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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ROBERT A. CLOUGH,
Lawyer (Bar No. 27447).

Proceeding No. 15#00002

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), 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 Kathy Jo Blake and Respondent lawyer Robert A. Clough.

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

b15

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on November
5 21, 1997.

6 **II. STIPULATED FACTS**

7 2. Between July 2011 and spring 2013, Respondent and his sister, lawyer Sarah
8 Blossom, worked together at Bainbridge Legal Solutions (BLS). During this period, Ms.
9 Blossom handled the majority of the trust account duties. Since spring 2013, Respondent has
10 practiced law on his own.

11 Facts Regarding L&I Representation

12 3. In June 2011, Gerard Fitzpatrick was injured on the job. Mr. Fitzpatrick filed a claim
13 with Labor and Industries (L&I), which was denied. Mr. Fitzpatrick hired Respondent to try to
14 reopen the claim.

15 4. Respondent and Mr. Fitzpatrick agreed to a contingent fee whereby Respondent
16 would earn 30% of any funds he recovered for Mr. Fitzpatrick from the L&I claim, but
17 Respondent has no evidence that the fee agreement was reduced to writing.. Mr. Fitzpatrick
18 also agreed to pay \$1,000 to a doctor/witness for his time spent being deposed. The parties did
19 not reach a clear agreement regarding what other costs would be Mr. Fitzpatrick's
20 responsibility.

21 5. Respondent obtained compensation from L&I for Mr. Fitzpatrick.

22 6. On or about January 17, 2013, Respondent received a \$2,194.85 payment from L&I
23 for Mr. Fitzpatrick. Respondent did not notify Mr. Fitzpatrick of his receipt of the funds.

1 Respondent deposited the funds into BLS's trust account.

2 7. On January 18, 2013, Respondent disbursed the funds as follows: \$600 to
3 Respondent's personal account, \$1,194.85 to BLS's operating account, and \$400 to cash.

4 8. According to records provided by Respondent, between October 21, 2011 and
5 September 10, 2012, costs advanced on behalf of Mr. Fitzpatrick amounted to \$2,144.51.

6 9. Respondent did not promptly provide a written accounting to Mr. Fitzpatrick after
7 distribution of the funds.

8 10. Respondent did not disburse to Mr. Fitzpatrick any funds from the \$2,194.85
9 payment. Ms. Blossom, however, disbursed a total of \$1,153.58 to Mr. Fitzpatrick on or about
10 January 29, 2013 after Mr. Fitzpatrick independently learned of the \$2,194.85 payment.

11 11. On February 8, 2013, Respondent received a check for \$33,174.03 from L&I for Mr.
12 Fitzpatrick. Respondent did not notify Mr. Fitzpatrick of his receipt of the funds.

13 12. On February 8, 2013, Respondent deposited the check into the firm's trust account.
14 Respondent then transferred \$12,020.03 to his personal account, wrote a check from the trust
15 account to himself for \$1,400 (which he deposited to his personal account less \$300 in cash),
16 and wrote a check from the trust account to BLS's operating account for \$500.

17 13. Respondent did not promptly provide a written accounting to Mr. Fitzpatrick after
18 distribution of the funds.

19 14. Respondent withdrew a total of \$13,920.03.

20 15. Respondent never provided any billing statements to Mr. Fitzpatrick.

21 16. In March 2013, Mr. Fitzpatrick terminated the representation.

22 17. Respondent never provided Mr. Fitzpatrick with a written statement stating the
23 outcome of the matter and showing the remittance to the client and the method of its

1 determination.

2 18. Respondent acted knowingly in failing to have a written contingent fee agreement
3 signed by Mr. Fitzpatrick that stated the method by which the fee was to be determined, and
4 knowingly in collecting more fees from Mr. Fitzpatrick than provided for in the agreement with
5 him.

6 Facts Regarding Queen Anne Water Works Representation

7 19. In a matter unrelated to the L&I representation, in late January or early February
8 2013, Respondent agreed to represent Mr. Fitzpatrick and his wife in an action filed against
9 them by their neighbors. Hrudkaj, et al v. Queen Anne Waterworks, et al, Mason County
10 Superior Court Cause Number 13-2-00049-4 (Queen Anne Waterworks Matter).

11 20. Respondent and the Fitzpatricks did not enter into a written fee agreement and the
12 parties disagree as to the terms of the oral agreement. Respondent claims that the fee for the
13 Queen Anne Waterworks matter was to be a flat fee of \$3,000.00 to be deducted from the funds
14 received on Mr. Fitzpatrick's behalf in the L&I matter. The Fitzpatricks claim that Respondent
15 was not going to charge them for defending the Queen Anne Waterworks matter as a favor to
16 them.

