BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re **JOHN G. YOUNG,** Lawyer (Bar No. 12890).	Proceeding No. 18#00021 ODC File No(s). 15-01411 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 (Association) through disciplinary counsel Marsha Matsumoto, Respondent's counsel David Allen and Respondent lawyer John G. Young (Respondent).

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

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proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time, and expense attendant to further proceedings.

I. ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on November 2, 1982.

II. STIPULATED FACTS

Mayers v Bell – Malpractice Action

2. In 2007, David Mayers, Jr., sued J. Grahame Bell for legal malpractice. Mr. Mayers was represented by Thomas Buchmeier in the lawsuit.

3. On December 11, 2008, Mr. Mayers obtained a default judgment against Mr. Bell in the amount of $60,000.

Mr. Bell's Fees from Exxon Valdez Litigation

4. In January 2009, Respondent received attorney fees for work done on the Exxon Valdez litigation.

5. Respondent designated $36,795.39 as Mr. Bell's share of the fees because Mr. Bell had assisted Respondent in the litigation.

6. Respondent deposited Mr. Bell's funds to the trust account of the law firm Young deNormandie (YdN), where Respondent was a shareholder.

7. On January 5, 2009, Respondent sent Mr. Bell a letter and a check drawn on YdN's trust account in the amount of $36,795.39.

8. Mr. Bell asked Respondent to keep the funds in YdN's trust account because Mr. Bell wanted to hire the firm to represent him in setting aside Mr. Mayers's default judgment.

9. On or about January 20, 2009, YdN stopped payment on the $36,795.39 check to

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Mr. Bell.

10. On January 22, 2009, Mr. Bell sent Respondent an email discussing draft terms for a "retainer agreement."

11. On January 26, 2009, Respondent sent Mr. Bell an email, attaching an engagement letter. The email stated, in part, "[h]ere is the letter that we discussed. If you still wish to proceed in this matter, sign it and pdf it back."

12. The engagement letter stated:

> You have asked us to represent you in connection with that certain legal action entitled David M. Mayers, Jr. v John G. Bell, civil cause number 07-2-20616-7 KNT now pending in the Superior Court for King County, Washington and in connection with a suit that you may wish to file naming Mr. Mayers, Terry Reilly, Michael Gusa, and/or Thomas Buchmeier as defendants, as appropriate. We have agreed to that representation on the express condition that you provide us with a $36,000 retainer against which we will bill our fees as they are incurred.
>
> Because we cannot terminate our representation of you in pending litigation without court approval, we must insist the retainer be deemed earned upon receipt. It will only be refundable if (1) either of us first terminates the representation and (2) we receive court approval to withdraw as your counsel. If these conditions are met, any balance remaining after all of our fees and costs have been paid in full will then be refunded to you.
>
> If these conditions are acceptable to you, please countersign one copy of this letter where indicated below. Upon receipt of a countersigned copy of this letter, we will transfer $36,000 of the funds we are holding in our trust account for you to our general account and will immediately start work on your case.

13. Mr. Bell responded, "[n]ot sure if WE know how to pdf it back. We (pl) will see what we see, or not." Later, Mr. Bell wrote, "[w]e do not. What we may do is either print/sign/fax it, OR convert it into an MS Word doc and // J. Grahame Bell it."

14. During the period January 26, 2009 through August 10, 2009, Mr. Bell did not deliver a signed engagement letter to Respondent or YdN.

15. In the absence of a signed engagement letter, YdN did not transfer Mr. Bell's funds

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from its trust account to its general account.

16. After doing a small amount of work on Mr. Bell's case, YdN concluded there was no basis to challenge Mr. Mayers's judgment or to pursue claims against Mr. Mayers. In May 2009, YdN charged Mr. Bell $3,672.07 for these services. YdN collected its fees by disbursing $3,672.07 from Mr. Bell's funds in YdN's trust account.

17. The remainder of Mr. Bell's funds ($33,123.32) remained in YdN's trust account.

18. YdN never appeared on behalf of Mr. Bell in Mayers v Bell.

Mayers v. Bell - Writ of Garnishment

19. On July 14, 2009, Mr. Buchmeier obtained a Writ of Garnishment (Writ) against YdN for $63,334.40 ($60,000 judgment plus interest, fees and costs). Mr. Buchmeier arranged for the Writ to be served on YdN to garnish funds the firm was holding for Mr. Bell in its trust account.

