

FILED

Jun 18 2020

Disciplinary
Board

Docket # 002

BEFORE THE
DISCIPLINARY BOARD

In re

TRACY SCOTT COLLINS,

Lawyer (Bar No. 20839).

Proceeding No.

ODC File No. 20-00091

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 Jonathan Burke and Respondent lawyer Tracy Scott Collins.

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 avoid the risk, time, expense, and publicity attendant to further proceedings.

1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on November 8,
3 1991.

4 **II. STIPULATED FACTS**

5 2. Respondent's practice focuses on criminal defense.

6 3. On July 23, 2018, TJ¹ was charged with a number of felony charges related to the
7 unlawful possession and distribution of illegal drugs and the illegal possession of firearms.

8 4. On April 19, 2019, TJ hired Respondent to represent him regarding the pending
9 charges from July 23, 2018.

10 5. TJ paid Respondent a flat fee of \$7,000 to represent him under a fee agreement that
11 provided that "representation is completed at plea and sentencing, at sentencing after trial, or
12 decision by the appellate court."

13 6. Respondent filed a notice of appearance in the criminal matter and performed work
14 on TJ's defenses and attended some hearings, including a bail hearing.

15 7. On July 11, 2019, criminal charges were filed against TJ in a separate criminal matter.

16 8. On July 19, 2019, TJ entered into a fee agreement for Respondent to represent him in
17 the second matter for a flat fee of \$3,500. Respondent was paid \$2,000 of the flat fee, leaving a
18 balance of \$1,500.

19 9. On July 23, 2019, Respondent filed a notice of appearance in that matter.

20 10. TJ's trial in the first matter was scheduled for December 2, 2019. The trial in the
21 second matter was scheduled for November 25, 2019.

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¹ This Stipulation uses the initials for Respondent's client.

1 11. In the late evening of October 17, 2019 or the early morning of October 18, 2019,
2 Respondent received a telephone call from an FBI agent who told Respondent that the FBI agent
3 was with a suspect who wanted to speak to Respondent.

4 12. At the time, the FBI and DEA were at the suspect's house serving a search warrant
5 where several guns and a large amount of drugs had been found.

6 13. Prior to the call, Respondent had no prior contact with the suspect.

7 14. The FBI agent told Respondent that if the suspect agreed to cooperate, they would not
8 arrest him and he could potentially "work" off any alleged charges.

9 15. Respondent then spoke to the suspect and conveyed the offer from the FBI and
10 explained the general implications of working as a confidential informant. During this
11 conversation, Respondent was not informed about details regarding the suspect's situation. He
12 only knew the suspect's name. Respondent told the suspect that it was up to him to make a
13 decision on whether to accept the offer to work as confidential informant.

14 16. The suspect told Respondent that he would contact Respondent in the morning to
15 discuss representation.

16 17. On the morning of October 18, 2019, the suspect called Respondent to follow up on
17 representation by the Respondent. Respondent did not conduct a conflicts check before speaking
18 with the suspect.

19 18. During the telephone conversation, the suspect revealed to Respondent that TJ was
20 the target of the FBI's investigation.

21 19. After learning that TJ was the subject of the FBI's investigation, Respondent informed
22 the suspect that he could not represent the suspect due to a conflict of interest, and referred the
23 suspect to another lawyer.

1 20. After the conversation, Respondent determined that he would need to withdraw from
2 representing TJ due to a conflict of interest relating to his telephone call with the suspect. On
3 October 18, 2019, Respondent discussed the issue with the prosecutor handling TJ's criminal
4 matters, and prosecutor agreed with Respondent that he needed to withdraw from representing
5 TJ.

6 21. On October 22, 2019, Respondent met with TJ at his office to inform him that he
7 needed to withdraw from representing him in the pending criminal matters.

8 22. When Respondent met with TJ and discussed the circumstances necessitating his
9 withdrawal from representing TJ, Respondent revealed information that he had obtained from the
10 suspect without the suspect's consent.

11 23. Respondent explained to TJ about the telephone call from the FBI agent and his
12 subsequent conversation with the suspect in which the suspect revealed that TJ was the target of
13 the investigation. Respondent told TJ that he could not reveal the suspect's name. TJ made
14 several guesses regarding the identity of the suspect, but Respondent declined to confirm or deny
15 whether any of those individuals was the suspect.

