

FILED

OCT 16 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

J. CRAIG BARRILE,
Lawyer (Bar No. 22198).

Proceeding No. 12#00127

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Debra Slater, Respondent lawyer J. Craig Barrile, and Respondent's counsel J. Donald Curran.

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, and expense attendant to further proceedings.

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4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on November
6 11, 1992.

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8 **II. STIPULATED FACTS**

9 2. Respondent is a sole practitioner in Deer Park, Washington. Before going to law
10 school, he worked as a high school counselor for 17 years.

11 3. In approximately 2009, Alan Hurd contacted Respondent with the idea to associate
12 his law services and Mr. Hurd's licensed mortgage brokerage business. Respondent had known
13 Alan Hurd for over 20 years. He was a good friend and Respondent trusted him. Pacific
14 Mortgage Center (PMC) is owned and operated by Alan Hurd. PMC negotiates home loan
15 modifications on behalf of homeowners who are in financial distress. PMC provided marketing
16 services to Respondent. Respondent understood he would be the initial contact for the clients
17 and would provide professional services. Respondent was of the belief that Mr. Hurd would be
18 acting under Respondent's supervision and control and would be contacting lenders to modify
19 client mortgages. As originally conceived, Respondent believed the arrangement was ethical.
20 As the arrangement evolved as set forth hereafter, it was not.

21 4. United Processing Services, Inc., (UPS), is the parent of PMC and is also owned and
22 operated by Alan Hurd. UPS gathers and evaluates financial records and information that it
23 then provides to lenders. Respondent engaged UPS to perform this service for his clients.
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1 **Brogan Matter**

2 5. Nathan and Shawna Brogan contacted PMC in August 2010 about modifying their
3 loan with Flagstar Bank.

4 6. They met with Hurd, who explained their options for refinancing. Based on the
5 information Hurd provided to them, they decided to go forward with PMC's services.

6 7. Hurd had them sign a document titled "Attorney-Client Fixed Fee Agreement-Loan
7 Modification." Even though the Brogans thought they were hiring PMC and Hurd, the
8 agreement indicated that they were hiring Respondent to represent them in seeking a
9 modification of their loan.

10 8. Respondent provided Hurd with his fee agreement, which Hurd then completed and
11 had clients execute. Respondent was not present at the meeting and the terms of the fee
12 agreement were not explained to the Brogans.

13 9. The fee agreement stated that the Brogans were paying a "fixed fee of \$2300," which
14 was earned upon receipt. The amount of the fee was determined by Hurd.

15 10. The agreement also provided that Barrile's firm was not retained and no attorney
16 client relationship was established and no services would be performed until the client had
17 completed an interview with one of the firm's attorneys. The agreement also provided that the
18 Brogans would "forfeit" their fee if they breached any of its terms.

19 11. Hurd instructed the Brogans to make their check in the amount of \$2300 payable to
20 Respondent. The Brogans paid the fees in two installments of \$1150 each which were
21 deposited into Respondent's trust account on September 30, 2010 and November 1, 2010.

1 12. Hurd instructed the Brogans to stop making payments to Flagstar, which they did.
2 They were not advised by either Respondent or Hurd of the consequences of not making the
3 payments.

4 13. Throughout the entire representation, the Brogans never met or talked with
5 Respondent. All of the work performed on behalf of the Brogans was performed by an
6 employee of PMC/UPS. PMC/UPS did a substantial amount of work in attempting to modify
7 the Brogans' mortgage loan. Respondent did little or no work on the Brogans' matter.

8 14. In December 2010, the Brogans received a Notice of Trustee Sale from Flagstar,
9 which they forwarded to PMC. They received no communication from Respondent about the
10 foreclosure.

11 15. On April 15, 2011, Hurd notified the Brogans that he was unable to postpone the
12 sale. He also informed them that the only way to stop the sale was by filing bankruptcy and that
13 they should contact Respondent about that.

14 16. The Brogans went to Respondent's office, where they met him for the first time,
15 eight months after they hired him.

16 17. The Brogans agreed to pay Respondent \$1000 to file a bankruptcy petition on their
17 behalf. The petition was filed that day.

18 18. From the \$2300 they paid, Respondent paid UPS \$800 and PMC \$1065.50.
19 Respondent kept \$434.50 as his attorney fees.

20 **Kristie Coleman Matter**

21 19. On or around April 1, 2010, Kristie Coleman met with Hurd about modifying her
22 home loan.

1 20. Hurd presented Coleman with Respondent's "Attorney Client Fixed Fee Agreement-
2 Loan Modification," which Respondent had provided to Hurd in blank. This was the same
3 agreement that the Brogans had signed.

