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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

David C. Reed,

Lawyer (Bar No. 24663).

Supreme Court No. 201,396-1

ODC'S REPLY TO
RESPONDENT'S
DECLARATION

The Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (WSBA) files this Reply in response to Respondent's David C. Reed's Declaration, which was submitted in response to ODC's Petition for Interim Suspension (ELC 7.2(a)(1)).

In his Declaration, Respondent asserts that the allegations against him, concerning his theft and conversion of client settlement funds, involve mere contractual disputes. As discussed below, Respondent's assertions are wholly unsupported by the evidence, including the sworn statements of Respondent's clients and Respondent's own deposition testimony and records.

Respondent has been charged with the theft and conversion of LE and KE's \$25,150 in settlement funds. In his Declaration, Respondent admits that he does not have the settlement funds in trust and "cannot immediately replace the funds." He tells this Court that he removed the funds under an agreed plan to pursue a larger case against LE and KE's

insurance company involving multiple clients. However, in 2014, when LE and KE asked Respondent to deliver their settlement funds, he repeatedly assured them by text message and email that he would send them a check, without any mention of having used the funds for an agreed purpose. See Declaration of LE, Exhibits A and B. Furthermore, when Respondent was asked during his deposition why he transferred LE and KE's settlement funds 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 privilege against self-incrimination. See Declaration of Disciplinary Counsel, Exhibit D, TR Vol. II 125-32, 137. And, when asked whether LE or KE ever authorized him to disburse part or all of the settlement funds from his trust account, Respondent testified, "I don't have any independent recollection of them ever doing that." See Declaration of Disciplinary Counsel, Exhibit D, TR Vol. II 132, ln. 5-9, 15-20.

Respondent's assertion of a "fee claim" to the \$25,150 is further belied by Respondent's failure to produce a signed fee agreement with LE and KE, an actual billing statement, or any document demonstrating that LE and KE authorized Respondent to use their settlement to finance the development of multiple clients' claims. Moreover, when LE confronted Respondent in 2014 about his failure to deliver the funds, Respondent

did not tell LE that he had withdrawn the money for fees. He told LE that he had unknowingly spent the money when it became mixed into his personal account. See Declaration of LE, ¶24.

Respondent claims a similar arrangement with LB in which he was authorized to use her \$25,000 settlement to develop a system for processing cases for multiple clients. Again, Respondent has not produced a written agreement with LB authorizing him to use her settlement funds or a ledger showing how LB's settlement funds were spent, even though Respondent has depleted nearly all of LB's settlement.¹ Moreover, LB's deposition testimony directly contradicts Respondent's claim. See Declaration of Disciplinary Counsel, Exhibit F. LB testified that, when her claim settled, Respondent told her she would receive \$13,000² out of the \$25,000 settlement, and that he would retain the remaining \$12,000. LB testified that she authorized Respondent to use the \$12,000 only for her case.

With respect to GR's settlement, Respondent claims a different type of arrangement. Out of an approximate \$32,000 in settlement funds, GR received \$15,000 and Respondent received the rest. Respondent

¹ LB received only \$1,200 from Respondent's operating account.

² Nearly one year later, having only delivered \$1,200 to LB, Respondent told LB that she would receive \$10,000 not \$13,000, and indicated that he was holding the funds in an account for her. As of February 11, 2015, LB still had received only \$1,200 out of her \$25,000 settlement.

asserts that GR authorized him to take his attorney's fees, plus \$5,000 designated to pay an insurance company's subrogated interest, for Respondent's own benefit because Respondent agreed that he would pay the subrogated interest after attempting to negotiate a reduction with the insurance company. This is contrary to the information provided by GR to an ODC investigator, which indicates that Respondent told GR he would hold back \$5,000 for the subrogated interest and inform GR of the outcome. When GR did not hear from Respondent or receive an accounting, he attempted to contact Respondent to find out what happened to the \$5,000, but Respondent did not respond.³ Meanwhile, Respondent admits that he withdrew the \$5,000 from his trust account and used it for his own benefit, while the subrogated interest remains unpaid.

Finally, Respondent contends that he should not be placed on interim suspension before he has had a full evidentiary hearing. He makes this argument through a Declaration that offers no documentation to support his assertions. Furthermore, the day before he filed his Declaration with this Court, Respondent filed an Answer to the Amended Formal Complaint in the underlying disciplinary proceeding. In the Answer, Respondent asserted his privilege against self-incrimination in

³ As explained in ODC's Petition, GR's grievance remains under investigation. However, as set forth in the Declaration of Brian McCarthy (submitted with the Petition), ODC had an opportunity to interview GR in February 2015.

