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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JOHN PAUL BRODY JR,
Lawyer (Bar No. 9503).

Proceeding No. 17#00030

RESIGNATION FORM OF JOHN PAUL
BRODY JR (ELC 9.3(b))

I, John Paul Brody, Jr., declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.
2. I was admitted to practice law in the State of Washington on October 30, 1979.
3. I was served with a Formal Complaint and Notice to Answer in this matter on May 30, 2017.
4. After consultation with my counsel, John Stephan Moceri, I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Rules for Enforcement of Lawyer Conduct (ELC).
5. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged

Resignation Form of John Paul Brody
(ELC 9.3(b))
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OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

1 misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in
2 disciplinary counsel's statement. I do not agree with the allegations and have answered the
3 Formal Complaint in my Answer, which is of record.

4 6. Rather than defend against the allegations, at 71 years of age, I have chosen to
5 resign in lieu of discipline. I wish to permanently resign from membership in the Association.

6 7. In accordance with ELC 13.9(c)(2) and ELC 13.9(e), I consent to entry of an order
7 assessing expenses of \$1,500 in this matter.

8 8. I agree to pay any additional costs that may be ordered by a Review Committee
9 under ELC 9.3(g). I understand from disciplinary counsel that the maximum amount of
10 additional costs that could be ordered by the Review Committee is \$225.00

11 9. I understand that, in accordance with ELC 9.3, Resignation in Lieu of Discipline,
12 section ELC 13.9(b)(3), my resignation is permanent and that any future application by me for
13 reinstatement as a member of the Association is currently barred. If the Supreme Court changes
14 this rule or an application is otherwise permitted in the future, it will be treated as an application
15 by one who has been disbarred for ethical misconduct, and that, if I file an application, I will not
16 be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or
17 instances of alleged misconduct on which this resignation was based.

18 10. In accordance with Resignation in Lieu of Discipline and specifically ELC
19 9.3(b)(4)(d), I agree to (a) notify all other states and jurisdictions in which I am admitted,
20 including federal district court, of this resignation in lieu of discipline; (b) seek to resign
21 permanently from the practice of law in any federal court where I am admitted; and (c) provide
22 disciplinary counsel with copies of this notification and any response(s); and (d) acknowledging

23 Resignation Form of John Paul Brody
24 (ELC 9.3(b))
Page 2

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1 that this resignation could be treated as a disbarment by all other jurisdictions.

2 11. I agree to (a) notify all other professional licensing agencies in any jurisdiction
3 from which I have a professional license that is predicated on my admission to practice law of
4 this resignation in lieu of discipline; (b) seek to resign permanently from any such license; and
5 (c) provide disciplinary counsel with copies of any of these notifications and any responses.

6 12. In accordance with Resignation in Lieu of Discipline and specifically ELC
7 9.3(b)(6), I agree that when applying for any employment, I will disclose the resignation in lieu
8 of discipline in response to any question regarding disciplinary action or the status of my license
9 to practice law.

10 13. I understand that my resignation becomes effective on disciplinary counsel's
11 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) disciplinary
12 counsel must do so promptly following receipt of this document.

13 14. In accordance with Resignation in Lieu of Discipline ELC 9.3(b)(8), when my
14 resignation becomes effective, I agree to be subject to all restrictions that apply to a disbarred
15 lawyer.

16 15. In accordance with ELC 9.3 Resignation in Lieu of Discipline, upon filing of my
17 resignation, I agree to comply with the same duties as a disbarred lawyer under ELC 14.1
18 through ELC 14.4.

19 16. I understand that, after my resignation becomes effective, it is permanent. I will
20 never be eligible to apply and will not be considered for admission or reinstatement to the
21 practice of law nor will I be eligible for admission for any limited practice of law.

22 17. I certify under penalty of perjury under the laws of the State of Washington that

1 the foregoing is true and correct.

