

**FILED**

JUN 03 2014

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ALICE EUNAH KIM,**  
Lawyer (Bar No. 36896).

Proceeding No. 13#00106

STIPULATION TO A ONE-YEAR  
SUSPENSION

Under Rule 9.1 of the 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 Francesca D'Angelo and Respondent lawyer Alice Eunah Kim.

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

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1 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 November  
4 14, 2005.

5 **II. STIPULATED FACTS**

6 Client EK<sup>1</sup>

7 2. On or about November 13, 2011, Client EK signed a contingency fee agreement  
8 (agreement) with respondent.

9 3. The agreement provided that, in the event of a pre-lawsuit settlement, EK would  
10 pay Respondent 1/3 or 33.3 percent of the net recovery as attorney's fees.

11 4. The agreement defined net recovery as the initial amount that the client recovered  
12 after medical costs were deducted.

13 5. The agreement did not provide that fees collected from subrogation would be  
14 considered additional compensation to the attorney.

15 6. In December 2012, EK's case settled for \$15,300, and Respondent deposited the  
16 funds into her trust account.

17 7. Under the terms of the agreement, Respondent's fee should have been calculated  
18 on the net recovery after medical expenses.

19 8. EK's Personal Injury Protection (PIP) provider agreed to reduce its subrogation  
20 amount from \$5,503.29 to \$3,504.66 pursuant to *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d  
21 632 (1998)(*Mahler*).

22 9. After EK's PIP provider reduced its subrogation amount, EK's net recovery was

23 <sup>1</sup> Clients names are referred to by their initials in order to protect their privacy.

1 \$11,795.37.

2 10. Under the terms of the agreement, Respondent's fee should have totaled \$3,981.79.

3 11. Respondent actually took 1/3 of EK's gross settlement, which totaled \$5,100.

4 12. Respondent also took an additional \$1,998.66, which was the entire amount of  
5 EK's PIP provider's subrogation reduction.

6 13. Respondent did not inform EK about the additional \$1,998.66 that Respondent  
7 took from EN's settlement due to the reduction in medical expenses.

8 14. In total, Respondent took \$7098.66, which was 60 percent of EK's net recovery,  
9 rather than the 33.3 percent of the net recovery as permitted under the agreement.

10 15. Respondent took \$3,166.87 more than what was permitted under the agreement.

11 16. At the time EK's settlement funds were disbursed, Respondent obtained EK's  
12 signature on a disbursement statement that stated that any discount received from medical  
13 providers or attorney's fees collected from any subrogation would be paid to Respondent as  
14 additional compensation.

15 17. This above noted provision was not part of Respondent's original fee agreement  
16 with EK.

17 18. Respondent did not advise EK in writing of the desirability of seeking the advice  
18 of independent legal counsel before signing the disbursement statement, or obtain EK's informed  
19 written consent to the essential terms of the transaction and to her role in the transaction.

20 19. On August 9, 2013, Respondent made full restitution to EK.

21 Client EN

22 20. On September 20, 2010, client EN signed a contingency fee agreement with  
23 Respondent.

1 21. The agreement provided that in the event of a recovery without filing suit,  
2 Respondent's fee would equal 1/3 or 33.3 percent of the gross recovery.

3 22. The agreement defined gross recovery as the amount of recovery before expenses  
4 were deducted.

5 23. The agreement did not provide that fees collected from subrogation would be  
6 considered additional compensation to the attorney.

7 24. Respondent settled EN's case for \$5,825, and Respondent deposited these funds  
8 into her trust account.

9 25. Respondent discounted her fee to \$1,708.33.<sup>2</sup>

10 26. According to the disbursement statement Respondent provided to EN, Respondent  
11 was to pay EN's PIP provider \$2,624.

12 27. EN's PIP provider agreed to reduce its subrogation amount from \$2,624 to  
13 \$1,249.33 pursuant to *Mahler*.

14 28. Respondent took the remaining \$1,374.67.

15 29. Respondent did not inform EN about the additional \$1,374.67 that Respondent  
16 took from EN's settlement due to the reduction in medical expenses.

17 30. Respondent's total fee amounted to 53% of EN's gross recovery.

18 31. Respondent took \$1,114.33 more than permitted under the terms of the fee  
19 agreement.

