

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**BRIAN K. HAMMER,**  
Lawyer (Bar No. 7642).

Proceeding No. 15#00016  
STIPULATION TO SUSPENSION

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 Suspension 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 Sam B. Franklin and Rosemary J. Moore, and Respondent lawyer Brian K. Hammer.

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

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1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
2 avoid the risk, time, and expense attendant to further proceedings.

### 3 I. ADMISSION TO PRACTICE

4 1. Respondent was admitted to practice law in the State of Washington on November  
5 10, 1977.

### 6 II. STIPULATED FACTS

7 2. In December 2005, Respondent represented John R. Roles (Roles) in establishing the  
8 John R. Roles Revocable Trust (Trust). Roles and his daughter, Aimee Sorensen (Sorensen)  
9 were appointed as trustees. The beneficiaries of the Trust were Sorensen and her sisters, Mary  
10 Strand (Strand) and Esther Hayes (Hayes).

11 3. Over the ensuing years, Respondent provided legal services to Roles, as an  
12 individual, and to Roles and Sorensen, as trustees.

13 4. Respondent did not have a written fee agreement with Roles or Sorensen, nor did he  
14 keep contemporaneous time or billing records. Respondent sent Roles written invoices on an  
15 infrequent and irregular basis. Roles promptly paid the invoices he received.

16 5. On December 29, 2009, Roles died of a stroke and Sorensen became the sole trustee  
17 of the Trust.

18 6. Respondent continued to represent Sorensen as trustee and to wind up her father's  
19 estate.

20 7. On January 7, 2010, Respondent filed a non-probate notice to creditors, under RCW  
21 11.42.030, in Snohomish County Superior Court. The notice required any person who was  
22 owed a debt by the decedent to file a claim within thirty days or the claim would be forever  
23 barred against both the decedent's probate and non-probate assets.

1 8. Respondent did not provide Sorensen with an invoice for attorney fees incurred prior  
2 to Roles' death. Nor did he file a creditor's claim for attorney fees owed by Roles.

3 9. From time to time throughout the representation, Respondent orally asked Sorensen  
4 for money, typically, in round amounts. From January 2010 through December 2011, Sorensen  
5 made the following payments to Respondent:

6 January 4, 2010	\$4,000	Retainer for Trust advice
7 March 30, 2010	\$5,000	Legal fees
8 April 14, 2010	\$700	2009 tax preparation
9 May 20, 2010	\$5,000	Legal fees
10 August 19, 2010	\$5,000	Legal fees
11 October 14, 2010	\$5,000	Legal fees
12 March 17, 2011	\$936	2010 tax preparation
13 August 16, 2011	\$5,000	Legal fees
14 September 30, 2011	\$4,000	Probate retainer
15 December 30, 2011	\$3,398	Legal fees
16 <b>TOTAL</b>	<b>\$38,034</b>	

17  
18 10. Respondent deposited the January 4, 2010, October 14, 2010, and September 30,  
19 2011 payments to a trust account, but withdrew these funds from trust without giving Sorensen  
20 notice of his intent to withdraw fees and without giving her an accounting after distributing the  
21 funds.

22 11. Respondent did not deposit any of Sorensen's other payments to a trust account,  
23 even though the August 16, 2011 and December 30, 2011 payments included advance fees.

24 12. Respondent billed Sorensen only twice during the period January 2010 through

1 December 2011: 1) on April 13, 2010 in the amount of \$700 for preparation of a 2009  
2 individual income tax return, and 2) on March 14, 2011 in the amount of \$936 for preparation of  
3 a 2010 Trust income tax return. Sorensen promptly paid both invoices, as shown by the \$700  
4 payment on April 14, 2010 and the \$936 payment on March 17, 2011.

5 13. In 2011, Strand and Hayes began challenging the manner in which Sorensen  
6 administered the Roles Trust, particularly the fees paid to Respondent. Strand and Hayes  
7 demanded that Respondent provide detailed billing records, including contemporaneous time  
8 records, to account for his legal fees. Respondent did not produce the records because he did  
9 not have them.

10 14. On November 28, 2011, Strand and Hayes filed a complaint under the Washington  
11 Trust and Estate Dispute Resolution Act (TEDRA), requesting that Sorensen be removed as  
12 trustee. In their complaint, Strand and Hayes alleged the legal fees paid to Respondent were  
13 excessive, unwarranted, and unreasonable. Strand and Hayes were represented by Thomas  
14 Cooper in the TEDRA action. Sorensen was represented by Kearney Hammer, Respondent's  
15 brother.

16 15. On January 4, 2012, Respondent prepared two invoices, totaling \$31,198,  
17 purporting to be for legal fees and costs. After preparing the invoices, Respondent destroyed  
18 the source documents he used to prepare the invoices.

