

FILED

MAR 15 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MICHAEL J. MCLAUGHLIN,

Lawyer (Bar No. 13367).

Proceeding No. 12#00050

STIPULATION TO REPRIMAND AND
PROBATION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand and Probation is entered into by the Washington State Bar Association (Association), through disciplinary counsel Scott G. Busby, and by Respondent Michael J. McLaughlin.

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 proceeding now by entering into the following Stipulation to Reprimand and Probation to avoid

1 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 July 7, 1983.

4 **II. STIPULATED FACTS**

5 2. In April 2010, WSBA Auditor Lainie D. Patterson conducted a random examination
6 of Respondent's books and records under ELC 15.1(a). The purpose of the examination was to
7 determine whether Respondent was complying with RPC 1.15A and RPC 1.15B.

8 3. Ms. Patterson examined records relating to two IOLTA accounts at Mountain West
9 Bank: an account ending in 435 that Respondent used for funds relating to escrow services, and
10 an account ending in 954 that Respondent used for funds relating to other legal services. The
11 examination covered the period between December 1, 2008, and March 31, 2010.

12 4. Ms. Patterson's audit revealed the following:

13 a) Respondent failed to reconcile or review his accounts, resulting in Respondent's
14 failure to detect negative balances and employee theft.

15 b) As a result of shortages in account #435, Respondent disbursed funds on behalf of
16 clients or third persons that exceeded the funds of those persons on deposit.

17 c) About 24 clients had account balances left over from escrow transactions that had
18 concluded more than a year earlier.

19 d) Respondent allowed non-lawyers to be authorized signatories on account #435.

20 e) Respondent failed to properly supervise his non-lawyer employees, one of whom
21 stole more than \$18,000 from account #435.

22 5. As a result of the audit and its findings, the Chair of the Disciplinary Board ordered
23 that the matter be referred to the Office of Disciplinary Counsel for investigation under ELC
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1 15.1(c). Senior Auditor Cheryl M. Heuett then conducted an audit of Respondent's books and
2 records for the period between July 1, 2007, and July 31, 2010.

3 6. Ms. Heuett's audit revealed the following:

4 a) Respondent provided an inaccurate checkbook register for account #954.

5 Respondent provided no checkbook register for account #435. Instead, Respondent
6 provided computer-generated reports, none of which show a running balance for the
7 account as required by RPC 1.15B(a)(1)(v). The ending balances shown in those
8 reports were inaccurate, in one month by over \$40,000. For some periods,
9 Respondent provided multiple versions of the same report that did not match each
10 other.

11 b) Respondent provided inaccurate client ledgers for account #954. The "balance
12 reports" that Respondent provided in lieu of client ledgers for account #435 did not
13 show a running balance as required by RPC 1.15B(a)(2)(v). The client balances
14 shown in the "balance reports" did not match the client ledgers that Ms. Heuett
15 reconstructed from the records Respondent provided.

16 c) All bank statement reconciliations for account #954 were done on the same day,
17 rather than monthly, as required by RPC 1.15A(h)(6). The reconciliation reports do
18 not match the checkbook register and the client ledgers that Respondent provided.
19 Respondent's checkbook register and client ledgers were revised so that they could
20 be reconciled with the bank statements. For account #435, the totaled "balance
21 reports" that Respondent provided in lieu of client ledgers did not match the
22 reconciled balance shown on the "statement proofing register report" that
23 Respondent provided in lieu of a check register.

- 1 d) Respondent's client ledgers for account #954 showed a shortage of \$5,731.03 as of
2 July 31, 2010, the end of the audit period. The shortage was partially, but not
3 completely, corrected. Reconstructed client ledgers for account #435 showed a
4 shortage of \$30,498.12 as of December 31, 2008, as well as shortages in varying
5 amounts every month between July 31, 2008, and July 31, 2010. The shortages
6 indicate that funds were disbursed on behalf of a client or third person that exceeded
7 the funds of that person on deposit, and consequently that someone else's funds were
8 used on that person's behalf.
- 9 e) Between January 1, 2008 and July 31, 2010, monthly payments on behalf of client
10 ROP were deposited in account #954. The majority of each payment was disbursed
11 to ROP, but the remainder of each payment, which was an earned fee, was left in
12 trust.
- 13 f) For account #954, the auditor's reconstruction showed 25 clients with positive
14 balances totaling \$2,429 for whom there had been no activity in the account since at
15 least January 1, 2008. For account #435, the auditor's reconstruction showed 38
16 clients with positive balances totaling \$20,633.10 for whom there had been no
17 activity for more than a year. These funds were not disbursed to the persons entitled
18 to receive them.
- 19 g) In several instances, Respondent disbursed funds from account #435 before the
20 corresponding deposits had cleared the bank. In some cases, Respondent disbursed
21 funds before the corresponding deposits had been made.
- 22 h) Respondent allowed two non-lawyer employees, Wenona Jones and Stephanie Pitts,
23 to be authorized signatories on his trust accounts. Ms. Jones apparently made
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1 three unauthorized payments to her sister totaling \$16,000 from funds in account
2 #435.

