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APR 16 2014

DISCIPLINARY BOARD

**BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION**

In re

PHILLIP AARON,
Lawyer (Bar No. 6464).

Proceeding No. 12#00088

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), 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 Marsha Matsumoto, respondent's counsel Patrick Sheldon, and respondent lawyer Phillip Aaron (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 avoid the risk, time,

1 and expense attendant to further proceedings.

2 **I. STIPULATED FACTS**

3 1. Respondent was admitted to practice law in the State of Washington no later than
4 February 4, 1976.

5 2. At all times relevant to this matter, Respondent's practice consisted primarily of rep-
6 resenting indigent, African American clients who alleged that they were victims of childhood
7 rape, sodomy, and other sexual abuse by priests serving under the Archdiocese of Chicago.

8 3. During the first half of 2008, Respondent was recovering from a stroke experienced
9 in July 2007. In 2009, Respondent experienced additional strokes and/or stroke-like conditions
10 for which he was hospitalized. Respondent's strokes and/or stroke-like conditions caused him
11 to cut back on his work schedule due to impaired speech, dexterity, and weakness on the right
12 side of his body. During this period, there were several months when there was no trust account
13 activity.

14 4. Respondent engaged in the following conduct, but did not act with a dishonest mo-
15 tive.

16 **Trust Account**

17 5. Respondent maintained a trust account ending in 0202 at the Bank of America for
18 the deposit of client funds.

19 6. Respondent was the only authorized signer on the trust account. Respondent per-
20 sonally signed most of the checks drawn on the trust account. However, on occasion, Respond-
21 ent authorized his son or wife to sign his name to trust account checks. When Respondent au-
22 thorized his son or wife to sign his name to trust account checks, he did so on a check-by-check
23 basis with full knowledge of the amounts being disbursed and the payees who would receive the
24

1 funds.

2 7. In spring 2010, the Association's auditor conducted a random examination of Re-
3 spondent's trust account.

4 8. In June 2010, the Disciplinary Board Chair referred the auditor's random examina-
5 tion to the Office of Disciplinary Counsel for investigation.

6 9. During the period June 1, 2008 through May 31, 2010, Respondent did not maintain
7 a complete and/or accurate check register for his trust account in that the check register did not
8 include a client matter for each deposit, disbursement, and transfer and did not include a payor
9 and/or payee for each deposit, disbursement, and transfer.

10 10. During the period June 1, 2008 through May 31, 2010, Respondent did not maintain
11 adequate client ledgers, as defined by RPC 1.15B(a)(2), for his trust account.

12 11. During the period June 1, 2008 through May 31, 2010, Respondent did not reconcile
13 his trust account check register to his bank statements, except for the months of May and June
14 2009.

15 12. During the period June 1, 2008 through May 31, 2010, Respondent did not reconcile
16 his trust account check register to a combined total of client ledgers. Respondent could not per-
17 form these reconciliations because he did not maintain client ledgers.

18 13. Because Respondent did not maintain client ledgers, he was unable to determine
19 whether client settlement funds were properly deposited and disbursed. Instead, he paid clients
20 the sums he thought they were due based on the settlement documents, and retained the balance
21 in his trust account, assuming that he was entitled to the remaining funds. Respondent then dis-
22 bursed the remaining funds for his own benefit.

23 14. Respondent delegated responsibility for maintaining his trust account records to
24

1 non-lawyer assistant(s). For the purposes of this proceeding, non-lawyer assistant(s) include
2 bookkeepers.

3 15. Respondent did not train his non-lawyer assistant(s) on how to maintain trust ac-
4 count records. Furthermore, Respondent did not meaningfully review the trust account records
5 or supervise his assistant(s)'s handling of the trust account records.

6 16. Respondent delegated responsibility for determining what funds to deposit and dis-
7 burse from his trust account to non-lawyer assistant(s). When Respondent signed checks drawn
8 on the trust account, or authorized his wife and son to sign the checks, Respondent relied on
9 non-lawyer assistant(s) to determine whether he was entitled to disburse the funds and to deter-
10 mine the amount of funds to be disbursed.

11 17. Respondent did not make reasonable efforts to ensure that the conduct of his non-
12 lawyer assistant(s) in handling his trust account and trust account records was compatible with
13 Respondent's professional obligations as a lawyer.

14 **VS Settlement**

15 18. In or around 2007, Respondent began representing VS and five other members of
16 the S family, who alleged that they had been abused by a priest and/or had derivative claims.

17 19. Respondent filed a lawsuit on behalf of VS in U.S. District Court for the Northern
18 District of Illinois.

