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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re  
  
John David Ferrell,  
  
Lawyer (Bar No. 28922).

Supreme Court No.  
  
DECLARATION OF  
DISCIPLINARY COUNSEL IN  
SUPPORT OF PETITION FOR  
INTERIM SUSPENSION

I, Scott G. Busby, declare and state:

1. I am a Senior Disciplinary Counsel in the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association). I am the disciplinary counsel assigned to the investigation of ODC File No. 14-01810, a grievance against Respondent John David Ferrell. This statement is submitted in support of ODC's Petition for Interim Suspension under ELC 7.2(a)(3).

2. The Association's records show that Respondent was admitted to the practice of law in Washington on June 10, 1999.

3. On September 18, 2014, I took Respondent's deposition in the investigation of a different grievance, ODC File No. 14-00220. A true and correct copy of the transcript of that deposition is attached as Appendix A.

4. The deposition was taken due to Respondent's failure to comply with a request for records under ELC 5.3(g). The deposition testimony concerning Respondent's failure to comply is at pages 5-7 of



Appendix A. True and correct copies of Exhibits 1-3 referenced therein are attached as Appendix B.

5. Rule 1.15A(c)(2) of the Rules of Professional Conduct (RPC) requires that, except as provided in RPC 1.5(f), a lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

6. During his deposition, Respondent admitted that between 2010 and 2013 he practiced law without a trust account. Respondent also admitted that during this period his typical fee agreement required the client to pay an advance fee deposit before the commencement of services. The deposition testimony concerning Respondent's failure to maintain a trust account is at pages 9-11 and 14-15 of Appendix A. The deposition testimony concerning Respondent's typical fee agreement is at page 17 of Appendix A. A true and correct copy of Exhibit 5, an example of Respondent's typical fee agreement, is attached as Appendix C. The provisions concerning advance fee deposits are at pages 2-3 of Appendix C.

7. Respondent also admitted that on two specific occasions in November and December, 2012, he deposited checks for an advance fee deposit into his operating account because he did not maintain a trust

account. The deposition testimony concerning these two checks is at pages 8-11 of Appendix A.

8. Respondent asserted his “Fifth Amendment right against self-incrimination” and declined to answer when he was asked (a) whether he accepted other advance fee deposits between 2010 and 2013, (b) whether his other family law clients paid him on an hourly basis, and (c) how many family law clients he had. Respondent also declined to answer when he was asked about his trust account practices after opening a trust account in 2013. The deposition testimony concerning these matters is at pages 16-17 and 26-28 of Appendix A.

9. Based on Respondent’s deposition testimony and the records and information received in the investigation of ODC File No. 14-00220, it appears that Respondent has not been safeguarding client property in accordance with RPC 1.15A during the period between 2010 and the present. Accordingly, ODC opened a grievance against Respondent under ELC 5.3(a) in the name of ODC and assigned it ODC File No. 14-01810.

10. On November 18 and 19, 2014, under ELC 5.3(g), ODC sent a Request for Response to Grievance to Respondent by first class mail and by certified at his address on file with the Association. ODC requested certain records for Respondent’s law firm operating account(s) and his trust account(s). ODC also requested certain fee agreements, billing

statements, and settlement statements. A true and correct copy of the November 19, 2014, Request for Response to Grievance, together with the certified mail receipt indicating that Respondent received it, is attached as Appendix D.

11. Respondent has not provided any response to the Request for Response to Grievance.

12. On January 14, 2015, under ELC 5.3(h), ODC sent a notice to Respondent by certified mail and by first class mail at his address on file with the Association. Respondent was notified (a) that no response to the Request for Response to Grievance had been received, (b) that under ELC 5.3(h) he must provide the requested documents within ten days, and (c) that failing to cooperate with an investigation might subject him to interim suspension under ELC 7.2(a)(3). A true and correct copy of the January 14, 2015, ELC 5.3(h) notice is attached as Appendix E.

13. Respondent has not provided any response to either the Request for Response to Grievance or the ELC 5.3(h) notice.

14. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

3-13-2015 Seattle WA

Date & Place

Scott G. Busby

Scott G. Busby, Bar No. 17522

Senior Disciplinary Counsel

# APPENDIX A



Deposition of: John David Ferrell

9/18/14

## 1 APPEARANCES

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FOR THE WASHINGTON STATE BAR ASSOCIATION:

**SCOTT G. BUSBY**

Senior Disciplinary Counsel

1325 Fourth Avenue

Suite 600

Seattle, WA 98121-2330

FOR RESPONDENT JOHN DAVID FERRELL:

**KURT M. BULMER**

Attorney at Law

740 Belmont Place E., Apt. 3

Seattle, WA 98102-4442

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I N D E X

WITNESS	PAGE
JOHN DAVID FERRELL	
Examination, By Mr. Bray	4

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Letter - 6/11/14 to Kurt Bulmer from Scott Busby - "Additional Request for Response to Grievance"	5
2	Letter - 7/16/14 to Kurt Bulmer from Scott Busby re Hernandez Grievance	6
3	Subpoena Duces Tecum	7
4	Key Bank Business Banking Statement	8
5	Fee Agreement	17

Deposition of: John David Ferrell 9/18/14

1 Seattle, Washington, Thursday, September 18, 2014

2 1:04 p.m.

3 -- o00o --

4 MR. BUSBY: So we're on the record on  
5 September 18, 2014, at 1:04 p.m.

6 Would the court reporter please identify  
7 herself for the record and swear the witness.

8 COURT REPORTER: Lori Thompson.

9 (Witness sworn.)

10

11 THEREUPON,

12

**JOHN DAVID FERRELL,**

13 Called as a witness by the Bar Association, after having  
14 been first duly sworn by the court reporter, testified as  
15 follows:

16

**EXAMINATION**

17

**BY MR. BUSBY:**

18

Q. Mr. Ferrell, I'm Scott Busby, I'm a lawyer with

19

the Office of Disciplinary Counsel. This is a deposition

20

by the Washington State Bar Association Office of

21

Disciplinary Counsel to determine whether lawyer

22

discipline may be appropriate under the Rules of

23

Professional Conduct and the Rules for Enforcement of

24

Lawyer Conduct. However, the facts developed in this

25

investigation might constitute violations of other state

1 or federal laws.

2                   Although these proceedings are  
3 confidential, the information you give us may be made  
4 public under the Rules for Enforcement of Lawyer Conduct.  
5 You should also be aware that we may refer the information  
6 you give us to other administrative agencies.

7                   Do you understand all that?

8           A.    I do.

9           Q.    I don't have to explain deposition procedure to  
10 you, I assume; is that correct?

11          A.    You don't.

12          Q.    You've done them before?

13          A.    Yes.

14          Q.    And you are represented by counsel?

15          A.    That's correct.

16                         MR. BUSBY:  Would Counsel please  
17 identify himself please.

18                         MR. BULMER:  Kurt M. Bulmer.

19          Q.    (By Mr. Busby)  Okay, let's move into the  
20 substance.  Let me begin with a letter dated June 11,  
21 2014, that I'll have the court reporter mark as an  
22 exhibit.