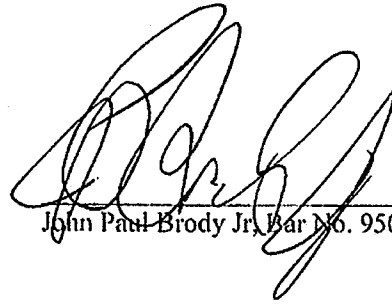
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Nov 3, 2017
Date and Place
Tacoma, WA

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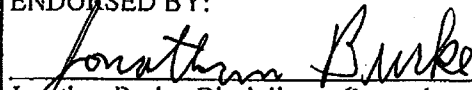
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John Paul Brody Jr., Bar No. 9503

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ENDORSED BY:

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Jonathan Burke, Disciplinary Counsel
Bar No. 20910

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Resignation Form of John Paul Brody
(E.C. 9.3(b))
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MAY 02 2017

EXHIBIT
A

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
JOHN PAUL BRODY JR,
Lawyer (Bar No. 9503).

Proceeding No. 17#00030
FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

ADMISSION TO PRACTICE

1. Respondent John Paul Brody Jr. was admitted to the practice of law in the State of Washington on October 30, 1979.

FACTS REGARDING COUNTS 1, 2, 3, 4, 5, and 6

2. During all material times, Sandra Walruff and John Walruff, collectively referred to as the Walruffs, owned two parcels of property. One parcel contained the Walruffs'

007

1 residence (Residence). The other parcel contained a mobile home and was rented by the
2 Walruffs (Rental Property).

3 3. In 2006, the Walruffs hired Respondent to represent them in a boundary dispute
4 filed against them by Charles Robson and Jill Peters (hereafter, collectively referred to as the
5 Robsons), the purchasers of another parcel of real property.

6 4. The Walruffs prevailed on the boundary dispute and were awarded attorney fees of
7 \$25,468 against the Robsons.

8 5. By the end of the litigation, the Walruffs had paid Respondent \$14,000 and owed
9 him \$11,757.38 in outstanding attorney fees.

10 6. Respondent declined the Walruffs' request to pursue the Robsons for the attorney
11 fees awarded to them in the litigation. The Walruffs never collected the debt owed by the
12 Robsons.

13 7. In July 2009, Wells Fargo Bank (Wells Fargo) commenced foreclosure
14 proceedings against the Residence after the Walruffs defaulted on loan payments.

15 8. The trustee's sale was scheduled for October 2, 2013.

16 9. After defaulting on the loan secured by the Residence, the Walruffs were
17 attempting to refinance their loan with Wells Fargo but were unable to effectuate a refinance by
18 October 2, 2009, the date scheduled for the trustee's sale.

19 10. On September 30, 2009, the Walruffs met with Respondent to discuss filing
20 bankruptcy to stop the foreclosure and/or trustee's sale.

21 11. On September 30, 2009, the Walruffs paid Respondent \$1,400, the standard flat
22 fee Respondent typically charged for handling a Chapter 7 bankruptcy at the time.

23 12. During the meeting, the Walruffs informed Respondent that both of them were

1 unemployed and dependent upon social security disability payments and rental income from the
2 Rental Property.

3 13. The Walruffs disclosed to Respondent during the meeting that they owned the
4 Rental Property free and clear of liens.

5 14. The Walruffs disclosed to Respondent during the meeting that the trustee's sale
6 was scheduled for October 2, 2009.

7 15. Respondent discouraged the Walruffs from filing bankruptcy because he claimed
8 that they would lose the Rental Property in bankruptcy.

9 16. Respondent directed his assistant to contact the trustee and obtain the amount
10 currently due to cure the deficiency owed to Wells Fargo.

11 17. On September 30, 2009 or October 1, 2009, Respondent's then legal assistant,
12 Lynn Swanson (Swanson) prepared a fee agreement entitled Retainer Agreement Hourly Rate
13 (Retainer Agreement), reflecting that the Walruffs were hiring Respondent to represent them in
14 connection with "curing default with Wells Fargo + NW Trustee."

15 18. The Retainer Agreement provided that Respondent would be charging the
16 Walruffs at an hourly rate of \$200 and that they paid "an initial retainer of \$1400 as an advance
17 against Counsel's fees for services and other charges incurred in this matter."

