

FILED

SEP 19 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SHARI A. BROWN,
Lawyer (Bar No.32935).

Proceeding No. 12#00092

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Randy Beitel, Respondent lawyer Shari A. Brown, and Respondent's counsel Kurt M. Bulmer.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she 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 her. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time, expense, and publicity attendant to further proceedings.

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1 Respondent wishes to stipulate to suspension without affirmatively admitting the facts
2 and misconduct in ¶¶ 5, 10, 15, 20, and 27 rather than proceed to a public hearing. Respondent
3 agrees that if this matter were to proceed to a public hearing, there is a substantial likelihood
4 that the Association would be able to prove, by a clear preponderance of the evidence, the facts
5 and misconduct in ¶¶ 5, 10, 15, 20, and 27.

6 I. ADMISSION TO PRACTICE

7 1. Respondent was admitted to practice law in the State of Washington on November
8 13, 2002.

9 II. STIPULATED FACTS

10 JS Matter

11 2. Respondent represented client JS¹ in a personal injury case. As the result of a set-
12 tlement of the JS matter, Respondent received a \$18,500 check from Liberty Mutual, which Re-
13 spondent deposited into her trust account on August 9, 2011.

14 3. Federated Insurance had a subrogated interest of \$3,333.33 in the JS matter settle-
15 ment proceeds as the result of medical payments on behalf of JS.

16 4. On September 12, 2011, Respondent disbursed \$9,000.95 from her trust account to
17 JS. Respondent represented to JS that this sum was the balance of the settlement funds less Re-
18 spondent's costs and fees, less \$3,333.33 which she was withholding to pay the subrogated in-
19 terest of Federated Insurance.

20 5. Respondent was not entitled to any portion of the \$3,333.33 that had been withheld
21 to from the settlement proceeds of JS to cover the subrogated interest of Federated Insurance.
22 On or about September 9, 2011 and September 14, 2011, Respondent knowingly converted all

23 _____
24 ¹ The names of all clients who are not grievants are abbreviated to maintain their confidentiality.

1 of these funds to her own use. By October 17, 2011, the funds in Respondent's trust account
2 were completely depleted. It is unclear whether the Association could prove by a clear prepon-
3 derance of the evidence that Respondent acted with criminal intent in this conversion of funds in
4 light of the psychological conditions and personal situations set forth in the confidential attach-
5 ments.

6 6. Respondent did not inform JS that she had not paid the subrogated interest of Feder-
7 ated Insurance.

8 7. Respondent used her own funds to remit \$3,333.33 to Federated Insurance in Febru-
9 ary, 2012, after a grievance had been filed.

10 **Spain Ray Matter**

11 8. Respondent represented Spain Ray in a personal injury case. That matter was settled
12 by a \$16,705 payment from Allstate Insurance, which Respondent deposited into her trust ac-
13 count on April 1, 2010.

14 9. Respondent provided her client with an April 19, 2010 Settlement Breakdown that
15 reflected that \$2,855 was being withheld to pay the lien of Seattle Back Clinic and \$2,275 was
16 being withheld to pay the lien of Patrice Lynch, LMP.

17 10. Respondent was not entitled to any portion of the \$5,130 that had been withheld
18 from Ms. Ray to pay these liens. Over a period of time, Respondent knowingly converted these
19 funds to her own use. By October 17, 2011, the funds in Respondent's trust account were com-
20 pletely depleted. It is unclear whether the Association could prove by a clear preponderance of
21 the evidence that Respondent acted with criminal intent in this conversion of funds in light of
22 the psychological conditions and personal situations set forth in the confidential attachments.

1 11. Respondent did not advise Ms. Ray that she had not paid the liens of Seattle Back
2 Clinic and Patrice Lynch, LMP.

3 12. Respondent used her own funds to pay the liens of Seattle Back Clinic and Patrice
4 Lynch, LMP in December 2012.

5 **Sau M Matter**

6 13. Respondent represented client Sau M in a personal injury action. That matter settled
7 by a \$3,800 check from Progressive Northwestern Insurance, which Respondent deposited into
8 her trust account on August 9, 2010.

