

OCT 31 2017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

R. BRYAN GEISSLER,
Lawyer (Bar No. 12027).

Proceeding No. 17#00058

ODC File No(s). 16-01402

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), 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 J. Donald Curran, and Respondent lawyer R. Bryan Geissler.

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

1 avoid the risk, time, 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 October 27,
4 1981.

5 **II. STIPULATED FACTS**

6 2. On June 7, 2010, Respondent entered into a written fee agreement (Agreement) with
7 Rebecca Jones (Ms. Jones) to represent her in the dissolution of her marriage.

8 3. The Agreement provided, in part:

- 9
- 10 • An hourly fee of \$225, with payment of a \$1,000 “non-refundable
 - 11 • Interest at the rate of one percent per month on any unpaid balance; and
 - 12 • A meeting 90 prior to trial to discuss a trial retainer, which was to be paid
- 13 within 65 days prior to trial.

14 4. The Agreement did not provide security for Respondent’s fee, and expressly stated
15 that security was “N/A.”

16 5. The Agreement did not state that the \$1,000 was the property of Respondent on
17 receipt; that the payment of the \$1,000 in advance did not affect Ms. Jones’s right to terminate
18 the lawyer-client relationship; or that, if the lawyer-client relationship was terminated before the
19 agreed-upon legal services had been completed, Ms. Jones may or may not have a right to a
20 refund of a portion of the fee.

21 6. On June 7, 2010, Ms. Jones paid Respondent \$1,000 by check. The \$1,000
22 represented an advance fee.

23 7. Respondent deposited the \$1,000 check into his business account, not a trust
24 account.

8. Respondent states that, within a few weeks of depositing Ms. Jones’s check, he

1 earned the entire \$1,000.

2 9. Ms. Jones did not pay Respondent any other money.

3 10. In spring 2011, as trial was approaching, Respondent discussed a trial retainer with
4 Ms. Jones.

5 11. Ms. Jones indicated that she could not afford a trial retainer, but may have someone
6 interested in buying her house. The house was community property of Ms. Jones's marriage,
7 and was to be awarded in the litigation between Ms. Jones and her estranged husband, Stephen
8 Jones (Mr. Jones).

9 12. Respondent agreed to wait until Ms. Jones sold the house before collecting his fees,
10 but wanted her to sign documents to secure his fees.

11 13. Respondent prepared a Promissory Note and Deed of Trust for Ms. Jones's
12 signature.

13 14. On May 6, 2011, Ms. Jones signed the Promissory Note and Deed of Trust. The
14 Promissory Note provided that Ms. Jones promised to pay Respondent \$15,000 with interest at a
15 rate of 12% per annum. The Promissory Note was secured by a Deed of Trust on the Jones's
16 house.

17 15. The terms of the transaction were not fair and reasonable to Ms. Jones in that the
18 transaction allowed Respondent to charge Ms. Jones 12% interest on a fully secured debt.

19 16. Respondent did not advise Ms. Jones in writing of the desirability of seeking advice
20 from an independent lawyer regarding the Promissory Note and Deed of Trust; did not obtain
21 Ms. Jones's informed consent in writing to Respondent's role in the transaction, including
22 whether Respondent was representing Ms. Jones in the transaction; and did not fully inform Ms.
23 Jones of the risks and advantages of signing the Promissory Note and Deed of Trust.

24

1 17. In August 2011, Ms. Jones's case concluded with a Decree of Legal Separation. The
2 Decree required the immediate listing of the house for sale, and awarded one-half of the net
3 proceeds from the sale of the house to Ms. Jones and one-half to Mr. Jones.

4 18. Ms. Jones listed the house for sale, but the house did not sell.

5 19. On October 4, 2011, Respondent recorded the Deed of Trust in Spokane County,
6 Washington.

7 20. Ms. Jones was not aware that Respondent had recorded the Deed of Trust until she
8 attempted to refinance the house in 2016.

9 III. STIPULATION TO MISCONDUCT

10 21. By failing to deposit Ms. Jones's \$1,000 check into a trust account, Respondent
11 violated RPC 1.15A(c).

12 22. By obtaining a Promissory Note and Deed of Trust from Ms. Jones without meeting
13 the requirements of RPC 1.8(a)(1), RPC 1.8(a)(2), and RPC 1.8(a)(3), Respondent violated RPC
14 1.8(a).

