

FILED

Feb 8, 2021

Disciplinary
Board

Docket # 045

DISCIPLINARY BOARD
WASHINGTON SUPREME COURT

In re

HOWARD JOSEPH MARCUS,

Lawyer (Bar No. 12529).

Formal Proceeding No. 20#00007

ODC File No. 18-01235

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's 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 (WSBA) through disciplinary counsel Jonathan Burke, Respondent lawyer Howard Joseph Marcus, and Respondent's counsel Anne Seidel.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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 Respondent. Respondent

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OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
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1 chooses to resolve this proceeding now by entering into the following stipulation to facts,
2 misconduct and sanction to 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 June 22,
5 1982.

6 **II. STIPULATED FACTS**

7 **Facts Relating to Wilson's Judgment**

8 2. On June 20, 2014, Respondent filed a lawsuit on behalf of Respondent's client
9 Pinnacle Realty Management (Pinnacle) against Joemisha Wilson (Wilson) along with a
10 stipulated judgment in an unlawful detainer action.

11 3. Pinnacle knew that Respondent would not handle collection of the judgment.

12 4. Respondent did not file a notice of withdrawal from representing Pinnacle.

13 5. On February 27, 2017, Wilson deposited \$3,000 into the registry of the court as
14 payment on the judgment owed to Pinnacle. In a phone call, Wilson informed Respondent that
15 Wilson paid \$3,000 into the registry of the court and agreed that Respondent could file an *ex*
16 *parte* motion disbursing the funds.

17 6. On March 23, 2017, Respondent filed an *ex parte* motion to disburse the \$3,000 in
18 the registry of the court to Pinnacle (in care of Respondent), which was entered by the court.

19 7. On March 24, 2017, the court registry issued a check for \$3,000 to Respondent,
20 which was sent to Respondent that same date.

21 8. Respondent did not receive the check for approximately three months because
22 Respondent was out of the country.

23 9. On June 19, 2017, the \$3,000 check was deposited into Respondent's trust account.

1 10. On June 23, 2017, Respondent issued a check to Pinnacle (a/k/a Verandas
2 Apartments) from Respondent's trust account for \$3,000 along with a letter inquiring whether
3 Pinnacle wanted to accept the \$3,000 check as full satisfaction of the debt, which was now
4 \$5,409.39, including interest.

5 11. Pinnacle never received the check or letter. Consequently, the \$3,000 remained in
6 Respondent's trust account until February 22, 2019.

7 12. Respondent should have known that Pinnacle did not receive the \$3,000.

8 13. At some point, Wilson discovered that the \$3,000 had been disbursed to
9 Respondent but had not been paid to Pinnacle.

10 14. On January 18, 2018, Wilson filed an *ex parte* motion for an order requiring
11 Respondent to return the \$3,000 to the registry of the court, which the court granted that day.

12 15. Wilson attempted to reach Respondent by telephone on February 1, 2019 and left
13 the following voicemail message: "Hey, Mr. Marcus, this is Joemisha Wilson. I'm calling in
14 regards to the \$3,000 that I put into the account, the treasury, into the court last February and I
15 think you have filed a motion to pick it up in March, and I just filed a motion on January 18th to
16 return the money because that money was supposed to go into a specific place, and it, the third
17 party agency, is actually holding me accountable and not the court anymore, so I filed the
18 motion and the hearing for you to return the money as soon as possible" and included the court
19 case number and Wilson's telephone number.

20 16. Wilson says a copy of the order was sent to Respondent in the mail. Respondent
21 says that the order was not received by Respondent.

22 17. On July 24, 2018, Wilson filed a grievance with ODC, which ODC dismissed
23 without requesting a response. ODC sent the grievance to Respondent on July 27, 2018, along

1 with the dismissal letter. Respondent did not read the grievance as it had already been
2 dismissed.

3 18. On September 7, 2018, Wilson contested the dismissal of the grievance and
4 provided a number of supporting documents to ODC. On or about September 14, 2018, ODC
5 re-opened Wilson's grievance and sent Respondent a number of documents, including a copy of
6 the January 18, 2018 order.

