

FILED

OCT 30 2015

DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

**HAROLD HUDSON
FRANKLIN, JR.,**

Lawyer (Bar No. 20486).

Proceeding No. 15#00032

STIPULATION TO DISCIPLINE

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 Discipline 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 Harold Hudson Franklin, Jr.

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

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 3,
5 1991.

6 **II. STIPULATED FACTS**

7 2. In 2013 and 2014, Respondent maintained two IOLTA trust accounts, one at
8 Chase Bank and one at Bank of America. In September 2013, ODC received notice that the
9 Chase trust account was overdrawn. The ensuing investigation revealed that, during the period
10 March 1, 2013 through February 28, 2014, Respondent did not maintain a check register or
11 client ledgers for his trust accounts, did not reconcile the accounts monthly, made cash
12 withdrawals from trust, did not remove all of his earned fees from trust, disbursed funds on
13 behalf of a client in excess of the amount the client had on deposit, and disbursed funds from
14 deposits before the deposits had cleared the banking system.

15 **III. STIPULATION TO MISCONDUCT**

16 3. By failing to maintain a check register as required by RPC 1.15B(a)(1),
17 Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a)(1).

18 4. By failing to maintain individual client ledgers as required by RPC 1.15B(a)(2),
19 Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a)(2).

20 5. By failing to reconcile his trust account records, Respondent violated RPC
21 1.15A(h)(2), RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

22 6. By making cash withdrawals from a trust account, Respondent violated RPC
23 1.15A(h)(5).

1 7. By commingling his funds in a trust account with those of his clients,
2 Respondent violated RPC 1.15A(c) and RPC 1.15A(h)(1).

3 8. By disbursing from a trust account more funds on behalf of a client than the
4 client had on deposit in the trust account, Respondent violated RPC 1.15A(h)(8).

5 9. By disbursing funds from a trust account before corresponding deposits had
6 cleared the banking process and been collected, Respondent violated RPC 1.15A(h)(7).

7 **IV. PRIOR DISCIPLINE**

8 10. Respondent has received no prior discipline.

9 **V. APPLICATION OF ABA STANDARDS**

10 11. The following American Bar Association Standards for Imposing Lawyer
11 Sanctions (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 factors
14 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
19 know 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
24 dealing with client property and causes little or no actual or potential injury to a
client.

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

13. There was actual injury to the extent that funds belonging to certain clients were
invaded and used for other clients, Respondent's commingling of his own funds with those of
his clients exposed their funds to the risk of seizure by his creditors, Respondent was unable to

1 determine at any given time the total amount that should be in the account and how much of it
2 belonged to each client, and he failed to notice and correct mathematical mistakes he had made.
3 There was potential injury insofar as Respondent might have insufficient funds held in trust to
4 be able to pay his clients all of the funds each was due and, if he were incapacitated, one would
5 not be able to determine to whom all of the funds in trust belonged.

6 14. The presumptive sanction is suspension.

7 15. The following aggravating factors apply under ABA Standard 9.22:

- 8 (d) multiple offenses; and
9 (i) substantial experience in the practice of law: Respondent was
admitted in 1991.

10 16. The following mitigating factor applies under ABA Standard 9.32:

- 11 (a) absence of a prior disciplinary record.

12 17. It is an additional mitigating factor that Respondent has agreed to resolve this
13 matter at an early stage of the proceedings.

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

16 **VI. STIPULATED DISCIPLINE**

17 19. The parties stipulate that Respondent shall receive a reprimand for his
18 misconduct.

