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May 21 2019  
Disciplinary  
Board

Docket # 018

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**MARK E. SMITH,**  
Lawyer (Bar No. 30924).

Proceeding No. 18#00023  
ODC File No. 16-00420  
STIPULATION TO 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 Debra Slater, Respondent's Counsel Cassandra L. Stamm, and Respondent lawyer Mark Smith.

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

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 January 30,  
5 2001.

6 **II. STIPULATED FACTS**

7 **Trust Account Issues**

8 2. On or about January 27, 2016, two checks were presented against insufficient funds  
9 in Respondent's trust account at HomeStreet Bank. The checks were dishonored. The overdraft  
10 occurred when Respondent mistakenly wrote the checks from his trust account instead of his  
11 business account at Homestreet Bank.

12 3. ODC performed an audit of Respondent's trust account for the time period January  
13 1, 2014 through May 31, 2017.

14 4. Respondent did not maintain a current, accurate, and complete check register for his  
15 trust account during the audit period.

16 5. Respondent did not maintain current, accurate, and complete client ledgers during  
17 the audit period.

18 6. Respondent did not reconcile his trust account bank statement balances to a trust  
19 account check register on a monthly basis.

20 7. Respondent did not reconcile a trust account check register to the combined total of  
21 all client ledgers on a monthly basis.

22 **Client AE**

23 8. On December 7, 2015, Respondent received a settlement check in the amount of  
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1 \$40,000 for client AE, which he deposited into his trust account.

2 9. On December 7, 2015, Respondent met with AE and provided AE with a check in  
3 the amount of \$17,671.70, which represented AE's share of the settlement.

4 10. On December 7, 2015, Respondent disbursed \$18,591.49 of AE's settlement funds to  
5 himself which he deposited into his personal checking account at Bank of America. Of the  
6 \$18,591.49, Respondent was entitled to \$16,000 in fees. AE directed Respondent to use the  
7 remaining \$2,591.49 of the settlement funds to repay a personal loan AE owed to a third party.

8 11. On December 21, 2015, Respondent disbursed an additional \$3,700 of AE's  
9 settlement funds to himself. He deposited the funds into his personal checking account.

10 12. Of the \$3,700, \$3,303.40 was owed to Healthcare Authority and Coordinated Care.

11 13. Respondent issued a check in the amount of a \$2,355.43 to Healthcare Authority and  
12 a check in the amount of \$974.97 to Coordinated Care from his business checking account.

13 14. Although both checks were dated December 12, 2015, Respondent did not remit  
14 them to the providers until April 2016.

15 15. In December 2015, when the checks were written, there were insufficient funds in  
16 Respondent's business account to pay the checks.

17 16. Respondent used the funds intended for Healthcare Authority and Coordinated Care  
18 for his own benefit, without entitlement. He ultimately paid Healthcare Authority and  
19 Coordinated Care for AE's medical expenses in April 2016.

20 17. The client ledgers Respondent maintained for AE were not accurate.

21 **Client HG**

22 18. On January 20, 2016, Respondent transferred \$800 belonging to HG from his trust  
23 account to his business account.

1 19. Respondent issued check #5055 from his business account to pay Bothell  
2 Chiropractic, one of HG's medical providers. Check #5055 was dated January 29, 2016, but  
3 Respondent did not present the check to Bothell Chiropractic until April 21, 2018.

4 20. By transferring \$800 from his trust account to his business account, Respondent used  
5 HG's funds to cure a deficit in his business account.

6 21. Respondent used the funds for his own benefit, without entitlement.

7 22. In February 2016, Respondent transferred \$5,000 of HG's funds from his trust  
8 account to himself by cashing checks #3087, #3088, #3089, #3090, #3091, #3092, and #3093.  
9 Respondent also cashed trust account checks #3094 and #3095 in the total amount of \$2,970,  
10 which were funds belonging to HG.

11 23. Respondent used the funds for his own benefit, without entitlement. He ultimately  
12 paid Bothell Chiropractic for HG's medical expenses in May 2016.