16 24. Respondent's disclosures to TJ may have put the safety of the suspect and other
17 individuals at risk, and may have inadvertently compromised the FBI's efforts to use the suspect
18 as a confidential informant.

19 25. On October 18, 2019, Respondent sent notice to the Spokane Police Department that
20 TJ was claiming ownership of an automobile that was seized under the forfeiture statute and that
21 TJ was requesting a hearing.

22 26. On October 22, 2019, Respondent filed a motion to withdraw from representing TJ.
23 On October 23, 2019, Respondent agreed to defer the forfeiture hearing that Respondent had

1 | previously scheduled on October 18, 2019.

2 | 27. On October 24, 2019, the court entered an order authorizing Respondent's withdrawal
3 | from representing TJ.

4 | 28. Respondent declined TJ's requests for a refund or partial refund of flat fees paid by
5 | TJ because Respondent believed that he had already provided \$9,000 in legal services to TJ if he
6 | had charged TJ on an hourly basis at his hourly rate.

7 | 29. After Respondent withdrew, TJ had a public defender assigned to represent him in
8 | both matters. Respondent assisted TJ in getting a public defender assigned to his cases. TJ's
9 | trials were continued.

10 | III. STIPULATION TO MISCONDUCT

11 | 30. By revealing information to TJ that Respondent received from a prospective client,
12 | Respondent violated RPC 1.18(b) and RPC 8.4(d).

13 | 31. By failing to return unearned fees to TJ upon termination, Respondent violated RPC
14 | 1.16(d).

15 | IV. PRIOR DISCIPLINE

16 | 32. In 2012, Respondent received a reprimand for misrepresenting a client's fiancée as his
17 | paralegal to a jail employee. In 2017, Respondent received a reprimand for violating trust account
18 | rules.

19 | V. APPLICATION OF ABA STANDARDS

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

22 | 34. ABA Standard 4.2 applies to the duty to preserve confidences and provides as follows:
23 |

1 4.2 Failure to Preserve the Client's Confidences

2 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit
3 the lawyer or another, knowingly reveals information relating to
4 representation of a client not otherwise lawfully permitted to be disclosed,
5 and this disclosure causes injury or potential injury to a client.

6 4.22 Suspension is generally appropriate when a lawyer knowingly reveals
7 information relating to the representation of a client not otherwise lawfully
8 permitted to be disclosed, and this disclosure causes injury or potential
9 injury to a client.

10 4.23 **Reprimand is generally appropriate when a lawyer negligently reveals
11 information relating to representation of a client not otherwise lawfully
12 permitted to be disclosed and this disclosure causes injury or potential
13 injury to a client.**

14 4.24 Admonition is generally appropriate when a lawyer negligently reveals
15 information relating to representation of a client not otherwise lawfully
16 permitted to be disclosed and this disclosure causes little or no actual or
17 potential injury to a client.

18 35. Respondent negligently revealed information obtained from the prospective client to
19 TJ causing potential injury to the prospective client.

20 36. Reprimand is the presumptive sanction for Respondent's conduct under ABA
21 Standard 4.23.

22 37. ABA Standard 7.0 applies to violations owed as a professional including violations of
23 RPC 8.4(d) and RPC 1.16(d), and provides as follows:

24 7.0 Violations of Duties Owed as a Professional

25 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
26 conduct that is a violation of a duty owed as a professional with the intent to
27 obtain a benefit for the lawyer or another, and causes serious or potentially
28 serious injury to a client, the public, or the legal system.

29 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
30 conduct that is a violation of a duty owed as a professional and causes injury
31 or potential injury to a client, the public, or the legal system.

32 7.3 **Reprimand is generally appropriate when a lawyer negligently engages**

1 **in conduct that is a violation of a duty owed as a professional and causes**
2 **injury or potential injury to a client, the public, or the legal system.**

3 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
4 instance of negligence that is a violation of a duty owed as a professional,
5 and causes little or no actual or potential injury to a client, the public, or the
6 legal system.

7 38. Respondent negligently revealed information obtained from the prospective client to
8 TJ, which caused potential injury to other individuals, and to the administration of justice.

