

FILED

Sep 17 2018

Disciplinary
Board

Docket # 019

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

THEODORE ROBERT PARRY,

Lawyer (Bar No. 15203).

Proceeding No. 17#00070

ODC File No. 16-01036

STIPULATION TO SUSPENSION

Following settlement conference conducted
under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Benjamin J. Attanasio, Respondent's Counsel Kurt M. Bulmer, and Respondent lawyer Theodore Robert Parry.

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

1 Supreme Court. Respondent further understands that a hearing and appeal could result in an
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this
3 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
4 avoid the risk, time, and expense attendant to further proceedings.

5 **I. ADMISSION TO PRACTICE**

6 1. Respondent was admitted to practice law in the State of Washington on November 4,
7 1985.

8 **II. STIPULATED FACTS**

9 2. In 2010, Sally Smeltzer was involved in an automobile accident with William
10 Kinnamon, an employee of the city of Mountlake Terrace, Washington.

11 3. Ms. Smeltzer suffered injuries in the accident and her medical treatment was paid
12 for, in part, by Medicare.

13 4. Respondent represented Ms. Smeltzer in a personal injury case against Mr.
14 Kinnamon and the City of Mountlake Terrace.

15 5. On or about June 29, 2015, the parties agreed to settle the case for \$30,000.
16 However, no settlement check was issued at that time.

17 6. Respondent was responsible for determining the amount of Ms. Smeltzer's medical
18 costs for which Medicare sought reimbursement (the "Medicare lien").

19 7. On or about July 14, 2015, Respondent sent a letter to Medicare to inquire about
20 the amount of the Medicare lien.

21 8. On or about September 10, 2015, Respondent sent a second letter to Medicare,
22 having received no response to his earlier letter.

23 9. On or about October 7, 2015, lawyer Robert Sifferman wrote a letter to
24

1 Respondent on Ms. Smeltzer's behalf requesting an update on the status of the case.

2 10. On or about October 27, 2015, Respondent sent Mr. Sifferman a letter in reply
3 explaining that he was awaiting a determination on the amount of the Medicare lien.

4 11. Also on or about October 27, 2015, Respondent emailed the city's lawyer, Alan
5 Peizer, to request the release of the settlement funds. Mr. Sifferman was copied on that email.

6 12. On or about November 6, 2015, Mr. Peizer sent Respondent a settlement check for
7 \$30,000 made out to Respondent, Ms. Smeltzer, and Medicare.

8 13. Because the check included Medicare as a payee, it could not be deposited without
9 Medicare's endorsement.

10 14. Respondent did not deposit the check, but retained it in his file.

11 15. Beginning in December 2015, Respondent's father, with whom Respondent was
12 very close, became seriously ill, leading to his death in February 2016.

13 16. Respondent served as his father's caregiver during that time.

14 17. On or about January 5, 2016, Mr. Sifferman sent Respondent an email requesting
15 an update on the case, noting that he had not received any information since October 2015.

16 18. Respondent did not respond to that email.

17 19. On or about February 5, 2016, Mr. Sifferman sent Respondent a letter asking for
18 an update on the case.

19 20. Respondent did not respond to that letter.

20 21. On or about February 15, 2016, Medicare sent Respondent a letter informing him
21 that the Medicare lien was \$6,801.98.

22 22. On or about March 11, 2016, Mr. Sifferman called Respondent and left a
23 voicemail.

1 23. Respondent did not return the call.

2 24. On or about April 1, 2016, Mr. Sifferman sent Respondent a letter requesting an
3 update on the case in writing by April 11, 2016.

4 25. On or about April 13, 2016, Respondent sent Mr. Sifferman a letter informing Mr.
5 Sifferman that he had received the Medicare lien amount in February and that he believed
6 Medicare was "overcharging by \$783.68+/- for medical treatment unrelated to this accident."

7 26. Respondent told Mr. Sifferman he intended to write to Medicare that week to
8 request a reduction in the Medicare lien and that he would copy Mr. Sifferman on that letter.

