

FILED

Sep 23, 2019

Disciplinary
Board

Docket # 014

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

W. TRACY CODD,

Lawyer (Bar No. 16745).

Proceeding No. 18#00047

ODC File No. 16-00994

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 Benjamin J. Attanasio, Respondent's Counsel Kurt M. Bulmer, and Respondent lawyer W. Tracy Codd.

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

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 June 2,
5 1987.

6 **II. STIPULATED FACTS**

7 2. These matters came to the attention of the Office of Disciplinary Counsel when
8 Respondent self-reported a returned trust account check to ODC.

9 3. Respondent maintains a Bank of America trust account ending in 2011.

10 4. On June 9, 2016, Respondent wrote a \$5,697.75 check from his trust account to his
11 client SH. Respondent states that he advised SH to wait to deposit the check until he told her
12 she could do so.

13 5. SH deposited the check the same day.

14 6. On that date, SH had no funds on deposit in Respondent's trust account.

15 7. On June 13, 2016, at 3:38 p.m., Respondent deposited \$158,270 into his trust
16 account on behalf of SH and another client, EH.

17 8. Of the \$158,270 deposit, \$8,270 were funds relating to the representation of SH and
18 \$150,000 were settlement funds relating to the representation of EH.

19 9. At the time of the deposit, Respondent held funds for one other client in his trust
20 account.

21 10. Respondent states that after making the deposit, he asked the teller whether the funds
22 were good and that the teller advised him they were.

23 11. On June 13, 2016, at 3:40 p.m., Respondent disbursed \$60,000 from his trust account
24

1 to himself.

2 12. The \$60,000 disbursement was for attorney fees for Respondent's representation of
3 EH and was to be drawn from the \$150,000 in settlement funds.

4 13. At the time Respondent disbursed the \$60,000, the \$158,270 deposit had not cleared
5 the banking process and been collected.

6 14. On June 14, 2016, the \$158,270 deposit was posted to Respondent's trust account.

7 15. On June 15, 2016, Bank of America put a hold on the deposit.

8 16. On June 15, 2016, Respondent's check for \$60,000 was returned due to an
9 "Uncollected Funds Hold."

10 17. Several days later, Respondent first learned of the returned check when he was
11 notified by mail.

12 18. On June 21, 2016, Respondent reported to ODC that the \$60,000 check had been
13 returned.

14 19. In response to requests from ODC, Respondent provided records for his Bank of
15 America trust account ending in 2011 for the period from May 2016 through August 2017 (the
16 "audit period").

17 20. During the audit period, Respondent maintained his check register and his client
18 ledgers in a single document.

19 21. During the audit period, Respondent's combined check register and client ledger
20 document did not always contain the name of the payor for each transaction.

21 22. During the audit period, Respondent's combined check register and client ledger
22 document did not always state the purpose of each transaction.

23 23. During the audit period, Respondent's combined check register and client ledger
24



1 document did not contain any running individual client ledger balances.

2 24. For 16 days between June 13, 2016 and July 1, 2016, Respondent's combined check
3 register and client ledger document did not list a running check register balance after each
4 transaction. The document listed a running check register balance on other days.

5 25. During the audit period, although Respondent did reconcile his check register to his
6 bank statements, Respondent did not perform monthly reconciliations of his check register
7 balance to the combined total of client ledger balances.

8 26. The audit showed that during the audit period all clients received the funds they were
9 entitled to receive.

10 **III. STIPULATION TO MISCONDUCT**

11 27. By disbursing funds from his trust account to SH when SH had no funds on deposit
12 in the trust account, Respondent violated RPC 1.15A(h)(8).

13 28. By disbursing funds from his trust account before the related deposits had cleared the
14 banking process and been collected, Respondent violated RPC 1.15A(h)(7).

15 29. By failing to list the payor on all transactions, identify the purpose of all
16 transactions, list a running check register balance between June 13, 2016 and July 1, 2016,
17 and/or list any running client ledger balances on his combined check register and client ledger
18 document, Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a).

19 30. By failing to perform monthly reconciliations of his check register balance to the
20 combined total of client ledger balances, Respondent violated RPC 1.15A(h)(2) and RPC
21 1.15A(h)(6) and RPC 1.15B(a)(8).

22 **IV. PRIOR DISCIPLINE**

23 31. Respondent has no record of prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 32. The following American Bar Association Standard for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) applies to this case:

4 ***4.1 Failure to Preserve the Client's Property***

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

8 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
9 client property and causes injury or potential injury to a client.

10 4.12 Suspension is generally appropriate when a lawyer knows or should
11 know that he is dealing improperly with client property and causes injury
12 or potential injury to a client.

13 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes injury or potential injury to a client.

15 4.14 Admonition is generally appropriate when a lawyer is negligent in
16 dealing with client property and causes little or no actual or potential
17 injury to a client.