20 32. At the time EN's settlement funds were disbursed, Respondent obtained EN's  
21 signature on a disbursement statement stating that any discount received from medical  
22 providers or attorney's fees collected from any subrogation would be paid to Respondent as

23 <sup>2</sup> Under the terms of the agreement, Respondent would have been entitled to 1/3 of the gross recovery or  
\$1,941.67.

1 additional compensation.

2 33. The above noted provision was not part of Respondent's original fee agreement  
3 with EN.

4 34. Respondent did not advise EN in writing of the desirability of seeking the advice  
5 of independent legal counsel before signing the disbursement statement, or obtain EN's  
6 informed written consent to the essential terms of the transaction and to her role in the  
7 transaction.

8 35. On August 9, 2013, Respondent made full restitution to EN.

9 Client NS

10 36. On September 20, 2010, client NS signed a contingency fee agreement with  
11 Respondent.

12 37. The agreement provided that in the event of a pre-lawsuit settlement, Respondent's  
13 fee would be 1/3 or 33.3 percent of the gross recovery.

14 38. The agreement did not provide that fees collected from subrogation would be  
15 considered additional compensation to the attorney.

16 39. In June 2012, Respondent settled NS's case for \$7,502 and deposited these funds  
17 into her trust account.

18 40. According to the disbursement statement, Respondent discounted her fee to \$2,300.67.<sup>3</sup>

19 41. The disbursement statement stated that \$3,102 would be paid to NS's PIP provider,

20 42. NS's PIP provider agreed to reduce its subrogation amount from \$3,102 to \$1,568  
21 pursuant to *Mahler*.

22 43. Respondent took the remaining \$1,534.

23 <sup>3</sup> Under the terms of the fee agreement, Respondent would have been entitled to 1/3 of the gross  
recovery or \$2500.

1 44. Respondent did not inform NS about the additional \$1,534 that Respondent took  
2 from EN's settlement due to the reduction in the subrogation amount.

3 45. Respondent's total fee for NS's case amounted to 51% of NS's gross recovery.

4 46. Respondent took \$1,334.67 more from NS's recovery than was permitted under the  
5 fee agreement.

6 47. Prior to disbursing NS's settlement funds, Respondent obtained NS's signature on  
7 a disbursement statement that stated that any discount received from medical providers or  
8 attorney's fees collected from any subrogation would be paid to Respondent as additional  
9 compensation.

10 48. The above-noted provision was not part of Respondent's initial fee agreement with  
11 NS.

12 49. Respondent did not advise NS in writing of the desirability of seeking the advice of  
13 independent legal counsel before signing the disbursement statement, or obtain NS's informed  
14 written consent as to the essential terms of the transaction and to her role in the transaction.

15 50. On August 9, 2013, Respondent made full restitution to NS.

16 Trust Account Records

17 51. From September 2012 through November 2012, Respondent failed to maintain a  
18 check register with a running balance for her trust account.

19 52. From September 2012 through November 2012, the client ledgers maintained by  
20 Respondent did not contain running balances and were not accurate.

21 53. From September 2012 through November 2012, Respondent failed to maintain  
22 copies of checks written on her trust account.

**III. STIPULATION TO MISCONDUCT**

54. By taking a substantially higher percentage of her client's recovery than was provided for in her fee agreement, Respondent violated RPC 1.5(a).

55. By obtaining her clients' signature on a document at the time of settlement that provided for more fees than those allowed in her fee agreement, without advising the clients in writing of the desirability of seeking the advice of independent counsel, and without obtaining the clients' informed written consent to the essential terms of the transaction or Respondent's role in the transaction, Respondent violated RPC 1.8(a).

56. By failing to maintain adequate trust account records, Respondent violated RPC 1.15B(a)(1) and RPC 1.15B(a)(2).

**IV. PRIOR DISCIPLINE**

57. Respondent has no prior discipline.

**V. APPLICATION OF ABA STANDARDS**

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

***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.

1 4.14 Admonition is generally appropriate when a lawyer is negligent in  
2 dealing with client property and causes little or no actual or potential  
injury to a client.

