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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
SCOTT ETHERTON,
Lawyer (Bar No. 29904).

Proceeding No. 16#00045
ODC File No(s). 15-00082
STIPULATION TO 90-DAY SUSPENSION

Under Rule 9.1 of the 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 Benjamin J. Attanasio and Respondent lawyer Scott Etherton.

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

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

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on May 25,
4 2000.

5 **II. STIPULATED FACTS**

6 2. During the period of July 1, 2013 through January 28, 2015, Respondent maintained
7 a trust account at Bank of America ending in 7752.

8 3. Respondent failed to maintain a check register for account 7752.

9 4. Respondent failed to maintain client ledger records.

10 5. Respondent failed to maintain copies of agreements with clients pertaining to fees
11 and costs.

12 6. Respondent failed to maintain copies of statements and accountings to clients and
13 third parties showing the disbursement of funds to them or on their behalf.

14 7. Respondent failed to maintain copies of bills for legal fees and expenses rendered to
15 clients.

16 8. Respondent failed to maintain copies of invoices, bills and other documents
17 supporting disbursements and transfers from account 7752.

18 9. Respondent failed to maintain bank statements, copies of deposit slips, or cancelled
19 checks for account 7752.

20 10. Respondent failed to maintain trust account reconciliations for account 7752.

21 11. Respondent failed to maintain portions of client files reasonably necessary for a
22 complete understanding of the financial transactions pertaining to them.

23 12. Respondent failed to reconcile his trust account records on a monthly basis.

1 13. During the period between August 1, 2013 and January 31, 2015, Respondent made
2 at least 19 cash withdrawals totaling over \$9,000 from account 7752.

3 14. Based on records obtained directly from Bank of America, ODC reconstructed a
4 check register and client ledgers for Respondent's trust account covering the period between
5 August 1, 2013 and January 31, 2015.

6 15. Because Respondent failed to maintain complete trust account records, and because
7 he made withdrawals in cash and not to a named payee, ODC has unable been to determine
8 whether Respondent was entitled to all the funds he withdrew.

9 16. Beginning in late 2012, Respondent was experiencing employment, financial, and
10 medical issues.

11 III. STIPULATION TO MISCONDUCT

12 17. By making cash withdrawals from his trust account, Respondent violated RPC
13 1.15A(h)(5).

14 18. By failing to reconcile his trust account records on a monthly basis, and by failing to
15 maintain trust account reconciliations, Respondent violated RPC 1.15A(h)(6) and RPC
16 1.15B(a)(8).

17 19. By failing to maintain complete contemporaneous trust account records, Respondent
18 violated RPC 1.15A(h)(2) and RPC 1.15B(a).

19 IV. PRIOR DISCIPLINE

20 20. In 2012, Respondent received an admonition for failing to timely respond to
21 discovery and attend mediation and court hearings (in violation of RPC 1.3), and failing to
22 promptly return the client's file upon request (in violation of RPC 1.16).

1 **V. APPLICATION OF ABA STANDARDS**

2 21. The following American Bar Association Standards for Imposing Lawyer Sanctions

3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **4.1 Failure to Preserve the Client's Property**

5 4.11 **Disbarment** is generally appropriate when a lawyer knowingly converts
6 client property and causes injury or potential injury to a client.

7 4.12 **Suspension** is generally appropriate when a lawyer knows or should
8 know that he is dealing improperly with client property and causes injury or
9 potential injury to a client.

10 4.13 **Reprimand** is generally appropriate when a lawyer is negligent in
11 dealing with client property and causes injury or potential injury to a client.

12 4.14 **Admonition** is generally appropriate when a lawyer is negligent in
13 dealing with client property and causes little or no actual or potential injury to a
14 client.

15 22. Respondent knew that he was making cash withdrawals, was not maintaining deposit
16 slips, and was not maintaining client ledgers.

17 23. Respondent should have known that he was otherwise dealing improperly with client
18 property.

19 24. Respondent's conduct caused actual injury because he is unable to account for client
20 funds in his possession.

21 25. The presumptive sanction is a suspension.

22 26. The following aggravating factors apply under ABA Standard 9.22:

- 23 (a) prior disciplinary offenses (admonished in 2012 for failing to
24 provide diligent representation and failing to promptly return his
client's file);
- (c) a pattern of misconduct;
- (i) substantial experience in the practice of law (admitted to the
practice of law in Washington in May 2000);

1 27. The following mitigating factor applies under ABA Standard 9.32:

2 (c) personal or emotional problems (employment, financial, and medical
3 issues).

4 28. It is an additional mitigating factor that Respondent has agreed to resolve this matter
5 at an early stage of the proceedings.

6 29. On balance the aggravating and mitigating factors do not require a departure from
7 the presumptive sanction.

8 VI. STIPULATED DISCIPLINE

9 30. The parties stipulate that Respondent shall receive a 90-day suspension for his
10 conduct.

