

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 21-38 & 21-59  
)  
MICAH D. FARGEY, )  
)  
Respondent. )

Counsel for the Bar: Courtney C. Dippel

Counsel for the Respondent: None

Disciplinary Board: Mark A. Turner, Adjudicator  
Honorable Jill A. Tanner  
Karina M. Grigorian, Public Member

Disposition: Violation of RPC 1.3, RPC 1.15-1(a), 1.15-1(c), 1.15-1(d),  
RPC 1.16(d), RPC 8.1(a)(2), RPC 8.4(a)(2), RPC 8.4(a)(3),  
and RPC 8.4(a)(4). Trial Panel Opinion. Disbarment.

Effective Date of Opinion: April 12, 2022

**TRIAL PANEL OPINION**

The Oregon State Bar (Bar) charged Micah D. Fargey with 11 violations involving multiple Rules of Professional Conduct (RPC). The charges include: knowing conversion of client funds; committing criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer; failing to maintain client funds in trust; failing to return client property and refund unearned fees; neglect of a legal matter; and failing to respond to requests for information from a disciplinary authority. The Bar asked us to disbar Respondent.

Respondent failed to file an answer in this proceeding and is in default. As discussed below, we find that the charges are supported by the allegations in the amended formal complaint. We further find that the appropriate sanction in this case is disbarment.

**PROCEDURAL POSTURE**

The Bar filed the formal complaint against Respondent on September 21, 2021 and an amended formal complaint against him on September 22, 2021. The Bar moved for an order

allowing service by publication on November 3, 2021, which was granted on November 4, 2021. The Bar filed a Notice of Completion of Service by Publication on December 20, 2021, and filed a motion for default on January 4, 2022.

The motion for default was granted on January 6, 2022. The Bar also moved for an interim suspension under BR 3.1 based on Respondent's acts of conversion of client funds. Respondent failed to respond to the BR 3.1 petition. An interim suspension under BR 3.1 was granted by order dated January 6, 2022 and remains in effect.

When a respondent is in default, the Bar's factual allegations are deemed to be true. See BR 5.8(a); *In re Magar*, 337 Or 548, 551-53, 100 P3d 727 (2004). We now must determine whether the facts pleaded establish the rule violations alleged and, if so, what sanction is appropriate. See *In re Koch*, 345 Or 444, 455, 198 P3d 910 (2008). In assessing whether the charges are established we are limited to considering only the facts alleged in the amended formal complaint. When determining the appropriate sanction, we may consider additional evidence.

## **ANALYSIS OF THE CHARGES**

### **A. David Peterson Matter (Case No. 21-58) – First Cause of Complaint**

The Bar alleges that Respondent neglected a legal matter in violation of RPC 1.3; failed to hold his client's property separate from his own property in violation of RPC 1.15-1(a); failed to maintain client funds in his trust account until they were earned or expenses were incurred in violation of RPC 1.15-1(c); committed a criminal act (theft) that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of RPC 8.4(a)(2); and knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on his fitness to practice law, including the knowing conversion of client funds, in violation of RPC 8.4(a)(3).

### **Facts**

On August 14, 2020, Respondent agreed to represent David Peterson (Peterson) in an employment matter. Peterson paid Respondent \$5,000 by check to be used exclusively for litigation costs. ¶ 6. <sup>1</sup> On August 17, 2020, Respondent deposited Peterson's check into his trust account. ¶ 7. At all relevant times, Respondent had custody and control over his lawyer trust account maintained at Wells Fargo Bank. ¶ 3.

On August 18, 2020, Respondent transferred \$3,500 of Peterson's funds to his personal bank account without having earned them, with the intent to deprive Peterson of the funds, and knowingly converted those funds to his own use. ¶ 9. On or before September 21, 2020, Respondent transferred the remaining \$1,500 of Peterson's funds to his personal bank account

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<sup>1</sup> Paragraph citations are to the amended formal complaint.

without having earned them, with the intent to deprive Peterson of the funds, and knowingly converted those funds to his own use. ¶ 10.

Between August 14, 2020 and December 1, 2020, when Peterson terminated Respondent's representation, Respondent failed to perform any substantial work on Peterson's behalf and did not incur any litigation costs in Peterson's matter. ¶ 8.