20. On July 22, 2009, Respondent accepted service of the Writ. On the same day, Respondent sent Mr. Bell an email advising him of the Writ and stating, "I believe that I will have to respond by advising him of the money that we are holding in trust for you. (As you know, some time ago I proposed that you convert the money into a prepaid fee but you never responded to my suggestion)."

21. On August 10, 2009, Mr. Bell sent Respondent a letter enclosing a copy of the January 26, 2009 engagement letter. The engagement letter bore Mr. Bell's signature and a handwritten date of January 30, 2009 below Mr. Bell's signature. In the accompanying letter, Mr. Bell wrote:

> While we did print this out and sign it, shortly after it was sent to us, we were unable to "sign" it as a pdf document, and then re-transmit it to you, as you had asked.

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> And, we also were unable to meet with you, as we had discussed, shortly thereafter.
>
> It was our intention, as we also discussed for this to have been effective, as of the date signed, even though it may have to be delivered at some point later.
>
> Thank you again, for your patience and assistance, and please accept our apologies for any inconvenience or confusion.

22. On August 11, 2009, Respondent received the engagement letter signed by Mr. Bell and conferred with YdN lawyer Dean von Kallenbach about YdN's response to the Writ.

23. On August 11, 2009, YdN paralegal Jan Helde and Mr. von Kallenbach prepared an Answer to Writ of Garnishment (Answer). Because Respondent had personal knowledge of the facts set forth in the Answer, Mr. von Kallenbach had Respondent review the Answer for accuracy before it was filed with the court. Respondent confirmed the contents and made no corrections.

24. The Answer was signed by YdN's Administrator April Campbell on August 11, 2009, and was filed with the court on August 12, 2009. The Answer stated:

> On July 23, 2009, the date Young deNormandie, P.C. received the writ, Young deNormandie held $33,123.32 in trust as a non-refundable litigation retainer for the benefit of J. Grahame Bell. Mr. Bell paid these funds pursuant to a written fee agreement with Young deNormandie which states that the funds were immediately earned and non-refundable. Relying on the WSBA's Informal Opinions: 1610 & 1838 Young deNormandie believes these funds are not subject to garnishment.

25. The Answer was incorrect and misleading. The funds were not paid to YdN pursuant to a written fee agreement. At the time Respondent received and designated the funds as belonging to Mr. Bell, YdN and did not have a written fee agreement with Mr. Bell. Furthermore, YdN did not hold the funds in its trust account as a "non-refundable litigation retainer." The engagement letter that Respondent prepared for Mr. Bell's signature expressly stated that the "retainer" was refundable.

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26. On or about August 13, 2009, Ms. Helde and Mr. von Kallenbach prepared an affidavit for Mr. Bell. It stated:

> I received the Answer to Writ of Garnishment prepared by the Garnishee Defendant Young deNormandie, P.C. and I believe the garnishee's answer is incorrect.
>
> I requested the firm of Young deNormandie, P.C. to represent me in connection with the present lawsuit. On January 26, 2009, John Young of Young deNormandie mailed to me the terms and conditions to his representation of me in this matter. The terms required me to provide Young deNormandie with a non-refundable retainer.
>
> Young deNormandie received the retainer and placed the funds into its trust account awaiting approval of the terms.
>
> On January 30, 2009 I accepted the terms as outlined in the January 26, 2009 letter and instructed Young deNormandie to place my retainer into its general account as earned retainer.
>
> It is my belief that those funds are no longer mine, but the earned income of Young deNormandie. These funds are not subject of the garnishment filed by Plaintiff, David W. Mayer.

27. Mr. von Kallenbach forwarded the Affidavit to Respondent so that Respondent could review it with Mr. Bell and obtain his signature. On August 13, 2009, Respondent sent Mr. Bell an email with instructions to sign the Affidavit.

28. Mr. Bell's Affidavit was filed with the court on August 25, 2009.

29. The Affidavit was incorrect and misleading. The engagement terms that Respondent sent to Mr. Bell did not require him to provide YdN with a "non-refundable retainer." Furthermore, Mr. Bell did not instruct YdN, on January 30, 2009, to place his "retainer" into its general account.

