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**DISCIPLINARY BOARD**

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**STEPHEN TADASHI ARAKI,**  
Lawyer (Bar No. 6428).

Proceeding No. 12#00100  
STIPULATION TO DISBARMENT

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to disbarment is entered into by the Washington State Bar Association (Association), through disciplinary counsel Francesca D'Angelo, and Respondent lawyer Stephen Tadashi Araki and Respondent's counsel, Kurt M. Bulmer.

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

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**I. ADMISSION TO PRACTICE**

1. Respondent was admitted to practice law in the State of Washington on December 5, 1975. On February 16, 2012, Respondent's license to practice law was suspended for one year pursuant to an order of the Supreme Court in Proceeding Number 10#00069. To date, Respondent has not sought reinstatement from suspension.

**II. STIPULATED FACTS**

2. On April 29, 2010, Respondent and the Association entered into a Stipulation to Reprimand and Probation (Stipulation).

3. This Stipulation was approved by a hearing officer on May 3, 2010.

4. Under the terms of the Stipulation, the probation period was from May 3, 2010 to May 3, 2012.

5. Under the terms of the Stipulation, Respondent was required to do the following during the probation period:

- Fully comply with RPC 1.15A and RPC 1.15B;
- By June 3, 2010, provide the Association a complete accounting of all trust funds in trust as of March 31, 2010. The accounting had to identify the amount of each client's or third party's funds held in trust. If there was any shortage of funds in trust, Respondent was to immediately restore whatever funds were necessary to cure the shortage. If Respondent was unable to account for all the funds in trust, Respondent was required to immediately remit the unaccounted for funds to the State of Washington as unclaimed property;
- Beginning June 3, 2010, and on a quarterly basis thereafter, Respondent was required to provide to the Association all the trust account records required under RPC 1.15B, so that by January 31, 2012, Respondent would have provided all the trust account records for the period between January 1, 2010 through December 31, 2011;
- Within ten days of any request, Respondent was required to provide the Association such information as requested to determine whether he had properly accounted for all funds in his trust accounts and/or complied

1 with RPC 1.15A and RPC 1.15B.

2 6. During the period of May 3, 2010 to May 3, 2012, Respondent had two trust  
3 accounts with Viking Bank, Account 3025 and Account 3033, which were primarily used for  
4 his escrow business.

5 Violation of Probation

6 7. During the period of May 3, 2010 to May 3, 2012, Respondent violated the terms  
7 of his probation as set forth in paragraphs 8-17.

8 8. Respondent failed to comply with RPC 1.15A and RPC 1.15B as set forth in  
9 Paragraphs 18-22.

10 9. Respondent failed to provide the Association with a complete accounting of all  
11 trust funds in trust by June 3, 2010 as required by the Stipulation.

12 10. The Association repeatedly requested additional information to determine  
13 whether Respondent had properly accounted for all funds in his trust account. Respondent did  
14 not timely respond to these requests.

15 11. The records that Respondent did provide showed shortages for several clients or  
16 third parties. Respondent failed to immediately restore funds to his trust accounts to cure these  
17 shortages as required by the Stipulation.

18 12. During the probation period, Respondent failed to remit unaccounted for funds in  
19 his trust account to the State of Washington as unclaimed property.

20 13. Respondent failed to timely provide the Association the trust account records  
21 required by RPC 1.15B as follows:

22 14. By June 3, 2010, Respondent was required to submit all trust records as required  
23 under RPC 1.15B for the periods between January 1, 2010 to March 31, 2010. Respondent did  
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1 not provide these records until June 21 and June 28, 2010. These records were incomplete in  
2 that they did not include client ledgers or deposit slips for either of Respondent's trust accounts  
3 and did not include cancelled checks for one of the trust accounts.

4 15. By July 31, 2010, Respondent was required to submit trust account records for  
5 the period of April 1, 2010 through June 30, 2010. Respondent did not submit these account  
6 records until August 18, 2010. These records did not include deposit slips or cancelled checks.

