

FILED

Sep 18, 2019

Disciplinary
Board

Docket # 013

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

ALAN EDWARD HARVEY,

Lawyer (Bar No. 25785).

Proceeding No. 19#00027

ODC File No. 18-00734

STIPULATION TO REPRIMAND AND
PROBATION

Following settlement conference 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 under ELC 10.12(h), the following Stipulation to Reprimand and Probation is entered into by Respondent Alan Edward Harvey and the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Scott G. Busby.

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

1 Supreme Court. Respondent further understands that a hearing and appeals could result in an
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this
3 proceeding now by entering into the following stipulation to facts, misconduct, sanction, and
4 probation to avoid the risk, time, and expense of further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on June 4,
7 1996.

8 II. STIPULATED FACTS

9 2. In June 2017, Marclay Construction poured a concrete foundation for a home that
10 Shayne and Jill Bradley were building. The Bradleys contend that the foundation was defective,
11 and they spent time and money making repairs.

12 3. In July 2017, the Bradleys hired Respondent to represent them in their dispute with
13 Marclay.

14 4. There was no written fee agreement.

15 5. On July 7, 2017, the Bradleys paid Respondent \$500, the amount Respondent said
16 he needed to begin the representation.

17 6. The Bradleys were ready to make additional payments as required if, for example,
18 the matter required litigation, but Respondent never sent them an invoice, never requested an
19 additional payment, and never discussed the need for any additional payment.

20 7. In August and September 2017, the Bradleys sent Respondent several requests for
21 information about the status of the matter.

22 8. Respondent replied that he was in a conference, on the road, out of the office, ill,
23

1 or engaged in another matter.

2 9. Respondent did not comply with the Bradleys' requests for information.

3 10. On October 25, 2017, Respondent sent a one-page letter to Marclay. On behalf of
4 Mr. Bradley, Respondent requested a refund from Marclay and the policy number of Marclay's
5 contractor's license bond with Wesco Insurance.

6 11. On October 27, 2017, Ed Martinez of Wesco Insurance provided Respondent with
7 detailed instructions on how to make a claim against Marclay's bond. Mr. Martinez informed
8 Respondent by letter and by email that (a) to make a claim against a contractor's bond the
9 Bradleys must file a lawsuit under RCW 18.27.040, (b) the lawsuit must be filed against the
10 contractor (Marclay) and its registered surety (Wesco), (c) the lawsuit must be filed in the
11 Superior Court of the county where the work was done, and (d) a copy of the lawsuit must be
12 forwarded to the Washington State Department of Labor & Industries, which would then serve
13 Wesco.

14 12. Respondent did not show this letter to the Bradleys or inform them of the need to
15 file a lawsuit to make a claim against Marclay's bond.

16 13. Between October 2017 and January 2018, Mr. Bradley sent Respondent multiple
17 requests for information about the status of the matter. Mr. Bradley asked, for example, if there
18 was "any word from the bond," "any news from the bond company," "any news," "anything
19 back from the bond company," and "any news."

20 14. Respondent replied that he was "jammed up," "out of the office," "playing catch
21 up," "out of the area," "in court," and "in witness interviews," but he did not comply with the
22 Mr. Bradley's requests for information.

1 15. In late January 2018, Mr. Bradley obtained from Mr. Martinez a copy of the
2 October 27, 2017 letter and email that Mr. Martinez had sent to Respondent explaining how to
3 make a claim against Marclay's bond.

4 16. On January 25, 2018, Mr. Bradley forwarded a copy of Mr. Martinez's October 27,
5 2017 letter and email to Respondent. Mr. Bradley told Respondent that they needed to file a
6 lawsuit promptly.

7 17. On January 29, 2018, Ms. Bradley sent Respondent a request for information about
8 the status of the matter.

9 18. Respondent did not reply, so Ms. Bradley sent a follow-up request on February 2,
10 2018.

11 19. Respondent still did not reply, so Mr. Bradley sent him a message on February 13,
12 2018 asking: "Have you filed the paperwork? If not and you are too busy maybe I should go
13 with another attorney?"

