

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

FILED
SEP 11 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

BRIAN JEFFREY CARL,
Lawyer (Bar No. 15730).

Proceeding No. 14#00057

STIPULATION TO A THREE-YEAR
SUSPENSION

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 suspension 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 Brian Jeffrey Carl.

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

019

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 2,
5 1986.

6 **II. STIPULATED FACTS**

7 2. Respondent maintained a trust account with Bank of American, ending in 6619, for
8 the deposit of client funds.

9 3. On or about September 5, 2013, Respondent disbursed check #1959 from his trust
10 account in the amount of \$1,000, payable to himself.

11 4. The disbursement to himself was not related to the interests of any client whose
12 funds Respondent was holding in his trust account.

13 5. Respondent was not entitled to the funds.

14 6. Respondent knew that he was not entitled to the funds.

15 7. Respondent used the funds for his own benefit to pay business expenses.

16 8. Respondent knowingly converted the client funds.

17 Client MV¹

18 9. On or about May 1, 2013, Respondent deposited a \$2,000 advance fee from client
19 MV into his trust account.

20 10. The same day, Respondent disbursed \$550 to himself for fees for work performed
21 for MV in April 2013.

22 11. On or about May 7 and 8, 2013, Respondent performed additional work on MV's

23 ¹ Client names are abbreviated to maintain confidentiality.

1 behalf that would total another \$450 in fees when billed to MV.

2 12. On or about May 17, 2013, Respondent removed \$250 of MV's funds from trust to
3 pay fees, but did not give MV reasonable advance notice of his intent to do so.

4 13. On or about May 31, 2013, Respondent sent client MV a billing statement showing
5 that she owed a balance of \$450.

6 14. The May 31, 2013 billing statement did not state that Respondent had already paid
7 himself \$250 from MV's funds.

8 15. On or about June 4, 2013, Respondent disbursed another \$450 to himself from MV's
9 funds, but did not give MV reasonable advance notice of his intent to do so.

10 16. Respondent was not entitled to at least \$250 of the funds he disbursed to himself
11 from MV's funds.

12 17. Respondent used the funds for his own benefit.

13 18. On or about August 7, 2013, Respondent paid himself \$500 from MV's funds in
14 trust, but did not notify MV that he had done so.

15 19. On or about August 31, 2013, Respondent sent MV a billing statement showing that
16 she owed \$525 in fees.

17 20. The August 31, 2013 billing statement that Respondent sent to MV did not reflect a
18 credit for \$500 that he had removed on or about August 7, 2013.

19 21. On or about September 3, 2013, Respondent paid himself an additional \$525 from
20 trust, bringing MV's trust balance to <\$325>.

21 22. In doing so, Respondent used \$325 of another client's funds.

22 23. Of the \$525 Respondent paid to himself on or about September 3, 2013, he was not
23 entitled to at least \$500 of those funds.

24 Stipulation to Discipline
Page 3

OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

1 24. Respondent used the funds for his own benefit.

2 Client BR

3 25. In or around January 2013, Respondent deposited \$753 into trust on behalf of Client
4 BR.

5 26. On or around March 3, 2013, Respondent withdrew the entire amount of funds
6 deposited on behalf of BR.

7 27. Respondent did not give BR reasonable advance notice of his intent to withdraw the
8 funds by a billing statement or other document.

9 Trust Account Records

10 28. During the period January 1, 2013 through October 31, 2013, Respondent failed to
11 maintain a check register for his trust account that included all transactions for his IOLTA trust
12 account.

13 29. During the period January 1, 2013 through October 31, 2013, Respondent failed to
14 maintain a check register for his trust account with a running balance after each transaction.

15 30. During the period January 1, 2013 through October 31, 2013, Respondent failed to
16 maintain individual client ledgers showing all transactions for each client with funds in his trust
17 account.

18 31. During the period January 1, 2013 through October 31, 2013, Respondent failed to
19 prepare reconciliations from the bank statement to the check register for his trust account.

20 32. During the period January 1, 2013 through October 31, 2013, Respondent failed to
21 prepare reconciliations from the check register to the combined total of his client ledgers for his
22 trust account.

23 33. As a result of his failure to maintain complete and accurate trust account records,

1 Respondent disbursed more funds that he had on deposit for two of his clients, resulting in
2 negative balances of <\$78> and <\$10> for those clients.