### **Respondent Neglected Peterson's Legal Matter in Violation of RPC 1.3.**

RPC 1.3 states: "A lawyer shall not neglect a legal matter entrusted to the lawyer."

Neglect is the failure to act or the failure to act diligently over a period of time when action is required. In order to establish a violation of that rule, the allegations must show a course of neglectful conduct, not an isolated instance of negligence. *In re Jackson*, 347 Or 426, 435, 223 P3d 387 (2009); *In re Magar*, 335 Or 306, 321, 66 P3d 1014 (2003) (discussing former DR 6-101(B)). Neglect has been found after only two months of inattention to a matter. *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999). A lawyer's failure to take action, after being retained by a client for legal services, constitutes neglect. *See, e.g., In re Biggs*, 318 Or 281, 294, 864 P2d 1310 (1994) (finding that a lawyer neglected the cases he undertook for 17 different clients during a seven-month period for which he did not perform the services for which he was retained).

Respondent failed to take any constructive action for approximately three-and-a-half months after being hired by Peterson. This complete failure to act constitutes neglect in violation of RPC 1.3.

### **Respondent Violated RPC 8.4(a)(3) by Engaging in Conduct Involving Dishonesty That Reflects Adversely on His Fitness to Practice When He Knowingly Converted His Client's Funds.**

RPC 8.4(a)(3) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law."

When an attorney knowingly converts clients funds, the attorney engages in dishonesty in violation of RPC 8.4(a)(3). *In re Webb*, 363 Or 42, 50, 418 P3d 2 (2018); *In re Martin*, 328 Or 177, 186, 970 P2d 638 (1998). Conversion is the "intentional exercise of dominion or control over a chattel which so seriously interferes with the rights of another to control it that the actor may justly be required to pay the other the full value of the chattel." *In re Martin*, 328 Or at 184. "Knowing" is defined as actual knowledge of the fact in question, but knowledge can be inferred from the circumstances. RPC 1.0(h).

Respondent knowingly converted Peterson's funds when he took \$3,500 of Peterson's funds from his trust account for his personal use the day after he deposited the funds, and took the remainder of the funds by September 21, 2020. Respondent did not incur any costs

requiring reimbursement in Peterson's matter. Respondent did not have any right to any of Peterson's funds and knew that he did not have a right to any of the funds at the time he removed the funds from his trust account. Respondent violated RPC 8.4(a)(3).

**Respondent Violated RPC 8.4(a)(2) When He Engaged in Criminal Conduct Reflecting Adversely on His Fitness to Practice Law.**

RPC 8.4(a)(2) provides: "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, truthfulness or fitness as a lawyer in other respects."

In order to establish a violation of RPC 8.4(a)(2), a criminal conviction is not required, but the Bar must allege facts that establish that Respondent committed a criminal act. *In re Hassenstab*, 325 Or 166, 176, 934 P2d 166 (1997). The Bar must also allege facts showing some rational connection, other than the criminality of the act itself, between the conduct and the lawyer's fitness to practice law. *In re White*, 311 Or 573, 589, 815 P2d 1257 (1991). *In re White* instructs us to consider whether the potentially criminal act adversely reflected on a respondent's honesty, trustworthiness, or fitness to practice law. *Id.* Relevant factors under *White* include the lawyer's mental state; the extent to which the criminal act demonstrates disrespect for the law or law enforcement; the presence or absence of a victim; the extent of actual or potential injury to a victim; and the presence or absence of a pattern of criminal conduct. *Id.*

When these acts occurred ORS § 164.015 provided:

"A person commits theft when, with the intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner thereof."

As well, ORS § 164.055(1)(a), provided:

"A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS §164.015 and the total value of the property in a single or aggregate transaction is \$1,000 or more."

Theft in the first degree is a Class C felony. ORS § 164.055(3).

We have found that Respondent knowingly converted Peterson's funds for his own personal use. In so doing, Respondent is guilty of the crime of theft in violation of ORS 164.055. The Oregon Supreme Court has found that theft under ORS § 164.015(1) is a criminal act which reflects adversely on a lawyer's fitness to practice law and therefore violates RPC 8.4(a)(2). See *In re Anson*, 302 Or 446, 454, 730 P2d 1229 (1986).

Respondent violated RPC 8.4(a)(2).