7 19. Respondent should have known from reviewing the documents sent by ODC on
8 September 14, 2018 that Respondent was required to return the \$3,000 to the registry of the
9 court. Respondent did not know that Pinnacle had not cashed the \$3,000 check because
10 Respondent did not review bank statements for Respondent's trust account and did not reconcile
11 the trust account.

12 20. On January 15, 2019, an ODC investigator informed Respondent that Pinnacle
13 never received the check. The investigator told Respondent to see if the check had been cashed
14 and then they would talk again.

15 21. On January 31, 2019, Respondent left a message for the investigator that the check
16 had not been cashed and that Respondent intended to deposit the funds into the registry of the
17 court the next day. On February 1, 2019, Respondent prepared a check for \$3,000.
18 Respondent did not immediately deposit the check into the registry of the court because
19 Respondent incorrectly believed that he should meet with the ODC investigator before
20 depositing the check.

21 22. On February 22, 2019, Respondent delivered the \$3,000 check to the registry of
22 the court.

1 **Facts Relating to Respondent's Law Practice and Trust Account Practices**

2 23. Since the 1980's, Respondent's law practice has focused on representing landlords in
3 eviction matters. In connection with Respondent's practice, Respondent sometimes obtained
4 writs of restitution and monetary judgments against the debtor tenants. Respondent's clients
5 typically used a collection agency or other lawyers to collect the judgments because
6 Respondent's practice did not involve collections.

7 24. Respondent's client contact was primarily by telephone.

8 25. Respondent usually did not file a notice of withdrawal in the lawsuits after obtaining
9 the writ and judgment.

10 26. During the past 20 years, debtors who owed judgments to Respondent's clients and
11 former clients occasionally contacted Respondent to pay off judgments, sometimes several
12 years after the judgment was obtained. Respondent accepted these payments and placed them in
13 Respondent's trust account.

14 27. In one instance, Respondent received funds for client JN¹ in 1999 but did not attempt
15 to disburse the funds promptly. In 2003, Respondent prepared and sent a check to JN, but the
16 check was returned undeliverable because Respondent did not have the correct current address
17 for JN.

18 28. Respondent prepared and sent checks to certain other clients, including SC, EA, ER,
19 PGP, and EP, but those checks were not cashed because Respondent did not have current
20 addresses for the clients. In two other instances (LS and FO), Respondent prepared and sent
21 checks to LS and FO, who unbeknownst to Respondent at the time, were deceased, but the
22 checks were not cashed.

23 ¹ This stipulation uses the initials of former clients.

1 29. During the period from 2008 through 2012, Respondent used a relative who was a
2 private investigator to try to locate a number of clients who had undisbursed funds in
3 Respondent's trust account. Respondent also attempted to locate the clients on his own. These
4 attempts to locate clients were not successful.

5 30. On February 1, 2018, Respondent's trust account contained undisbursed client funds
6 totaling \$50,247.89. Of this total, \$31,077.89 represented outstanding checks to clients dated
7 from 2003 through 2008: (1) \$1,350.00 to JN on 4/25/2003; (2) \$1,583.32 to PGP on 4/20/2003;
8 (3) \$3,980.34 to EA on 2/5/2007; (4) \$4,190.80 to FO on 2/5/2007; (5) \$15,788.22 to LS on
9 7/24/2007; and (6) \$4,185.21 to EP on 8/9/2008.

10 31. On October 30, 2019, Respondent disbursed \$29,207.23 to DOR's unclaimed
11 property fund on behalf of six clients: JN, PGP, FO, EA, LS, and JM.

12 32. On November 5, 2019, Respondent sent a check for \$4,185.21 to client ER
13 representing funds that had been in Respondent's trust account since August 2008. Respondent
14 sent a second check that was cashed.

15 33. All of the client funds in Respondent's trust account were ultimately disbursed. In
16 July 2020, Respondent closed Respondent's trust account.