9 27. Respondent never contacted Medicare to request a reduction in the amount of the
10 Medicare lien.

11 28. Respondent did not obtain a second settlement check without Medicare listed as a
12 payee.

13 29. On or about May 24, 2016, Mr. Sifferman sent Respondent a letter to again inquire
14 as to the status of Ms. Smeltzer's case.

15 30. Respondent did not respond to that letter.

16 31. On or about July 6, 2016, Ms. Smeltzer filed a grievance against Respondent.

17 32. Respondent considered his representation of Ms. Smeltzer terminated upon the
18 filing of the grievance.

19 33. On or about August 18, 2016, Respondent called Mr. Sifferman, who indicated he
20 would take over the case.

21 34. Respondent did not provide the client file, or a copy of the file, to Mr. Sifferman or
22 Ms. Smeltzer at that time.

23 35. Respondent did not provide Mr. Sifferman with the settlement check or sufficient
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1 information to resolve any dispute over the Medicare lien.

2 36. On or about September 21, 2016, Ms. Smeltzer sent Respondent a handwritten
3 letter requesting that he provide her client file to Mr. Sifferman.

4 37. Respondent does not recall receiving this letter, but the resolution of this disputed
5 fact is not necessary to resolve this matter.

6 38. Respondent did not provide the file, or a copy of the file, to Mr. Sifferman or Ms.
7 Smeltzer in response to that request.

8 39. In December 2016, January 2017, and February 2017, ODC asked Respondent,
9 through counsel, to provide the client file to Mr. Sifferman.

10 40. Respondent did not provide the file, or a copy of the file, to Mr. Sifferman or Ms.
11 Smeltzer in response to those requests.

12 41. In June 2017, in response to a subpoena, Respondent provided the file to ODC,
13 which transmitted a copy to Ms. Smeltzer.

14 III. STIPULATION TO MISCONDUCT

15 42. By failing to act with reasonable diligence and promptness in resolving any dispute
16 over the Medicare lien and/or resolving any issues with disbursement of Ms. Smeltzer's
17 settlement, Respondent violated RPC 1.3.

18 43. By failing to promptly reply to Mr. Sifferman's requests for information made on
19 Ms. Smeltzer's behalf, Respondent violated RPC 1.4.

20 44. By failing to provide Ms. Smeltzer or Mr. Sifferman with the client file or other
21 information necessary to complete the case after his representation was terminated, Respondent
22 violated RPC 1.16(d).

IV. PRIOR DISCIPLINE

45. On April 5, 2007, Respondent was suspended for one year for violations of the following:

- Former RPC 7.1(a), 7.5(a), and 7.5(d) (by using a false law firm name);
- Former RPC 1.14(a) (by withdrawing funds from trust before deposits had cleared the banking process);
- Former RPC 1.5(a) and/or 1.5(c)(1) (by collecting an improper amount of contingent fees);
- Former RPC 1.5(b) and/or 1.5(c)(1) (by drafting a fee agreement that did not clearly indicate the manner in which a contingent fee would be calculated);
- Former RPC 1.14(a) (by withdrawing funds from trust to which he was not entitled);
- Former RPC 1.3 (by failing to promptly pursue resolution of a client's medical provider claim);
- Former RPC 1.7(b) (by having a conflict of interest);
- Former RPC 1.14(a)(2) (by failing to return disputed funds to trust);
- Former RPC 1.4(b) (by failing to provide a client information necessary to make informed decisions about the case); and
- Former RPC 1.3 and 5.3 (by failing to supervise a clerk to ensure a client's medical records were obtained in a timely manner).