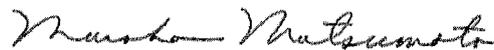
response to all of the factual allegations relating to his handling of LE, KE, and LB's settlement funds and his trust account. Attached as Exhibit A is a copy of Respondent's Answer.

ODC recognizes that suspending a lawyer's license on an interim basis is a serious matter. However, when the evidence indicates that a respondent lawyer has repeatedly invaded client funds for his own benefit; has provided inconsistent, unsupported, and implausible explanations for his actions; and is unable or unwilling to protect his clients' interests, it is ODC's responsibility to bring the lawyer's conduct to the Court's attention and to petition for the lawyer's interim suspension pending the conclusion of disciplinary proceedings.

DATED THIS 1st day of May, 2015.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL



Marsha Matsumoto, Bar No. 15831
Senior Disciplinary Counsel
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8233

EXHIBIT A

FILED
APR 27 2015
DISCIPLINARY
BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re:) Proceeding No.: 14#00081
DAVID C. REED,) ANSWER
Lawyer (WSBA No. 24663).)

COMES NOW, David C. Reed, Respondent herein, by and through his attorney, Kurt M. Bulmer, answering the Amended Formal Complaint filed in this matter. This Answer is filed pursuant to the Rules for Enforcement of Lawyer Discipline (ELC), including ELC 10.5, and under CR 8(b). All matters not expressly admitted are denied.

1. ANSWERS TO PARAGRAPHS AS IDENTIFIED
IN FORMAL COMPLAINT

- 1. Admission to Practice - Paragraph 1 -- Admitted;
- 2. Facts Paragraph 2 -- Admitted.
- 3. Fact Paragraphs 3 -- 53 -- Pursuant to ELC 5.4(a), Respondent asserts his privilege against self-incrimination and declines to answer.
- 4. Count Paragraphs 54 -- 63 -- Denied.

ANSWER - Page 1

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1 5. --Fact Paragraphs 64 --91 - Pursuant to ELC 5.4(a), Respondent asserts his privilege
2 against self-incrimination and declines to answer.

3 6. Count Paragraphs 92 -- 96 -- Denied.

4 7. Fact Paragraphs 97 -- 129 - Pursuant to ELC 5.4(a), Respondent asserts his privilege
5 against self-incrimination and declines to answer.

6 8. Count Paragraphs 130 -- 134 -- Denied.

7 9. Facts Paragraph 135 -- Admitted.

8 10. Facts Paragraph 136 -- Denied that Respondent never met with Bar investigators and
9 never provided documents. Admit that he did not immediately met with the Bar investigator in
10 response to the letter of March 26, 2014.

11 11. Facts Paragraph 137 -- Admitted.

12 12. Facts Paragraph 138 -- Denied. Respondent has to the best of his ability provided the
13 records requested. Respondent at all times made a best effort to gather and provide the
14 extensive records requested. Admit that he did not provide the records by the date demanded by
15 the ODC since he was unable to get them gathered in the timeframe set by the ODC in its letter.

16 13. Facts Paragraph 139 -- Admitted.

17 14. Facts Paragraph 140 -- Admitted.

18 15. Facts Paragraph 141 -- Admitted.

19 16. Facts Paragraph 142 -- Admitted.

20 17. Facts Paragraph 143 -- Admitted.

21 18. Facts Paragraph 144 -- Respondent lacks sufficient information to admit or deny
22 when Mr. Pittle appeared for him so the date is denied but it is admitted that Mr. Pittle did
23 appear for Respondent at about this time.

24 19. Facts Paragraph 145 -- Respondent lacks sufficient information to admit or deny
25 what Mr. Pittle did in regards to getting an extension or what representations were made in that

ANSWER -- Page 2

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1 process so this paragraph is denied. It is admitted that at some point on some basis an extension
2 was given.

3 20. Facts Paragraph 146 – Admit that a continuance was granted by the ODC,
4 Respondent lacks sufficient information to admit or deny the conditions agreed to by the ODC
5 and Mr. Pittle so rest of this paragraph is denied.

6 21. Facts Paragraph 147 – Respondent lacks sufficient information to admit or deny
7 what Mr. Pittle did in regards to getting an extension or what representations were made in that
8 process so this paragraph is denied. It is admitted that at some point on some basis an extension
9 was given.

10 22. Facts Paragraph 148 – Respondent lacks sufficient information to admit or deny
11 what documents Mr. Pittle provided and when he did so this paragraph is denied.

12 23. Facts Paragraph 149 – Admit that records were provided but Respondent lacks
13 sufficient information to admit or deny exactly what documents were provided or how they
14 were provided so the rest of this paragraph is denied.