23                                 [EXHIBIT NO. 1 MARKED FOR IDENTIFICATION]

24                                 Okay, Exhibit No. 1 is copy of a letter  
25 dated June 11th.  Did you receive that?

Deposition of: John David Ferrell 9/18/14

1 A. Yes.

2 Q. When did you receive it?

3 A. I don't recall. It was sometime afterwards.

4 Sorry, I don't have the exact date.

5 Q. Did you file a response to it?

6 A. Yes, I believe we provided the court file -- I'm  
7 sorry, not court file, the client file.

8 Q. Is that what's in the box in front of us?

9 A. Yes.

10 Q. And that was provided last Friday?

11 A. That's correct.

12 Q. Can you explain why you didn't respond before  
13 last Friday to this letter?

14 Q. Yeah, I wanted to cooperate, I understand that I  
15 need to cooperate, I just -- it's a serious matter so I  
16 wanted to -- I wasn't quite sure how to take the steps to  
17 respond. But then ultimately I provided that through  
18 Counsel.

19 Q. Did you receive this letter back in June of  
20 2014?

21 A. That's right, yes.

22 Q. And then there's a subsequent letter dated  
23 July 16th that I will just have marked as an exhibit.

24 [EXHIBIT NO. 2 MARKED FOR IDENTIFICATION]

25 So that's Exhibit 2, it's dated July 16,

1 and did you receive that soon after July 16th?

2 A. I did, yes.

3 Q. Ask just, again, I'd like to know if there's a  
4 reason why you didn't respond sooner than last Friday,  
5 which was September 12th.

6 A. Just unable to determine how to proceed. But  
7 then I did provide that then last Friday.

8 Q. And then, finally, you got a subpoena, which I  
9 think I'll also mark since we need to talk about some of  
10 the things on it.

11 [EXHIBIT NO. 3 MARKED FOR IDENTIFICATION]

12 So you understand the reason for the  
13 subpoena is because we didn't receive a response to these  
14 two letters?

15 A. Yes, I do.

16 Q. So let's look at the subpoena and go through the  
17 items and let's see what documents you have in response.

18 So item number one is the fee agreement,  
19 and I did receive -- there is a fee agreement in the  
20 client file that you provided last Friday.

21 How about billing statements? I did not  
22 see any billing statements.

23 A. Let's see, I have not provided a billing  
24 statement to the Hernandezes.

25 Q. How about financial records, copies of all

1 financial records, item number three?

2 A. I believe there's a copy of Hernandez's canceled  
3 check, the first one that they submitted that had bounced,  
4 and then I've also -- I have with me copies of the bank  
5 records showing their subsequent deposit of their -- the  
6 amount that they paid up front.

7 Q. Okay. What I saw in the box by way of financial  
8 records were copies of two checks, as you mention. There  
9 was one check that was returned and there was a subsequent  
10 check dated -- one check dated November 26, 2012, that was  
11 returned, and a subsequent check dated December 3, 2012.

12 So you have some additional financial  
13 records?

14 A. And this would be the banking statement from Key  
15 Bank.

16 (Document proffered to Mr. Busby.)

17 Q. So what we have here, and we probably -- yeah,  
18 let's mark that as an exhibit.

19 **[EXHIBIT NO. 4 MARKED FOR IDENTIFICATION]**

20 So this Exhibit No. 4 is a statement dated  
21 December 31, 2012. I see it doesn't -- it looks like it  
22 begins with December 3rd. Looks like actually the  
23 statement period is the month of December; is that right?

24 A. That's my understanding, yes.

25 Q. So the first check that -- the check that didn't

Deposition of: John David Ferrell 9/18/14

1 clear was deposited on November 26, 2012; right?

2 A. I think that's correct, yes.

3 Q. Did you deposit that check?

4 A. I did deposit that check.

5 Q. And that was the same day that Mr. and  
6 Mrs. Hernandez came to your office; right?

7 A. Yes.

8 Q. So that deposit -- I understand that check  
9 didn't clear, but the deposit wouldn't be on this  
10 statement; right?

11 A. It's not on that statement, correct.

12 Q. So this bank statement is -- What kind of  
13 account is this?

14 A. That's my operating account.

15 Q. For John D. Ferrell, PLLC?

16 A. That's correct.

17 Q. And that's not a lawyer trust account?

18 A. That is correct.

19 Q. And then it shows a deposit on December 4th of  
20 \$2,000. Is that the Hernandez check?

21 A. Yes.

22 Q. And, you know, the obvious question is why did  
23 you deposit that check in this account instead of your  
24 trust account?

25 A. I had not opened up my trust account at that

Deposition of: John David Ferrell 9/18/14

1 time.

2 Q. You had no trust account at that time?

3 A. That's correct, I did not.

4 Q. So tell me, the earlier deposit, the check that  
5 didn't clear, was that deposited in this account also?

6 A. Yes.

7 MR. BULMER: We can get you that  
8 statement. I thought that the record that was in the file  
9 was attached to the statement for the account. Was I  
10 wrong?

11 MR. BUSBY: Which record? I'm not  
12 sure I follow you.

13 MR. BULMER: The record that was in  
14 the file I thought was attached to the statement from that  
15 account.

16 MR. BUSBY: I don't think so. You can  
17 look there but --

18 MR. BULMER: No, I'm sure you're  
19 looking at the right one from what I've seen. Is there an  
20 account number on there, though?

21 MR. BUSBY: There is an account  
22 number, it's not an account statement.

23 MR. BULMER: Okay, but that account  
24 number should be the same as the one you were just looking  
25 at.

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1 MR. BUSBY: Oh, yes, and you are -- I  
2 think that's the case.

3 Q. (By Mr. Busby) Okay, so it was deposited. So  
4 the first check, the one that didn't clear was deposited  
5 in the same account which is your operating account;  
6 right?

7 A. That is correct.

8 Q. And then you opened a trust account at some  
9 point?

10 A. That's correct.

11 Q. At Key Bank?

12 A. Correct, yes.

13 Q. At the same branch as this one?

14 A. Yes.

15 Q. And when did you open the trust account?

16 A. I don't have the exact date. I want to say it  
17 was later in the summer of 2012 -- or I'm sorry, 2013.

18 Q. Yeah, this would be late 2012. Okay.

19 Going back to the subpoena, were there any  
20 other funds received or disbursed in connection with the  
21 Hernandez case?

22 A. No.

23 Q. Was there a filing fee?

24 A. There was a filing fee, yes. Actually there was  
25 a -- what was it... I have to look at the court record.

Deposition of: John David Ferrell 9/18/14

1 There may have been a filing fee of \$56 to file the  
2 petition. And that would have been paid out of that  
3 operating account.