4 21. Coleman signed the agreement, agreeing to pay Respondent \$2700 in attorney fees
5 in two installments, which were deposited into Respondent's trust account on April 1, 2010 and
6 May 3, 2010. Respondent did not meet with Coleman and the fees were not explained to her.
7 Hurd had determined the amount of the fee.

8 22. Hurd advised Coleman to stop making her loan payments. Respondent did not
9 explain to Coleman the consequences of not making her loan payments.

10 23. Throughout the representation, Coleman never met with Respondent. She
11 telephoned his office five or six times to inquire about the status of her case. She received one
12 return call. Respondent told her they were working on her case. Although Respondent did little
13 or no work on her case, PMC/UPS did perform services on her behalf.

14 24. Coleman's home was foreclosed in fall 2010.

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16 **Trina Villa Matter**

17 25. In early 2011, Trina Villa met with Hurd about modifying her home loan. Hurd told
18 her that he worked with Respondent and that it would cost her \$2000.

19 26. On March 20, 2011, Villa paid the entire \$2000 by check made payable to
20 Respondent, which was deposited to Respondent's trust account on March 18, 2011.

21 27. The form "Attorney-Client Fixed Fee Agreement" was sent to her. She signed the
22 agreement and returned it to Respondent.

1 28. Hurd advised Villa to stop making her home loan payment to Bank of America. She
2 was not advised of the consequences of not making her payments.

3 29. Villa never met with Respondent. She had one telephone conversation with him
4 about the status of her matter.

5 30. Villa met with Hurd in late 2011 to discuss her case. Hurd informed her that she
6 needed to pay an additional \$1500 in fees. She decided against paying the additional fees.

7 31. Her loan was not modified. Respondent did little or no work on her case.

8 **Reginald Garigan Matter**

9 32. Reginald Garigan met with Hurd about modifying his home loan. Hurd told Garigan
10 that he worked with Respondent. Garigan signed Respondent's "Attorney Client Fixed Fee
11 Agreement-Loan Modification." He paid the fee of \$2900, which was set by Hurd, in full. The
12 \$2,900 was deposited into Respondent's trust account on October 1, 2010.

13 33. Garigan never met with Respondent, nor did he have any other form of
14 communication with him. PMC/UPS did work to attempt a modification of Garigan's loan,
15 even though Respondent did little or no work on Garigan's case.

16 34. In November 2011, Garigan received a letter from his lender requesting a payment
17 of \$3000 before they could finalize a loan modification. Garigan contacted Hurd, who told him
18 to pay the \$3000.

19 35. Garigan did not have the money to pay an additional \$3000, and his lender
20 foreclosed. Neither Hurd nor Respondent advised Garigan of the consequences of not paying
21 the \$3000. Respondent did little or no work on Garigan's matter.

1 36. In February 2012, Garigan received a Final Notice of Sheriff's sale of his property.
2 He contacted Hurd and asked for a refund of the fees he had paid. Hurd refused to refund any
3 of the fees.

4 37. Garigan's property was sold at a sheriff's sale in March 2012.

5 **Faith Boblick Matter**

6 38. In Fall 2009, Faith Boblick contacted Respondent to seek relief from her credit card
7 debt. She meet with Respondent, who filed a chapter 7 bankruptcy petition on her behalf.
8 Boblick paid Respondent \$1300 as attorney fees for the bankruptcy.

9 39. During her conversations with Respondent, Respondent told her that he could
10 negotiate a reduction in her mortgage payment on her loan with IndyMac Bank, even though no
11 foreclosure had been initiated.

12 40. Boblick signed the "Attorney-Client Fixed Fee Agreement-Loan Modification" on
13 September 30, 2009, and paid Respondent \$2,000 in attorney fees, which was deposited to
14 Respondent's trust account on August 12, 2009.

15 41. Respondent advised Boblick to stop making her loan payments. He did not explain
16 the consequences of not making the payments.

17 42. Other than two of three telephone conversations about her case, Boblick received no
18 documents from Respondent regarding the loan modifications.

19 43. In January 2012, her home was foreclosed. Respondent did little or no work on her
20 case.

21 **Christie Blair Matter**

1 44. On May 18, 2010, Christie Blair received a letter from Respondent on his letterhead
2 and signed by him stating that his research indicated she could be eligible to lower her home
3 loan payments.

4 45. Blair called the number in the letter and scheduled an appointment. At the
5 appointment, she met with Hurd, who told her that a lawyer would be involved in the process.
6 Respondent was not present.

7 46. Blair subsequently telephoned Respondent's office to confirm that he was, in fact, a
8 lawyer. That was the sole communication she had with Respondent. Respondent did little or no
9 work on her matter.

10 47. On June 25, 2010, Blair signed the "Attorney-Client Fixed Fee Agreement-Loan
11 Modification" and paid \$2300 in attorney fees for the loan modification services.

