

**FILED**

**AUG 19 2016**

**DISCIPLINARY  
BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**HAROLD J. MOBERG,**

Lawyer (Bar No. 13924).

Proceeding No. 15#00083

ODC File No(s). 15-00265

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), 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 Francesca D'Angelo and Respondent lawyer Harold J. Moberg.

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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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 January 12,  
5 1984.

6 **II. STIPULATED FACTS**

7 2. In or around April 2005, Darin Hendrickson was awarded a \$4,072 judgment against  
8 Gary Jacobs in Grant County.

9 3. A certified copy of the judgment was filed with the Grant County Auditor on June 1,  
10 2005.

11 4. Gary Jacobs passed away on June 28, 2005. His daughter, Jolyn Jacobs, served as  
12 personal representative of his estate.

13 5. Ms. Jacobs hired Respondent to probate Mr. Jacobs' estate.

14 6. In September 2005, Respondent filed a probate action in Grant County Superior  
15 Court.

16 7. On or about June 30, 2006, the Jacobs estate sold a parcel of real property located in  
17 Grant County to Grant County Fire District #5.

18 8. Respondent was representing the Jacobs estate at the time of the sale.

19 9. Grant County Title Insurance Company provided escrow services for the transaction.

20 10. Respondent was an owner of Grant County Title Company.

21 11. The parties to the real estate transaction signed an Earnest Money Receipt and  
22 Agreement dated May 31, 2006. The agreement provided that any monetary encumbrances on  
23 the property would be paid from Seller's funds at the date of closing.

1 12. On June 29, 2006, Grant County Title Company issued check number 13572 in the  
2 amount of \$4,560.64 payable to Grant County Superior Court. The check bore the notation  
3 "Judgment Payoff."

4 13. A settlement statement was prepared and executed on June 30, 2006. The settlement  
5 statement stated that \$4,560.64 was paid as a judgment payoff to Grant County Superior Court  
6 for the Hendrickson judgment.

7 14. Check number 13572 was never deposited into the registry of Grant County Superior  
8 Court.

9 15. Check number 13572 never cleared Grant County Title's escrow account.

10 16. On November 8, 2006, Grant County Title issued check number 14680 in the  
11 amount of \$4,560.64, payable to Moberg Law Firm Trust Account. The check bore the notation  
12 "Re: Judgment Payoff."

13 17. Respondent placed the funds in his trust account.

14 18. Respondent did not advise Mr. Hendrickson of the receipt into his trust account of  
15 the funds to pay off the judgment.

16 19. Respondent did not pay the Hendrickson judgment or obtain a release of the  
17 judgment.

18 20. On October 26, 2007, Respondent removed \$968.50 from his law firm's trust  
19 account to pay his costs and fees in connection with his representation of the Jacobs estate.

20 21. At the time that Respondent removed these funds, the only funds in Respondent's  
21 law firm trust account were the funds received from Grant County Title Company for the  
22 Hendrickson judgment payoff.

23 22. On November 2, 2009, Respondent removed \$834.15 from his trust account to pay

1 his costs and fees in connection with his representation of the Jacobs estate. At the time that  
2 Respondent removed these funds, the only funds in Respondent's law firm trust account were  
3 the funds received from Grant County Title Company for the Hendrickson judgment payoff.

4 23. After November 2009, Respondent had only \$2,757.99 of the judgment payoff funds  
5 remaining in his trust account.

6 24. In or around March 2013, Mr. Hendrickson went to Respondent's office to demand  
7 payment of the judgment.

8 25. Respondent did not pay the Hendrickson judgment.

9 26. In March 2013, Grant County Fire District #5 sold the property it had purchased  
10 from the Jacobs estate to Mastermind Productions, Inc.

11 27. Grant County Title Company issued a title insurance policy in connection with the  
12 sale. Grant County Title Company did not detect the unsatisfied judgment on file with the  
13 Grant County Auditor's Office.

14 28. In May 2015, Mr. Hendrickson filed a lawsuit in Grant County Superior Court  
15 against Mastermind Productions requesting a judgment in the amount of the original judgment  
16 plus interest, costs and attorney's fees.

17 29. In June 2016, Respondent paid Mr. Hendrickson \$16,856.48, representing the  
18 amount of the original judgment, plus 12% interest per annum and attorney's fees.

### 19 III. STIPULATION TO MISCONDUCT

20 30. By failing to promptly notify Hendrickson of the judgment payoff funds in his  
21 possession and by failing to promptly pay Hendrickson's judgment from the funds that had been  
22 deposited in his trust account for that purpose, Respondent violated RPC 1.15A(d) and RPC  
23 1.15A(f).

1 31. By failing to hold all of the judgment payoff funds in a trust account, Respondent  
2 violated RPC 1.15A(c).

3 **IV. PRIOR DISCIPLINE**

4 32. Respondent has no prior discipline.

5 **V. APPLICATION OF ABA STANDARDS**

6 33. American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. &  
7 Feb. 1992 Supp.) section 4.12 applies to this case. A copy is attached hereto.

8 34. Respondent should have known that he was dealing improperly with the judgment  
9 funds.

10 35. There was injury to Mr. Hendrickson whose judgment was not paid and had to incur  
11 attorney's fees to collect the judgment.