4 Q. Okay. And then item number five is the complete  
5 client file. And is this what you've provided in that  
6 box, the complete file?

7 A. That file, and then I've also provided copies of  
8 all of my email correspondence to the Bar Association in  
9 response to the grievance. And so I separately printed  
10 out correspondence and attachments in response to the  
11 initial grievance request.

12 Q. Is that all your email correspondence?

13 A. And that's all my email correspondence.

14 Q. Okay, and I know what you're talking about.

15 What is your current office address?

16 A. My current office address is -- I have a P.O.  
17 Box. It's P.O. Box 1357 in Gig Harbor, Washington, 98335.

18 Q. And is there a physical street address?

19 A. And then I'm working out of a home office, so  
20 the address is 14202 67th Avenue Northwest. And that's in  
21 Gig Harbor.

22 Q. So that is both your home and your office?

23 A. That's correct. And Zip Code 98332.

24 Q. So, as you may or may not know, we had a little  
25 trouble finding you. Is that because you moved recently?

Deposition of: John David Ferrell 9/18/14

1 A. I moved recently, right.

2 Q. When was that?

3 A. In, let's see, the 1st of August I moved. I  
4 didn't know that you had trouble finding me, actually. I  
5 thought I had updated my address with the Bar Association.

6 Q. I think we did have your P.O. Box, but we  
7 couldn't -- yeah.

8 A. Okay.

9 Q. So are you still practicing law?

10 A. I am.

11 Q. With the firm called John D. Ferrell, PLLC?

12 A. That's correct.

13 Q. And are you a sole practitioner?

14 A. My wife is also a partner.

15 Q. And your wife's name?

16 A. Wendy --

17 Q. Wendy Ferrell?

18 A. -- C. Ferrell.

19 Q. Okay. How long have you been practicing law?

20 A. I graduated from law school in 1998 and passed  
21 the bar in 1999.

22 Q. And you've been practicing since then?

23 A. Yes.

24 Q. And what is currently the nature of your  
25 practice? What area or areas do you practice in?

Deposition of: John David Ferrell 9/18/14

1 A. Family law, and then also real estate law.

2 Q. And how long have you been practicing family  
3 law?

4 A. Since 2004.

5 Q. And about what percentage of your practice since  
6 2004 has been devoted to family law?

7 A. I'd say 75 percent.

8 Q. Did you have a trust account before you  
9 opened -- you said you opened one at Key Bank in around  
10 the summer of 2013?

11 A. That's -- let's see, I opened up the trust  
12 account approximately summer of 2013. Prior to that in  
13 2004 I operated a law firm called Ferrell & Ferrell, PLLC.  
14 I operated that until approximately October of 2008. And  
15 then I'm in the United States Reserves and so in October  
16 of 2008 then I spent a year on military duty in Germany  
17 until 2009 -- until, let's see, so October of 2009. And  
18 then October of 2009 to October of 2010, then I was on  
19 active duty military in Iraq.

20 Q. So you were practicing with Ferrell & Ferrell  
21 from 2004 to 2008, and then from October 2008 to October  
22 2010 you were away from your practice on active duty?

23 A. That's correct.

24 Q. And then let's -- going back to the trust  
25 account. Well, let's see, before I go back to the trust

Deposition of: John David Ferrell 9/18/14

1 account, October of 2010, did you return to law practice?

2 A. Then I returned to law practice in 2010. I  
3 didn't have a law practice, I came home and basically hung  
4 out my shingle again.

5 Q. Before that, before you left for Germany, you  
6 had a law office somewhere?

7 A. That's correct, in Bremerton.

8 Q. So maybe I should just go through  
9 chronologically. So you came back in October 2010, hung  
10 out a shingle, and did you go back to practicing family  
11 law?

12 A. Let's see, I practiced -- I did a number of  
13 things. I did document review with a company in Bellevue,  
14 I did family law, and then also I did real estate law  
15 also.

16 Q. What was your practice like in, let's say, late  
17 2012 when Mr. and Mrs. Hernandez came to you? At that  
18 point you had an office in University Place?

19 A. That's correct, yes.

20 Q. And did you have other family law clients?

21 A. I did.

22 Q. And before you opened the trust account in  
23 summer 2013 or thereabouts, when was the last time you had  
24 a lawyer trust account?

25 A. 2008.

Deposition of: John David Ferrell 9/18/14

1 Q. So before you went to Germany?

2 A. That's correct.

3 Q. And so between 2010 and 2013, were you accepting  
4 advance fee deposits such as the one that Mr. Hernandez  
5 paid you?

6 MR. BULMER: Objection; calls for  
7 waiver of the privilege.

8 MR. BUSBY: What?

9 MR. BULMER: Objection; calls for  
10 waiver of the privilege.

11 MR. BUSBY: Which privilege?

12 A. Yes, I'm going to assert my Fifth Amendment  
13 right against self-incrimination. I may change my mind on  
14 that at a later date, I just -- I need to talk to  
15 additional counsel.

16 Q. (By Mr. Busby) Okay. Let's see. How many  
17 clients did you have in November 2013?

18 A. I'd say active clients, um, approximately 30.

19 Q. And how many of those were family law clients?

20 A. If I were to estimate, I would say 25.

21 MR. BUSBY: I'm not sure exactly what  
22 you're going to object to, so I may ask a question that  
23 you choose to object to. But I'm not sure exactly what  
24 the scope of your objection will be.

25 Q. (By Mr. Busby) So were those clients paying you

1 on an hourly basis?

2 MR. BULMER: Objection; calls for  
3 waiver of privilege.

4 And you have to answer.

5 A. And I assert my Fifth Amendment right.

6 Q. (By Mr. Busby) Okay. I just want to understand  
7 how far we're going to go with this.

8 Okay, let's look at your fee agreement in  
9 the Hernandez case.

10 [EXHIBIT NO. 5 MARKED FOR IDENTIFICATION]

11 I'm not going to go through this with you,  
12 I just want to ask you is this typical of the fee  
13 agreement you were using in late 2012?

14 A. Yes.

15 Q. In this case did you ever request an additional  
16 advance fee deposit from the Hernandezes?

17 A. No, not -- no, just the \$2,000.

18 Q. What is the balance of their account today?

19 A. That I don't know.

20 Q. Do you have any records that would tell you what  
21 it is?

22 A. I do not.

23 Q. And I mean by that not do you have any records  
24 here today, but do you have any records anywhere that  
25 would tell you what their balance is today?

Deposition of: John David Ferrell 9/18/14

1 A. I don't believe I do. I'd have to reconstruct  
2 my time.

3 Q. How would you do that?

4 A. Looking at the correspondence that I sent out to  
5 them back and forth on the file and the work that I did  
6 drafting their documents.

