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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

GEOFFREY COLBURN CROSS,

Lawyer (Bar No. 3089).

Proceeding No. 15#00094

ODC File No(s). 14-01762

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Francesca D'Angelo and Respondent lawyer Geoffrey Colburn Cross.

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

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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 practice law in the State of Washington on August 15,
4 1968.

5 **II. STIPULATED FACTS**

6 ***Medicare Payment***

7 2. In 2012, Wayne L. Palmer hired Respondent to represent him on a personal injury
8 claim. The fee agreement between Respondent and Mr. Palmer stated that Respondent would
9 receive 25 percent of the gross settlement.

10 3. In July 2013, Mr. Palmer's case settled for \$100,000.

11 4. The Defendant's insurer, Victoria Fire & Casualty issued two checks; one to
12 Respondent and Mr. Palmer for \$91,983.88, and one to Medicare Secondary Payer Recovery
13 Contractor (MSPRC) for their \$8,016.12 subrogation.

14 5. Respondent deposited the \$91,983.88 check into his trust account.

15 6. In August 2013, Respondent disbursed \$25,000 as attorney fees and \$2,126.29 as
16 reimbursement for costs.

17 7. From August 16, 2013 to September 29, 2013, Respondent disbursed \$44,857.99 to
18 or on behalf of Mr. Palmer.

19 8. Respondent did not provide Mr. Palmer an accounting after distributing the funds.

20 9. Respondent placed the \$8,016.12 check to MSPRC in Mr. Palmer's client file.

21 10. On January 28, 2014, Respondent's associate wrote a letter to MSPRC asking for a
22 final subrogation demand. MSPRC did not respond. Respondent did not deposit the check to
23 MSPRC in his trust account. The check to MSPRC remained in Respondent's file.

1 11. In September 2013, Mr. Palmer began to receive collection letters from MSPRC
2 threatening to withhold his Medicare payments until the subrogation was paid.

3 12. Mr. Palmer contacted MSPRC and negotiated the lien down to \$6,008.62.

4 13. On February 13, 2015, Respondent returned the original \$8,016.20 check to Victoria
5 Fire & Casualty and asked them to remit two checks; one for \$6,008.62 to MSRC and the
6 remainder to Mr. Palmer. Victoria Fire & Casualty remitted the checks as requested.

7 14. In March 2015, Respondent paid MSPRC and Mr. Palmer.

8 ***PIP Subrogation***

9 15. At the time of his injury, Mr. Palmer had a personal injury protection policy (PIP)
10 from American Family Insurance (American Family) with a \$5,000 policy limit.

11 16. On September 13, 2013, American Family issued a check for \$5,000 to Respondent
12 and Mr. Palmer for medical expenses.

13 17. Respondent deposited the American Family check into his trust account.

14 18. On September 16, 2013, American Family sent a letter requesting that American
15 Family's payout of medical expenses be reimbursed.

16 19. On January 27, 2014, Respondent disbursed \$3,027.03 back to American Family.

17 20. Respondent disbursed the remaining \$1,972.97 to himself as fees. Respondent
18 refunded \$650 of this amount to Mr. Palmer.

19 21. Respondent did not provide an accounting of these disbursements to Mr. Palmer.

20 22. Respondent's fee agreement with Mr. Palmer did not allow him to take a portion of
21 the American Family funds.

22 23. On February 7, 2014, American Family waived any right to recovery of the \$5,000.

23 24. American Family never cashed the \$3,027.03 check.

1 25. On June 4, 2015, Respondent issued a check to Mr. Palmer for \$3,027.03.

2 26. Respondent continued to retain \$1,322.97 of the PIP funds as fees. However, on
3 April 12, 2016, Respondent issued a check to Mr. Palmer for \$1,322.97 delivering the
4 remaining PIP funds.

5 ***Trust Account***

6 27. From December 2013 through January 31, 2015 Respondent did not maintain a
7 running balance on his check register.