**Respondent Violated RPC 1.15-1(a) by Failing to Safeguard His Client’s Property in Trust.**

RPC 1.15-1(a) provides:

“A lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate “Lawyer Trust Account” maintained in the jurisdiction where the lawyer’s office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.”

Attorneys are required to safeguard and hold separate from their own property client funds in their possession. An attorney who withdraws funds belonging to clients from a trust account before they are earned violates RPC 1.15-1(a). *In re Biggs*, 318 Or at 293.

By converting Peterson’s funds to his own use between August 18, 2020 and September 21, 2020, Respondent failed to safeguard client property in violation of RPC 1.15-1(a).

**Respondent Violated RPC 1.15-1(c) When He Withdrew Client Funds From His Trust Account.**

RPC 1.15-1(c) states:

“A lawyer shall deposit into a lawyer 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, unless the fee is denominated as “earned on receipt,” “nonrefundable” or similar terms and complies with Rule 1.5(c)(3).”

Attorneys must keep client funds paid in advance in their trust account until the fees are earned or costs have been incurred. Respondent failed to do so here and violated RPC 1.15 -1(c).

**B. David Peterson Matter – Second Cause of Complaint**

In this cause, the Bar alleges that Respondent failed to promptly deliver funds or other property that his client was entitled to receive in violation of RPC 1.15-1(d), and failed to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation in violation of RPC 1.16(d).

## Facts

On August 3, 2020, Peterson provided Respondent with documents relevant to his legal matter. ¶ 14. On December 1, 2020, when Peterson terminated Respondent, he requested that Respondent refund unearned funds and return his documents. Respondent failed to deliver either one to his client. ¶ 15.

### **Respondent Violated RPC 1.15-1(d) When He Failed to Promptly Deliver Funds His Client Was Entitled to Receive.**

RPC 1.15-1(d) states:

“Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”

RPC 1.15-1(d) requires attorneys to promptly deliver funds or other property to the client that the client is entitled to receive. “Property” here includes client files. *In re Kneeland*, 281 Or 317, 319, 574 P2d 324 (1978). The Supreme Court has found that an attorney violated RPC 1.15-1(d) when his client requested his file materials and the lawyer failed to provide them until eight months had passed and his client had filed a Bar complaint. *In re Snyder*, 348 Or 307, 315, 232 P3d 952 (2010).

Respondent’s complete failure to refund the money or deliver the requested documents to his client violated RPC 1.15-1(d).

### **Respondent Violated RPC 1.16(d) When He Failed to Deliver Requested Documents and Funds to His Client.**

RPC 1.16(d) states:

“Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.”

RPC 1.16(d) requires attorneys to return client property upon termination. For the reasons described in the preceding section, Respondent also violated RPC 1.16(d).

### **C. David Peterson Matter – Third Cause of Complaint**

In the third cause of complaint, the Bar charges Respondent with knowingly failing to respond to requests for information from Disciplinary Counsel's Office (DCO) in connection with Peterson's grievance, in violation of RPC 8.1(a)(2).

#### **Facts**

On February 11, 2021, DCO received a grievance from Peterson about Respondent's conduct. By letter dated March 9, 2021, DCO requested Respondent's response to Peterson's grievance. The letter was addressed to Respondent at the address then on record with the Bar (record address) and was sent by first class mail. The letter was also sent to Respondent at the email address then on record with the Bar (record email address). The email and letter were not returned undelivered. Respondent did not respond. ¶ 18.

By letter dated April 2, 2021, DCO again requested Respondent's response to Peterson's grievance. The letter was sent to Respondent's record address by both first class and certified mail, return receipt requested. The letter was also sent to Respondent's record email address. DCO never received the signed certified mail receipt back from Respondent or anyone at his firm. Neither the letter sent by first class mail nor the letter sent to Respondent's record email address was returned as undeliverable. ¶ 19.

In early April 2021, DCO learned of a home address for Respondent. By letter dated April 14, 2021, DCO again requested Respondent's response to Peterson's grievance by mailing a letter to Respondent at his home address. The letter was sent by both first class and certified mail, return receipt requested. DCO never received the signed certified mail receipt back from Respondent or anyone else at his home address. The letter sent by first class mail was not returned as undeliverable. ¶ 20.