30. The Answer and Mr. Bell's Affidavit also omitted facts that were necessary to avoid misleading the reader, including that:

- YdN did not receive Mr. Bell's signed engagement letter until August 11,

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2009, after YdN was served with the Writ;

- the engagement letter stated the "retainer" was refundable upon termination of the representation by either party and the court's approval of YdN's withdrawal;
- the engagement letter stated YdN would bill fees against the "retainer" as fees were incurred; and
- YdN did, in fact, bill and withdraw fees against the funds held in its trust account for Mr. Bell.

31. Based on the representations made by YdN and Mr. Bell, Mr. Mayers released his Writ and filed a lawsuit against Mr. Bell and YdN for violation of the Uniform Fraudulent Transfer Act (UFTA), RCW 19.40.

Mayers v Bell and Young deNormandie – UFTA Action

32. On August 27, 2009, Mr. Mayers filed a lawsuit alleging that Mr. Bell and YdN violated the Uniform Fraudulent Transfer Act (UFTA), RCW 19.40. The lawsuit alleged that Mr. Bell transferred funds to YdN without consideration of reasonably equivalent value and/or that Mr. Bell transferred funds to YdN with actual intent to hinder Mr. Mayers's ability to collect his judgment.

33. In response to the UFTA lawsuit, Mr. Bell and YdN took a different position than they had taken in response to the Writ. They denied that any transfer of Mr. Bell's funds had occurred and claimed that Mr. Bell had always retained ownership of the funds in YdN's trust account. YdN further stated that the funds held in trust for Mr. Bell were subject to garnishment and that its prior representation to the contrary was "incorrect." On November 4, 2010, YdN moved for summary judgment, arguing that Mr. Mayers could not establish that Mr. Bell transferred ownership of the funds held by YdN. In support of the motion, Respondent signed a declaration stating, in part:

> In January 2009, I received fees from the Exxon litigation, which were deposited in YdN's trust account. After receiving the fees, I directed $36,795.39 to be paid

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to Mr. Bell for his work on the case (the "distribution").

> Mr. Bell requested that I not send him the distribution and asked me to keep the funds in YdN's trust account. Mr. Bell told me that he wanted YdN to represent him in a lawsuit brought by Mr. Mayers and asked that the distribution be applied as a non-refundable retainer for legal services.
>
> I agreed that YdN would represent Mr. Bell in his lawsuit with Mr. Mayers. I drafted a written fee agreement between Mr. Bell and YdN. The fee agreement stated that the distribution would be used as a retainer against which YdN would bill its fees "as they are incurred." Although the fee agreement provided that the retainer would be "deemed earned upon receipt," it specifically stated that the retainer was refundable if (1) either party terminated the representation; and (2) YdN received court approval to withdraw as Bell's counsel. . . .
>
> After the parties signed the fee agreement, YdN did not appear in the lawsuit between Bell and Mayers, but did perform work in the case and billed $3,672.07 to Mr. Bell. These funds were deducted from Mr. Bell's retainer.

34. The trial court granted YdN's motion for summary judgment, and Mr. Mayers appealed.

35. In April 2012, the Court of Appeals held that Mr. Bell and YdN were estopped from denying that a transfer occurred and remanded the matter for trial. The Court said:

> Legal proceedings are not a shell game, and money received from a client by a law firm cannot be both refundable and nonrefundable. When the firm of Young de Normandie and its client John Grahame Bell responded to a writ of garnishment by characterizing Bell's fee deposit as a "nonrefundable litigation retainer" earned on receipt and "not subject to garnishment," they were estopped from later claiming the money actually belonged to Bell all along.

36. In May 2012, Mr. Bell died.

37. The UFTA litigation continued and, on August 16, 2013, YdN moved again for summary judgment. In support of the motion, YdN filed another declaration by Respondent. The declaration stated, in part:

> I knew that YdN was holding slightly more than $36,000 in its trust account for Mr. Bell (the distributed funds). I told Bell that YdN would represent him in Mayers and other matters, but only if he paid a $36,000 "retainer" for legal services. I sent Mr. Bell, on behalf of YdN, a written fee agreement ("Fee