17 21. Respondent entered an appearance and negotiated an agreed order with respect to
18 one of the issues in the matter on February 7, 2013.

19 22. Although Respondent never provided any billing statements to the Fitzpatricks,
20 according to a statement prepared by Respondent, \$2,688.30 of the \$13,920.03 Respondent had
21 withdrawn on February 8, 2013, was designated as Bainbridge Legal Solutions – Fees (Retainer
22 RE: Queen Anne H2O).

23 23. According to time records prepared by Respondent, Respondent spent 6.3 hours and

1 traveled 80 miles on the Water Works representation up to the time he withdrew the \$2,688.39
2 designated as fees for that representation on February 8, 2013. Respondent billed \$125 per
3 hour and reimbursed himself mileage at a rate of 56.5 cents a mile. Respondent's fees and
4 costs on the Water Works representation through February 8, 2013 amounted to only \$832.70.

5 24. Respondent never provided any billing statements to the Fitzpatricks.

6 25. On March 15, 2013, Ms. Blossom took over the defense of the Water Works Claim.

7 Trust Account Records

8 26. On April 17, 2013, the Fitzpatricks filed a grievance against Respondent in which
9 they alleged that Respondent took more money from the L&I checks than he was entitled to.

10 27. On July 12, 2013, the Fitzpatricks filed an action against Respondent in which they
11 alleged Respondent overcharged for his work on the L&I matter.

12 28. On March 12, 2014, the court entered a judgment against Respondent in the amount
13 of \$3,373.07.

14 29. Respondent will fully satisfy the \$3,373.07 judgment and will provide evidence
15 therof to Disciplinary Counsel on or before December 28, 2015 as a precondition of this
16 stipulation..

17 30. Respondent did not replace and/or maintain the disputed funds in trust, or take action
18 to resolve the dispute, until after the judgement was entered against him.

19 31. Respondent acted knowingly in not returning to trust the funds that Mr. Fitzpatrick
20 claimed were his and of which Mr. Fitzpatrick disputed Respondent's removal.

21 32. The Office of Disciplinary Counsel (ODC) served a subpoena duces tecum on
22 Respondent. The subpoena duces tecum required, among other things, the production of
23 Respondent's complete trust account records between July 1, 2012 and June 30, 2013, including

1 client ledgers, check registers and account reconciliations.

2 33. Respondent appeared for the deposition as required by the subpoena duces tecum,
3 but did not bring any client ledgers, check registers or account reconciliations to the deposition.

4 34. For a period of at least spring 2013 through August 27, 2013, Respondent did not
5 maintain a check register or client ledgers for his trust account. Because Respondent did not
6 maintain a check register or client ledgers, he was unable to perform bank or client ledger
7 reconciliations for his trust account.

8 35. While he and Ms. Blossom worked together, Respondent failed to provide Ms.
9 Blossom with client ledgers so that she could reconcile the firm's trust account.

10 III. STIPULATION TO MISCONDUCT

11 36. By not having a contingent fee agreement on the L&I claim that was in writing,
12 stating the method by which the fee was to be determined, and by failing to provide a written
13 statement stating the outcome of the matter, and by collecting more fees from Mr. Fitzpatrick
14 than provided for in the agreements with him, Respondent violated RPC 1.5(c)(1), RPC
15 1.5(c)(2), and RPC 1.5(a).

16 37. By taking Mr. Fitzpatrick's funds, without entitlement to do so, Respondent
17 violated RPC 1.15A(b).

18 38. By withdrawing funds from trust before the fee was earned and prior to giving Mr.
19 Fitzpatrick notice of his intent to do so, and by failing to promptly provide a written accounting
20 to Mr. Fitzpatrick after distribution of his funds, Respondent violated RPC 1.15A(c)(2), RPC
21 1.15A(h)(3), and RPC 1.15A(e).

22 39. By failing to maintain a checkbook register, client ledgers, and/or trust account bank
23 and client ledger reconciliations Respondent violated RPC 1.15A(h)(2) and/or RPC 1.15B(a).

1 40. By taking funds from trust that Mr. Fitzpatrick claimed were his and/or not returning
2 the funds to trust after learning that Mr. Fitzpatrick disputed their removal, Respondent violated
3 RPC 1.15A(g).

