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FILED

Nov 12 2020

Disciplinary
Board

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

Docket # 051

In re

BORIS RUBINSTEIN,
Lawyer (Bar No. 23055).

Proceeding No. 19#00003

ODC File No. 17-00004

STIPULATION TO REPRIMAND

Following settlement conference conducted
under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), 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, Respondent's counsel Anne I. Seidel and Respondent lawyer Boris Rubinstein.

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

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on November 10,
5 1993.

6 **II. STIPULATED FACTS**

7 2. At all relevant times, Respondent managed Rubinstein Law Office, a firm that
8 primarily handled personal injury matters.

9 3. Respondent maintained an Interest on Lawyer's Trust Account, ending in 6522, at Key
10 Bank for the deposit of client funds (Key Bank trust account).

11 4. Respondent was the only authorized signer on the Key Bank trust account, and the
12 only lawyer responsible for trust account transactions and recordkeeping.

13 **Trust Account Overdrafts**

14 5. In December 2016, Key Bank closed Respondent's trust account.

15 6. At the time the trust account was closed, there were outstanding (uncashed) checks
16 drawn on the account. When some of the outstanding checks were presented for payment, Key
17 Bank issued overdraft notices.

18 7. In December 2016, Respondent opened a trust account, ending in 2337, at Columbia
19 Bank for the deposit of client funds (first Columbia Bank trust account).

20 8. Respondent deposited \$921,675.51 from the closed Key Bank trust account into the
21 first Columbia Bank trust account.

22 9. In August 2017, Respondent opened another trust account, ending in 6330, at
23 Columbia Bank, for the deposit of new client funds (second Columbia Bank trust account).

1 **Trust Account Records**

2 10. During the period July 2001 through December 2016, Respondent maintained a trust
3 account check register and client ledgers in QuickBooks (trust account records).

4 11. Respondent personally entered most of the deposits and disbursements into the trust
5 account records.

6 12. During part or all of the period July 2001 through December 2016, Respondent did
7 not maintain a complete or accurate check register for the Key Bank trust account to the extent
8 detailed in paragraphs 14, 15, and 16, infra.

9 13. During part or all of the period July 2001 through December 2016, Respondent did
10 not maintain complete or accurate client ledgers.

11 14. During part or all of the period July 2001 through December 2016, Respondent failed
12 to enter correct information for some deposits.

13 15. Between October 2010 and July 2015, Respondent failed to enter approximately 68
14 trust account checks totaling more than \$180,000 into the trust account records. All of these
15 checks cleared the bank. In some, but not all instances, Respondent's bookkeeper entered general
16 journal entries (GJE) to cover the checks. A GJE is a bookkeeping entry that is not the same as
17 entering an actual transaction.

18 16. From August 2001 through August 2014, Respondent disbursed more than nineteen
19 million dollars from the Key Bank trust account to himself for earned fees, but did not identify
20 the client matter(s) for which the funds were disbursed. The funds were disbursed by bank
21 transfer to Respondent's general account, usually in round amounts ranging from \$5,000 to
22 \$600,000. Respondent states that he did not know he was required to identify a client matter
23 when disbursing funds from the trust account to himself.

1 17. During the period July 2001 through August 2014, Respondent did not reconcile his
2 trust account check register to the bank statements (bank statement reconciliation).

3 18. Respondent arranged for a bookkeeper to start performing bank statement
4 reconciliations for the Key Bank trust account in September 2014.

5 19. During the period July 2001 through December 2016, Respondent did not reconcile
6 his trust account check register to the client ledgers (client ledger reconciliation).

7 20. Due to Respondent's inadequate recordkeeping, Respondent was unable to identify
8 the ownership of \$160,937.44 that he was holding in the first Columbia Bank trust account.

9 **Disbursing More Funds Than Clients Had on Deposit**

10 21. As of December 31, 2016, Respondent had negative client ledgers totaling more than
11 <\$108,000>. In some instances, the ledgers were negative because Respondent disbursed more
12 funds than the clients had on deposit in his trust account. In other instances, the ledgers may have
13 been inaccurate.

14 **Delivery of Funds to Clients and Third Persons Entitled to Receive Them**

15 22. As of November 30, 2016, Respondent's records showed that he had approximately
16 100 outstanding trust account checks, totaling more than \$160,000, that were dated from
17 November 2010 through January 2016. The checks were payable to clients, health care providers,
18 and insurance companies, among others.

19 23. After Key Bank closed Respondent's trust account and issued overdraft notices,
20 Respondent issued new checks to replace the outstanding checks written on his Key Bank trust
21 account. In 67 instances, Respondent delayed issuing replacement checks until May 2017. For
22 example:

23 a. In May 2017, Respondent issued a check in the amount of \$5,011.25 to Rainier Chiro

1 & LMP (Rainier Chiro) for funds that Rainier Chiro was entitled to receive in February
2 2013. Although Respondent's records show that he prepared a check to Rainier Chiro
3 in February 2013, Rainier Chiro maintains that it did not receive the check.

