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DISCIPLINARY
BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

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In re

FRANK J. PROHASKA,

Lawyer (Bar No. 27589).

Proceeding No. 14#00067

STIPULATION TO REPRIMAND

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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 Managing Disciplinary Counsel
Joanne S. Abelson and Respondent lawyer Frank J. Prohaska.

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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

Stipulation to Reprimand
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DW

1 avoid the risk, time, expense, and publicity attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

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

5 **II. STIPULATED FACTS**

6 Facts regarding the representation of Ten Wen Yang

7 2. Beginning in approximately April 2010, Respondent represented Ten Wen Yang in
8 two unemployment benefits hearings following his termination from his former employer,
9 Uwajimaya, Inc.

10 3. Mr. Yang reads and speaks Mandarin and only a few simple things in English.

11 4. Based on the information Respondent learned from representing Mr. Yang at those
12 hearings, he believed that Mr. Yang had a prima facie case of age discrimination against
13 Uwajimaya.

14 5. On November 24, 2010, Mr. Yang signed a contingency fee agreement with
15 Respondent for prosecution of an employment discrimination lawsuit against Uwajimaya.

16 6. Respondent filed the complaint in King County Superior Court on August 1, 2011.
17 He based his allegations on the testimony of Mr. Yang and other employees who testified at the
18 unemployment hearings.

19 7. On May 4, 2012, Uwajimaya filed a motion for summary judgment, setting it for
20 hearing on June 1, 2012.

21 8. Respondent failed to timely file an opposition to the summary judgment motion.

22 9. On June 1, 2012, the day of the summary judgment hearing, Respondent filed a
23 response accompanied by a declaration from Mr. Yang (signed May 30, 2012) and himself.

1 10. In his own declaration, Respondent stated that he is a solo practitioner, had been in
2 trial in April 2012, had been preparing for another trial in May 2012, and had “inadvertently
3 miscalendared my response deadline to Defendant’s motion in this matter due to distractions
4 from these respective trials.”

5 11. The court considered the late response but granted the summary judgment motion
6 that day.

7 12. Respondent did not advise Mr. Yang in a manner that Mr. Yang could understand
8 that he had lost the summary judgment motion.

9 13. Mr. Yang first learned of the outcome of the summary judgment motion in
10 approximately October 2012, when he went to a different lawyer who printed out the order and
11 gave him a copy.

12 14. Meanwhile, Respondent began to prepare a motion to reconsider. He obtained two
13 declarations, one from a witness who signed in November 2012 and another from Mr. Yang
14 who signed on January 16, 2013.

15 15. On September 5, 2013, Respondent filed a motion to reconsider.

16 16. The court denied the motion as untimely.

17 17. Mr. Yang fired Respondent in approximately November 2013.

18 Facts regarding fees and billing

19 18. Over the course of Respondent’s representation of Mr. Yang, Mr. Yang paid him
20 \$2,500.

21 19. Except for the contingency fee agreement for the discrimination suit, Respondent
22 had no written fee agreements with Mr. Yang.

23 20. On April 19, 2010 and May 10, 2010, Mr. Yang gave Respondent checks for \$500

1 and \$300, respectively.

2 21. These payments were advance fees for Respondent to represent Mr. Yang in the
3 unemployment hearings.

4 22. Respondent did not put any of the \$800 into a trust account.

5 23. On May 19, 2011, six months after Mr. Yang signed the contingency fee agreement
6 for the discrimination case, Mr. Yang paid Respondent another \$500.

7 24. At least \$300 of this sum was for advanced costs for the discrimination case.

8 25. A dispute exists as to whether the remaining \$200 was for advance costs or for work
9 Respondent already performed in the unemployment hearings.

10 26. Respondent did not put any of the \$500 into a trust account.

11 27. In August 2011, Respondent expended \$276.49 in costs for the discrimination suit.
12 He did not incur any more costs in the discrimination suit.

13 28. On August 31, 2011, Mr. Yang paid Respondent another \$500 for advance costs in
14 the discrimination suit.

15 29. Respondent did not put the funds into a trust account.

16 30. On September 5, 2013, Mr. Yang paid Respondent another \$700.

17 31. Respondent did not put the \$700 into a trust account.

18 32. A dispute exists regarding the purpose of these funds. According to Respondent, the
19 \$700 was for him to prepare a will for Mr. Yang. Mr. Yang contends that he did not ask
20 Respondent to go forward with preparing a will and that he told Respondent he would discuss a
21 will after the Uwajimaya case was over and he had a chance to talk with his family. Mr. Yang
22 thought the funds were for additional advance costs for the discrimination suit. In either case,
23 the funds should have been placed in trust.

1 33. Respondent produced for ODC a draft of an incomplete will that he said he prepared
2 for Mr. Yang, which contains mostly boilerplate.

3 34. Mr. Yang never saw a copy of a draft will.

4 35. Respondent placed all funds he received from Mr. Yang into his general account.

5 36. Respondent did not keep track of the time he spent on Mr. Yang's legal matters. He
6 never sent Mr. Yang a billing statement or provided him an accounting of the funds received
7 and distributed.

8 37. Respondent did not refund any unearned fees or costs to Mr. Yang.

9 III. STIPULATION TO MISCONDUCT

10 38. By failing to diligently pursue Mr. Yang's discrimination suit, Respondent violated
11 RPC 1.3 and RPC 3.2.

12 39. By failing to timely advise Mr. Yang about the outcome of the summary judgment
13 hearing in a manner that Mr. Yang could understand, Respondent violated RPC 1.4(a)(3) and
14 RPC 1.4(b).

