

**FILED**

NOV 12 2014

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**LIAM A. MCCANN,**  
Lawyer (Bar No. 30865).

Proceeding No. 14#00046

STIPULATION TO ONE-YEAR  
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to One-Year Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association), through Disciplinary Counsel Scott G. Busby, and by Respondent Liam A. McCann.

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, to 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

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 December 7,  
4 2000.

5 **II. STIPULATED FACTS**

6 2. S.B. hired Respondent in March 2009 to recover money she had loaned to T.P.

7 3. In an email dated March 13, 2009, Respondent set forth an estimated "litigation  
8 budget" based on an hourly rate of \$190.

9 4. There was no other written fee agreement.

10 5. Between April 6, 2009, and October 7, 2009, Respondent billed S.B. a total of  
11 \$3,910.94 in five billing statements at an hourly rate of \$200, as follows:

<u>Date</u>	<u>Amount</u>
April 6, 2009	\$1,060
May 7, 2009	700
August 3, 2009	1,155.47
August 31, 2009	480.47
October 7, 2009	515

15 6. During the course of the representation, S.B. made nine payments to Respondent  
16 totaling \$5,600 by check as follows:

<u>Date</u>	<u>Amount</u>
March 24, 2009	\$1,600
April 8, 2009	400
May 5, 2009	500
June 1, 2009	500
June 17, 2009	500
July 21, 2009	200
August 25, 2009	500
May 4, 2010	400
February 10, 2011	1,000

- 1        7.    Respondent deposited the first two checks into his trust account.
- 2        8.    Some or all of those funds were legal fees paid in advance.
- 3        9.    Respondent withdrew some or all of those funds before they were earned.
- 4        10.   Respondent withdrew some or all of those funds without giving reasonable notice
- 5        to S.B. through a billing statement or other document.
- 6        11.   By April 30, 2009, Respondent's trust account had a total balance of only \$344.01.
- 7        12.   As of that date, Respondent should have been holding \$940 in trust for S.B. alone.
- 8        13.   Respondent deposited the next seven checks into his operating account.
- 9        14.   Some or all of those funds were legal fees and expenses paid in advance.
- 10       15.   In April 2009, Respondent filed three lawsuits on behalf of S.B. against T.P. in the
- 11       King County Superior Court.
- 12       16.   By August 24, 2009, Respondent had obtained default judgments against T.P. in all
- 13       three cases.
- 14       17.   On October 9, 2009, Respondent obtained an Order for Supplemental Proceedings
- 15       in one of the three cases.
- 16       18.   After October 9, 2009, Respondent took no action of record in any of the three
- 17       cases.
- 18       19.   After October 9, 2009, Respondent failed to act with reasonable diligence and
- 19       promptness in representing S.B.
- 20       20.   On February 8, 2011, Respondent requested from S.B. "another deposit to [her]
- 21       account for this next round."
- 22       21.   On February 10, 2011, S.B. sent Respondent a check for \$1,000.

1           22. On February 18, 2011, Respondent acknowledged receipt of the check and told  
2 S.B., "I will be sending you monthly bills letting you know where your account stands."

3           23. Respondent did not send S.B. another bill until June 19, 2013, after she filed a  
4 grievance against him.

5           24. During the course of the representation, S.B. periodically requested information  
6 about the status of her matters.

7           25. After July 2011, Respondent stopped responding to S.B.'s requests for information  
8 about the status of her matter.

9           26. On October 11, 2012, S.B. asked Respondent to send her matters to a collection  
10 agency and return whatever was left of the funds she had advanced.

11           27. Respondent did not respond.

12           28. Over the next three months, S.B. followed up with more such requests.

13           29. Respondent did not respond.

14           30. On December 13, 2012, S.B. sent Respondent an email stating:

15           Liam, I've been trying to get in touch with you for an extremely long time and I  
16 haven't heard a word about my case. My next step will be to bar association  
17 unless I hear from you not to be rude but I've been trying to reach you for over a  
year and haven't heard a word since I sent you that \$1000.00 all of the sudden  
you just disappear.

18           31. On December 13, 2012, Respondent responded as follows:

19           "[S.] – sorry about that! I'll look at the file and send you the balance. Give me a  
20 few days."

21           32. Respondent did not send S.B. a refund or otherwise communicate with her until  
22 June 19, 2013, after she filed a grievance against him.

23           33. On April 29, 2013, S.B. filed a grievance against Respondent.

1 34. On May 3, 2013, Disciplinary Counsel sent the grievance to Respondent with a  
2 request for his written response.

3 35. Respondent did not respond.

4 36. On June 6, 2013, Disciplinary Counsel sent Respondent a notice under former ELC  
5 5.3(f)<sup>1</sup> informing him that he would be subpoenaed for a deposition unless he provided a written  
6 response to the allegations in the grievance by June 19, 2013.