9 39. Respondent negligently failed to return unearned fees after withdrawing, resulting in
10 harm the TJ.

11 40. Reprimand is the presumptive sanction under ABA Standard 7.3.

12 41. The presumptive sanction for Respondent's misconduct is reprimand.

13 42. The following aggravating factors apply under ABA Standard 9.22:

14 (a) **Prior disciplinary offenses** [In 2012, Respondent received a reprimand for
15 misrepresenting a client's fiancée as his paralegal to a jail employee. In
16 2017, Respondent received a reprimand for violating a number of trust
17 account rules];

18 (d) **Multiple offenses** [Respondent violated a number of RPCs]; and

19 (i) **Substantial experience in the practice of law** [Respondent was admitted
20 in 1991].

21 43. The following mitigating factors apply under ABA Standard 9.32:

22 (b) **Absence of dishonest or selfish motive**; and

23 (c) **Remorse.**

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

45. On balance the aggravating and mitigating factors do not require a departure from the
presumptive sanction of reprimand.

1 **VI. STIPULATED DISCIPLINE**

2 46. The parties stipulate that Respondent shall receive a reprimand for his conduct.

3 **VII. RESTITUTION**

4 47. The parties agree that Respondent will pay a total of \$3,500 in restitution to TJ
5 pursuant to ELC 13.7. Respondent will provide to ODC with proof of any and all payments to
6 TJ within ten (10) days of each payment being made.

7 48. Respondent shall make an initial payment of \$1,200 to TJ as a condition precedent to
8 ODC's acceptance of this Stipulation. Respondent will provide ODC with proof of the \$1,200
9 payment to TJ prior to signing the Stipulation.

10 49. Following Respondent's initial payment of \$1,200 to TJ and the approval of this
11 Stipulation, Respondent shall make monthly payments of \$300 per month due on the 15th day of
12 the month commencing on August 15, 2020 until the balance of \$2,300 is paid in full. This
13 payment schedule anticipates that Respondent shall make seven monthly payments of \$300
14 (\$2,100) from August 15, 2000 through February 15, 2021. The final monthly payment will be
15 in the amount of \$200, and is due on March 15, 2021.

16 50. Interest shall accrue on any late payment at the rate of one (1) percent per month (12
17 percent per annum simple interest).

18 51. The provisions in this Stipulation regarding restitution are not intended to have a res
19 judicata, issue preclusion, and/or collateral estoppel effect on claims by other parties.

20 52. Failure to comply with the monthly payment schedule may subject Respondent to
21 discipline under ELC 13.7(c).

22 **VIII. COSTS AND EXPENSES**

23 53. In light of Respondent's willingness to resolve this matter by stipulation at an early

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750.00
2 in accordance with ELC 13.9(i). Respondent may request a payment plan for payment of costs
3 pursuant to ELC 13.9(i). Unless Respondent does not obtain a payment plan under ELC 13.9(i),
4 the Association may seek a money judgment under ELC 13.9(l) if these costs are not paid within
5 30 days of approval of this stipulation or in compliance with the terms of payment plan approved
6 under ELC 13.9(i). Failure to pay costs in accordance with ELC 13.9(l) may subject Respondent
7 to discipline under ELC 13.9(j).

8 **IX. VOLUNTARY AGREEMENT**

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

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

16 **X. LIMITATIONS**

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

22 57. This Stipulation is not binding upon ODC or the respondent as a statement of all
23 existing facts relating to the professional conduct of the respondent lawyer, and any additional

1 existing facts may be proven in any subsequent disciplinary proceedings.


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

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

11 60. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
12 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
13 of Lawyer Conduct will be made. Respondent represents that, in addition to Washington,
14 Respondent also is admitted to practice law in the following jurisdictions, whether current status
15 is active, inactive, or suspended: Federal District Court Eastern District of Washington and Ninth
16 Circuit Court of Appeals.

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

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

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4 _____
Tracy Scott Collins, Bar No. 20839
Respondent

Dated: 5/17/2020

6 _____
Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel

Dated: _____

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

Tracy Scott Collins, Bar No. 20839
Respondent

Dated: _____

Jonathan Burke

Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel

Dated: 06/05/20