15 23. By acquiring a proprietary interest in real property that was the subject matter of Ms.
16 Jones's litigation, Respondent violated RPC 1.8(i).

17 IV. PRIOR DISCIPLINE

18 24. In 2010, Respondent was admonished for failing to return original files to a third
19 party (accountant) who was entitled to receive them and, instead, providing the files to his
20 client. Respondent's conduct violated RPC 1.15A(f) and RPC 1.15A(g).

21 V. APPLICATION OF ABA STANDARDS

22 25. The following American Bar Association Standards for Imposing Lawyer Sanctions
23 (1991 ed. & Feb. 1992 Supp.) apply to this case:

1 **4.1 Failure to Preserve the Client's Property**

- 2 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
3 client property and causes injury or potential injury to a client.
4 4.12 Suspension is generally appropriate when a lawyer knows or should
5 know that he is dealing improperly with client property and causes injury
6 or potential injury to a client.
7 4.13 **Reprimand is generally appropriate when a lawyer is negligent in
8 dealing with client property and causes injury or potential injury to a
9 client.**
10 4.14 Admonition is generally appropriate when a lawyer is negligent in
11 dealing with client property and causes little or no actual or potential
12 injury to a client.

13 **4.3 Failure to Avoid Conflicts of Interest**

- 14 4.31 Disbarment is generally appropriate when a lawyer, without the informed
15 consent of client(s):
16 (a) engages in representation of a client knowing that the lawyer's interests
17 are adverse to the client's with the intent to benefit the lawyer or another,
18 and causes serious or potentially serious injury to the client; or
19 (b) simultaneously represents clients that the lawyer knows have adverse
20 interests with the intent to benefit the lawyer or another, and causes
21 serious or potentially serious injury to a client; or
22 (c) represents a client in a matter substantially related to a matter in which
23 the interests of a present or former client are materially adverse, and
24 knowingly uses information relating to the representation of a client with
25 the intent to benefit the lawyer or another and causes serious or
26 potentially serious injury to a client.
27 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
28 interest and does not fully disclose to a client the possible effect of that
29 conflict, and causes injury or potential injury to a client.
30 4.33 **Reprimand is generally appropriate when a lawyer is negligent in
31 determining whether the representation of a client may be materially
32 affected by the lawyer's own interests, or whether the representation
33 will adversely affect another client, and causes injury or potential
34 injury to a client.**
35 4.34 Admonition is generally appropriate when a lawyer engages in an
36 isolated instance of negligence in determining whether the representation
37 of a client may be materially affected by the lawyer's own interests, or
38 whether the representation will adversely affect another client, and causes
39 little or no actual or potential injury to a client.

20 26. Respondent was negligent in failing to properly handle Ms. Jones's \$1,000 advance
21 fee payment.

22 27. There was potential injury in that Ms. Jones's advance fee deposit was not

1 | safeguarded in a trust account before Respondent earned and was entitled to use the funds.

2 | 28. The presumptive sanction is reprimand under ABA Standard 4.13.

3 | 29. Respondent was negligent in failing to avoid a conflict of interest in obtaining the
4 | Promissory Note and Deed of Trust from Ms. Jones.

5 | 30. Ms. Jones was injured in that she entered into the transaction with Respondent
6 | without the benefit of complete or independent information or advice.

7 | 31. The presumptive sanction is reprimand under ABA Standard 4.33.

8 | 32. The following aggravating factors apply under ABA Standard 9.22:

- 9 | (a) prior disciplinary offenses (Respondent received a 2010 admonition, as
10 | described above);
11 | (d) multiple offenses;
11 | (i) substantial experience in the practice of law (Respondent was admitted to
11 | practice law in 1981).

12 | 33. The following mitigating factors apply under ABA Standard 9.32:

- 13 | (d) timely good faith effort to make restitution or to rectify consequences of
14 | misconduct (prior to entering into this Stipulation, Respondent released
14 | the Deed of Trust and waived all interest on Ms. Jones's outstanding
15 | attorney's fees);
15 | (l) remorse.

16 | 34. It is an additional mitigating factor that Respondent has agreed to resolve this matter
17 | at an early stage of the proceedings.

