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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

CHARLES M. GREENBERG,
Lawyer (Bar No. 17661).

Proceeding No. 16#00009

ODC File No. 13-01750

STIPULATION TO SUSPENSION
AND PROBATION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension and Probation is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Natalea Skvir and Respondent lawyer Charles M. Greenberg.

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

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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 May 31,
4 1988.

5 **II. STIPULATED FACTS**

6 2. Respondent maintained a trust account ending in -6704 at Bank of America for the
7 deposit of client funds.

8 3. On or about September 10, 2013, a check in the amount of \$2,064.56 was presented
9 against insufficient funds in Respondent's trust account ending in -6704, causing an overdraft in
10 the amount of \$351.56. The check was dishonored.

11 4. The check was issued on behalf of MB, whose funds had been deposited into the
12 trust account in an amount sufficient to cover the check.

13 5. The funds deposited for MB¹ were not maintained in the trust account, but were used
14 for another purpose, causing the overdraft in Respondent's trust account.

15 6. During the period January 1, 2012 through May 2014 (the audit period), Respondent
16 did not maintain a check register for the trust account ending in -6704.

17 7. During the audit period, Respondent did not maintain an individual ledger or other
18 record for each client that listed all transactions for each client.

19 8. During the audit period, Respondent received bank statements for the trust account
20 ending in -6704 during the period on a monthly basis.

21 9. During the audit period, Respondent did not prepare on a monthly basis a
22 reconciliation of a check register balance for the trust account ending in -6704 to the bank
23

24 ¹ We refer to clients by initials rather than by name to protect their privacy.

1 statement balance for the account.

2 10. During the audit period, Respondent did not prepare on a monthly basis a
3 reconciliation of a check register balance for the trust account ending in -6704 to a combined
4 total of individual client ledger records.

5 11. On one or more occasions during the audit period, Respondent disbursed funds from
6 the trust account ending in -6704 on behalf of a client in excess of the funds that were on
7 deposit for that client.

8 12. On one or more occasions during the audit period, Respondent used funds that
9 belonged to one client to make a disbursement on behalf of another client.

10 13. On one or more occasions during the audit period, Respondent did not promptly pay
11 or deliver to a client or third person the property which the client or third person was entitled to
12 receive.

13 14. On one or more occasions during the audit period, Respondent deposited advanced
14 fees and/or costs received via credit card into his general account and later transferred them to a
15 trust account.

16 15. Upon establishing his own firm, Respondent had delegated primary responsibility for
17 maintaining his trust account ending in -6704 to a staff member, a non-lawyer. During the
18 period, that staff member was responsible for creating and maintaining records for the account,
19 depositing and disbursing funds into and out of the account, and signed most of the checks
20 written on the account. Respondent failed to make reasonable efforts, such as adequate training
21 or supervision, to ensure that the staff member's conduct was compatible with his own
22 professional obligations.

1 **III. STIPULATION TO MISCONDUCT**

2 16. Respondent violated the following RPC:

- 3 a. Failure to maintain a check register as required by RPC 1.15B(a)(1), in violation
4 of RPC 1.15B(a)(1) and RPC 1.15A(h)(2);
- 5 b. Failure to maintain individual client ledgers as required by RPC 1.15B(a)(2), in
6 violation of RPC 1.15B(a)(2) and RPC 1.15A(h)(2);
- 7 c. Failure to reconcile trust account records on a monthly basis as required by RPC
8 1.15A(h)(6), in violation of RPC 1.15A(h)(6) and RPC 1.15B(a)(8) and RPC
9 1.15A(h)(2);
- 10 d. Disbursing funds held in trust for a client in excess of the funds on deposit for
11 that client, and disbursing funds of one client on behalf of another, in violation of
12 RPC 1.15A(h)(8);
- 13 e. Failure to maintain MB's funds in his trust account, in violation of RPC
14 1.15A(c);
- 15 f. Failure to promptly pay a client or third party the property which the client or
16 third party was entitled to receive, in violation of RPC 1.15A(f);
- 17 g. Failure to deposit client funds received via credit card directly into a trust
18 account, in violation of RPC 1.15A(c);
- 19 h. Allowing a non-lawyer to sign checks drawn on his trust account, in violation of
20 RPC 1.15A(h)(9); and
- 21 i. Failure to supervise a staff member in handling his trust account, in violation of
22 RPC 5.3(a) and RPC 5.3(b).
- 23
- 24

