

1
2
3
4
5
6
7
8
9
10
11
12

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ALEXANDER J. MILKIE,

Lawyer (Bar No. 40525).

Proceeding No. 14#00038

STIPULATION TO 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 Suspension
15 is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar
16 Association (Association) through disciplinary counsel Marsha Matsumoto, Respondent's
17 Counsel Kurt M. Bulmer, and Respondent lawyer Alexander Milkie (Respondent).

18 Respondent understands that he is entitled under the ELC to a hearing, to present
19 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,
20 misconduct and sanction in this case. Respondent further understands that he is entitled under
21 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the
22 Supreme Court. Respondent further understands that a hearing and appeal could result in an
23 outcome more favorable or less favorable to him. Respondent chooses to resolve this
24

DM

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, and expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on October 29,
5 2008.

6 **II. STIPULATED FACTS**

7 2. In January 2010, Respondent entered into an office-share arrangement with lawyers,
8 MA and SC. By May 2010, MA and SC had moved out and Respondent had taken over their
9 practice, under the name Sigma Law Group (Sigma).

10 3. Sigma's practice focused on personal injury cases, and many of its clients spoke
11 Korean as their first language. Because Respondent was inexperienced in the area of personal
12 injury law and did not speak Korean, he relied heavily on Sigma's Korean-speaking, non-lawyer
13 assistants to work on cases, manage the office, and communicate with clients. When
14 Respondent took over the practice, while he did not conduct a thorough review, it appeared to
15 him that the office was well run, he relied on the processes set up by prior counsel and focused
16 his attention on the clients' legal matters.

17 4. Sigma's non-lawyer assistants included Kevin Choi, Peter Choi, and Peter Lee,
18 among others. Kevin Choi and Peter Choi worked for Sigma before Respondent took over, and
19 it was Kevin Choi who initially brought Respondent into the office-share arrangement with MA
20 and SC. Kevin Choi served as Sigma's office manager.

21 5. In May 2010, Respondent opened a trust account, ending in #9503, and an
22 operating account, ending in #0019, for Sigma Law Group at Bank of America.

23 6. From May 2010 until March 2012, Respondent had non-lawyer Peter Choi as an
24

1 authorized signer on the trust account. At the time, Respondent was unaware of the prohibition
2 on having a non-lawyer as an authorized signer on a trust account. Upon learning of the
3 prohibition, Respondent removed Peter Choi as an authorized signer on the trust account.

4 7. From May 2010 until March 2012, Respondent delegated to Kevin Choi and Peter
5 Choi the authority to determine what funds were deposited to the trust account and what funds
6 were disbursed from the trust account. Respondent was rarely involved in these decisions.

7 8. From May 2010 until March 2012, Respondent delegated to Kevin Choi and Peter
8 Choi the operation of the trust account, including making the deposits, preparing the checks,
9 maintaining the records, and accessing the account online.

10 9. Respondent relied on his non-lawyer assistants' assurances that they knew how to
11 maintain a trust account. As a result, Respondent did not provide them with any training on
12 handling client funds or trust accounting. Moreover, he provided little, if any, supervision over
13 their activities relating to the trust account.

14 10. From May 2010 until March 2012, Respondent never reviewed any client ledgers,
15 bank statement reconciliations, or client ledger reconciliations for the trust account. He did not
16 review the bank statements and he was unable to access the account online because he did not
17 have the log-in information.

18 ***Trust Account Overdraft***

19 11. On November 7, 2011, a \$14,000 settlement check was deposited to Respondent's
20 trust account. Some of the funds deposited by the \$14,000 check were disbursed before the
21 deposit cleared the banking process.

22 12. On November 10, 2011, the \$14,000 check was returned due to improper
23 endorsement, causing the trust account to be overdrawn by \$9,130.06.

1 13. On November 11, 2011, Bank of America issued an overdraft notice for
2 Respondent's trust account. As a result, ODC opened a grievance investigation against
3 Respondent.

4 ***Trust Account Records***

5 14. During the period May 18, 2010 through April 4, 2013, Respondent did not maintain
6 a contemporaneous, complete or accurate check register for his trust account. He did not
7 maintain contemporaneous client ledgers. He did not reconcile, monthly or quarterly, a check
8 register to the bank statements (bank statement reconciliation) or a check register to a combined
9 total of client ledgers (client ledger reconciliation) for his trust account.

10 15. During the period May 18, 2010 through November 30, 2012, more than \$460,000
11 was transferred from Respondent's trust account to his operating account. None of the transfers
12 were recorded contemporaneously in a check register or were identified as having been made on
13 behalf of a specific client.

14 ***Withdrawals by Means Other Than Check or Bank Transfer***

15 16. During the period September 2, 2010 through March 3, 2011, there were five cash
16 withdrawals totaling \$11,800 from Respondent's trust account. None of the cash withdrawals
17 were recorded contemporaneously in a check register or were identified as having been made on
18 behalf of a specific client.

19 ***Failure to Safeguard Client Funds***

20 17. In March 2012, ODC recommended that Respondent reconstruct his trust account
21 records.

