

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

FILED

FEB 05 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

PAUL MICHAEL DONION,
Lawyer (Bar No. 25053).

Proceeding No. 11#00098

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 Marsha Matsumoto, Respondent's counsel Brett A. Purtzer, and Respondent lawyer Paul Michael Donion.

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,

ORIGINAL

1 and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to the practice of law in the State of Washington on Oc-
4 tober 17, 1995.

5 **II. STIPULATED FACTS**

6 2. In 2008, Respondent took over Northwest Advocates for the Injured, Inc. (NWAI),
7 a law firm that represented industrial insurance claimants, from Tolan Furusho (Furusho), who
8 was disbarred in August 2008.

9 3. KK worked as a paralegal for Furusho and NWAI.

10 4. When Respondent took over NWAI, he continued to employ KK as a paralegal.

11 5. When Respondent took over NWAI, he assumed responsibility for NWAI's trust
12 account, ending in 5666, at Columbia State Bank (NWAI trust account).

13 6. Respondent was the only authorized signer on the NWAI trust account.

14 7. Respondent was assisted by KK in making deposits to the NWAI trust account,
15 preparing checks, and maintaining the trust account records.

16 8. Respondent did not adequately review or supervise KK's handling of client funds,
17 the NWAI trust account, or the trust account records. Respondent did not train KK on how to
18 handle client funds or maintain the trust account records. Respondent states that he relied on
19 Furusho's assurances that the trust account was in order and that KK was capable of handling
20 the account.

21 NWAI Trust Account

22 9. During the period January 2008 through December 2011, Respondent did not
23 maintain a complete or accurate check register for the NWAI trust account.

1 10. During the period January 2008 through December 2011, Respondent did not
2 maintain client ledgers for the Nwai trust account.

3 11. During the period January 2008 through December 2011, Respondent did not per-
4 form bank statement or client ledger reconciliations for the Nwai trust account.

5 12. After a grievance investigation was opened against Respondent in July 2009, Re-
6 spondent hired a contract bookkeeper to reconstruct the Nwai trust account records for the pe-
7 riod January 1, 2008 to December 31, 2011.

8 13. The reconstruction of Respondent's trust account records revealed that there was a
9 shortage of client funds in the Nwai trust account. The shortage occurred because Respondent
10 disbursed approximately \$27,000 from the trust account to himself, to his law firm, and to KK
11 without identifying a client matter for the disbursement of funds. Respondent believes that
12 some of these disbursements were for earned fees; however, Respondent is unable to demon-
13 strate, due to inadequate recordkeeping, that he was entitled to any of the disbursements. Re-
14 spondent also states that KK converted funds from the Nwai trust account by writing at least
15 nine checks to herself and that, during the reconstruction of Respondent's trust account records,
16 she attempted to conceal her conversion by altering copies of the checks to make it appear as if
17 the checks were written to clients or third parties.

18 14. Respondent terminated KK's employment when he discovered that she had altered
19 copies of the trust account checks.

20 15. The reconstruction of Respondent's trust account records also revealed that, on
21 more than 20 occasions, Respondent failed to promptly disburse funds that his clients were enti-
22 tled to receive.

23 16. During the period December 2010 to March 2012, Respondent deposited a total of
24

1 \$24,630.32 of his own funds to the Nwai trust account to address the shortage of client funds
2 in the account.

3 17. In December 2013, as a condition of this stipulation, Respondent deposited an ad-
4 ditional \$1,392.50 of his own funds to replace the remaining shortage in the Nwai trust ac-
5 count, disbursed \$1,429.74 to clients who were entitled to receive funds but had not received
6 them, and, in cases where he could not locate the clients, remitted \$17,840.62 to the Department
7 of Revenue, Unclaimed Property.

8 Tina Seal

9 18. In February 2007, Tina Seal (Seal) sustained an on-the-job injury while employed
10 as a truck driver in Washington.

11 19. At the time of her injury, Seal worked for Trans-System, Inc. (Trans-System), a
12 self-insured employer.

13 20. Seal's injuries forced her to stop working in June 2007.

14 21. Seal initially represented herself in her industrial insurance claim before the Wash-
15 ington State Department of Labor and Industries (L&I) and Trans-System.

