to a refund of a portion of the fee if the agreed upon services had not in fact been
20 rendered. *Id.*
- 21 35. None of the fees paid by AL were deposited into the respondent's trust account. Ex. A-
22 109.
- 23 36. The respondent admits that he did not deposit any of these fees into his trust account. Ex.
24 A-135. This reason offered for this is that the respondent did not believe he was required
25 to do so.
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1 37. Whatever the respondent's subjective belief may have been regarding these three fee
2 agreements, on their face each failed to comply with the provisions of RPC 1.5(f). The
3 respondent was thus obligated to deposit these fees into his trust account.

4 38. The respondent was obligated, under the terms of his probation, to provide these fee
5 agreements to ODC.

6 39. There is insufficient evidence to conclude by a clear preponderance that portions of the
7 CK, JD, and AL fees were collected before being earned. This is, to a large extent,
8 attributable to the respondent's deficient record keeping but the burden of proof lies with
9 ODC.

10 **IV. CONCLUSIONS OF LAW**

11 Based on the foregoing facts which have been established by a clear preponderance of the
12 evidence, the Hearing Officer makes the following Conclusions of Law:

13 **COUNT 1:** By failing to provide trust account records and fee agreements, as required
14 by the terms of his 2017 probation order and ELC 1.5 and 13.8, the respondent violated RPC
15 8.4(1).

16 **COUNT 2:** By failing to fully and completely respond to ODC's inquiries in the 2019
17 grievance and failing to completely and accurately respond to the subpoena duces tecum contrary
18 to ELC 1.5, 5.3, and/or 5.5, the respondent violated RPC 8.4(1).

19 **COUNT 3:** By failing to maintain accurate, current, and complete trust account records
20 the respondent violated RPC 1.15A(h)(2) and/or RPC 1.15B.

21 **COUNT 4:** By failing to properly and accurately reconcile his trust account records, the
22 respondent violated RPC 1.15A(h)(6) and/or RPC 1.15B(a)(8).

23 **COUNT 5:** By failing to deposit fees paid in advance by CK, JD, and AL into his trust
24 account, the respondent violated RPC 1.5(f) and/or RPC 1.15A(c)(2).
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2 **V. RULING ON MOTION TO REOPEN HEARING FOR NEW EVIDENCE**

3
4 The respondent's request to reopen the hearing to present additional evidence regarding his
5 mental health and current caseload/practice situation is hereby denied. This evidence is not
6 "newly discovered" in the common understanding of the term and is more properly characterized
7 as additional information to expand upon testimony and evidence that was already presented at
8 the hearing. Regarding evidence of the respondent's mental health, there is always the potential
9 for additional evidence as a person's mental state is not static. Furthermore, neither psychology
10 or psychiatry are exact sciences and practitioners in these fields will often reach different
11 opinions based on the same information. For these reasons, and because the proposed
12 information would only serve to further expand on issues already in the record, this Hearing
13 Officer declines to reopen the hearing for such evidence. See *In re Disciplinary Hearing Against*
14 *Brothers*, 149 Wn.2d 575, 583, 70 P.3d 940 (2003). Similarly, evidence of the respondent's
15 current practice and the probable impact on his clients and the criminal justice system is already
16 contained within the hearing record.

17 **VI. PRESUMPTIVE SANCTIONS**

18 A presumptive sanction must be determined for each ethical violation. As required under
19 Washington law and the American Bar Association (ABA) standards, the Hearing Officer must
20 apply a two-step process. Step one is to determine the presumptive sanction, taking into account
21 the ethical duty violated, the lawyer's mental state, and the extent of the harm caused by the
22 misconduct. Step two is to consider whether aggravating or mitigating factors should alter the
23 presumptive sanction. As required, each count must be addressed individually.

24
25 **A. Count 1**

1 For Count 1, failure to comply with the 2017 probation agreement, the ethical duty at
2 issue is ABA Standard 7.0:

3 *7.0 Violations of Duties Owed as a Professional*

4 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
5 conduct that is a violation of a duty owed as a professional with the intent
6 to obtain a benefit for the lawyer or another, and causes serious or
7 potentially serious injury to a client, the public, or the legal system.