19 20. In June 2008, all six cases went to mediation and settled.

20 21. For the purposes of this proceeding, the relevant defendants were the Catholic Bish-
21 op of Chicago (the Archdiocese), represented by Jay Franke, and the Benedictine Order, repre-
22 sented by Hinshaw Culbertson (Hinshaw).

23 22. VS's settlement agreement with the Archdiocese and the Benedictine Order provid-
24

1 ed for a \$500,000 settlement, which was to be paid out as follows:

2 **Paragraph 1.1: Annuity Contract.** (a) A check in the amount of One Hun-
3 dred Eighty Three Thousand Four Hundred Eighty Nine Dollars and Twenty
4 Three Cents (\$183,489.23) shall be made payable to Hartford CEBSCO (the
"Assignee") to fund an annuity from Hartford Life Insurance Company (the
"Annuity Issuer") which will provide future benefits outlined below. . . ;

5 **Paragraph 1.2: Deduction of Medical Expenses.** A deduction in the amount
6 of Seventy Three Thousand Six Hundred Seventy Nine Dollars and Fifteen Cents
(\$73,679.15) shall be taken for reimbursement of [VS's] medical expenses relat-
7 ed hereto previously paid by the Catholic Bishop;

8 **Paragraph 1.3: Payment of Remaining Amount.** The remaining balance of
9 Two Hundred Forty Two Thousand Eight Hundred Thirty One Dollars and Sixty
Two Cents (\$242,831.62) shall be paid to Phillip Aaron in a check made payable
10 to "Phillip Aaron Client Trust Account" (EIN . . .) Phillip Aaron shall distribute
the funds from this account as follows:

- 11 (a) One Hundred Seven [sic] Five Thousand Dollars (\$175,000) shall be paid
to Phillip Aaron as payment of Phillip Aaron's attorneys fees related
hereto;
- 12 (b) Fifty Seven Thousand Eight Hundred Thirty One Dollars and Twelve
13 Cents (\$57,831.12) shall be paid to Phillip Aaron for payment of Phillip
Aaron's costs related hereto; and
- 14 (c) Ten Thousand Dollars and Fifty Cents (\$10,000.50) shall be paid to [VS],
upon bank clearance of the settlement funds.

15 23. The \$500,000 settlement was funded by the Archdiocese and the Benedictine Order,
16 with each paying an equal share of \$250,000.

17 24. The Archdiocese provided its share to Hinshaw, which was responsible for collect-
18 ing the settlement funds and disbursing them.

19 25. When the Archdiocese delivered its share of VS's settlement to Hinshaw, the Arch-
20 diocese failed to deduct the \$73,679.15 that it was entitled to withhold as a reimbursement.

21 26. Hinshaw then failed to deduct the \$73,679.15 when it disbursed the settlement funds
22 to Respondent. Consequently, Respondent received \$316,510.77, instead of the \$242,831.62
23 that he was supposed to receive, for VS.

1 27. Although VS's settlement agreement provided that Hinshaw would disburse funds
2 to Respondent by check, Respondent received the settlement funds for VS in combination with
3 the settlement funds for the other five S family members via three wire transfers from Hinshaw
4 in June and July 2008. As such, Respondent did not receive VS's settlement funds in a single
5 payment of \$316,510.77.

6 28. The wire transfers did not provide Respondent with a clear and distinct deposit slip
7 that identified the transferred funds by client and, in the absence of client ledgers, Respondent
8 did not realize that he had received \$73,679.15 more than he should have. Similarly, Franke
9 and Hinshaw did not realize that Respondent had been overpaid for some time.

10 29. In September 2008, Hinshaw became aware of the \$73,679.15 overpayment to Re-
11 spondent, but did not advise Respondent of the overpayment.

12 30. As of January 2009, Respondent had disbursed all of the funds he received from
13 Hinshaw, including the \$73,679.15 overpayment. Respondent disbursed the \$73,679.15 for his
14 own benefit believing the funds to be his own.

15 31. On January 31, 2009, the balance in Respondent's trust account was \$498.05.

16 32. On January 30, 2009, Respondent sent Franke a letter regarding the \$73,679.15 de-
17 duction and inquiring about the medical expenses used to calculate the deduction.

18 33. On January 30, 2009, Franke sent Respondent a letter stating that the Archdiocese
19 had not yet reconciled the recovery of treatment costs advanced on behalf of VS and that he
20 would provide Respondent with an accounting.