On April 23, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent's immediate suspension from the practice of law for his failure to respond to DCO. The petition was sent to Respondent by first class mail addressed to Respondent at his record address. Respondent did not respond to the petition. ¶ 21. On May 12, 2021, the Adjudicator issued an order suspending Respondent from the practice of law, pursuant to BR 7.1. ¶ 22.

#### **Respondent Violated RPC 8.1(a)(2) When He Knowingly Failed to Respond to DCO's Inquiries.**

RPC 8.1(a)(2) states:

“(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

“(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a

lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

DCO is a disciplinary authority. RPC 8.1(a)(2) requires Oregon lawyers to cooperate when DCO investigates disciplinary matters. That includes an obligation to respond to DCO’s inquiries.

DCO made multiple written requests to Respondent for information in response to Peterson’s grievance that were mailed and emailed to Respondent’s record addresses and residential address. The law presumes that “a letter duly directed and mailed was received in the regular course of the mail.” ORS 40.135(1)(q). The statute directs us to find that Respondent received the requests; Respondent failed to respond. Respondent’s knowing failure to respond to lawful demands for information from DCO violates RPC 8.1(a)(2). *In re Miles*, 324 Or 218, 221, 923 P2d 1219 (1996); *In re Obert*, 352 Or 231, 248-49, 282 P3d 825 (2012). We find that Respondent knowingly violated RPC 8.1(a)(2).

**D. (Case No. 21-59) – Fourth Cause of Complaint**

In the fourth cause the Bar charged Respondent with committing criminal acts that reflect adversely on his fitness to practice in violation of RPC 8.4(a)(2), and with engaging in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

**Facts**

These charges arise from several driving offenses Respondent committed, and his conduct in the two criminal proceedings involving those offenses.

On October 23, 2020, Respondent committed the crime of Driving Under the Influence of Intoxicants (DUII) under ORS § 813.010 in Washington County (Washington County Circuit Court Case No. 20CR6113) (“Washington County matter”). Respondent’s Oregon driver’s license was subsequently suspended because of his alleged blood alcohol content. ¶ 28.

On November 18, 2020, Respondent pled not guilty in the Washington County matter and signed a release agreement which required Respondent to not possess or consume any alcohol, not drive a motor vehicle until he obtained a valid Oregon driver’s license, and to appear at all of his court dates. ¶ 29.

On December 30, 2020, Respondent again committed the crime of DUII in violation of ORS § 813.010 in the City of Beaverton. ¶ 30. At the same time, Respondent also committed the crime of Driving While Suspended (DWS) in violation of ORS § 811.182 (Beaverton Municipal Court Case No. 21-10007) (“Beaverton Municipal matters”). ¶ 31.

As a result of the Beaverton Municipal matters, on or about January 5, 2021, the State moved for an order requiring Respondent to show cause why his release should not be revoked

or, in the alternative, for an order issuing a bench warrant in the Washington County matter. ¶ 32.

On January 12, 2021, the court entered an order forfeiting Respondent's security and issued a bench warrant. ¶ 33. On February 1, 2021, Respondent was taken into custody on the bench warrant, and Respondent signed a second release agreement. ¶ 34. On February 24, 2021, Beaverton Municipal Court issued a bench warrant for Respondent when he failed to appear for a pre-trial conference. ¶ 35.

On April 26, 2021, Respondent failed to appear at a hearing in the Washington County matter, and the court issued a second bench warrant. ¶ 36. On May 10, 2021, Respondent was taken into custody in the Washington County matter and signed a third release agreement. ¶ 37.

On June 16, 2021, Respondent failed to appear for a pre-trial conference in his Beaverton Municipal matter and the court issued another bench warrant. ¶ 38.

On August 5, 2021, Respondent failed to appear at a hearing in his Washington County matter and the court issued a third bench warrant. ¶ 39.