8 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
9 conduct that is a violation of a duty owed as a professional and causes
10 injury or potential injury to a client, the public, or the legal system.

11 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
12 conduct that is a violation of a duty owed as a professional and causes
13 injury or potential injury to a client, the public, or the legal system.

14 7.4 Admonition is generally appropriate when a lawyer engages in an
15 isolated instance of negligence that is a violation of a duty owed as a
16 professional, and causes little or no actual or potential injury to a client,
17 the public, or the legal system.

18 As to Count 1, the Hearing Officer finds the respondent acted knowingly by repeated failing to
19 abide by the requirements of his probation agreement. While the respondent did make some
20 efforts to comply, these efforts were largely the result of ODC staff repeatedly contacting and
21 reminding the respondent to provide the required material. Additionally, ODC provided the
22 respondent with multiple warnings, extensions, and otherwise took a number of steps to give the
23 respondent extra chances to comply. Given these warnings, and the extensive communication
24 between the respondent and ODC, the Hearing Officer cannot find this violation was the result of
25 mere negligence. The presumptive sanction for Count 1 is thus suspension.

26 **B. Count 2**

1 For Count 2, failure to respond to ODC's inquiries and the subpoena duces tecum, the
2 applicable standard is 7.0 as set forth above. The respondent's mental state for this violation is
3 also knowing, as he was plainly aware of the duty to respond to both written inquiries and the
4 subpoena that was ultimately issued. The respondent's failure to reply in a timely and complete
5 manner cannot be said to be merely negligent.

7 C. Count 3

8 The applicable ABA standard for Count 3, failure to maintain a client ledger and
9 checkbook register for his trust account, is 4.1:

10 *4.1 Failure to Preserve the Client's Property*

11 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
12 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
14 is dealing improperly with client property and causes injury or potential injury to
15 a client.

16 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
17 client property and causes injury or potential injury to a client.

18 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
19 client property and causes little or no actual or potential injury to a client.

20 Additionally, as the respondent's 2017 probation related to trust account violations, ABA
21 Standard 8.0 also applies:

22 *8.0 Prior Discipline Orders*

23 8.1 Disbarment is generally appropriate when a lawyer:
24 (a) intentionally or knowingly violates the terms of a prior disciplinary order and
25 such violation causes injury or potential injury to a client, the public, the legal
26 system, or the profession; or
27 (b) has been suspended for the same or similar misconduct, and intentionally or

1 knowingly engages in further similar acts of misconduct that cause injury or
2 potential injury to a client, the public, the legal system, or the profession.

3 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the
4 same or similar misconduct and engages in further similar acts of misconduct
5 that cause injury or potential injury to a client, the public, the legal system, or the
6 profession.

7 8.3 Reprimand is generally appropriate when a lawyer:
8 (a) negligently violates the terms of a prior disciplinary order and such violation
9 causes injury or potential injury to a client, the public, the legal system, or the
10 profession; or
11 (b) has received an admonition for the same or similar misconduct and engages
12 in further similar acts of misconduct that cause injury or potential injury to a
13 client, the public, the legal system, or the profession.

14 8.4 An admonition is generally not an appropriate sanction when a lawyer violates
15 the terms of a prior disciplinary order or when a lawyer has engaged in the same
16 or similar misconduct in the past.

17 For Count 3, the Hearing Officer finds the respondent's mental state was negligence. The
18 respondent believed, albeit incorrectly, that he was not required to maintain fully compliant
19 records for his trust account given the minimal amount of activity and small amount of personal
20 funds he believed he held in the account. Notably, the respondent did maintain *some* records,
21 though in a haphazard and ineffective manner, which supports the finding that he was attempting
22 to comply and was not knowingly in violation as he was not aware that adverse consequences
23 could occur. Given this, the presumptive sanction for Count 3 under Standard 4.1 and 8.0 is
24 reprimand.