21 34. On February 4, 2009, Franke sent Respondent a letter with an accounting of VS's
22 settlement. In the letter, Franke discussed the Archdiocese's failure to deduct the \$73,679.15
23 from VS's settlement funds and informed Respondent for the first time that the "Phillip Aaron
24

1 Client Trust Fund owes the Archdiocese \$73,679.15.”

2 35. Thereafter, Respondent delivered a cashier’s check in the amount of \$73,679.15 to
3 the Archdiocese, in full satisfaction of the Archdiocese’s claim of an overpayment.

4 II. STIPULATION TO MISCONDUCT

5 36. By failing to maintain the \$73,679.15 overpayment in a trust account, Respondent
6 violated RPC 1.15A(c) and RPC 1.15A(g).

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

9 38. By failing to adequately reconcile his trust account records, Respondent violated
10 RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

11 39. By failing to adequately supervise his non-lawyer assistant(s), Respondent violated
12 RPC 5.3(a) and (b).

13 III. PRIOR DISCIPLINE

14 40. Respondent does not have a record of prior public discipline with the Association.

15 IV. APPLICATION OF ABA STANDARDS

16 41. The following American Bar Association Standards for Imposing Lawyer Sanctions
17 (1991 ed. & Feb. 1992 Supp.) apply to this case:

18 4.1 Failure to Preserve the Client’s Property

19 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

20 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.

21 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.

22 4.14 Admonition is generally appropriate when a lawyer is negligent in deal-
ing with client property and causes little or no actual or potential injury to
23 a client.

24 7.0 Violations of Duties Owed as a Professional

- 1 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
2 conduct that is a violation of a duty owed as a professional with the intent
3 to obtain a benefit for the lawyer or another, and causes serious or poten-
4 tially serious injury to a client, the public, or the legal system.
- 5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
6 conduct that is a violation of a duty owed as a professional and causes in-
7 jury or potential injury to a client, the public, or the legal system.
- 8 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
9 conduct that is a violation of a duty owed as a professional and causes in-
10 jury or potential injury to a client, the public, or the legal system.
- 11 7.4 Admonition is generally appropriate when a lawyer engages in an isolat-
12 ed instance of negligence that is a violation of a duty owed as a profes-
13 sional, and causes little or no actual or potential injury to a client, the
14 public, or the legal system.

15 42. Respondent should have known that he was failing to maintain complete trust ac-
16 count records, failing to reconcile his trust account, failing to supervise his non-lawyer assis-
17 tant(s), and failing to maintain third party funds in a trust account.

18 43. Respondent's failure to safeguard funds in a trust account for the Archdiocese
19 caused potential injury. In addition, Respondent's failure to maintain adequate trust account
20 records caused potential injury to the Archdiocese because it precluded him from determining
21 that he had been overpaid before he spent all of the money, and caused potential injury to all
22 clients and third parties who had funds in Respondent's possession.

23 44. The presumptive sanction is suspension under ABA Standards 4.12 and 7.2.

24 45. The following aggravating factors apply under ABA Standards 9.22:

- (d) multiple offenses;
- (i) substantial experience in the practice of law (Respondent was admitted to practice law in Washington in 1976).

46. The following mitigating factors apply under ABA Standard 9.32:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems (during the first half of 2008, Respondent was recovering from a stroke experienced in July 2007. In 2009, Respondent also experienced strokes and/or stroke-like

1 conditions for which he was hospitalized. Respondent's strokes
2 and/or stroke-like conditions caused him to cut back on his work
3 schedule due to impaired speech, dexterity, and weakness on the
4 right side of his body);

5 (g) character or reputation.

6 47. It is considered an additional mitigating factor that Respondent is willing to resolve
7 this matter prior to hearing.

8 48. Based on the factors set forth above, the presumptive sanction should be mitigated to
9 reprimand.

10 **V. STIPULATED DISCIPLINE**

11 49. The parties stipulate that Respondent shall receive a reprimand for his conduct in
12 failing to maintain the \$73,679.15 overpayment in a trust account, failing to maintain complete
13 and accurate trust account records, failing to reconcile his trust account, and failing to adequately
14 supervise his non-lawyer assistant(s).

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

- 18 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
19 1.15B, and shall carefully review the current version of the publication, Managing
20 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 21 b) For all client matters, Respondent shall have a written fee agreement signed by the
22 client, which agreements are to be maintained for least seven years (see RPC
23 1.15B(a)(3)).
- 24 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
account records for the time period to be reviewed by ODC's audit staff and disciplinary
counsel for compliance with the RPC:
- i) Months 1 – 3. By no later than the 30th day of the fourth month after the
commencement of probation, Respondent shall provide the trust account records
from the date of commencement of probation to the end of the third full
month.