15 40. By failing to deposit advance fees and costs into his trust account, Respondent
16 violated RPC 1.15A(c)(2).

17 41. By failing to refund unearned fees and costs to Mr. Yang on termination, and by
18 retaining funds as a fee for work performed that was of no benefit to Mr. Yang, Respondent
19 violated RPC 1.5(a) and RPC 1.16(d).

20 42. By failing to provide Mr. Yang with an accounting of funds received and distributed,
21 Respondent violated RPC 1.15A(e).

22 IV. PRIOR DISCIPLINE

23 43. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

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

- 4 • ABA Standard 4.1 applies to the violations set forth in ¶¶ 40 and 42;
5 • ABA Standard 4.4 applies to the violations set forth in ¶¶ 38-39;
6 • ABA Standard 7.0 applies to the violations set forth in ¶ 41.¹

7 45. Respondent should have known that he was dealing improperly with Mr. Yang's
8 funds when he deposited them into his general account. Respondent acted negligently in all
9 other respects.

10 46. Mr. Yang was injured in that his legal position was compromised and he lost the use
11 of his funds.

12 47. The presumptive sanction is a suspension for the violation in ¶ 40 and a reprimand
13 for the violations in ¶¶ 38-39 and 41-42.

14 48. The following aggravating factors apply under ABA Standard 9.22:

- 15 (d) multiple offenses; and
16 (i) substantial experience in the practice of law [admitted 1997].

17 49. The following mitigating factors apply under ABA Standard 9.32:

- 18 (a) absence of a prior disciplinary record;
19 (b) absence of dishonest or selfish motive; and
20 (l) remorse.

21 50. It is an additional mitigating factor that Respondent has agreed to resolve this matter
22 at an early stage of the proceedings.

23 51. Based on a balancing of the factors set forth above, the presumptive sanction should
24 be mitigated to a reprimand.

25 ¹ A full copy of the applicable ABA Standards is attached as Appendix A.

1 **VI. STIPULATED DISCIPLINE**

2 52. The parties stipulate that Respondent shall receive a reprimand.

3 53. In addition, Respondent will be subject to probation for a period of two years
4 beginning the date this stipulation receives final approval from the Hearing Officer.

5 54. The conditions of probation are set forth below. Respondent's compliance with these
6 conditions shall be monitored by ODC's Probation Administrator:

- 7 a) For all client matters, Respondent shall have a written fee agreement signed by the
8 client, which agreements are to be maintained for least seven years (see RPC
9 1.15B(a)(3)).
- 10 b) During the probationary period, Respondent shall complete a minimum of six (6)
11 credit hours of continuing legal education courses, at Respondent's own expense, in
12 the area of trust accounting. Respondent shall provide evidence of attendance at
such courses to the Probation Administrator no later than 30 days after the
conclusion of the course. Proof of attendance shall include the program brochure,
evidence of payment, and a written statement that includes the date and time of
attendance.

13 55. Failure to comply with a condition of probation listed herein may be grounds for
14 further disciplinary action under ELC 13.8(b).

15 **VII. RESTITUTION**

16 56. Respondent shall pay restitution to Mr. Yang of \$1,700, plus interest at a rate of 12%
17 per annum from the date this stipulation is final. Restitution must be paid within 30 days of
18 approval of this stipulation unless Respondent has entered into a payment plan under ELC
19 13.7(b).

20 **VIII. COSTS AND EXPENSES**

21 57. In light of Respondent's willingness to resolve this matter by stipulation at an early
22 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$500 in
23 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)

1 | if these costs are not paid within 30 days of approval of this stipulation unless Respondent has
2 | entered into a payment plan under ELC 13.9(i).

3 | **IX. VOLUNTARY AGREEMENT**

4 | 58. Respondent states that prior to entering into this Stipulation he had an opportunity to
5 | consult independent legal counsel regarding this Stipulation, that Respondent is entering into
6 | this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
7 | Association, nor by any representative thereof, to induce the Respondent to enter into this
8 | Stipulation except as provided herein.

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

11 | **X. LIMITATIONS**

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

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

20 | 62. This Stipulation results from the consideration of various factors by both parties,
21 | including the benefits to both by promptly resolving this matter without the time and expense of
22 | hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
23 | such, approval of this Stipulation will not constitute precedent in determining the appropriate

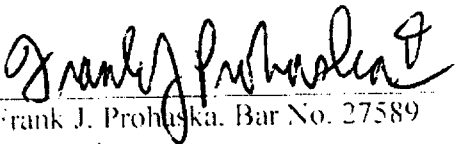
1 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
2 subsequent proceedings against Respondent to the same extent as any other approved
3 Stipulation.

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

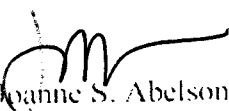
7 64. If this Stipulation is approved by the Hearing Officer, it will be followed by the
8 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
9 Enforcement of Lawyer Conduct will be made.

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

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

16 
17 Frank J. Prohaska, Bar No. 27589
18 Respondent

Dated: 2/3/15

19 
20 Joanne S. Abelson, Bar No. 24877
21 Managing Disciplinary Counsel

Dated: 2/10/15

APPENDIX A

SELECTED ABA STANDARDS

ABA Standard 4.1 -- Failure to Preserve the Client's Property

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

ABA Standard 4.4 -- Lack of Diligence

- 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 serious 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 injury or potential injury to a client, or
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

ABA Standard -- 7.0 Violations of Duties Owed as a Professional

- 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 obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury 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 injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated 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 system.