25 **D. Count 4**

26 As with Count 3, the applicable standards are 4.1 and 8.0 as set forth above. As to Count 4,
27

1 the Hearing Officer finds the applicable mental state is again negligence. As discussed above, the
2 respondent believed incorrectly that the lack of activity in his trust account meant he did not need
3 to reconcile his account. This belief was, of course, invalid as he should have still reconciled the
4 account on a monthly basis. As noted by multiple witnesses, this would have been quite simple
5 given the lack of activity. This fact further supports the finding the respondent acted negligently
6 rather than knowingly. Given this, the presumptive sanction for Count 4 under Standard 4.1 and
7 8.0 is reprimand.
8

9 E. Count 5

10 For Count 5, failure to deposit advance fees into his trust account, the applicable standard
11 is 4.1 as set forth above. For this count, the Hearing Officer finds the respondent's mental state
12 was again negligence. The three fee agreements at issue did not comply with RPC 1.5(f), as
13 found above. However, this Hearing Officer does find that the respondent subjectively believed
14 the agreements did comply with the rule. The Hearing Officer accepts the respondent's
15 testimony, which is unchallenged, that he orally explained the trust account deposit requirement
16 with his clients. Though this does not cure the violation, it does again support the finding the
17 respondent's violation was the result of negligence in drafting the fee agreements. The
18 presumptive sanction for Count 5 under Standard 4.1 is reprimand.
19

20 VII. AGGRAVATING AND MITIGATING CIRCUMSTANCES

21 Next, the applicable aggravating and mitigating circumstances under ABA Standard 9.22
22 must be determined. The Hearing Officer finds the following aggravating factors were proved
23 by a clear preponderance:
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1 A. Prior disciplinary offenses. The respondent received a reprimand in 2017 and was also
2 admonished in 2019.

3 B. Pattern of misconduct. There is, undeniably, a pattern of deficient behavior by the
4 respondent related to managing his trust accounts records.

5 C. Multiple offenses. The respondent did commit multiple ethical violations, with the
6 general theme being a failure to adequately and appropriately manage and provide
7 financial records.
8

9 D. Substantial experience in the law. The respondent was admitted to practice in 1977 and it
10 is undisputed that he is a highly experienced and competent criminal defense attorney.
11

12 The Hearing Officer does *not* find that the following aggravating factors were proven by a
13 clear preponderance of evidence:

14 A. Submission of false evidence, false statements, or other deceptive practices during the
15 disciplinary process. The respondent did, at times, provide information that was incorrect
16 or incomplete. However, the Hearing Officer does not find the respondent was deceptive
17 or knowingly made false statements during the disciplinary process. At times, the
18 respondent's explanations for his actions were confusing and implausible. The Hearing
19 Officer's finding on the reasons for this will be discussed further below. Additionally, the
20 Hearing Officer finds that some of the respondent's actions, for instance the *post hoc*
21 creation of account records, were a desperate and ineffectual attempt to comply at the last
22 minute rather than an attempt to deceive.
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1 B. Refusal to acknowledge wrongful nature of conduct. The Hearing Officer finds that at
2 points during the disciplinary process and hearing the respondent was less cooperative
3 and professional than is ideal. However, Hearing Officer does not find the respondent's
4 behavior amounts to a refusal to acknowledge the wrongful nature of his conduct.
5 Importantly, the respondent conceded four of the five counts filed against him and his
6 defenses against Count 5 were non-frivolous legal arguments. On this record, the Hearing
7 Officer cannot find this aggravating factor was proven.
8

9 Turning to mitigating factors, the Hearing Officer finds the respondent has proven the
10 following factors exist pursuant to ABA Standard 9.32:
11

12 A. Absence of dishonest or selfish motive. There is no evidence the respondent
13 committed these violations to benefit himself or to intentionally injure or defraud
14 a client.

