

FILED

Nov 29 2018

Disciplinary
Board

Docket # 037

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

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In re

JILL J. SMITH,

Lawyer (Bar No. 41162).

15# 00077

Proceeding No. 15#00100

ODC File No(s). 14-02241, 15-00970, and 15-01178

STIPULATION TO 3-YEAR SUSPENSION
AND PROBATION

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Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to 3-year Suspension and Probation (Stipulation) is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Jonathan Burke and Respondent lawyer Jill J. Smith (Respondent) through Respondent's lawyer Peter Offenbecher.

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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

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Supreme Court. Respondent further understands that a hearing and appeal could result in an

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 March 5,
6 2009.

7 II. STIPULATED FACTS

8 FACTS REGARDING DAHLQUIST

9 2. In May 2013, John Dahlquist (Dahlquist) hired Respondent to assist him in dealing
10 with the pending foreclosure by the Richie Group of Dahlquist's rental property located in West
11 Seattle (Rental Property). He also notified Respondent that he was in bankruptcy and that relief
12 from the stay had been granted to the Richie Group to proceed with its interest in the Rental
13 Property.

14 3. Between May 21, 2013 and July 28, 2013, Dahlquist had serious health issues that
15 caused him to be hospitalized and/or recuperating at a skilled nursing facility.

16 4. On June 5, 2013, Dahlquist provided Respondent with his debit card information
17 by telephone and authorized Respondent to use it to withdraw certain funds from his bank
18 account. Respondent and Dahlquist dispute how much Respondent was authorized to charge
19 through the debit card.

20 5. On or about June 6, 2013, Respondent used Dahlquist's debit card information to
21 transfer \$6,500 from Dahlquist's bank account into Respondent's general account. At that time,
22 there was no written fee agreement between Respondent and Dahlquist.

23 6. Prior to March 2015, Respondent did not have an IOLTA account.

1 7. On June 7, 2013, the trustee's sale of the Rental Property was scheduled.
2 Respondent went to the place of the sale, met with the Richie Group representative, left her
3 business card, and left prior to any sale occurring. Based on her conversations with the
4 representative, Respondent believed that the sale would be postponed. However, the trustee's
5 sale of the property proceeded and the Richie Group became owner of the Rental Property.

6 8. On or about June 19, 2013, Respondent used Dahlquist's debit card information to
7 transfer \$1,000 from Dahlquist's bank account into Respondent's general account. There is a
8 dispute between Respondent and Dahlquist whether this transfer was authorized.

9 9. On June 22, 2013, Respondent met with Dahlquist at the skilled nursing facility, at
10 which time he signed and initialed a written fee agreement (Fee Agreement)

11 10. Respondent's Fee Agreement provided that Dahlquist would be charged a flat fee
12 of \$7,500, plus a contingent fee of 33 1/3 percent for "[r]epresentation of claims regarding real
13 estate & deeds with Richie Group."

14 11. Respondent's Fee Agreement reflected that it was dated May 30, 2013.

15 12. On June 22, 2013, Respondent used Dahlquist's debit card information to transfer
16 \$275 from Dahlquist's bank account into Respondent's general account. There is a dispute
17 between Respondent and Dahlquist whether this transfer was authorized.

18 13. On June 13, 2013, the Trustee's Deed reflecting the Richie Group's ownership
19 interest in Rental Property was recorded.

20 14. On July 26, 2013, Respondent wrote a letter to Dahlquist incorrectly stating that
21 there was no Trustee's Deed recorded after the June 7, 2013 trustee's sale, and that she would
22 be checking with the bankruptcy trustee to find out if she could proceed with an adversarial
23 case.

1 15. Respondent never spoke with the chapter 7 trustee assigned to Dahlquist's
2 bankruptcy about pursuing Dahlquist's claims against the Richie Group.

3 16. On September 3, 2013, Respondent wrote another letter to Dahlquist again stating
4 that no Trustee's Deed had been recorded.

5 17. In September 2013, Dahlquist and Respondent made several attempts to arrange a
6 meeting between them to discuss the status of his claim against the Richie Group. These
7 attempts ultimately resulted in a lunch meeting between the two on September 27, 2013.

8 18. On August 30, 2013, Dahlquist paid Respondent \$150 in advance for a
9 consultation, which Respondent accepted and deposited into her general account.

10 19. On September 27, 2013, Dahlquist paid \$150 to Respondent for another
11 consultation, which Respondent accepted and deposited into her general account.

12 20. Respondent negligently failed to recognize that she had already been paid a flat fee
13 that covered the same services.

14 21. During March and April 2014, Dahlquist sent Respondent emails requesting a copy
15 of the Fee Agreement.