**Respondent Engaged in Criminal Conduct That Reflects Adversely on His Fitness to Practice Law in Violation of RPC 8.4(a)(2).**

As noted before, RPC 8.4(a)(2) provides: "It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

We previously set forth the elements of this rule violation as it pertained to Respondent's theft of client funds. Applying the analysis the Oregon Supreme Court has found that an attorney's criminal acts reflected adversely on his fitness to practice law when the attorney knew that the law prohibited him from driving while he was intoxicated and while his license was suspended. *In re McDonough*, 336 Or 36, 77 P3d 306 (2003). In *McDonough*, an attorney was charged with 18 driving-related offenses involving driving while intoxicated or driving while suspended between 1983 through 2001. The court held that the attorney's driving-related offenses violated the predecessor to RPC 8.4(a)(2) because the attorney's conduct was intentional, caused actual injury to his passenger in one event and created a potential injury to the public every time he drove while intoxicated. The attorney's decision to continue to drive while his license was suspended also revealed a pattern of criminal conduct that caused actual injury to the legal system by undermining the orders that had suspended his driving privileges and by demonstrating an indifference to the law. *Id.*

Here we find that Respondent's multiple acts of driving while intoxicated and driving while suspended within a short period of time demonstrate a pattern of criminal conduct that reflects adversely on his fitness to practice law.

Respondent intentionally drove while his license was suspended. After signing his release agreement promising to refrain from consuming alcohol he intentionally breached that agreement when he was arrested for his second DUII.

Respondent's failure to appear for court-ordered hearings also demonstrates disrespect for the law and the judicial system. It shows a disregard for the increased and unnecessary resources that the court expended in his criminal matters. His conduct in both criminal matters increased the likelihood for a potential injury to a victim and his pattern of criminal conduct increased the likelihood that someone may have been injured should he have been in an accident.

Respondent's conduct in his pending criminal matters reflects adversely on his fitness to practice law because his conduct was intentional, caused potential injury to the public every time that he drove while intoxicated, and his decision to drive after his license was suspended caused actual injury to the legal system by undermining the orders suspending his driving privileges issued by the DMV and the court in his Washington County matter. The driving-related offenses at issue here and Respondent's numerous failures to appear at court-ordered hearings demonstrate an indifference to the law.

We find that Respondent violated RPC 8.4(a)(2).

**Respondent Engaged in Conduct Prejudicial to the Administration of Justice in Violation of RPC 8.4(a)(4).**

RPC 8.4(a)(4) provides: "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

To establish a violation of RPC 8.4(a)(4), the Bar must allege that (1) the respondent lawyer's action was improper; (2) the lawyer's conduct occurred during the course of a judicial proceeding; and (3) the lawyer's conduct had or could have had a prejudicial effect on the administration of justice. *In re Ard*, 369 Or 180, --- P3d --- (2021). "Administration of justice" refers to both "the procedural functioning of the proceeding and the substantive interests of the parties." *In re Kluge*, 335 Or 326, 345; 66 P3d 492 (2003); *In re Meyer*, 328 Or 211, 214, 970 P2d 652 (1999). To violate the rule, the conduct must have resulted in prejudice and "prejudice may arise from several acts that cause some harm or a single act that causes substantial harm to the administration of justice. *Kluge*, *id.*

An attorney violated RPC 8.4(a)(4) when he was arrested on charges of domestic violence, harassment, and coercion arising out of a domestic disturbance and, after being ordered to have no contact with the victim, was arrested at his home where the victim also resided, resulting in the court finding contempt. *In re Rodolfo A. Camacho*, 32 DB Rptr 150 (2018). In *Camacho*, the court entered a judgment in the attorney's criminal matter, finding that the attorney committed contempt of court by willfully engaging in disobedience of, resistance to or obstruction of the court's authority, process, orders, or judgments by violating his release agreement.

An attorney also violated RPC 8.4(a)(4) when he failed to comply with three court orders issued in his own domestic relations proceeding for which he was also found in contempt, and his conduct caused injury to his spouse and children, and also to the legal system by consuming court time and resources. *In re J. Stefan Gonzalez (I)*, 25 DB Rptr 1 (2011).

Respondent's conduct here in the Washington County matter was improper. He disobeyed court orders to not consume alcohol. He disobeyed an order not to drive without a valid Oregon driver's license. He disobeyed orders to appear at all court hearings. Respondent's multiple failures to appear in both criminal matters required the court to expend time and resources to hold hearings which he did not appear for, issue bench warrants for which law enforcement had to arrest and release him, hold additional hearings to address the warrants and reset other hearings. Respondent's conduct prejudiced the procedural functioning of the court and the substantive interests of the State to seek justice in both matters.

Respondent violated RPC 8.4(a)(4).