15 B. Personal or emotional problems. There is ample evidence the respondent,
16 beginning in 2017, suffered a number of significant personal traumas. These
17 included: (1) his involvement in September of 2017 in a car accident where,
18 without any fault on his part, a young girl was seriously injured, resulting in
19 significant psychological stress and anxiety; (2) physical injuries stemming from
20 the same car accident; (3) the March, 2018 destruction by fire of his 98-year-old
21 mother's home and the attendant need for the respondent to deal with the fall-out
22 from this episode; (4) a head injury incurred in a fall in September, 2018 that
23 resulted in a concussion and ongoing memory and concentration problems.
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1 C. Character or reputation. The respondent is, by all accounts, a very talented,
2 committed, and skilled criminal defense attorney with more than forty years of
3 experience. Notably, the respondent did not receive any professional discipline for
4 the first forty years of his legal career. In addition to his trial skills and reputation,
5 the respondent served in leadership positions in local and statewide legal
6 organizations.
7

8 D. Remorse. The Hearing Officer does find the respondent to be remorseful for the
9 difficulties he has caused ODC, the WSBA, and the legal system as a whole.
10 Though the respondent is, at times, argumentative and obstreperous, the Hearing
11 Officer does not find this to negate his otherwise sincere remorse for the
12 violations he has committed.
13

14 E. Remedial efforts. The respondent has taken significant proactive steps to avoid a
15 repeat of the violations at issue, including hiring a bookkeeper and an associate
16 attorney to assist him in the business aspects of his practice and to share the
17 workload.
18

19 F. Mental Health Diagnosis. The respondent has been previously diagnosed with
20 depression and has sought care for this mental health condition. Additionally, the
21 hearing record and admitted exhibits establish the respondent has been involved
22 for decades with unusually stressful and difficult criminal litigation. These cases
23 included a large number of homicides, potential capital cases, and sexual assaults.
24 This Hearing Officer finds the respondent's diagnosis of depression, likely
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1 connected to the extremely serious and grim nature of his practice, significantly
2 and negatively impacted his ability to address other matters in his life, including
3 his probation requirements. While not an excuse for the violations, this does to a
4 mitigate the respondent's behavior.
5

6 **VIII. RECOMMENDED SANCTION AND CONCLUSION**

7 As set forth above, the presumptive sanction, taking into account the respective
8 presumptive sanction for each count, is suspension. The Hearing Officer must then weigh the
9 aggravating and mitigating circumstances to arrive at the ultimate recommended sanction. Here,
10 the respondent undeniably committed the instant violations while on probation for a prior
11 violation that was substantially similar. The respondent, by failing to comply with his probation
12 and to respond to the ODC investigation, made a bad situation even worse. Given this, the
13 ODC's recommendation for a twelve-month suspension is not unreasonable.
14
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16 The personal difficulties and traumas facing the respondent during the same time frame
17 as the violations must be balanced against the repetitive nature of his conduct. As noted above,
18 the respondent's personal difficulties were by no means *de minimis* and served to compound a
19 preexisting mental health diagnosis and the stresses of an unusually demanding and taxing
20 practice. As found by this Hearing Officer, these issues, though by no means the exclusive cause
21 of the violations, contributed greatly, particularly to Counts 1 and 2.
22

23 Addressing the injuries at issue, the Hearing Officer finds the respondent's conduct in
24 Counts 1 and 2 did cause harm to ODC by requiring the otherwise unnecessary expenditure of
25 limited time and funds. Regarding Counts 3-5, the Hearing Officer finds the respondent's
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1 conduct caused potential injury to his clients by misadvising them of nature and disposition of
2 the advances fees they paid him. The Hearing Officer does not find an actual injury to the clients
3 and there is no allegation the fees were unreasonable or were used improperly by the respondent.
4 Nonetheless, the Hearing Officer does not consider these injuries to be insubstantial or trivial in
5 anyway. The respondent's conduct was harmful to ODC, potentially harmful to his clients, and
6 reflected poorly on the legal profession as well.
7

8 The Hearing Officer is mindful that punishment is not the goal of attorney discipline, and
9 that protection of the public and the deterrence of similar misconduct are the only permissible
10 goals. *In re Disciplinary Proceeding Against Tasker*, 141 Wn.2d 557, 9 P.3d 822 (2000).
11

12 Ultimately, the mitigating circumstances outweigh the aggravating circumstances, in the opinion
13 of the Hearing Officer. In this case, considering all the evidence and circumstances, the Hearing
14 Officer finds, balancing the respective potential harms to the public and the need for deterrence,
15 that a reprimand is appropriate in the case. As part of this balancing, the Hearing Officer
16 considers the impact a suspension would have on the respondent's current clients, witnesses,
17 alleged victims, and a criminal justice system already straining under delays due to the COVID-
18 19 pandemic.