11 31. As a condition of reinstatement from suspension, Respondent must complete the
12 following steps to disburse any funds that are owed to clients or third parties and to establish
13 that he will be capable, going forward, of handling client funds in compliance with RPC 1.15A
14 and 1.15B:

- 15 a) For each of the following clients listed on the reconstructed trust records prepared
16 by the WSBA Auditor and transmitted to Respondent by letter dated March 1, 2016,
17 Respondent will provide ODC with complete documentary evidence demonstrating
18 either that the client is not entitled to a return of any of the amount listed on the
19 client ledger prepared by the WSBA Auditor (a redacted version is attached as
20 Exhibit A, a non-redacted version is provided separately to Respondent) or that he
21 has provided the client with a complete accounting of funds and returned to the
22 client any unearned amounts and/or any amounts to which Respondent cannot
23 establish entitlement:
24

Client Initials	Amount(s) Deposited to Trust	Date(s) of Deposit(s)
JH	\$700.00	6/12/2014
	\$300.00	7/22/2014
BD	\$300.00	8/23/2013
DTL	\$500.00	1/23/2014
	\$1,000.00	1/23/2014
	\$1,300.00	2/25/2014
EDM	\$350.00	11/1/2013

DDM	\$375.00	8/18/2014
JP	\$500.00	8/14/2013
RT	\$550.00	10/1/2013

b) For the time frame of February 1, 2015 up through the date of submission to ODC for consideration of reinstatement, Respondent will provide to ODC, for each trust account open during any portion of that time frame, copies of the following:

- any and all bank statements,
 - copies of any and all deposited items,
 - copies of any and all records of withdrawals,
 - a complete and accurate check register identifying every transaction,
 - complete and accurate client ledgers identifying every transaction attributable to a client,
 - monthly reconciliations between the check register and the bank statement, and
monthly reconciliations between the check register and the client ledgers.
- 13.3(b)(1)(B).

c) Respondent will carefully review the WSBA publication Managing Client Trust Accounts: Rules, Regulations, and Common Sense, and will provide a signed certification that he has done so.

d) Respondent will complete the WSBA continuing legal education course entitled, "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on managing trust accounts in Washington State, and provide documentation showing that he has done so.

e) To be eligible for reinstatement, Respondent must provide the required documentation to ODC at least 30 days prior to seeking certification of completion.

32. Respondent will be subject to probation for a period of two years commencing upon

Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his/her trust account practices, and shall comply with the specific probation terms set forth below:

a) 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.

b) For all client matters, Respondent shall have a written fee agreement signed by the client, which agreements are to be maintained for least seven years (see RPC 1.15B(a)(3)).

1 e) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
2 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

- 3 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
4 commencement of probation, Respondent shall provide the trust account
5 records from the date of commencement of probation to the end of the third
6 full month.
- 7 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
8 commencement of probation, Respondent shall provide the trust account
9 records from the end of the previously provided quarter through the end of
10 month six.
- 11 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
12 commencement of probation, Respondent shall provide the trust account
13 records from the end of the previously provided quarter through the end of
14 month nine.
- 15 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
16 the commencement of probation, Respondent shall provide the trust
17 account records from the end of the previously provided quarter through
18 the end of month twelve.
- 19 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
20 account records from the end of the previously provided quarter through
21 the end of month fifteen.
- 22 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
23 the commencement of probation, Respondent shall provide the trust
24 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 will include: (a) a complete checkbook register for his/her trust
account covering the period being reviewed, (b) complete individual client ledger
records for any client with funds in Respondent's trust account during all or part of
the period being reviewed, as well as for Respondent's own funds in the account (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

1 being reviewed. The ODC's Audit Manager or designee will review Respondent's
2 trust account records for each period.

- 3 d) On the same quarterly time schedule set forth in the preceding paragraph,
4 Respondent will provide ODC's Audit Manager or designee with copies of any and
5 all fee agreements entered into within the time period at issue.
- 6 e) The ODC's Audit Manager or designee may request additional financial or client
7 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
8 Within twenty days of a request from ODC's Audit Manager or designee for
9 additional records needed to verify Respondent's compliance with RPC 1.15A
10 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
11 additional records requested.
- 12 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
13 or designee in reviewing and reporting on Respondent's records to determine
14 his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
15 Respondent will make payment within thirty days of each written invoice setting
16 forth the auditor's time and payment due.

11 VII. RESTITUTION

12 33. Restitution is required, to the extent provided in paragraph 31(a), above.

13 VIII. COSTS AND EXPENSES

14 34. In light of Respondent's willingness to resolve this matter by stipulation at an early
15 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of
16 \$1217.31 in accordance with ELC 13.9(i). The Association will seek a money judgment under
17 ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation or if
18 Respondent has entered into a periodic payment plan under ELC 13.9(i)(3) and fails to comply
19 with the terms of the periodic payment plan.