16 22. Respondent did not timely respond to these requests.

17 23. In March 2014, Respondent requested that Dahlquist pay an additional \$2,500 for
18 legal services related to his claims against the Richie Group.

19 24. Respondent should have known that there was no basis to request additional fees
20 from Dahlquist because Respondent had already received full payment of the entire flat fee.

21 25. On March 7, 2014, Dahlquist paid Respondent \$1,000 in additional advance fees
22 and/or costs which Respondent deposited into her general account.

23 26. On April 29, 2014, Dahlquist requested that Respondent account for all legal fees

1 paid.

2 27. On or about May 13, 2014, Respondent provided Dahlquist with a copy of the Fee
3 Agreement, an incomplete billing statement of some of the payments Respondent received from
4 Dahlquist with copies of the charges to Dahlquist's debt card.

5 28. On June 6, 2014, Dahlquist terminated Respondent and demanded a full refund.

6 29. Respondent did not timely respond to Dahlquist's demand for a refund.

7 30. For purposes of this stipulation, the parties agree that Respondent should have
8 returned \$3,750 of the \$7,500 flat fee plus the additional \$1,300 Dahlquist paid to Respondent
9 after paying the flat fee.

10 31. On September 25, 2014, Dahlquist filed a grievance against Respondent with
11 ODC.

12 32. In November 2014, Respondent's prior lawyer acknowledged in a letter to ODC
13 that Respondent needed to pay Dahlquist a partial refund of \$1,300, representing fees charged
14 after the Respondent had already paid herself the entire flat fee that she charged to Dahlquist for
15 the same legal services. Respondent has repeatedly attempted to refund \$1,300 to Dahlquist.
16 Dahlquist has repeatedly declined to accept the attempts by Respondent's lawyers to return
17 \$1,300.

18 **FACTS REGARDING THE CONNERS**

19 33. Rita Conner (Rita) and Craig Conner (Craig), collectively referred to as the
20 Connors, owned real Property (the Property) in Snohomish County, Washington that they sold
21 to Pauline Conner (Pauline), Craig's mother, who assumed the mortgage on the Property.

22 34. On or about April 16, 2010, the Property was sold to Federal National Association
23 (Fannie Mae) at a trustee's sale and Fanny Mae commenced an unlawful detainer action to

1 remove the Conners from the Property.

2 35. On November 30, 2011, the Conners hired Respondent to represent them and
3 Pauline in the unlawful detainer action and a wrongful foreclosure action.

4 36. Respondent's fee agreement reflected that she represented the Conners and Pauline
5 Conner.

6 37. Under the terms of Respondent's fee agreement, the Conners were required to pay
7 a "flat fee" of \$6,500, plus a \$500 "cost deposit."

8 38. Respondent's fee agreement did not contain the language in RPC 1.5(f)(2) that
9 allows a lawyer to deposit flat fees in the general account before the fees are earned.

10 39. On November 11, 2011, the Conners paid Respondent \$500 that Respondent
11 designated as advance costs.

12 40. Respondent deposited the \$500 in advance costs into her general account.

13 41. The Conners paid Respondent the \$6,500 "flat fee" in a series of payments.

14 42. The \$6,500 in "flat fee" payments were deposited into Respondent's general
15 account.

16 43. Respondent used the advance fees and/or advance costs paid by the Conners before
17 these funds were earned and/or used to pay costs.

18 44. In 2012, Respondent filed a wrongful foreclosure lawsuit in Pauline's name.

19 45. In 2014, Respondent filed a motion for partial summary judgment, which was
20 denied by the court on May 13, 2014.

21 46. Respondent advised the Conners to pursue an interlocutory appeal of the decision
22 denying the motion for partial summary judgment.

23 47. In an email to the Conners, Respondent stated "I really think the Court of Appeals

1 would go our way on this, I'm not sure what the downside is, but I think this goes 90% in our
2 favor." At the time, Respondent should have known that it was likely that the motion for
3 discretionary review would be denied, given the law.

4 48. On or about June 20, 2014, Respondent filed a motion for discretionary review.

5 49. On September 4, 2014, the court filed its decision denying discretionary review.

6 50. Respondent and the Conners disagree about whether or not Respondent informed
7 the Conners or Pauline Conner about the Court's denial of the motion for discretionary review.

8 51. After the motion for discretionary review was denied, Respondent failed to
9 reasonably return calls from the Conners and/or did not respond to emails from the Conners
10 regarding the status of the matter.

11 52. The Conners terminated Respondent and hired new counsel due to Respondent's
12 lack of communication.