12 48. Bank of America, Blair's lender, agreed to lower the interest rate on her loan from
13 5% to 4.75%. She declined to accept the offer as it did not significantly reduce her payments.
14 Sometime thereafter, she received a letter from PMC advising her that PMC had fulfilled its
15 obligation to her and they were closing her file.

16 49. On January 24, 2011, Blair requested a copy of her file from Respondent. She did
17 not receive a reply or her client file.

18 19 **III. STIPULATION TO MISCONDUCT**

20 50. By failing to keep his clients reasonably informed about the status of their matters
21 and failing to explain their matters to the extent reasonably necessary to permit them to make
22 informed decisions regarding the representation, Respondent violated RPC 1.4(a)(2) and RPC
23 1.4(b).

1 51. By misrepresenting to his clients, through the use of his "Attorney-Client Fixed Fee
2 Agreement-Loan Modification," that he would be handling their matters when, in fact, all of the
3 work was performed by Hurd/PMC/UPS, Respondent violated RPC 8.4(c).

4 52. By having Hurd present the "Attorney-Client Fixed Fee Agreement-Loan
5 Modification" to his clients and having them sign the fee agreement without any explanation by
6 Respondent, thereby failing to communicate the scope of his representation and the basis or rate
7 of the fee to his clients, Respondent violated RPC 1.5(b).

8 53. By failing to disclose in his "flat" fee agreement that the client may be entitled to a
9 refund of a portion of the fee if the legal services have not been completed, Respondent violated
10 RPC 1.5(f).

11 54. By allowing PMC/Hurd to advise his clients about how to handle their loans and, in
12 particular, advising them to stop making payments, thereby failing to exercise independent
13 professional judgment and failing to render candid advice to his clients, Respondent violated
14 RPC 2.1.

15 55. By sharing legal fees with PMC and UPS, Respondent violated RPC 5.4.

16 56. Respondent violated RPC 5.5(a) by retaining nonlawyers to perform legal functions
17 on behalf of his clients and delegating legal functions to nonlawyers.

18 **IV. PRIOR DISCIPLINE**

19 57. Respondent has no prior discipline.

20 **V. APPLICATION OF ABA STANDARDS**

21 58. The American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed.
22 & Feb. 1992 Supp.), that apply to this case are attached hereto as Appendix A.
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1 59. ABA Standard 4.4 applies to violations of RPC 1.4. Respondent acted knowingly in
2 failing to communicate with his clients and in failing to explain matters to them so they could
3 make informed decisions about their matters. There was injury to each of them in that they did
4 not know the status of their matters and, as a result, suffered unnecessary uncertainty and stress.
5 They were also injured in that they were denied the opportunity to participate in making
6 decisions about how their matters were handled. The presumptive sanction is suspension.

7 60. ABA Standard 4.6 applies to violations of RPC 8.4(c). Respondent acted knowingly
8 in not disclosing to his clients that the work on their cases would be primarily performed by
9 PMC and UPS. There was injury to his clients in that they believed that a lawyer was involved
10 in their case and was acting on their behalf. The presumptive sanction is suspension.

11 61. ABA Standard 7.0 is applicable to Respondent's violations of RPC 1.5. Respondent
12 acted knowingly in failing to explain his fees to his clients. He also acted knowingly in failing
13 to include language in his flat fee agreement that the client had to right to a refund if the
14 services were not completed. There was actual injury to each of Respondent's clients in that
15 they did not understand that they were entitled to a refund. They were also denied the
16 opportunity to ask questions about the extent of the services they were receiving from
17 Respondent. The presumptive sanction is suspension.

18 62. ABA Standard 7.0 applies to Respondent's violations of RPC 2.1, RPC 5.4, and RPC
19 5.5.

20 As to the RPC 2.1 violation, Respondent acted knowingly in failing to exercise
21 independent professional judgment and failing to render candid advice. Respondent could have
22 met with the clients and provided them with appropriate advice. Instead, they were advised by
23 Hurd, a nonlawyer. There was injury to his clients in that they relied on Hurd's advice to cease
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1 making their mortgage payments, which resulted in foreclosure of their homes. The
2 presumptive sanction is suspension.

3 As to the RPC 5.4 violation, Respondent acted knowingly in sharing legal fees with
4 PMC and UPS. The arrangement Respondent had with PMC and UPS benefitted only
5 Respondent—he received fees for doing little or no work. His conduct was knowing and
6 resulted in injury to his clients. The presumptive sanction is suspension.

7 As to the RPC 5.5 violation, it appears Respondent acted knowingly in assisting Hurd in
8 the unauthorized practice of law. There was injury to Respondent's clients in that the advice
9 they received from Hurd may have been inappropriate for their particular situations. The
10 presumptive sanction is suspension.

