

FILED

JUN 08 2015

DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JOHN A. LONG,
Lawyer (Bar No. 15119).

Proceeding No. 14#00047

STIPULATION TO TWO REPRIMANDS

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Two Reprimands is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Debra Slater and Respondent lawyer John A. Long.

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

Stipulation to Discipline
Page 1

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1 avoid 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 June 3,
4 1985.

5 **II. STIPULATED FACTS**

6 IRINA CAYWARD MATTER

7 2. In December 2009, Irina Cayward hired Respondent to represent her in obtaining
8 loan modifications for her investment properties and home.

9 3. Ms. Cayward, an active member of several local real estate investor associations,
10 agreed to refer potential clients seeking loan modifications to Respondent, to serve as liaison
11 with the clients, and to perform other duties relating to the clients.

12 4. Respondent agreed to pay Ms. Cayward \$850 for each client she referred who
13 signed a representation agreement and paid a fee or he applied that amount to her unpaid legal
14 bill.

15 5. Respondent did not advise Ms. Cayward in writing of the desirability of seeking
16 independent counsel regarding the arrangement or obtain Ms. Cayward's written consent to the
17 terms of the arrangement.

18 CRAWFORD/BORDEN MATTER

19 6. In June 2010, Mary Crawford and William Borden (Crawford/Borden) hired
20 Respondent to negotiate a modification of their home loan with Wells Fargo Bank.

21 7. Respondent and Crawford/Borden entered into a written fee agreement and paid a
22 \$4,000 fee. The fee agreement described the fee as "non refundable." It did not include all the
23 terms required by RPC 1.5(f) for a flat fee.

1 8. Respondent deposited the \$4,000 into his operating account, which was not a trust
2 account. The funds should have been deposited into a trust account.

3 9. In July 2011, Wells Fargo offered Crawford/Borden a Special Forbearance
4 Agreement, which they accepted

5 10. Wells Fargo did not thereafter provide a loan modification to Crawford/Borden.

6 11. In April 2012, Crawford/Borden hired Respondent to compel Wells Fargo to
7 provide a modified loan and entered into a new written fee agreement that provided for an
8 hourly fee.

9 12. On April 5, 2012, Crawford/Borden paid Respondent an advance fee of \$5,000,
10 which Respondent correctly deposited into his trust account.

11 13. On July 3, 2012, Respondent sent a demand letter to Wells Fargo.

12 14. In response to the demand letter, Wells Fargo requested documents to initiate a
13 new review. Having already submitted numerous documents, Respondent advised
14 Crawford/Borden to pursue a lawsuit against Wells Fargo. Crawford/Borden agreed.

15 15. By early August 2012, Respondent had drafted a complaint, and Crawford/Borden
16 had approved the complaint for delivery to Wells Fargo along with a new demand letter.

17 16. On August 3, 2012, Respondent withdrew the \$5,000 advance fee from his trust
18 account. Respondent did not provide Crawford/Borden with a billing statement or other written
19 notice before he withdrew the \$5,000.

20 17. Because of personal problems that impacted his law practice, Respondent
21 subsequently took little, if any, action to pursue Crawford/Borden's case, and, they hired a new
22 lawyer. Respondent did thereafter provide his files to Crawford/Borden.

1 MARK ARNOLD MATTER

2 18. In March 2011, Mark Arnold hired Respondent to represent him in obtaining loan
3 modifications for five properties he owned.

4 19. Respondent and Dr. Arnold entered into a separate written fee agreement for each
5 property, which set forth a menu of fees for specific services and described the fees as “non-
6 refundable.”

7 20. None of the fee agreements included all the terms required by RPC 1.5(f) for a flat
8 fee.

9 21. On April 27, 2011, Dr. Arnold paid Respondent \$35,980 pursuant to the fee
10 agreements, which Respondent deposited into his operating account, which was not a trust
11 account. The funds should have been deposited into a trust account.

12 22. On December 11, 2012, Dr. Arnold requested an accounting of the funds he had
13 paid to Respondent, which Respondent did not provide until June 16, 2013. Respondent
14 resolved Dr. Arnold’s concerns and continues to represent him.

15 ELENA MIRONENKO MATTER

16 23. In November 2011, Respondent and Elena Mironenko entered into a written fee
17 agreement for representation in obtaining a loan modification.

18 24. The agreement set forth a menu of fees for specific services, including a \$4,500 fee
19 for modification of a first lien mortgage. The fee agreement described the fees as “non-
20 refundable.” It did not include all the terms required by RPC 1.5(f) for a flat fee.

21 25. In November 21, 2011, Ms. Mironenko paid Respondent \$4,500, which
22 Respondent deposited into his operating account, which was not a trust account. The funds
23 should have been deposited into a trust account.

III. STIPULATION TO MISCONDUCT

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2 26. By agreeing to pay and paying Ms. Cayward a commission, and agreeing to give
3 and giving Ms. Cayward a credit against her legal fees for referring clients to Respondent,
4 Respondent violated RPC 7.2(b) and RPC 8.4(a).

5 27. By paying Ms. Cayward a commission and giving her a credit against her legal
6 fees for referring clients to Respondent, which commission or credit was contingent on the
7 client entering into a representation agreement with Respondent and paying Respondent's fee,
8 Respondent violated RPC 5.4(a).

9 28. By entering into a business transaction with Ms. Cayward without meeting the
10 requirements of RPC 1.8(a)(1) and RPC 1.8(a)(2) and RPC 1.8(a)(3), Respondent violated RPC
11 1.8(a).