13 **Contingent Fee Clients**

14 24. Respondent entered into contingent fee agreements with 14 clients. At the  
15 conclusion of the matters, Respondent did not provide the clients with a written statement  
16 stating the outcome of the matter, and, if there was a recovery, showing the remittance to the  
17 clients and the method of its determination.

18 **III. STIPULATION**

19 25. By using or converting funds belonging to AE and HG for his own use, Respondent  
20 violated RPC 1.15A(b).

21 26. By failing to maintain funds belonging to AE and HG in his trust account,  
22 Respondent violated RPC 1.15A(c)(1).

23 27. By failing to promptly pay Healthcare Authority and Coordinated Care and Bothell  
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1 Chiropractic funds they were entitled to receive, Respondent violated RPC 1.15A(f).

2 28. By failing to provide settlement statements to his contingent fee clients, Respondent  
3 violated RPC 1.5(c) and RPC 1.15A(e).

4 29. By failing to maintain a current, accurate, and complete check register for his trust  
5 account, Respondent violated RPC 1.5A(h)(2) and RPC 1.15B(a)(1).

6 30. By failing to maintain accurate client ledgers, Respondent violated RPC 1.15B(a)(2).

7 31. By failing to reconcile a trust account check register to his trust account bank  
8 statements for his trust account and failing to reconcile a trust account check register to the  
9 combined total of all client ledgers, Respondent violated RPC 1.15A(h)(6).

#### 10 IV. PRIOR DISCIPLINE

11 32. Respondent has no prior discipline.

#### 12 V. APPLICATION OF ABA STANDARDS

13 33. American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. &  
14 Feb. 1992 Supp.) 4.1 applies in this case. A copy of ABA Standard 4.1 is attached hereto as  
15 Appendix A.

16 34. Respondent should have known that he was dealing improperly with his trust  
17 account and his client's funds.

18 35. There was actual injury to AE's and HG's health care providers as their payments  
19 were delayed. There was also actual injury to Respondent's clients who were deprived of  
20 information about their recoveries.

21 36. The presumptive sanction is at least suspension.

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

- 23 (b) dishonest or selfish motive;  
24 (d) multiple offenses; and

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

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

- 3 (a) absence of a prior disciplinary record;  
4 (c) personal or emotional problems;  
5 (d) timely good faith effort to make restitution or to rectify consequences of  
6 misconduct-(Respondent retained the services of a bookkeeper to get his  
7 trust account records in order and has taken steps to educate himself  
8 about the proper handling of his trust account);  
9 (g) character or reputation; and  
10 (l) remorse.

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

13 39. Based on the factors set forth above, the presumptive sanction should be mitigated to  
14 suspension.

#### 15 VI. STIPULATED DISCIPLINE

16 40. The parties stipulate that Respondent shall receive a 27 month suspension for his  
17 conduct.

18 41. As a condition of reinstatement from suspension, Respondent must complete the  
19 following steps to disburse any funds that are owed to clients or third parties and to receive  
20 additional education on how to handle client funds in compliance with the Washington Supreme  
21 Court's RPC 1.15A and RPC 1.15B:

- 22 a) For the time frame of June 1, 2017 up through the date of submission to ODC for  
23 consideration of reinstatement, Respondent must provide to ODC, for each trust  
24 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 disbursements,
  - a complete and accurate check register identifying every transaction,
  - complete and accurate client ledgers identifying every transaction attributable to a client,

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- monthly reconciliations between the check register and the bank statement,
- monthly reconciliations between the check register and the client ledgers, and
- if the Respondent maintains trust-account records in QuickBooks, provide an electronic copy of the file with the trust-account records.

