

Filed
Washington State Supreme Court

MAR 06 2015

Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

David C. Reed,
Lawyer (Bar No. 24663).

Supreme Court No.

ODC'S PETITION FOR
INTERIM SUSPENSION (ELC
7.2(a)(1))

Under Rule 7.2(a)(1) of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) petitions this Court for an Order of Interim Suspension of David C. Reed pending the outcome of disciplinary proceedings.

This Petition arises because it appears that Respondent David C. Reed's continued practice of law poses a substantial threat of serious harm to the public, and a Review Committee of the Disciplinary Board recommended an interim suspension. This Petition is based on the following declarations:

- Declaration of Disciplinary Counsel Marsha Matsumoto, with attached exhibits:
 - Exhibit A - March 26, 2014 letter to Reed
 - Exhibit B - May 15, 2014 subpoena duces tecum to Reed
 - Exhibit C - Transcript of Reed's July 16, 2014 Deposition
 - Exhibit D - Transcript of Reed's July 22, 2014 Deposition
 - Exhibit E - Transcript of Reed's August 20, 2014 Deposition
 - Exhibit F - Transcript of LB's February 11, 2015 Deposition
 - Exhibit G - Disciplinary Counsel's Analysis Letter
 - Exhibit H - Review Committee Order
 - Exhibit I - Amended Formal Complaint

- Declaration of LE
- Declaration of Rita Swanson
- Declaration of Brian McCarthy

Although this petition is a public document under ELC 3.1(b)(3), certain names of clients have been abbreviated herein and the attached declarations have been filed under seal to protect confidential client information.

I. STATEMENT OF GROUNDS/ARGUMENT

At any time when it appears that the continuation of the practice of law by a respondent lawyer during the pendency of disciplinary proceedings will result in a substantial threat of serious harm, ODC, on the unanimous recommendation of a Review Committee, may petition this Court for an order suspending the lawyer during the pendency of the proceedings. ELC 7.2(a)(1).

The most serious disciplinary charges in this matter are based on Respondent's alleged theft and conversion of client settlement funds for his own benefit. While the charges have not yet been established in an adjudicative hearing, Respondent's testimony at deposition, his failure to produce records in response to two subpoenas duces tecum, the sworn statements of his clients, and an examination by an Association auditor demonstrate that Respondent's continued practice of law poses a substantial threat of serious harm to the public.

ODC initially opened a grievance investigation against Respondent after being notified by Respondent's bank that he had overdrawn his trust account. During the grievance investigation, two clients, LE and LB, informed ODC that Respondent had received settlement funds on their behalf, but had not disbursed funds to them, despite repeated promises to do so.

More recently, in February 2015, a third client, GR, informed ODC that Respondent had received settlement funds on his behalf, held back \$5,000 for an insurance company's subrogation interest, and then failed to respond to GR's inquiries about the money.

A. LE AND KE

Respondent represented LE and KE regarding an insurance claim for the loss of LE's diamond engagement ring.

Respondent did not enter into a contingency fee agreement with LE and KE, or bill them for fees. On their own initiative, LE and KE paid Respondent \$1,000 for his legal assistance.

In 2013, LE and KE agreed to settle their claim with the insurance company for \$25,150. Respondent deposited the settlement check to his trust account on October 1, 2013.¹

¹ See Declaration of Rita Swanson.

The following day, on October 2, 2013, Respondent made an online transfer from his trust account to his operating account in the amount of \$7,383.33.² On October 23, 2013, Respondent made another online transfer to his operating account in the amount of \$2,000. These were the only transactions in the trust account in October, leaving a balance in the trust account of \$19,607.38 on October 31, 2013.

On November 26, 2013, Respondent transferred another \$2,000 from his trust account to his operating account. This was the only activity in the trust account in November, leaving a balance in the trust account of \$17,607.38 on November 30, 2013.

In December 2013, Respondent made seven online transfers, totaling \$14,500, from his trust account to his operating account. The December 31, 2013 balance in the trust account was \$3,107.38.

In January 2014, Respondent made three online transfers of \$1,000 each from his trust account to his operating account. These transfers left a trust account balance of \$107.38 as of January 31, 2014. In essence, all of LE's and KE's funds had been depleted.

² Respondent testified that he was the only person authorized to perform online transfers from his trust account. See Declaration of Disciplinary Counsel, Exhibit D (Transcript of Reed's July 22, 2014 Deposition) TR Vol. II 124, ln 10-11.

During Respondent's July 22, 2014 deposition, when asked why he made the transfers from his trust account to his operating account, Respondent testified that he did not know. When asked to explain what happened to the \$25,150, Respondent asserted his right against self-incrimination under the Fifth Amendment.³

As set forth in LE's declaration, Respondent never asked LE or KE to endorse the \$25,150 settlement check. Sometime later, LE learned that Respondent cashed the check in August 2013, by endorsing her name and KE's name with a power of attorney notation. LE and KE did not sign a power of attorney giving Respondent authority to endorse checks on their behalf, nor did they give Respondent oral permission to sign their names on the settlement check.

LE and KE did not receive any funds from the \$25,150 settlement, nor did they authorize Respondent to use their funds for any other purpose. On multiple occasions, LE and KE asked Respondent to deliver the insurance money to them so that they could purchase a replacement ring. Respondent put LE and KE off with a variety of excuses and promises, but never delivered the funds.