17 34. In 2020, Respondent sold Respondent's law practice and retired from the practice of
18 law.

19 III. STIPULATION TO MISCONDUCT

20 35. By failing to promptly comply with the court order to return the \$3,000 to the
21 registry of the court, Respondent violated RPC 8.4(d).

22 36. By failing to reconcile trust account records, Respondent violated RPC
23 1.15A(h)(6).

1 37. By failing to promptly pay or deliver funds to clients, Respondent violated RPC
2 1.15A(f) and former RPC 1.14.

3 **IV. PRIOR DISCIPLINE**

4 38. Respondent has no prior discipline.

5 **V. APPLICATION OF ABA STANDARDS**

6 39. The following American Bar Association Standards for Imposing Lawyer Sanctions
7 (1991 ed. & Feb. 1992 Supp.) apply to this case.

8 40. ABA Standard 6.2 applies to violations of court orders under RPC 8.4(d) and
9 provides as follows:

10 **6.2 Abuse of the Legal Process**

11 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
12 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
serious injury or potentially serious injury to a party or causes serious or potentially
serious interference with a legal proceeding.

13 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
14 violating a court order or rule, and causes injury or potential injury to a client or a party,
or causes interference or potential interference with a legal proceeding.

15 6.23 Reprimand is generally appropriate when a lawyer negligently fails to
16 comply with a court order or rule, and causes injury or potential injury to a client
or other party, or causes interference or potential interference with a legal
17 proceeding.

18 6.24 Admonition is generally appropriate when a lawyer engages in an isolated
19 instance of negligence in complying with a court order or rule, and causes little or no
actual or potential injury to a party, or causes little or no actual or potential interference
with a legal proceeding.

20 41. Respondent negligently failed to comply with the order to return funds to the
21 registry, causing actual injury to Wilson and potential injury to the court system.

22 42. Reprimand is the presumptive sanction for Respondent's conduct under ABA
23 Standard 6.23.

1 43. ABA Standard 4.1 is most applicable to the duties to properly handle client funds,
2 including violations of RPC 1.15A, and former RPC 1.14, and provides as follows.

3 **4.1 *Failure to Preserve the Client's Property***

4 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
property and causes injury or potential injury to a client.

5 4.12 **Suspension is generally appropriate when a lawyer knows or should know
6 that he is dealing improperly with client property and causes injury or
potential injury to a client.**

7 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
8 client property and causes injury or potential injury to a client.

9 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
client property and causes little or no actual or potential injury to a client.

10 44. Respondent should have known that he was failing to properly handle client funds
11 resulting in actual harm.

12 45. The presumptive sanction for Respondent's failure to properly handle client property
13 is suspension under ABA Standard 4.12.

14 46. The Supreme Court has found that, where there are multiple ethical violations, the
15 "ultimate sanction imposed should at least be consistent with the sanction for the most serious
16 instance of misconduct among a number of violations." In re Disciplinary Proceeding Against
17 Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6). Here,
18 suspension is the most serious presumptive sanction for Respondent's misconduct.

19 47. The following aggravating factors apply under ABA Standard 9.22:

- 20 (d) multiple offenses; and
21 (i) substantial experience in the practice of law [Respondent was admitted to
practice in 1982].

22 48. The following mitigating factors apply under ABA Standard 9.32:

- 23 (a) absence of a prior disciplinary record;
24 (b) absence of a dishonest or selfish motive;

- 1 (c) personal or emotional problems [During the relevant time period, Respondent
2 suffered from serious medical conditions that are described in the Confidential
Attachment];
3 (g) character; and
(l) remorse.

4 49. On balance the aggravating and mitigating factors warrant a reduction from the
5 presumptive sanction of suspension to reprimand.

6 VI. STIPULATED DISCIPLINE

7 50. The parties stipulate that Respondent shall receive a reprimand for Respondent's
8 conduct.

