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Disciplinary
Board

Docket # 007

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

MICHAEL CARROLL,
Lawyer (Bar No. 13092).

Proceeding No. 19#00073

ODC File No. 18-01325

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 Respondent Michael Carroll and the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Senior Disciplinary Counsel Scott G. Busby.

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, to 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

1 proceeding now by entering into the following stipulation to facts, misconduct, and sanction to
2 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 May 16,
5 1983.

6 **II. STIPULATED FACTS**

7 2. On or about April 12, 2013, Drew Vickers was involved in an accident (“the
8 accident”) while driving a Yamaha all-terrain vehicle (ATV). Vickers and his passenger, Mary
9 Valenzuela, were both injured.

10 3. On or about April 25, 2013, Vickers consulted with Respondent about representation
11 in two matters: (a) a potential lawsuit against Yamaha, the manufacturer of the ATV, and (b)
12 potential criminal charges against Vickers arising out of the accident.

13 4. Respondent did not condition the consultation on Vickers’s informed consent that no
14 information disclosed during the consultation would prohibit Respondent from representing a
15 different client in the matter.

16 5. Vickers gave Respondent information about the circumstances surrounding the
17 accident, including his consumption of alcohol, the observations of witnesses, and the evidence
18 then known to him that the accident was caused by a manufacturing defect.

19 6. Vickers did not consent to Respondent’s subsequent use of information received
20 from him in representing a different client with interests materially adverse to those of Vickers.

21 7. Respondent referred Vickers to a different lawyer for representation in the potential
22 criminal case and a potential products liability lawsuit against Yamaha.

1 8. Respondent undertook an investigation of the accident using information received
2 from Vickers.

3 9. On or about September 14, 2013, Respondent agreed to represent Valenzuela against
4 Vickers with respect to a civil claim or claims arising out of the accident.

5 10. In April 2016, Respondent served Vickers with the summons and complaint in *Mary*
6 *Valenzuela v. Drew Vickers*, Pierce County Superior Court No. 16-2-09320-1. The complaint,
7 signed by Respondent as counsel for the plaintiff, alleged that Vickers, the defendant, was liable
8 for the injuries Valenzuela sustained as a result of the April 12, 2013 ATV accident.

9 11. Vickers did not consent to Respondent's representation of Valenzuela in the same or
10 a substantially related matter in which her interests were materially adverse to the interests of
11 Vickers.

12 III. STIPULATION TO MISCONDUCT

13 12. By using information learned from a prospective client (Vickers), and by
14 representing a client (Valenzuela) with interests materially adverse to those of a prospective
15 client (Vickers) in the same or a substantially related matter, Respondent violated RPC 1.18(c).

16 IV. PRIOR DISCIPLINE

17 13. Respondent has no prior discipline.

18 V. APPLICATION OF ABA STANDARDS

19 14. The following American Bar Association *Standards for Imposing Lawyer Sanctions*
20 (1991 ed. & Feb. 1992 Supp.) apply to this case:

21 4.3 Failure to Avoid Conflicts of Interest

22 Absent aggravating or mitigating circumstances, upon application of the
23 factors set out in Standard 3.0, the following sanctions are generally appropriate

1 in cases involving conflicts of interest:

2 4.31 Disbarment is generally appropriate when a lawyer, without the
3 informed consent of client(s):

4 (a) engages in representation of a client knowing that the lawyer's
5 interests are adverse to the client's with the intent to benefit the
6 lawyer or another, and causes serious or potentially serious injury
7 to the client; or

8 (b) simultaneously represents clients that the lawyer knows have
9 adverse interests with the intent to benefit the lawyer or another,
10 and causes serious or potentially serious injury to a client; or

11 (c) represents a client in a matter substantially related to a matter
12 in which the interests of a present or former client are materially
13 adverse, and knowingly uses information relating to the
14 representation of a client with the intent to benefit the lawyer or
15 another and causes serious or potentially serious injury to a client.

16 4.32 Suspension is generally appropriate when a lawyer knows of a
17 conflict of interest and does not fully disclose to a client the possible
18 effect of that conflict, and causes injury or potential injury to a client.

19 4.33 Reprimand is generally appropriate when a lawyer is negligent in
20 determining whether the representation of a client may be materially
21 affected by the lawyer's own interests, or whether the representation will
22 adversely affect another client, and causes injury or potential injury to a
23 client.

24 4.34 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in determining whether the representation
of a client may be materially affected by the lawyer's own interests, or
whether the representation will adversely affect another client, and causes
little or no actual or potential injury to a client.

15. Respondent was negligent in determining whether he could represent Valenzuela in a
matter substantially related to the matter about which Vickers had consulted him.

16. Respondent caused injury or potential injury to Vickers by representing Valenzuela
in a substantially related matter.

17. The presumptive sanction is reprimand.

18. The following aggravating factor applies under ABA *Standards* std. 9.22:

1 (i) substantial experience in the practice of law (admitted 1983).

2 19. The following mitigating factor applies under ABA Standard 9.32:

3 (a) absence of a prior disciplinary record.

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

6 21. On balance, the aggravating and mitigating factors do not require a departure from
7 the presumptive sanction.

8 **VI. STIPULATED DISCIPLINE**

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

10 **VII. COSTS AND EXPENSES**

11 23. In light of Respondent's willingness to resolve this matter by stipulation at an early
12 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
13 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(d)
14 if these costs are not paid within 30 days of approval of this stipulation.

15 **VIII. VOLUNTARY AGREEMENT**

16 24. Respondent states that prior to entering into this Stipulation he had an opportunity to
17 consult independent legal counsel regarding this Stipulation, that he is entering into this
18 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
19 Association, nor by any representative thereof, to induce the Respondent to enter into this
20 Stipulation except as provided herein.

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

1 **IX. LIMITATIONS**

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

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

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

17 29. Under ELC 3.1(b), all documents that form the record before the hearing officer for
18 his or her review become public information on approval of the Stipulation by the hearing
19 officer, unless disclosure is restricted by order or rule of law.

20 30. If this Stipulation is approved by the hearing officer, it will be followed by the
21 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
22 Enforcement of Lawyer Conduct will be made.

1 31. If this Stipulation is not approved by the hearing officer, it will have no force or
2 effect, and neither it nor the fact of its execution will be admissible as evidence in the pending
3 disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal
4 action.

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

7 

8 Michael Carroll, Bar No. 13092
9 Respondent

Dated: 02/06/2020

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11 Scott G. Busby, Bar No. 17522
12 Senior Disciplinary Counsel

Dated: 2/6/2020