13 **FACTS REGARDING TRUST ACCOUNT ISSUES AND FEES**

14 53. During the period from March 2012 through March 2015, Respondent did not have
15 a trust account.

16 54. During the period from March 2012 through March 2015, Respondent deposited
17 all client funds, including advance fees and advance costs (Dahlquist, the Conners, DL, and
18 LB),¹ and settlement proceeds (DL, RI, and BN), into her general account.

19 55. When Respondent calculated her fees based on a contingent fee, she did not
20 provide each client with a detailed settlement statement.

21
22 ¹ To protect client information, the client's initials are used unless the client filed a grievance with ODC.
23 When Respondent represented married clients, the initials of one of the clients is usually used for
simplicity purposes.

1 **A. Facts regarding DL Case**

2 56. On or about September 11, 2011, DL hired Respondent to file a quiet title action.

3 57. Under the terms of the fee agreement, Respondent charged DL a flat fee of \$6,000
4 plus a one-third contingent fee based on the gross settlement amount minus the \$6,000 flat fee.

5 58. Respondent's flat fee agreement with DL did not contain the language in RPC
6 1.5(f)(2) that allows a lawyer to deposit flat fees into a general account.

7 59. Respondent did not deposit the flat fee paid by DL into a trust account.

8 60. In January 2015, DL's claim settled for \$50,000.

9 61. Respondent deposited the \$50,000 in settlement proceeds into her general account.

10 62. Respondent negligently miscalculated the amount of proceeds due to DL resulting
11 in Respondent keeping \$2,000 more of DL's settlement proceeds than she was entitled to under
12 the terms of the fee agreement.

13 63. Respondent did not provide DL with a sufficiently detailed accounting of the
14 settlement proceeds when they were disbursed.

15 64. On October 2013, DL hired Respondent in a wrongful foreclosure case relating to
16 other real property.

17 65. DL paid Respondent \$7,500 in advance fees and/or advance costs.

18 66. Respondent deposited the advance fees and/or advance costs paid by DL into her
19 general account.

20 67. On July 11, 2014, Respondent commenced a lawsuit for DL against JP Morgan
21 Chase Bank (Chase), MetLife Home Loans (Metlife), Northwest Trustee Systems (NWTS), and
22 Mortgage Electronic Registration Systems, Inc. (MERS).

23 68. On August 21, 2015, Chase and MERS jointly filed a motion for summary

1 judgment that was joined by Metlife. Chase later struck the joint motion for summary
2 judgment.

3 69. NWTS filed a motion for summary judgment.

4 70. Respondent failed to reasonably communicate with DL regarding the pending
5 motions for summary judgment.

6 71. Respondent never filed a response to any of the motions for summary judgment.

7 72. On October 28, 2015, the court granted NWTS's motion for summary judgment
8 dismissing DL's case against NWTS.

9 73. Respondent negligently failed to inform DL that the motion for summary judgment
10 was granted in favor of NWTS and that DL's case was dismissed.

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12 **FACTS REGARDING TILA RESCISSION LAWSUITS & OTHER RELATED**
13 **MATTERS**

14 74. During the period from January 2011 through December 2017, Respondent held
15 herself out as a lawyer whose legal practice focused on representing consumer borrowers facing
16 foreclosure and other legal issues relating to residential loans and foreclosure.

17 75. During the period from July 2015 through December 2017, Respondent knew
18 about a borrower's right to rescission under the Truth In Lending Act (TILA), 15 USC §1635 *et*
19 *seq.*, and case law interpreting rescission under TILA.

20 76. During the period from July 2015 through December 2017, Respondent knew or
21 should have known that the right to rescission under TILA does not extend to certain loans,
22 including "a residential mortgage transaction" § 1635(e)(1) or a "transaction which constitutes a
23 refinancing or consolidation (with no new advances of the principal balance then due and any
24 accrued and unpaid finance charges)." § 1635(e)(2).

1 77. During the period from July 2015 through December 2017, Respondent knew that
2 the right to rescission under TILA is limited to qualifying loans for “up to three years after the
3 transaction is consummated.” Respondent knew that a borrower’s right to seek rescission under
4 TILA is subject to a three-year statute of repose. § 1625(f). Respondent knew that any attempt
5 to rescind more than three years after the date of consummation of the transaction is absolutely
6 time-barred. Jesinowski v. Countrywide Home Loans, Inc., ___ U.S. ___, 135 S.Ct. 790, 791-
7 792, (2015); Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412, (1998) (loan was consummated
8 when it closed).

9 78. Starting in 2015, Respondent informed clients and/or potential clients facing
10 foreclosure that they could pursue legal remedies for rescission under TILA for loans that had
11 closed more than three years before the notice of rescission based on a new and untested legal
12 theory. At the time Respondent was not aware that her legal theory had been previously tested
13 and rejected in three unpublished federal district court cases that were decided before she filed
14 her first TILA rescission case.