- 3 i) Many of the more than 50 HUD statements examined by the auditor did not
4 accurately reflect the financial transactions in question.

5 III. STIPULATION TO MISCONDUCT

6 7. By failing to maintain complete and accurate trust account records, Respondent
7 violated RPC 1.15(h)(2) and 1.15B.

8 8. By failing to properly reconcile his trust account records as often as bank statements
9 were generated, Respondent violated RPC 1.15A(h)(6).

10 9. By disbursing funds on behalf of a client or third person that exceeded the funds of
11 that person on deposit, and by using the funds of one client or third person on behalf of someone
12 else, Respondent violated RPC 1.15A(h)(8).

13 10. By retaining earned fees in account #954, Respondent violated 1.15A(h)(1).

14 11. By failing to promptly pay or deliver property that a client or third person was
15 entitled to receive, Respondent violated RPC 1.15A(f).

16 12. By disbursing funds from a trust account before the corresponding deposits had
17 cleared the banking process and been collected, Respondent violated RPC 1.15A(h)(7).

18 13. By allowing non-lawyers to be authorized signatories on his trust accounts,
19 Respondent violated RPC 1.15A(h)(9).

20 14. By providing written accountings in the form of HUD statements that were not
21 accurate, Respondent violated RPC 1.15A(e).

22 IV. PRIOR DISCIPLINE

23 15. Respondent has no prior discipline.
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1 **V. APPLICATION OF ABA STANDARDS**

2 16. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 17. ABA Standards std. 4.1 applies to the lawyer's duties under RPC 1.15A and 1.15B.
5 Std. 4.1 provides:

6 4.11 **Disbarment** is generally appropriate when a lawyer knowingly converts
7 client property and causes injury or potential injury to a client.

8 4.12 **Suspension** is generally appropriate when a lawyer knows or should know
9 that he is dealing improperly with client property and causes injury or
10 potential injury to a client.

11 4.13 **Reprimand** is generally appropriate when a lawyer is negligent in dealing
12 with client property and causes injury or potential injury to a client.

13 4.14 **Admonition** is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes little or no actual or potential injury to a
15 client.

16 18. Respondent was negligent in dealing with client property.

17 19. Respondent caused injury or potential injury to his clients, some of whom did not
18 receive money to which they were entitled.

19 20. The presumptive sanction is reprimand.

20 21. The following aggravating factors apply under ABA Standards std. 9.22:

- 21 (c) a pattern of misconduct;
22 (d) multiple offenses;
23 (i) substantial experience in the practice of law.

24 22. The following mitigating factors apply under ABA Standards std. 9.32:

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

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

1 24. Based on the factors set forth above, the presumptive sanction is reprimand.

2 **VI. STIPULATION TO DISCIPLINE**

3 25. The parties stipulate that Respondent will receive a reprimand.

4 **VII. STIPULATION TO PROBATION**

5 26. Respondent will be on probation for two years following approval if this Stipulation,
6 and must comply with the conditions of probation set forth below.

7 27. Respondent must carefully review and fully comply with RPC 1.15A and RPC
8 1.15B, and must carefully review the Association's publication, Managing Client Trust
9 Accounts: Rules, Regulations, and Common Sense.

10 28. For all client matters, Respondent must have a written fee agreement signed by the
11 client, and all such agreements must be maintained for least seven years (see RPC 1.15B(a)(3)).

12 29. Within 30 days following approval if this Stipulation, Respondent must cease
13 placing funds of clients or third persons into the two Mountain West Bank trust accounts ending
14 in 435 and 954 referenced above.

15 30. Within 30 days following approval if this Stipulation, Respondent must open one or
16 more new trust accounts to be maintained in full compliance with RPC 1.15A and RPC 1.15B.

17 31. As soon as possible, but no later than July 1, 2013, Respondent must disburse all
18 funds in the two Mountain West Bank trust accounts ending in 435 and 954 referenced above to
19 the clients or other persons entitled to receive them.