12 36. The presumptive sanction is suspension.

13 37. The following aggravating factors apply under ABA Standard 9.22:

14 (i) Substantial experience in the practice of law [Respondent was admitted to  
15 practice in 1984].

16 38. The following mitigating factors apply under ABA Standard 9.32:

17 (a) absence of a prior disciplinary record;  
(l) remorse.

18 39. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
19 at an early stage of the proceedings and has paid Mr. Hedrickson an amount equal to his  
20 judgment, interest and attorney's fees.

21 40. Based on the factors set forth above, the presumptive sanction should be mitigated to  
22 reprimand.

1 **VI. STIPULATED DISCIPLINE**

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

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

- 6 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC  
7 1.15B, and shall carefully review the current version of the publication, Managing  
8 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 9 b) For all client matters, Respondent shall have a written fee agreement signed by the  
10 client, which agreements are to be maintained for least seven years (see RPC  
11 1.15B(a)(3)).
- 12 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-  
13 account records for the time period to be reviewed by ODC's audit staff and  
14 disciplinary counsel for compliance with the RPC:
- 15 i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the  
16 commencement of probation, Respondent shall provide the trust account  
17 records from the date of commencement of probation to the end of the third  
18 full month.
  - 19 ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
20 commencement of probation, Respondent shall provide the trust account  
21 records from the end of the previously provided quarter through the end of  
22 month six.
  - 23 iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
24 commencement of probation, Respondent shall provide the trust account  
records from the end of the previously provided quarter through the end of  
month nine.
  - iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth month after  
the commencement of probation, Respondent shall provide the trust  
account records from the end of the previously provided quarter through  
the end of month twelve.
  - v) Months 13– 15. By no later than the 30<sup>th</sup> day of the sixteenth month after  
the commencement of probation, Respondent shall provide the trust  
account records from the end of the previously provided quarter through  
the end of month fifteen.

1 vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth month after  
2 the commencement of probation, Respondent shall provide the trust  
3 account records from the end of the previously provided quarter through  
4 the end of month eighteen.

5 vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
6 after the commencement of probation, Respondent shall provide the trust  
7 account records from the end of the previously provided quarter through  
8 the end of month twenty-one.

9 The trust account records Respondent provides to ODC for each quarterly review of  
10 his trust account will include: (a) a complete checkbook register for his/her trust  
11 account covering the period being reviewed, (b) complete individual client ledger  
12 records for any client with funds in Respondent's trust account during all or part of  
13 the period being reviewed, as well as for Respondent's own funds in the account (if  
14 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled  
15 checks covering the period being reviewed, (d) copies of all trust account client  
16 ledger reconciliations for the period being reviewed, and (e) copies of  
17 reconciliations of Respondent's trust account check register covering the period  
18 being reviewed. The ODC's Audit Manager or designee will review Respondent's  
19 trust account records for each period.

20 d) On the same quarterly time schedule set forth in the preceding paragraph,  
21 Respondent will provide ODC's Audit Manager or designee with copies of any and  
22 all fee agreements entered into within the time period at issue.

23 e) The ODC's Audit Manager or designee may request additional financial or client  
24 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.  
25 Within twenty days of a request from ODC's Audit Manager or designee for  
26 additional records needed to verify Respondent's compliance with RPC 1.15A  
27 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the  
28 additional records requested.

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

## 34 VII. RESTITUTION

35 43. No restitution is required by this stipulation. Respondent has paid Mr. Hendrickson  
36 an amount equal to his judgment, interest and attorney's fees.

1 **VIII. COSTS AND EXPENSES**

2 44. In light of Respondent's willingness to resolve this matter by stipulation at an early  
3 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$250 in  
4 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
5 if these costs are not paid within 30 days of approval of this stipulation.

Handwritten initials and a signature.

6 **IX. VOLUNTARY AGREEMENT**

7 45. Respondent states that prior to entering into this Stipulation he has had an  
8 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is  
9 entering into this Stipulation voluntarily, and that no promises or threats have been made by  
10 ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into  
11 this Stipulation except as provided herein.

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

14 **X. LIMITATIONS**

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

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

23 49. This Stipulation results from the consideration of various factors by both parties.



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

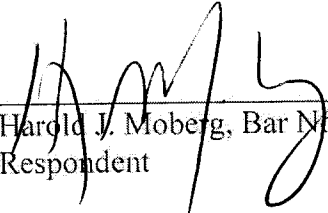
7 50. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for  
8 his or her review become public information on approval of the Stipulation by the Hearing  
9 Officer, unless disclosure is restricted by order or rule of law.

10 51. If this Stipulation is approved by the Hearing Officer, it will be followed by the  
11 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
12 Enforcement of Lawyer Conduct will be made.

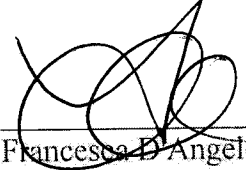
13 52. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have  
14 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in  
15 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil  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

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

  
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Harold J. Moberg, Bar No. 13924  
Respondent

Dated: August 10, 2016

  
\_\_\_\_\_  
Francesca D'Angelo, Bar No. 22979  
Disciplinary Counsel

Dated: August 12, 2016

## Attachment to Stipulation

### *Failure to Preserve the Client's Property*

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

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.