4 IV. PRIOR DISCIPLINE

5 41. Respondent has no prior discipline.

6 V. APPLICATION OF ABA STANDARDS

7 42. 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
11 factors set out in 3.0, the following sanctions are generally appropriate in
12 cases involving the failure to preserve client property:

13 4.11 Disbarment is generally appropriate when a lawyer knowingly
14 converts client property and causes injury or potential injury to a
15 client.

16 4.12 **Suspension is generally appropriate when a lawyer knows or
17 should know that he is dealing improperly with client
18 property and causes injury or potential injury to a client.**

19 4.13 Reprimand is generally appropriate when a lawyer is negligent in
20 dealing with client property and causes injury or potential injury
21 to a client.

22 4.14 Admonition is generally appropriate when a lawyer is negligent in
23 dealing with client property and causes little or no actual or
24 potential injury to a client.

43. Respondent acted knowingly in failing to have a written contingent fee agreement
signed by Mr. Fitzpatrick that stated the method by which the fee was to be determined, by
failing to provide Mr. Fitzpatrick with a written statement stating the outcome of the L & I
matter, and by collecting more fees from Mr. Fitzpatrick than provided for in the agreement

1 with him. Under ABA Standards “knowledge is the conscious awareness of the nature or
2 attendant circumstances of the conduct but without the conscious objective or purpose to
3 accomplish a particular result.” Mr. Fitzpatrick was injured in that he was 1) denied information
4 about the terms of the fee agreement and how his funds would be disbursed before they were
5 removed from the trust account, and 2) deprived of funds to which he was entitled.

6 44. The presumptive sanction for Respondent’s violation of RPC 1.5(c) and RPC 1.5(a)
7 is suspension under ABA Standard std. 4.12.

8 45. Respondent should have known he was not entitled to all of the funds he took from
9 Mr. Fitzpatrick.

10 46. The presumptive sanction is suspension for Respondent’s violation of RPC 1.15A(b)
11 under ABA Standards std. 4.12.

12 47. Respondent acted knowingly in failing to properly handle the funds in his trust
13 account and by failing to keep the required records. Mr. Fitzpatrick was injured in that he was
14 deprived of funds to which he was entitled.

15 48. The presumptive sanction is suspension for Respondent’s violation of RPC
16 1.15A(h)(2) and/or RPC 1.15B(a), RPC 1.15A(c)(2) and RPC 1.15A(h)(3) under ABA
17 Standards std. 4.12.

18 49. Respondent acted knowingly in not returning to trust the funds that Mr. Fitzpatrick
19 claimed were his and of which Mr. Fitzpatrick disputed Respondent’s removal. Mr. Fitzpatrick
20 was injured in that he was deprived funds to which he was entitled.

21 50. The presumptive sanction is suspension for Respondent’s violations of RPC
22 1.15A(g) under ABA Standards std. 4.12.

23 51. The following aggravating factors apply under ABA Standard 9.22:

1 (i) substantial experience in the practice of law.

2 52. The following mitigating factors apply under ABA Standard 9.32:

3 (a) absence of prior disciplinary record;

4 (c) personal or emotional problems (Respondent's conduct was affected by
5 substance abuse during the representation of Mr. Fitzpatrick).

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

8 54. On balance the aggravating and mitigating factors do not require a departure from
9 the presumptive sanction of suspension, but do warrant a suspension of 30 months.

10 VI. STIPULATED DISCIPLINE

11 55. The parties stipulate that Respondent shall receive a 30 months suspension for his
12 misconduct.

13 a) Respondent's reinstatement is conditioned on a showing of fitness to practice
14 law. Any disputes related to reinstatement will be resolved under the procedures of ELC
15 13.3(b)(2).

16 a) b) Respondent shall, at least 90 days prior to a request for reinstatement, undergo a
17 chemical dependency evaluation. Respondent shall complete any recommended
18 treatment. Respondent shall execute all the necessary releases to allow disciplinary
19 counsel full access to the health and treatment records and reports as it relates to the
20 chemical dependence evaluation and treatment.