9 14. Respondent provided her client Sau M with an August 18, 2010 Settlement Break-
10 down that reflected that \$335 was being withheld to pay the lien of Seattle Back Clinic.

11 15. Respondent was not entitled to any portion of the \$335 that had been withheld from
12 client Sau M to pay the lien of Seattle Back Clinic. Over a period of time, Respondent know-
13 ingly converted these funds to her own use. By October 17, 2011 the funds in Respondent's
14 trust account were completely depleted. It is unclear whether the Association could prove by a
15 clear preponderance of the evidence that Respondent acted with criminal intent in this conver-
16 sion of funds in light of the psychological conditions and personal situations set forth in the con-
17 fidential attachments.

18 16. Respondent did not advise client Sau M that she did not pay the lien of Seattle Back
19 Clinic.

20 17. Respondent used her own funds to pay the lien of Seattle Back Clinic in December
21 2012.

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1 **E G Matter**

2 18. Respondent represented client EG in a personal injury action. That matter settled by
3 a \$12,864.33 check from Lancer Insurance, which Respondent deposited into her trust account
4 on October 30, 2009.

5 19. Respondent provided her client EG with a Settlement Breakdown that reflected that
6 \$310 was being withheld to pay the client's obligation to Associated Emergency Physicians.

7 20. Respondent was not entitled to any portion of the \$310 that had been withheld from
8 client EG to pay the client's obligation to Associated Emergency Physicians. Over a period of
9 time, Respondent knowingly converted these funds to her own use. By October 17, 2011 the
10 funds in Respondent's trust account were completely depleted. It is unclear whether the Asso-
11 ciation could prove by a clear preponderance of the evidence that Respondent acted with crimi-
12 nal intent in this conversion of funds in light of the psychological conditions and personal situa-
13 tions set forth in the confidential attachments.

14 21. Respondent did not advise EG that she did not pay his obligation to Associated
15 Emergency Physicians.

16 22. Respondent used her own funds to pay Associated Emergency Physicians in Decem-
17 ber 2012.

18 **Failure to Comply With Trust Account Requirements**

19 23. During the period December 31, 2008 through October 31, 2011, Respondent did not
20 contemporaneously maintain a check register for her trust account with entries for all receipts,
21 disbursements, and transfers, which identified all transactions by client, and which contained a
22 running balance of the account.

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24

1 24. During the period December 31, 2008 through October 31, 2011, Respondent did not
2 contemporaneously maintain individual client ledgers with entries for all receipts, disburse-
3 ments and transfers.

4 25. During the period December 31, 2008 through October 31, 2011, Respondent re-
5 ceived trust account bank statements on a monthly basis, but did not monthly prepare reconcilia-
6 tions of her trust account bank statements to a check register or to client ledgers.

7 26. During the period December 31, 2008 through October 31, 2011, on at least nine oc-
8 casions, Respondent withdrew cash from her trust account.

9 III. STIPULATION TO MISCONDUCT

10 27. By failing to maintain the funds of clients JS, Spain Ray, Sau M, and EG in trust and
11 by knowingly converting those funds to her own use, Respondent violated RPC 1.15A(c)(1) and
12 RPC 1.15A(b).

13 28. By failing to maintain a contemporaneous trust account check register with entries
14 for all receipts, disbursements and transfers, which identified all transactions by client, and
15 which contained a running balance of the account, Respondent violated RPC 1.15A(h)(2) by
16 violating RPC 1.15B(a)(1).

17 29. By failing to maintain contemporaneous individual client ledgers with entries for all
18 receipts, disbursements and transfers, Respondent violated RPC 1.15A(h)(2) by violating RPC
19 1.15B(a)(2).

20 30. By failing to prepare reconciliations of her trust account bank statements, check reg-
21 ister and client ledgers on a monthly basis, Respondent violated RPC 1.15A(h)(6).

