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DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
JAMES M. HEALY, JR.,
Lawyer (Bar No. 1575).

Proceeding No. 14#00030
STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Marsha Matsumoto and respondent lawyer James M. Healy, Jr. (Respondent).

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to

ORIGINAL

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1 avoid the risk, time, and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to the practice of law in the State of Washington on
4 September 20, 1961.

5 2. In September 2014, Respondent changed his licensing status to inactive.

6 **II. STIPULATED FACTS**

7 3. Respondent maintained a trust account ending in #6550 at Columbia Bank (trust
8 account) for the deposit of client funds.

9 4. Respondent personally maintained the records for the trust account.

10 **Failure to Maintain Client Funds in a Trust Account and Failure to Deliver**

11 5. On June 28, 2013, \$130,000 was wired into Respondent's trust account for clients
12 SA and TM, who managed a company that loaned money for construction projects. The
13 \$130,000 was provided by investors, LB and GB of Partner Fund Capital No. 1, LLC (Partner
14 Fund Capital).

15 6. In early July 2013, Respondent discovered that his adult grandson, TH, had
16 negotiated a \$100 check against the trust account without authorization or entitlement to the
17 funds. Respondent also discovered that several blank trust account checks were missing from
18 the drawer in his home where he normally kept them.

19 7. After Respondent learned of the \$100 theft, he confronted TH, who apologized and
20 assured Respondent that he had destroyed the remaining missing checks. Respondent accepted
21 TH's assurances, even though this was not the first time TH had stolen money. A few years
22 earlier, TH had presented a forged check against Respondent's business/personal account.

23 8. Respondent replaced the \$100 into his trust account on July 10, 2013, but did not

1 take any further action to safeguard his clients' funds.

2 9. Respondent did not notify Columbia Bank about the forgery or missing checks, did
3 not stop payment on the missing checks, did not close the trust account, and did not transfer his
4 clients' funds to a new trust account. Furthermore, Respondent did not closely monitor the
5 activity in his trust account or promptly review the July 2013 bank statement, which would have
6 revealed and potentially prevented subsequent thefts.

7 10. On or about August 28, 2013, Respondent was contacted by Columbia Bank and
8 informed that checks had been presented against insufficient funds in his trust account.
9 Columbia Bank also sent overdraft notices to the Association, which caused ODC to open a
10 grievance investigation.

11 11. The overdraft notices were triggered by four checks that were presented against
12 insufficient funds in Respondent's trust account during the period August 23, 2013 to August
13 27, 2013. All four checks were forged and made payable to TH, who was not entitled to the
14 funds. Columbia Bank dishonored and returned the checks.

15 12. Before the overdrafts occurred, 22 checks payable to TH were presented against
16 Respondent's trust account and honored. From June 24, 2013 to August 23, 2013, TH
17 successfully withdrew \$81,915 in client funds from the trust account without authorization or
18 entitlement to the funds.

19 13. As of September 30, 2013, Respondent's trust account held only \$5,468.27, when it
20 should have held \$86,422 for SA, TM, and Partner Fund Capital, alone.

21 14. Respondent's trust account was short \$81,815 in client funds.

22 15. Sometime after September 30, 2013, Respondent closed his trust account.

23 16. To date, Respondent has not delivered to SA, TM, or Partner Fund Capital any of the

1 \$86,422 they are entitled to receive. Respondent states that he does not have the current
2 financial ability to do so.

3 **Trust Account Records**

4 17. During the period May through September 2013, Respondent did not maintain a
5 complete and/or accurate check register for his trust account. For example, Respondent's check
6 register did not include deposits or a running balance after each transaction. Furthermore,
7 Respondent did not enter check numbers for disbursements, until he discovered TH's thefts
8 from the trust account.

9 18. During the period May through September 2013, Respondent did not maintain
10 client ledgers for his trust account. Respondent maintained settlement statements, but the
11 settlement statements did not meet the requirements of a client ledger. For example, the
12 settlement statements did not include the dates on which transactions occurred, check numbers
13 for disbursements, or a running balance after each transaction.

14 19. During the time period May through September 2013, Respondent did not
15 reconcile his check register to the bank statements or reconcile his check register to a combined
16 total of client ledgers.

17 20. During the time period May through September 2013, Respondent's trust account
18 contained \$836.27 that he was unable to identify by client matter or owner.

19 **III. STIPULATION TO MISCONDUCT**

20 21. By failing to maintain client funds in a trust account, Respondent violated RPC
21 1.15A(c)(1).

