

FILED

SEP 19 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
WILLIAM D. McCOOL,
Lawyer (Bar No. 9605).

Proceeding No.
STIPULATION TO REPRIMAND
AND PROBATION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand and Probation is entered into by the Washington State Bar Association (Association), through disciplinary counsel Randy Beitel, Respondent lawyer William D. McCool, and Respondent's counsel Janelle M. Carman.

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,

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1 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 November 2,
4 1979.

5 **II. STIPULATED FACTS**

6 2. Since at least 1980, Respondent has practiced law in Walla Walla, Washington, and
7 has maintained an IOLTA trust account at the Baker Boyer Bank for the pooled deposit of client
8 funds.

9 3. Respondent did not have an established routine for making sure that any client bal-
10 ances are returned to the client at the time representations were concluded or client files became
11 inactive.

12 4. Although Respondent maintained a check register and client ledgers for his trust ac-
13 count, and on a monthly basis he reconciled his bank statement to his check register balance, he
14 did not have an effective system for reconciling the client ledgers to these totals.

15 5. As a result, over the years, various client balances remained in Respondent's trust
16 account after the representations were concluded. Because of the inadequacies of Respondent's
17 monthly reconciliation process, this did not become apparent to Respondent for some time. The
18 sums did, however, continue to accumulate in the account.

19 6. In 2001, there was a major fire which destroyed the office building in which Re-
20 spondent's office was located. A substantial portion of Respondent's trust account records were
21 either destroyed or substantially damaged.

22 7. By the time of the 2001 fire, Respondent was aware that there were funds in his trust
23 account for long-inactive clients. For some time prior to the fire, Respondent had been meaning
24

1 to figure out whose money was in the account, locate the inactive clients and return their funds.

2 8. The 2001 fire made the prospect of this task significantly more daunting and with the
3 other demands occasioned by recovering from the office fire, the task of unraveling his trust ac-
4 count records languished.

5 9. In 2002, Respondent's wife was diagnosed with cancer, which resulted in her death
6 in 2005. During this time frame, much of Respondent's attention was focused on his wife's
7 health challenge, and although he was aware there were problems with his trust account records,
8 he made no progress in unraveling his trust account records.

9 10. Following his wife's death, Respondent intended to unravel his trust account records,
10 but did not take any meaningful action until 2011, when he asked his office manager to start do-
11 ing an internal audit of the trust account to figure out the ownership of all the funds in the ac-
12 count and to locate inactive clients who had balances.

13 11. These efforts were underway when an anonymous grievance was received by disci-
14 plinary counsel in 2012 alleging that Respondent's trust account had a sizeable balance of funds
15 for inactive or unidentified clients.

16 12. As of April 12, 2012, Respondent's trust account had a balance of \$61,848.34, be-
17 longing to 188 clients. The date of last activity for these clients varied greatly, and was spread
18 out over the last 25 years.

19 13. With the filing of the grievance, Respondent dramatically increased his ongoing ef-
20 forts to locate the inactive clients and return their funds. Respondent had his office manager
21 focus on this task and hired an investigator to locate many of the inactive clients. Respondent
22 was also personally engaged in this effort.

1 14. As of March 31, 2013, Respondent had located all but 62 of the 188 inactive clients,
2 and the amount of funds in the trust account for the inactive clients had been reduced from
3 \$61,848.34 to \$12,586.11.

4 15. Respondent's efforts to locate the inactive clients continues and he intends to contin-
5 ue these efforts until the end of June 2014, at which time he intends to submit the remaining
6 balance of the funds to the State of Washington under the Uniform Unclaimed Property Act,
7 RCW 63.29.

8 16. The WSBA Auditor has reviewed Respondent's trust account records and identified
9 certain inadequacies in addition to those noted above regarding the monthly reconciliations.
10 Specifically, the check register did not include deposits and did not have a running balance. In
11 addition, funds had been disbursed from the account on behalf of six clients in excess of the
12 funds on deposit for these clients in the account, in a total amount of \$600.03.

13 17. When these inadequacies were brought to Respondent's attention, he immediately
14 placed \$600.03 of his own funds in the account to bring the account into balance. Respondent
15 and his office manager also met with the WSBA Auditor to review the inadequacies noted
16 above.

17 18. Respondent has instituted a new accounting system for his trust account, and over
18 the last six months, on a monthly basis, has submitted his records for review by the WSBA au-
19 ditor who has found them to be in compliance with the trust account rules, RPC 1.15A and RPC
20 1.15B.