15 79. Starting in October 2015, Respondent filed a number of lawsuits (hereafter referred
16 to as “TILA rescission lawsuits”) for clients who filed notices of rescission under TILA more
17 than three-years after the loan had closed. Respondent’s TILA rescission lawsuits sought
18 injunctive relief to prevent lenders from collecting on the subject loans.

19 80. Respondent should have been aware that her legal theory she believed allowed her
20 to file the TILA rescission lawsuits and appeals was wrong because of case law cited by the
21 opposing parties and/or the courts in their decisions to dismiss her cases.

22 81. On May 5, 2016, ODC took Respondent’s deposition. During the deposition, ODC
23 examined Respondent regarding whether her TILA rescission lawsuits had any legal basis.

1 After the deposition, Respondent continued to file TILA rescission lawsuits. See sections below
2 on BE, LJ, and KP.

3 82. By May 20, 2016, Respondent knew that her TILA rescission lawsuits exposed her
4 clients to liability for the attorney fees and costs incurred by the defendants because the court in
5 VJ sanctioned her for filing a lawsuit with no basis in law and assessed attorney fees against her
6 clients. After being sanctioned, Respondent filed two new TILA rescission lawsuits (see
7 sections below on LJ and KP) and appealed dismissal of TILA rescission lawsuits. See sections
8 below on MB, LJ GM, TO.

9 83. All of TILA rescission lawsuits were dismissed by federal district courts.

10 84. Respondent charged clients for appealing the dismissal of the TILA rescission
11 lawsuits to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed the dismissal of the
12 TILA rescission lawsuits filed by Respondent.

13 **A. Facts Relating to VJ's Two TILA Rescission Lawsuits**

14 85. In 2015, VJ hired Respondent to pursue remedies under the TILA rescission statute
15 relating to certain real property owned by VJ.

16 86. Respondent knew that rescission related to a refinanced home loan agreement that
17 closed in September 2008.

18 87. Respondent knew or should have known that a rescission under TILA would not
19 apply to VJ's loan because the right to rescission under TILA does not apply to a refinanced
20 home loan unless there was principal advanced (cash out to the borrower) as part of the
21 transaction.

22 88. On or about October 23, 2015, Respondent filed a TILA rescission lawsuit for VJ.

23 89. On April 6, 2016, the court granted the lenders' motion to dismiss without

1 prejudice under Federal Rule of Civil Procedure (FRCP) 12(b)(6) because (1) rescission under
2 TILA does not apply to a refinanced home loan, and (2) the notice of rescission was sent after
3 the three-year statutory period had expired.

4 90. On November 7, 2015, Respondent filed a second TILA rescission lawsuit for VJ
5 regarding other real property VJ owned against a number of defendants and/or lenders regarding
6 a refinance loan that closed on or about April 17, 2008.

7 91. On March 10, 2016, the court granted the defendants' motion to dismiss the TILA
8 rescission lawsuit because (1) any right to rescission under TILA expired, at latest, in April
9 2011, and (2) Respondent's claim that the loan was never consummated was contrary to the
10 facts and logically inconsistent with VJ's goal to rescind the loan transaction.

11 92. On March 10, 2016, the court entered an order to show cause why Respondent
12 should not be sanctioned for filing an action with no legal basis.

13 93. Respondent did not file a response to the show cause order.

14 94. On May 20, 2016, the court awarded the defendants \$11,972.50 in attorney fees
15 and costs against VJ, and ordered that Respondent be sanctioned \$5,000 for bringing an action
16 with no basis in law.

17 95. Respondent paid the \$5,000 assessed against her to the court for bringing a cause
18 of action with no legal basis.

19 96. Respondent did not inform VJ about the \$11,972.50 in attorney fees assessed
20 against VJ, which was ultimately paid from the proceeds from the sale of VJ's real property.

21 **B. Facts Regarding GN's TILA Rescission Lawsuit**

22 97. In 2015, GN hired Respondent to pursue remedies under the TILA rescission
23 statute against Nationstar Mortgage (Nationstar) regarding a \$500,000 mortgage loan that

1 closed on October 1, 2006 that was used to acquire GN's residence.

2 98. Respondent knew or should have known that the TILA rescission provision did not
3 apply to GNs loan as required by 15 USC § 1635(e)(1).

4 99. On October 17, 2015, Respondent filed a TILA rescission lawsuit against
5 Nationstar.

6 100. On December 9, 2015, the court granted Nationstar's motion to dismiss GN's
7 TILA rescission lawsuit because the rescission was untimely.