18 33. Respondent knew or should have known he was not dealing properly with client
19 property.

20 34. Respondent's conduct caused potential injury to his clients.

21 35. The presumptive sanction is suspension.

22 36. The following aggravating factor applies under ABA Standard 9.22:

23 (i) substantial experience in the practice of law [Respondent was admitted in 1987].

24 37. The following mitigating factors apply under ABA Standard 9.32:

(a) absence of a prior disciplinary record; and

(b) absence of a dishonest or selfish motive.

38. It is an additional mitigating factor that Respondent has brought his trust account
records into substantial compliance with RPC 1.15A and RPC 1.15B prior to the execution of
this stipulation.

39. Based on the factors set forth above, the presumptive sanction should be mitigated to



1 a reprimand.

2 **VI. STIPULATED DISCIPLINE**

3 40. The parties stipulate that Respondent shall receive a reprimand for his conduct.

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

- 7 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
8 1.15B, and shall carefully review the current version of the publication, Managing
9 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 10 b) Within 30 days of the commencement of probation, and after reviewing the above-
11 referenced publication, Respondent shall meet with ODC's Audit Manager or
12 designee to discuss RPC 1.15A and RPC 1.15B and general trust accounting
13 practices. The meeting shall be at a mutually convenient location for a minimum of
14 one hour and shall be free of charge.
- 15 c) For all client matters, Respondent shall have a written fee agreement signed by the
16 client, which agreements are to be maintained for least seven years (see RPC
17 1.15B(a)(3)).
- 18 d) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
19 Review Report," Respondent shall review the trust-account records detailed on the
20 form report, review the completed report, and sign and date the completed report.
- 21 e) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
22 account records for the time period to be reviewed by ODC's audit staff and
23 disciplinary counsel for compliance with the RPC:
- 24 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
commencement of probation, Respondent shall provide the trust account
records from the date of commencement of probation to the end of the third
full month.
 - ii) Months 4 – 6. By no later than the 30th day of the seventh 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 six.
 - iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
commencement of probation, Respondent shall provide the trust account



1 records from the end of the previously provided quarter through the end of
2 month nine.

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

7 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
8 the commencement of probation, Respondent shall provide the trust
9 account records from the end of the previously provided quarter through
10 the end of month fifteen.

11 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
12 the commencement of probation, Respondent shall provide the trust
13 account records from the end of the previously provided quarter through
14 the end of month eighteen.

15 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
16 after the commencement of probation, Respondent shall provide the trust
17 account records from the end of the previously provided quarter through
18 the end of month twenty-one.

19 The trust account records Respondent provides to ODC for each quarterly review of
20 his trust account will include: (a) copies of each completed “Monthly
21 Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a
22 complete checkbook register for his trust account covering the period being
23 reviewed, (c) complete individual client ledger records for any client with funds in
24 Respondent’s trust account during all or part of the period being reviewed, as well
as for Respondent’s own funds in the account (if any), and (d) copies of all trust-
account bank statements, deposit slips, and cancelled checks covering the period
being reviewed. If Respondent maintains trust account records in QuickBooks, the
records may be provided by providing ODC with an electronic copy of the
QuickBooks file and any password needed to access the file. ODC’s Audit
Manager or designee will review Respondent’s trust account records for each
period.

f) On the same quarterly time schedule set forth in the preceding paragraph,
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.

g) ODC’s Audit Manager or designee may request additional financial or client
records if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B.
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
additional records requested.



1 h) Respondent will reimburse the Association for time spent by ODC's Audit Manager
2 or designee in reviewing and reporting on Respondent's records to determine
3 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
forth the auditor's time and payment due.

4 VII. RESTITUTION

5 42. No restitution is required by this stipulation.

6 VIII. COSTS AND EXPENSES

7 43. Respondent shall pay attorney fees and administrative costs of \$880 in accordance
8 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
9 costs are not paid within 30 days of approval of this stipulation.

10 IX. VOLUNTARY AGREEMENT

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

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

18 X. LIMITATIONS

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

24 47. This Stipulation is not binding upon ODC or the respondent as a statement of all

1 existing facts relating to the professional conduct of the respondent lawyer, and any additional
2 existing facts may be proven in any subsequent disciplinary proceedings.

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

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

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

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

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

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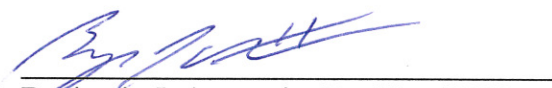
4 W. Tracy Codd, Bar No. 16745
Respondent

Dated: 9/16/19

5 

6 Kurt M. Bulmer, Bar No. 5559
Counsel for Respondent

Dated: 9/16/19

7 

8 Benjamin J. Attanasio, Bar No. 43032
Disciplinary Counsel

Dated: 9/16/19