20 Weighing the quantity, and more importantly the quality, of the aggravating and
21 mitigating factors, there are sufficiently compelling grounds to merit a departure from the
22 presumptive sanction. The Hearing Officer thereby recommends the respondent be reprimanded
23 and placed on probation with the requirements that he continue to be subject to trust account
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1 managing for at least one year and participate in recommended mental health treatment for at
2 least one year.

3
4
5 DATED this 19th day of September, 2021.

6 *James B. Smith*
7 _____
8 James B. Smith, WSBA #35537
9 Hearing Officer
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CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, 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's Counsel Kevin M. Bank, at kevin@kevinbanklaw.com, on the 21st day of September, 2021.



Clerk to the Disciplinary Board

FILED

Sep 28, 2021

Disciplinary
Board

Docket # 055

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

WALTER O. PEALE III,
Lawyer (Bar No. 7889).

Proceeding No. 20#00006

ODC's MOTION TO MODIFY DECISION

I. INTRODUCTION

The hearing in the matter was held on June 7 and 8, 2021. On September 19, 2021, the Hearing Officer filed their Findings of Fact, Conclusions of Law, and Recommendation that the Respondent, Walter Peale, be reprimanded. Bar File (BF) 53. The Office of Disciplinary Counsel (ODC) brings this motion under Rule 10.16(c) of the Rules for Enforcement of Lawyer Conduct (ELC), requesting that the Hearing Officer's recommended sanction be amended to include a fixed period of probation. Proposed probation conditions are attached as Exhibit A.

II. ARGUMENT

A respondent who has been sanctioned under rule 13.1 may be placed on probation for a fixed period of two years or less. ELC 13.8(a). Specific and enforceable terms of probation are

1 appropriate in this case because (1) it will assist Respondent in maintaining a practice that
2 complies with the Rules of Professional Conduct; (2) it serves the purposes of lawyer discipline
3 by protecting the public, see In re Disciplinary Proceedings Against Noble, 100 Wn.2d 88, 96
4 (1983); and (3) it is specifically authorized by the ELC, see ELC 13.8(a).

5 The Hearing Officer's recommended sanction and conclusion recommends the
6 respondent be reprimanded and placed on probation with the requirements that he continue
7 to be subject to trust account managing for at least one year and participate in recommended
8 mental health treatment for at least one year. The current recommendation does not set forth
9 sufficient specificity to allow ODC to appropriately monitor respondent's compliance with these
10 broad and open-ended terms probation.

11 III. CONCLUSION

12 Therefore, ODC requests that the Hearing Officer amend their decision to include a
13 specific recommendation that Respondent be placed on probation for a specific set period of
14 time (two years) and that Respondent be required to comply with the probation conditions
15 listed in Exhibit A.


16 DATED this 28th day of September, 2021.

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21 Kathy Jo Blake, Bar No. 29235
22 Managing Disciplinary Counsel

Certificate of Service

I certify that I caused a copy of the foregoing Motion to Modify Decision dated September 28, 2021 to be emailed to Kevin M. Bank at kevin@kevinbanklaw.com and to Hearing Officer James Smith at jamesbsmith2006@msn.com on September 28, 2021.



Kathy Jo Blake, Bar No. 29235
Managing Disciplinary Counsel

1
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3 Exhibit A

4 1. Respondent will be subject to probation for a period of two years commencing upon
5 final order of this reprimand

6 2. The conditions of probation are set forth below. Respondent's compliance with these
7 conditions shall be monitored by the Probation Administrator of the Office of Disciplinary
8 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
9 herein may be grounds for further disciplinary action under ELC 13.8(b).