8 28. From December 2013 through January 31, 2015, Respondent did not reconcile his
9 check register to his client ledgers.

10 29. As of August 12, 2015, Respondent's trust account contained at least \$1,642.39 in
11 funds that he could not attribute to clients.

12 **III. STIPULATION TO MISCONDUCT**

13 30. By holding the MSPRC check in his client file for eighteen months, Respondent
14 violated RPC 1.15A(c)(1).

15 31. By failing to promptly provide one or more written accountings to Mr. Palmer after
16 distributing settlement funds from his trust account, Respondent violated RPC 1.15A(e).

17 32. By failing to maintain a complete check register with a running balance, Respondent
18 violated RPC 1.15B(a)(1) and RPC 1.15A(h)(2).

19 33. By failing to perform reconciliations for his checkbook register, client ledgers, and
20 bank statements, Respondent violated RPC 1.15A(h)(6), RPC 1.15A(h)(2) and RPC
21 1.15B(a)(8).

22 34. By failing to promptly pay or deliver funds in his trust account that either belonged
23 to clients or third parties, Respondent violated RPC 1.15A(f).

1 **IV. PRIOR DISCIPLINE**

2 35. On December 29, 2010, Respondent received a reprimand based on conduct
3 involving a conflict of interest.

4 **V. APPLICATION OF ABA STANDARDS**

5 36. The following American Bar Association Standards for Imposing Lawyer Sanctions
6 (1991 ed. & Feb. 1992 Supp.) apply to this case:

7 ***4.1 Failure to Preserve the Client's Property***

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

11 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
12 client property and causes injury or potential injury to a client.

13 4.12 **Suspension is generally appropriate when a lawyer knows or should
14 know that he is dealing improperly with client property and causes
injury or potential injury to a client.**

15 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
16 with client property and causes injury or potential injury to a client.

17 4.14 Admonition is generally appropriate when a lawyer is negligent in
18 dealing with client property and causes little or no actual or potential
19 injury to a client.

20 37. Respondent knew or should have known that he was not handling funds correctly
21 and knew or should have known that he was not keeping appropriate records. Respondent knew
22 or should have known that he needed to provide a written accounting to Mr. Palmer for the
23 funds disbursed from trust. Mr. Palmer was injured in that he was confused about the amount
24 that was due him and his payments were delayed. The presumptive sanction under ABA
Standard 4.12 is suspension.

38. The following aggravating factors apply under ABA Standard 9.22:

- 22 (a) prior disciplinary offenses [In 2010, Mr. Cross was reprimanded for
23 conduct involving a conflict of interest];
- 24 (i) substantial experience in the practice of law [Respondent was admitted to
practice in 1968].

1 39. The following mitigating factors apply under ABA Standard 9.32:

- 2 (b) absence of a dishonest or selfish motive;
3 (d) timely good faith effort to make restitution or to rectify consequences of
4 misconduct;
5 (e) full and free disclosure to disciplinary board or cooperative attitude
6 toward proceedings.
7 (l) remorse

8 40. It is a mitigating factor that Respondent has agreed to resolve this matter at an early
9 stage of the proceedings.

10 41. On balance, the aggravating and mitigating factors support a reduction of the
11 presumptive sanction to reprimand.

12 VI. STIPULATED DISCIPLINE

13 42. The parties stipulate that Respondent shall receive a reprimand.

14 43. Within 30 days of the date of the final approval of this Stipulation, Respondent shall
15 determine ownership of the \$1,642.39 balance in his trust account, disburse the funds to the
16 identified party, and remit the remainder, if any, to the Washington State Department of
17 Revenue's unclaimed property fund.