7 Q. And I think I asked you this before, but is it  
8 the case you didn't send any statements or invoices to the  
9 Hernandez -- to Mr. Hernandez?

10 A. I did not.

11 Q. So let's talk briefly about the course of your  
12 representation of Mr. Hernandez. I understand he came to  
13 you November 26, 2012. If that's not the case, let me  
14 know. What did he want you to do?

15 A. He wanted me to file an action to collect child  
16 support and also a petition for post-secondary education  
17 for his son. The son -- the parties' existing parenting  
18 plan had the custody for the son with the mother, but the  
19 son had been living with him for a period of time. And so  
20 he wanted then to have child support essentially flipped  
21 so that it would be going to him and not be an obligation  
22 that he would have to pay the mother. And then as the --  
23 as their child was still in high school, he wanted  
24 post-secondary education reserved so that in the event  
25 that Jeremy, the son, went to post-secondary school, then

Deposition of: John David Ferrell 9/18/14

1 they could seek to obtain compensation for that.

2 Q. So did he tell you that Jeremy was 18 at the  
3 time he came in?

4 A. He did.

5 Q. And so you filed some pleadings -- which are in  
6 that big white notebook that you brought me -- and you did  
7 that on December 20, 2012?

8 A. Yes, I understand that that's the time period I  
9 filed the initial pleadings. Yes.

10 Q. And you noted them for hearing it looks like  
11 February 19th?

12 A. That's correct, yes.

13 Q. Do you want to look at --

14 A. Sure.

15 (Documents proffered to witness.)

16 Q. But tell me, I think the pleadings are tabs 11  
17 through 17 and the note for hearing is tabs 19 and 20 --  
18 or 19 through 21.

19 A. Yes, that's correct.

20 Q. Did you send copies of the pleadings to  
21 Mr. Hernandez?

22 A. I don't recall. I believe -- well, I sent the  
23 original pleadings to him for signature, and then they  
24 sent those back to me, and then I filed them. But I don't  
25 recall now if I sent copies of the file documents to them.

Deposition of: John David Ferrell 9/18/14

1 Q. Okay. So that initial petition was dismissed.  
2 Can you just describe to me what happened? And refer to  
3 the documents if you like. It appears that something  
4 happened in court on the 21st of February 2013.

5 A. Yeah. I filed the Petition for Modification of  
6 Custody Decree Parenting Plan, slash, Residential Schedule  
7 on December 20, 2012. In conjunction with that I asked  
8 for a modification of child support. Then -- you know,  
9 and it lists there that Jeremy is 18. And then at the  
10 hearing -- or actually before the hearing it was brought  
11 to my attention that Jeremy was over the age of 18 so the  
12 parenting plan no longer applied to him. But since he was  
13 still in high school that the order of child support  
14 applied to him. So I could not proceed under a  
15 modification of the parenting plan since that had already  
16 expired.

17 Q. How did that come to your attention?

18 A. I believe that opposing counsel brought that to  
19 my attention. And then I brought -- at the time of the  
20 hearing then I brought the -- let's see, I believe the  
21 motion to dismiss. Yeah, I signed the motion to dismiss  
22 that's dated February 21st and then filed. And so then  
23 that motion, the order of dismissal then was also filed on  
24 February 21st with the commissioner.

25 Q. So it's my understanding you were seeking at

Deposition of: John David Ferrell 9/18/14

1 least two things. One, is -- or your client was seeking  
2 at least two things. One, was child support payments to  
3 be made by the mother to the father because the child was  
4 living with the father, and then there was an issue about  
5 post-secondary education support. Which at that point  
6 hadn't begun; right?

7 A. That is correct. The post-secondary had not  
8 begun.

9 Q. Because this is now early 2013 Jeremy was still  
10 in high school; right?

11 A. Correct.

12 Q. But notwithstanding that the post-secondary  
13 support might not commence yet, your position and your  
14 client's position was that he was entitled to child  
15 support payments from the date the petition was filed;  
16 right?

17 A. That's correct, yes.

18 Q. So tab 29 is a Notice of Noncompliance, and it  
19 doesn't look like there was ever a hearing. Is that  
20 because the petition was dismissed?

21 A. Well, the noncompliance order is because there  
22 was not a confirmation of service showing that we had  
23 served the opposing party, or a settlement conference had  
24 not been set by the deadline. But then the petition that  
25 was subsequently -- or dismissed on that same day.

Deposition of: John David Ferrell 9/18/14

1 Q. So that's why the notice has a reference to a  
2 hearing in the future in March sometime, and that didn't  
3 occur because the petition was dismissed?

4 A. That is correct, yes.

5 Q. So then you filed another petition in April of  
6 2013?

7 A. That is correct, yes.

8 Q. And you requested child support again?

9 A. Correct.

10 Q. And post-secondary support?

11 A. Correct.

12 Q. It looks like nothing was filed after April 1,  
13 2013; is that right?

14 A. That's correct.

15 Q. And what else did you do in the case after  
16 April 1, 2013?

17 A. After April 1st I corresponded by email with the  
18 clients to determine whether Jeremy had applied for post-  
19 secondary education. And what I had done was filed the  
20 petition before he graduated from high school, because  
21 that preserves the ability to seek post-secondary  
22 education. Because if it's filed after he graduates, then  
23 you can't ask for that. So I filed it, then asked them,  
24 you know, had Jeremy entered or applied for or been  
25 accepted to either college or a technical school. And

Deposition of: John David Ferrell 9/18/14

1 then with that information I would proceed back to the  
2 Court and say, look, we filed the petition and we want,  
3 you know, and Jeremy's now applied or been accepted for  
4 post-secondary education, here's what the costs are and  
5 here's how -- here's the proposal for how those costs  
6 should be split between mother, father, and child.

7 Q. Okay. So the petition that you filed April 1,  
8 2013, was never noted for a hearing; right?

9 A. That is correct, yes.

10 Q. And why is that?

11 A. It's been my experience that I was not able to  
12 note it for a hearing until I had some actual hard costs  
13 for the Court to consider.

14 Q. Hard costs on?

15 A. On the post-secondary education. So if I went  
16 in there and said, Judge, we want to split up post-  
17 secondary education, then the answer would be, well, you  
18 know, what are those costs? Well, I don't know that  
19 because he hasn't applied for or been accepted to any sort  
20 of post-secondary education.

21 However, let's say that he had applied to  
22 Tacoma Community College and been accepted, he would have  
23 received here's the cost for room and board -- or costs  
24 for books, here's the fees, here's the tuition. Then at  
25 that time I could go to the Court and say, here are the

Deposition of: John David Ferrell 9/18/14

1 costs associated with that and here's, you know, our  
2 proposal to split that up between the parties.

3 Q. So let me see if I understand correctly. To get  
4 post-secondary education assistance -- I'm not sure what  
5 the correct terminology is -- you have to file the  
6 petition before the child finishes high school?