8 101. The court allowed GN to file an amended complaint consistent with its decision.

9 102. On February 23, 2016, Respondent filed an amended complaint that added the
10 allegation that "[u]pon information and belief that the loan was never consummated."

11 103. On March 7, 2016, the court granted Nationstar's second motion to dismiss on the
12 grounds that TILA does not extend to residential mortgage transactions as alleged in the second
13 complaint, and that GN's attempt to rescind under TILA was untimely.

14 104. Respondent appealed the court's dismissal.

15 105. Respondent knew that she could not prevail on appeal because the appellate briefs
16 she filed did not address the court's conclusion that rescission under TILA did not apply to
17 GN's loan.

18 106. On November 1, 2017, the Ninth Circuit Court of Appeals affirmed the court's
19 decision to dismiss GN's case.

20 **C. Facts Regarding S-C's TILA Rescission Lawsuit**

21 107. In 2015, Respondent was hired by S-C to pursue remedies under the TILA
22 rescission statute against lenders and/or defendants regarding a loan that closed in July 2007.

23 108. S-C sent a notice of rescission pursuant to TILA on July 23, 2015 knowing that the

1 3-year deadline for seeking rescission under TILA had long expired.

2 109. S-C also wanted Respondent to file a statute of limitations claim to stop
3 foreclosure proceedings, but Respondent decided to file the TILA rescission lawsuit separately
4 first instead of adding the statute of limitations claims.

5 110. On October 23, 2015, Respondent filed a TILA rescission lawsuit against S-C's
6 lenders and/or other related defendants.

7 111. On March 9, 2016, the court granted the lenders' motion to dismiss under FRCP
8 12(b)(6) without prejudice finding that S-C's notice of rescission was untimely.

9 112. Respondent timely appealed the court's dismissal of S-C's TILA rescission action.

10 113. Respondent charged S-C approximately \$7,000 to handle the appeal.

11 114. On November 1, 2017, the court of appeals affirmed the decision to dismiss S-C's
12 claim with prejudice.

13 **D. Facts Regarding Respondent's Representation of LB**

14 115. On November 4, 2012, LB hired Respondent to pursue remedies against lenders in
15 connection with a loan to purchase real property that closed in 2005 that was secured by a deed
16 of trust.

17 116. LB paid Respondent a flat fee of \$7,000 and advance costs of \$500, which
18 Respondent deposited into her general account during November and December 2012.

19 117. Respondent filed a lawsuit for LB against various lenders, including Bank of New
20 York Mellon (BNYM).

21 118. On May 22, 2013, BNYM filed a motion to dismiss LB's claims against the
22 defendants.

23 119. Respondent did not file a response to BNYM's motion to dismiss because the

1 parties were negotiating a resolution and pursuant to these negotiations Respondent filed a
2 Stipulated Motion for Voluntary Dismissal on June 18, 2013.

3 120. On June 19, 2013, pursuant to the Stipulated Motion for Voluntary Dismissal, the
4 court entered an Order of Voluntary Dismissal against the defendants.

5 121. On June 27, 2014, LB hired Respondent to file a second lawsuit related to LB's
6 residential mortgage loan.

7 122. LB paid Respondent a flat fee of \$6,500 to represent LB in the second lawsuit.

8 123. On or about October 14, 2014, Respondent filed a lawsuit against a number of
9 lenders and/or other defendants, including Bank of America (BA) and Shellpoint Mortgage
10 (Shellpoint).

11 124. On January 9, 2015, Shellpoint filed a motion to dismiss LB's lawsuit under FRCP
12 12(b)(6).

13 125. On January 7, 2015, BA filed a motion to dismiss LB's lawsuit under FRCP
14 12(b)(6).

15 126. Respondent did not file responses to the pending motions to dismiss filed by
16 Shellpoint and BA.

17 127. On February 23, 2015, the court granted the motions to dismiss and dismissed
18 LB's lawsuit with prejudice.

19 128. In 2015, Respondent was hired by LB to pursue remedies under the TILA
20 rescission statute against BA and Shellpoint.

21 129. On August 4, 2015, LB sent a notice of rescission to BA, BNYM, and Shellpoint
22 relating to the loan that closed in 2005.

23 130. On October 27, 2015, Respondent filed a TILA rescission lawsuit for LB against

1 Shellpoint, BA, and BNYM.

2 131. Respondent should have known that LB's TILA rescission lawsuit was barred
3 under the doctrine of *res judicata* because the prior lawsuit Respondent had filed for LB had
4 been dismissed with prejudice.

5 132. Respondent knew or should have known that LB's loan did not qualify for
6 rescission under TILA.