16 22. In July 2007, Seal started receiving time-loss payments from Trans-System.
17 Trans-System generally issued Seal's time-loss checks every other week on a Friday, and she
18 received them a few days later.

19 23. In summer 2008, Seal contacted Nwai to inquire about her legal rights relating to
20 her industrial insurance claim.

21 24. In September 2008, Respondent entered into a fee agreement with Seal. Under the
22 terms of Nwai's fee agreement, Seal agreed to pay Nwai a 30% contingency fee on any bene-
23 fits secured by Nwai's representation, and a 7% administrative fee (not to exceed \$70) for each
24

1 time-loss check processed by NWAI.

2 25. On September 9, 2008, NWAI sent a notice of appearance to Trans-System and to
3 L&I.

4 26. Seal received a couple more time-loss checks directly, then Trans-System began
5 sending Seal's time-loss payments to NWAI. Respondent collected a \$70 administrative fee for
6 each time-loss check sent directly to Ms. Seal after his representation began, even though his
7 office did not process the checks.

8 27. NWAI received a May 8, 2009 time-loss check for Seal from Trans-System.

9 28. Respondent did not notify Seal of his receipt of the May 8, 2009 time-loss check.

10 29. On May 11, 2009, Respondent's office deposited to the NWAI trust account Seal's
11 May 8, 2009 time-loss check in the amount of \$1,266.44 along with another client's check for a
12 total deposit of \$2,242.14. Based on the reconstruction of Respondent's check register, Seal's
13 funds were used to fund disbursements to other clients.

14 30. Meanwhile, Seal did not receive any checks from Respondent in May 2009.

15 31. On May 18, 2009, Seal sent an email to Respondent informing him that she had
16 not received her check for the time-loss payment issued on May 8, 2009.

17 32. Respondent delegated his response to KK, who sent Seal an email falsely stating,
18 "[y]our time loss payments were stopped . . ."

19 33. On May 21, 2009, Seal spoke with Respondent and KK, and Respondent told Seal
20 that her time-loss benefits would continue. In June 2009, Seal started receiving time-loss
21 checks from Respondent again, but she did not receive a check for the May 8, 2009 time-loss
22 payment.

23 34. Seal emailed Respondent several times seeking an explanation. Respondent
24

1 agreed to look into the matter, but continued to provide Seal with inadequate information due to
2 his reliance on KK. Finally, when Seal pressed for a copy of the May 8, 2009 Trans-System
3 check, Respondent confirmed that the check had been deposited to his trust account, but not
4 disbursed to Seal.

5 35. As of July 3, 2009, the Nwai trust account had a bank balance of only \$1,045.78,
6 when the account should have held at least \$1,196.44 (\$1,266.44 - \$70 fee) of Seal's funds from
7 the May 11, 2009 deposit.

8 36. On July 10, 2009, Respondent issued a check in the amount of \$1,196.44 to Seal to
9 cover the May 8, 2009 time-loss payment, less Respondent's \$70 administrative fee.

10 37. On July 15, 2009, Seal discharged Respondent as her lawyer.

11 III. STIPULATION TO MISCONDUCT

12 38. By failing to maintain complete and accurate trust account records, Respondent vi-
13 olated RPC 1.15A(h)(2) and RPC 1.15B.

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

16 40. By failing to maintain client funds in a trust account, Respondent violated RPC
17 1.15A(c)(1).

18 41. By failing to promptly deliver funds to clients that they were entitled to receive,
19 Respondent violated RPC 1.15A(f).

20 42. By failing to promptly notify Tina Seal of the receipt of her funds and by failing to
21 promptly comply with reasonable requests for information, Respondent violated RPC 1.15A(d),
22 RPC 1.4(a), and RPC 1.15A(e).

23 43. By disbursing Tina Seal's time-loss benefits on behalf of another client, Respond-
24

1 ent violated RPC 1.15A(h)(8).

2 44. By failing to adequately supervise his non-lawyer assistant, KK, Respondent vio-
3 lated RPC 5.3(b).

4 IV. PRIOR DISCIPLINE

5 45. Respondent does not have a record of prior discipline with the Association.