7 16. By October 31, 2010, Respondent was required to submit his trust account  
8 records for July 1, 2010 through September 30, 2010. By January 31, 2011, Respondent was  
9 required to submit trust account records for the period of October 1, 2010 through December 31,  
10 2010. Respondent did not submit records for those time periods until April 21, 2011 and May  
11 5, 2011. These records were incomplete.

12 17. By July 31, 2011, Respondent was required to submit his trust account records  
13 for April 1, 2011 through June 30, 2011; By October 30, 2011, Respondent was required to  
14 submit trust account records for July 1, 2011 through September 30, 2011; By January 31, 2012,  
15 Respondent was required to submit records from October 1, 2011 through December 31, 2011.  
16 Respondent did not submit any of these records. On May 3, 2012, Respondent produced partial  
17 records, but did not provide copies of client ledgers, canceled checks, deposit slips.

18 Failure to Comply with RPC 1.15A and RPC 1.15B

19 18. During the probation period, Respondent failed to comply with RPC 1.15A and  
20 RPC 1.15B as set forth in paragraphs 18- 22.

21 19. Respondent failed to properly reconcile his trust records.

22 20. Respondent disbursed more funds on behalf of clients or third parties from his  
23 trust accounts than he had in trust on behalf of those clients or third parties. Although it could  
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1 not be definitively determined due to the state of Respondent's record-keeping, as of July 11,  
2 2012, Respondent's list of client balances showed two ledgers with negative balances totaling  
3 <\$210.55>.

4 21. Respondent failed to pay clients or third persons funds that they were entitled to  
5 receive. As of July 11, 2012, Respondent's ledger accounts still contained funds that should  
6 have been disbursed to clients or remitted to the State of Washington as unclaimed property.

7 22. Respondent's checkbook register and client ledgers did not include running  
8 balances.

9 23. Respondent delegated the task of maintaining and closing his trust accounts to  
10 his non-lawyer assistant and his former partner, a suspended lawyer. Respondent did not  
11 adequately supervise his non-lawyer assistant and his former partner, to ensure that their  
12 conduct was compatible with his own obligations under the RPC.

### 13 III. STIPULATION TO MISCONDUCT

14 24. By failing to comply with the terms of the Stipulation and the conditions of his  
15 probation, Respondent violated RPC 8.4(D).

16 25. By failing to properly reconcile his trust account, Respondent violated RPC  
17 1.15A(h)(6).

18 26. By disbursing funds from trust in excess of what was being held on deposit for  
19 clients and third parties, Respondent violated RPC 1.15A(h)(8).

20 27. By failing to promptly pay funds due to clients and third parties, Respondent  
21 violated RPC 1.15A(f).

22 28. By failing to keep a running balance in his check register and/or client ledgers,  
23 Respondent violated RPC 1.15B(a)(1)(v) and RPC 1.15B(a)(2)(v).

1 29. By failing to make reasonable efforts to ensure that his non-lawyer assistant's  
2 conduct was compatible with his obligations under the RPC and by delegating the task of  
3 maintaining his trust account to a suspended lawyer, Respondent violated RPC 5.3 and  
4 5.8(b)(1).

#### 5 IV. PRIOR DISCIPLINE

6 30. In May 2010, Respondent was reprimanded for misconduct involving his trust  
7 account and failure to supervise non-lawyer employees. His conduct violated former RPC 1.14<sup>1</sup>  
8 (preserving identity of funds and property of a client) and RPC 5.3 (responsibilities regarding  
9 non-lawyer assistants). A two-year period of probation was imposed. Respondent's violation  
10 of this probation is the subject of these proceedings.

11 31. In February 2012, Respondent's license to practice law was suspended for one  
12 year for conduct involving a conflict of interest in violation of RPC 1.7.

#### 13 V. APPLICATION OF ABA STANDARDS

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

16 33. ABA Standard 4.1 is applies to the duty to preserve and properly handle client  
17 property:

##### 18 ***4.1 Failure to Preserve the Client's Property***

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

21 4.11 Disbarment is generally appropriate when a lawyer knowingly  
22 converts client property and causes injury or potential injury to a  
client.