4 b. In May 2017, Respondent issued a check to Kent Chiro & Massage (Kent Chiro) in
5 the amount of \$5,000 for funds that Kent Chiro was entitled to receive in May 2013.
6 Although Respondent's records show that he prepared a check to Kent Chiro in May
7 2013, Kent Chiro maintains that it did not receive the check.

8 c. In May 2017, Respondent issued a check to client JS in the amount of \$789.21 for
9 funds that JS was entitled to receive in October 2014. Although Respondent issued a
10 check in the amount of \$789.21 to the Department of Labor and Industries (L&I) for
11 JS in October 2014, L&I promptly informed Respondent's office that it was not
12 entitled to the funds and did not cash the check.

13 d. In May 2017, Respondent issued a check to GEICO in the amount of \$5,500 for funds
14 that GEICO was entitled to receive in January 2016. Although Respondent's records
15 show that he prepared a check to GEICO in January 2016, GEICO maintains that it
16 did not receive the check.

17 **Failure to Deposit Client Funds into a Trust Account**

18 24. On May 12, 2015, Respondent deposited \$41,955.53 into his general account, when
19 the funds should have been deposited into his trust account. Although the incorrect deposit may
20 have been due to bank error, Respondent did not deposit the \$41,955.53 into a trust account until
21 February 3, 2017.

22 25. Respondent states that he did not realize the deposit mistake because he did not
23 understand the bank statement reconciliations prepared by his bookkeeper.

1 **Commingling**

2 26. Respondent deposited funds into his trust account that were not connected to a
3 representation or escrow. The deposited funds included funds relating to non-client business
4 entities and several boys' soccer clubs.

5 **Disbursing Funds From Trust Before Deposits Cleared**

6 27. In four client matters, Respondent disbursed funds before the related deposits were
7 made to the bank or cleared the banking system.

8 **III. STIPULATION TO MISCONDUCT**

9 28. By failing to deposit and maintain client funds in a trust account, Respondent violated
10 RPC 1.15A(c).

11 29. By failing to promptly pay or deliver funds that clients and third persons were entitled
12 to receive, Respondent violated RPC 1.15A(f).

13 30. By failing to maintain a complete and accurate trust account check register and client
14 ledgers, Respondent violated RPC 1.15A(h)(2), RPC 1.15B(a)(1) and RPC 1.15B(a)(2).

15 31. By failing to reconcile his trust account records, Respondent violated RPC
16 1.15A(h)(6) and RPC 1.15B(a)(8).

17 32. By disbursing more funds than clients had on deposit, Respondent violated RPC
18 1.15A(h)(8).

19 33. By disbursing funds before deposits were made to the trust account and before deposits
20 cleared the banking system, Respondent violated RPC 1.15A(h)(7).

21 34. By depositing funds into his trust account that were not connected to a representation
22 or escrow, Respondent violated RPC 1.15A(a) and RPC 1.15A(c).

1 **IV. APPLICATION OF ABA STANDARDS**

2 35. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 ***4.1 Failure to Preserve the Client's Property***

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

- 8 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
9 client property and causes injury or potential injury to a client.
10 4.12 Suspension is generally appropriate when a lawyer knows or should know
11 that he is dealing improperly with client property and causes injury or
12 potential injury to a client.
13 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes injury or potential injury to a client.
15 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing
16 with client property and causes little or no actual or potential injury to a
17 client.

18 36. Respondent knew or should have known that he was failing to properly handle client
19 funds.

20 37. Respondent's conduct caused actual and potential injury, including that client funds
21 deposited into Respondent's general account as described in paragraph 24 were not safeguarded
22 in a trust account.

23 38. The presumptive sanction is suspension.

24 39. The following aggravating factors apply under ABA Standard 9.22:

- (c) a pattern of misconduct;
(d) multiple offenses;
(i) substantial experience in the practice of law [Respondent was admitted to
practice in Washington in 1993 and in California in 1991].

40. The following mitigating factors apply under ABA Standard 9.32:

- (a) absence of a prior disciplinary record;
(b) absence of a dishonest motive;

- 1 (c) personal or emotional problems [Respondent states that, from 2007 to
2 2018, he experienced stress relating to his father's chronic illness and
3 eventual death. See also Confidential Attachment A to this Stipulation.];
(g) character or reputation;
(l) remorse.

4 41. It is an additional mitigating factor that, during the grievance investigation,
5 Respondent took steps to research and correct some errors in his Key Bank trust account records,
6 to issue new checks to clients and third persons whose funds had remained in trust due to old,
7 outstanding checks, and to retain a contract bookkeeper to regularly review his trust account
8 reconciliations.

9 42. Based on the factors set forth above, the presumptive sanction should be mitigated to
10 reprimand.

11 V. STIPULATED DISCIPLINE

12 43. The parties stipulate that Respondent shall receive a reprimand for his conduct.