V. APPLICATION OF ABA STANDARDS

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

1 **4.4 *Lack of Diligence***

2 Absent aggravating or mitigating circumstances, upon application of the factors
3 set out in Standard 3.0, the following sanctions are generally appropriate in
4 cases involving a failure to act with reasonable diligence and promptness in
5 representing a client:

6 4.41 Disbarment is generally appropriate when:

- 7 (a) a lawyer abandons the practice and causes serious or potentially
8 serious injury to a client; or
- 9 (b) a lawyer knowingly fails to perform services for a client and
10 causes serious or potentially serious injury to a client; or
- 11 (c) a lawyer engages in a pattern of neglect with respect to client
12 matters and causes serious or potentially serious injury to a client.

13 4.42 Suspension is generally appropriate when:

- 14 (a) a lawyer knowingly fails to perform services for a client and
15 causes injury or potential injury to a client, or
- 16 (b) a lawyer engages in a pattern of neglect and causes injury or
17 potential injury to a client.

18 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
19 not act with reasonable diligence in representing a client, and causes
20 injury or potential injury to a client.

21 4.44 Admonition is generally appropriate when a lawyer is negligent and does
22 not act with reasonable diligence in representing a client, and causes little
23 or no actual or potential injury to a client.

24 **7.0 *Violations of Duties Owed as a Professional***

 Absent aggravating or mitigating circumstances, upon application of the factors
 set out in Standard 3.0, the following sanctions are generally appropriate in
 cases involving false or misleading communication about the lawyer or the
 lawyer's services, improper communication of fields of practice, improper
 solicitation of professional employment from a prospective client, unreasonable
 or improper fees, unauthorized practice of law, improper withdrawal from
 representation, or failure to report professional misconduct.

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

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.

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.

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.

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8.0 *Prior Discipline Orders*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving prior discipline.

8.1 Disbarment is generally appropriate when a lawyer:

- (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.3 Reprimand is generally appropriate when a lawyer:

- (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
- (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

47. Respondent acted knowingly.

48. Respondent's conduct caused injury to Ms. Smeltzer, who experienced needless delay in the resolution of her case and receipt of her settlement funds.

49. The presumptive sanction is suspension.

50. The following aggravating factors apply under ABA Standard 9.22:

- (a) prior disciplinary offenses (in 2007, Respondent was suspended for one year for multiple RPC violations as set forth above); and
- (i) substantial experience in the practice of law (Respondent was admitted to practice in 1985).

51. The following mitigating factors apply under ABA Standard 9.32:

- 1 (b) absence of a dishonest or selfish motive; and
2 (c) personal or emotional problems.

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

5 53. On balance the aggravating and mitigating factors do not require a departure from
6 the presumptive sanction.

7 **VI. STIPULATED DISCIPLINE**

8 54. The parties stipulate that Respondent shall receive a 60-day suspension for his
9 conduct.

10 55. Respondent will be subject to probation for a period of two years beginning when
11 Respondent is reinstated to the practice of law and shall comply with the specific probation
12 terms set forth below:

13 (a) During the period of probation, Respondent's practice will be supervised by a
14 practice monitor. The practice monitor must be a WSBA member with no record of
public discipline and who is not the subject of a pending public disciplinary
proceeding.

15 (b) The role of the practice monitor is to consult with and provide guidance to
16 Respondent regarding case management, office management, and avoiding
17 violations of the Rules of Professional Conduct, and to provide reports and
18 information to the Probation Administrator regarding Respondent's compliance
with the terms of probation and the RPC. The practice monitor does not represent
the Respondent.

19 (c) At the beginning of the probation period, the Probation Administrator will select a
lawyer to serve as practice monitor for the period of Respondent's probation.

20 (i) Initial Challenge: If, within 15 days of the written notice of the selection
21 of a practice monitor, Respondent sends a written request to the Probation
Administrator that another practice monitor be selected, the Probation
22 Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.

23 (ii) Subsequent Challenges: If, after selection of a second (or subsequent)
24 practice monitor, Respondent believes there is good cause why that
individual should not serve as practice monitor, Respondent may, within

1 15 days of notice of the selected practice monitor, send a written request to
2 the Probation Administrator asking that another practice monitor be
3 selected. That request must articulate good cause to support the request.
4 If the Probation Administrator agrees, another practice monitor will be
5 selected. If the Probation Administrator disagrees, the Office of
Disciplinary Counsel will submit its proposed selection for practice
monitor to the Chair of the Disciplinary Board for appointment pursuant to
ELC 13.8(a)(2), and will also provide the Chair with the Respondent's
written request that another practice monitor be selected.

