

FILED

JAN 06 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

LARRY LEE WHYTE,
Lawyer (Bar No. 35282).

Proceeding No. 12#00102

AFFIDAVIT OF LARRY LEE WHYTE
RESIGNING FROM MEMBERSHIP
IN WASHINGTON STATE BAR
ASSOCIATION

(new ELC 9.3(b) – effective January 1, 2014)

Larry Lee Whyte, being duly sworn, hereby attests to the following:

1. I am over the age of eighteen years and am competent. I make the statements in this affidavit from personal knowledge.
2. I was admitted to practice law in the State of Washington on September 20, 2004.
3. I was served with a Formal Complaint and Notice to Answer in this matter on December 18, 2012.
4. I have voluntarily decided to resign from the Washington State Bar Association

019

1 (the Association) in Lieu of Discipline under the new Rule for Enforcement of Lawyer Conduct
2 (ELC) 9.3, which will be effective January 1, 2014.

3 5. I am currently suspended from the practice of law. I agree to not seek
4 reinstatement from suspension.

5 6. Attached as Exhibit A is Disciplinary Counsel's statement of alleged misconduct
6 for purposes of ELC 9.3(b). While not admitting the misconduct in the Attached Statement of
7 Alleged Misconduct, attached as Exhibit A, I admit that the Association could prove, by a clear
8 preponderance of the evidence, the violations set forth in Exhibit A, and that the proof of such
9 violations would suffice to result in discipline.

10 7. I have agreed to the entry of a confession of judgment for \$1,000 to cover
11 expenses. I agree to pay any additional costs that may be ordered by a Review Committee
12 under ELC 9.3(g).

13 8. I understand that this Affidavit will be held by disciplinary counsel and not
14 filed with the clerk of the Disciplinary Board until January 2, 2014, when the new ELC
15 9.3(b) becomes effective. I understand that my resignation becomes effective on disciplinary
16 counsel's filing of this document with the clerk of the Disciplinary Board, which will be on
17 January 2, 2014.

18 9. I understand that when this affidavit is filed with the clerk for the Disciplinary
19 Board, my resignation is permanent and that any future application by me for reinstatement as
20 a member of the Association is currently barred. If the Supreme Court changes this rule or an
21 application is otherwise permitted in the future, it will be treated as an application by one who
22 has been disbarred for ethical misconduct, and that, if I file an application, I will not be entitled
23 to a reconsideration or reexamination of the facts, complaints, allegations, or instances of
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1 | alleged misconduct on which this resignation was based.

2 | 10. After this affidavit is filed, I agree to (a) notify all other jurisdictions in which
3 | I am or have been admitted to practice law of the resignation in lieu of discipline, (b) seek to
4 | resign permanently from the practice of law in any other jurisdiction in which I am admitted, (c)
5 | provide disciplinary counsel with copies of any of these notifications and any responses, and (d)
6 | acknowledge that the resignation could be treated as a disbarment by all other jurisdictions.

7 | 11. After this affidavit is filed, I agree to (a) notify all other professional licensing
8 | agencies in any jurisdiction from which I have a professional license that is predicated on my
9 | admission to practice law of this resignation in lieu of discipline; (b) seek to resign permanently
10 | from any such license; and (c) provide disciplinary counsel with copies of any of these
11 | notifications and any responses.

12 | 12. After this affidavit is filed, I agree that when applying for any employment, I will
13 | disclose the resignation in lieu of discipline in response to any question regarding disciplinary
14 | action or the status of my license to practice law.

15 | 13. When my resignation becomes effective, I agree to be subject to all restrictions
16 | that apply to a disbarred lawyer.

17 | 14. Upon filing of this affidavit, I agree to comply with the same duties as a
18 | disbarred lawyer under ELC 14.1 through ELC 14.4.

19 | 15. I understand that after my resignation becomes effective, it is permanent. I
20 | will never be eligible to apply and will not be considered for admission or reinstatement to the
21 | practice of law nor will I be eligible for admission for any limited practice of law.

22 | ///

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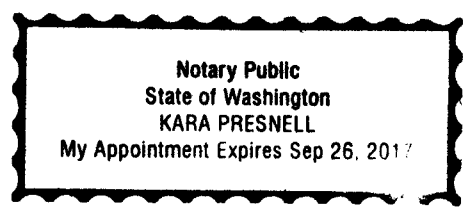
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16. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dec 4, 2013 Bainbridge Island
Date and Place
Larry Lee Whyte
Larry Lee Whyte, Bar No. 35282

SUBSCRIBED AND SWORN to before me this 4 day of December, 2013.



Kara Presnell
NOTARY PUBLIC for the state of
Washington, residing at 231 Winslow
way Bainbridge Island WA 98110
My commission expires: 9/26/2017

EXHIBIT A

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7 BEFORE THE
8 DISCIPLINARY BOARD
9 OF THE
10 WASHINGTON STATE BAR ASSOCIATION

11 In re

12 **LARRY LEE WHYTE,**
13 Lawyer (Bar No. 35282).

Proceeding No. 12#00102

STATEMENT OF ALLEGED
MISCONDUCT UNDER ELC 9.3(b)(1)

14 The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of
15 the Rules for Enforcement of Lawyer Conduct (ELC).

16 **I. ADMISSION TO PRACTICE**

17 1. Respondent Larry Lee Whyte was admitted to the practice of law in the State of
18 Washington on September 20, 2004.

19 **II. ALLEGED FACTS**

20 2. In August 2010, Susan Harris hired Respondent to represent her in a wrongful
21 termination case involving her former employer, Madison Avenue Retirement Center (MARC).