18 | 35. On balance the aggravating and mitigating factors do not require a departure from
19 | the presumptive sanction of reprimand.

20 | **VI. STIPULATED DISCIPLINE**

21 | 36. The parties stipulate that Respondent shall receive a reprimand for his conduct.

22 | 37. Respondent will be subject to probation for a period of two years commencing upon
23 | final approval of this Stipulation, with periodic reviews under ELC 13.8 of his trust account

24 |

1 | practices, and must comply with the specific probation terms set forth below:

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

1 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
2 after 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 twenty-one.

5 The trust account records Respondent provides to ODC for each quarterly review of
6 his trust account will include: (a) copies of each completed "Monthly
7 Reconciliation and Review Report" referenced in sub-paragraph(c) above, (b) a
8 complete checkbook register for his trust account covering the period being
9 reviewed, (c) complete individual client ledger records for any client with funds in
10 Respondent's trust account during all or part of the period being reviewed, as well
11 as for Respondent's own funds in the account (if any), and (d) copies of all trust-
12 account bank statements, deposit slips, and cancelled checks covering the period
13 being reviewed. The ODC's Audit Manager or designee will review Respondent's
14 trust account records for each period.

15 e) On the same quarterly time schedule set forth in the preceding paragraph,
16 Respondent will provide ODC's Audit Manager or designee with copies of any and
17 all fee agreements entered into within the time period at issue.

18 f) The ODC's Audit Manager or designee may request additional financial or client
19 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
20 Within twenty days of a request from ODC's Audit Manager or designee for
21 additional records needed to verify Respondent's compliance with RPC 1.15A
22 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
23 additional records requested.

24 g) 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
 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.

38. Respondent shall obtain, at his own expense, six (6) Continuing Legal Education
credits in the areas of fee agreements, collecting fees, and conflicts of interests.

39. Respondent shall provide copies of any and all conflict disclosures and/or waivers
provided to and/or signed by clients during the probation period.

VII. RESTITUTION

40. Restitution is not required as part of this Stipulation.

1 **VIII. COSTS AND EXPENSES**

2 41. In light of Respondent's willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$754.50
4 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
5 13.9(i) if these costs are not paid within 30 days of approval of this stipulation.

6 **IX. VOLUNTARY AGREEMENT**

7 42. Respondent states that prior to entering into this Stipulation he has consulted
8 independent legal counsel regarding this Stipulation, that Respondent is entering into this
9 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
10 Association, nor by any representative thereof, to induce the Respondent to enter into this
11 Stipulation except as provided herein.

12 43. Once fully executed, this Stipulation is a contract governed by the legal principles
13 applicable to contracts, and may not be unilaterally revoked or modified by either party.

14 **X. LIMITATIONS**

15 44. This Stipulation is a compromise agreement intended to resolve this matter in
16 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
17 expenditure of additional resources by the Respondent and ODC. Both the Respondent and
18 ODC acknowledge that the result after further proceedings in this matter might differ from the
19 result agreed to herein.

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


23 46. This Stipulation results from the consideration of various factors by both parties,
24

1 including the benefits to both by promptly resolving this matter without the time and expense of
2 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
3 such, approval of this Stipulation will not constitute precedent in determining the appropriate
4 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
5 subsequent proceedings against Respondent to the same extent as any other approved
6 Stipulation.

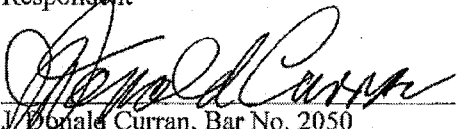
7 47. Under ELC 3.1(b), all documents that form the record before the Chief Hearing
8 Officer for his or her review become public information on approval of the Stipulation by the
9 Chief Hearing Officer, unless disclosure is restricted by order or rule of law.

10 48. If this Stipulation is not approved by the Chief Hearing Officer, 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
13 civil or criminal action.


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

16 
17 _____
18 R. Bryan Geissler, Bar No. 12027
19 Respondent

Dated: 9/12/17

20 
21 _____
22 Donala Curran, Bar No. 2050
23 Counsel for Respondent

Dated: 10/16/17

24 
Marsha Matsumoto, Bar No. 15831
Managing Disciplinary Counsel

Dated: 10/25/17