

FILED
JAN 06 2017
DISCIPLINARY
BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ERIC VALLEY,
Lawyer (Bar No. 21184).

Proceeding No. 17#00002
ODC File No: 16-00174
STIPULATION TO REPRIMAND

Under Rule 9.1 of the 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 Kathy Jo Blake and Respondent lawyer Eric Valley.

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

002

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
4 13, 1991.

5 **II. STIPULATED FACTS**

6 2. On December 16, 2014 Client M.J. signed a "Non-Refundable Flat Fee Retainer and
7 Hourly Fee Agreement" with Respondent to represent him in a criminal matter.

8 3. The fee agreement required what was described as a non-refundable retainer of
9 \$1,500. The agreement also stated that after Respondent had spent six hours on the matter, his
10 fee becomes the hourly rate of \$250 per hour.

11 4. On December 15, 2014, M.J. paid Respondent \$1,500.

12 5. As of December 15, 2014, Respondent had not earned at least part of the \$1,500.

13 6. Respondent did not place the \$1,500 into a trust account.

14 7. Respondent did not earn the full \$1,500 until February 17, 2015.

15 8. On January 15, 2015, Client C.C. hired Respondent to represent him in a criminal
16 matter.

17 9. Also on January 15, 2015, C.C. signed a "Non-Refundable Flat Fee Retainer and
18 Hourly Fee Agreement" with the Respondent.

19 10. The fee agreement required what was described as a non-refundable retainer of
20 \$1,500 for up to six hours of his services, after which point the fees became the hourly rate of
21 \$250 per hour.

22 11. C.C. paid the Respondent \$1,500 in cash on that same day.

23 12. As of January 15, 2015, Respondent had not earned at least part of the \$1,500.

1 13. Respondent did not place C.C.'s cash into a trust account.

2 14. On March 12, 2015, Client R.S. hired Respondent to assist him with vacating and
3 sealing a prior criminal conviction.

4 15. That same day, R.S. signed a "Non-refundable Flat Fee Retainer and Hourly Fee
5 Agreement" with the Respondent.

6 16. The fee agreement stated, "Client agrees to a non-refundable retainer of \$500 for up
7 to two hours of Attorney's services, after which point Attorney's fee becomes the hourly rate of
8 \$250 per hour."

9 17. Also on March 12, 2015, R.S. paid the Respondent \$300.

10 18. As of March 12, 2015, Respondent had only earned \$125 of the \$300 payment.

11 19. Respondent did not place any portion of the \$300 into a trust account.

12 20. In each of the fee agreements, the funds labeled as retainers were not true retainers
13 as defined by RPC 1.5(f)(1).

14 21. With each of these clients, the Respondent intended the "retainers" to operate as
15 "flat fees".

16 22. When he signed the agreements, Respondent believed his fee agreements allowed
17 him to treat the "non-refundable retainers" as earned upon receipt and that he was not required
18 to place the funds into a trust account. Respondent now recognizes this belief was incorrect. .

19 23. None of the Respondent's fee agreements comply with RPC 1.5(f)(2).

20 24. In each of these cases, the funds collected represented advanced fee deposits that
21 should have been placed into a trust account.

22 25. Respondent does not maintain a trust account.

23 26. Respondent eventually earned all the funds he collected from M.J., C.C. and R.S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

III. STIPULATION TO MISCONDUCT

27. By failing to deposit and maintain advance fees from clients into a trust account, Respondent violated RPC 1.15A(c)(1) (requiring a lawyer to deposit advanced legal fees and expenses into a trust account, to be withdrawn by the lawyer only as fees are earned or expenses incurred).

IV. PRIOR DISCIPLINE

28. Respondent received a Reprimand on August 7, 2012 for failing to place and maintain advance fees from clients into trust. Respondent did not use any written fee agreement in the matter resulting in the prior discipline.

V. APPLICATION OF ABA STANDARDS

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

4.1 Failure to Preserve the Client's Property

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

- 30. Respondent acted negligently.
- 31. Clients were potentially injured because their funds were not safeguarded.
- 32. The presumptive sanction is reprimand.
- 33. The following aggravating factors apply under ABA Standard 9.22:

1 (a) prior disciplinary offense [August 7, 2012 Reprimand for failing to
2 place advanced fees into trust]; and

3 (i) Substantial experience in the practice of law (admitted 1991).

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

5 (b) Absence of a dishonest motive; and

6 (c) Timely good faith effort to make restitution and rectify consequences
7 of misconduct. [Respondent already has modified his fee agreement
8 to comply with RPC 1.5(f)(2)].

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

13 VI. STIPULATED DISCIPLINE

14 37. The parties stipulate that Respondent shall receive a reprimand for his conduct.

15 38. Respondent will be subject to probation for a period of two years commencing upon
16 final approval of this stipulation, with periodic reviews under ELC 13.8 of his trust account
17 practices, and shall comply with the specific probation terms set forth below:

18 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
19 1.15B, and shall carefully review the current version of the publication, Managing
20 Client Trust Accounts: Rules, Regulations, and Common Sense.

21 b) For all client matters, Respondent shall have a written fee agreement signed by the
22 client, Fee agreements are to be maintained for least seven years (see RPC
23 1.15B(a)(3)).

24 c) Respondent shall attend or view a recorded session of Ethics School.

d) On a quarterly basis, Respondent shall provide ODC's audit staff 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. If Respondent does not have a
trust account, he shall submit a letter stating that fact on the timeline set forth
below:

- 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 e) On the same quarterly time schedule set forth in the preceding paragraph,
2 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.
- 3 f) On the same quarterly time schedule set forth in paragraph 38(d), Respondent will
4 provide ODC's Audit Manager or designee with a list of all current clients.
- 5 g) The ODC's Audit Manager or designee may request additional financial or client
6 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
7 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.
- 8 h) Respondent will reimburse the Association for time spent by ODC's Audit Manager
9 or designee in reviewing and reporting on Respondent's records to determine
his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
10 Respondent will make payment within thirty days of each written invoice setting
forth the auditor's time and payment due.

11 VII. RESTITUTION

12 39. No restitution is required by this stipulation.

13 VIII. COSTS AND EXPENSES

14 40. In light of Respondent's willingness to resolve this matter by stipulation at an early
15 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750
16 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
17 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

18 IX. VOLUNTARY AGREEMENT

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

1 42. 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 43. 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 44. 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 45. 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.

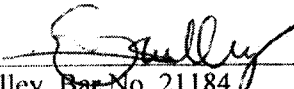
19 46. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
20 his or her review become public information on approval of the Stipulation by the Hearing
21 Officer, unless disclosure is restricted by order or rule of law.

22 47. If this Stipulation is approved by the Hearing Officer, it will be followed by the
23 disciplinary action agreed to in this Stipulation. All notices required in the Rules for

1 Enforcement of Lawyer Conduct will be made.

2 48. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
3 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
4 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
5 or criminal action.

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

8 
9 _____
Eric Valley, Bar No. 21184
Respondent

Dated: 10/15/16

10
11
12 _____
13 Kathy Jo Blake, Bar No. 29235
Disciplinary Counsel

Dated: _____

Eric S. Valley
Attorney at Law
P. O. Box 2059
Shelton, WA 98584

RECEIVED

DEC 20 2016

WSB - OFFICE OF
DISCIPLINARY COUNSEL

Kathy Jo Blake

WSBA

1325 Fourth Ave Suite 600

Seattle WA

98101-2539



1000



98101

U.S. POSTAGE
PAID
SHELTON, WA
98584
DEC 16 16
AMOUNT
\$1.15
R2304H109773-04