7 37. On June 19, 2013, Respondent sent Disciplinary Counsel copies of (a) a letter to  
8 S.B. dated June 19, 2013, (b) a billing statement dated June 19, 2013, and (c) a check payable to  
9 S.B. in the amount of \$520 dated June 18, 2013.

10 38. The letter stated that the June 19, 2013, billing statement was S.B.'s "final bill,"  
11 and that the \$520 check represented "the remaining amount of [her] retainer deposit."

12 39. The billing statement reflected an "Ending Retainer Balance" of \$520.

13 40. The check bore the notation "retainer refund," and was written on Respondent's  
14 personal account, not his trust account.

15 41. The total of S.B.'s payments less the total charges reflected on the billing  
16 statements Respondent sent to her exceeded \$520.

17 42. Respondent failed to return all the funds to which to S.B. was entitled.

18 43. On August 26, 2013, Disciplinary Counsel sent Respondent request for a written  
19 response, along with a request for a copy of Respondent's client file for S.B., and a copy of  
20 Respondent's billing and trust account records for S.B.

21 44. Respondent did not respond.

22 <sup>1</sup> The ELC were amended effective January 1, 2014.





1 **V. APPLICATION OF ABA STANDARDS**

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

4 64. ABA *Standards* std. 4.4 applies to Respondent's violations of RPC 1.3 and 1.4:

- 5 4.41 Disbarment is generally appropriate when:  
6 (a) a lawyer abandons the practice and causes serious  
7 or potentially serious injury to a client; or  
8 (b) a lawyer knowingly fails to perform services for a  
9 client and causes serious or potentially serious  
10 injury to a client; or  
11 (c) a lawyer engages in a pattern of neglect with  
12 respect to client matters and causes serious or  
13 potentially serious injury to a client.  
14 4.42 Suspension is generally appropriate when:  
15 (a) a lawyer knowingly fails to perform services for a  
16 client and causes injury or potential injury to a  
17 client, or  
18 (b) a lawyer engages in a pattern of neglect and causes  
19 injury or potential injury to a client.  
20 4.43 Reprimand is generally appropriate when a lawyer is  
21 negligent and does not act with reasonable diligence in  
22 representing a client, and causes injury or potential injury  
23 to a client.  
24 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.

65. In failing to act diligently on S.B.'s behalf, and in failing to keep her informed and  
respond to her requests for information, Respondent acted knowingly and caused injury to his  
client.

66. The presumptive sanction for Respondent's violations of RPC 1.3 and 1.4 is  
suspension under ABA *Standards* std. 4.42.

67. ABA *Standards* std. 4.1 applies to Respondent's violations of RPC 1.15A, 1.15B,



1 and 1.16(d):

- 2 4.11 Disbarment is generally appropriate when a lawyer  
3 knowingly converts client property and causes injury or  
4 potential injury to a client.  
5 4.12 Suspension is generally appropriate when a lawyer knows  
6 or should know that he is dealing improperly with client  
7 property and causes injury or potential injury to a client.  
8 4.13 Reprimand is generally appropriate when a lawyer is  
9 negligent in dealing with client property and causes injury  
10 or potential injury to a client.  
11 4.14 Admonition is generally appropriate when a lawyer is  
12 negligent in dealing with client property and causes little  
13 or no actual or potential injury to a client.

14 68. Respondent knew or should have known that he was dealing improperly with client  
15 funds, and he caused injury to his client.

16 69. The presumptive sanction for Respondent's violations of RPC 1.15A, 1.15B, and  
17 1.16(d) is suspension under ABA *Standards* std. 4.12.

18 70. The following aggravating factors apply under ABA *Standards* std. 9.22:

- 19 (d) multiple offenses;  
20 (i) substantial experience in the practice of law (admitted in 2000).

21 71. The following mitigating factor applies under ABA *Standards* std. 9.32:

- 22 (a) absence of a prior disciplinary record.

23 72. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
24 at an early stage of the proceedings.

## 25 VI. STIPULATED DISCIPLINE

26 73. The parties stipulate that Respondent shall receive a one-year suspension for his  
27 misconduct.

28 74. As a condition of reinstatement from suspension, Respondent shall complete the

1 following steps to determine whether any funds are owed to clients or third parties:

- 2 a) Respondent shall reconstruct<sup>2</sup> his trust account records for the time period of  
3 January 1, 2009, to December 31, 2014, in compliance with the requirements of  
4 RPC 1.15A and RPC 1.15B, using all available client records and financial records  
5 to assist in the identification of funds received and disbursed. Respondent shall do  
6 so at his own expense. Respondent shall not be eligible for a certification of  
7 completion of specific conditions of suspension under ELC 13.3(b)(1)(B) unless  
8 Respondent provides the complete reconstructed trust-account records to ODC at  
9 least 60 days prior to seeking certification of completion. Respondent shall  
10 promptly provide additional records and information to ODC if requested to  
11 facilitate ODC's assessment of the completeness and accuracy of the  
12 reconstruction.<sup>3</sup>
- 13 b) The reconstruction may, or may not, reveal that one or more clients have not  
14 received all funds to which they are entitled. If the reconstructed trust-account  
15 records for the time period of January 1, 2009, to December 31, 2014, indicate that  
16 any client is owed funds, then Respondent shall provide each client, in writing, with  
17 a complete updated accounting of his receipt and disbursement of all funds. The  
18 accounting shall identify the source, date and amount of all funds received, and the  
19 recipient, purpose, date and amount of all funds disbursed. Respondent shall not be  
20 eligible for a certification of completion of specific conditions of suspension under  
21 ELC 13.3(b)(1)(B) unless Respondent provides ODC with proof that he has done  
22 so, and with copies of the accountings, at least 60 days prior to seeking certification  
23 of completion.

## 14 VII. RESTITUTION

15 75. Respondent shall pay restitution of \$5,600 to the grievant, S.B., in accordance with  
16 ELC 13.7. Reinstatement from suspension is conditioned on payment of restitution.

17 76. If the reconstructed trust-account records for the time period of January 1, 2009, to

18 \_\_\_\_\_  
19 <sup>2</sup> "Reconstruction" involves the preparation, for all funds put into and removed from the trust account,  
20 of complete and accurate client ledgers, check register, reconciliations between the check register  
21 balances and the balances of the bank statements, and reconciliations between the check register  
22 balances and the combined total of all the client ledger balances.

23 <sup>3</sup> Respondent acknowledges and agrees that if information in reconstructed trust account records or in  
24 other information or records provided to ODC reveals any acts of misconduct not specifically identified  
in this Stipulation, ODC may investigate and/or prosecute such additional misconduct to the extent  
otherwise authorized by the ELC.

1 December 31, 2014, indicate that any client or third party is owed funds, then Respondent is  
2 required to make full restitution to each client or third party of all funds owed. Respondent  
3 shall pay to the client interest on those funds, at a rate of 6% calculated from the date on which  
4 the client or third party was first entitled to receive the funds to the date on which repayment is  
5 made. Reinstatement is conditioned on full payment of restitution, with interest.

#### 6 VIII. COSTS AND EXPENSES

7 77. In light of Respondent's willingness to resolve this matter by stipulation at an early  
8 stage of the proceedings, Respondent shall pay costs and expenses of \$500 in accordance with  
9 ELC 13.9(i). The Association may seek a money judgment under ELC 13.9(l) if these costs and  
10 expenses are not paid within 30 days of approval of this stipulation. Reinstatement from  
11 suspension is conditioned on payment of costs and expenses.

#### 12 IX. VOLUNTARY AGREEMENT

13 78. Respondent states that prior to entering into this stipulation he has had an  
14 opportunity to consult independent legal counsel regarding this stipulation, that Respondent is  
15 entering into this stipulation voluntarily, and that no promises or threats have been made by  
16 ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into  
17 this stipulation except as provided herein.

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

#### 20 X. LIMITATIONS

21 80. This stipulation is a compromise agreement intended to resolve this matter in  
22 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
23

1 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer  
2 and ODC acknowledge that the result after further proceedings in this matter might differ from  
3 the result agreed to herein.

4 81. This stipulation is not binding upon ODC or the Respondent as a statement of all  
5 existing facts relating to the professional conduct of the Respondent lawyer, and any additional  
6 existing facts may be proven in any subsequent disciplinary proceedings.

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

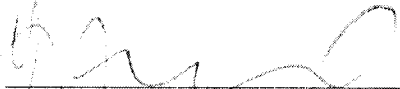
14 83. Under Disciplinary Board policy, in addition to the stipulation, the Disciplinary  
15 Board shall have available to it for consideration all documents that the parties agree to submit  
16 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
17 form the record before the Board for its review become public information on approval of the  
18 stipulation by the Board, unless disclosure is restricted by order or rule of law.

19 84. If this stipulation is approved by the Disciplinary Board and Supreme Court, it will  
20 be followed by the disciplinary action agreed to in this stipulation. All notices required in the  
21 Rules for Enforcement of Lawyer Conduct will be made.

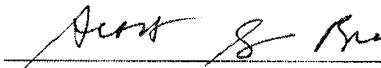
22 85. If this stipulation is not approved by the Disciplinary Board and Supreme Court, this  
23

1 stipulation will have no force or effect, and neither it nor the fact of its execution will be  
2 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
3 proceeding, or in any civil or criminal action.

4 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
5 to One-Year Suspension as set forth above.

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7 \_\_\_\_\_  
Liam A. McCann, Bar No. 30865  
Respondent

Dated: 9/15/14

8   
9 \_\_\_\_\_  
Scott G. Busby, Bar No. 17522  
Senior Disciplinary Counsel

Dated: 9/18/14