19 16. The first January 4, 2012 invoice for \$14,204 covered the period from 2005 to 2009,  
20 prior to Roles' death. Most of the fees were for services rendered to Sorensen and Roles as  
21 trustees; however, \$888 was for services rendered to Roles as an individual and creator of the  
22 Roles Trust.

23 17. Respondent charged and collected the \$888 from Sorensen's post-death payments,  
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1 even though he never filed a creditor's claim and his claim for the fees was barred. In charging  
2 and collecting the fees, Respondent failed to inform Sorensen that neither she nor the Trust was  
3 required to pay the \$888.

4 18. The second January 4, 2012 invoice for \$16,994 covered the period from December  
5 30, 2009 to November 9, 2011, after Roles' death. The invoice did not reflect any of the post-  
6 death payments made by Sorensen.

7 19. The April 13, 2010, March 14, 2011, and two January 4, 2012 invoices totaled  
8 \$32,834 in fees and costs, which was \$5,200 less than Sorensen paid to Respondent.  
9 Respondent did not maintain these funds in a trust account for Sorensen.

10 20. Respondent's handling of advance fees and his failure to maintain contemporaneous  
11 time or billing records did not give Sorensen reasonable and fair disclosure of the material  
12 elements of the fee agreement and Respondent's billing practices.

13 21. Following a trial in the TEDRA action, the court disallowed Respondent's pre-death  
14 attorney fees and found that 40% of Respondent's post-death attorney fees were excessive. The  
15 court concluded that Sorensen overpaid Respondent \$14,204 in attorney fees for services  
16 rendered before Roles' death, and \$6,797.60 in attorney fees for services rendered after Roles'  
17 death. Sorensen was held individually liable for these sums, and paid the Roles Trust out of her  
18 own pocket. Respondent did not refund any fees to Sorensen.

19 Disbursing Funds from a Trust Account in Excess of the Amount on Deposit for Sorensen

20 22. As set forth above, Respondent deposited Sorensen's January 4, 2010 payment of  
21 \$4,000 to his trust account.

22 23. During the period January 5, 2010 to January 14, 2010, Respondent withdrew \$6,580  
23 from his trust account for the Roles matter, exceeding the amount that Sorensen had on deposit  
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1 by \$2,580. Respondent covered the excess disbursement by using other clients' funds.

2 24. Respondent did not provide Sorensen with notice of his intent to withdraw fees. Nor  
3 did he provide her with a written accounting after disbursing the funds.

### 4 III. STIPULATION TO MISCONDUCT

5 25. By charging Sorensen and the Roles Trust \$888 in attorney fees incurred prior to  
6 Roles' death, without informing Sorensen that Respondent's claim for the fees was barred due  
7 to his failure to file a creditor's claim, Respondent violated RPC 1.7(a), RPC 1.4(b), and RPC  
8 1.5(a).

9 26. By charging Sorensen and the Roles Trust unreasonable attorney fees for legal  
10 services rendered after Roles' death, Respondent violated RPC 1.5(a).

11 27. By failing to deposit and maintain Sorensen's advance fees in a trust account,  
12 Respondent violated RPC 1.15A(c).

13 28. By failing to give Sorensen reasonable notice of his intent to disburse fees from his  
14 trust account through a billing statement or other document, Respondent violated RPC  
15 1.15A(h)(3).

16 29. By failing to provide prompt written accountings to Sorensen upon distributing funds  
17 from his trust account, Respondent violated RPC 1.15A(e).

18 30. By disbursing funds from his trust account on behalf of Sorensen that exceeded the  
19 funds she had on deposit, Respondent violated RPC 1.15A(h)(8).

### 20 IV. PRIOR DISCIPLINE

21 31. Respondent does not have a record of prior disciplinary action with the Association.

### 22 V. APPLICATION OF ABA STANDARDS

23 32. The following American Bar Association Standards for Imposing Lawyer Sanctions

1 (1991 ed. & Feb. 1992 Supp.) apply to this case:

2 **4.1 Failure to Preserve the Client's Property**

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

6 4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
7 client property and causes injury or potential injury to a client.

8 4.12 Suspension is generally appropriate when a lawyer knows or should  
9 know that he is dealing improperly with client property and causes injury  
10 or potential injury to a client.

11 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing  
12 with client property and causes injury or potential injury to a client.

13 4.14 Admonition is generally appropriate when a lawyer is negligent in  
14 dealing with client property and causes little or no actual or potential  
15 injury to a client.