22 18. In April 2012, Respondent hired a contract bookkeeper to reconstruct the records for
23 his trust account and his operating account. The reconstruction covered the period May 18,
24

1 | 2010 through April 4, 2013.

2 | 19. The reconstruction revealed that client funds were transferred from Respondent's
3 | trust account to his operating account without entitlement to the funds, that there were
4 | substantial shortages in the trust account, and that payments to clients and third parties were
5 | delayed. In addition, the reconstruction revealed instances in which one client's funds were
6 | used on behalf of another client, clients did not receive settlement statements or other
7 | documentary notice before their funds were disbursed for attorney's fees, and clients did not
8 | receive written accountings after their funds were distributed.

9 | 20. At the end of every month from November 2010 through March 2013,
10 | Respondent's trust account had shortages ranging from at least \$903.79 to \$111,092.18.

11 | 21. During and upon completion of the reconstruction, Respondent deposited his own
12 | funds to the trust account to restore shortages and delivered funds to clients and third parties
13 | who were entitled to receive funds.

14 | 22. Respondent terminated Kevin Choi's employment in February 2012, and Peter
15 | Choi left Respondent's employ a few months later.

16 | 23. In March 2012, Respondent took over responsibility for determining what funds to
17 | deposit to and disburse from the trust account, for issuing checks, and for maintaining the trust
18 | account records.

19 | **III. STIPULATION TO MISCONDUCT**

20 | 24. By delegating authority and control over his trust account to his non-lawyer staff
21 | without making reasonable efforts to ensure that his staff's conduct was compatible with his
22 | professional obligations, Respondent violated RPC 5.3(b), which resulted in the following
23 | violations:

- 1 a. Failure to maintain client funds in a trust account, in violation of RPC
2 1.15A(c)(1) and (2);
- 3 b. Failure to promptly deliver funds that clients and third parties were entitled to
4 receive, in violation of RPC 1.15A(f);
- 5 c. Using one client's funds on behalf of another, in violation of RPC 1.15A(h)(8);
- 6 d. Making cash withdrawals from the trust account, in violation of RPC
7 1.15A(h)(5);
- 8 e. Disbursing funds before the related deposit cleared the banking process, in
9 violation of RPC 1.15A(h)(7);
- 10 f. Failure to maintain trust account records on a contemporaneous basis, in
11 violation of RPC 1.15A(h)(2) and RPC 1.15B(a); and
- 12 g. Failure to reconcile his trust account, in violation of RPC 1.15A(h)(6) and RPC
13 1.15B(a)(8).

14 IV. PRIOR DISCIPLINE

15 25. Respondent does not have a record of prior discipline in Washington.

16 V. APPLICATION OF ABA STANDARDS

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

19 7.0 Violations of Duties Owed as a Professional

20 Absent aggravating or mitigating circumstances, upon application of the
21 factors set out in Standard 3.0, the following sanctions are generally appropriate
22 in cases involving false or misleading communication about the lawyer or the
23 lawyer's services, improper communication of fields of practice, improper
24 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

1 to obtain a benefit for the lawyer or another, and causes serious or
2 potentially serious injury to a client, the public, or the legal system.

3 7.2 **Suspension is generally appropriate when a lawyer knowingly
4 engages in conduct that is a violation of a duty owed as a professional
5 and causes injury or potential injury to a client, the public, or the
6 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
9 injury or potential injury to a client, the public, or the legal system.

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

14 ***4.1 Failure to Preserve the Client's Property***

15 Absent aggravating or mitigating circumstances, upon application of the
16 factors set out in 3.0, the following sanctions are generally appropriate in cases
17 involving the failure to preserve client property:

18 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
19 client property and causes injury or potential injury to a client.

20 4.12 Suspension is generally appropriate when a lawyer knows or should
21 know that he is dealing improperly with client property and causes injury
22 or potential injury to a client.

23 4.13 **Reprimand is generally appropriate when a lawyer is negligent in
24 dealing with client property and causes injury or potential injury to a
client.**

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

27. Respondent acted knowingly when he failed to adequately supervise his non-lawyer
assistants. He did not ascertain their qualifications or skills to handle client funds, did not
provide training, and did not review their work. He did not review the trust account bank
statements or the records that his assistants were supposed to be keeping. Had Respondent
looked at the "check register," he would have seen that it consisted of carbons and check stubs
that did not include all transactions and did not have an accurate running balance. Had he asked
to see the client ledgers, bank statement reconciliations, or client ledger reconciliations, he
would have discovered that they did not exist.

1 28. Respondent acted knowingly when he made Peter Choi an authorized signatory on
2 his trust account. He acted, at least, negligently when he failed to properly handle client
3 property or maintain trust account records.

4 29. Respondent's conduct caused actual injury. For nearly two years, he abdicated his
5 responsibility to safeguard client property, which allowed client funds to be misappropriated,
6 client and third party payments to be delayed, and recordkeeping to be so deficient that it was
7 impossible to track client funds.

8 30. The presumptive sanction is suspension under ABA Standards 7.2 and reprimand
9 under ABA Standards 4.13.

10 31. The following aggravating factors apply under ABA Standards 9.22:

11 (d) multiple offenses.