3 **4.3 Failure to Avoid Conflicts of Interest**

4 Absent aggravating or mitigating circumstances, upon application of the  
5 factors set out in Standard 3.0, the following sanctions are generally appropriate  
in cases involving conflicts of interest:

6 4.31 Disbarment is generally appropriate when a lawyer, without the informed  
consent of client(s):

- 7 (a) engages in representation of a client knowing that the lawyer's interests
- 8 are adverse to the client's with the intent to benefit the lawyer or another,
- 9 and causes serious or potentially serious injury to the client; or
- 10 (b) simultaneously represents clients that the lawyer knows have adverse
- 11 interests with the intent to benefit the lawyer or another, and causes
- 12 serious or potentially serious injury to a client; or
- 13 (c) represents a client in a matter substantially related to a matter in which
- 14 the interests of a present or former client are materially adverse, and
- 15 knowingly uses information relating to the representation of a client with
- 16 the intent to benefit the lawyer or another and causes serious or
- 17 potentially serious injury to a client.

18 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of  
19 interest and does not fully disclose to a client the possible effect of that  
20 conflict, and causes injury or potential injury to a client.

21 4.33 Reprimand is generally appropriate when a lawyer is negligent in  
22 determining whether the representation of a client may be materially  
23 affected by the lawyer's own interests, or whether the representation  
24 will adversely affect another client, and causes injury or potential  
injury to a client.

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

**7.0 Violations of Duties Owed as a Professional**

Absent aggravating or mitigating circumstances, upon application of the  
factors set out in Standard 3.0, the following sanctions are generally appropriate  
in cases involving false or misleading communication about the lawyer or the  
lawyer's services, improper communication of fields of practice, improper



solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

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

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

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

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

59. Respondent acted knowingly in her handling of client funds and negligently in determining whether she had a conflict of interest.

60. Respondent acted knowingly in charging her clients an unreasonable fee.

61. There was injury to Respondent's clients who were overcharged and deprived of the use of their funds for a period of time.

62. The presumptive sanction is suspension.

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

- (d) multiple offenses.

64. The following mitigating factors apply under ABA Standard 9.32:

- (a) absence of a prior disciplinary record;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

1  
2 It is an additional mitigating factor that Respondent has agreed to resolve this matter at an early  
3 stage of the proceedings.

4 65. On balance the aggravating and mitigating factors do not require a departure from  
5 the presumptive sanction.

6 **VI. STIPULATED DISCIPLINE**

7 66. The parties stipulate that Respondent shall receive a one-year suspension for her  
8 conduct.

9 **VII. RESTITUTION**

10 67. Respondent has paid full restitution to EK, EN, and NS. There is therefore no  
11 restitution required by this stipulation.

12 **VIII. COSTS AND EXPENSES**

13 68. In light of Respondent's willingness to resolve this matter by stipulation at an  
14 early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of  
15 \$500 in accordance with ELC 13.9(i). The Association will seek a money judgment under  
16 ELC 13.9(1) if these costs are not paid within 30 days of approval of this stipulation.  
17 Reinstatement from suspension is conditioned on payment of costs.

18 **IX. VOLUNTARY AGREEMENT**

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

1 **X. LIMITATIONS**

2 70. This Stipulation is a compromise agreement intended to resolve this matter in  
3 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
4 expenditure of additional resources by the Respondent and ODC. Both the Respondent  
5 lawyer and ODC acknowledge that the result after further proceedings in this matter might  
6 differ from the result agreed to herein.

7 71 This Stipulation is not binding upon ODC or the respondent as a statement of all  
8 existing facts relating to the professional conduct of the respondent lawyer, and any additional  
9 existing facts may be proven in any subsequent disciplinary proceedings.

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

17 73. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
18 Board shall have available to it for consideration all documents that the parties agree to submit  
19 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
20 form the record before the Board for its review become public information on approval of the  
21 Stipulation by the Board, unless disclosure is restricted by order or rule of law.


22 74. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will  
23 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the

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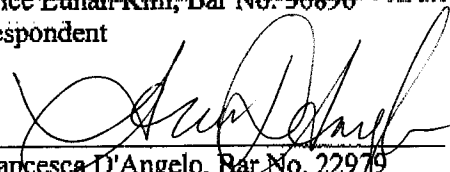
Rules for Enforcement of Lawyer Conduct will be made.

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

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

  
\_\_\_\_\_  
Alice Eunah Kim, Bar No. 36896  
Respondent

Dated: 2/14/14

  
\_\_\_\_\_  
Francesca D'Angelo, Bar No. 22979  
Disciplinary Counsel

Dated: 2/14/14