15 24. Facts Paragraph 150 – Admit that records were provided but Respondent lacks
16 sufficient information to admit or deny exactly what documents were provided or how they
17 were provided so the rest of this paragraph is denied.

18 25. Facts Paragraph 151 – Respondent lacks sufficient information to admit or deny
19 what documents Mr. Pittle provided so this paragraph is denied. Respondent at all times made a
20 best effort to gather and provide the extensive records requested.

21 26. Facts Paragraph 152 – Admitted.

22 27. Facts Paragraph 153 – Admitted. He did not bring the records because he had
23 already provided records he believed to be sufficient. Respondent at all times made a best effort
24 to gather and provide the extensive records requested.

25 28. Facts Paragraph 154 – Admitted.

1 29. Facts Paragraph 155 – Admit the deposition was continued. Respondent lacks
2 sufficient information to admit or deny what Mr. Pittle did in regards to getting an extension or
3 what representations were made in that process so the rest of this paragraph is denied.

4 30. Facts Paragraph 156 – Admit that additional documents were not provided.
5 Respondent had produced everything he was capable of generating at that time. Respondent at
6 all times made a best effort to gather and provide the extensive records requested.

7 31. Facts Paragraph 157 – Admit that additional documents were provided. Respondent
8 lacks sufficient information to admit or deny what documents Mr. Pittle provided or how he did
9 so the rest of this paragraph is denied. Respondent at all times made a best effort to gather and
10 provide the extensive records requested.

11 32. Facts Paragraph 158 – Respondent lacks sufficient information to admit or deny
12 what documents Mr. Pittle provided so this paragraph is denied. Respondent had produced
13 everything he was capable of generating at that time. Respondent at all times made a best effort
14 to gather and provide the extensive records requested.

15 33. Facts Paragraph 159 – Admitted.

16 34. Facts Paragraph 160 – Admit that Respondent agreed to produce more records.
17 Deny that what he had provided was not responsive to the subpoena. Respondent at all times
18 made a best effort to gather and provide the extensive records requested.

19 35. Facts Paragraph 161 – Respondent lacks sufficient information to admit or deny
20 what emails and lists the ODC sent Mr. Pittle so this paragraph is denied.

21 36. Facts Paragraph 162 – Admit that additional documents were not submitted by July,
22 29, 2014. Deny implication that doing so was a failure to cooperate. Respondent had produced
23 everything he was capable of generating at that time. Respondent at all times made a best effort
24 to gather and provide the extensive records requested.

25 37. Facts Paragraph 163 – Admitted.

1 38. Facts Paragraph 164 – Admit that the deposition was continued. Respondent lacks
2 sufficient information to admit or deny what representations and agreements were entered into
3 by the ODC and Mr. Pittle so the rest of this paragraph is denied.

4 39. Facts Paragraph 165 – Admit that additional documents were not provided. Denied
5 that Respondent agreed to whatever the ODC and Mr. Pittle agreed. Deny implication that any
6 failure to provide additional documents was a failure to cooperate. Respondent had produced
7 everything he was capable of generating at that time. Respondent at all times made a best effort
8 to gather and provide the extensive records requested.

9 40. Facts Paragraph 166 – Admitted.

10 41. Facts Paragraph 167 – Admit that the fee agreement was produced. The rest of this
11 paragraph is denied.

12 42. Facts Paragraph 168 – Admitted.

13 43. Facts Paragraph 169 – Admitted. Respondent produced everything he was capable
14 of generating at that time. Deny any implication that what he produced or did not produce was
15 a failure to cooperate. Respondent at all times made a best effort to gather and provide the
16 extensive records requested.

17 44. Facts Paragraph 170 – Admitted. Respondent produced everything he was capable
18 of generating at that time. Deny any implication that what he produced or did not produce was
19 a failure to cooperate.

20 45. Facts Paragraph 171 – Admitted. Respondent was willing to produce anything else
21 the ODC wanted if he was capable of generating it. Respondent at all times made a best effort
22 to gather and provide the extensive records requested.

23 46. Facts Paragraph 172 – Admit that additional documents were not provided.
24 Respondent had produced everything he was capable of generating.

25 47. Facts Paragraph 173 – Admitted.

1 48. Facts Paragraph 174 -- Admit that additional documents were not provided.
2 Respondent had produced everything he was capable of generating. Respondent at all times
3 made a best effort to gather and provide the extensive records requested.

4 49. Count Paragraph 175 -- Denied.