14 20. Respondent replied that he was "not too busy" and that he would have "an
15 effective summary and update" by February 16.

16 21. Respondent did not provide a summary and update.

17 22. On February 16, 2018, Mr. Bradley sent Respondent a message asking when
18 would be a good time to call. In reply, Respondent wrote that he would "call as soon as [he
19 was] free."

20 23. Respondent did not call.

21 24. Mr. Bradley sent Respondent another message on February 28, 2018 asking for
22 information about the status of the matter.

1 25. Respondent did not reply.

2 26. Mr. Bradley sent Respondent another message on March 8, 2018 asking for an
3 update.

4 27. Respondent did not reply.

5 28. Mr. Bradley sent Respondent another message on March 9, 2018 asking, "Can you
6 recommend someone else who has the time to put into our case? We need to settle this."

7 29. Respondent did not reply.

8 30. Soon thereafter, Mr. Bradley discovered, on his own, that other claims had already
9 been filed against Marclay's bond. Those claims had priority over the Bradleys' claim because
10 the Bradleys' claim had not yet been filed.

11 31. The Bradleys hired a different lawyer who promptly filed suit on the Bradleys'
12 behalf against Marclay, its principals, and Wesco.

13 32. On April 27, 2018, Ms. Bradley sent Respondent a request for a refund. She
14 explained that they had hired a different lawyer due to Respondent's failure to communicate and
15 his "lack of follow through," and that Respondent's failure to act had resulted in numerous other
16 claims having priority over theirs.

17 33. On the same date, Mr. Bradley filed a grievance against Respondent.

18 34. On May 2, 2018, ODC sent Respondent a request for a written response to Mr.
19 Bradley's grievance within 30 days.

20 35. Respondent did not respond.

21 36. On June 20, 2018, ODC sent Respondent a notice under ELC 5.3(h) that he must
22 file a written response to the grievance within 10 days. The notice informed Respondent that if
23

1 he failed to file a response within 10 days, he would be subpoenaed for a noncooperation
2 deposition and would be subject to discipline.

3 37. Respondent did not respond.

4 38. On July 17, 2018, Disciplinary Counsel issued a subpoena duces tecum to
5 Respondent under ELC 5.3(h) due to his failure to provide a response to the grievance. The
6 subpoena commanded Respondent to appear for a deposition on August 7, 2018 and to produce
7 his client file.

8 39. The subpoena was served at Respondent's office on July 23, 2018.

9 40. On that date, Respondent had been out of the office on vacation since July 19,
10 2018.

11 41. On August 3, 2018, Respondent informed Disciplinary Counsel that he was out of
12 the office on vacation and that he would not return until August 8, 2018. Respondent asked for
13 an extension until August 13, 2018 for his written response to the grievance.

14 42. Disciplinary Counsel granted Respondent's request for an extension and informed
15 Respondent that his deposition would be continued to August 21, 2018. Disciplinary Counsel
16 also sent Respondent additional copies of the grievance, the subpoena duces tecum, and the
17 correspondence dated May 2 and June 20, 2018 referenced above.

18 43. On August 20, 2018, the day before the scheduled noncooperation deposition,
19 Respondent asked Disciplinary Counsel for a postponement.

20 44. Disciplinary Counsel agreed to continue the deposition to September 6, 2018.

21 45. Respondent stated that he would provide a written response to the grievance, along
22 with the documents described in the subpoena duces tecum, by August 27, 2018.

1 46. On August 24, 2018, the deposition was continued to September 27, 2018 to allow
2 time for Mr. Bradley to reply to the written response that Respondent was to provide by August
3 27, 2018.

4 47. Respondent did not provide a written response to the grievance.

5 48. Respondent appeared for his noncooperation deposition on September 27, 2018
6 and produced documents responsive to the subpoena.

7 III. STIPULATION TO MISCONDUCT

8 49. By failing to act with reasonable diligence and promptness in representing a client,
9 Respondent violated RPC 1.3.