7 133. On January 28, 2016, BA and BNYM filed a motion to dismiss the TILA
8 rescission lawsuit under FRCP 12(b)(6).

9 134. On May 5, 2016, the court granted the motion to dismiss filed by BA and BNYM.

10 135. On April 8, 2016, Shellpoint filed a motion to dismiss under FRCP 12(b)(6).

11 136. Respondent did not file a response to Shellpoint's motion to dismiss.

12 137. On June 3, 2016, the court granted Shellpoint's motion to dismiss.

13 138. On June 3, 2016, the court dismissed LB's TILA rescission lawsuit.

14 139. During Respondent's representation of LB, Respondent failed to communicate
15 reasonably sufficiently with LB regarding the status of LB's lawsuits.

16 **E. Facts Regarding BE's TILA Rescission Lawsuit**

17 140. In 2013, Respondent was hired to represent BE regarding BE's mortgage loans
18 and/or foreclosure.

19 141. On September 10, 2013, Respondent filed a lawsuit for BE against lenders and/or
20 other defendants in state court in Mason County.

21 142. Respondent's amended complaint alleged that BE "entered into a financial
22 arrangement" to refinance a loan used to purchase BE's real property.

23 143. On August 5, 2015, defendant MERS and Merscorp Inc. (Merscorp) filed a motion

1 for summary judgment to dismiss all of BE's claims.

2 144. Respondent failed to file a response to the summary judgment motion filed by
3 MERS and Merscorp.

4 145. On October 5, 2015, the court granted the motion for summary judgment filed by
5 MERS and Merscorp dismissing BE's claims with prejudice.

6 146. On or about October 2, 2015, defendant NWTS filed a motion for summary
7 judgment to dismiss BE's claims.

8 147. On October 12, 2015, defendant Ocwen Loan Serving (Ocwen) filed a motion for
9 summary judgment to dismiss BE's claims.

10 148. Respondent failed to file a response to the summary judgment motions filed by
11 NWTS and Ocwen.

12 149. On November 9, 2015, the court entered an order granting the summary judgment
13 motions of NWTS and Ocwen dismissing BE's claims with prejudice.

14 150. In 2015 or 2016, BE hired Respondent to pursue remedies under the TILA
15 rescission statute in connection with the home loan that closed in May 2010, which was the
16 subject of the prior lawsuit Respondent filed for BE that was previously dismissed with
17 prejudice.

18 151. BE filed a notice of rescission on or about February 4, 2016 with lenders Ocwen,
19 GMAC Mortgage Co. (GMAC) and Pinnacle Capital Mortgage Corporation (Pinnacle).

20 152. On May 13, 2016, Respondent filed a TILA rescission lawsuit for BE naming
21 Pinnacle and Ocwen as defendants.

22 153. Respondent's complaint alleged that the loan that closed in May 2010 was never
23 consummated.

1 154. Respondent failed to effectuate service of the complaint on Pinnacle.

2 155. On August 11, 2016, Ocwen filed a motion to dismiss under FRCP 12(b)(c).

3 156. Respondent knowingly failed to file a response to Ocwen's motion to dismiss.

4 157. On September 13, 2016, the court granted Ocwen's motion to dismiss BE's lawsuit
5 under FRCP 12(b)(c) with prejudice.

6 158. On September 13, 2016, the court entered a judgment dismissing BE's TILA
7 rescission lawsuit against Ocwen and Pinnacle with prejudice.

8 **F. Facts Regarding MB's Lawsuits**

9 159. Respondent represented MB in a lawsuit against various lenders and/or other
10 defendants filed by Respondent in 2014.

11 160. On January 23, 2015, defendant NWTS filed a motion to dismiss under FRCP
12 12(b)(6).

13 161. On March 27, 2015, the court granted NWTS's motion to dismiss some of MB's
14 claims with prejudice and granted the motion to dismiss some claims without prejudice and with
15 leave to amend the complaint within 14 days.

16 162. Respondent did not file an amended complaint.

17 163. On April 28, 2015, defendant Chase filed a motion to dismiss MB's lawsuit and a
18 motion for summary judgment.

19 164. Respondent knowingly failed to file a response to Chase's motion for summary
20 judgment.

21 165. On July 31, 2015, the court granted Chase's motion for summary judgment
22 dismissing MB's claims against Chase.

23 166. On August 19, 2015, NWTS filed a motion for summary judgment to dismiss

1 MB's remaining claims.

2 167. On October 28, 2015, the court granted NWTs's motion for summary judgment
3 under the "law of the case" doctrine and dismissed all claims against NWTs because the court
4 previously granted Chase's summary judgment motion.

