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Disciplinary
Board

Docket # 019

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

ROBERT CHARLES KAUFMAN,

Lawyer (Bar No. 12543).

Proceeding No. 18#00019

ODC File No(s). 16-01638

STIPULATION TO REPRIMAND

Following settlement conference conducted
under ELC 10.12(h)

14 Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer
15 Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the
16 following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC)
17 of the Washington State Bar Association (Association) through disciplinary counsel Marsha
18 Matsumoto, Respondent's Counsel Donna Young, and Respondent lawyer Robert Charles
19 Kaufman.

20 Respondent understands that he is entitled under the ELC to a hearing, to present
21 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,
22 misconduct and sanction in this case. Respondent further understands that he is entitled under
23 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the
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1 Supreme Court. Respondent further understands that a hearing and appeal could result in an
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this
3 proceeding now by entering into the following stipulation to facts, misconduct, and sanction to
4 avoid the risk, time, and expense attendant to further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on August 10,
7 1982.

8 II. STIPULATED FACTS

9 2. At all relevant times, Respondent was a sole practitioner with a practice focused on
10 family law and collections.

11 3. Respondent maintained a trust account at U.S. Bank, ending in 1972, for the deposit
12 of client funds.

13 Random Examination

14 4. In December 2015, Respondent was randomly selected for an examination (random
15 examination) of his trust account records by ODC under Rule 15.1(a) of the Rules for
16 Enforcement of Lawyer Discipline (ELC).

17 5. The random examination covered the period October 1, 2015 through November 30,
18 2015 (examination period).

19 6. During the examination period, Respondent maintained a handwritten check register
20 for his trust account, but it did not contain a running balance after each transaction.

21 7. During the examination period, Respondent did not maintain client ledgers for his
22 trust account that included all of the information required by RPC 1.15B(a)(2). Respondent
23 maintained records in Timeslips entitled "Funds with Running Balances," that were organized
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1 by client, but did not always include the purpose of the transaction, the date on which the
2 transaction occurred, the check number for each disbursement, the payor or payee, a balance
3 after each transaction, or all transactions.

4 8. During the examination period, Respondent did not reconcile his check register to
5 the bank statements, or reconcile his check register to a combined total of client ledger balances.

6 9. On May 10, 2016, the ODC Auditor instructed Respondent to reconstruct a set of
7 client ledgers, to reconcile his check register to the client ledgers, and to determine the
8 ownership of all unidentified funds in his trust account. The ODC Auditor sent Respondent
9 information on managing client trust accounts and using QuickBooks for trust accounting.

10 10. Respondent did not reconstruct his trust account records prior to the end of the
11 random examination.

12 11. On September 22, 2016, the ODC Auditor sent Respondent a report of her findings
13 and recommendation that a disciplinary investigation of Respondent's trust account records and
14 handling of client funds be conducted.

15 12. On October 28, 2016, a Review Committee of the Disciplinary Board ordered ODC
16 to conduct a grievance investigation into whether Respondent's handling of client funds
17 complied with the RPC.

18 *Trust Account Investigation*

19 13. On August 25, 2017, Disciplinary Counsel requested that Respondent produce his
20 complete trust account records for the period January 1, 2017 through July 31, 2017 (the
21 investigation period).

22 14. On October 12, 2017, Respondent produced his trust account records for the
23 investigation period. Respondent's trust account records consisted of a handwritten check
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1 register, the "Funds with Running Balances" record, which showed deposits and withdrawals
2 only during the investigation period, bank statements, cancelled checks, and deposit slips, but
3 there were no client ledgers that met the requirements of RPC 1.15B(a)(2).

4 15. Respondent's handwritten check register did not contain a running balance after each
5 transaction.

6 16. During the investigation period, Respondent did not reconcile his check register to
7 the bank statements, or reconcile his check register to a combined total of client ledger balances.

8 17. Because of the deficiencies in his trust account records, Respondent sometimes
9 failed to promptly disburse funds from his trust account to clients who were entitled to receive
10 them, and he failed to timely withdraw earned fees from his trust account.

11 18. Respondent states that, prior to entering into this stipulation, he attended a
12 continuing legal education course on trust accounting, retained a lawyer to reconstruct his trust
13 account records for the period January 1, 2014 through December 31, 2017, and contracted with
14 an outside bookkeeper to assist him with ongoing maintenance of his trust account records.

15 III. STIPULATION TO MISCONDUCT

16 19. By failing to maintain complete and current trust account records and by failing to
17 reconcile his trust account, Respondent violated RPC 1.15A(h)(2), 1.15A(h)(6), and 1.15B(a)(1)
18 and (2).

19 20. By failing to promptly deliver funds from his trust account to clients entitled to
20 receive them, Respondent violated RPC 1.15A(f).

21 21. By failing to withdraw his earned fees from his trust account, Respondent violated
22 RPC 1.15A(c).

1 **IV. PRIOR DISCIPLINE**

2 22. Respondent does not have a record of prior discipline in Washington.

3 **V. APPLICATION OF ABA STANDARDS**

4 23. The following American Bar Association Standards for Imposing Lawyer Sanctions
5 (1991 ed. & Feb. 1992 Supp.) apply to this case:

6 ***4.1 Failure to Preserve the Client's Property***

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

10 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
11 client property and causes injury or potential injury to a client.

12 4.12 Suspension is generally appropriate when a lawyer knows or should
13 know that he is dealing improperly with client property and causes injury
14 or potential injury to a client.

15 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
16 with client property and causes injury or potential injury to a client.

17 4.14 Admonition is generally appropriate when a lawyer is negligent in
18 dealing with client property and causes little or no actual or potential
19 injury to a client.

