

FILED

Apr 21 2020

Disciplinary
Board

Docket # 004

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

ALEX S. CHUN,

Lawyer (Bar No. 26910).

Proceeding No. 19#00074

ODC File No. 17-00020

STIPULATION TO SIX-MONTH
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel M Craig Bray, Respondent's Counsel Kenneth Scott Kagan, and Respondent lawyer Alex Chun.

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

1 outcome more favorable or less favorable to him. Respondent chooses to resolve this
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
3 avoid the risk, time, and expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on June 23,
6 1997.

7 **II. STIPULATED FACTS**

8 2. Respondent owned a law firm called Paradigm Legal. At the time he had a Chase
9 Bank trust account ending in 6308.

10 3. In November 2016, Respondent merged his law firm into another law office.

11 4. When he formed the new firm, Respondent opened new bank accounts, including a
12 second trust account ending in 9790.

13 5. On or about November 11, 2016, Respondent drew checks on trust account 6308 to
14 disburse funds to a client in a personal injury matter, to himself for earned legal fees, and to the
15 client's medical service providers.

16 6. On behalf of the same client, Respondent also sent a personal injury protection (PIP)
17 subrogation reimbursement in the amount of \$19,752.99 to the Ameriprise Insurance Company
18 (Ameriprise) with check #1299.

19 7. At approximately the same time, Respondent transferred trust funds from account
20 6308 to account 9790.

21 8. Respondent failed to leave sufficient funds in account 6308 to cover outstanding
22 checks written on that account.

23 9. There were insufficient funds in account 6308 to cover check #1299 when it was
24

1 presented to the bank on December 13, 2016. The bank returned the check.

2 10. Check #1299 was presented again on December 16, 2016, and was again returned by
3 the bank.

4 11. On December 20 and 27, 2016, ODC received trust account overdraft notices from
5 Chase Bank regarding the overdraft on trust account 6308 caused by check #1299.

6 12. After Respondent was notified of the overdraft, he transferred \$20,000 from account
7 9790 back to account 6308 and re-issued payment to Ameriprise using check #1321.

8 13. On January 5, 2017, ODC requested an explanation for the overdraft of check #1299
9 and asked Respondent to provide certain trust account and bank records for November and
10 December 2016.

11 14. Respondent complied.

12 15. The response and records showed that Respondent had not been keeping proper
13 trust-account records or reconciling his account as required by both RPC 1.15A and 1.15B.

14 16. On July 10, 2017, ODC asked Respondent to provide additional trust account and
15 bank records dating back to the opening of account 6308 in May 2015, as well as copies of fee
16 agreements and settlement statements.

17 17. Respondent provided the requested records and also QuickBooks files, one identified
18 as the "Original" file, and one as the "Updated" file.

19 18. Review of the "Updated" QuickBooks file that Respondent provided, which was
20 prepared for him by a bookkeeper he hired after receiving the overdraft notifications, indicated
21 that many client ledgers still had positive balances.

22 19. Review of the "Updated" QuickBooks file also showed that there were several client
23 ledgers that had large negative balances and showed that funds had been disbursed from trust to

1 “clients” who never had funds on deposit in the trust account to begin with.

2 20. On March 6, 2018, ODC asked Respondent to provide additional records and answer
3 several specific questions about transactions in his trust accounts.

4 21. Respondent complied.

5 22. In his response, Respondent stated that he had discovered that his nonlawyer office
6 manager/bookkeeper had created fake clients in the trust account records and disbursed funds
7 from trust to those fake clients, despite the fact that no funds were on deposit for them and they
8 had no entitlement to the funds.

9 23. ODC’s audit manager conducted an examination of Respondent’s trust account and
10 bank records, which included creating client ledgers to which all identifiable trust account
11 transactions were posted.

12 24. The audit period was May 29, 2015 through February 9, 2017.

13 25. The examination was performed in an attempt to assess Respondent’s compliance
14 with RPC 1.15A (safeguarding property) and RPC 1.15B (required trust account records).

15 26. The examination showed that Respondent violated several provisions of RPC 1.15A
16 and RPC 1.15B and also RPC 5.3 (responsibilities regarding nonlawyer assistants).