22 31. By withdrawing funds from her trust account in the form of cash, Respondent vio-
23 lated RPC 1.15A(h)(5).

1 **IV. PRIOR DISCIPLINE**

2 32. Respondent has no prior discipline.

3 **V. APPLICATION OF ABA STANDARDS**

4 33. The following American Bar Association Standards for Imposing Lawyer Sanctions
5 (1991 ed. & Feb. 1992 Supp.) apply to this case:

6 ABA Standards section 4.1 is most applicable to Respondent's duty to maintain client
7 funds in trust and keep complete records:

8 **4.1 Failure to Preserve the Client's Property**

9 4.11 Disbarment is generally appropriate when a lawyer knowingly converts cli-
ent property and causes injury or potential injury to a client.

10 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 poten-
tial injury to a client.

11 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.

12 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 cli-
13 ent.

14 Respondent knowingly converted client funds. The failure to maintain all client funds in a trust
15 account and the remaining violations of the trust account rules were instances where Respondent
16 should have known she was dealing improperly with client funds.

17 34. Although there was no apparent actual injury to clients JS, Spain Ray, Sau M, and
18 EG due to the delay in their obligations being paid out of the settlement proceeds, there was
19 significant potential injury as the result of the funds not remaining in trust in that had anything
20 happened to Respondent while the funds were converted, the clients may well have lost their
21 funds. With respect to all the other violations of the trust account rules, there was potential for
22 injury in that it could not necessarily be ascertained that all client funds had been safeguarded.

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1 35. The presumptive sanction for the conversion of client funds is disbarment. The pre-
2 sumptive sanction for failure to keep adequate trust account records and maintain client funds in
3 a trust account is suspension.

4 36. The following aggravating factors apply under ABA Standards Section 9.22:

5 **§9.22(b). A dishonest or selfish motive** is inherent in a knowing conversion of client
6 trust funds. This aggravating factor is offset somewhat by Respondent's impaired mental state,
7 as discussed in the confidential psychological report, attached hereto under seal as Attachment
8 A, and the statement of personal circumstances set forth in the confidential statement Respond-
9 ent provided to her psychologist, attached hereto under seal as Attachment B, which reduced
10 respondent's ability to think logically and clearly and led her to think that the behavior was ac-
11 ceptable.

12 **§9.22(d). Multiple offenses** are present in that there are numerous violations. This is
13 offset somewhat by the fact that virtually all of the offenses are similar in nature in that they all
14 are trust account violations.

15 **§9.22(i). Substantial Experience in the Practice of Law** – Respondent was admitted
16 to practice in 2002.

17 37. The following mitigating factors apply under ABA Standards Section 9.32:

18 **§9.32(a). Absence of a Prior Disciplinary Record.**

19 **§9.32(c). Personal and Emotional Problems.** As is set forth in the confidential psy-
20 chological report, attached hereto under seal as Attachment A, and the statement of personal
21 circumstances set forth in the confidential statement Respondent provided to her psychologist,
22 attached hereto under seal as Attachment B, Respondent suffers from a significant psychologi-
23 cal disorder which led her to think that otherwise unacceptable and out of character behavior
24

1 was nonetheless acceptable. Her personal situation also significantly contributed to the unwise
2 choices she made which led to the ethical violations.

3 **§9.32(I). Remorse.** Respondent has expressed genuine remorse for her misconduct.

4 38. The psychological condition set forth in the confidential medical report is a serious
5 and substantial mitigator. It goes to the heart of the knowing dishonesty aggravator and largely
6 offsets what is ordinarily the knowing nature of a conversion of client funds. The personal cir-
7 cumstances as set forth in the confidential statement of Respondent is also a substantial mitiga-
8 tor. On balance, the mitigating factors outweigh the aggravating factors and warrant the sanction
9 of a lengthy suspension with probation conditions rather than disbarment.