21 III. STIPULATION TO MISCONDUCT

22 19. Respondent stipulates that his failure to adequately reconcile his trust account rec-
23 ords violated RPC 1.15A(h)(6). Respondent stipulates that his failure to promptly return funds
24

1 to clients at the conclusion of their representation violated RPC 1.15A(f). Respondent stipulates
2 that his failure to record deposits in his check register and maintain a running balance in the
3 check register violated RPC 1.15B(a)(1). Respondent stipulates that his disbursement of funds
4 on behalf of clients in excess of the funds those client had on deposit violated RPC 1.15A(h)(8).

5 IV. PRIOR DISCIPLINE

6 20. In 1985, Respondent was reprimanded for receiving a loan from a client without full
7 disclosure, documentation and security for the loan. Also in 1985, Respondent was censured for
8 failing to deposit client funds in trust and maintain complete trust account records.

9 V. APPLICATION OF ABA STANDARDS

10 21. The following American Bar Association Standards for Imposing Lawyer Sanctions
11 (1991 ed. & Feb. 1992 Supp.) apply to this case:

12 4.1 Failure to Preserve the Client's Property

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

16 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
17 property and causes injury or potential injury to a client.

18 4.12 Suspension is generally appropriate when a lawyer knows or should know that
19 he is dealing improperly with client property and causes injury or potential injury to
20 a client.

21 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
22 client property and causes injury or potential injury to a client.

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

25 22. Although Respondent's failure to keep proper records was negligent, and did not in-
26 volve knowing conversion of client funds, by the time he was recovering from his office fire in
27 2001, he should have known that he was dealing improperly with client funds, and by the time
28 he had his office manager undertake an audit of his trust account in 2011, he knew there were

1 | problems in his trust account.

2 | 23. Respondent's inactive clients to whom he has made refunds were injured in that re-
3 | ceipt of the funds they were due was delayed, in some cases by many years. The remaining in-
4 | active clients that Respondent has not been able to locate, and whom Respondent may not ever
5 | be able to locate, will have their funds submitted to the unclaimed properties system where they
6 | may or may not ever receive their funds. To one degree or another, all of these clients have
7 | been injured.

8 | 24. The presumptive sanction is a suspension under ABA Standards Section 4.12.

9 | 25. The following aggravating factors apply under ABA Standards Section 9.22:

- 10 | • Prior Discipline – Respondent has been previously reprimanded and censured.
- 11 | • A Pattern of Misconduct – The misconduct involved 188 clients over 25 years.
- 12 | • Substantial Experience in the Practice of Law – Respondent has been in practice
13 | in Washington since 1779.

14 | 26. The following mitigating factors apply under ABA Standards Section 9.32:

- 15 | • Absence Of a Dishonest or Selfish Motive – Respondent's conduct was not mo-
16 | tivated by any attempt to dishonestly use any client funds. The client funds re-
17 | mained in Respondent's trust account for the entire period. Respondent in no
18 | way benefited from the delay in returning client funds.
- 19 | • Personal or Emotional Problems – During portions of the period of the miscon-
20 | duct, Respondent was dealing with the aftermath of a very destructive office fire
21 | and the illness and death of his wife.
- 22 | • Timely Good Faith Effort To Make Restitution or To Rectify Consequences of
23 | Misconduct – Respondent has expended substantial time and resources in at-
24 |

- 1 b) For all client matters, Respondent shall have a written fee agreement signed by the
2 client, which agreements are to be maintained for least seven years (see RPC
3 1.15B(a)(3)).
- 4 c) On a quarterly basis, Respondent shall provide the Association's audit staff with all
5 trust-account records for the time period to be reviewed by the Association's audit
6 staff and disciplinary counsel for compliance with the RPC:
- 7 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
8 commencement of probation, Respondent shall provide the trust account
9 records from the date this stipulation receives final approval to the end of
10 the third full month.
 - 11 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
12 commencement of probation, Respondent shall provide the trust account
13 records from the end of the previously provided quarter through the end of
14 month six.
 - 15 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
16 commencement of probation, Respondent shall provide the trust account
17 records from the end of the previously provided quarter through the end of
18 month nine.
 - 19 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
20 the commencement of probation, Respondent shall provide the trust ac-
21 count records from the end of the previously provided quarter through the
22 end of month twelve.
 - 23 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
24 the commencement of probation, Respondent shall provide the trust ac-
count records from the end of the previously provided quarter through the
end of month fifteen.
 - vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
the commencement of probation, Respondent shall provide the trust ac-
count records from the end of the previously provided quarter through the
end of month eighteen.
 - 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 the Association 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

1 the account (if any), (c) copies of all trust-account bank statements, deposit slips,
2 and cancelled checks covering the period being reviewed, (d) copies of all trust ac-
3 count client ledger reconciliations for the period being reviewed, and (e) copies of
4 reconciliations of Respondent's trust account check register covering the period be-
5 ing reviewed. The Association's Audit Manager or designee will review Respond-
6 ent's trust account records for each period.