18 44. Respondent will be subject to probation for a period of two years commencing upon
19 final approval of this stipulation with periodic reviews under ELC 13.8 of his trust account
20 practices, and shall comply with the specific probation terms set forth below:

- 21 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
22 1.15B, and shall carefully review the current version of the publication, Managing
23 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 24 b) For all client matters, Respondent shall have a written fee agreement signed by the
client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

1 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
2 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

3 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
4 commencement of probation, Respondent shall provide the trust account
records from the date of commencement of probation to the end of the third
5 full month.

6 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
7 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
8 month six.

9 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
10 commencement of probation, Respondent shall provide the trust account
11 records from the end of the previously provided quarter through the end of
12 month nine.

13 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month twelve.

17 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
18 the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
the end of month fifteen.

20 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
21 the commencement of probation, Respondent shall provide the trust
22 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
his trust account will include: (a) a complete checkbook register for his/her trust
account covering the period being reviewed, (b) complete individual client ledger
records for any client with funds in Respondent's trust account during all or part of
the period being reviewed, as well as for Respondent's own funds in the account (if
any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
checks covering the period being reviewed, (d) copies of all trust account client
ledger reconciliations for the period being reviewed, and (e) copies of

1 reconciliations of Respondent's trust account check register covering the period
2 being reviewed. The ODC's Audit Manager or designee will review Respondent's
trust account records for each period.

3 d) On the same quarterly time schedule set forth in the preceding paragraph,
4 Respondent will provide ODC's Audit Manager or designee with copies of any and
all fee agreements entered into within the time period at issue.

5 e) The ODC's Audit Manager or designee may request additional financial or client
6 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
7 Within twenty days of a request from ODC's Audit Manager or designee for
additional records needed to verify Respondent's compliance with RPC 1.15A
and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
8 additional records requested.

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

12 VII. RESTITUTION

13 45. Restitution is not applicable to this stipulation.

14 VIII. COSTS AND EXPENSES

15 46. In light of Respondent's willingness to resolve this matter by stipulation at an early
16 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
17 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
if these costs are not paid within 30 days of approval of this stipulation.

18 IX. VOLUNTARY AGREEMENT

19 47. Respondent states that prior to entering into this Stipulation he had an opportunity to
20 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
21 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
22 Association, nor by any representative thereof, to induce the Respondent to enter into this
23 Stipulation except as provided herein.

1 48. Once fully executed, this stipulation is a contract governed by the legal principles
2 applicable to contracts, and may not be unilaterally revoked or modified by either party.

3 **X. LIMITATIONS**

4 49. This Stipulation is a compromise agreement intended to resolve this matter in
5 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
6 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
7 and ODC acknowledge that the result after further proceedings in this matter might differ from
8 the result agreed to herein.

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

12 51. This Stipulation results from the consideration of various factors by both parties,
13 including the benefits to both by promptly resolving this matter without the time and expense of
14 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
15 such, approval of this Stipulation will not constitute precedent in determining the appropriate
16 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
17 subsequent proceedings against Respondent to the same extent as any other approved
18 Stipulation.

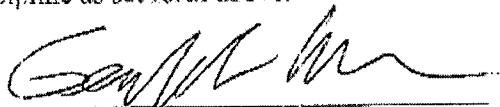
19 52. Under ELC 3.1(b), all documents that form the record before the Hearing Officer
20 for his or her review become public information on approval of the Stipulation by the Hearing
21 Officer, unless disclosure is restricted by order or rule of law.

22 53. If this Stipulation is approved by the Hearing Officer it will be followed by the
23 disciplinary action agreed to in this Stipulation. All notices required in the Rules for

1 Enforcement of Lawyer Conduct will be made.


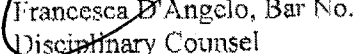
2 54. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
3 no force or effect, and neither is nor the fact of its execution will be admissible as evidence in
4 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
5 or criminal action.

6 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
7 to Discipline as set forth above.

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Dated: 5/6/16

9 Geoffrey Colburn Cross, Bar No. 3089
10 Respondent

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Dated: 5/9/16

13 Francesca D'Angelo, Bar No. 22979
14 Disciplinary Counsel