23 <sup>1</sup> The RPC were amended in 2006. All references to the RPC are to those in effect at the time of the  
24 misconduct.

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- 4.12 **Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.**
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

34. ABA Standard 8.0 applies to the duty to comply with prior disciplinary orders:

**8.0 Prior Discipline Orders**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving prior discipline.

- 8.1 **Disbarment is generally appropriate when a lawyer:**
  - (a) **intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or**
  - (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.3 Reprimand is generally appropriate when a lawyer:
  - (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
  - (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

35. Respondent acted knowingly.

36. There was injury to Respondent's clients and third parties who had money in trust but were not notified. Others had funds in trust that they were entitled to receive back, but

1 that were used for other purposes.

2 37. The presumptive sanction is disbarment.

3 38. The following aggravating factors apply under ABA Standards Section 9.22:

- 4 (a) prior disciplinary offenses;  
5 (d) multiple offenses;  
6 (i) substantial experience in the practice of law.

6 39. No mitigating factors listed under ABA Standard 9.32 apply here.

7 40. The aggravating and mitigating factors do not require a departure from the  
8 presumptive sanction of disbarment.

9 **VI. STIPULATED DISCIPLINE**

10 41. The parties stipulate that Respondent will be disbarred.

11 **VII. RESTITUTION**

12 42. Respondent shall reconstruct his trust-account records for the time period of May  
13 3, 2010 to October 31, 2013. If the reconstruction indicates that any client is owed funds, then  
14 Respondent shall make full restitution to each client of all funds owed. Respondent shall pay to  
15 the client interest on those funds, at a rate of 12%, calculated from the date on which the client  
16 (or third party as directed by the client) was first entitled to receive the funds to the date on  
17 which repayment is made. Reinstatement from disbarment is conditioned on full payment of  
18 restitution, with interest.

19 **VIII. COSTS AND EXPENSES**

20 43. In light of Respondent's willingness to resolve this matter by stipulation at an  
21 early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of  
22 \$1,500 in accordance with ELC 13.9(i). The Association will seek a money judgment under  
23 ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.



1 Reinstatement from disbarment is conditioned on payment of costs.

2 **IX. VOLUNTARY AGREEMENT**

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

8 **X. LIMITATIONS**

9 45. This Stipulation is a compromise agreement intended to resolve this matter in  
10 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
11 expenditure of additional resources by the Respondent and the Association. Both the  
12 Respondent lawyer and the Association acknowledge that the result after further proceedings in  
13 this matter might differ from the result agreed to herein.

14 46. This Stipulation is not binding upon the Association or the respondent as a  
15 statement of all existing facts relating to the professional conduct of the respondent lawyer, and  
16 any additional existing facts may be proven in any subsequent disciplinary proceedings.

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

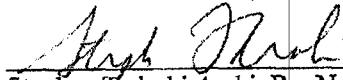
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1 48. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
2 Board shall have available to it for consideration all documents that the parties agree to submit  
3 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
4 form the record before the Board for its review become public information on approval of the  
5 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

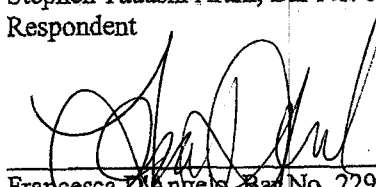
6 49. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it  
7 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in  
8 the Rules for Enforcement of Lawyer Conduct will be made.

9 50. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,  
10 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
11 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
12 proceeding, or in any civil or criminal action.


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

15   
16 Stephen Tadashi Araki, Bar No. 6428  
17 Respondent

Dated: 10/10/13

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19 Francesca D'Angelo, Bar No. 22979  
20 Disciplinary Counsel

Dated: 10/10/13

21   
22 Kurt M. Nelson, #5559  
23 Attorney for Respondent Araki

Dated: 10/10/13