12 29. By depositing Crawford/Borden's fee of \$4,000 into his operating account, in the
13 absence of an agreement meeting the requirements of RPC 1.5(f)(2), Respondent violated RPC
14 1.15A(c).

15 30. By withdrawing Crawford/Borden's \$5,000 advance fee from his trust account
16 without giving Crawford/Borden notice of his intent to do so through a billing statement or
17 other document, Respondent violated RPC 1.15A(h)(3).

18 31. By depositing Dr. Arnold's fees of \$35,980 into his operating account, in the
19 absence of an agreement meeting the requirements of RPC 1.5(f)(2), Respondent violated RPC
20 1.15A(c).

21 32. By failing to promptly upon request provide a written accounting to Dr. Arnold,
22 Respondent violated RPC 1.15A(e).

23 33. By depositing Ms. Mironenko's fee of \$4,500 into his operating account, in the

1 absence of an agreement meeting the requirements of RPC 1.5(f)(2), Respondent violated RPC
2 1.15A(c).

3 **IV. PRIOR DISCIPLINE**

4 34. Respondent has no prior discipline.

5 **V. APPLICATION OF ABA STANDARDS**

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

8 ABA Standard 7.0 is most applicable to Respondent's conduct in sharing fees with a
9 non-lawyer, compensating a non-lawyer for recommending his services, and soliciting
10 prospective clients through a third person, in violation of RPC 5.4(a), RPC 7.2(b), RPC 7.3(a),
11 and RPC 8.4(a).

12 **7.0 Violations of Duties Owed as a Professional**

13 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
14 conduct 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.

15 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
16 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.

17 **7.3 Reprimand is generally appropriate when a lawyer negligently 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.**

18 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
19 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.

20 36. Respondent was negligent in sharing fees with Ms. Cayward and engaging her to
21 solicit prospective clients. The injury was potential.

22 37. The presumptive sanction is reprimand.

23 ABA Standard 4.1 is most applicable to Respondent's failure to properly handle client

1 property, in violation of RPC 1.15A(c).

2 4.1 Failure to Preserve the Client's Property

3 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
property and causes injury or potential injury to a client.

4 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.

5 **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.**

6 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.

7
8 38. Respondent acted negligently in failing to properly handle advance fees paid to him
by Crawford/Borden, by Dr. Arnold, and by Ms. Mironenko.

9 39. The injury was potential in that the funds were not protected in a trust account.

10 40. The presumptive sanction is a reprimand.

11 41. The following aggravating factors apply under ABA Standard 9.22:

12 (d) multiple offenses; and

13 (i) substantial experience in the practice of law (Respondent was admitted to the
14 practice of law in Iowa in 1970, California in 1971, and Washington in 1985).

15 42. The following mitigating factors apply under ABA Standard 9.32:

16 (a) absence of a prior disciplinary record;

17 (c) personal or emotional problems (in July 2012, Respondent separated from his
18 wife who was a paralegal and case flow manager in Respondent's office. During
this time, Respondent had difficulty handling all of the demands of his law
19 practice); and

20 (l) remorse.

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

22 44. Based on the factors set forth above, the presumptive sanction in the Cayward matter
23 is a reprimand.

1 45. Based on the factors set forth above, the presumptive sanction is a reprimand in the
2 Crawford/Ford, Arnold, and Mironenko matters.

3 **VI. STIPULATED DISCIPLINE**

4 46. The parties stipulate that Respondent shall receive a reprimand for his conduct in the
5 Cayward matter and an additional reprimand for his conduct in the Crawford/Borden, Arnold,
6 and Mironenko matters.

7 47. Respondent will be subject to probation for a period of one-year beginning when this
8 stipulation receives final approval and shall comply with the specific probation terms set forth
9 below:

- 10 a) Respondent shall carefully review and fully comply with RPC 1.15A(c) and RPC
11 1.5(f).
- 12 b) For all client matters, Respondent shall have a written fee agreement signed by the
13 client, which agreements are to be maintained for at least seven years (see RPC
14 1.15B(a)(3)).
- 15 c) On a quarterly basis, Respondent shall provide ODC with all written fee agreements
16 signed by the clients, for the time period of probation, to be reviewed by ODC for
17 compliance with the RPC:
- 18 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
19 commencement of probation, Respondent shall provide all written fee
20 agreements signed by the clients from the date of the commencement of
21 probation to the end of the third full month.
- 22 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
23 commencement of probation, Respondent shall provide all written fee
24 agreements signed by the clients, from the end of the previously provided
quarter through the end of month six.
- iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
commencement of probation, Respondent shall provide all written fee
agreements signed by the clients, from the end of the previously provided
quarter through the end of month nine.
- iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
the commencement of probation, Respondent shall provide all written fee

1 agreements signed by the clients, from the end of the previously provided
2 quarter through the end of month twelve.

3 **VII. RESTITUTION**

4 48. Respondent shall pay restitution in the amount of \$5,000 to Crawford/Borden,
5 \$1,000 of that amount to be paid on or before the execution of this Stipulation.

6 **VIII. COSTS AND EXPENSES**

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

11 **IX. VOLUNTARY AGREEMENT**

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

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

19 **X. LIMITATIONS**

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

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

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

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

14 56. If this Stipulation is approved by the Hearing Officer, it will be followed by the
15 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
16 Enforcement of Lawyer Conduct will be made.

17 57. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
18 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
19 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
20 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.

John A. Long
John A. Long

John A. Long, Bar No. 15119
Respondent

Dated: 5/13/2015

Debra Slater

Debra Slater, Bar No. 18346
Disciplinary Counsel

Dated: 6/1/2015