

APR 26 2016

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RAJIV NAGAICH,

Lawyer (Bar No. 32991).

Proceeding No. *10# 000 44*

ODC File No. 15-00533

STIPULATION TO REPRIMAND

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 disciplinary counsel Jonathan Burke, Respondent's Counsel Thomas M. Fitzpatrick and Respondent lawyer Rajiv Nagaich.

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 Discipline

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OFFICE OF DISCIPLINARY COUNSEL OF THE
WASHINGTON STATE BAR ASSOCIATION

1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

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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 13, 2002.

5 **II. STIPULATED FACTS**

6 2. Respondent is the principal owner of a law firm.

7 3. Respondent's law firm routinely provides legal services to elderly and/or disabled
8 clients. Some of these services include providing estate planning, drafting wills and trusts, and
9 filing Medicaid applications.

10 4. Respondent was negligent in setting up an adequate system at the firm for
11 supervising staff.

12 5. In August 2013, Respondent approved YW's hiring as a resource specialist. YW's
13 application reflected that she had a prior felony conviction for theft related to her prior
14 employment.

15 6. YW informed the firm that her sister was responsible for the theft. At Respondent's
16 direction, MB called a telephone number provided by YW that YW represented as the telephone
17 number of the former employer. The person who answered the telephone corroborated YW's
18 claims.

19 7. YW's supervisor at the firm was MB, a non-lawyer, who reported to JE, the firm
20 administrator.

21 8. MB expressed concern about the propriety of YW's conduct to firm management on
22 several occasions. Respondent was made aware of MB's concerns.

23 9. At Respondent's direction, the firm performed another criminal background check of

1 YW about three months after she was employed. The criminal background check revealed that
2 YW had two felony convictions for theft: (1) a conviction in Thurston County on November 15,
3 15, 2011, and (2) a conviction in Pierce County on August 1, 2013, which YW had previously
4 disclosed. Respondent's firm was further reminded about YW's second felony with it received
5 a letter, dated May 16, 2014, from the clerk of the Thurston County Court containing an Order
6 to Withhold and Deliver funds to pay criminal restitution to the court.

7 10. YW had substantial direct contact with the firm's clients and/or relatives of clients.
8 YW also had direct access to the personal information about clients, including personal
9 identifiers and financial information.

10 11. On December 13, 2014, Respondent received information that YW was receiving
11 direct payments from one of Respondent's clients.

12 12. When the management of Respondent's firm investigated YW, they discovered that
13 YW had been convincing clients of the firm to pay her directly for services and then stealing the
14 money paid by clients. After discovering the thefts, the firm promptly fired YW and reported
15 her actions to the police.

16 13. The management of Respondent's firm also investigated YW's billing and client
17 files and discovered that YW had been billing clients for services that were not actually
18 rendered. For example, the firm discovered that YW charged clients for preparing and filing
19 Medicaid applications that were not actually prepared or filed.

20 14. YW's illegal and unethical conduct would have been revealed and/or prevented
21 earlier if Respondent's firm had implemented reasonable supervision of YW.

22 15. On January 6, 2015, Respondent's firm sent a letter notifying certain clients that YW
23 was no longer employed by the firm.

1 16. Subsequently, Respondent hired a new firm administrator, JB, and directed him to
2 fully re-investigate YW's conduct. As a result, Respondent's firm calculated a number of
3 overbillings and losses due to YW's conduct.

4 17. Respondent's firm paid, credited, and wrote-off substantial fees to clients in
5 connection with YW's conduct. In addition, Respondent's firm paid consequential damages
6 resulting from services that YW failed to timely perform. Respondent's firm also provided free
7 legal services to assist in taking corrective action for YW's conduct.

8 18. In the spring of 2015, JB implemented a management system for supervising lawyers
9 and non-lawyer staff at Respondent's firm.

10 19. JB is no longer employed by Respondent. Respondent has accepted GM as a partner
11 of the firm, and is in the process of changing management.

12 III. STIPULATION TO MISCONDUCT

13 20. By failing to make reasonable efforts to ensure that the firm had in effect measures
14 to ensure that non-lawyer staff's conduct complied with the RPC, Respondent violated RPC
15 5.3(b).

16 IV. PRIOR DISCIPLINE

17 21. Respondent has no prior discipline.