#### **E. OSB Matter – Fifth Cause of Complaint**

In this cause of complaint, the Bar again charged Respondent with knowing failure to respond to requests for information from DCO in violation of RPC 8.1(a)(2).

#### **Facts**

By letter dated April 21, 2021, DCO requested Respondent's response regarding the Washington County and Beaverton Municipal matters. The letter was addressed and sent by first class mail to Respondent at his record address, home address and was also sent to his record email address. The email and letter sent to Respondent's record address and home address were not returned undelivered. Respondent did not respond. ¶ 42.

By letter dated May 14, 2021, DCO again requested a response to the Washington County and Beaverton Municipal matters. The letter was addressed to Respondent at his record address and his home address and was sent by both first class and by certified mail, return receipt requested. The letter was also sent to his record email address. The letter and certified letter addressed to the home address were returned undeliverable. ¶ 43.

On or about May 28, 2021, DCO became aware of a second email address for Respondent. On that date, DCO sent a copy of the May 14, 2021 letter to Respondent at this new email address. The email was not returned undeliverable. ¶ 44.

On or about June 10, 2021, DCO filed a petition pursuant to BR 7.1 seeking Respondent's immediate suspension for his failure to respond to DCO. The petition was sent by first class mail addressed to Respondent at his record address and by email to his record email address. Respondent did not file a response to the petition. ¶ 45. On or about June 30, 2021, the Adjudicator issued an order suspending Respondent from the practice of law, pursuant to BR 7.1. ¶ 46.

### **Respondent Again Violated RPC 8.1(a)(2).**

As noted earlier, RPC 8.1(a)(2) states:

“An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

The conduct described above constitutes a knowing failure to respond to a disciplinary authority in violation of RPC 8.1(a)(2).

### **SANCTION**

We refer to the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards) and Oregon case law for guidance in determining the appropriate sanctions for lawyer misconduct.

#### ***ABA Standards.***

The ABA Standards establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, we make a preliminary determination of sanction, after which we may adjust the sanction based on the existence of recognized aggravating or mitigating circumstances. *See In re Nisley*, 365 Or 793, 815, 453 P3d 529 (2019).

#### ***Duty Violated.***

The most important ethical duties a lawyer owes are to his clients. ABA Standards at 5. Respondent violated the duty he owed to his client to preserve client property. ABA Standard 4.1. Respondent violated the duty to act with reasonable diligence and promptness, which includes the obligation to timely and effectively communicate. ABA Standard 4.4. Additionally, by committing criminal acts that reflect adversely on his fitness to practice law, Respondent violated his duty to maintain his personal integrity. ABA Standard 5.1.

Respondent also violated the duties he owed to the legal system, the legal profession, and the public by engaging in conduct prejudicial to the administration of justice. ABA Standards 6.1, 6.2.

Finally, Respondent violated his duty to cooperate with disciplinary authorities. ABA Standard 7.0.

### ***Mental State.***

The ABA Standards recognize three mental states: intent, knowledge, and negligence. “Intent” is when a lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* “Negligence” is the failure to be aware of a substantial risk that circumstances exist or that a result will follow, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.*

With regard to the conversion, dishonesty, and trust account violations, we find that Respondent acted intentionally. We infer from the circumstances that Respondent acted with the conscious objective to convert his client’s funds for his own use. Respondent also knowingly neglected Peterson’s case.

We find that he knowingly committed certain criminal acts. Although the first DUI offense could be attributed to negligence, the second DUI incident and the driving while suspended charge both resulted from knowing conduct.

Respondent also acted knowingly when he ignored his duty to respond to DCO. Despite receiving multiple requests for information, he never responded to his regulatory authorities.

Finally, Respondent acted knowingly when he engaged in conduct prejudicial to the administration of justice. He did not appear for court hearings. As an officer of the court, he knew how that would negatively affect the court’s functioning and that bench warrants would issue.

### ***Extent of Actual or Potential Injury.***

For purposes of determining an appropriate disciplinary sanction, we may take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

Respondent’s client, the public, the legal profession, and the Bar have all sustained actual injury as a result of respondent’s misconduct. A lawyer who converts client funds causes actual injury to a client. *In re Webb*, 363 Or 42, 51-52, 418 P3d 2 (2018). A client also sustains actual injury when an attorney fails to actively pursue the client’s case. *See e.g. In re Parker*, 330 Or 541, 546-47, 9 P3d 107 (2000). Respondent’s conduct that caused prejudice to the administration of justice also injured the legal system, the public, and the legal profession. *Ard, supra*.