16 **4.3 Failure to Avoid Conflicts of Interest**

17 Absent aggravating or mitigating circumstances, upon application of the factors  
18 set out in Standard 3.0, the following sanctions are generally appropriate  
19 in cases involving conflicts of interest:

20 4.31 Disbarment is generally appropriate when a lawyer, without the informed  
21 consent of client(s):

22 (a) engages in representation of a client knowing that the lawyer's interests  
23 are adverse to the client's with the intent to benefit the lawyer or another,  
24 and causes serious or potentially serious injury to the client; or

(b) simultaneously represents clients that the lawyer knows have adverse  
interests with the intent to benefit the lawyer or another, and causes  
serious or potentially serious injury to a client; or

(c) represents a client in a matter substantially related to a matter in which  
the interests of a present or former client are materially adverse, and  
knowingly uses information relating to the representation of a client with  
the intent to benefit the lawyer or another and causes serious or  
potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of  
interest and does not fully disclose to a client the possible effect of that  
conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in  
determining whether the representation of a client may be materially  
affected by the lawyer's own interests, or whether the representation will  
adversely affect another client, and causes injury or potential injury to a  
client.

4.34 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in determining whether the representation  
of a client may be materially affected by the lawyer's own interests, or

1 whether the representation will adversely affect another client, and causes  
2 little or no actual or potential injury to a client.

3 **7.0 Violations of Duties Owed as a Professional**

4 Absent aggravating or mitigating circumstances, upon application of the factors  
5 set out in Standard 3.0, the following sanctions are generally appropriate  
6 in cases involving false or misleading communication about the lawyer or  
7 the lawyer's services, improper communication of fields of practice,  
8 improper solicitation of professional employment from a prospective  
9 client, unreasonable or improper fees, unauthorized practice of law,  
10 improper withdrawal from representation, or failure to report professional  
11 misconduct.

12 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
13 conduct that is a violation of a duty owed as a professional with the intent  
14 to obtain a benefit for the lawyer or another, and causes serious or  
15 potentially serious injury to a client, the public, or the legal system.

16 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
17 conduct that is a violation of a duty owed as a professional and causes  
18 injury or potential injury to a client, the public, or the legal system.

19 7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
20 conduct that is a violation of a duty owed as a professional and causes  
21 injury or potential injury to a client, the public, or the legal system.

22 7.4 Admonition is generally appropriate when a lawyer engages in an  
23 isolated instance of negligence that is a violation of a duty owed as a  
24 professional, and causes little or no actual or potential injury to a client,  
the public, or the legal system.

33. Respondent acted negligently when he charged and collected fees for legal services  
that he rendered to Roles prior to Roles' death, without filing a creditor's claim for the fees.  
Respondent disbursed the funds without billing Sorensen and negligently failed to advise her  
that neither she nor the Trust was required to pay the fees. Respondent's conduct caused actual  
harm in that Sorensen was unaware of the fees paid and was later required to reimburse the  
Roles Trust out of her own pocket when Respondent's fees were disallowed in the TEDRA  
action. The presumptive sanction for Respondent's conduct is reprimand under ABA Standards  
4.33 and 7.3.

34. Respondent acted negligently in charging and collecting post-death attorney fees that  
were later disallowed by the TEDRA court. Respondent's conduct caused actual harm in that



1 Sorensen was required to reimburse the Roles Trust from her own funds. The presumptive  
2 sanction is reprimand under ABA Standard 7.3.

3 35. Respondent should have known that he was failing to deposit advance fees to a trust  
4 account and that he was disbursing funds in excess of the amount Sorensen had on deposit in his  
5 trust account.

6 36. Respondent knew that he was failing to notify Sorensen of his intent to withdraw  
7 fees from his trust account and that he was failing to provide written accountings upon  
8 disbursement.

9 37. Respondent's conduct caused actual harm in that funds belonging to the Roles Trust  
10 were not safeguarded in a trust account, and Sorensen did not have an opportunity to dispute  
11 Respondent's use of the funds as "fees." Ultimately, Sorensen was required to repay the Roles  
12 Trust from her own funds. The presumptive sanction is suspension under ABA Standard 4.12.

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

- 14 (d) multiple offenses;  
15 (i) substantial experience in the practice of law (Respondent was admitted to  
16 practice law in Washington in 1977. Respondent was licensed as a  
17 Certified Public Accountant (CPA) in 1974, although his license has  
since lapsed. In addition, Respondent was employed for two years by a  
CPA firm, where he was responsible for audits of business and  
professional and personal tax returns).

18 39. The following mitigating factor applies under ABA Standard 9.32:

- 19 (a) absence of a prior disciplinary record.

20 40. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
21 at an early stage of the proceedings.

22 41. On balance the aggravating and mitigating factors do not require a departure from  
23 the presumptive sanction, but warrant a sanction longer than the minimum six months.

1 **VI. STIPULATED DISCIPLINE**

2 42. The parties stipulate that Respondent shall receive a nine-month suspension for his  
3 conduct. Respondent represents that because of commitments regarding client matters, he needs  
4 until at least May 1, 2016 to wind down his practice and requests that the suspension be ordered  
5 to start no earlier than May 1, 2016. Disciplinary counsel has no objection to this request.