7 A. That's correct. That's in the parenting plan.  
8 That was in the original parenting plan that  
9 post-secondary education costs were reserved. And, let's  
10 see, I don't know if I have his parenting plan here in the  
11 file.

12 Q. I don't think the original one is.

13 A. But the general language is it's reserved and as  
14 long as it's exercised before the child graduates from  
15 high school.

16 Q. Okay. But you might not know how much it costs  
17 at that point; right?

18 A. You generally don't know. It's been my  
19 experience that you don't know what those costs are going  
20 to be until, you know, assuming that let's say they go to  
21 school in the fall that those costs will come out more  
22 toward the summer depending when they get accepted and  
23 when those fees and so forth are set.

24 Q. Okay. But meanwhile there's also a request for  
25 child support payments which don't pertain directly to

1 post-secondary education; right?

2 A. That's correct, yes.

3 Q. And why didn't you note that up for hearing so  
4 that you could get an order increasing -- I guess actually  
5 it was zero at that -- The transfer was going from father  
6 to mother at that point, wasn't it?

7 A. Right. Right.

8 Q. I mean, according to the orders.

9 A. Right.

10 Q. Okay. Why didn't you note it up for hearing to  
11 try to get an order for child support transfer from mother  
12 to father?

13 A. What I would have done in the motion before the  
14 Court then if, you know, assuming that post-secondary  
15 education would start there in the fall, I'd say, look,  
16 you know, Judge, in the judicial economy these are people  
17 with limited means, rather than doing two hearings we're  
18 going to do the post-secondary education hearing, and then  
19 also ask for back support from the time that the petition  
20 was filed, and say we would want credit for that from that  
21 time also.

22 Q. So in that case you'd be asking the mother to  
23 pay -- if you did that in September, you'd be asking her  
24 to pay support beginning April 1st?

25 A. That's correct, yes.

Deposition of: John David Ferrell 9/18/14

1 Q. There was some correspondence between your  
2 attorney and Mr. and Mrs. Hernandez about a refund  
3 possibility, or possibly continuing the representation or  
4 not. Have you resolved that?

5 A. I have not resolved that with them yet.

6 Q. Do you know which correspondence I'm referring  
7 to? There's a letter from Mr. Bulmer to Mr. and  
8 Mrs. Hernandez, and then there's a subsequent letter from  
9 Randy Hernandez to Mr. Bulmer.

10 A. I understand that, yes.

11 Q. So has it been determined between you whether  
12 there will be a refund or a continuation of the  
13 representation?

14 A. I have not discussed it with them.

15 Q. So no refund has been made?

16 A. No refund's been made, right.

17 Q. And at this point then would you say that you  
18 represent Mr. Hernandez or not?

19 A. Well, I would say I have not talked to him, but  
20 I would like to get the case resolved for him and get --  
21 What I don't know yet is whether Jeremy has entered  
22 post-secondary school now and whether funds are due to  
23 him. But I would like to get the issue of the child  
24 support resolved.

25 Q. Do you have any idea of the number of family law

1 clients you've had between October 2008 and the summer of  
2 2013?

3 MR. BULMER: Objection; calls for  
4 waiver of privilege.

5 A. And I object on the Fifth Amendment grounds.

6 Q. (By Mr. Busby) I think that's all the questions  
7 I have. Would you like to make any additions or  
8 corrections to statements that you've made or to clarify  
9 matters we've discussed?

10 A. Um... no, I think that, you know, I've covered  
11 the time from before and the 2004 to 2008, then I was on  
12 active duty at the time from 2009 to -- or 2008 to 2010.

13 In that time period also while I was in  
14 Iraq my wife was diagnosed with cancer. And then while I  
15 was in Iraq then she had a double mastectomy and then  
16 follow-on chemotherapy while I was in Iraq. And then when  
17 I returned during that initial time period, then she went  
18 through a reconstruction. And then it was in -- and so  
19 that took, I'd say, probably about a year or so with  
20 reconstruction and recovery and so forth on that.

21 That's just kind of a background of, you  
22 know, what happened with my deployment and the follow-on.

23 Q. Tell me about your current practices, your  
24 practices since summer 2013 since you opened the trust  
25 account. How do you use it? What do you do with it, the

Deposition of: John David Ferrell 9/18/14

1 trust account?

2 A. Let's see, client funds are deposited and then  
3 they're withdrawn also.

4 Q. So if you get a case like Hernandez, he comes in  
5 with a -- you've seen the fee agreement, he comes in with  
6 a \$2,000 advance fee deposit, what do you do with it?

7 A. Deposit it in the trust account.

8 Q. And then what about withdrawals, how do you make  
9 withdrawals?

10 A. That I would assert my Fifth Amendment right  
11 also.

12 Q. Do you currently send a billing to the client  
13 before you withdraw client funds from the trust account?

14 MR. BULMER: Objection; calls for  
15 waiver of the privilege.

16 A. And the Fifth Amendment privilege I reserve.

17 Q. (By Mr. Busby) Okay. Any other additions or  
18 clarifications?

19 A. No.

20 MR. BUSBY: Okay, no further questions  
21 at this time. And we may need to request some more  
22 documents or pose some additional questions to you. We'll  
23 let your lawyer know if that's the case.

24 THE WITNESS: Okay, thank you.

25 MR. BUSBY: Thanks.

Deposition of: John David Ferrell 9/18/14

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(Deposition concluded at 2:00 p.m.)  
(5 Exhibits were marked.)  
(Signature was not waived.)



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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the annexed and foregoing deposition consisting of Page 1 through 28 of the testimony of each witness named herein was taken stenographically before me and reduced to a typed format under my direction;

I further certify that according to CR 30(e) the witness was given the opportunity to examine, read and sign the deposition after the same was transcribed, unless indicated in the record that the review was waived;

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking the deposition or to the conduct of any party have been noted by me upon each said deposition;

I further certify that I am not a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

I further certify that each witness before

Deposition of: John David Ferrell 9/18/14

1 examination was by me duly sworn to testify the truth, the  
2 whole truth and nothing but the truth;

3 I further certify that the deposition, as  
4 transcribed, is a full, true and correct transcript of the  
5 testimony, including questions and answers, and all  
6 objections, motions and exceptions of counsel made and  
7 taken at the time of the foregoing examination and was  
8 prepared pursuant to Washington Administrative Code  
9 308-14-135, the transcript preparation format guideline;

10 I further certify that I am sealing the  
11 deposition in an envelope with the title of the above  
12 cause and the name of the witness visible, and I am  
13 delivering the same to the appropriate authority;

14 I further advise you that as a matter of firm  
15 policy, the Stenographic notes of this transcript will be  
16 destroyed three years from the date appearing on this  
17 Certificate unless notice is received otherwise from any  
18 party or counsel hereto on or before said date;

19 IN WITNESS WHEREOF, I have hereunto set my hand  
20 and affixed my Washington State CCR Seal this 22nd day of  
21 September, 2014.