18 19. The Retainer Agreement further provided that "\$1,400 of said retainer shall be
19 non-refundable."

20 20. Respondent claims that that the he charged the Walruffs a flat fee of \$1,400.
21 Respondent claim is inconsistent and/or contrary to the terms of Retainer Agreement.

22 21. Respondent did not inform the Walruffs in writing that the fee arrangement he had
23 with them was different from the terms in the Retainer Agreement.

- 1 22. Respondent did not comply with the written terms of the Retainer Agreement
2 and/or did not inform the Walruffs about material terms of the fee arrangement with
3 Respondent.
- 4 23. Respondent deposited the \$1,400 paid by the Walruffs into his general account.
- 5 24. Respondent never provided billing statements and/or an accounting to the Walruffs
6 regarding the fees incurred.
- 7 25. On October 1, 2009, Respondent loaned the Walruffs \$16,499.40, representing the
8 deficiency they owed to Wells Fargo.
- 9 26. On October 1, 2009, the Walruffs used the \$16,499.40 check from Respondent to
10 pay the deficiency owed to Wells Fargo causing the trustee's sale to be cancelled.
- 11 27. On October 1, 2009, Respondent had the Walruffs sign a promissory note (Note)
12 secured by two deeds of trust (DOTs) against the Residence and the Rental Property.
- 13 28. Under the terms of the Note, the Walruffs owed Respondent a \$30,000 principal,
14 which was comprised of the \$16,499.40 loaned by Respondent, the \$11,767.38 outstanding
15 balance in attorney fees owed to Respondent by the Walruffs in connection with the prior
16 litigation, plus a \$1,733 "loan origination fee."
- 17 29. The Note accrued interest at the rate of 12 per cent per annum and payment was
18 fully due in one-year on October 1, 2010.
- 19 30. The Note charged default interest after October 1, 2010 at the rate of 18 percent.
- 20 31. By adding the \$11,767.38 debt for outstanding fees owed to Respondent by the
21 Walruffs to the principal of the Note, Respondent converted the unsecured debt into a secured
22 debt.
- 23 32. At the time the Walruffs executed the Note and/or DOTs, Respondent represented

1 the Walruffs under the Retainer Agreement.

2 33. Respondent never informed the Walruffs in writing that he ceased to represent
3 them.

4 34. The Walruffs never terminated Respondent under the terms of the Retainer
5 Agreement.

6 35. At the time the Walruffs signed the Note and DOTs, they believed that Respondent
7 represented them.

8 36. At the time Respondent had the Walruffs execute the Note and/or DOTs,
9 Respondent knew that there was a significant risk that his responsibilities to the Walruffs under
10 the Retainer Agreement was limited by Respondent's status as an unsecured creditor and/or his
11 personal interest in the loan, Note, and/or DOTs .

12 37. Prior to representing the Walruffs and/or prior to the Walruffs executing the Note
13 and DOTs, Respondent never disclosed the conflicts of interest related to his being an unsecured
14 creditor and/or his personal interests in the Note and/or DOTs to the Walruffs in writing.

15 38. Respondent never obtained informed consent confirmed in writing from the
16 Walruffs regarding any conflicts of interest in connection with his representing them while
17 being an unsecured creditor and/or his personal interest regarding the loan, Note, and DOTs.

18 39. The \$1,400 paid by the Walruffs to Respondent was an additional fee related to
19 Respondent's loan and was unreasonable under the circumstances.

20 40. The Note and DOTs resulted in Respondent obtaining a security interest or other
21 pecuniary interest adverse to his clients, the Walruffs.

22 41. The terms of the Note and/or DOTs were not fair and reasonable to the Walruffs.

23 42. Respondent did not advise the Walruffs in writing of the desirability of seeking the

1 | advice of an independent lawyer before they executed the Note and/or DOTs.

2 | 43. Respondent did not give the Walruffs a reasonable opportunity to seek the advice
3 | of an independent lawyer before they executed the Note and/or DOTs.