For example, on January 14, 2014, Reed sent LE a text asking where and to whom he should send the money. He informed LE that he

³ See Declaration of Disciplinary Counsel, Exhibit D, TR Vol. II 123-32, 137.

would have to order a cashier's check from his bank and prepare paperwork for LE to sign. LE replied that the check could be delivered to her.

By February 1, 2014, LE had not received any funds from Respondent, and LE was becoming concerned. LE sent Respondent a text stating that she had not received anything and that she was planning to look at rings. Respondent replied that he had been busy preparing for trial and asked, "How much of the money will you require and when will you need it." LE sent Respondent a text the same day, asking for the "entire 25k" by the end of the week. Respondent replied, "Ok. I will send the check." Respondent did not send a check or otherwise deliver the funds.

As described in LE's Declaration, LE and KE continued to ask Respondent for their funds. Finally, Respondent admitted to LE that he had spent the settlement funds, and promised to pay her back in full. As of February 2015, Respondent had not delivered any funds to LE and KE.

B. CLIENT LB

Respondent represented LB on personal injury claims arising out of three separate motor vehicle accidents. In February 2014, Respondent settled one of LB's claims with the insurance company for \$25,000. Respondent deposited the settlement check to his trust account on

February 14, 2014.⁴ Prior to the deposit, the balance in the trust account was \$107.38.

Between February 14, 2014 and February 28, 2014, Respondent made nine online transfers, totaling \$20,983.33, from his trust account to his operating account. In addition, Respondent issued check 1002 in the amount of \$1,500 to himself on February 18, 2014 and debited \$736.89 to Sams Club Stores on February 19, 2014 for food and supplies. These transactions left a balance in the trust account of \$1,887.16 as of February 28, 2014.

In March 2014, Respondent made two additional online transfers to his operating account in the amounts of \$1,600 and \$200. Respondent also debited \$9.50 to the Washington State Patrol, apparently to pay a report fee for an identified client. As of March 31, 2014, the balance in Respondent's trust account was \$77.66. LB's funds were gone.

During his deposition, Respondent testified that he and LB agreed, before the disbursements were made, how the money was to be handled. Respondent testified that LB agreed to provide funding for the development of a non-traditional, innovative way to process personal injury cases. LB was to bear the initial costs of developing these processes, which would then be spread among other clients, and LB would

⁴ See Declaration of Rita Swanson.

be reimbursed at some point in the future. Respondent testified, "I'm not sure how I was thinking we were going to do the accounting for it."⁵ He testified, "I don't know that it all worked out precisely how we said or how -- what the idea was. I don't know that it all worked out that way."⁶ Respondent proceeded to deplete LB's settlement funds, but has failed to produce a written agreement setting forth his purported arrangement with LB or a client ledger or an accounting showing how LB's \$25,000 settlement was used.⁷

During her deposition, LB testified that Respondent told her he would need \$12,000 out of the \$25,000 settlement to pay for her pending cases, and that she would receive the remaining \$13,000.⁸ LB agreed, but did not receive the \$13,000.

When LB told Respondent that she needed some money, he issued a \$1,200 check to LB from his operating account in early March 2014. He did not, however, deliver any other funds to her. LB continued to ask

⁵ See Declaration of Disciplinary Counsel, Exhibit D, TR Vol. II 193, ln. 9-10.

⁶ *Id.* at 195-96.

⁷ Respondent was served with two subpoenas duces tecum by ODC based on his failure to cooperate with the grievance investigation, and appeared for his deposition three times. Respondent repeatedly failed to produce records, even though he claimed to have records available for delivery. See Declaration of Disciplinary Counsel.

⁸ See Declaration of Disciplinary Counsel, Exhibit F (Transcript of LB's February 11, 2015 Deposition) TR 28.

Respondent about her money, and Respondent agreed to pay her by various dates, but he never did. Eventually, LB stopped asking.

In or around January 2015, LB asked Respondent again about her money. Respondent told LB that she would receive \$10,000, not \$13,000. As of February 11, 2015, Respondent had not delivered any additional funds to LB.

C. CLIENT GR

On February 12, 2015, ODC received a call on behalf of another of Respondent's clients, GR. Although ODC has not yet obtained records or fully investigated the matter, an ODC investigator has interviewed GR. GR told the investigator that, around July or August 2014, Respondent received a settlement on his behalf, disbursed funds to GR, and recommended holding back \$5,000 to cover an insurance company's subrogation interest. Over the ensuing six months, GR tried to contact Respondent about the remainder of his settlement. In September and/or October 2014, Respondent told GR that he was still negotiating with the insurance company. After October 2014, Respondent stopped responding to GR's telephone messages and text messages. GR told the investigator that he has not received a settlement statement or an accounting from Respondent regarding his settlement funds.

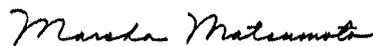
II. CONCLUSION

Based on the above, ODC has filed a formal complaint (attached to disciplinary counsel's declaration) charging Respondent with theft, conversion, and failure to cooperate, among other ethical violations. Given the above evidence, ODC believes that Respondent's continued practice of law will result in substantial harm, loss or damage to the public. Accordingly, ODC requests that this Court issue, pursuant to ELC 7.2(b)(2), an order to show cause requiring Respondent to appear before this Court on such date as the Chief Justice may set, and then and there show cause why this petition for immediate interim suspension should not be granted.

DATED THIS 4th day of March, 2015.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



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