22  
23 Lori A. Thompson, CCR  
24 Washington State Certified Court Reporter  
25 WA CCR No. 2606  
License in effect until July 4, 2015  
Residing at Gig Harbor, Washington

# APPENDIX B



WSBA

OFFICE OF DISCIPLINARY COUNSEL



Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
fax: 206-727-8325  
email: scottb@wsba.org

June 11, 2014

ADDITIONAL REQUEST FOR RESPONSE TO GRIEVANCE

Kurt M. Bulmer  
Attorney at Law  
740 Belmont Pl E Apt 3  
Seattle, WA 98102-4442

Re: Grievance of Randolph A. Hernandez against John D. Ferrell  
ODC File No. 14-00220

Dear Mr. Bulmer:

We are requesting that you provide additional information regarding this grievance. Please retain all records, files and accounts related to the grievance until this matter is concluded.

You are free to provide any documents or information you believe to be relevant, but we ask that you provide the following documents:

1. Copies of all fee agreements with the grievant;
2. Copies of all billing statements, invoices, letters, e-mails or other documents sent to the grievant reflecting a request for payment or an intent to withdraw earned fees;
3. Copies of all financial records (trust-account records, general-account records and/or personal-account records), including account and client ledgers, deposit slips, check registers, checks, and bank statements, relating to funds received or disbursed in connection with the grievant;
4. Copies of all invoices, accountings, or other documents sent to the grievant indicating the receipt, holding or disbursement of funds received in connection with the grievant.
5. A copy of the complete client file(s) for the grievant.

If there are no existing documents responsive to one or more of these requests, please so state.

If your client does not respond to this request within thirty (30) days from the date of this letter, we will take additional action under ELC 5.3(h) to compel a response.

Kurt M. Bulmer  
June 11, 2014  
Page 2 of 2

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Sincerely,



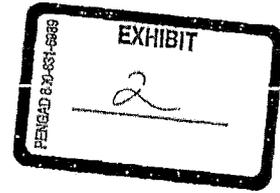
Scott G. Busby  
Senior Disciplinary Counsel

cc: Randolph A. Hernandez



WSBA

OFFICE OF DISCIPLINARY COUNSEL



Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
email: scottb@wsba.org

July 16, 2014

Kurt M. Bulmer  
Attorney at Law  
740 Belmont Pl E Apt 3  
Seattle, WA 98102-4442

Re: Grievance of Randolph A. Hernandez against John David Ferrell  
ODC File No. 14-00220

Dear Mr. Bulmer:

On June 11, 2014, and again on June 23, 2014, we sent you a request (enclosed) for certain documents and information related to the above referenced grievance. To the best of my knowledge, your client's response, which is required by Rule 5.3(f) of the Rules for Enforcement of Lawyer Conduct (ELC), has not been received.

Under ELC 5.3(h), your client must provide the requested documents and information within ten days of this letter, *i.e.*, on or before July 29, 2014. If we do not receive the requested documents and information within the ten-day period, we will subpoena your client for a deposition. If we must serve a subpoena, your client will be liable for the costs of the deposition, including service of process, and attorney fees of \$500.

Your client should be aware that failing to respond is, in itself, grounds for discipline and may subject your client to interim suspension under ELC 7.2(a)(3).

Sincerely,

Handwritten signature of Scott G. Busby in blue ink.

Scott G. Busby  
Senior Disciplinary Counsel

cc: Randolph A. Hernandez



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
fax: 206-727-8325  
email: scottb@wsba.org

June 11, 2014

### ADDITIONAL REQUEST FOR RESPONSE TO GRIEVANCE

Kurt M. Bulmer  
Attorney at Law  
740 Belmont Pl E Apt 3  
Seattle, WA 98102-4442

Re: Grievance of Randolph A. Hernandez against John D. Ferrell  
ODC File No. 14-00220

Dear Mr. Bulmer:

We are requesting that you provide additional information regarding this grievance. Please retain all records, files and accounts related to the grievance until this matter is concluded.

You are free to provide any documents or information you believe to be relevant, but we ask that you provide the following documents:

1. Copies of all fee agreements with the grievant;
2. Copies of all billing statements, invoices, letters, e-mails or other documents sent to the grievant reflecting a request for payment or an intent to withdraw earned fees;
3. Copies of all financial records (trust-account records, general-account records and/or personal-account records), including account and client ledgers, deposit slips, check registers, checks, and bank statements, relating to funds received or disbursed in connection with the grievant;
4. Copies of all invoices, accountings, or other documents sent to the grievant indicating the receipt, holding or disbursement of funds received in connection with the grievant.
5. A copy of the complete client file(s) for the grievant.

If there are no existing documents responsive to one or more of these requests, please so state.

If your client does not respond to this request within thirty (30) days from the date of this letter, we will take additional action under ELC 5.3(h) to compel a response.

Kurt M. Bulmer  
June 11, 2014  
Page 2 of 2

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Sincerely,



Scott G. Busby  
Senior Disciplinary Counsel

cc: Randolph A. Hernandez



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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
John David Ferrell,  
Lawyer (Bar No. 28922).

ODC File No. 14-00220  
SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON TO: John David Ferrell

YOU ARE HEREBY COMMANDED under Rule 5.3(h) of the Rules for Enforcement of Lawyer Conduct (ELC) to be and appear at the Washington State Bar Association offices, 1325 4<sup>th</sup> Avenue, Suite 600, Seattle, WA 98101, on September 16, 2014 at 1:30 p.m. to testify in investigatory proceedings being conducted by the Office of Disciplinary Counsel of the Washington State Bar Association. The testimony will be recorded by a certified court reporter.

YOU ARE FURTHER COMMANDED to bring the following with you at the above time:

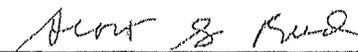
1. Copies of all fee agreements with the grievant (Randolph A. Hernandez);
2. Copies of all billing statements, invoices, letters, e-mails or other documents sent to the grievant reflecting a request for payment or an intent to withdraw earned fees;
3. Copies of all financial records (trust-account records, general-account records)

1 and/or personal-account records), including account and client ledgers, deposit slips, check  
2 registers, checks, and bank statements, relating to funds received or disbursed in connection  
3 with the grievant;

4 4. Copies of all invoices, accountings, or other documents sent to the grievant  
5 indicating the receipt, holding or disbursement of funds received in connection with the grievant.

6 5. A copy of the complete client file(s) for the grievant.

7 Dated this 26th day of August, 2014.

8  
9   
10 Scott G. Busby, Bar No. 17522  
Senior Disciplinary Counsel

11 CR 45 Sections (c) and (d):

12 (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

13 (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

14 (B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

17 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (c)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

19 (iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

20 (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

22 (d) Duties in Responding to Subpoena.