- 7
- 8 d) The Association's Audit Manager or designee may request additional financial or
9 client records if needed to verify Respondent's compliance with RPC 1.15A and/or
10 1.15B. Within twenty days of a request from the Association's Audit Manager or
11 designee for additional records needed to verify Respondent's compliance with RPC
12 1.15A and/or RPC 1.15B, Respondent will provide the Association's Audit Manag-
13 er or designee the additional records requested.
- 14 e) Respondent will reimburse the Washington State Bar Association for time spent by
15 the Association's Audit Manager or designee in reviewing and reporting on Re-
16 spondent's records to determine his/her compliance with RPC 1.15A and RPC
17 1.15B, at the rate of \$85 per hour. Respondent will make payment within thirty
18 days of each written invoice setting forth the auditor's time and payment due.
- 19 f) Respondent will continue to diligently search for the remaining inactive clients
20 whose funds he is still holding in trust, and will disburse those funds upon locating
21 those clients. By June 30, 2014, Respondent will conclude his efforts in this regard
22 and forthwith submit the remaining funds of the inactive clients to the State of
23 Washington under the State of Washington under the Uniform Unclaimed Property
24 Act, RCW 63.29.

25 VII. RESTITUTION

26 31. As Restitution, Respondent will continue his efforts to locate all inactive clients
27 whose funds he is maintaining and promptly provide them with their funds upon identification.
28 By June 30, 2014, Respondent will submit the remaining funds of the inactive clients to the
29 State of Washington under the Uniform Unclaimed Property Act, RCW 63.29. Thereafter,
30 should Respondent located further inactive clients, he will make every effort to refer them to the
31 Unclaimed Property Division and assist them in making a claim for their funds.

32 VIII. COSTS AND EXPENSES

33 32. In light of Respondent's willingness to resolve this matter by stipulation at an early
34 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000

1 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
2 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

3 IX. VOLUNTARY AGREEMENT

4 33. Respondent states that prior to entering into this Stipulation he has consulted inde-
5 pendent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation
6 voluntarily, and that no promises or threats have been made by the Association, nor by any rep-
7 resentative thereof, to induce the Respondent to enter into this Stipulation except as provided
8 herein.

9 X. LIMITATIONS

10 34. This Stipulation is a compromise agreement intended to resolve this matter in ac-
11 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
12 penditure of additional resources by the Respondent and the Association. Both the Respondent
13 lawyer and the Association acknowledge that the result after further proceedings in this matter
14 might differ from the result agreed to herein.

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

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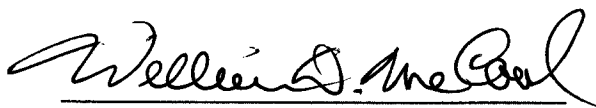
1 tion.

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

7 38. If this Stipulation is approved by the Disciplinary Board, it will be followed by the
8 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforce-
9 ment of Lawyer Conduct will be made.

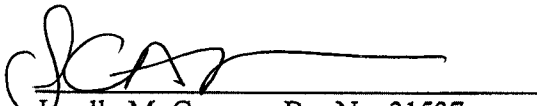
10 39. If this Stipulation is not approved by the Disciplinary Board, this Stipulation will
11 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence
12 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civ-
13 il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

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

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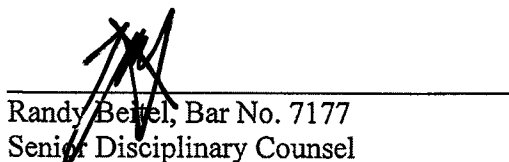
18 William D. McCool, Bar No. 9605
Respondent

Dated: 7-19-13

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21 Janelle M. Carman, Bar No. 31537
Counsel for Respondent

Dated: 7-19-13

22
23 

24 Randy Betzel, Bar No. 7177
Senior Disciplinary Counsel

Dated: 7/25/13