12 The following mitigating factors apply under ABA Standards 9.32:

- 13 (a) absence of a prior disciplinary record;
14 (f) inexperience in the practice of law (Respondent was admitted to
15 practice law in Washington in October 2008);
16 (l) remorse.

17 32. It is an additional mitigating factor that, during the grievance investigation,
18 Respondent took corrective measures to reconstruct his trust account records, to cure shortages
19 by depositing his own funds to the trust account, and to deliver funds to clients and third parties
20 who had not received their funds, and that he has agreed to resolve this matter at an early stage
21 of the proceedings.

22 33. On balance the aggravating and mitigating factors do not require a departure from
23 the presumptive sanction of suspension, but do warrant a suspension shorter than the minimum
24 six months.

1 **VI. STIPULATED DISCIPLINE**

2 34. The parties stipulate that Respondent shall receive a sixty day suspension.

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

- 6 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
7 1.15B, and shall carefully review the current version of the publication, Managing
8 Client Trust Accounts: Rules, Regulations, and Common Sense.
- 9 b) For all client matters, Respondent shall have a written fee agreement signed by the
10 client, which agreements are to be maintained for least seven years (see RPC
11 1.15B(a)(3)).
- 12 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
13 account records for the time period to be reviewed by ODC's audit staff and
14 disciplinary counsel for compliance with the RPC:
- 15 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
16 commencement of probation, Respondent shall provide the trust account
17 records from the date of his/her reinstatement to the end of the third full
18 month.
 - 19 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
20 commencement of probation, Respondent shall provide the trust account
21 records from the end of the previously provided quarter through the end of
22 month six.
 - 23 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
24 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
month nine.
 - iv) Months 10 – 12. By no later than the 30th day of the thirteenth 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 twelve.
 - v) Months 13– 15. By no later than the 30th day of the sixteenth 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 fifteen.

1 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
2 the commencement of probation, Respondent shall provide the trust
3 account records from the end of the previously provided quarter through
4 the end of month eighteen.

5 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
6 after the commencement of probation, Respondent shall provide the trust
7 account records from the end of the previously provided quarter through
8 the end of month twenty-one.

9 The trust account records Respondent provides to ODC for each quarterly review of
10 his trust account will include: (a) a complete checkbook register for his/her trust
11 account covering the period being reviewed, (b) complete individual client ledger
12 records for any client with funds in Respondent's trust account during all or part of
13 the period being reviewed, as well as for Respondent's own funds in the account (if
14 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
15 checks covering the period being reviewed, (d) copies of all trust account client
16 ledger reconciliations for the period being reviewed, and (e) copies of
17 reconciliations of Respondent's trust account check register covering the period
18 being reviewed. The ODC's Audit Manager or designee will review Respondent's
19 trust account records for each period.

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

23 e) The ODC's Audit Manager or designee may request additional financial or client
24 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
Within twenty days of a request from ODC's Audit Manager or designee for
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.

f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
or designee in reviewing and reporting on Respondent's records to determine
his/her 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.

VII. RESTITUTION

36. Restitution is not required in this matter as Respondent has restored client funds to
his trust account and delivered funds to clients and third parties entitled to receive them (or
remitted the funds to the Washington State Department of Revenue under the Uniform

1 Unclaimed Property Act).

2 **VIII. COSTS AND EXPENSES**

3 37. In light of Respondent's willingness to resolve this matter by stipulation at an early
4 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$5,192
5 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
6 13.9(l) if these costs are not paid within 30 days of approval of this stipulation by the Supreme
7 Court. Reinstatement from suspension is conditioned on payment of costs.

8 **IX. VOLUNTARY AGREEMENT**

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

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

16 **X. LIMITATIONS**

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

22 41. This Stipulation is not binding upon ODC or the Respondent as a statement of all
23 existing facts relating to the professional conduct of the respondent lawyer, and any additional
24

1 existing facts may be proven in any subsequent disciplinary proceedings.

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

9 43. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
10 Board shall have available to it for consideration all documents that the parties agree to submit
11 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
12 form the record before the Board for its review become public information on approval of the
13 Stipulation by the Board, unless disclosure is restricted by order or rule of law. If this
14 Stipulation is approved by the Disciplinary Board and Supreme Court, it will be followed by the
15 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
16 Enforcement of Lawyer Conduct will be made.

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

21 //

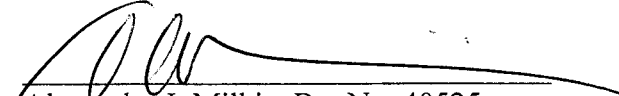
22 //

23 //


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

//
//
//

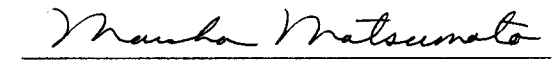
WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to Discipline as set forth above.


Alexander J. Milkie, Bar No. 40525
Respondent

Dated: 7/9/15


Kurt M. Bulmer, Bar No. 5559
Counsel for Respondent

Dated: 7/9/15


Marsha Matsumoto, Bar No. 15831
Senior Disciplinary Counsel

Dated: 7/9/15