

FILED

May 5, 2021

Disciplinary
Board

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

AL M. TREACY,
Lawyer (Bar No. 36602).

Proceeding No. 21#00018

ODC File No. 20-00688

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's 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 Managing Disciplinary Counsel Joanne S. Abelson and Respondent lawyer Al M. Treacy.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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 than the one stipulated to here. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and

1 sanction to 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 October 19,
4 2005.

5 **II. STIPULATED FACTS**

6 2. From 2008 until June 2020, Respondent worked for the Marysville City Attorney's
7 Office as one of two lawyers prosecuting cases in Municipal Court.

8 3. The City of Marysville contracts with a private law firm (the Firm) to provide public
9 defense.

10 4. For approximately eight months in 2019-2020, Respondent and a lawyer with the Firm
11 who acted as a public defender engaged in an intimate relationship.

12 5. Respondent did not advise Respondent's client, the City of Marysville, of the intimate
13 relationship.

14 6. During the intimate relationship, Respondent and the public defender appeared on
15 opposite sides of approximately 300 cases.

16 7. Respondent stated that no defendant was treated differently simply because the public
17 defender at issue represented that defendant, and that neither Respondent nor the public defender
18 divulged any confidential information, strategy, or privileged information to each other. ODC
19 has no evidence to the contrary.

20 8. In June 2020, after the intimate relationship ended, Respondent voluntarily reported it
21 to Respondent's supervisor and to a principal at the Firm.

22 9. The City of Marysville placed Respondent on administrative leave while it conducted
23 an investigation.

1 10. Days later, Respondent resigned and self-reported to ODC. Respondent consistently
2 has expressed remorse.

3 11. Respondent's supervisor reviewed the cases Respondent handled opposite the public
4 defender at issue and did not notice anything out of the ordinary.

5 12. The Firm reviewed its case management system, identified nearly 600 clients
6 (including cases where the public defender at issue was attorney of record, filled in for other
7 counsel, or attended meetings) who potentially were impacted, and reached out to all identified
8 clients. Two clients opted to have conflict counsel assigned to explore any post-conviction relief.

9 13. The intimate relationship between Respondent and the public defender, and its
10 potential impact on the court system, generated local media coverage.

11 III. STIPULATION TO MISCONDUCT

12 14. Respondent, as a prosecutor for the City of Marysville, violated RPC 1.7(a)(2) and
13 RPC 1.8(l) by engaging in an intimate relationship with a public defender who was representing
14 parties adverse to the City of Maryville.

15 IV. PRIOR DISCIPLINE

16 15. Respondent has no prior discipline.

17 V. APPLICATION OF ABA STANDARDS

18 16. The following American Bar Association Standards for Imposing Lawyer Sanctions
19 (1991 ed. & Feb. 1992 Supp.) apply to this case:

20 **Standard 4.3 -- Failure to Avoid Conflicts of Interest**

21 **4.31** Disbarment is generally appropriate when a lawyer, without the informed
22 consent of client(s):

23 (a) engages in representation of a client knowing that the lawyer's
interests are adverse to the client's with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to the client; or

24 (b) simultaneously represents clients that the lawyer knows have

1 adverse interests with the intent to benefit the lawyer or another, and causes serious
2 or potentially serious injury to a client; or

3 (c) represents a client in a matter substantially related to a matter in
4 which the interests of a present or former client are materially adverse, and
5 knowingly uses information relating to the representation of a client with the intent
6 to benefit the lawyer or another and causes serious or potentially serious injury to
7 a client.

8 **4.32** Suspension is generally appropriate when a lawyer knows of a conflict of
9 interest and does not fully disclose to a client the possible effect of that conflict,
10 and causes injury or potential injury to a client.

11 **4.33** Reprimand is generally appropriate when a lawyer is negligent in
12 determining whether the representation of a client may be materially affected by
13 the lawyer's own interests, or whether the representation will adversely affect
14 another client, and causes injury or potential injury to a client.

15 **4.34** Admonition is generally appropriate when a lawyer engages in an isolated
16 instance of negligence in determining whether the representation of a client may be
17 materially affected by the lawyer's own interests, or whether the representation will
18 adversely affect another client, and causes little or no actual or potential injury to a
19 client.

20 17. Respondent acted knowingly.

21 18. There was potential injury to Respondent's client given the consequences to the
22 hundreds of criminal cases that Respondent had handled opposite the public defender during the
23 intimate relationship. See People v. Jackson, 167 Cal. App. 3d 829, 832-33, 213 Cal. Rptr. 521
24 (1985) (conflict of interest from undisclosed "dating" relationship between prosecutor and
defense counsel led to reversal of conviction based on ineffective assistance of counsel). In
addition, Respondent's conduct threatened the integrity of the criminal justice system and public
confidence in the court system and the profession.

19. The presumptive sanction is Suspension under ABA Standard 4.32.

20. The following aggravating factors apply under ABA Standard 9.22:

(b) selfish motive;

(i) substantial experience in the practice of law [admitted 2005].

1 21. The following mitigating factors apply under ABA Standard 9.32:

2 (a) absence of a prior disciplinary record;

3 (c) personal or emotional problems [see confidential Appendix A];

4 (e) full and free disclosure to the disciplinary board or cooperative attitude toward
5 proceedings [based on Respondent's self-report to ODC];

6 (g) character or reputation; and

7 (l) remorse.

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

10 23. On balance, based on the factors set forth above, the presumptive sanction should be
11 mitigated to a reprimand

12 VI. STIPULATED DISCIPLINE

13 24. The parties stipulate that Respondent shall receive a Reprimand.

14 VII. RESTITUTION

15 25. No restitution is required by this stipulation.

16 VIII. COSTS AND EXPENSES

17 26. In light of Respondent's willingness to resolve this matter by stipulation at an early
18 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
19 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if
20 these costs are not paid within 30 days of approval of this stipulation unless Respondent has
21 entered into a payment plan under ELC 13.9(i).

22 IX. VOLUNTARY AGREEMENT

23 27. Respondent states that prior to entering into this Stipulation Respondent has had an

1 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is
2 entering into this Stipulation voluntarily, and that no promises or threats have been made by ODC,
3 the Association, nor by any representative thereof, to induce the Respondent to enter into this
4 Stipulation except as provided herein.

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

7 **X. LIMITATIONS**

8 29. This Stipulation is a compromise agreement intended to resolve this matter in
9 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
10 expenditure of additional resources by the Respondent and ODC. Both the Respondent and ODC
11 acknowledge that the result after further proceedings in this matter might differ from the result
12 agreed to herein.

13 30. This Stipulation is not binding upon ODC or the respondent as a statement of all
14 existing facts relating to the professional conduct of the respondent, and any additional existing
15 facts may be proven in any subsequent disciplinary proceedings.

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

22 32. Under ELC 3.1(b), all documents that form the record before the Chief Hearing
23 Officer for review become public information on approval of the Stipulation by the Hearing

1 Officer, unless disclosure is restricted by order or rule of law.

2 33. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
3 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
4 of Lawyer Conduct will be made.

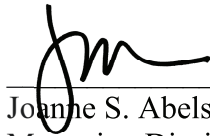
5 34. If this Stipulation is not approved by the Chief Hearing Officer, this Stipulation will
6 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence
7 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
8 or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

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

11
12 *Albert M. Treacy*

13 _____
14 Al M. Treacy, Bar No. 36602
Respondent

Dated: 30 March 2021

15 

16 _____
17 Joanne S. Abelson, Bar No. 24877
Managing Disciplinary Counsel

Dated: 3/31/21