13 44. Respondent will be subject to probation for a period of 24 months commencing upon
14 final approval of this stipulation. The conditions of probation are set forth below. Failure to
15 comply with a condition of probation listed herein may be grounds for further disciplinary action
16 under ELC 13.8(b).

17 Trust Account Review

- 18 a) Respondent shall participate in periodic reviews under ELC 13.8 of his trust account
19 practices and must comply with the following terms.
20 b) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B,
21 and shall carefully review the current version of the publication, Managing Client
22 Trust Accounts: Rules, Regulations, and Common Sense.
23 c) For all client matters, Respondent shall have a written fee agreement signed by the
24 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

- 1 d) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
2 Review Report," Respondent shall review the trust-account records detailed on the
3 form report, review the completed report, and sign and date the completed report.
- 4 e) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
5 account records for the time period to be reviewed by ODC's audit staff and
6 disciplinary counsel for compliance with the RPC:
- 7 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
8 commencement of probation, Respondent shall provide the trust account
9 records from the date of commencement of probation to the end of the third
10 full month.
 - 11 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
12 commencement of probation, Respondent shall provide the trust account
13 records from the end of the previously provided quarter through the end of
14 month six.
 - 15 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
16 commencement of probation, Respondent shall provide the trust account
17 records from the end of the previously provided quarter through the end of
18 month nine.
 - 19 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
20 the commencement of probation, Respondent shall provide the trust account
21 records from the end of the previously provided quarter through the end of
22 month twelve.
 - 23 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
24 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.

The trust account records Respondent provides to ODC for each quarterly review of his trust account will include: (a) copies of each completed "Monthly Reconciliation and Review Report" referenced in sub-paragraph (d) above, (b) a complete checkbook register for his trust account covering the period being reviewed, (c) complete individual client ledger records for any client with funds in Respondent's

1 trust account during all or part of the period being reviewed, as well as for
2 Respondent's own funds in the account (if any), and (d) copies of all trust-account
3 bank statements covering the period being reviewed. ODC's Audit Manager or
4 designee will review Respondent's trust account records for each period.

5 If Respondent uses Quickbooks for his trust account recordkeeping, Respondent shall
6 provide a backup or portable company file for the Quickbooks file that contains his
7 trust account records, including any passwords required to access the file. Provision
8 of a Quickbooks file with Respondent's check register and client ledgers will comply
9 with (b) and (c), supra.

10 f) On the same quarterly time schedule set forth in the preceding paragraph, Respondent
11 will provide ODC's Audit Manager or designee with copies of any and all fee
12 agreements entered into within the time period at issue.

13 g) ODC's Audit Manager or designee may request additional financial or client records
14 if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. Within
15 twenty days of a request from ODC's Audit Manager or designee for additional
16 records needed to verify Respondent's compliance with RPC 1.15A and/or RPC
17 1.15B, Respondent will provide ODC's Audit Manager or designee the additional
18 records requested.

19 h) Respondent will reimburse the Association for time spent by ODC's Audit Manager
20 or designee in reviewing and reporting on Respondent's records to determine his
21 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour. Respondent
22 will make payment within 30 days of each written invoice setting forth the auditor's
23 time and payment due.

24 VI. RESTITUTION

45. Respondent states that the first Columbia Bank trust account contained \$160,937.44
for which Respondent was unable to identify the owner(s) of the funds. Respondent states that
the first Columbia Bank trust account also contained \$4,079.18 for outstanding checks, and that
Respondent has been unable to deliver the funds despite having taken reasonable steps to locate
the clients and third persons entitled to the funds. Respondent remitted \$162,937.44 to the
Department of Revenue Unclaimed Property Division (DOR) on October 29, 2020, and shall
remit \$2,079.18 by October 31, 2021. Respondent shall provide ODC with documentary proof
that the funds have been properly remitted within 10 days of remitting the funds to DOR.

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VII. COSTS AND EXPENSES

46. Respondent shall pay attorney fees and administrative costs of \$14,884 (including \$13,384 costs and \$1,500 expenses), in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

VIII. VOLUNTARY AGREEMENT

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

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

IX. LIMITATIONS

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

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


51. 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 the Respondent to the same extent as any other approved
6 Stipulation.


7 52. If this Stipulation is approved by the Hearing Officer, it will be followed by the
8 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
9 of Lawyer Conduct will be made. Respondent states that, in addition to Washington, he also is
10 admitted to practice law in the following jurisdictions, whether current status is active, inactive,
11 or suspended: California.

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


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

18 
19 _____
Boris Rubinstein, Bar No. 23055
Respondent

Dated: 11/5/2020

20 
21 _____
Anne I. Seidel, Bar No. 22742
Counsel for Respondent

Dated: 11/5/2020

22 
23 _____
Marsha Matsumoto, Bar No. 15831
Managing Disciplinary Counsel

Dated: 11/5/2020