19 20. Respondent will be subject to probation for a period of two years commencing
20 upon the date on which the Hearing Officer approves this Stipulation, with periodic reviews
21 under ELC 13.8 of his trust account practices, and shall comply with the specific probation
22 terms set forth below:
23

- 1 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
2 1.15B, and shall carefully review the current version of the publication, Managing
3 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 4 b) For all client matters, Respondent shall have a written fee agreement signed by the
5 client, which agreements are to be maintained for least seven years (see RPC
6 1.15B(a)(3)).
- 7 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
8 account records for the time period to be reviewed by ODC's audit staff and
9 disciplinary counsel for compliance with the RPC:
- 10 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
11 commencement of probation, Respondent shall provide the trust account
12 records from the date of his/her reinstatement to the end of the third full
13 month.
- 14 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
15 commencement of probation, Respondent shall provide the trust account
16 records from the end of the previously provided quarter through the end of
17 month six.
- 18 iii) Months 7 – 9. By no later than the 30th day of the tenth 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 nine.
- 22 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
23 the commencement of probation, Respondent shall provide the trust
24 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 30th 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 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.

1 The trust account records Respondent provides to ODC for each quarterly review of
2 his trust account will include: (a) a complete checkbook register for his/her trust
3 account covering the period being reviewed, (b) complete individual client ledger
4 records for any client with funds in Respondent's trust account during all or part of
5 the period being reviewed, as well as for Respondent's own funds in the account (if
6 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
7 checks covering the period being reviewed, (d) copies of all trust account client
8 ledger reconciliations for the period being reviewed, and (e) copies of
9 reconciliations of Respondent's trust account check register covering the period
10 being reviewed. The ODC's Audit Manager or designee will review Respondent's
11 trust account records for each period.

- 12
- 13 d) On the same quarterly time schedule set forth in the preceding paragraph,
14 Respondent will provide ODC's Audit Manager or designee with copies of any and
15 all fee agreements entered into within the time period at issue.
- 16 e) The ODC's Audit Manager or designee may request additional financial or client
17 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
18 Within twenty days of a request from ODC's Audit Manager or designee for
19 additional records needed to verify Respondent's compliance with RPC 1.15A
20 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
21 additional records requested.
- 22 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
23 or designee in reviewing and reporting on Respondent's records to determine
24 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.

21. Respondent has retained the services of an accountant to reconstruct his records
and will maintain the services of an accountant to review his records during the period of
probation. The accountant submitted a report dated October 26, 2015 identifying certain
discrepancies and has agreed to a series of transactions to be completed by October 30,
2015, to correct these discrepancies. Respondent shall submit to Disciplinary Counsel no
later than November 6, 2015, evidence of the completion of these transactions.

VII. RESTITUTION

22. Upon the resolution of discrepancies identified in paragraph 21, all clients owed
money will have been paid the amounts due them, and restitution will not be warranted.

1 **VIII. COSTS AND EXPENSES**

2 23. In light of Respondent's willingness to resolve this matter by stipulation at an
3 early stage of the proceedings, Respondent shall pay reduced attorney fees and administrative
4 costs of \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment
5 under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

6 **IX. VOLUNTARY AGREEMENT**

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

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

14 **X. LIMITATIONS**

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

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

23 28. This Stipulation results from the consideration of various factors by both parties,

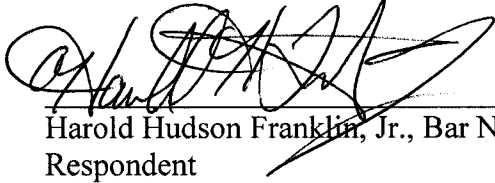
1 including the benefits to both by promptly resolving this matter without the time and expense of
2 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
3 such, approval of this Stipulation will not constitute precedent in determining the appropriate
4 sanction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

7 29. Under ELC 3.1(b), all documents that form the record before the Hearing Officer
8 for his review become public information upon approval of the Stipulation by the Hearing
9 Officer, unless disclosure is restricted by order or rule of law.

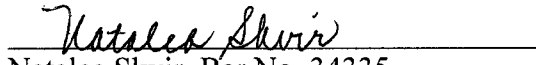
10 30. If this Stipulation is approved by the Hearing Officer, it will be followed by the
11 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
12 Enforcement of Lawyer Conduct will be made.

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

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

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6 _____
7 Harold Hudson Franklin, Jr., Bar No. 20486
8 Respondent

Dated: 10/26/2015

9 
10 _____
11 Natalea Skvir, Bar No. 34335
12 Disciplinary Counsel

Dated: 10/26/15