- 1 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
2 commencement of probation, Respondent shall provide the trust account rec-
3 ords from the end of the previously provided quarter through the end of month
4 six.
- 5 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the com-
6 mencement of probation, Respondent shall provide the trust account records
7 from the end of the previously provided quarter through the end of month
8 nine.
- 9 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after the
10 commencement of probation, Respondent shall provide the trust account rec-
11 ords from the end of the previously provided quarter through the end of month
12 twelve.
- 13 v) Months 13– 15. By no later than the 30th day of the sixteenth month after the
14 commencement of probation, Respondent shall provide the trust account rec-
15 ords from the end of the previously provided quarter through the end of month
16 fifteen.
- 17 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
18 the commencement of probation, Respondent shall provide the trust account
19 records from the end of the previously provided quarter through the end of
20 month eighteen.
- 21 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month af-
22 ter the commencement of probation, Respondent shall provide the trust ac-
23 count records from the end of the previously provided quarter through the end
24 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 reconciliations of Respondent's trust account check register covering the period being reviewed. The ODC's Audit Manager or designee will review Respondent's trust account records for each period.

- d) On the same quarterly time schedule set forth in the preceding paragraph, 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.
- e) The ODC's Audit Manager or designee may request additional financial or client records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.

1 Within twenty days of a request from ODC's Audit Manager or designee for addi-
2 tional records needed to verify Respondent's compliance with RPC 1.15A and/or
3 RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the addi-
4 tional records requested.

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

10 **VI. RESTITUTION**

11 51. Restitution is not applicable under this Stipulation.

12 **VII. COSTS AND EXPENSES**

13 52. In light of Respondent's willingness to resolve this matter by stipulation, Respondent
14 shall pay attorney fees and administrative costs of \$1,780 in accordance with ELC 13.9(i). The
15 Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30
16 days of approval of this Stipulation.

17 **VIII. VOLUNTARY AGREEMENT**

18 53. Respondent states that prior to entering into this Stipulation he has consulted inde-
19 pendent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation
20 voluntarily, and that no promises or threats have been made by ODC, the Association, nor by
21 any representative thereof, to induce the Respondent to enter into this Stipulation except as pro-
22 vided herein.

23 **IX. LIMITATIONS**

24 54. This Stipulation is a compromise agreement intended to resolve this matter in ac-
cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
penditure of additional resources by the Respondent and ODC. Both the Respondent lawyer

1 and ODC acknowledge that the result after further proceedings in this matter might differ from
2 the result agreed to herein.

3 55. This Stipulation is not binding upon ODC or the respondent as a statement of all ex-
4 isting facts relating to the professional conduct of the respondent lawyer, and any additional ex-
5 isting facts may be proven in any subsequent disciplinary proceedings.

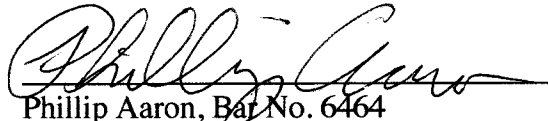
6 56. This Stipulation results from the consideration of various factors by both parties, in-
7 cluding the benefits to both by promptly resolving this matter without the time and expense of
8 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
9 such, approval of this Stipulation will not constitute precedent in determining the appropriate
10 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
11 subsequent proceedings against Respondent to the same extent as any other approved Stipula-
12 tion.

13 57. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
14 his or her review become public information on approval of the Stipulation by the Hearing Of-
15 ficer, unless disclosure is restricted by order or rule of law.

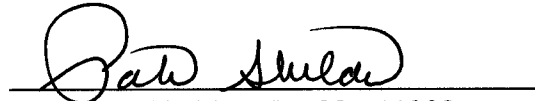
16 58. If this Stipulation is approved by the Hearing Officer, it will be followed by the dis-
17 ciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
18 of Lawyer Conduct will be made.

19 59. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
20 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
21 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
22 or criminal action.

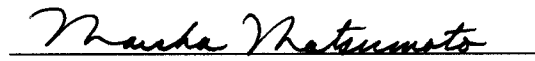
1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
2 to Discipline as set forth above.

3 
4 Phillip Aaron, Bar No. 6464
5 Respondent

Dated: 4/10/14

6 
7 Patrick C. Sheldon, Bar No. 11398
8 Counsel for Respondent

Dated: April 10, 2014

9 
10 Marsha Matsumoto, Bar No. 15831
11 Senior Disciplinary Counsel

Dated: April 11, 2014