- b) Respondent must carefully review the WSBA publication Managing Client Trust Accounts: Rules, Regulations, and Common Sense, and provide disciplinary counsel with a signed certification that he has done so.
- c) Respondent must complete the WSBA continuing legal education course entitled, "Managing Client Trust Accounts" (2017), or an equivalent 1.0 credits on managing trust accounts in Washington State, and provide disciplinary counsel with documentation showing that he has done so.
- d) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide the required documentation to disciplinary counsel at least 30 days prior to seeking certification of compliance with reinstatement provisions.

42. Respondent will be subject to probation for a period of two years commencing on Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his trust account practices, and must comply with the specific probation terms set forth below:

- e) 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.
- f) 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)).
- g) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and Review Report," Respondent shall review the trust-account records detailed on the form report, review the completed report, and sign and date the completed report.
- h) On a quarterly 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 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the commencement of probation, Respondent shall provide the trust account records from the date of commencement of probation to the end of the third full month.

- 1           ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
2           commencement of probation, Respondent shall provide the trust account  
3           records from the end of the previously provided quarter through the end of  
4           month six.
- 5           iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
6           commencement of probation, Respondent shall provide the trust account  
7           records from the end of the previously provided quarter through the end of  
8           month nine.
- 9           iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth month after  
10           the commencement of probation, Respondent shall provide the trust  
11           account records from the end of the previously provided quarter through  
12           the end of month twelve.
- 13           v) Months 13 – 15. By no later than the 30<sup>th</sup> day of the sixteenth month after  
14           the commencement of probation, Respondent shall provide the trust  
15           account records from the end of the previously provided quarter through  
16           the end of month fifteen.
- 17           vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth month after  
18           the commencement of probation, Respondent shall provide the trust  
19           account records from the end of the previously provided quarter through  
20           the end of month eighteen.
- 21           vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
22           after the commencement of probation, Respondent shall provide the trust  
23           account records from the end of the previously provided quarter through  
24           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) copies of each completed “Monthly Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a complete checkbook register for his trust account covering the period being reviewed, (c) 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), and (d) copies of all trust-account bank statements, deposit slips, and cancelled checks covering the period being reviewed. ODC’s Audit Manager or designee will review Respondent’s trust account records for each period.

- 21           i) On the same quarterly time schedule set forth in the preceding paragraph,  
22           Respondent will provide ODC’s Audit Manager or designee with copies of any and  
23           all fee agreements entered into within the time period at issue.
- 24           j) ODC’s Audit Manager or designee may request additional financial or client  
              records if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B.



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

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

10                                   **VII. RESTITUTION**

11           43. Restitution is not indicated in this case.

12                                   **VIII. COSTS AND EXPENSES**

13           44. In light of Respondent’s willingness to resolve this matter by stipulation at an early  
14           stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in  
15           accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
16           if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from  
17           suspension or disbarment is conditioned on payment of costs.

18                                   **IX. VOLUNTARY AGREEMENT**

19           45. Respondent states that prior to entering into this Stipulation he has consulted  
20           independent legal counsel regarding this Stipulation, that Respondent is entering into this  
21           Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
22           Association, nor by any representative thereof, to induce the Respondent to enter into this  
23           Stipulation except as provided herein.

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

**X. LIMITATIONS**

47. This Stipulation is a compromise agreement intended to resolve this matter in

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

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

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

15 50. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on  
16 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record  
17 before the Board for its review become public information on approval of the Stipulation by the  
18 Board, unless disclosure is restricted by order or rule of law.

19 51. 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 52. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this  
23 Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
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1 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the  
2 Rules for Enforcement of Lawyer Conduct will be made.

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


7 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
8 to Suspension as set forth above.

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10 \_\_\_\_\_  
11 Mark E. Smith, Bar No. 30924  
12 Respondent

Dated: 4/11/19

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13 \_\_\_\_\_  
14 Cassandra L. Stamm, Bar No. 29265  
15 Counsel for Respondent

Dated: 04.15.19

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15 \_\_\_\_\_  
16 Debra Slater, Bar No. 18346  
17 Disciplinary Counsel

Dated: 4/15/2019

# APPENDIX A

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

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client 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.