10 50. By failing to keep a client reasonably informed about the status of a matter, and by
11 failing to promptly comply with reasonable requests for information, Respondent violated RPC
12 1.4.

13 51. By failing to promptly provide a written response to the grievance, Respondent
14 violated RPC 8.4(l) (by violating ELC 5.3(f), 5.3(g), and/or 5.5(d).

15 IV. PRIOR DISCIPLINE

16 52. Respondent has no prior discipline.

17 V. APPLICATION OF ABA STANDARDS

18 53. The following American Bar Association Standards for Imposing Lawyer Sanctions
19 (1991 ed. & Feb. 1992 Supp.) apply to this case: ABA Standards stds. 4.4 and 7.0. The
20 applicable ABA Standards are set forth in Appendix A.

21 54. In failing to act with reasonable diligence and promptness in representing a client,
22 Respondent acted negligently and caused injury or potential injury to a client. The presumptive
23

1 sanction is reprimand under ABA Standards std. 4.43.

2 55. In failing to keep a client reasonably informed about the status of a matter, and in
3 failing to promptly comply with reasonable requests for information, Respondent acted
4 negligently and caused injury or potential injury to a client. The presumptive sanction is
5 reprimand under ABA Standards std. 4.43.

6 56. In failing to promptly provide a written response to the grievance, Respondent acted
7 negligently and caused injury or potential injury to a client and the legal system. The
8 presumptive sanction is reprimand under ABA Standards std. 7.3.

9 57. The following aggravating factors apply under ABA Standards std. 9.22:

- 10 (d) multiple offenses;
11 (i) substantial experience in the practice of law (admitted 1996).

12 58. The following mitigating factors apply under ABA Standards std. 9.32:

- 13 (a) absence of a prior disciplinary record;
14 (b) absence of a dishonest or selfish motive.

15 59. The aggravating and mitigating factors do not require a departure from the
16 presumptive sanction.

17 VI. STIPULATED DISCIPLINE

18 60. The parties stipulate that Respondent shall receive a reprimand for his misconduct.

19 VII. STIPULATION TO PROBATION

20 61. Respondent shall be subject to probation for a period of 24 months beginning on the
21 date this Stipulation receives final approval.

22 62. The conditions of probation are set forth below. Respondent's compliance with
23 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary

1 Counsel (“Probation Administrator”). Failure to comply with a condition of probation listed
2 herein may be grounds for further disciplinary action under ELC 13.8(b).

3 63. During the period of probation, Respondent’s practice will be supervised by a
4 practice monitor. The practice monitor must be a WSBA member with no record of public
5 discipline and who is not the subject of a pending public disciplinary proceeding. The role of
6 the practice monitor is to consult with and provide guidance to Respondent regarding case
7 management, office management, and avoiding violations of the Rules of Professional Conduct,
8 and to provide reports and information to the Probation Administrator regarding Respondent’s
9 compliance with the terms of probation and the RPC. The practice monitor does not represent
10 the Respondent.

11 64. At the beginning of the probation period, the Probation Administrator will select a
12 lawyer to serve as practice monitor for the period of Respondent’s probation. The selection is
13 subject to challenge as follows:

- 14 a) Initial Challenge: If, within 15 days of the written notice of the selection of a
15 practice monitor, Respondent sends a written request to the Probation
16 Administrator that another practice monitor be selected, the Probation
17 Administrator will select another practice monitor. Respondent need not identify
18 any basis for this initial request.
- 19 b) Subsequent Challenges: If, after selection of a second (or subsequent) practice
20 monitor, Respondent believes there is good cause why that individual should not
21 serve as practice monitor, Respondent may, within 15 days of notice of the
22 selected practice monitor, send a written request to the Probation Administrator
23 asking that another practice monitor be selected. That request must articulate good
24 cause to support the request. If the Probation Administrator agrees, another
practice monitor will be selected. If the Probation Administrator disagrees, the
Office of Disciplinary Counsel will submit its proposed selection for practice
monitor to the Chair of the Disciplinary Board for appointment pursuant to ELC
13.8(a)(2), and will also provide the Chair with the Respondent’s written request
that another practice monitor be selected. The Chair will decide whether another
practice monitor must be selected. The Chair’s decision is final.