17 27. The examination revealed that \$404,635.02 in funds belonging to Respondent,
18 comprised of earned fees or costs that Respondent had failed to timely remove from trust, were
19 converted from the trust account by the issuance of checks payable to fake clients for whom
20 there never had been any funds on deposit.

21 28. No client funds were converted from trust.

22 29. All converted funds belonged to Respondent.

23 30. It appears from the evidence presented that Respondent’s office manager converted
24

1 the funds belonging to Respondent from Respondent's trust account.

2 31. Adequate funds remained on deposit in Respondent's trust accounts to account for
3 funds belonging to or owed to clients and third parties at the end of the audit period.

4 32. Respondent had failed to promptly disburse \$168,349.43 from trust to clients and
5 third persons who were entitled to receive them.

6 33. Respondent failed to keep current, complete trust account records.

7 34. Respondent did not reconcile his trust account check register to the bank statements
8 or to client ledgers as often as he received bank statements, which was monthly.

9 35. In initial conversations with ODC's auditor, Respondent demonstrated a lack of
10 understanding of what trust account records were required by RPC 1.15B and what check
11 registers and client ledgers were.

12 36. Respondent initially failed to provide a check register. He later provided the
13 "Original" QuickBooks file, which contained the information that must be maintained in a
14 check register, stated that the file had been maintained by his office manager, and appeared to
15 have been previously unaware of this file's existence.

16 37. Respondent had direct supervisory authority over his office manager.

17 38. Respondent relinquished most of the control over his trust account to his office
18 manager and failed to make reasonable efforts to ensure that his office manager's conduct was
19 compatible with Respondent's professional obligations to: 1) keep current, complete trust
20 account records that met the requirements of RPC 1.15A and 1.15B; 2) remove funds belonging
21 to him from trust; 3) promptly and properly disburse trust funds to client and/or third persons
22 who were entitled to receive them; and 4) reconcile his trust account records on a monthly basis.

1 **III. STIPULATION TO MISCONDUCT**

2 39. By failing to maintain current, accurate trust account records, Respondent violated
3 RPC 1.15A(h)(2) and RPC 1.15B(a).

4 40. By failing to properly and timely reconcile his trust account records, Respondent
5 violated RPC 1.15A(h)(6).

6 41. By failing to promptly pay funds held in trust to those entitled to receive them,
7 Respondent violated RPC 1.15A(f).

8 42. By retaining funds belonging to him in trust for an unreasonable amount of time,
9 Respondent violated RPC 1.15A(h)(1).

10 43. By failing to make reasonable efforts to ensure that his nonlawyer office manager
11 properly accounted for and disbursed trust funds to those entitled to receive them, including to
12 Respondent himself, and that his office manager did not improperly convert funds from trust,
13 Respondent violated RPC 5.3(b).

14 **IV. PRIOR DISCIPLINE**

15 44. Respondent does not have any prior discipline in Washington.

16 **V. APPLICATION OF ABA STANDARDS**

17 45. The following American Bar Association Standards for Imposing Lawyer Sanctions
18 (1991 ed. & Feb. 1992 Supp.) apply to this case: ABA Standard 4.12 (failure to preserve client
19 property and ABA Standard 7.0 (violations of duties owed as a professional). The applicable
20 ABA Standards are attached as an appendix.

21 46. Respondent should have known that he was not properly managing client trust funds.

22 47. Respondent knowingly failed to supervise his nonlawyer employee.

23 48. Clients and third parties were injured because they were not timely paid funds to
24

1 which they were entitled.

2 49. Clients and third parties were at risk of losing their funds.

3 50. Respondent himself was injured because funds belonging to him were converted
4 from his trust account.

5 51. The presumptive sanction for violations of the trust account rules is suspension
6 under ABA Standard 4.12.

7 52. The presumptive sanction for the violation of RPC 5.3 is suspension under ABA
8 Standard 7.2.

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

- 10 (c) pattern of misconduct;
11 (d) multiple offenses; and
12 (i) substantial experience in the practice of law (Respondent was admitted to the
13 practice law in Washington on June 23, 1997).

14 54. The following mitigating factors apply under ABA Standard 9.32:

- 15 (a) absence of a prior disciplinary record;
16 (b) absence of a dishonest or selfish motive; and
17 (l) remorse.