- 6 (d) In the event the practice monitor is no longer able to perform his or her duties, the
7 Probation Administrator will select a new practice monitor at his or her discretion.
- 8 (e) During the period of probation, Respondent must cooperate with the named practice
9 monitor. Respondent must meet with the practice monitor at least once per month.
Respondent must communicate with the practice monitor to schedule all required
meetings.
- 10 (f) The Respondent must bring to each meeting a current, complete written list of all
11 pending client legal matters being handled by the Respondent. The list must
12 identify the current status of each client matter and any problematic issues regarding
each client matter. The list may identify clients by using the client's initials rather
than the client's name.
- 13 (g) At each meeting, the practice monitor will discuss with Respondent practice issues
14 that have arisen or are anticipated. In light of the conduct giving rise to the
15 imposition of probation, ODC recommends that the practice monitor and
16 Respondent discuss whether Respondent is diligently making progress on each
17 client matter, whether Respondent is in communication with each client, whether
Respondent needs to consider withdrawing from any client matters, and any other
relevant topics. Meetings may be in person or by telephone at the practice
monitor's discretion. The practice monitor uses discretion in determining the length
of each meeting.
- 18 (h) The practice monitor will provide the Probation Administrator with quarterly
19 written reports regarding Respondent's compliance with probation terms and the
20 RPC. Each report must include the date of each meeting with Respondent, a brief
21 synopsis of the discussion topics, and a brief description of any concerns the
practice monitor has regarding the Respondent's compliance with the RPC. The
report must be signed by the practice monitor. Each report is due within 30 days of
the completion of the quarter.
- 22 (i) If the practice monitor believes that Respondent is not complying with any of his
23 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
24 meeting, the practice monitor will promptly communicate that to the Probation
Administrator.

1 (j) Respondent must make payments totaling \$1,000 to the Washington State Bar
2 Association to defray the costs and expenses of administering the probation, as
3 follows:

- 4 (i) \$250 due within 30 days of the start of the probation;
- 5 (ii) \$250 due within 6 months of the start of the probation period;
- 6 (iii) \$250 due within 12 months of the start of the probation period; and
- 7 (iv) \$250 due within 18 months of the start of the probation period.

8 All payments should be provided to the Probation Administrator for processing.

9 **VII. RESTITUTION**

10 56. No restitution is required by this stipulation.

11 **VIII. COSTS AND EXPENSES**

12 57. In light of Respondent's willingness to resolve this matter by stipulation at an early
13 stage of the proceedings, Respondent shall pay reduced costs and expenses of \$1,758.18 in
14 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
15 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
16 suspension is conditioned on payment of costs.

17 **IX. VOLUNTARY AGREEMENT**

18 58. Respondent states that prior to entering into this Stipulation he has consulted
19 independent legal counsel regarding this Stipulation, that Respondent is entering into this
20 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
21 Association, nor by any representative thereof, to induce the Respondent to enter into this
22 Stipulation except as provided herein.

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

1 **X. LIMITATIONS**

2 60. 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 61. 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 62. 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 63. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
18 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
19 before the Board for its review become public information on approval of the Stipulation by the
20 Board, unless disclosure is restricted by order or rule of law.


21 64. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
22 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
23 Rules for Enforcement of Lawyer Conduct will be made.

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


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

7 
8 Theodore Robert Parry, Bar No. 15203
9 Respondent

Dated: 5-18-18

10 
11 Kurt M. Bulmer, Bar No. 5559
12 Counsel for Respondent

Dated: 5-18-18

13 
14 Benjamin J. Attanasio, Bar No. 43032
15 Disciplinary Counsel

Dated: 5/18/18