20 35. Reinstatement from suspension is conditioned on payment of costs, unless
21 Respondent is in full compliance with the terms of any periodic payment plan entered into under
22 ELC 13.9(i)(3).

1 IX. VOLUNTARY AGREEMENT

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

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

9 X. LIMITATIONS

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

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

18 40. This Stipulation results from the consideration of various factors by both parties,
19 including the benefits to both by promptly resolving this matter without the time and expense of
20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
21 such, approval of this Stipulation will not constitute precedent in determining the appropriate
22 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
23 subsequent proceedings against Respondent to the same extent as any other approved
24

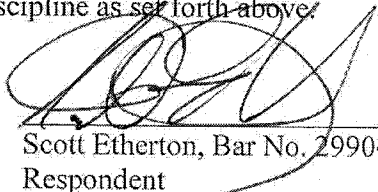
1 Stipulation.

2 41. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
3 Board shall have available to it for consideration all documents that the parties agree to submit
4 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
5 form the record before the Board for its review become public information on approval of the
6 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

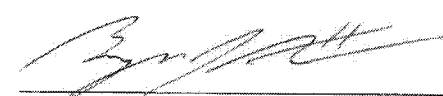
7 42. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
8 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
9 Rules for Enforcement of Lawyer Conduct will be made.

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

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

16 
17 Scott Etherton, Bar No. 29904
18 Respondent

Dated: 7/17/2017

19 
20 Benjamin J. Attanasio, Bar No. 43032
21 Disciplinary Counsel

Dated: 7/17/17

EXHIBIT A

EXHIBIT A

1:25 PM

01/09/17

Accrual Basis

Etherton Trust as Reconstructed by ODC auditor CHE

Client Ledgers

All Transactions

Type	Date	Num	Name	Memo	Debit	Credit	Balance
Client							
JH							
Deposit	06/12/2014	Dep	JH	Deposit		700.00	700.00
Deposit	07/22/2014	Dep	JH	Deposit		300.00	1,000.00
Total JH					0.00	1,000.00	1,000.00
BD							
Deposit	06/23/2013	Dep	BD	Rick error		300.00	300.00
Total BD					0.00	300.00	300.00
DTL							
Deposit	01/23/2014	Dep	DTL	Deposit		500.00	500.00
Deposit	01/23/2014	Dep	DTL	Deposit		1,000.00	1,500.00
Deposit	02/25/2014	Dep	DTL	Deposit		1,200.00	2,800.00
Total DTL					0.00	2,500.00	2,800.00
EDM							
Deposit	11/01/2013	Dep	EDM	Deposit		350.00	350.00
Total EDM					0.00	350.00	350.00
DDM							
Deposit	08/16/2014	Dep	DDM	contract - mel		375.00	375.00
Total DDM					0.00	375.00	375.00
JP							
Deposit	08/14/2013	Dep	JP	Deposit		500.00	500.00
Total JP					0.00	500.00	500.00
RT							
Deposit	10/01/2013	Dep	RT	Deposit		550.00	550.00
Total RT					0.00	550.00	550.00
Unknown							
Deposit	08/14/2013	Dep	Split	Cash Deposit		450.00	450.00
Deposit	08/24/2013	Dep	Unknown	Cash deposit		500.00	950.00
Deposit	10/01/2013	Dep	Unknown	Cash Deposit		600.00	1,550.00
Check	10/10/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	650.00		900.00
Check	10/16/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	335.00		565.00
Check	10/23/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	300.00		265.00
Check	11/16/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	300.00		-35.00
Check	11/19/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	50.00		-85.00
Check	11/25/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	550.00		-635.00
Check	12/16/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	65.00		-700.00
Check	12/18/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	500.00		-1,200.00
Check	12/30/2013	WD	WA TLR Cash withdrawal	Cash withdrawal	200.00		-1,400.00
Check	01/13/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	300.00		-1,700.00
Deposit	01/15/2014	Dep	Unknown	Cash Deposit		1,000.00	-700.00
Check	02/04/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	600.00		-1,300.00
Check	02/05/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	500.00		-2,000.00
Check	07/09/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	2,000.00		-4,000.00
Check	06/26/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	800.00		-4,800.00
Check	08/10/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	1,075.00		-5,875.00
Deposit	08/16/2014	Dep	Unknown	Cash deposit		1,600.00	-4,275.00
Check	08/24/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	480.00		-4,855.00
Check	08/24/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	40.00		-4,895.00
Check	10/06/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	300.00		-5,195.00
Check	10/14/2014	WD	WA TLR Cash withdrawal	Cash withdrawal	680.00		-5,875.00
Total Unknown					9,825.00	4,650.00	-5,875.00
Total Client					9,825.00	9,825.00	0.00
TOTAL					9,825.00	9,825.00	0.00