21 56. Respondent will be subject to probation for a period of two years beginning when
22 Respondent is reinstated to the practice of law and shall comply with the specific probation
23 terms set forth below:

24 Stipulation to Discipline
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OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
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Seattle, WA 98101-2539
(206) 727-8207

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- a) Respondent shall attend Ethics School.
- b) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B, and shall carefully review the current version of the publication, Managing Client Trust Accounts: Rules, Regulations, and Common Sense.
- c) For all client matters, Respondent shall have a written fee agreement signed by the client, which agreements are to be maintained for at least seven years (see RPC 1.15B(a)(3)).
- d) On a half-yearly basis, Respondent shall provide ODC's audit staff with all trust account records for the time period to be reviewed by ODC's audit staff and disciplinary counsel for compliance with the RPC:
 - i. Months 1-6: By no later than the 30th day of the seventh month after the commencement of probation, Respondent shall provide the trust account records from the date of his reinstatement to the end of the sixth full month.
 - ii. Months 7-12: 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 time period through the end of month twelve.
 - iii. Months 13-18: 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 time period through the end of month eighteen.

1 iv. Months 19-24: By no later than the 30th day of the twenty-fifth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the end of the previously provided time period through the end of
4 month twenty-four.

5 v. The trust account records Respondent provides to ODC for each six-month
6 review of his trust account will include: (a) a complete checkbook register for
7 his trust account covering the period being reviewed, (b) complete individual
8 client ledger records for any client with funds in Respondent's trust account
9 during all or part of the period being reviewed, as well as for Respondent's own
10 funds in the account (if any), (c) copies of all trust-account bank statements,
11 deposit slips, and cancelled checks covering the period being reviewed, (d)
12 copies of all trust account client ledger reconciliations for the period being
13 reviewed, and (e) copies of reconciliations of Respondent's trust account check
14 register covering the period being reviewed. The ODC's Audit Manager or
15 designee will review Respondent's trust account records for each period.

16 vi. On the same time schedule set forth in the preceding paragraph, Respondent
17 will provide ODC's Audit Manager or designee with copies of any and all fee
18 agreements entered into within the time period at issue.

19 vii. On the same time schedule set forth in the preceding paragraph, Respondent
20 will provide ODC's Audit Manager or designee with copies of any and all
21 settlement statements for each matter settled within the time period at issue.

22 viii. The ODC's Audit Manager or designee may request additional financial or
23 client records if needed to verify Respondent's compliance with RPC 1.15A

1 and/or 1.15B. Within twenty days of a request from ODC's Audit Manager or
2 designee for additional records needed to verify compliance with RPC 1.15A
3 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee
4 the additional records requested.

5 ix. Respondent will reimburse the Association for time spent by ODC's Audit
6 Manager or designee in reviewing and reporting on Respondent's records to
7 determine his compliance with RPC 1.15A and RPC 1.15B, at a rate of \$85 per
8 hour. Respondent will make payment within thirty days of each written invoice
9 setting forth the auditor's time and payment due.

10 **VII. RESTITUTION**

11 57. Respondent has agreed to fully satisfy the judgment obtained by Mr. Fitzpatrick as a
12 condition precedent to this stipulation. No further restitution is appropriate.

13 **VIII. COSTS AND EXPENSES**

14 58. In light of Respondent's willingness to resolve this matter by stipulation at an early
15 stage of the proceedings, Respondent shall pay costs and expenses of \$533.24 in accordance
16 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
17 costs are not paid within 30 days of approval of this stipulation.

18 59. Reinstatement from suspension is conditioned on payment of costs and expenses.

19 **IX. VOLUNTARY AGREEMENT**

20 60. Respondent states that prior to entering into this Stipulation he had an opportunity to
21 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
22 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
23

1 Association, nor by any representative thereof, to induce the Respondent to enter into this
2 Stipulation except as provided herein.

3 61. 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 **X. LIMITATIONS**

6 62. 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 63. This Stipulation is not binding upon ODC or the respondent as a statement of all
12 existing facts relating to the professional conduct of the respondent lawyer, and any additional
13 existing facts may be proven in any subsequent disciplinary proceedings.

14 64. 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.

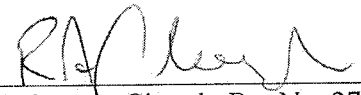
21 65. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
22 Board shall have available to it for consideration all documents that the parties agree to submit
23 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that

1 form the record before the Board for its review become public information on approval of the
2 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

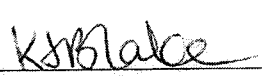
3 66. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
4 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
5 Rules for Enforcement of Lawyer Conduct will be made.

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

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

12 
13 _____
14 Robert A. Clough, Bar No. 27447
15 Respondent

Dated: 12/28/15

16 
17 _____
18 Kathy Jo Blake, Bar No. 29235
19 Disciplinary Counsel

Dated: 12/28/15