4 | 44. Respondent did not comply with the requirements in RPC 1.8(a) before the
5 | Walruffs signed the Note and/or DOTs.

6 | 45. Respondent used information he obtained during his representation of the
7 | Walruffs, including information regarding the Rental Property, the pending trustee's sale, and/or
8 | the Walruffs' financial condition, to their disadvantage when he had them execute the Note
9 | and/or DOTs.

10 | 46. In early 2010, the Walruffs modified their Residence mortgage loan.

11 | 47. On October 6, 2010, the Walruffs sent an email to Respondent stating that they
12 | were unable to pay the entire balance owed under the Note and proposing to make \$500 per
13 | month payments to him while they attempted to sell the Rental Property.

14 | 48. Respondent rejected the Walruffs' proposal.

15 | 49. The Walruffs sent other emails to Respondent attempting to reach an arrangement
16 | to pay off the Note. Respondent rejected these proposals.

17 | 50. On September 18, 2013, Respondent sent an email to the Walruffs stating that he
18 | would commence foreclosure on the Rental Property unless the Walruffs executed a deed in lieu
19 | of foreclosure for the Rental Property.

20 | 51. On November 13, 2013, Respondent sent a letter to the Walruffs stating that he
21 | would commence foreclosure on the Rental Property unless they paid him \$45,000 or they
22 | signed a deed in lieu of foreclosure for the Rental Property.

23 | 52. On March 5, 2014, the Walruffs filed a grievance against Respondent with ODC

1 relating to the loan, Note, and DOTs.

2 53. On June 22, 2014, Respondent commenced foreclosure proceedings against the
3 Walruffs' Rental Property.

4 54. The notice of trustee's sale reflected that the balance due on the Note at that time
5 was \$66,646.55.

6 55. On September 3, 2014, the Walruffs commenced a lawsuit against Respondent
7 seeking to enjoin the foreclosure proceedings.

8 56. During the pendency of the litigation between the Walruffs and Respondent, the
9 parties engaged in settlement negotiations.

10 57. During settlement negotiations, Respondent, through his lawyer, insisted that the
11 Walruffs agree to withdraw their grievance against him as part of any settlement agreement.

12 58. The Walruffs repeatedly declined Respondent's demand to withdraw the
13 grievance.

14 59. Respondent's insistence on withdrawing the grievance was done with the purpose
15 of impacting and/or impeding ODC's investigation of the Walruffs' grievance.

16 60. Respondent's insistence on the withdrawal of the grievance delayed settlement by
17 a number of months.

18 61. On January 10, 2017, the parties settled the lawsuit and the Walruffs retained the
19 Residence and Rental Property.

20 **COUNT I**

21 62. By representing the Walruffs while he had adverse interests and/or by representing
22 the Walruffs without obtaining informed consent in writing, Respondent violated RPC 1.7.

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COUNT 2

63. By using information relating to representation of the Walruffs to their disadvantage, Respondent violated RPC 1.8(b).

COUNT 3

64. By charging the Walruffs fees that were unreasonable, and/or, inconsistent with the written terms of Retainer Fee Agreement, Respondent violated RPC 1.4(b), RPC 8.4(c), RPC 1.5(a), and/or RPC 1.5(b).

COUNT 4

65. By failing to deposit advance fees into the trust account, Respondent violated RPC 1.15A(c).

COUNT 5

66. By having the Walruffs execute the Note and/or DOTs without complying with the provisions in RPC 1.8(a), Respondent violated RPC 1.8(a).

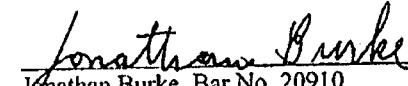
COUNT 6

67. By attempting to condition the settlement of the Walruffs' civil lawsuit on the withdrawal of the grievance, Respondent violated RPC 8.4(d) and/or RPC 8.4(a).

THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation, restitution, and assessment of the costs and expenses of these proceedings.

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Dated this 2nd day of May, 2017.


Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel