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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

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In re

SENGPHACHAHN J. LIVINGSTON,

Lawyer (Bar No. 37478).

Proceeding No. 16#00055

ODC File No(s). 14-00562

STIPULATION TO 21-MONTH
SUSPENSION

13 Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following
14 a settlement conference conducted under ELC 10.12(h), the following Stipulation to 21-Month
15 Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington
16 State Bar Association (Association) through disciplinary counsel Marsha Matsumoto,
17 Respondent's Counsel Anne I. Seidel, and Respondent lawyer Sengphachahn J. Livingston
18 (Respondent).

19 Respondent understands that she is entitled under the ELC to a hearing, to present
20 exhibits and witnesses on her behalf, and to have a hearing officer determine the facts,
21 misconduct and sanction in this case. Respondent further understands that she is entitled under
22 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the
23 Supreme Court. Respondent further understands that a hearing and appeal could result in an
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1 outcome more favorable or less favorable to her. Respondent chooses to resolve this proceeding
2 now by entering into the following stipulation to facts, misconduct and sanction to avoid the
3 risk, time, and expense attendant to further proceedings.

4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on May 31,
6 2006.

7 II. STIPULATED FACTS

8 2. Respondent was a solo practitioner who practiced primarily in the area of personal
9 injury law. Respondent practiced under the firm name, Livingston Law, LLC (Livingston Law).

10 3. Respondent maintained a trust account, ending in 3532, at JP Morgan Chase Bank
11 (Chase Bank) for the deposit of client funds. Respondent made the first deposit to this trust
12 account on December 4, 2013.

13 4. Respondent was the only authorized signer on the trust account.

14 5. Respondent maintained a business account, ending in 3870, at Chase Bank.

15 *Trust Account Overdrafts*

16 6. On March 19, 2014, check 7604 in the amount of \$2,912 was presented for payment
17 against insufficient funds in Respondent's trust account. At the time the check was presented,
18 the balance in Respondent's trust account was \$2,625.25. Check 7604 was dishonored and
19 returned by Chase Bank.

20 7. The March 2014 overdraft occurred when Respondent disbursed more funds for
21 client(s) than the client(s) had on deposit in the trust account.

22 8. On November 4, 2014, check 1093 in the amount of \$2,711.25 was presented for
23 payment against insufficient funds in Respondent's trust account. At the time the check was
24

1 presented, the balance in Respondent's trust account was \$116.77. Check 1093 was dishonored
2 and returned by Chase Bank.

3 9. The November 2014 overdraft occurred when Respondent disbursed funds for a
4 client before depositing the client's funds to the trust account.

5 ***Trust Account Records***

6 10. During the period December 4, 2013 through November 30, 2014, Respondent:

- 7
- 8 • did not maintain a contemporaneous, complete, or accurate check register
9 or for trust account 3532;
 - 10 • did not maintain contemporaneous, complete, or accurate client ledgers
11 for trust account 3532;
 - 12 • did not reconcile, monthly or quarterly, a check register to the bank
13 statements for trust account 3532 (bank statement reconciliation);
 - 14 • did not reconcile, monthly or quarterly, a check register to a combined
15 total of client ledgers (client ledger reconciliation) for trust account 3532.

16 11. In November 2014, following the second overdraft of her trust account, Respondent
17 hired Lewis County Tax and Bookkeeping (Lewis County Tax) to reconstruct the records for
18 her trust account. Respondent states that, after the reconstruction was completed, she continued
19 to employ Lewis County Tax to maintain her trust account records.

20 ***Client Settlement Funds***

21 12. During the period November 2013 through September 2014, Respondent disbursed
22 to her law firm client settlement funds that represented an insurance company's pro rata share of
23 attorney's fees under Mahler v. Szucs, 135 Wn.2d 398, 957 P.2d 632 (1998) and related cases
24 (Mahler fees).

13. Respondent disbursed the Mahler fees to her law firm, without entitlement to the
funds.

14. In disbursing the Mahler fees to her law firm, Respondent accepted the incorrect
advice of her non-lawyer assistant (Joseph Sim) that Mahler fees belong to the lawyer, not the

1 client.

2 15. During the period November 2013 through September 2014, Respondent disbursed
3 to her law firm client settlement funds held back for subrogated interests and medical bills
4 (holdback funds) when the insurance companies and medical providers waived or discounted
5 reimbursement of the subrogated interests and medical bills.

6 16. Respondent disbursed the holdback funds to her law firm, without entitlement to the
7 funds.

8 17. In disbursing the holdback funds to her law firm, Respondent accepted the incorrect
9 advice of her non-lawyer assistant (Joseph Sim) that any holdback funds remaining after
10 insurance companies and medical providers were paid belong to the lawyer, not the client.

11 18. Respondent did not provide her clients with written or other notice of her intent to
12 disburse the Mahler fees or holdback funds to her law firm.

13 19. Respondent's clients did not authorize Respondent to disburse the Mahler fees or
14 holdback funds to her law firm.

15 20. In 40 client matters, during the period November 2013 through September 2014,
16 Respondent through her staff provided clients with settlements statements that did not
17 accurately reflect how the clients' settlement funds were being disbursed. Because the
18 settlement statements did not disclose that Respondent was taking the Mahler fees and holdback
19 funds, the settlement statements overstated the amounts being paid to insurance companies and
20 medical providers, and understated the amounts being paid to Respondent's firm.

21 21. Respondent did not provide her clients with corrected settlement statements or
22 accurate written accountings showing how their funds were actually distributed, until April
23 2017.

1 22. In 38 client matters, Respondent disbursed approximately \$55,000 more to her law
2 firm than was permitted by her fee agreements. Respondent disbursed the funds by bank
3 transfer from her trust account to her business account without entitlement to the funds.
4 Respondent did so without adequately researching and investigating who was entitled to the
5 funds.

6 ***Fee Splitting with Non-Lawyer***

7 23. In 2011 or 2012, Respondent entered into an arrangement with non-lawyer Joseph
8 Sim, who owned and operated Puget Sound Law Consultants (PSLC), to provide paralegal,
9 marketing, and interpretation services.

10 24. Mr. Sim told Respondent that he had years of experience and had worked with other
11 lawyers on personal injury cases.

12 25. Respondent entered into the arrangement with Mr. Sim because she wanted to learn
13 personal injury law and develop a personal injury practice.

14 26. Under the arrangement, Respondent paid Mr. Sim half of the attorney's fees she
15 received, plus PSLC's costs. Respondent also paid half of the wages of PSLC's employees.

16 27. During Respondent's arrangement with Mr. Sim, she primarily worked remotely
17 from her home in Centralia. PSLC maintained an office in Lynnwood.

18 28. Mr. Sim and one or more PSLC employees spoke English and Korean. Mr. Sim
19 marketed Respondent's legal services to the Korean community, and used his contacts to get
20 personal injury clients for Respondent's law practice. Because Respondent did not speak or
21 write Korean, Mr. Sim and PSLC employees were the main points of contact for clients whose
22 primary language was Korean. In a number of instances where the client's primary language
23 was Korean, Respondent never met or spoke directly with the client.

1 29. Mr. Sim and PSLC employees routinely prepared and signed fee agreements,
2 negotiated with insurance companies and medical providers, prepared settlement statements,
3 and prepared trust account checks. Respondent reviewed some of the settlement statements, but
4 states that she did not understand them and accepted the incorrect advice of Mr. Sim that the
5 settlement statements need not reflect the actual disbursements made from the settlement funds.

6 III. STIPULATION TO MISCONDUCT

7 30. By using client funds without entitlement to the funds, Respondent violated RPC
8 1.15A(b) and RPC 1.15A(c).

9 31. By failing to promptly deliver funds that clients were entitled to receive, Respondent
10 violated RPC 1.15A(f).

11 32. By providing clients with inaccurate settlement statements through non-lawyer
12 assistants, Respondent violated RPC 1.4(a), RPC 1.4(b), RPC 1.5(c)(3), and RPC 1.15A(e).

13 33. By charging and collecting an unreasonable fee, Respondent violated RPC 1.5(a).

14 34. By failing to maintain a complete, accurate, and contemporaneous check register for
15 her trust account, Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a)(1).

16 35. By failing to maintain complete, accurate, and contemporaneous client ledgers,
17 Respondent violated RPC 1.15A(h)(2) and RPC 1.15B(a)(2).

18 36. By failing to reconcile her trust account, Respondent violated RPC 1.15A(h)(6) and
19 RPC 1.15B(a)(8).

20 37. By disbursing funds from her trust account before deposits cleared the banking
21 process and were collected, Respondent violated RPC 1.15A(h)(7).

22 38. By failing to provide a written accounting to her clients after distributing their funds
23 from her trust account, Respondent violated RPC 1.15A(e).

1 39. By sharing legal fees with a non-lawyer, Respondent violated RPC 5.4(a).

2 40. By failing to make reasonable efforts to ensure that the conduct of her non-lawyer
3 assistants was compatible with her professional obligations as a lawyer, by ratifying the conduct
4 of her non-lawyer assistants, and by failing to take reasonable remedial action, Respondent
5 violated RPC 5.3(a), RPC 5.3(b), and RPC 5.3(c).

6 **IV. PRIOR DISCIPLINE**

7 41. Respondent has no prior discipline.

8 **V. APPLICATION OF ABA STANDARDS**

9 42. The following American Bar Association Standards for Imposing Lawyer Sanctions
10 (1991 ed. & Feb. 1992 Supp.) applies to Respondent's use of client funds without entitlement
11 and trust account violations:

12 ***4.1 Failure to Preserve the Client's Property***

13 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

14 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.

15 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.

16 4.14 Admonition is generally appropriate when a lawyer is negligent in
dealing with client property and causes little or no actual or potential
17 injury to a client.

18 43. Under the ABA Standards, "knowledge" is the conscious awareness of the nature or
19 attendant circumstances of the conduct, but without the conscious objective or purpose to
20 accomplish a particular result. Respondent knew that Mahler fees and holdback funds were
21 being disbursed to her law firm, and should have known that she was not entitled to the funds.

22 44. Respondent's conduct caused actual injury by denying her clients funds that they
23 were entitled to receive.

1 45. The presumptive sanction for Respondent's use of client funds without entitlement is
2 suspension under ABA Standard 4.12.

3 46. Respondent knew that she was not providing her clients with written accountings
4 after disbursing their funds from trust. She should have known that she was not delivering
5 funds that clients were entitled to receive. She knew or should have known that she was not
6 maintaining adequate trust account records, was not reconciling her trust account, and was
7 disbursing funds from trust before the corresponding deposit cleared the banking process.

8 47. Respondent's conduct caused injury in that client funds were not safeguarded in a
9 trust account, clients were denied information about their funds, and Respondent was unable to
10 track the ownership of funds in her possession due to the inadequacy of her records.

11 48. The presumptive sanction for these trust account violations is suspension under ABA
12 Standard 4.12.

13 49. ABA Standard 4.1 also applies to Respondent's conduct in providing clients with
14 inaccurate settlement statements:

15 50. Respondent should have known that she was improperly handling the settlement
16 statements and improperly accounting for client settlement funds.

17 51. Respondent's conduct caused actual injury by withholding information from her
18 clients and preventing them from discovering how their funds were used.

19 52. The presumptive sanction is suspension under ABA Standard 4.12.

20 53. The following ABA Standard applies to Respondent's conduct in charging an
21 unreasonable fee, fee splitting with a non-lawyer, and failing to supervise non-lawyer assistants.

22 ***7.0 Violations of Duties Owed as a Professional***

23 Absent aggravating or mitigating circumstances, upon application of the
24 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

1 lawyer's services, improper communication of fields of practice, improper
2 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.

3 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
4 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.

5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
6 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 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
8 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.

9 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.

10 54. Respondent acted knowingly when she participated in a fee sharing arrangement
11 with non-lawyer Joseph Sim, failed to supervise Mr. Sim and PSLC staff, and charged an
12 unreasonable fee.

13 55. Respondent's conduct in failing to supervise non-lawyer assistants and charging an
14 unreasonable fee caused injury in that clients were given inaccurate information about the
15 distribution of their settlement funds and charged fees they did not owe.

16 56. The presumptive sanction is suspension under ABA Standard 7.2.

17 57. With respect to all of the above, Respondent's conduct reflects poorly on the
18 profession and diminishes public confidence in the legal system.

19 58. The following aggravating factors apply under ABA Standard 9.22:

- 20 (c) a pattern of misconduct; and
21 (d) multiple offenses.

22 59. The following mitigating factors apply under ABA Standard 9.32:

- 23 (a) absence of a prior disciplinary record;
24 (c) personal or emotional problems (family and health issues, see
Confidential Attachment A to this Stipulation);

- 1 (g) character or reputation (Respondent provided letters from two lawyers
2 who describe Respondent's practice in criminal and family law matters as
3 competent, dedicated, reliable, and trustworthy); and
(l) remorse (Respondent has repeatedly acknowledged her mistakes and
expressed remorse for her actions).

4 60. On balance, the aggravating and mitigating factors do not require a departure from
5 the presumptive sanction of suspension, but warrant a 21-month suspension.

6 VI. STIPULATED DISCIPLINE

7 61. The parties stipulate that Respondent shall receive a 21-month suspension for her
8 conduct.

9 62. Respondent's reinstatement from suspension is conditioned upon Respondent's
10 fulfillment of the requirements set forth in Confidential Attachment B to this Stipulation.

11 63. Respondent will be subject to probation for a period of two years commencing upon
12 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of her
13 trust account practices, and shall comply with the specific probation terms set forth below:

- 14 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
15 1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.
- 16 b) For all client matters, Respondent shall have a written fee agreement signed by the
17 client, which agreements are to be maintained for least seven years, regardless of
18 whether RPC 1.15B(a)(3) requires that a fee agreement be maintained. A "client
19 matter" does not include: 1) representation by Respondent of her employer if
Respondent is serving as in-house counsel, or 2) representation by Respondent of
another lawyer's client if Respondent does not receive, hold, or disburse funds in
connection with the representation.
- 20 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
21 Review Report," Respondent shall review the trust-account records detailed on the
form report, review the completed report, and sign and date the completed report.
- 22 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
23 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

- 1 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the date of commencement of probation to the end of the third
4 full month.
- 5 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
6 commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month six.
- 9 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
10 commencement of probation, Respondent shall provide the trust account
11 records from the end of the previously provided quarter through the end of
12 month nine.
- 13 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month twelve.
- 17 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
18 the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
20 the end of month fifteen.
- 21 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
22 the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
24 the end of month eighteen.
- vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
 after the commencement of probation, Respondent shall provide the trust
 account records from the end of the previously provided quarter through
 the end of month twenty-one.

 The trust account records Respondent provides to ODC for each quarterly review of
 her trust account will include: (a) copies of each completed “Monthly
 Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a
 complete checkbook register for her trust account covering the period being
 reviewed, (c) complete individual client ledger records for any client with funds in
 Respondent’s trust account during all or part of the period being reviewed, as well
 as for Respondent’s own funds in the account (if any), (d) copies of all trust-account
 bank statements, deposit slips, and cancelled checks covering the period being
 reviewed, and (e) copies of all trust account client ledger reconciliations for the
 period being reviewed. The ODC’s Audit Manager or designee will review
 Respondent’s trust account records for each period.

1 If Respondent does not maintain a trust account, Respondent will provide a signed
2 declaration stating that she does not maintain a trust account and does not handle
client funds.

3 If Respondent is employed by a law firm that maintains a trust account, but she is
4 not responsible for making deposits or disbursements or maintaining the trust
5 account records, Respondent will provide a signed declaration so stating and
6 identifying the institution where the trust account is maintained, the account
number, and the name(s) of the lawyer(s) responsible for making deposits,
disbursements and maintaining the trust account records.

7 e) On the same quarterly time schedule set forth in the preceding paragraph,
Respondent will provide ODC's Audit Manager or designee with copies of any and
all fee agreements entered into within the time period at issue.

8 f) The ODC's Audit Manager or designee may request additional financial or client
9 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
10 Within twenty days of a request from ODC's Audit Manager or designee for
11 additional records needed to verify Respondent's compliance with RPC 1.15A
and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
additional records requested.

12 g) Respondent will reimburse the Association for time spent by ODC's Audit Manager
13 or designee in reviewing and reporting on Respondent's records to determine her
14 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
Respondent will make payment within thirty days of each written invoice setting
forth the auditor's time and payment due.

15 VII. RESTITUTION

16 64. Prior to the execution of this Stipulation, Respondent paid restitution to the
17 individuals and in the amounts set forth in Confidential Attachment C to this Stipulation. These
18 amounts may differ from those listed in the Formal Complaint based on documents Respondent
19 provided to ODC.

20 VIII. COSTS AND EXPENSES

21 65. In light of Respondent's willingness to resolve this matter by stipulation at an early
22 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$2,160
23 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
24

1 13.9(D) if these costs are not paid within 30 days of approval of this stipulation.

2 **IX. VOLUNTARY AGREEMENT**

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

8 67. Once fully executed, this Stipulation is a contract governed by the legal principles
9 applicable to contracts, and may not be unilaterally revoked or modified by either party.

10 **X. LIMITATIONS**

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

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

19 70. This Stipulation results from the consideration of various factors by both parties,
20 including 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

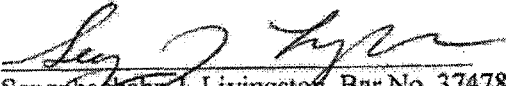
1 subsequent proceedings against Respondent to the same extent as any other approved
2 Stipulation.

3 71. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
4 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
5 before the Board for its review become public information on approval of the Stipulation by the
6 Board, unless disclosure is restricted by order or rule of law.


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

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


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

16 
17 Sengphachanh J. Livingston, Bar No. 37478
18 Respondent

Dated: 05/15/2017

19 
20 Anne I. Seidel, Bar No. 22742
21 Counsel for Respondent

Dated: 5/15/17

22 
23 Marsha Matsumoto, Bar No. 15831
24 Managing Disciplinary Counsel

Dated: 5/11/17