10 Trust Account Monitoring

11 3. Respondent will be subject to trust account probation for a period of two years
12 commencing upon final approval of this reprimand, with periodic reviews under ELC 13.8 of their
13 trust account practices, and must comply with the specific probation terms set forth below:
14

15 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B,
16 and shall carefully review the current version of the publication, Managing Client
Trust Accounts: Rules, Regulations, and Common Sense.

17 b) For all client matters, Respondent shall have a written fee agreement signed by the
18 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

19 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
20 Review Report," Respondent shall review the trust-account records detailed on the
form report, review the completed report, and sign and date the completed report.

21 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
22 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

23 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
24 commencement of probation, Respondent shall provide the trust account

1 records from the date of commencement of probation to the end of the
2 third full month.

- 3 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
4 commencement of probation, Respondent shall provide the trust account
5 records from the end of the previously provided quarter through the end of
6 month six.
- 7 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
8 commencement of probation, Respondent shall provide the trust account
9 records from the end of the previously provided quarter through the end of
10 month nine.
- 11 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
12 the commencement of probation, Respondent shall provide the trust
13 account records from the end of the previously provided quarter through
14 the end of month twelve.
- 15 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
16 the commencement of probation, Respondent shall provide the trust
17 account records from the end of the previously provided quarter through
18 the end of month fifteen.
- 19 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
20 the commencement of probation, Respondent shall provide the trust
21 account records from the end of the previously provided quarter through
22 the end of month eighteen.
- 23 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
24 after the commencement of probation, Respondent shall provide the trust
account records from the end of the previously provided quarter through
the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of his trust account will include: (a) copies of each completed "Monthly Reconciliation and Review Report" referenced in sub-paragraph(c) above, (b) a complete checkbook register for his/her trust account covering the period being reviewed, (c) complete individual client ledger records for any client with funds in Respondent's trust account during all or part of the period being reviewed, as well as for Respondent's own funds in the account (if any), and (d) copies of all trust-account bank statements, deposit slips, and cancelled checks covering the period being reviewed. ODC's Audit Manager or designee will review Respondent's trust account records for each period.

- 1 e) On the same quarterly time schedule set forth in the preceding paragraph,
2 Respondent will provide ODC's Audit Manager or designee with copies of any and
3 all fee agreements entered into within the time period at issue.
- 4 f) ODC's Audit Manager or designee may request additional financial or client records
5 if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. Within
6 twenty days of a request from ODC's Audit Manager or designee for additional
7 records needed to verify Respondent's compliance with RPC 1.15A and/or RPC
8 1.15B, Respondent will provide ODC's Audit Manager or designee the additional
9 records requested.
- g) Respondent will reimburse the Association for time spent by ODC's Audit Manager
or designee in reviewing and reporting on Respondent's records to determine their
compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour. Respondent
will make payment within thirty days of each written invoice setting forth the
auditor's time and payment due.

10 Mental Health Treatment Monitoring

- 11 h) Respondent shall comply with all requirements and recommendations of Dr.
12 Benjamin and Dr. Dunner, including but not limited to the completion of any period
13 of in- or out-patient treatment and aftercare and the taking of all prescribed
14 medications.
- i) Within 14 days of final approval of reprimand, Respondent shall execute an
15 authorization[s] allowing and directing the treatment provider to take the following
16 actions:
- 17 i) on a quarterly basis, send written reports to the Probation Administrator
18 that include the dates of treatment, whether Respondent has been
19 cooperative with treatment, and whether continued treatment is
20 recommended;
 - 21 ii) report immediately to the Probation Administrator if Respondent fails to
22 appear for treatment or stops treatment without the provider's agreement
23 and consent prior to either termination of the treatment plan or expiration
24 of the probation period set forth in this order;
 - iii) report immediately to the Probation Administrator if Respondent fails to
comply with any treatment recommendations of the treatment provider;
 - iv) report immediately to the Probation Administrator if Respondent otherwise
violates any of the terms or conditions of treatment;

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- v) report immediately to the Probation Administrator if the provider will no longer serve as treatment provider to Respondent prior to termination of the treatment plan or expiration of the probation period set forth in this order; and
- vi) report to the Probation Administrator if Respondent successfully completes treatment and is discharged from further treatment.
- j) Respondent is responsible for paying any and all fees, costs, and/or expenses of mental health evaluation and treatment.

