

FILED

Jul 07 2020

Disciplinary
Board

Docket # 020

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

STEPHEN JOSEPH GARVEY,
Lawyer (Bar No. 13486).

Proceeding No. 20#00009

ODC File No. 19-00114

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 Henry Cruz and Respondent lawyer Stephen Joseph Garvey.

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 proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time,

1 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 October 27,
4 1983. Respondent is inactive due to medical reasons.

5 **II. STIPULATED FACTS**

6 2. On or about August 13, 2017, Respondent agreed to represent Kimberly Fay in a
7 bankruptcy matter for a flat fee of \$660 plus a filing fee of \$335.

8 3. On or about August 24, 2017, Respondent collected \$995 from Ms. Fay in full
9 payment of the flat fee and filing fee.

10 4. Respondent gave Ms. Fay some bankruptcy documents to fill out and return to him.

11 5. Respondent and Ms. Fay never met or spoke with each other again.

12 6. Ms. Fay completed the bankruptcy documents and called Respondent to schedule an
13 appointment, but his phone number was disconnected.

14 7. Ms. Fay went to Respondent's office to deliver the completed bankruptcy
15 documents, but Respondent's office was shut down.

16 8. Sometime in 2018, Respondent closed his practice for medical reasons.

17 9. Respondent failed to perform any of the agreed-upon legal services in Ms. Fay's
18 case.

19 10. Respondent never notified Ms. Fay of the office closure or the possibility of a refund.

20 11. In May 2019, after Ms. Fay filed a grievance with the ODC, Respondent refunded
21 the \$335 filing fee to her.

22 12. In May 2020, after the ODC filed a formal complaint in this matter, Respondent
23 refunded the \$660 flat fee to Ms. Fay.

1 **III. STIPULATION TO MISCONDUCT**

2 13. By failing to refund, upon termination of representation, Ms. Fay's advance payment
3 of fees not earned and expenses not incurred, Respondent violated RPC 1.16(d).

4 **IV. PRIOR DISCIPLINE**

5 14. Respondent has no prior discipline.

6 **V. APPLICATION OF ABA STANDARDS**

7 15. The following American Bar Association Standards for Imposing Lawyer Sanctions
8 (1991 ed. & Feb. 1992 Supp.) apply to this case:

9 **7.0 Violations of Duties Owed as a Professional**

10 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
11 that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer
or another, and causes serious or potentially serious injury to a client, the public, or the legal
system.

12 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
that is a violation of a duty owed as a professional and causes injury or potential injury to a client,
the public, or the legal system.

13 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
14 that is a violation of a duty owed as a professional and causes injury or potential injury to a client,
the public, or the legal system.

15 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
of negligence that is a violation of a duty owed as a professional, and causes little or no actual or
potential injury to a client, the public, or the legal system.

16 16. Respondent's conduct was knowing.

17 17. Ms. Fay was injured because she lost the use of her funds for an extended period of
18 time.

19 18. The presumptive sanction is suspension.

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

21 (i) substantial experience in the practice of law [admitted 1983].

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

23 (a) absence of a prior disciplinary record;

1 (b) absence of a dishonest or selfish motive;

2 (h) physical disability [see Confidential Attachment A].

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

5 22. It is a further mitigating factor that Respondent repaid Ms. Fay in full before entering
6 into this stipulation.

7 23. On balance, based on the factors set forth above, the presumptive sanction should be
8 mitigated to a reprimand.

9 **VI. STIPULATED DISCIPLINE**

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

11 **VII. RESTITUTION**

12 25. No restitution is required by this Stipulation since Respondent already has repaid Ms.
13 Fay in full.

14 **VIII. COSTS AND EXPENSES**

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

19 **IX. VOLUNTARY AGREEMENT**

20 27. Respondent states that prior to entering into this Stipulation, he had an opportunity to
21 consult independent legal counsel regarding this Stipulation, that Respondent is entering into this
22 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
23 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except

1 as provided herein.

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

4 X. LIMITATIONS

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

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

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

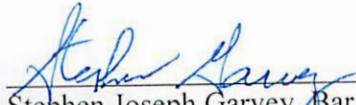
19 32. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
20 his or her review become public information on approval of the Stipulation by the Hearing
21 Officer, unless disclosure is restricted by order or rule of law.

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


1 of Lawyer Conduct will be made.

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

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

8 
9 _____
10 Stephen Joseph Garvey, Bar No. 13486
11 Respondent

Dated: 7-1-20

12 
13 _____
14 Henry Cruz, Bar No. 38799
15 Disciplinary Counsel

Dated: 07/01/2020