5 168. On November 23, 2015, Respondent filed a motion to vacate the orders dismissing
6 MB's case under FRCP 60(b) on the grounds of excusable neglect.

7 169. Respondent should have known that the motion to vacate she drafted and filed was
8 inadequate and legally deficient because it did not address two of the four factors for
9 establishing excusable neglect.

10 170. On December 23, 2015, the court denied the motion to vacate filed by Respondent
11 for MB.

12 171. Respondent did not keep MB sufficiently reasonably informed about the status of
13 the lawsuit.

14 172. MB hired Respondent to pursue remedies under the TILA rescission statute.

15 173. On December 4, 2015, Respondent caused MB's notice of rescission to be sent to
16 Chase on behalf of MB regarding a loan to purchase real property that closed in 2006, nearly 10
17 years after MB executed the loan.

18 174. On February 29, 2016, Respondent filed a TILA rescission lawsuit against Chase
19 and BA.

20 175. BA filed a motion a motion to dismiss.

21 176. Respondent voluntarily dismissed MB's claims against BA.

22 177. On June 16, 2016, Chase filed a motion to dismiss MB's claims under FRCP
23 12(b)(6). Respondent filed opposition to the motion to dismiss.

1 178. On October 18, 2016, the court granted Chase's motion to dismiss the TILA
2 rescission lawsuit with prejudice on the grounds that the notice of rescission was filed untimely
3 and/or after the three-year rescission period had expired.

4 179. The court also ordered Respondent to show cause why she should not be
5 sanctioned pursuant to FRCP 11.

6 180. On November 1, 2016, Chase filed a motion for attorney fees under the terms of
7 the deed of trust. The court determined that Chase was entitled to recover attorney fees and
8 costs against MB.

9 181. On January 17, 2017, the court entered an order assessing attorney fees and costs
10 against MB in the amount of \$5,837.16.

11 182. On January 17, 2017, the court ordered Respondent and/or her law firm to pay
12 \$5,000 in sanctions to the clerk of the court under FRCP 11(b)(2).

13 183. On February 14, 2017, Respondent filed a notice of appeal in MB's matter.

14 184. Respondent charged MB \$7,500 to handle the appeal.

15 185. As part of MB's appeal, Respondent argued that the court erred by assessing
16 \$5,000 in sanctions against Respondent personally.

17 186. Respondent did not inform MB that she was appealing the sanctions imposed
18 against Respondent and did not inform MB about any conflict of interest relating to using MB's
19 appeal to seek personal financial benefit for Respondent.

20 187. Respondent did not obtain informed consent in writing regarding any conflict of
21 interest relating using MB's appeal to argue against the sanctions imposed on Respondent
22 personally.

23 188. Respondent appealed the court's order of dismissal knowing that there was no

1 factual and/or legal basis to reverse the court's order.

2 189. On November 1, 2017, the court of appeals issued a decision affirming the trial
3 court's decision, including the sanctions imposed against Respondent personally.

4 190. Respondent did not communicate with MB regarding the court of appeals decision
5 in a reasonably sufficient and timely manner.

6 191. Respondent did not pay the \$5,000 in sanctions imposed against her personally by
7 the court because she did not have sufficient funds to pay the entire \$5,000.

8 **G. Facts Regarding LJ's TILA Lawsuit**

9 192. In 2015, Respondent was hired by LJ to pursue remedies under the TILA
10 rescission statute regarding a loan that closed on October 7, 2005.

11 193. On November 24, 2015, LJ filed a notice of rescission.

12 194. On June 6, 2016, Respondent filed a TILA rescission lawsuit for LJ against her
13 lenders and/or other defendants.

14 195. On June 22, 2016, the court *sua sponte* issued an order to show cause on why the
15 court should not dismiss LJ's TILA rescission lawsuit and assess sanctions against Respondent.

16 196. The court's show cause order required Respondent to submit a written response
17 within 15 days on a number of issues.

18 197. Respondent knowingly failed to submit a written response by the deadline
19 established by the court and did not request an extension.

20 198. On July 18, 2016, the court entered an order requiring Respondent to personally
21 appear in court on July 28, 2016, which she did. On July 20, 2016, Respondent filed KP's
22 TILA rescission lawsuit.

23 199. On August 10, 2016, the court entered an order dismissing LJ's TILA rescission

1 lawsuit with prejudice and ordered Respondent to pay \$10,000 in sanctions to the court by no
2 later than 30 days after the date of the order.

3 200. On September 8, 2016, Respondent filed a notice of appeal of the court's order on
4 behalf of herself and LJ without disclosing the conflict of interest to LJ and obtaining informed
5 consent regarding any conflict of interest between the interest of LJ and Respondent.