3 III. STIPULATION TO MISCONDUCT

4 34. By removing \$1,000 in client funds from his trust account without authorization or
5 entitlement, Respondent converted client funds for his own use in violation of RPC 1.15A(b).

6 35. By removing funds of MV without entitlement, Respondent converted client funds
7 for his own use in violation of RPC 1.15A(b).

8 36. By failing to give reasonable advance notice to clients MV and BR of his intent to
9 remove earned fees from trust through a billing statement or other document, Respondent
10 violated RPC 1.15A(h)(3).

11 37. By failing to maintain a checkbook register for his trust account which included
12 entries for all transactions and a new trust account balance after each receipt, disbursement, or
13 transfer, Respondent violated RPC 1.15B(a)(1)(v).

14 38. By failing to maintain client ledgers, Respondent violated RPC 1.15B(a)(2).

15 39. By failing to reconcile his trust account records on a monthly basis, Respondent
16 violated RPC 1.15A(h)(6).

17 IV. PRIOR DISCIPLINE

18 40. Respondent has no prior discipline.

19 V. APPLICATION OF ABA STANDARDS

20 41. The following American Bar Association Standards for Imposing Lawyer Sanctions
21 (1991 ed. & Feb. 1992 Supp.) apply to this case:

22 *4.1 Failure to Preserve the Client's Property*

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

1 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
2 client property and causes injury or potential injury to a client.

3 4.12 Suspension is generally appropriate when a lawyer knows or should
4 know that he is dealing improperly with client property and causes injury
5 or potential injury to a client.

6 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
7 with client property and causes injury or potential injury to a client.

8 4.14 Admonition is generally appropriate when a lawyer is negligent in
9 dealing with client property and causes little or no actual or potential
10 injury to a client.

11 42. Respondent's conversion of client funds was knowing.

12 43. Respondent's conduct in failing to give his clients reasonable advance notice before
13 withdrawing earned fees was knowing.

14 44. In failing to maintain complete and accurate trust account records, Respondent
15 should have known that he was dealing improperly with client property.

16 45. Although it appears there was no actual injury, there was potential injury to
17 Respondent's clients who could have lost the use of their funds.

18 46. The presumptive sanction for the conversion of client funds is disbarment.

19 47. The presumptive sanction for failure to keep adequate trust account records and
20 failure to provide advanced written notice to his clients of his intent to withdraw earned fees is
21 suspension.

22 48. The following aggravating factors apply under ABA Standard 9.22:

23 (b) selfish motive;

24 (d) multiple offenses are present in that there are six violations. This is
offset somewhat by the fact that many of the offenses are similar in
nature in that four of the violations relate to Respondent's trust account
practices;

(i) substantial experience in the practice of law [Respondent was admitted to
practice in 1986].

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

- 1 (a) absence of a prior disciplinary record;
2 (b) personal and emotional problems [In 2013, Respondent was experiencing
3 significant family problems as discussed in the statement, attached hereto
4 under seal as Attachment A];
5 (d) good faith effort to rectify the consequences of his misconduct. [Upon
6 being notified of the grievance investigation, Respondent immediately
7 took steps to bring his trust account records into compliance with the
8 RPC and deposited funds into his trust account to cure the shortages];
9 (e) full and free disclosure to the disciplinary board or cooperative attitude
10 toward proceedings. [From the outset of the grievance investigation,
11 Respondent acknowledged his misconduct and he has admitted
12 substantially all of the factual allegations in the Formal Complaint];
13 (g) character and reputation. [Respondent states that he has a good
14 reputation in the legal community and regularly receives client referrals
15 from other attorneys. Respondent states that he volunteers for a non-
16 profit organization to raise funds to provide food assistance throughout
17 the world and coordinated the first walk to feed the hungry in Seattle.
18 Respondent states that he volunteers at the downtown emergency center
19 on a regular basis, and has mentored high school students in moot court
20 competitions];
21 (l) remorse [Respondent has expressed genuine remorse for his conduct and
22 did so before the matter was ordered to hearing].

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

51. On balance, the mitigating factors outweigh the aggravating factors and warrant a
sanction of a lengthy suspension, rather than disbarment.

VI. STIPULATED DISCIPLINE

52. The parties stipulate that Respondent shall receive a three-year suspension for his
conduct.

53. Respondent will be subject to probation for a period of two years commencing upon
Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his
trust account practices, and shall comply with the specific probation terms set forth below:

- a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.