23 (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

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(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

# APPENDIX C

## FEE AGREEMENT

I want you, the client, to understand the basis of my fees and my method of billing. My experience has shown that unless there is a clear understanding of these matters at the beginning, there are likely to be problems later.

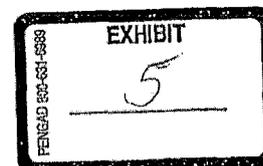
I charge on the basis of time spent, either in person or by telephone. The actual cost of your case will vary depending upon a number of factors, including the complexity of the legal issues, the amount of pretrial discovery and whether or not the matter actually goes to trial. Most importantly, the total cost will depend upon the agreements that can be reached between the parties.

I want to provide you with competent, efficient legal services, and I am confident of my ability to do so. I cannot, however, afford to work for you if you fail in your responsibility to pay my fees and costs.

If you have any questions about fees, costs or billing procedures, please do not hesitate to discuss them with me or my legal assistant.

Randolph Hernandez, (hereafter "client"), agrees to retain ATTORNEY, (hereafter "attorney"), to represent client's interests in a **FAMILY LAW** matter under the following terms and conditions:

1. **PLEDGE OF ATTORNEY:** Attorney will devote his full professional abilities to the case and client agrees to cooperate with attorney. Neither attorney nor client will settle the case without the other's express approval.
2. **COSTS:** As used in this agreement, the term "costs" shall mean any expense to investigate, prepare and try the case, other than a fee for attorney's services. Examples of costs include but are not limited to, filing fees, service of process, expenses for depositions and other forms of pre-trial discovery, appraisals, expert and lay witness fees, and long distance phone calls. Attorney agrees not to commit client to more than \$300.00 costs without obtaining authorization from client. Client shall pay all costs as they are incurred.
3. **ATTORNEY'S FEE:** ATTORNEY will be the attorney responsible for client's case. Client will pay attorney for all services rendered at attorney's regular hourly rate on



the date services are performed. Attorney's current hourly rate is \$112.50 per hour. Paralegal services, even if performed by an attorney is charged at a rate of \$50.00 per hour.

4. **SERVICES PERFORMED:** Services performed may include any of the following, depending upon the nature of the case:

- a. Client interview
- b. Correspondence
- c. Telephone calls - which are billed at the normal hourly rates with a minimum charge of 2/10th hour per call
- d. Negotiating
- e. Preparation of pleadings and other documents
- f. Attendance at depositions
- g. Interrogatories - preparation, review and answering
- h. Legal research and preparation of brief(s)
- i. Witness interviews
- j. Investigation and retainer of experts
- k. Pre-trial preparation
- l. Court appearances, both contested and uncontested. A minimum of \$250.00 is charged for any contested court hearing.
- m. Travel to/from locations and court appearance.
- n. Review and preparation of e-mail.

5. **PAYMENT OF COSTS AND FEES:** Client shall pay attorney for costs and fees incurred as provided below:

- a. **Advance Fee Deposit:** Before attorney commences services, client shall pay an advance fee deposit of \$ 2000.00, on or before November 26, 2012.

The attorney will charge his time against the retainer noted above. If the case is settled prior to exhaustion of the advance fee deposit, the balance will be refunded.

If the advance fee deposit drops below \$500, the client hereby agrees to provide the attorney with an additional advance fee deposit as requested from the attorney. If the client does not pay the additional advance fee deposit within twenty (20) days from the attorney's request for such payment, attorney will cease to do further work on the case and withdraw from the case until such time as the additional advance fee deposit is paid.

If this case does not settle at or prior to a settlement conference, an additional advance fee deposit in an amount to be determined by the

attorney must be paid within 20 days from the date of the settlement conference, otherwise the attorney will cease to do further work on the case and withdraw from the case until such time as the additional advance fee deposit is paid.

The client will receive a monthly statement indicating charges and the balance in the advance fee deposit account.

- b. **Trial Advance Fee Deposit:** Sixty (60) days prior to trial, client shall pay an additional advance fee deposit of \$4,000.00 per scheduled trial day.
- d. **Unpaid Account Balances:** Unpaid balances shall bear interest at the rate of 1% per month until paid.

6. **REPRESENTATIONS:** Client agrees that attorney has made no promises or guarantees regarding the outcome of client's case. Client acknowledges being advised of the hazards and unpredictability of court decisions. Opinions may be rendered as to the probability of success or failure in this matter, but such opinions are not a guarantee of results.

7. **ASSIGNMENT:** Client authorizes attorney to act for client in client's name, including receiving money or property to which client is entitled. Client irrevocably assigns to attorney such money or property held by attorney as is necessary to satisfy amounts owed to attorney in this or any other matter between attorney and client.

8. **COLLECTION:** Should any suit be filed for collection of a delinquent balance, it may be filed in any court of competent jurisdiction in Pierce County, Washington. Client submits to the jurisdiction and venue of that court and agrees to pay payment of actual attorney fees and costs of collection, in addition to the delinquent balance, with interest.

9. **FEE DISPUTES:** Any outstanding principal balance shall carry an interest rate of one percent (1%) per month until paid. Should suit be filed for collection of any delinquent balance, the suit, at the option of the attorney, may be filed in Pierce County, Washington, and client submits to the jurisdiction of that Court and client shall be responsible for all attorney's fees and costs incurred in any collection proceeding in addition to the delinquent balance and interest.

10. **TERMINATION:** Either client or attorney may terminate this agreement at any time, provided that client shall immediately pay all costs and fees due and owing at the date services are terminated.

11. CREDIT CARDS: Client acknowledges that Attorney is not allowed to accept a credit card payment for attorney's fees from a client who intends to list such payment of fees on a credit card as a debt in a bankruptcy proceeding.

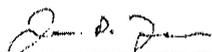
12. E-MAIL COMMUNICATION AUTHORIZATION: Attorney has found that communications with our clients, opposing counsel and others are greatly facilitated by the use of e-mails via the Internet. Unfortunately, we cannot rule out the interception of information contained in e-mails by those misusing the resources of the Internet. Using e-mail communication therefore poses some risk. Accordingly, in order for me to utilize the Internet for e-mail communication in connection with your case, we require that each client specifically authorize us to do so. Client will provide Attorney with a reliable and secure private e-mail address in order to facilitate the transfers of documents and communication.

 I approve the use of e-mail communication by Attorney and its attorneys and staff in connection with their representation of me.

13. FULL AGREEMENT: This agreement constitutes the entire fee and representation agreement between attorney and client. Any changes or modifications must be in writing and mutually signed. In signing, attorney and client acknowledge that they have read and understood the terms of this agreement and agree to abide by its terms.

DATED this 26<sup>th</sup> day of November, 2012.