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> Agreement") setting forth the terms under which the firm would represent him. . . .
>
> The bottom of the Fee Agreement contained a place for Bell to sign. This signature block states that Mr. Bell "accept[s] the above conditions and wish Young deNormandie to represent me." It further directs YdN to "transfer $36,000 of monies held in trust for me to your general account as an earned retainer." Bell signed the Fee Agreement on January 30, 2009 and returned it to YdN.
>
> YdN's Firm Administrator handles YdN's IOLTA trust account. After Bell signed the Fee agreement, I should have directed her to transfer $36,000.00 from the firm's trust account to the firm's general account. I simply overlooked this step. As a result, the $36,000.00 remained in the firm's trust account. Bell could not have known that YdN had failed to follow his express directive to transfer the $36,000.00 from the firm's trust account to the firm's operating account. . . .
>
> In July 2009, Mayers served YdN with a writ of garnishment seeking funds belonging to Bell. After receiving the writ of garnishment, I realized for the first time that YdN had not transferred the $36,000.00 from the firm's trust account to the firm's operating account. Even though the $33,123.32 of the distributed funds remained in the trust account, I believed those funds belonged to YdN as provided by the Fee Agreement. . . .

38. Respondent's Declaration was misleading in that it represented the engagement letter as having been signed by Mr. Bell on January 30, 2009 and returned such that YdN should have immediately transferred Mr. Bell's funds from its trust account to its general account. In fact, the funds were not transferred because YdN did not receive Mr. Bell's signed engagement letter until August 11, 2009.

39. YdN's motion for summary judgment was denied.

40. The case was tried before a jury in November 2013, and resulted in a hung jury. A mistrial was declared and a new trial date was set.

41. In early 2014, Mr. Mayer moved to compel YdN to produce its communications with Mr. Bell.

42. On April 25, 2014, the court entered Order on In Camera Review releasing certain

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communications that addressed the movement of funds, the manner in which they were moved, the intent of the parties, and the timeline over which these acts occurred. The court also noted that "what Mr. Young knew and when he knew it is directly at issue in this litigation." The communications released by the court's Order included the emails and correspondence described above.

43. A second jury trial was held in November 2014. The jury entered a verdict for Mr. Mayers, along with a special verdict finding a violation of the UFTA based on actual fraud.

44. On January 21, 2015, the court entered a judgment against YdN in the amount of $63,437.2, plus $40,530 in attorney fees.

45. In or around March 2015, YdN satisfied the judgment.

46. With respect to the events described in this Stipulation, Respondent states that his conduct resulted from his misinterpretation of the nature of Mr. Bell's funds. He states that the engagement letter he sent to Mr. Bell contained inconsistent terms, which incorrectly described Mr. Bell's funds as both an advance fee deposit and an earned fee. Respondent states that, in reviewing for filing YdN's Answer to Writ of Garnishment and Mr. Bell's Affidavit and in signing his own August 16, 2013 Declaration, he misinterpreted Mr. Bell's funds as being nonrefundable and as belonging to YdN.

III. STIPULATION TO MISCONDUCT

47. By engaging in conduct prejudicial to the administration of justice, Respondent violated RPC 8.4(d).

IV. PRIOR DISCIPLINE

48. Respondent does not have a record of prior disciplinary action.

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V. APPLICATION OF ABA STANDARDS

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

> ***6.1 False Statements, Fraud, and Misrepresentation***
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:
>
> 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

50. Respondent's conduct was negligent.

51. Respondent's conduct caused injury by misleading Mr. Mayers regarding the nature of the funds in YdN's trust account, by requiring Mr. Mayers to expend time and resources seeking legal relief, and by burdening the legal system.

52. The presumptive sanction is reprimand.

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

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(f) substantial experience in the practice of law (Respondent was admitted to practice law in Washington in 1982).

54. The following mitigating factor applies under ABA Standard 9.32:

(a) absence of prior disciplinary record.

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

56. On balance the aggravating and mitigating factors do not require a departure from the presumptive sanction.

VI. STIPULATED DISCIPLINE

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

VII. RESTITUTION

58. Restitution is not required by this Stipulation as Young deNormandie has satisfied Mr. Mayers's judgment.

VIII. COSTS AND EXPENSES

59. In light of Respondent's willingness to resolve this matter by stipulation at an early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of $1,025 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

IX. VOLUNTARY AGREEMENT

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

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

X. LIMITATIONS

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

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

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

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

66. If this Stipulation is approved by the Hearing Officer, it will be followed by the disciplinary action agreed to in this Stipulation. All notices required in the Rules for

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Enforcement of Lawyer Conduct will be made.

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

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

John G. Young, Bar No. 12890
Respondent

Dated: 8/8/18

David Allen, Bar No. 500
Counsel for Respondent

Dated: Aug 14, 2018

Marsha Matsumoto, Bar No. 15831
Managing Disciplinary Counsel

Dated: August 15, 2018

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