10 **VI. STIPULATED DISCIPLINE**

11 39. Respondent stipulates to a three-year suspension under ELC 13.1(a)(2) and ELC
12 13.3. Reinstatement is conditioned on a showing that Respondent has the mental capacity to
13 practice law, to be established by at least a one-year proven period of stable recovery as moni-
14 tored by Respondent's treating mental health professional. Any disputes related to reinstate-
15 ment will be resolved under the procedures of ELC 13.3(b)(2).

16 40. Reinstatement is to be followed by a two-year period of probation under ELC 13.8
17 during which:

18 (1) Respondent is to remain under the care of a treating mental health professional and will
19 comply with the recommendations of her treating mental health professional as to treatment.

20 The treating mental health professional will make quarterly reports to disciplinary counsel as to
21 whether Respondent is remaining in treatment and complying with treatment recommendations.

22 (2) There will be periodic reviews of Respondent's trust account practices, with Respondent to
23 comply with the specific probation terms set forth below:
24

1 (a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
2 1.15B, and shall carefully review the Association's publication, Managing Client Trust
3 Accounts: Rules, Regulations, and Common Sense.

4 (b) For all client matters, Respondent shall have a written fee agreement signed by the
5 client, which agreements are to be maintained for least seven years (see RPC
6 1.15B(a)(3)).

7 (c) On a quarterly basis, Respondent shall provide the Association's audit staff with all
8 trust-account records for the time period to be reviewed by the Association's audit staff
9 and disciplinary counsel for compliance with the RPC:

10 (i) Months 1 – 3. By no later than the 30th day of the fourth month after Re-
11 spondent's reinstatement, Respondent shall provide the trust account records
12 from the date of her reinstatement to the end of the third full month.

13 (ii) Months 4 – 6. By no later than the 30th day of the seventh month after Re-
14 spondent's reinstatement, Respondent shall provide the trust account records
15 from the end of the previously provided quarter through the end of month six.

16 (iii) Months 7 – 9. By no later than the 30th day of the tenth month after Re-
17 spondent's reinstatement, Respondent shall provide the trust account records
18 from the end of the previously provided quarter through the end of month nine.

19 (iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
20 Respondent's reinstatement, Respondent shall provide the trust account records
21 from the end of the previously provided quarter through the end of month twelve.

22 (v) Months 13– 15. By no later than the 30th day of the sixteenth month after
23 Respondent's reinstatement, Respondent shall provide the trust account records
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1 from the end of the previously provided quarter through the end of month fifteen.

2 (vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
3 Respondent's reinstatement, Respondent shall provide the trust account records
4 from the end of the previously provided quarter through the end of month eight-
5 een.

6 (vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
7 after Respondent's reinstatement, Respondent shall provide the trust account
8 records from the end of the previously provided quarter through the end of month
9 twenty-one.

10 The trust account records Respondent provides to the Association for each quarterly re-
11 view of her trust account will include: (a) a complete checkbook register for her trust ac-
12 count covering the period being reviewed, (b) complete individual client ledger records
13 for any client with funds in Respondent's trust account during all or part of the period
14 being reviewed, as well as for Respondent's own funds in the account (if any), (c) copies
15 of all trust-account bank statements, deposit slips, and cancelled checks covering the pe-
16 riod being reviewed, (d) copies of all trust account client ledger reconciliations for the
17 period being reviewed, and (e) copies of reconciliations of Respondent's trust account
18 check register covering the period being reviewed. The Association's Audit Manager or
19 designee will review Respondent's trust account records for each period.

20 (d) On the same quarterly time schedule set forth in the preceding paragraph, Respond-
21 ent will provide the Association's Audit Manager or designee with copies of any and all
22 fee agreements entered into within the time period at issue.

23 (e) The Association's Audit Manager or designee may request additional financial or
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1 client records if needed to verify Respondent's compliance with RPC 1.15A and/or
2 1.15B. Within twenty days of a request from the Association's Audit Manager or de-
3 signee for additional records needed to verify Respondent's compliance with RPC 1.15A
4 and/or RPC 1.15B, Respondent will provide the Association's Audit Manager or design-
5 ee the additional records requested.