22 22. By failing to maintain complete and/or accurate trust account records, Respondent
23 violated RPC 1.15A(h)(2) and RPC 1.15B.

1 23. By failing to reconcile his trust account records, Respondent violated RPC
2 1.15A(h)(6) and RPC 1.15B(a)(8).

3 24. By failing to promptly deliver to clients and/or third parties funds they were
4 entitled to receive, Respondent violated RPC 1.15A(f).

5 IV. PRIOR DISCIPLINE

6 25. Respondent does not have a record of prior discipline with the Washington State Bar
7 Association.

8 V. APPLICATION OF ABA STANDARDS

9 26. The following American Bar Association Standards for Imposing Lawyer Sanctions
10 (1991 ed. & Feb. 1992 Supp.) apply to this case:

11 **4.1 Failure to Preserve the Client's Property**

12 Absent aggravating or mitigating circumstances, upon application of the factors
13 set out in 3.0, the following sanctions are generally appropriate in cases
14 involving the failure to preserve client property:

15 **4.11 Disbarment is generally appropriate when a lawyer knowingly converts
16 client property and causes injury or potential injury to a client.**

17 **4.12 Suspension is generally appropriate when a lawyer knows or should
18 know that he is dealing improperly with client property and causes
19 injury or potential injury to a client.**

20 **4.13 Reprimand is generally appropriate when a lawyer is negligent in
21 dealing with client property and causes injury or potential injury to a
22 client.**

23 **4.14 Admonition is generally appropriate when a lawyer is negligent in
24 dealing with client property and causes little or no actual or potential
injury to a client.**

25 27. With regard to TH's theft of trust account funds, Respondent's conduct was
26 negligent up to the point he discovered that TH had negotiated the \$100 check. Thereafter,
27 Respondent knew or should have known that the security of his clients' funds was in jeopardy.
28 He had an affirmative duty to protect his clients' funds from further theft, but he chose not to
29 take any action.

1 28. The resulting injury is actual and serious. Respondent's trust account was short
2 more than \$80,000 in client funds, he states that he does not have the ability to replace the
3 money, he removed whatever funds remained in the trust account, and clients (or third parties)
4 have not received the funds they are entitled to receive.

5 29. The presumptive sanction is suspension under ABA Standards 4.12.

6 30. With regard to Respondent's failure to maintain required trust account records,
7 Respondent's conduct was negligent. The resulting injury was actual and potential in that
8 Respondent was unable to identify all funds in his trust account by owner and was unable to
9 calculate the exact amount of the shortage caused by TH's thefts.

10 31. The presumptive sanction is reprimand under ABA Standards 4.13.

11 32. The following aggravating factors apply under ABA Standards 9.22:

- 12 (d) multiple offenses; and
13 (i) substantial experience in the practice of law (Respondent was admitted to
14 practice law in Washington in 1961).

15 33. The following mitigating factors apply under ABA Standards 9.32:

- 16 (a) absence of a prior disciplinary record; and
17 (b) absence of a dishonest or selfish motive.

18 34. It is an additional mitigating factor that Respondent has agreed to resolve this matter
19 at an early stage of the proceedings.

20 35. Based on the factors set forth above, the appropriate sanction for Respondent's
21 conduct is a six-month suspension.

22 VI. STIPULATED DISCIPLINE

23 36. The parties stipulate that Respondent shall receive a six-month suspension for his
24 conduct.

37. Respondent will be subject to probation for a period of two years commencing upon

1 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his
2 trust account practices, and shall comply with the specific probation terms set forth below:

- 3 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
4 1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.
- 5 b) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
6 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:
- 7 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
8 commencement of probation, Respondent shall provide the trust account
records from the date of his reinstatement to the end of the third full month.
- 9 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
10 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
11 month six.
- 12 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
13 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
14 month nine.
- 15 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
16 the commencement of probation, Respondent shall provide the trust
17 account records from the end of the previously provided quarter through
the end of month twelve.
- 18 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
19 the commencement of probation, Respondent shall provide the trust
20 account records from the end of the previously provided quarter through
the end of month fifteen.
- 21 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
22 the commencement of probation, Respondent shall provide the trust
account records from the end of the previously provided quarter through
23 the end of month eighteen.
- 24 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
after the commencement of probation, Respondent shall provide the trust
account records from the end of the previously provided quarter through
the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of

1 his trust account will include: (a) a complete checkbook register for his trust
2 account covering the period being reviewed, (b) complete individual client ledger
3 records for any client with funds in Respondent's trust account during all or part of
4 the period being reviewed, as well as for Respondent's own funds in the account (if
5 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
6 checks covering the period being reviewed, (d) copies of all trust account client
7 ledger reconciliations for the period being reviewed, and (e) copies of
8 reconciliations of Respondent's trust account check register covering the period
9 being reviewed. The ODC's Audit Manager or designee will review Respondent's
10 trust account records for each period.