9 51. **Trust Account Probation for Two Years.** Subject to the exceptions in paragraph
10 52 below, Respondent will be subject to probation for a period of two years with periodic
11 reviews under ELC 13.8 of Respondent's trust account practices, and must comply with the
12 specific probation terms set forth below:

- 13 a) For all client matters, Respondent shall have a written fee agreement signed by the
14 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).
- 15 b) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
16 Review Report," Respondent shall review the trust-account records detailed on the
form report, review the completed report, and sign and date the completed report.
- 17 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
18 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:
- 19 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
20 commencement of probation, Respondent shall provide the trust account
records from the date of commencement of probation to the end of the third
21 full month.
- 22 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
23 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
month six.

- 1 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the end of the previously provided quarter through the end of
4 month nine.
- 5 iv) Months 10 – 12. By no later than the 30th day of the thirteenth 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 twelve.
- 9 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
10 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 fifteen.
- 13 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month eighteen.
- 17 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
18 after the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
20 the end of month twenty-one.

21 The trust account records Respondent provides to ODC for each quarterly review of
22 Respondent's trust account will include: (a) copies of each completed "Monthly
23 Reconciliation and Review Report" referenced in sub-paragraph (c) above, (b) a
24 complete checkbook register for Respondent's trust account covering the period
 being reviewed, (c) 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), and (d) copies of all
 trust-account bank statements, deposit slips, and cancelled checks covering the
 period being reviewed. ODC's Audit Manager or designee will review
 Respondent's trust account records for each period.

- 1 e) On the same quarterly time schedule set forth in the preceding paragraph,
2 Respondent will provide ODC's Audit Manager or designee with copies of any and
3 all fee agreements entered into within the time period at issue.
- 4 f) ODC's Audit Manager or designee may request additional financial or client
5 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
6 Within twenty days of a request from ODC's Audit Manager or designee for
7 additional records needed to verify Respondent's compliance with RPC 1.15A
8 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
9 additional records requested.
- 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
Respondent's 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.

10 **52. If within 30 days of approval of this Stipulation Respondent reports in writing**
11 **to ODC that Respondent is not handling client or third person funds and/or that**
12 **Respondent is no longer licensed to practice law, Respondent's report shall fulfill the**
13 **terms of the probation.** If, at any time within two years following the approval of this
14 Stipulation, Respondent opens a trust account or handles client or third person funds,
15 Respondent will notify ODC in writing within 14 days of doing so and will be subject to the
16 terms of probation as set forth in this Stipulation.

17 VII. RESTITUTION

18 53. No restitution is warranted.

19 VIII. COSTS AND EXPENSES

20 54. , Respondent shall pay attorney fees and administrative costs of \$1,785.41
21 (representing \$1,035.41 in costs plus \$750.00 in expenses) in accordance with ELC 13.9(i). The
22 Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 45
23 days of approval of this Stipulation.

1 **IX. VOLUNTARY AGREEMENT**

2 55. Respondent states that prior to entering into this Stipulation Respondent had an
3 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is
4 entering into this Stipulation voluntarily, and that no promises or threats have been made by
5 ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into
6 this Stipulation except as provided herein.

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

9 **X. LIMITATIONS**

10 57. This Stipulation is a compromise agreement intended to resolve this matter in
11 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
12 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
13 and ODC acknowledge that the result after further proceedings in this matter might differ from
14 the result agreed to herein.

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


18 59. This Stipulation results from the consideration of various factors by both parties,
19 including 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

1 Stipulation.


2 60. If this Stipulation is approved by the Hearing Officer, it will be followed by the
3 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
4 Enforcement of Lawyer Conduct will be made.

5 61. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
6 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
7 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
8 or criminal action.


9 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
10 to Reprimand as set forth above.

11 
12 _____
13 Howard Joseph Marcus, Bar No. 12529
14 Respondent

Dated: 1/26/21

15 
16 _____
17 Anne I. Seidel, Bar No. 22742
18 Attorney for Respondent

Dated: 1/26/21

19 
20 _____
21 Jonathan Burke, Bar No. 20910
22 Senior Disciplinary Counsel

Dated: 1/26/21