Allison Sato

FILED

From: Kevin Bank <kevin@kevinbanklaw.com>
Sent: Monday, October 4, 2021 10:25 AM
To: JAMES SMITH; Kathy Jo Blake; OnlineFiling
Subject: RE: In re Peale 20#00006 (ODC's Motion to Modify Decision)

Oct 4, 2021
Disciplinary
Board

Docket # 057

We would prefer a one year trust account probation due to the fact that Mr. Peale has now hired an bookkeeper and realizes his past practices were deficient. However, we would accept what the HO decides on this issue. No other comments or objections.

Thank you

Kevin Bank

Sent from [Mail](#) for Windows 10

Kevin Bank
Kevin Bank Law
P. O. Box 61183
Seattle, WA 98141-6183
kevin@kevinbanklaw.com

206-771-6418

www.kevinbanklaw.com

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From: [JAMES SMITH](#)
Sent: Friday, October 1, 2021 3:50 PM
To: [Kathy Jo Blake](#); [Kevin Bank](#); [OnlineFiling](#)
Subject: Re: In re Peale 20#00006 (ODC's Motion to Modify Decision)

Mr. Bank,

Do you have any objection to this proposed order?

Sincerely,

James Smith

Sent from [Outlook](#)

From: Kathy Jo Blake <kathyjob@wsba.org>

Sent: Tuesday, September 28, 2021 3:53 PM

To: Kevin Bank <kevin@kevinbanklaw.com>; OnlineFiling <Onlinefiling@wsba.org>; jamesbsmith2006@msn.com <jamesbsmith2006@msn.com>

Subject: In re Peale 20#00006 (ODC's Motion to Modify Decision)

Dear Hearing Officer Smith and Kevin Bank,

Chris Chang has begun maternity leave so I will be representing ODC for the remainder of this matter. Attached please find my notice of reassignment, ODC's motion to modify the Hearing Officer's decision related to terms of probation and a proposed order.

Sincerely,

Kathy Jo Blake



Kathy Jo Blake | Managing Disciplinary Counsel | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5939 | kathyjob@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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FILED

Oct 6, 2021

Disciplinary
Board

Docket # 058

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

WALTER O. PEALE III,

Lawyer (Bar No. 7889).

Proceeding No. 20#00006

ORDER MODIFYING HEARING
OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND HEARING
OFFICER'S RECOMMENDATIONS

This matter having come before the Hearing Officer on Disciplinary Counsel's Motion to Modify Decision, and the Hearing Officer having reviewed the motion and responses thereto (if any); and the Hearing Officer being fully advised, therefore

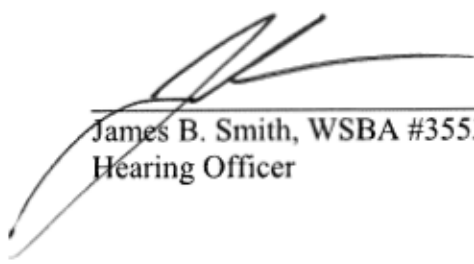
ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

ODC'S Motion to Modify Decision is GRANTED. The Hearing Officer will amend the hearing officer's recommendation to include a recommendation of a two-year period of probation following final order of reprimand, under certain terms and conditions outlined in Exhibit A to ODC's Motion to Modify Decision.

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Dated this 6th day of October, 2021.



James B. Smith, WSBA #35537
Hearing Officer

CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, I certify that I caused a copy of the Order Modifying HO's FOF, COL and HO's Recommendation to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Kevin M. Bank, at kevin@kevinbanklaw.com, on the 6th day of October, 2021.



Clerk to the Disciplinary Board