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

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

22 **VI. STIPULATED DISCIPLINE**

23 57. The parties stipulate that Respondent shall receive a six-month suspension for his
24 conduct.

58. As a condition of reinstatement from suspension, Respondent must complete the
following steps to disburse any funds in his trust account that are owed to clients or third parties

1 and to receive additional education on how to handle client funds in compliance with RPC
2 1.15A and RPC 1.15B:

- 3 a) For each of the clients listed in ODC's Auditor's September 26, 2019 audit report, a
4 copy of which was provided to Respondent on September 26, 2019, Respondent
5 must provide ODC with documentary evidence demonstrating either that (1) the
6 client or third party is not entitled to a return of any of the amount listed, or (2) that
7 Respondent has provided the client or third party with an accounting of funds and
8 has paid to the client or third party any unearned amounts and any amounts to which
9 Respondent cannot establish entitlement.
- 10 b) For the time frame of February 9, 2017 up through the date that Respondent seeks
11 reinstatement, Respondent must provide to ODC, for each trust account in which
12 there was any activity during any portion of that time frame, copies of the
13 following:
- 14 • any and all bank statements,
 - 15 • copies of any and all deposited items,
 - 16 • copies of any and all records of disbursements,
 - 17 • an accurate check register identifying every transaction,
 - 18 • accurate client ledgers identifying every transaction attributable to a
19 client,
 - 20 • monthly reconciliations between the check register and the bank
21 statement,
 - 22 • monthly reconciliations between the check register and the client
23 ledgers, and
 - 24 • if the Respondent maintains trust-account records in QuickBooks,
provide an electronic copy of the file with the trust-account records.
- 25 c) Respondent must carefully review the WSBA publication Managing Client Trust
26 Accounts: Rules, Regulations, and Common Sense, and provide disciplinary
27 counsel with a signed certification that he has done so.
- 28 d) Respondent must complete the WSBA continuing legal education course entitled,
29 "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on
30 managing trust accounts in Washington State, and provide disciplinary counsel with
31 documentation showing that he has done so.
- 32 e) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide
33 the required documentation to disciplinary counsel at least 30 days prior to seeking
34 reinstatement.

59. Respondent will be subject to probation for a period of two years commencing upon
reinstatement from suspension, with periodic reviews under ELC 13.8 of his trust account

1 practices, and must comply with the specific probation terms set forth below:

- 2 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
3 1.15B.
- 4 b) For all client matters, Respondent shall have a written fee agreement signed by the
5 client, which agreements are to be maintained for least seven years (see RPC
6 1.15B(a)(3)).
- 7 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
8 Review Report," Respondent shall review the trust-account records detailed on the
9 form report, review the completed report, and sign and date the report.
- 10 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
11 account records for the time period to be reviewed by ODC's audit staff and
12 disciplinary counsel for compliance with the RPC:
- 13 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
14 commencement of probation, Respondent shall provide the trust account
15 records from the date of commencement of probation to the end of the third
16 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
20 month six.
- 21 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
22 commencement of probation, Respondent shall provide the trust account
23 records from the end of the previously provided quarter through the end of
24 month nine.
- 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
account 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.

1 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
2 after the commencement of probation, Respondent shall provide the trust
3 account records from the end of the previously provided quarter through
4 the end of month twenty-one.

5 The trust account records Respondent provides to ODC for each quarterly review of
6 his trust account will include: 1) copies of each completed “Monthly Reconciliation
7 and Review Report” referenced in sub-paragraph (h) above, 2) a checkbook register
8 for his trust account covering the period being reviewed, 3) individual client ledger
9 records for any client with funds in Respondent’s trust account during all or part of
10 the period being reviewed, as well as for Respondent’s own funds in the account (if
11 any), and 4) copies of all trust-account bank statements, deposit slips, and cancelled
12 checks covering the period being reviewed. ODC’s Audit Manager or designee will
13 review Respondent’s trust account records for each period.

14 e) On the same quarterly time schedule set forth in the preceding paragraph,
15 Respondent will provide ODC’s Audit Manager or designee with copies of any and
16 all fee agreements entered into within the time period at issue.