1 b) For all client matters, Respondent shall have a written fee agreement signed by the
2 client, which agreements are to be maintained for least seven years (see RPC
3 1.15B(a)(3)).

4 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
5 account records for the time period to be reviewed by ODC's audit staff and
6 disciplinary counsel for compliance with the RPC:

7 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
8 commencement of probation, Respondent shall provide the trust account
9 records from the date of his/her reinstatement to the end of the third full
10 month.

11 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
12 commencement of probation, Respondent shall provide the trust account
13 records from the end of the previously provided quarter through the end of
14 month six.

15 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
16 commencement of probation, Respondent shall provide the trust account
17 records from the end of the previously provided quarter through the end of
18 month nine.

19 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
20 the commencement of probation, Respondent shall provide the trust
21 account records from the end of the previously provided quarter through
22 the end of month twelve.

23 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
24 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.

vi) Months 16 – 18. By no later than the 30th day of the nineteenth 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 eighteen.

vii) Months 19 – 21. By no later than the 30th day of the twenty-second 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 twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of
his trust account will include: (a) a complete checkbook register for his/her trust
account covering the period being reviewed, (b) complete individual client ledger
records for any client with funds in Respondent's trust account during all or part of

1 the period being reviewed, as well as for Respondent's own funds in the account (if
2 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
3 checks covering the period being reviewed, (d) copies of all trust account client
4 ledger reconciliations for the period being reviewed, and (e) copies of
reconciliations of Respondent's trust account check register covering the period
being reviewed. The ODC's Audit Manager or designee will review Respondent's
trust account records for each period.

- 5 d) On the same quarterly time schedule set forth in the preceding paragraph,
6 Respondent will provide ODC's Audit Manager or designee with copies of any and
all fee agreements entered into within the time period at issue.
- 7 e) The ODC's Audit Manager or designee may request additional financial or client
8 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
9 Within twenty days of a request from ODC's Audit Manager or designee for
additional records needed to verify Respondent's compliance with RPC 1.15A
and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
10 additional records requested.
- 11 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
12 or designee in reviewing and reporting on Respondent's records to determine
his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
Respondent will make payment within thirty days of each written invoice setting
13 forth the auditor's time and payment due.

14 VII. RESTITUTION

15 54. Restitution is not required in this matter as Respondent has restored the funds to his
16 trust account.

17 VIII. COSTS AND EXPENSES

18 55. In light of Respondent's willingness to resolve this matter by stipulation at an early
19 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
20 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
21 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
22 suspension or disbarment is conditioned on payment of costs.

1 IX. VOLUNTARY AGREEMENT

2 56. Respondent states that prior to entering into this Stipulation he has had an
3 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is
4 entering into this Stipulation voluntarily, and that no promises or threats have been made by
5 ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into
6 this Stipulation except as provided herein.

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

9 X. LIMITATIONS

10 58. This Stipulation is a compromise agreement intended to resolve this matter in
11 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
12 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
13 and ODC acknowledge that the result after further proceedings in this matter might differ from
14 the result agreed to herein.

15 59. This Stipulation is not binding upon ODC or Respondent as a statement of all
16 existing facts relating to the professional conduct of the respondent lawyer, and any additional
17 ~~existing facts may be proven in any subsequent disciplinary proceedings.~~

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

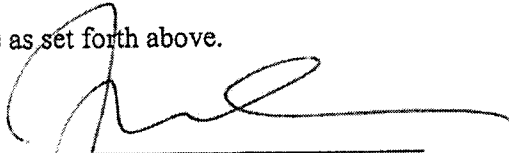
1 Stipulation.

2 61. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
3 Board shall have available to it for consideration all documents that the parties agree to submit
4 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
5 form the record before the Board for its review become public information on approval of the
6 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

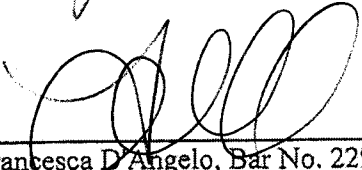
7 62. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
8 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
9 Rules for Enforcement of Lawyer Conduct will be made.

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

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

16 
17 _____
18 Brian Jeffrey Carl, Bar No. 15730
19 Respondent

Dated: 3/9/15

19 
20 _____
21 Francesca D'Angelo, Bar No. 22979
22 Disciplinary Counsel

Dated: 3/9/15