6 (f) Respondent will reimburse the Washington State Bar Association for time spent by
7 the Association's Audit Manager or designee in reviewing and reporting on Respond-
8 ent's records to determine his/her compliance with RPC 1.15A and RPC 1.15B, at the
9 rate of \$85 per hour. Respondent will make payment within thirty days of each written
10 invoice setting forth the auditor's time and payment due.

11 (3) During the probation period, Respondent will participate in at least 12 credit hours of CLE
12 courses in the field of law office management, at least five credit hours of which will be instruc-
13 tion in the trust account requirements for a lawyer. Respondent will provide proof of satisfac-
14 tion of this requirement to Disciplinary Counsel.

15 VII. RESTITUTION

16 41. Respondent has made a full and complete payment of the obligations related to the
17 client funds that she converted. With respect to the violations related to Respondent's operation
18 of her trust account, there is no showing of any loss of client funds. As such, no restitution is
19 appropriate.

20 VIII. COSTS AND EXPENSES

21 42. Respondent shall pay attorney fees and administrative costs of \$6,000.00 in accord-
22 ance with ELC 13.9(i), provided that it is agreed that because of Respondent's dire financial cir-
23 cumstances, no interest will accrue on the unpaid balance during the period of her suspension,
24

1 but upon application for reinstatement, interest will accrue from the date of any payment plan
2 entered under ELC 13.9(i)(3). Under ELC 13.3(b)(1)(B), prior to reinstatement, these costs
3 must be paid, or a payment plan must be entered into under ELC 13.9(i)(3).

4 IX. VOLUNTARY AGREEMENT

5 43. Respondent states that prior to entering into this Stipulation she has consulted inde-
6 pendent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation
7 voluntarily, and that no promises or threats have been made by the Association, nor by any rep-
8 resentative thereof, to induce the Respondent to enter into this Stipulation except as provided
9 herein.

10 X. LIMITATIONS

11 44. This Stipulation is a compromise agreement intended to resolve this matter in ac-
12 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
13 penditure of additional resources by the Respondent and the Association. Both the Respondent
14 lawyer and the Association acknowledge that the result after further proceedings in this matter
15 might differ from the result agreed to herein.

16 45. This Stipulation is not binding upon the Association or the respondent as a statement
17 of all existing facts relating to the professional conduct of the respondent lawyer, and any addi-
18 tional existing facts may be proven in any subsequent disciplinary proceedings.

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

1 subsequent proceedings against Respondent to the same extent as any other approved Stipula-
2 tion.

3 47. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
4 Board shall have available to it for consideration all documents that the parties agree to submit
5 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
6 form the record before the Board for its review become public information on approval of the
7 Stipulation by the Board, unless disclosure is restricted by order or rule of law. Not withstand-
8 ing the foregoing, the parties stipulate to a protective order under ELC 3.2(c) to preclude public
9 disclosure or public filing of the confidential medical report that is attached as Attachment A
10 and is filed under seal.

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

14 49. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
15 Stipulation will have no force or effect, and neither it nor the fact of its execution will be admis-
16 sible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary pro-
17 ceeding, or in any civil or criminal action.

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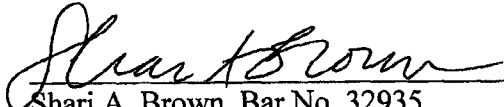
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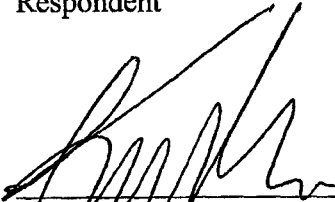
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1 WHEREFORE the undersigned being fully advised, adopt and agree to the facts and terms of
2 this Stipulation to Discipline as set forth above.

3
4 
5 Shari A. Brown, Bar No. 32935
6 Respondent

Dated: 7.19.13

7
8 
9 Kurt M. Byrner, Bar No. 5559
10 Counsel for Respondent

Dated: 7/19/13

11 
12 Randy Beitel, Bar No. 7177
13 Senior Disciplinary Counsel

Dated: 7/19/13