20 24. Following the random examination, Respondent knew or should have known that he
21 was not maintaining adequate trust account records or timely disbursing funds from his trust
22 account.

23 25. Respondent's conduct caused injury in that his inadequate recordkeeping
24 compromised his ability to accurately track client funds, delayed the disbursement of funds
from his trust account to clients, and caused lawyer funds to be held with client funds in his trust
account.

26. The presumptive sanction is suspension.

27. The following aggravating factor applies under ABA Standard 9.22:

- (i) substantial experience in the practice of law [Respondent was admitted to practice in Washington in 1982, and admitted to practice law in New Jersey in 1978].

1 28. The following mitigating factors apply under ABA Standard 9.32:

- 2 (a) absence of a prior disciplinary record;
3 (b) absence of a dishonest or selfish motive;
4 (c) personal or emotional problems [Respondent states that his 96-year-old
5 father became ill in May 2016 and died in April 2017. Respondent states
6 that, during this period, he travelled to New Jersey every 10 to 14 days to
7 be with his father];
8 (l) remorse.

9 29. Based on the circumstances and factors set forth above, the presumptive sanction
10 should be mitigated to a reprimand.

11 VI. STIPULATED DISCIPLINE

12 30. The parties stipulate that Respondent shall receive a reprimand for his conduct.

13 31. Respondent will be subject to probation for a period of two years commencing upon
14 final approval of this stipulation, with periodic reviews under ELC 13.8 of his/her trust account
15 practices, and must comply with the specific probation terms set forth below:

- 16 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
17 1.15B, and shall carefully review the current version of the publication, Managing
18 Client Trust Accounts: Rules, Regulations, and Common Sense.
19 b) For all client matters, Respondent shall have a written fee agreement signed by the
20 client, which agreements are to be maintained for least seven years (see RPC
21 1.15B(a)(3)).
22 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
23 Review Report," Respondent shall review the trust-account records detailed on the
24 form report, review the completed report, and sign and date the completed report.
25 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
26 account records for the time period to be reviewed by ODC's audit staff and
27 disciplinary counsel for compliance with the RPC:
28 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
29 commencement of probation, Respondent shall provide the trust account
30 records from the date of commencement of probation to the end of the third
31 full month.

- 1 ii) Months 4 – 6. By no later than the 30th day of the seventh 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 six.
- 5 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
6 commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month nine.
- 9 iv) Months 10 – 12. By no later than the 30th day of the thirteenth 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 twelve.
- 13 v) Months 13 – 15. By no later than the 30th day of the sixteenth 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 fifteen.
- 17 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
18 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 eighteen.
- 21 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
22 after the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
24 the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of his trust account will include: (a) copies of each completed “Monthly Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a complete checkbook register for his/her 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.

- e) 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 during the probation period.

1 f) ODC's Audit Manager or designee may request additional financial or client
2 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
3 Within twenty days of a request from ODC's Audit Manager or designee for
4 additional records needed to verify Respondent's compliance with RPC 1.15A
5 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
6 additional records requested.

7 g) Respondent will reimburse the Association for time spent by ODC's Audit Manager
8 or designee in reviewing and reporting on Respondent's records to determine
9 his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
10 Respondent will make payment within thirty days of each written invoice setting
11 forth the auditor's time and payment due.

12 VII. RESTITUTION

13 32. To the extent that payments made to clients and third parties via trust account checks
14 2613, 2935, 2952, 2991, 3080, 3155, and 3197 remain uncashed, Respondent shall within 30
15 days of final approval of this stipulation take steps to contact the respective payees and
16 determine the status of the uncashed checks. If after taking reasonable steps, Respondent is
17 unable to locate the client(s) or third person(s), Respondent should treat the funds as unclaimed
18 property under the Uniform Unclaimed Property Act, RCW 63.29. Within six months of final
19 approval of this stipulation, Respondent shall provide ODC with proof that the funds have been
20 delivered, are no longer owed, or have been remitted to the Department of Revenue consistent
21 with RCW 63.29.

22 VIII. COSTS AND EXPENSES

23 33. In light of Respondent's willingness to resolve this matter by stipulation, Respondent
24 shall pay attorney fees and administrative costs of \$750 in accordance with ELC 13.9(i). The
Association will seek a money judgment under ELC 13.9(j) if these costs are not paid within 30
days of approval of this stipulation.

IX. VOLUNTARY AGREEMENT

34. Respondent states that prior to entering into this Stipulation he has consulted

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

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

7 **X. LIMITATIONS**

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

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

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

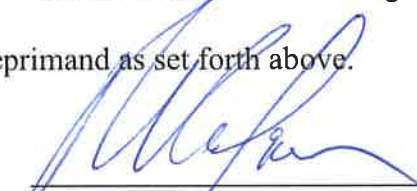
23 39. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
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1 his or her review become public information on approval of the Stipulation by the Hearing
2 Officer, unless disclosure is restricted by order or rule of law.

3 40. If this Stipulation is approved by the Hearing Officer, it will be followed by the
4 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
5 Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition to
6 Washington, Respondent also is admitted to practice law in the following jurisdiction, whether
7 current status is active, inactive, or suspended: New Jersey.

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


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

14 
15 _____
16 Robert Charles Kaufman, Bar No. 12543
Respondent

Dated: 12/19/2019

17 
18 _____
19 Donna Young, Bar No. 15455
Counsel for Respondent

Dated: 12/19/19

20 
21 _____
22 Marsha Matsumoto, Bar No. 15831
23 Managing Disciplinary Counsel

Dated: 12/19/19