1 **IV. PRIOR DISCIPLINE**

2 17. In 1998, Respondent stipulated to a Reprimand for violating RPC 5.1
3 (Responsibilities of a Supervisory Lawyer) and RPC 8.4(c) (Dishonesty, Fraud, Deceit or
4 Misrepresentation). In 1990, Respondent was an associate attorney at a law firm and altered a
5 Work in Progress (WIP) report by switching initials when so instructed by a partner in the firm.
6 Between 1991 and 1994, Respondent was a partner at a different law firm and instructed a
7 bookkeeper to alter WIPs in a number of instances, and he later learned other partners were
8 doing the same. He was reprimanded for having caused initials on clients' WIPs to be switched
9 and for failing to take prompt corrective action when he learned of the other partners' deception.

10 **V. APPLICATION OF ABA STANDARDS**

11 18. The following American Bar Association Standards for Imposing Lawyer Sanctions
12 (1991 ed. & Feb. 1992 Supp.) apply to this case:

13 19. Standard 7.0 is most applicable to a lawyer's failure to ensure that the conduct of a
14 non-lawyer on his staff is compatible with the lawyer's professional obligations. It reads:

15 **7.0 Violations of Duties Owed as a Professional**

16 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
17 conduct that is a violation of a duty owed as a professional with the intent to
18 obtain a benefit for the lawyer or another, and causes serious or potentially
19 serious injury to a client, the public, or the legal system.

20 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
21 conduct that is a violation of a duty owed as a professional and causes injury or
22 potential injury to a client, the public, or the legal system.

23 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
24 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.

20. Respondent knowingly failed to adequately train and supervise his non-lawyer staff

1 to comply with his own professional obligations.

2 21. Respondent's failure to do so caused at least potential injury to his clients insofar as
3 one could not determine, from his trust-account records, to whom the money in the account
4 belonged, and in what amounts. To the extent that trust account funds belonging to one client
5 were used to make disbursements on behalf of another client, there was actual injury to the
6 clients whose funds were improperly invaded. Clients and/or third parties who did not promptly
7 receive funds to which they were entitled were actually injured by being deprived of the use of
8 their funds.

9 22. The presumptive sanction is suspension.

10 23. Standard 4.1 is most applicable to a failure to preserve client funds. It reads:

11 **4.1 Failure to Preserve the Client's Property**

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

15 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
16 client property and causes injury or potential injury to a client.

17 4.12 Suspension is generally appropriate when a lawyer knows or should
18 know that he is dealing improperly with client property and causes injury or
19 potential injury to a client.

20 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
21 with client property and causes injury or potential injury to a client.

22 4.14 Admonition is generally appropriate when a lawyer is negligent in
23 dealing with client property and causes little or no actual or potential injury to a
24 client.

24 24. Respondent knew or should have known that he was dealing improperly with client
property.

25 25. As a result of this conduct, clients and/or third parties suffered potential and actual
injury as set forth in paragraph 21, above.

26 26. The presumptive sanction is suspension.

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

1 (a) prior disciplinary offense: In 1998, Respondent received a reprimand for
2 misrepresentations in written statements issued to a client and for failing to
reasonably assure his partners' conformity to the RPC, as described in paragraph
17, above;

3 (d) multiple offenses; and

4 (i) substantial experience in the practice of law: Respondent was admitted in
1988.

5 28. The following mitigating factor applies under ABA Standard 9.32:

6 (m) remoteness of prior offenses.

7 29. On balance the aggravating and mitigating factors do not require a departure from
8 the presumptive sanction.

9 VI. STIPULATED DISCIPLINE

10 30. The parties stipulate that Respondent shall receive a sixty-day suspension for his
11 conduct.

12 31. As a condition of reinstatement from suspension, Respondent must complete the
13 following steps to disburse any funds that are owed to clients or third parties and to establish
14 that he will be capable, going forward, of handling client funds in compliance with RPC 1.15A
15 and RPC 1.15B:

16 a) Respondent will provide proof of his having deposited his own funds to his trust
17 account[s] to cure any outstanding shortage[s] reflected in Respondent's
QuickBooks client ledgers submitted to ODC's Senior Auditor on Respondent's
18 behalf by e-mail dated December 9, 2016.