1 65. In the event the practice monitor is no longer able to perform his or her duties, the
2 Probation Administrator will select a new practice monitor at his or her discretion.

3 66. During the period of probation, Respondent must cooperate with the named practice
4 monitor. Respondent must meet with the practice monitor at least once per month. Respondent
5 must communicate with the practice monitor to schedule all required meetings.

6 67. Respondent must bring to each meeting a current, complete written list of all
7 pending client legal matters being handled by the Respondent. The list must identify the current
8 status of each client matter and any problematic issues regarding each client matter. The list
9 may identify clients by using the client's initials rather than the client's name.

10 68. At each meeting, the practice monitor will discuss with Respondent practice issues
11 that have arisen or are anticipated. In light of the conduct giving rise to the imposition of
12 probation, ODC recommends that the practice monitor and Respondent discuss whether
13 Respondent is diligently making progress on each client matter, whether Respondent is in
14 communication with each client, whether Respondent has promptly billed each client, whether
15 Respondent's fee agreements are consistent with the RPC and are understandable to the client,
16 and whether Respondent needs to consider withdrawing from any client matters. Meetings may
17 be in person or by telephone at the practice monitor's discretion. The practice monitor uses
18 discretion in determining the length of each meeting.

19 69. The practice monitor will provide the Probation Administrator with quarterly written
20 reports regarding Respondent's compliance with probation terms and the RPC. Each report
21 must include the date of each meeting with Respondent, a brief synopsis of the discussion
22 topics, and a brief description of any concerns the practice monitor has regarding the
23

1 Respondent's compliance with the RPC. The report must be signed by the practice monitor.
2 Each report is due within 30 days of the completion of the quarter.

3 70. If the practice monitor believes that Respondent is not complying with any of his
4 ethical duties under the RPC, or if Respondent fails to schedule or attend a monthly meeting, the
5 practice monitor will promptly communicate that to the Probation Administrator.

6 71. Respondent must make payments totaling \$1,000 to the Washington State Bar
7 Association to defray the costs and expenses of administering the probation, as follows:

- 8 a) \$250 due within 30 days of the start of the probation;
- 9 b) \$250 due within 6 months of the start of the probation period;
- 10 c) \$250 due within 12 months of the start of the probation period; and
- 11 d) \$250 due within 18 months of the start of the probation period.

12 All payments should be provided to the Probation Administrator for processing.

13 **VIII. RESTITUTION**

14 72. Respondent shall pay restitution to Shayne and Jill Bradley in the amount of \$500.
15 Restitution shall be paid within 30 days of approval of this stipulation.

16 **IX. COSTS AND EXPENSES**

17 73. Respondent shall pay attorney fees and administrative costs of \$1,000 in accordance
18 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
19 costs are not paid within 30 days of approval of this stipulation.

20 **X. VOLUNTARY AGREEMENT**

21 74. Respondent states that prior to entering into this Stipulation he had an opportunity to
22 consult independent legal counsel, that he is entering into this Stipulation voluntarily, and that
23

1 no promises or threats have been made by ODC, the Association, or any representative thereof
2 to induce the Respondent to enter into this Stipulation except as provided herein.

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

5 XI. LIMITATIONS

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

11 77. This Stipulation is not binding on ODC or Respondent as a statement of all existing
12 facts relating to Respondent's professional conduct, and any additional existing facts may be
13 proven in any subsequent disciplinary proceedings.

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

21 79. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
22 his or her review become public information on approval of the Stipulation by the Hearing
23

1 Officer, unless disclosure is restricted by order or rule of law.


2 80. If this Stipulation is approved by the Hearing Officer, it will be followed by the
3 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
4 Enforcement of Lawyer Conduct will be made.

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

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

11 
12 Alan Edward Harvey, Bar No. 15785
13 Respondent

Dated: 9/13/2019

14 
15 Scott G. Busby, Bar No. 17522
16 Senior Disciplinary Counsel

Dated: 9/13/19