11 c) The ODC's Audit Manager or designee may request additional financial or client
12 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
13 Within twenty days of a request from ODC's Audit Manager or designee for
14 additional records needed to verify Respondent's compliance with RPC 1.15A
15 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
16 additional records requested.

17 d) Respondent will reimburse the Association for time spent by ODC's Audit Manager
18 or designee in reviewing and reporting on Respondent's records to determine his
19 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
20 Respondent will make payment within thirty days of each written invoice setting
21 forth the auditor's time and payment due.

22 VII. RESTITUTION

23 38. Respondent agrees to pay restitution in the amount of \$86,422 to Partner Fund
24 Capital No. 1, LLC, subject to the jurisdiction and orders of the United States Bankruptcy Court
in Respondent's Chapter 13 bankruptcy filed in the Western District of Washington under Case
No. 14-43015-BDL.

39. In the event that Respondent has an obligation under the preceding paragraph to
make restitution and the Lawyers' Fund for Client Protection (Lawyers' Fund) of the
Washington State Bar Association has previously compensated the payee, Respondent agrees to
reimburse the Lawyers' Fund for those amounts, subject to the jurisdiction and orders of the
United States Bankruptcy Court in Respondent's Chapter 13 bankruptcy filed in the Western
District of Washington under Case No. 14-43015-BDL.

1 **VIII. COSTS AND EXPENSES**

2 40. In light of the substantial amount of restitution owed by Respondent and
3 Respondent's pending bankruptcy proceeding, ODC foregoes an assessment of costs and
4 expenses in this matter.

5 **IX. VOLUNTARY AGREEMENT**

6 41. Respondent states that prior to entering into this Stipulation he has had an
7 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is
8 entering into this Stipulation voluntarily, and that no promises or threats have been made by
9 ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into
10 this Stipulation except as provided herein.

11 42. Once fully executed, this Stipulation is a contract governed by the legal principles
12 applicable to contracts, and may not be unilaterally revoked or modified by either party.

13 **X. LIMITATIONS**

14 43. This Stipulation is a compromise agreement intended to resolve this matter in
15 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
16 expenditure of additional resources by the respondent lawyer and ODC. Both the respondent
17 lawyer and ODC acknowledge that the result after further proceedings in this matter might
18 differ from the result agreed to herein.

19 44. This Stipulation is not binding upon ODC or the respondent lawyer as a statement of
20 all existing facts relating to the professional conduct of the respondent lawyer, and any
21 additional existing facts may be proven in any subsequent disciplinary proceedings.

22 45. This Stipulation results from the consideration of various factors by both parties,
23 including the benefits to both by promptly resolving this matter without the time and expense of

1 | hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
2 | such, approval of this Stipulation will not constitute precedent in determining the appropriate
3 | sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
4 | subsequent proceedings against Respondent to the same extent as any other approved
5 | Stipulation.

6 | 46. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
7 | Board shall have available to it for consideration all documents that the parties agree to submit
8 | to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
9 | form the record before the Board for its review become public information on approval of the
10 | Stipulation by the Board, unless disclosure is restricted by order or rule of law.

11 | 47. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
12 | be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
13 | Rules for Enforcement of Lawyer Conduct will be made.

14 | 48. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
15 | Stipulation will have no force or effect, and neither it nor the fact of its execution will be
16 | admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
17 | proceeding, or in any civil or criminal action.

18 | WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
19 | to Discipline as set forth above.

20 | _____
21 | James M. Healy, Jr., Bar No. 1575
21 | Respondent

Dated: _____

22 | *Marsha Matsumoto*
23 | _____
23 | Marsha Matsumoto, Bar No. 15831
23 | Senior Disciplinary Counsel

Dated: 11/11/2014

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Dated: 11-11-14

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23 | Marsha Matsumoto, Bar No. 15831
24 | Senior Disciplinary Counsel

Dated: _____