22 3. Although Respondent and Harris agreed that Respondent would be paid on a one-
23 third contingent fee basis, Respondent and Harris did not enter into a written fee agreement,
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1 signed by Harris.

2 4. On September 23, 2010, Harris wrote a \$400 check to Respondent for costs.

3 5. Respondent did not deposit the cost advance into his IOLTA account.

4 6. On November 8, 2010, Respondent filed a complaint against MARC in Kitsap
5 County Superior Court.

6 7. At Harris' request and while the MARC lawsuit was pending, Respondent agreed to
7 prepare estate planning documents for Harris.

8 8. Respondent and Harris did not enter into a written fee agreement for the estate
9 planning work, nor did Respondent explain to Harris the rate and basis of his fee for the estate
10 planning work.

11 9. In April 2011, a settlement was reached in the MARC lawsuit in which MARC
12 agreed to pay Harris \$3,000.00.

13 10. On April 27, 2011, Harris signed the settlement agreement.

14 11. Respondent did not tell Harris that he had received the settlement check on May 5,
15 2011 and that he had deposited the \$3,000.00 into his IOLTA account.

16 12. On May 6, 2011, Respondent withdrew \$1,000.00 of the settlement money from his
17 IOLTA account and deposited the funds into his operating/general account.

18 13. On May 13, 2011, Respondent withdrew an additional \$1,000.00 of the settlement
19 money from his IOLTA account and deposited the funds into his operating/general account.

20 14. On May 20, 2011, Respondent withdrew the remaining \$1,000.00 of the settlement
21 money from his IOLTA account and deposited the funds into his operating/general account.

22 15. On May 27, 2011, Harris asked Respondent if he had received the signed settlement
23 agreement and settlement check. He confirmed he had received both the check and settlement
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1 agreement.

2 16. Respondent did not notify Harris of his intent to withdraw fees from the settlement
3 funds prior to doing so, nor did he timely provide Harris with a written accounting after
4 distributing the settlement funds to himself.

5 17. Respondent was not entitled to the entire \$3,000.00 he took from the MARC
6 settlement.

7 18. On August 1, 2011, Harris filed a grievance with the Association.

8 19. On August 15, 2011, after Respondent received a copy of the grievance, he
9 deposited \$1,950.30 into his IOLTA account and sent Harris a check in the amount of \$1,950.30
10 drawn on his IOLTA account, representing her two-thirds of the MARC settlement less costs
11 advanced.

12 20. Respondent also provided Harris with a billing statement showing attorney fees in
13 the amount of \$2,025.00 for the estate planning work. Harris had not agreed to pay Respondent
14 \$2,025.00 for the estate planning work.

15 21. Respondent did not provide any estate planning documents to Harris.

16 22. During the Association's investigation of the grievance filed by Harris, the
17 Association requested Respondent's complete client file for Harris.

18 23. As part of the client file, Respondent provided the Association with a contingent fee
19 agreement purportedly signed by Harris.

20 24. Harris' signature on the fee agreement is not genuine. Respondent knew that the
21 signature was not genuine when he provided it to the Association.

22 **III. ALLEGED MISCONDUCT.**

23 25. By taking Harris' settlement funds for his own use, committing the crime of theft, in
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1 violation of Revised Code of Washington (RCW) 9A.56.020(1)(a) and RCW 9A.56.010(22)(b),
2 Respondent violated RPC 8.4(b) and 8.4(c).

3 26. By taking funds belonging to Harris to which he was not entitled and converting
4 them to his own use, Respondent violated RPC 1.15A(b), which provides that a lawyer must not
5 use, convert, borrow or pledge client or third person property for the lawyer's own use.

6 27. By providing the Association with a fee agreement bearing a signature of Harris that
7 he knew was not genuine, which constituted the crime of forgery, in violation of RCW
8 9A.60.020, Respondent violated RPC 8.4(b), RPC 8.4(c), RPC 8.4(d), and RPC 8.1(a).

9 28. By not diligently preparing the estate planning documents, not providing them to
10 Harris, and then billing Harris \$2,025.00 for the work, resulting in no benefit to Harris,
11 Respondent violated RPC 1.3 and RPC 1.5(a).

12 29. By failing to explain the basis or rate of his fee, and that he intended to deduct his
13 attorney fees for the estate planning work from the MARC settlement, Respondent violated
14 RPC 1.5(b).

15 30. By failing to have a written contingent fee agreement signed by Harris, Respondent
16 violated RPC 1.5(c)(1).

17 31. By failing to communicate with Harris about the status of the final settlement with
18 MARC and/or that he had received the settlement check, Respondent violated RPC 1.4(a).

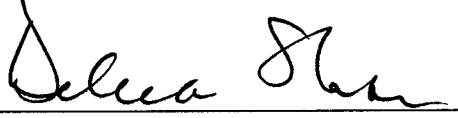
19 32. By failing to deposit the \$400.00 cost advance Harris paid him into a trust account,
20 Respondent violated RPC 1.15A(c)(2).

21 33. By failing to promptly notify Harris that he had received the MARC settlement
22 check and by failing to promptly pay Harris her share of the MARC settlement, Respondent
23 violated RPC 1.15A(d) and RPC 1.15A(f).

1 34. By depositing the MARC settlement check on May 5, 2011, and disbursing funds to
2 himself on May 6, 2011, without first giving notice to Harris, Respondent violated RPC
3 1.15A(h)(3).

4 35. By failing to provide a written accounting to Harris of the MARC settlement funds,
5 Respondent violated RPC 1.15A(d) and RPC 1.15A(e).

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7 DATED this 6th day of January 2014.

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10 Debra Slater, Bar No. 18346
11 Disciplinary Counsel
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