19 b) For each of the clients listed on Respondent's QuickBooks client ledgers submitted
20 to ODC's Senior Auditor on Respondent's behalf by e-mail dated December 9,
2016, Respondent will provide ODC with complete documentary evidence
21 demonstrating either that the client or third party is not entitled to a return of any of
the amount listed or that he has provided the client or third party with a complete
22 accounting of funds and returned to the client or third party any unearned amounts
and/or any amounts to which Respondent cannot establish entitlement.

23 c) If, in implementing the requirements set forth in paragraph 31(b), above, there
24 remain any funds which Respondent is unable to attribute to a named client or third
party, or to establish his entitlement to the funds, Respondent must remit those

1 funds to the Unclaimed Property Division of the Washington State Department of
2 Revenue.

- 3 d) For the time frame of December 1, 2016 up through the date of submission to ODC
4 for consideration of reinstatement, Respondent will provide to ODC, for each trust
5 account open during any portion of that time frame, copies of the following:

6 any and all bank statements,
7 copies of any and all deposited items,
8 copies of any and all records of withdrawals,
9 a complete and accurate check register identifying every transaction,
10 complete and accurate client ledgers identifying every transaction attributable
11 to a client,
12 monthly reconciliations between the check register and the bank statement, and
13 monthly reconciliations between the check register and the client ledgers.
14 13.3(b)(1)(B).

- 15 e) Respondent will carefully review the WSBA publication Managing Client Trust
16 Accounts: Rules, Regulations, and Common Sense, and will provide a signed
17 certification that he has done so.

- 18 f) Respondent will complete the WSBA continuing legal education course entitled,
19 "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on
20 managing trust accounts in Washington State, and provide documentation showing
21 that he has done so.

- 22 g) To be eligible for reinstatement, Respondent must provide the required
23 documentation to ODC at least 30 days prior to seeking certification of compliance
24 with reinstatement provisions.

32. 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:

- 19 h) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
20 1.15B, and shall carefully review the current version of the publication, Managing
21 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 22 i) For all client matters, Respondent shall have a written fee agreement signed by the
23 client, which agreements are to be maintained for least seven years (see RPC
24 1.15B(a)(3)).
- 25 j) On a quarterly basis, Respondent shall provide ODC's probation administrator with
all trust-account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

- 1 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the date of commencement of probation to the end of the third
4 full month.
- 5 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
6 commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month six.
- 9 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
10 commencement of probation, Respondent shall provide the trust account
11 records from the end of the previously provided quarter through the end of
12 month nine.
- 13 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month twelve.
- 17 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
18 the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
20 the end of month fifteen.
- 21 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
22 the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
24 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
 the period being reviewed, as well as for Respondent's own funds in the account (if
 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
 checks covering the period being reviewed, (d) copies of all trust account client
 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.

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

15 VII. RESTITUTION

16 33. Required restitution is addressed in paragraph 31(b) above.

17 34. Reinstatement from suspension is conditioned on full payment of restitution, with
18 interest.

19 VIII. COSTS AND EXPENSES

20 35. Respondent shall pay attorney fees and administrative costs of \$4,188 in accordance
21 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
22 costs are not paid within 30 days of approval of this stipulation.

23 36. Reinstatement from suspension is conditioned on payment of costs.

24 IX. VOLUNTARY AGREEMENT

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

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

3 **X. LIMITATIONS**

4 39. This Stipulation is a compromise agreement intended to resolve this matter in
5 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
6 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
7 and ODC acknowledge that the result after further proceedings in this matter might differ from
8 the result agreed to herein.

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

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

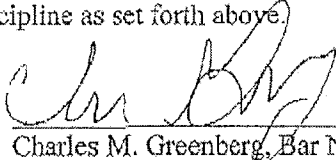
19 42. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
20 Board and the Supreme Court shall have available to it for consideration all documents that the
21 parties agree to submit to the Disciplinary Board and Supreme Court, and all public documents.
22 Under ELC 3.1(b), all documents that form the record before the Board for its review become
23 public information on approval of the Stipulation by the Board, unless disclosure is restricted by
24

1 order or rule of law.

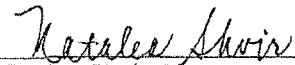
2 43. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
3 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
4 Rules for Enforcement of Lawyer Conduct will be made.

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

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

11 
12 _____
13 Charles M. Greenberg, Bar No. 17661
14 Respondent

Dated: 2/16/2017

14 
15 _____
16 Natalea Skvir, Bar No. 34335
17 Disciplinary Counsel

Dated: 2/16/2017

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