6 V. APPLICATION OF ABA STANDARDS

7 46. The following American Bar Association Standards for Imposing Lawyer Sanctions
8 (1991 ed. & Feb. 1992 Supp.) apply to this case:

9 ***4.1 Failure to Preserve the Client's Property***

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

- 13 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
14 client property and causes injury or potential injury to a client.
15 4.12 Suspension is generally appropriate when a lawyer knows or should
16 know that he is dealing improperly with client property and causes injury
17 or potential injury to a client.
18 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
19 with client property and causes injury or potential injury to a client.
20 4.14 Admonition is generally appropriate when a lawyer is negligent in deal-
21 ing with client property and causes little or no actual or potential injury to
22 a client.

23 ***4.4 Lack of Diligence***

24 Absent aggravating or mitigating circumstances, upon application of the factors
set out in Standard 3.0, the following sanctions are generally appropriate
in cases involving a failure to act with reasonable diligence and prompt-
ness in representing a client:

- 4.41 Disbarment is generally appropriate when:
(a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or
(b) a lawyer knowingly fails to perform services for a client and causes seri-
ous or potentially serious injury to a client; or
(c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.
4.42 Suspension is generally appropriate when:
(a) a lawyer knowingly fails to perform services for a client and causes inju-
ry or potential injury to a client, or

- 1 (b) a lawyer engages in a pattern of neglect and causes injury or potential in-
2 jury to a client.
3 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
4 not act with reasonable diligence in representing a client, and causes inju-
5 ry or potential injury to a client.
6 4.44 Admonition is generally appropriate when a lawyer is negligent and does
7 not act with reasonable diligence in representing a client, and causes little
8 or no actual or potential injury to a client.

9 **7.0 Violations of Duties Owed as a Professional**

10 Absent aggravating or mitigating circumstances, upon application of the factors
11 set out in Standard 3.0, the following sanctions are generally appropriate
12 in cases involving false or misleading communication about the lawyer or
13 the lawyer's services, improper communication of fields of practice, im-
14 proper solicitation of professional employment from a prospective client,
15 unreasonable or improper fees, unauthorized practice of law, improper
16 withdrawal from representation, or failure to report professional miscon-
17 duct.

- 18 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
19 conduct that is a violation of a duty owed as a professional with the intent
20 to obtain a benefit for the lawyer or another, and causes serious or poten-
21 tially serious injury to a client, the public, or the legal system.
22 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
23 conduct that is a violation of a duty owed as a professional and causes in-
24 jury or potential injury to a client, the public, or the legal system.
7.3 Reprimand is generally appropriate when a lawyer negligently engages in
conduct that is a violation of a duty owed as a professional and causes in-
jury or potential injury to a client, the public, or the legal system.
7.4 Admonition is generally appropriate when a lawyer engages in an isolat-
ed instance of negligence that is a violation of a duty owed as a profes-
sional, and causes little or no actual or potential injury to a client, the
public, or the legal system.

47. Respondent's failure to maintain adequate trust account records, to reconcile his trust
account, and to maintain client funds in a trust account was negligent.

48. The injury was actual in that clients who were entitled to receive funds did not re-
ceive them and clients, whose whereabouts have changed and who cannot now be located, will
need to file a claim with the Department of Revenue to recover their funds. Other clients re-
ceived their funds, but their payments were delayed. There was also potential injury in that cli-
ent funds were not protected in a trust account and Respondent's records were inadequate to

1 track client funds.

2 49. The presumptive sanction under ABA Standards 4.1 is reprimand.

3 50. Respondent's failure to inform Seal of his receipt of her May 8, 2009 time-loss pay-
4 ment, to adequately respond to her requests for information, and to promptly deliver her time-
5 loss payment was negligent.

6 51. The injury to Seal was actual. She was denied prompt and accurate information
7 about her benefits and she was denied timely payment of her May 2009 benefits, which caused
8 her personal and financial hardship.

9 52. The presumptive sanction under ABA Standards 4.1 and 4.4 is reprimand.

10 53. Respondent's failure to properly supervise his non-lawyer assistant was negligent.