ATTORNEY:

  
\_\_\_\_\_  
John D. Ferrell

DATED this 26<sup>th</sup> day of November, 2012.

CLIENT:

  
\_\_\_\_\_  
Signature  
Randolph A. Hernandez  
\_\_\_\_\_  
Print Name

# APPENDIX D



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998

fax: (206) 727-8325

email: [scottb@wsba.org](mailto:scottb@wsba.org)

November 19, 2014

REQUEST FOR RESPONSE TO GRIEVANCE

John D. Ferrell  
PO Box 1357  
Gig Harbor, WA 98335-3357

Re: Grievance of ODC against John D. Ferrell  
ODC File No. 14-01810

Dear Mr. Ferrell:

The Office of Disciplinary Counsel is authorized to investigate a grievance against a lawyer to determine whether the lawyer's conduct should have an impact on his license to practice law. We have opened a grievance file against you, with the file number indicated above, based on your September 18, 2014, deposition testimony and on the records and information received in the investigation of ODC File No. 14-00220 (the grievance by Randolph A. Hernandez). Among other things, you testified that you did not maintain a trust account during a period of time when your typical fee agreement provided for an advance fee deposit. Based on the aforementioned testimony, records, and information, it appears that you may not have been safeguarding client property in accordance with RPC 1.15A during the period between 2010 and the present.

We are requesting your response. Please retain all records, files and accounts related to the grievance until this matter is concluded. You are free to provide any information you believe is relevant, but we ask that you provide the following records:

1. Your complete trust account records for any and all trust accounts, including KeyBank account # [REDACTED] 8540, for the period beginning January 1, 2012, through September 30, 2014, including but not limited to:
  - a) any and all bank statements;
  - b) copies (front and back) of all checks written on the account during this period, including cancelled checks and checks returned for insufficient funds;
  - c) copies of all other withdrawals from the account, including but not limited to cash withdrawals and wire transfers;

- d) copies of all deposit slips and copies of all deposited items (front and back), including deposited items that did not clear;
  - e) any and all client ledgers;
  - f) check register;
  - g) reconciliations between the bank statements and the check register and reconciliations between the check register and the client ledgers; and
  - h) if you use Quickbooks or Quicken for your account recordkeeping, a backup or portable company file for the Quickbooks file that contains your account records, including any passwords required to access the file.
2. Your complete records for any and all law firm operating accounts, including KeyBank account # [REDACTED] 8334, for the period beginning January 1, 2012, through September 30, 2014, including but not limited to:
- a) any and all bank statements;
  - b) copies (front and back) of all checks written on the account during this period, including cancelled checks and checks returned for insufficient funds;
  - c) copies of all other withdrawals from the account, including but not limited to cash withdrawals and wire transfers;
  - d) copies of all deposit slips and copies of all deposited items (front and back), including deposited items that did not clear;
  - e) check register; and
  - f) if you use Quickbooks or Quicken for your account recordkeeping, a backup or portable company file for the Quickbooks file that contains your account records, including any passwords required to access the file.
3. Copies of any and all fee agreements related to funds received during the time period beginning January 1, 2012, through September 30, 2014.
4. Copies of any and all billing statements, invoices, and other documents reflecting fees earned or costs incurred that were prepared and/or sent during the time period beginning January 1, 2012, through September 30, 2014.
5. Copies of any and all settlement statements related to funds received during the time period beginning January 1, 2012, through September 30, 2014.

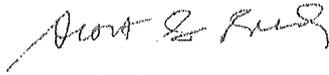
The grievance process is governed by the Rules for Enforcement of Lawyer Conduct (ELC). ELC 5.3 sets out the obligations of respondent lawyers, including the duty to promptly file a

John D. Ferrell  
November 19, 2014  
Page 3 of 3

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written response and to furnish copies of requested records. If you do not furnish copies of the requested records within **thirty (30) days** from the date of this letter, we will take additional action under ELC 5.3(h) to compel your response.

Sincerely,



Scott G. Busby  
Senior Disciplinary Counsel

1 12 2014

U.S. Postal Service™

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Sent To

John D. Farrell

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or PO Box No.

PO Box 1357

City, State, ZIP+4

Gig Harbor WA 98335-3357

PS Form 3800, August 2006

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Washington State Bar Association  
1325 Fourth Avenue, Ste 600  
Seattle, WA 98101-2539

SB 14-01810

SB 14-01810

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John D. Ferrell  
PO Box 1357  
Gig Harbor, WA 98335

2. Article Number  
(Transfer from service label)

7012 2920 0000 5949 5720

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *J.D.F.*  Agent  Addressee

B. Received by (Printed Name) *John Ferrell* C. Date of Delivery *12-11-14*

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

# APPENDIX E



# WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
email: scottb@wsba.org

January 14, 2015

John D. Ferrell  
John D. Ferrell, PLLC  
PO Box 1357  
Gig Harbor, WA 98335-3357

Re: Grievance of ODC against John D. Ferrell  
ODC File No. 14-01810

Dear Mr. Ferrell:

On November 18 and 19, 2014, we asked you to provide certain records related to the above referenced grievance. To the best of my knowledge, your response, which is required by Rule 5.3(f) of the Rules for Enforcement of Lawyer Conduct (ELC), has not been received.

Under ELC 5.3(h), you must provide the requested documents within ten days of the date of this letter, i.e., on or before January 27, 2014. If we do not receive your response within the ten-day period, we will subpoena you for a deposition. If we must serve a subpoena, you will be liable for the costs of the deposition, including service of process, and attorney fees of \$500.

You should be aware that failing to cooperate fully and promptly with an investigation is grounds for discipline, and may subject you to interim suspension under ELC 7.2(a)(3).

Sincerely,

A handwritten signature in cursive script that reads "Scott G. Busby".

Scott G. Busby  
Senior Disciplinary Counsel



**WSBA**  
Washington State Bar  
1125 4th Avenue, Suite 600  
Seattle, WA 98101-2530

**CERTIFIED MAIL**



7012 2920 0000 5949 5973

JOHN D FERRELL  
ATTORNEY AT LAW  
PO BOX 1357  
GIG HARBOR WA 98335-3357



# WSBA

OFFICE OF DISCIPLINARY COUNSEL

Scott G. Busby  
Senior Disciplinary Counsel

direct line: (206) 733-5998  
email: scottb@wsba.org

January 14, 2015

John D. Ferrell  
John D. Ferrell, PLLC  
PO Box 1357  
Gig Harbor, WA 98335-3357

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ODC File No. 14-01810

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Sincerely,

A handwritten signature in cursive script that reads "Scott G. Busby".

Scott G. Busby  
Senior Disciplinary Counsel



WSBA

Washington State Bar Association

1325 4th Avenue, Suite 600

Seattle, WA 98101-2539

JOHN D FERRELL  
ATTORNEY AT LAW  
PO BOX 1357  
GIG HARBOR WA 98335-3357