11 63. The following aggravating factors apply under ABA Standards Section 9.22:

- 12 (a) a pattern of misconduct;
- 13 (d) multiple offenses;
- 14 (i) substantial experience in the practice of law [Respondent was admitted in
15 Washington in 1992].

16 64. The following mitigating factors apply under ABA Standards Section 9.32:

- 17 (a) absence of a prior disciplinary record;
- 18 (d) timely good faith effort to make restitution or to rectify consequences of
19 misconduct – Respondent has made restitution to the clients identified in
20 paragraph 69 herein;
- 21 (e) full and free disclosure to disciplinary board or cooperative attitude toward
22 proceedings;
- 23 (l) remorse.

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

66. The aggravating and mitigating factors do not require a departure from the
presumptive sanction.

1 **VI. STIPULATED DISCIPLINE**

2 67. Respondent hereby stipulates to an 18 month suspension.

3 68. Reinstatement is conditioned upon full restitution to each of the below named
4 clients.

5
6 **VII. RESTITUTION**

7 69. Respondent has made full restitution to the following clients, which represents the
8 actual funds received by Respondent:

9	Nathan and Shawna Brogan	\$ 435.50
	Kristie Coleman	\$ 430.00
10	Trina Villa	\$ 430.00
	Reginald Garigan	\$ 548.00
11	Faith Boblick	\$ 284.50
	Christie Blair	<u>\$ 430.00</u>
12	TOTAL	\$2,558.00.

13 70. Reinstatement from suspension is conditioned on payment of restitution to the above
14 named clients, or the Lawyers Fund for Client Protection, if appropriate.

15
16 **VIII. COSTS AND EXPENSES**

17 71. In light of Respondent's willingness to resolve this matter by stipulation at an early
18 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of
19 \$1,000.00 in accordance with ELC 13.9(i). The Association will seek a money judgment under
20 ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

21 72. Reinstatement from suspension is conditioned on payment of costs.

1 **IX. VOLUNTARY AGREEMENT**

2 73. Respondent states that prior to entering into this Stipulation he consulted
3 independent legal counsel regarding this Stipulation, that Respondent is entering into this
4 Stipulation voluntarily, and that no promises or threats have been made by the Association, nor
5 by any representative thereof, to induce the Respondent to enter into this Stipulation except as
6 provided herein.

7
8 **X. LIMITATIONS**

9 74. This Stipulation is a compromise agreement intended to resolve this matter in
10 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
11 expenditure of additional resources by the Respondent and the Association. Both the
12 Respondent lawyer and the Association acknowledge that the result after further proceedings in
13 this matter might differ from the result agreed to herein.

14 75. This Stipulation is not binding upon the Association or the respondent as a statement
15 of all existing facts relating to the professional conduct of the respondent lawyer, and any
16 additional existing facts may be proven in any subsequent disciplinary proceedings.

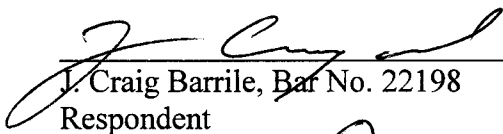
17 76. This Stipulation results from the consideration of various factors by both parties,
18 including the benefits to both by promptly resolving this matter without the time and expense of
19 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
20 such, approval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

1 77. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
2 Board shall have available to it for consideration all documents that the parties agree to submit
3 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
4 form the record before the Board for its review become public information on approval of the
5 Stipulation by the Board, unless disclosure is restricted by order or rule of law

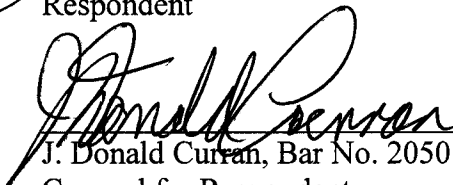
6 78. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
7 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
8 Rules for Enforcement of Lawyer Conduct will be made.

9 79. If this Stipulation is not approved by the Disciplinary Board and Supreme Court],
10 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
11 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
12 proceeding, or in any civil or criminal action.

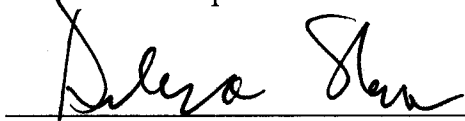
13 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
14 to Discipline as set forth above.

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16 
J. Craig Barrile, Bar No. 22198
Respondent

Dated: 5/1/2013

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18 
J. Donald Curran, Bar No. 2050
Counsel for Respondent

Dated: 5/7/2013

19
20 
Debra Slater, Bar No. 18346
Disciplinary Counsel

Dated: 5/20/2013