20 32. On a quarterly basis, as set forth below, Respondent must provide the Association's
21 Audit Manager or designee with all trust account records so that the Association's audit staff
22 can determine whether Respondent has complied with the RPC. The records to be provided for
23 each quarterly review must include: (a) a complete checkbook register for each trust account
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1 covering the period being reviewed, (b) complete individual client ledger records for any client
2 with funds in trust during all or part of the period being reviewed, as well as for Respondent's
3 own funds in the account (if any), (c) copies of all trust account bank statements, deposit slips,
4 and cancelled checks covering the period being reviewed, (d) copies of all trust account client
5 ledger reconciliations for the period being reviewed, and (e) copies of reconciliations of
6 Respondent's trust account check register covering the period being reviewed.

7 a) **First Quarter.** By no later than April 30, 2013, Respondent must provide the trust
8 account records from January 1, 2013 to March 31, 2013.

9 b) **Second Quarter.** By no later than July 31, 2013, Respondent must provide the trust
10 account records from April 1, 2013 to June 30, 2013.

11 c) **Third Quarter.** By no later than October 31, 2013, Respondent must provide the
12 trust account records from July 1, 2013 to September 30, 2013.

13 d) **Fourth Quarter.** By no later than January 31, 2014, Respondent must provide the
14 trust account records from October 1, 2013 to December 31, 2013.

15 e) **Fifth Quarter.** By no later than April 30, 2014, Respondent must provide the trust
16 account records from January 1, 2014 to March 31, 2014.

17 f) **Sixth Quarter.** By no later than July 31, 2014, Respondent must provide the trust
18 account records from April 1, 2014 to June 30, 2014.

19 g) **Seventh Quarter.** By no later than October 31, 2014, Respondent must provide the
20 trust account records from July 1, 2014 to September 30, 2014.

21 33. On the same quarterly schedule set forth in the preceding paragraph, Respondent
22 must provide the Association's Audit Manager or designee with copies of (a) all fee agreements
23 entered into within the time period at issue and (b) all final HUD statements created during the
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1 time period at issue.

2 34. The Association's Audit Manager or designee may request additional financial or
3 client records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
4 Within thirty days of a request from the Association's Audit Manager or designee for such
5 additional records, Respondent must provide the additional records requested.

6 35. Respondent will reimburse the Association at the rate of \$85 per hour for time spent
7 by the Association's Audit Manager or designee in reviewing and reporting on Respondent's
8 records to determine whether Respondent has complied with the RPC. Respondent must make
9 payment within thirty days of each written invoice setting forth the auditor's time and the
10 payment due.

11 **VIII. COSTS AND EXPENSES**

12 36. Respondent must pay costs and expenses of \$6,000 as partial reimbursement for the
13 auditor time expended thus far. The Association will seek a money judgment under ELC 13.9(l)
14 if these costs are not paid within 30 days of approval of this Stipulation.

15 **IX. VOLUNTARY AGREEMENT**

16 37. Respondent states (a) that prior to entering into this Stipulation he has had an
17 opportunity to consult independent legal counsel regarding this Stipulation, (b) that he is
18 entering into this Stipulation voluntarily, and (c) that no promises or threats have been made by
19 the Association, or by any representative thereof, to induce Respondent to enter into this
20 Stipulation except as provided herein.

21 **X. LIMITATIONS**

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

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

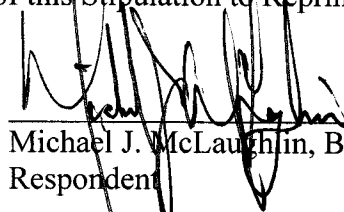
7 40. This Stipulation results from the consideration of various factors by both parties,
8 including the benefits to both by promptly resolving this matter without the time and expense of
9 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
10 such, approval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

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

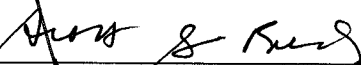
17 42. If this Stipulation is approved by the Hearing Officer, it will be followed by the
18 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
19 Enforcement of Lawyer Conduct will be made.

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

1 WHEREFORE the undersigned being fully advised, adopt and agree to the facts and
2 terms of this Stipulation to Reprimand and Probation as set forth above.

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4 _____
5 Michael J. McLaughlin, Bar No. 13367
6 Respondent

Dated: 12-10-12

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8 _____
9 Scott G. Busby, Bar No. 17522
10 Disciplinary Counsel

Dated: 12-18-12

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