17 f) ODC’s Audit Manager or designee may request additional financial or client
18 records if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B.
19 Within twenty days of a request from ODC’s Audit Manager or designee for
20 additional records needed to verify Respondent’s compliance with RPC 1.15A
21 and/or RPC 1.15B, Respondent will provide ODC’s Audit Manager or designee the
22 additional records requested.

23 g) Respondent will reimburse the Association for time spent by ODC’s Audit Manager
24 or designee in reviewing and reporting on Respondent’s records to determine his
 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.

 h) Respondent agrees to attend Ethics School by webinar (approximately 7.5 hours), or
 by obtaining the recorded product from the WSBA CLE Store, and to pay
 registration costs of \$150 plus applicable sales tax. Respondent will receive all
 applicable approved CLE credits for time in attendance at the Ethics School.
 Attendance at Ethics School is in addition to and shall not fulfill any continuing
 legal education (CLE) requirements set out in other terms of this Stipulation.

 i) Respondent shall contact the Ethics School administrator, currently Thea Jennings,
 Disciplinary Program Administrator for the Office of Disciplinary Counsel, at (206)
 733-5985 or theaj@wsba.org, within 60 days of reinstatement from suspension to
 confirm enrollment in Ethics School and related logistics.

VII. RESTITUTION

60. As no client funds were converted from trust, restitution is not owing except to the

1 extent that Respondent is responsible for promptly paying funds held in trust to those who are
2 entitled to receive them as specified above in paragraph 58(a).

3 **VIII. COSTS AND EXPENSES**

4 61. In light of Respondent's willingness to resolve this matter by stipulation at an early
5 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
6 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
7 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
8 from suspension is conditioned on payment of costs.

9 **IX. VOLUNTARY AGREEMENT**

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

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

17 **X. LIMITATIONS**

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

23 65. This Stipulation is not binding upon ODC or the respondent as a statement of all
24

1 existing facts relating to the professional conduct of the respondent lawyer, and any additional
2 existing facts may be proven in any subsequent disciplinary proceedings.

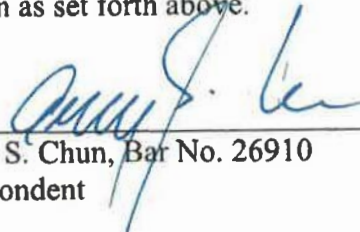
3 66. This Stipulation results from the consideration of various factors by both parties,
4 including the benefits to both by promptly resolving this matter without the time and expense of
5 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
6 such, approval of this Stipulation will not constitute precedent in determining the appropriate
7 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
8 subsequent proceedings against Respondent to the same extent as any other approved
9 Stipulation.

10 67. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
11 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record before
12 the Board for its review become public information on approval of the Stipulation by the Board,
13 unless disclosure is restricted by order or rule of law. Stipulations to disbarment and suspension
14 should include Supreme Court approval.

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

18 69. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
19 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
20 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
21 proceeding, or in any civil or criminal action.


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

3 
4 Alex S. Chun, Bar No. 26910
5 Respondent

Dated: 3/25/2020

6 
7 Kenneth Scott Kagan, Bar No. 12983
8 Counsel for Respondent

Dated: 3/25/2020

9 
10 M Craig Bray, Bar No. 20821
11 Disciplinary Counsel

Dated: 3/25/2020

1 **Applicable ABA Standards**

2 ***4.1 Failure to Preserve the Client's Property***

- 3 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
property and causes injury or potential injury to a client.
- 4 4.12 Suspension is generally appropriate when a lawyer knows or should know that he
5 is dealing improperly with client property and causes injury or potential injury to
6 a client.
- 7 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.
- 8 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
9 client property and causes little or no actual or potential injury to a client.

10 ***7.0 Violations of Duties Owed as a Professional***

- 11 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional with the intent to
12 obtain a benefit for the lawyer or another, and causes serious or potentially
serious injury to a client, the public, or the legal system.
- 13 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
14 conduct that is a violation of a duty owed as a professional and causes injury or
15 potential injury to a client, the public, or the legal system.
- 16 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 injury or
17 potential injury to a client, the public, or the legal system.
- 18 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
19 instance of negligence that is a violation of a duty owed as a professional, and
causes little or no actual or potential injury to a client, the public, or the legal
20 system.