6 43. Respondent will be subject to probation for a period of two years commencing upon  
7 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his  
8 trust account practices, and shall comply with the specific probation terms set forth below:

- 9 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC  
10 1.15B, and shall carefully review the current version of the publication, Managing  
Client Trust Accounts: Rules, Regulations, and Common Sense.
- 11 b) For all client matters, Respondent shall have a written fee agreement signed by the  
12 client, which agreements are to be maintained for least seven years (see RPC  
1.15B(a)(3)).
- 13 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-  
14 account records for the time period to be reviewed by ODC's audit staff and  
disciplinary counsel for compliance with the RPC:
- 15 i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the  
16 commencement of probation, Respondent shall provide the trust account  
records from the date of his/her reinstatement to the end of the third full  
17 month.
- 18 ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
19 commencement of probation, Respondent shall provide the trust account  
records from the end of the previously provided quarter through the end of  
20 month six.
- 21 iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
22 commencement of probation, Respondent shall provide the trust account  
records from the end of the previously provided quarter through the end of  
23 month nine.
- 24 iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth 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 twelve.

1 v) Months 13– 15. By no later than the 30<sup>th</sup> day of the sixteenth month after  
2 the commencement of probation, Respondent shall provide the trust  
3 account records from the end of the previously provided quarter through  
4 the end of month fifteen.

5 vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth month after  
6 the commencement of probation, Respondent shall provide the trust  
7 account records from the end of the previously provided quarter through  
8 the end of month eighteen.

9 vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
10 after the commencement of probation, Respondent shall provide the trust  
11 account records from the end of the previously provided quarter through  
12 the end of month twenty-one.

13 The trust account records Respondent provides to ODC for each quarterly review of  
14 his trust account will include: (a) a complete checkbook register for his/her trust  
15 account covering the period being reviewed, (b) complete individual client ledger  
16 records for any client with funds in Respondent's trust account during all or part of  
17 the period being reviewed, as well as for Respondent's own funds in the account (if  
18 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled  
19 checks covering the period being reviewed, (d) copies of all trust account client  
20 ledger reconciliations for the period being reviewed, and (e) copies of  
21 reconciliations of Respondent's trust account check register covering the period  
22 being reviewed. The ODC's Audit Manager or designee will review Respondent's  
23 trust account records for each period.

24 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.  
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  
additional records requested.

f) Respondent will reimburse the Association for time spent by ODC's Audit Manager  
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  
forth the auditor's time and payment due.

1 **VII. RESTITUTION**

2 44. Respondent shall pay restitution to Aimee Sorensen in the amount of \$9,150.40, of  
3 which \$2,500 will be paid within two weeks of Respondent's signature on this stipulation. As a  
4 condition precedent to disciplinary counsel's signature on this stipulation, Respondent shall  
5 provide proof of payment of the \$2,500 within two weeks of Respondent's signature on this  
6 stipulation. The remainder of the restitution will be paid pursuant to ELC 13.3(b).  
7 Reinstatement is conditioned on full payment of restitution.

8 **VIII. COSTS AND EXPENSES**

9 45. In light of Respondent's willingness to resolve this matter by stipulation at an early  
10 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$695 in  
11 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
12 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from  
13 suspension is conditioned on payment of costs.

14 **IX. VOLUNTARY AGREEMENT**

15 46. Respondent states that prior to entering into this Stipulation he has consulted  
16 independent legal counsel regarding this Stipulation, that Respondent is entering into this  
17 Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
18 Association, nor by any representative thereof, to induce the Respondent to enter into this  
19 Stipulation except as provided herein.

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

22 **X. LIMITATIONS**

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

5 49. This Stipulation is not binding upon ODC or the Respondent as a statement of all  
6 existing facts relating to the professional conduct of the respondent lawyer, and any additional  
7 existing facts may be proven in any subsequent disciplinary proceedings.

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

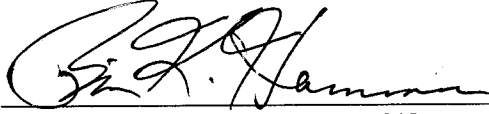
15 51. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
16 Board shall have available to it for consideration all documents that the parties agree to submit  
17 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
18 form the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

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

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

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

6 

7 Brian K. Hammer, Bar No. 7642  
8 Respondent

Dated: 1/19/2016

9 

10 Rosemary J. Moore, Bar No. 28650  
11 Counsel for Respondent

Dated: 1/19/16

12 

13 Marsha Matsumoto, Bar No. 15831  
14 Senior Disciplinary Counsel

Dated: 2/1/16