11 54. As noted above, the injury was actual and potential in that clients did not receive
12 funds they were entitled to receive or their payments were delayed, client funds were not pro-
13 tected in a trust account, Respondent's records were inadequate to track client funds, and Seal
14 was denied prompt and accurate information about her case.

15 55. The presumptive sanction under ABA Standards 7.0 is reprimand.

16 56. The following aggravating factors apply under ABA Standards 9.22:

17 **9.2 Aggravation**

- 18 (d) multiple offenses;
19 (i) substantial experience in the practice of law (Respondent was admitted to
20 practice law in 1995).

21 57. The following mitigating factors apply under ABA Standards 9.32:

22 **9.3 Mitigation**

- 23 (a) absence of a prior disciplinary record;
24 (d) timely good faith effort to rectify consequences of misconduct;
(l) remorse.

58. It is an additional mitigating factor that Respondent has agreed to resolve this matter

1 at an early stage of the proceedings.

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

4 **VI. STIPULATED DISCIPLINE**

5 60. The parties stipulate that Respondent shall receive a reprimand for his conduct.

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

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

The trust account records Respondent provides to ODC for each quarterly review of his trust account(s) will include: (a) a complete checkbook register for his/her trust account(s) covering the period being reviewed, (b) complete individual client ledger records for any client with funds in Respondent's trust account(s) during all or part of the period being reviewed, as well as for Respondent's own funds in the account(s) (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.

- d) On the same quarterly time schedule set forth in the preceding paragraph, 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.
- e) The ODC's Audit Manager or designee may request additional financial or client records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. 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.
- f) Respondent will reimburse the Association for time spent by ODC's Audit Manager 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. Respondent will make payment within thirty days of each written invoice setting forth the auditor's time and payment due.

1 **VII. RESTITUTION**

2 62. Respondent agrees to pay \$210 in restitution (for administrative fees that were im-
3 properly charged) to Tina Seal plus interest on those funds at a rate of 12% calculated from May
4 11, 2009 to the date on which payment is made.

5 **VIII. COSTS AND EXPENSES**

6 63. In light of Respondent's willingness to resolve this matter by stipulation, Respondent
7 shall pay attorney fees and administrative costs of \$2,600 in accordance with ELC 13.9(i). The
8 Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 90
9 days of approval of this stipulation.

10 **IX. VOLUNTARY AGREEMENT**

11 64. Respondent states that prior to entering into this Stipulation he has consulted inde-
12 pendent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation
13 voluntarily, and that no promises or threats have been made by ODC, the Association, nor by
14 any representative thereof, to induce the Respondent to enter into this Stipulation except as pro-
15 vided herein.

16 **X. LIMITATIONS**

17 65. This Stipulation is a compromise agreement intended to resolve this matter in ac-
18 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
19 penditure 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 66. This Stipulation is not binding upon ODC or Respondent as a statement of all exist-
23 ing facts relating to the professional conduct of the respondent lawyer, and any additional exist-
24

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

2 67. This Stipulation results from the consideration of various factors by both parties, in-
3 cluding 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 Stipula-
8 tion.

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

12 69. If this Stipulation is approved by the Hearing Officer, it will be followed by the dis-
13 ciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
14 of Lawyer Conduct will be made.

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

19 //

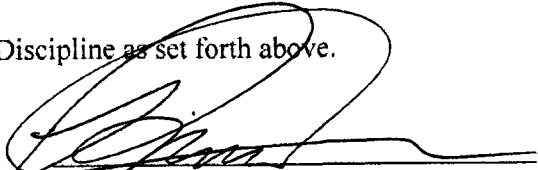
20 //

21 //


22 //

23 //

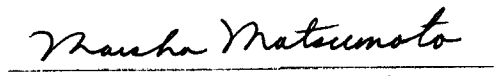
1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
2 to Discipline as set forth above.

3 
4 Paul Michael Donion, Bar No. 25053
5 Respondent

Dated: 1/22/14

6 
7 Brett A. Purtzer, Bar No. 17283
8 Counsel for Respondent

Dated: 1/22/14

9 
10 Marsha Matsumoto, Bar No. 15831
11 Senior Disciplinary Counsel

Dated: 1/23/14