18 V. APPLICATION OF ABA STANDARDS

19 22. The following standard from American Bar Association Standards for Imposing
20 Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) applies to this case:

21 7.0 Violations of Duties Owed as a Professional

22 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
23 conduct that is a violation of a duty owed as a professional with the intent to obtain a
24 benefit for the lawyer or another, and causes serious or potentially serious injury to a
client, the public, or the legal system.

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2 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
3 conduct that is a violation of a duty owed as a professional and causes injury or potential
4 injury to a client, the public, or the legal system.

5 **7.3 Reprimand is generally appropriate when a lawyer negligently engages in**
6 **conduct that is a violation of a duty owed as a professional and causes injury or**
7 **potential injury to a client, the public, or the legal system.**

8 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
9 instance of negligence that is a violation of a duty owed as a professional, and causes
10 little or no actual or potential injury to a client, the public, or the legal system.

11 23. Respondent negligently failed to employ reasonable supervision of YW and/or staff.

12 24. Respondent's conduct resulted in substantial injury to clients and actual or potential
13 injury to the legal system.

14 25. The presumptive sanction is reprimand under ABA Standard 7.3.

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

16 (h) Vulnerability of victim (some of the victims are elderly clients who suffer from
17 dementia and other mental and physical health problems); and

18 (i) Substantial experience in the practice of law (Respondent was admitted to practice in
19 2002).

20 27. The following mitigating factors apply under ABA Standard 9.32:

21 (a) Absence of prior disciplinary record; and

22 (d) Timely good faith effort to make restitution or to rectify consequence of misconduct.

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

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

1 **VI. STIPULATED DISCIPLINE**

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

3 31. Respondent will be subject to probation for a period of one-year beginning when
4 this stipulation receives final approval and shall comply with the specific probation terms set
5 forth below:

- 6 a) During the year of probation, Respondent and the individual at the firm responsible
7 for supervising lawyers and non-lawyer staff will meet with a practice monitor
8 agreeable to disciplinary counsel on a monthly basis. The parties agree that lawyer
9 Arthur Lachman is acceptable to act as the practice monitor. If Mr. Lachman is
10 unable to fulfill his duties as practice monitor, another practice monitor agreeable to
11 disciplinary counsel will be appointed.
- 12 b) The practice monitor's task is to review, evaluate, and make recommendations to
13 Respondent regarding the implementation and maintenance of adequate reasonable
14 measures for Respondent, supervising lawyers, and non-legal staff so that their
15 professional conduct is compatible with the professional obligations with the
16 professional obligations of the RPCs.
- 17 c) In preparation for each monthly meeting with the practice monitor, Respondent will
18 provide the practice monitor with a copy of all billing statements for legal services
19 billed and/or provided during the month. The practice monitor is not expected or
20 required to review all the billing entries. Respondent will provide the practice
21 monitor with access to any client file requested by the practice monitor.
- 22 d) The practice monitor will submit a quarterly report (every three months) to the
23 probation monitor at ODC (currently Thea Jennings). The quarterly report will
24 disclose the date of each monthly meeting and include a short synopsis of the topics
discussed at each meeting and any recommendation and/or concerns the practice
monitor has regarding the ethical practices at Respondent's firm. Each quarterly
report is due 30 days after the last monthly meeting for that quarter.
- e) Respondent is responsible for paying for each consultation with the probation
monitor.

21 **VII. RESTITUTION**

22 32. Does not apply.

23 **VIII. COSTS AND EXPENSES**

24 33. In light of Respondent's willingness to resolve this matter by stipulation at an early

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$500 in
2 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
3 if these costs are not paid within 30 days of approval of this stipulation.

4 IX. VOLUNTARY AGREEMENT

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

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

12 X. LIMITATIONS

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

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

21 38. This Stipulation results from the consideration of various factors by both parties,
22 including the benefits to both by promptly resolving this matter without the time and expense of
23 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As

1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved
4 Stipulation.

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

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

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

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



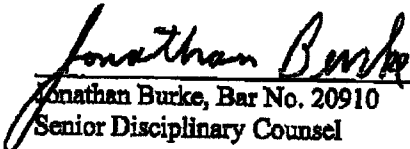
Rajiv Nagarch, Bar No. 32991
Respondent

Dated: 4/19/16



Thomas M. Fitzpatrick, Bar No. 8894
Counsel for Respondent

Dated: 4/19/16



Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel

Dated: 4/19/16