

**FILED**

Jun 30, 2023

Disciplinary  
Board

Docket # 003

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**ROBERT P. BROUILLARD,**

Lawyer (Bar No. 19786).

Proceeding No. 23#00010

ODC File No. 19-01076

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 Marsha Matsumoto and Respondent lawyer Robert P. Brouillard.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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 Respondent. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to

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 November 8,  
4 1990.

5 **II. STIPULATED FACTS**

6 2. Respondent maintained an Interest on Lawyer's Trust Account (trust account), ending  
7 in 7622, at Heritage Bank for the deposit of client funds.

8 3. Respondent also maintained a business account and a personal account at Heritage  
9 Bank.

10 4. On July 10, 2019, Respondent deposited a \$150,000 cashier's check into the trust  
11 account for client "Dave Scott."

12 5. On July 11, 2019, Respondent wired \$130,000 to a bank in Georgia at "Scott's"  
13 request. Respondent also transferred \$1,306.25 in attorney fees for "Scott" to Respondent's  
14 business account.

15 6. On July 15, 2019, Respondent learned that the \$150,000 cashier's check was fake.

16 7. Respondent was able to reverse the wire transfer to the Georgia bank; however,  
17 because a \$25 service fee was charged, only \$129,975 was returned to Respondent's trust account  
18 on July 16, 2019.

19 8. On July 17, 2019, Heritage Bank issued an overdraft notice for Respondent's trust  
20 account.

21 9. The overdraft occurred, in part, because Respondent disbursed funds for "Scott"  
22 before the deposit cleared the banking system, and Respondent failed to restore to the trust  
23 account the \$1,306.25 disbursed for attorney fees and the \$25 charged for the wire service fee.

1           10. On September 4, 2019, Respondent deposited \$1,331.25 into the trust account for  
2 “Scott.”

3 **Failure to Maintain Client Funds in a Trust Account**

4           11. On July 17, 2019, the day of the overdraft, Respondent’s trust account had an overall  
5 shortage of <\$3,382.50> in client funds. Part of the shortage was due to the “Scott” matter, but  
6 the remainder was due to a negative balance on Respondent’s own ledger. Respondent’s ledger  
7 was negative from January 1, 2019 through February 29, 2020, in amounts ranging from negative  
8 <\$150> to negative <\$2,051.25>. A negative ledger for Respondent indicated that Respondent  
9 disbursed more funds for Respondent’s own benefit than Respondent had on deposit in the trust  
10 account.

11           12. In addition, when Respondent disbursed funds from the trust account to clients and  
12 third persons, Respondent first transferred funds from the trust account to the business account  
13 and then issued checks to clients and third persons from the business account.

14           13. As of February 29, 2020, Respondent’s trust account was short <\$1,302.03> in client  
15 funds.

16           14. As of June 22, 2023, Respondent’s trust account was short <\$5,500> in client funds.

17 **Cash Withdrawals**

18           15. From January through May 2019, Respondent made 23 cash withdrawals from the  
19 trust account, totaling \$11,600, relating to client SJ.

20 **Trust Account Records**

21           16. During the period January 1, 2019 through February 29, 2020, Respondent did not  
22 maintain a trust account check register.

23           17. During the period January 1, 2019 through February 29, 2020, Respondent did not

1 maintain complete or accurate client ledgers. To the extent Respondent had client ledgers,  
2 Respondent did not maintain them for seven years after the events they recorded. Respondent  
3 destroyed the client ledgers when the balance reached zero.

4 18. During the period January 1, 2019 through February 29, 2020, Respondent did not  
5 reconcile a trust account check register to the bank statements.

6 19. During the period January 1, 2019 through February 29, 2020, Respondent did not  
7 reconcile a trust account check register to a combined total of client ledgers.

8 20. Due to Respondent's inadequate recordkeeping, Respondent was unable to identify  
9 the ownership of all funds in the trust account. As of February 29, 2020, Respondent's trust  
10 account contained \$1,297.02 that Respondent was unable to identify by client matter.