Additionally, Respondent's failure to cooperate with DCO's investigations also caused actual injury to the legal profession, the public, and the Bar. *Miles*, 324 Or at 221-22.

### ***Preliminary Sanction.***

Absent aggravating or mitigating circumstances, the following ABA Standards apply here:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. ABA Standard 4.11. Suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. ABA Standard 4.12.

Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. ABA Standard 4.41(b). Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standard 4.42(a).

Disbarment is generally appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft. ABA Standard 5.11(a).

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system. ABA Standard 7.1. Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. ABA Standard 7.2.

Given the knowing conversion and theft of client funds, the presumptive sanction here is disbarment.

### ***Aggravating and Mitigating Circumstances.***

We find the following aggravating factors recognized under the ABA Standards present here:

1. A dishonest or selfish motive. ABA Standard 9.22(b). Respondent's conduct in converting his client's funds demonstrates that Respondent acted with both a dishonest and a selfish motive.
2. Pattern of Misconduct. ABA Standard 9.22(c). "[A] pattern of misconduct does not necessarily require proof of a prior sanction. Rather, that aggravating factor bears on whether the violation is a one-time mistake, which may call for a lesser

sanction, or part of a larger pattern, which may reflect a more serious ethical problem.” *In re Bertoni*, 363 Or 614, 644, 426 P3d 64 (2018). Respondent converted Peterson’s funds twice within one month in the fall of 2020, and then engaged in repeated acts of criminal conduct throughout that same time period. He continued to engage in misconduct in 2021 when he repeatedly missed court appearances in both of his criminal proceedings.

3. Multiple offenses. ABA Standard 9.22(d). Respondent has violated a number of the Rules of Professional Conduct.

In mitigation we find only the absence of a prior record of discipline. ABA Standard 9.32(a). The aggravating factors outweigh the mitigating factors here. There is no basis for reducing the sanction here to less than the presumptive sanction of disbarment.

### ***Oregon Case Law.***

Oregon cases confirm that disbarment is warranted. The Supreme Court has consistently disbarred lawyers who convert client funds. *Webb*, 363 Or at 52. “Drawing together the factors of duty, mental state, and injury, and before examining aggravating and mitigating factors, under both the ABA Standards and this court’s case law, disbarment is the presumptively appropriate sanction” for conversion of client funds. *Id.* “[A] lawyer may suffer all the claimed disabilities and may have the greatest of attributes, but if he or she steals funds from a client, the sanction is disbarment.” *Martin*, 328 Or at 193 (quoting *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988)); *In re Pierson*, 280 Or 513, 518, 571 P2d 907 (1977) (“a single conversion by a lawyer to his own use of his client’s funds will result in permanent disbarment”); *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988) (despite mitigating circumstances, where an attorney “steals funds from a client, the sanction is disbarment”); *In re Benjamin*, 312 Or 515, 823 P2d 413 (1991) (lawyer disbarred for failing to promptly pay money to clients and using client money for personal expenses); *In re Biggs*, 318 Or 281, 864 P2d 1310 (1994); *In re Murdock*, 328 Or 18, 968 P2d 1270 (1998) (attorney disbarred for embezzling from his law firm).

Respondent’s conversion of client funds alone warrants disbarment.

### ***Restitution***

BR 6.1(a) provides that, in conjunction with a disposition or sanction referred to in this rule, a respondent may be required to make restitution of some or all of the money, property or fees received by the respondent in the representation of a client. In addition to sanctioning Respondent, we order Respondent to make restitution of \$5,000 to David Peterson.

## CONCLUSION

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties. ABA Standard 1.1. To fulfill this goal, we order that Respondent be disbarred effective the day this decision becomes final, and that he pay restitution in the amount of \$5,000 to his former client, David Peterson.

Respectfully submitted this 10th day of March 2022.

/s/ Mark A. Turner

Mark A. Turner, Adjudicator

/s/ Honorable Jill Tanner

Honorable Jill Tanner, Trial Panel Member

/s/ Karina Grigorian

Karina Grigorian, Trial Panel Public Member