5 50. Unnumbered Paragraph -- Hearing Request and Disposition Paragraph -- The
6 Association has failed to identify dismissal as one of the possible dispositions as may be
7 warranted by the facts and the law. The implication that only a sanction or the other listed
8 options are possible is expressly denied. Dismissal is a possible disposition and is the
9 appropriate result in this proceeding.

10 2. DEFENSES PURSUANT TO ELC 10.5(b)(2)

11 51. Respondent denies that he failed to cooperate. He produced voluminous records,
12 some of which were not helpful to his case and helped serve as the basis of charges against
13 him. He produced everything he was capable of producing but the ODC was demanding
14 information he did not have or could not produce. He hired counsel to assist him in order to try
15 to show he was cooperating as best he could.

16 52. Respondent has asserted his privilege against self-incrimination. He has not done so
17 to thwart this process but rather out of an abundance of caution given the nature of the alleged
18 misconduct found in the charging counts. He may very well withdraw his assertion and file an
19 Amended Answer at a future time.

20 53. Respondent asserts that when the true facts are brought before the hearing officer
21 they will show that Respondent's actions did not violate the alleged RPCs.

22 54. Respondent reserves his right to bring other defenses as appear appropriate during
23 the proceedings and to assert mitigating factors including but not limited to those identified in
24 the ABA Standards for Imposing Lawyer Sanctions.

1 55. This matter is mitigated so as to not require disciplinary proceedings pursuant to the
2 ABA Standards for Imposing Lawyer Sanctions and *In Re McGlothlen*, 99 Wn.2d 515, 663
3 P.2d 1330 (1983).

4 3. ADDRESS DESIGNATION PURSUANT TO ELC 10.5(b)(3)
5 AND
6 4. WAIVER OF ELC 4.1(b)(1)(B) - SERVICE BY MAIL

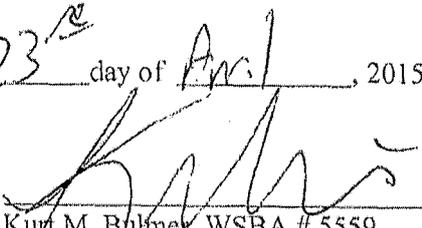
7 56. Pursuant to ELC 10.5(b)(3), all further pleadings, notices and other documents in
8 relation to these proceedings may be served upon Respondent by serving the same upon his
9 attorney Kurt M. Bulmer, WSBA # 5559, at 740 Belmont Place E., # 3, Seattle, WA 98102-
10 4442.

11 57. Pursuant to ELC 4.1(b)(1)(B) Respondent waives the requirement that all service by
12 mail in these proceedings be by certified or registered mail. He does so with the understanding
13 that by waiving this requirement Disciplinary Counsel does the same and that all service to all
14 parties to this matter may be by first-class mail.

15 4. REQUEST FOR DISMISSAL AND COSTS

16 Having answered the Amended Formal Complaint, Respondent asks that the
17 allegations against him be dismissed and that the proceedings against him be closed. He asks
18 that he be awarded the costs, expenses and attorney fees expended by him in defending this
19 matter.

20 Dated this 23rd day of April, 2015.

21 
22 Kurt M. Bulmer, WSBA # 5559
23 Attorney for Respondent Reed

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Answer to be served on

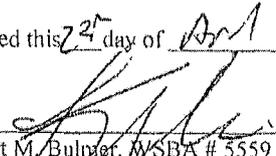
Marsha Matsumoto
Senior Disciplinary Counsel
Washington State Bar Association
1325 4th Ave. STE 600
Seattle, WA 98101-2539

Hardeep S. Rekhi
Hearing Officer
1411 4th Ave Ste 1101
Seattle, WA 98101-2243

Allison Sato
Clerk to the Disciplinary Board
Washington State Bar Association
1325 4th Ave. STE 600
Seattle, WA 98101-2539

by first-class mail, postage prepaid to each of them on the 23rd of April, 2015.

Dated this 24th day of April, 2015.


Kurt M. Bulmer, WSBA # 5559
Attorney for Respondent Reed

OFFICE RECEPTIONIST, CLERK

To: Marsha Matsumoto
Cc: dcree77@gmail.com
Subject: RE: In re David C. Reed, Supreme Court No. 201,396-1

Received 5-1-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Marsha Matsumoto [mailto:marsham@wsba.org]
Sent: Friday, May 01, 2015 3:58 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: dcree77@gmail.com
Subject: In re David C. Reed, Supreme Court No. 201,396-1

Attached for filing is the Office of Disciplinary Counsel's Reply to Respondent's Declaration. The case is In re David C. Reed (Bar No. 24663), Supreme Court No. 201,396-1.

Thank you.



Marsha Matsumoto | Senior Disciplinary Counsel

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