11 21. In May 2023, Respondent hired Prosper Bookkeeping to reconstruct records for  
12 Respondent's trust account. As of the date of this Stipulation, Prosper Bookkeeping has  
13 reconstructed Respondent's trust account records for the period January 1, 2019 to present.

### 14 III. STIPULATION TO MISCONDUCT

15 22. By failing to maintain client funds in a trust account, as evidenced by the shortages in  
16 Respondent's trust account and by transferring funds from the trust account to the general account  
17 before disbursing funds to clients and third persons, Respondent violated RPC 1.15A(c).

18 23. By disbursing funds from the trust account before the deposited funds cleared the  
19 banking process in the "Scott" matter, Respondent violated RPC 1.15A(h)(7).

20 24. By disbursing funds in excess of the amounts on deposit for "Scott" and on deposit for  
21 Respondent, and by using client funds to cover the disbursements, Respondent violated RPC  
22 1.15A(h)(8).

23 25. By making cash withdrawals from the trust account, Respondent violated RPC



1 1.15A(h)(5).

2 26. By failing to maintain a trust account check register and by failing to maintain client  
3 ledgers meeting the requirements of RPC 1.15B(a)(2), Respondent violated RPC 1.15A(h)(2) and  
4 RPC 1.15B(a).

5 27. By failing to perform bank and client ledger reconciliations for the trust account,  
6 Respondent violated RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

7 **IV. PRIOR DISCIPLINE**

8 28. Respondent does not have a record of prior discipline.

9 **V. APPLICATION OF ABA STANDARDS**

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

12 ***4.1 Failure to Preserve the Client's Property***

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

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

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

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

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

30. Respondent knew that Respondent was failing to properly handle client property,  
failing to maintain trust account records, failing to reconcile, and making cash withdrawals.

31. Respondent's conduct caused actual and potential injury in that Respondent was  
unable to identify the ownership of all funds in the trust account, had a shortage of client funds in  
trust, and risked the security of all client funds by disbursing the "Scott" deposit before it was

1 collected.

2 32. The presumptive sanction is suspension.

3 33. The following aggravating factors apply under ABA Standard 9.22:

- 4 (c) a pattern of misconduct;  
5 (i) substantial experience in the practice of law (admitted to practice in  
6 Washington in November 1990).

6 34. The following mitigating factors apply under ABA Standard 9.32:

- 7 (a) absence of a prior disciplinary record;  
8 (b) absence of a dishonest motive;  
9 (l) remorse.

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

11 36. It is also a mitigating factor that Respondent has retained a contract accountant to  
12 reconstruct Respondent's trust account records from January 1, 2019 to present, has deposited  
13 funds into the trust account to correct shortages, and will continue to employ or contract with an  
14 accountant/bookkeeper to maintain Respondent's trust account records through the two-year  
15 period of probation, required by ¶39 this Stipulation. Respondent acknowledges, however, that  
16 it is Respondent's responsibility to supervise the accountant/bookkeeper and to ensure that  
17 Respondent's handling of client funds and trust account recordkeeping comply with the RPC.

18 37. Based on the factors set forth above, the presumptive sanction should be mitigated to  
19 a reprimand.

## 20 VI. STIPULATED DISCIPLINE

21 38. The parties stipulate that Respondent shall receive a reprimand for Respondent's  
22 conduct.

23 39. Respondent will be subject to probation for a period of two years commencing upon

1 final approval of this Stipulation, with periodic reviews under ELC 13.8 of Respondent's trust  
2 account practices, and must comply with the specific probation terms set forth below:

- 3 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B,  
4 and shall carefully review the current version of the publication, Managing Client  
Trust Accounts: Rules, Regulations, and Common Sense.
- 5 b) For all client matters, Respondent shall have a written fee agreement signed by the  
6 client, which agreements are to be maintained for least seven years (see RPC  
7 1.15B(a)(3)).
- 8 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and  
9 Review Report," Respondent shall review the trust-account records detailed on the  
10 form report, review the completed report, and sign and date the completed report.
- 11 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-  
12 account records for the time period to be reviewed by ODC's audit staff and  
13 disciplinary counsel for compliance with the RPC:
- 14 i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the  
15 commencement of probation, Respondent shall provide the trust account  
16 records from the date of commencement of probation to the end of the third  
17 full month.
  - 18 ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
19 commencement of probation, Respondent shall provide the trust account  
20 records from the end of the previously provided quarter through the end of  
21 month six.
  - 22 iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
23 commencement of probation, Respondent shall provide the trust account  
24 records from the end of the previously provided quarter through the end of  
month nine.
  - iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth 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 twelve.
  - v) Months 13 – 15. By no later than the 30<sup>th</sup> day of the sixteenth 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 fifteen.
  - vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth 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 eighteen.

- 3 vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
4 after the commencement of probation, Respondent shall provide the trust  
5 account records from the end of the previously provided quarter through the  
6 end of month twenty-one.

7 The trust account records Respondent provides to ODC for each quarterly review of  
8 his trust account will include: (a) copies of each completed “Monthly Reconciliation  
9 and Review Report” referenced in sub-paragraph(c) above, (b) a complete checkbook  
10 register for Respondent’s trust account covering the period being reviewed, (c)  
11 complete individual client ledger records for any client with funds in Respondent’s  
12 trust account during all or part of the period being reviewed, as well as for  
13 Respondent’s own funds in the account (if any), and (d) copies of all trust-account  
14 bank statements, deposit slips, and cancelled checks covering the period being  
15 reviewed. ODC’s Audit Manager or designee will review Respondent’s trust account  
16 records for each period.

- 17 e) On the same quarterly time schedule set forth in the preceding paragraph, Respondent  
18 will provide ODC’s Audit Manager or designee with copies of any and all fee  
19 agreements entered into within the time period at issue.
- 20 f) ODC’s Audit Manager or designee may request additional financial or client records  
21 if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B. Within  
22 twenty days of a request from ODC’s Audit Manager or designee for additional  
23 records needed to verify Respondent’s compliance with RPC 1.15A and/or RPC  
24 1.15B, Respondent will provide ODC’s Audit Manager or designee the additional  
records requested.
- g) Respondent will reimburse the Association for time spent by ODC’s Audit Manager  
or designee in reviewing and reporting on Respondent’s records to determine  
Respondent’s 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.

## VII. RESTITUTION

40. If the reconstructed trust-account records, for the time period of January 1, 2019 to  
present, indicate that any client or third person is owed funds, then Respondent is required to  
make full restitution to each client and third person of all funds owed. Respondent shall pay to  
the client interest on those funds, at a rate of 12%, calculated from the date on which the client



1 (or third person as directed by the client) was first entitled to receive the funds to the date on  
2 which repayment is made.

3 41. Respondent shall pay restitution as required by ELC 13.7(b).

#### 4 VIII. COSTS AND EXPENSES

5 42. In light of Respondent's willingness to resolve this matter by stipulation at an early  
6 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$780 in  
7 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if  
8 these costs are not paid within 30 days of approval of this Stipulation.

#### 9 IX. VOLUNTARY AGREEMENT

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

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

#### 17 X. LIMITATIONS

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

23 46. 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, and any additional existing  
2 facts may be proven in any subsequent disciplinary proceedings.

3 47. 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 Stipulation.

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

12 49. If this Stipulation is approved by the Hearing Officer, it will be followed by the  
13 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement  
14 of Lawyer Conduct will be made. Respondent represents that, in addition to Washington,  
15 Respondent also is admitted to practice law in the following jurisdictions, whether current status  
16 is active, inactive, or suspended: None.

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

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

3  
4           *Robert P Brouillard*

Dated: June 27, 2023

5           Robert Patrick Brouillard, Bar No. 19786  
6           Respondent

7           *Marsha Matsumoto*

Dated: 6/28/23

8           Marsha Matsumoto, Bar No. 15831  
9           Managing Disciplinary Counsel