6 201. Respondent did not comply with the court's order to pay the court \$10,000 within
7 30 days.

8 202. On September 21, 2016, the court issued an order to show cause why the court
9 should not impose further sanctions for failure to comply with the August 10, 2016 court order.

10 203. On October 11, 2016, Respondent filed a response to the order to show cause
11 stating that she was unable to pay the \$10,000 fine.

12 204. Respondent failed to comply with the deadlines for the appeal.

13 205. On November 30, 2016, the court entered an order directing Respondent to submit
14 a proposed payment plan to pay the \$10,000 in sanctions to the court.

15 206. On January 3, 2016, Respondent's appeal was dismissed for failure to prosecute.

16 207. On January 27, 2017, the court entered an order regarding Respondent's obligation
17 to pay sanctions that (1) approved Respondent's proposed payment plan of making a minimum
18 payment of \$300 per quarter towards the sanctions starting June 30, 2017; (2) directed
19 Respondent to inform the court and submit a renewed payment plan if it becomes economically
20 feasible to pay more than \$300 per quarter, and (3) directed Respondent to file a quarterly
21 declaration with each sanction payment indicating the amount she paid, the manner in which she
22 paid, and the balance sheet showing each payment and the amount Respondent believes remains
23 due of the \$10,000 sanction incurred.

1 208. Respondent knowingly did not comply with the January 27, 2017 order and did not
2 make any payments to the court or file any quarterly declarations.

3 209. On February 16, 2018, Respondent filed a motion to vacate the August 10, 2016
4 order of sanctions and the January 27, 2017 order.

5 210. On April 3, 2018, the court entered an order denying Respondent's motion to
6 vacate finding that Respondent did not comply with the court's previous orders.

7 211. The court's April 3, 2018 order included an order to show cause requiring
8 Respondent to submit a response with 15 days to address her failure to obey the January 27,
9 2017 court order.

10 212. Respondent knowingly did not comply with the order to show cause and did not
11 file a response to the order to show cause.

12 213. Respondent did not make any payments to the court until after the court issued an
13 order on August 10, 2018 for Respondent to appear in court regarding noncompliance with the
14 order. After the order, Respondent made two payments totaling \$1,300. Respondent did not
15 submit any declarations as required by the January 27, 2017 court order.

16 214. In November 2017, Respondent represented LJ in an unlawful detainer action
17 against the purchasers of her real property.

18 215. The purchasers prevailed in the unlawful detainer action.

19 216. Respondent appealed the court's decision in favor of the purchasers.

20 217. On April 30, 2018, the court of appeals entered a decision in favor of the
21 purchasers.

22 218. Despite requests from LJ, Respondent did not keep LJ sufficiently reasonably
23 informed about the outcome of the appeal.

1 **H. Facts Regarding GM's TILA Lawsuit**

2 219. In or about 2016, GM hired Respondent to pursue remedies under TILA's
3 rescission statute relating to a residential mortgage transaction loan closed in April 2006.

4 220. On April 18, 2016, Respondent filed a TILA rescission lawsuit against IndyMac
5 Mortgage Services (IndyMac), Deutsche Bank Nation Trust Company (Deutsche), and Ocwen.

6 221. On October 24, 2016, the defendants filed a motion to dismiss GM's TILA
7 rescission case under FRCP 12(b)(6).

8 222. On December 28, 2016, the court entered an order dismissing GM's TILA
9 rescission lawsuit.

10 223. On January 11, 2017, Respondent filed a notice of appeal of the court's decision to
11 dismiss GM's lawsuit.

12 224. On November 1, 2017, the Ninth Circuit Court of Appeals affirmed the court's
13 dismissal of GM's case.

14 **I. Facts Regarding TO's TILA Rescission Lawsuit**

15 225. In or about 2015, TO hired Respondent to pursue remedies under the TILA
16 rescission statute relating to a refinance home loan that closed in June 2007.

17 226. On July 19, 2015, TO sent a notice of rescission under TILA to Wells Fargo Bank
18 NA (Wells Fargo).

19 227. On March 31, 2016, Respondent filed a TILA rescission lawsuit against Wells
20 Fargo.

21 228. Although she conducted her own personal investigation of the facts of the case,
22 Respondent issued no formal discovery requests pursuant to the Rules of Civil Procedure.

23 229. On June 30, 2016, Wells Fargo filed a motion for summary judgment to dismiss

1 TO's lawsuit.

2 230. On September 3, 2016, Respondent filed a response to the motion to summary
3 judgment filed by Wells Fargo.

4 231. On December 27, 2016, the court entered an order granting Wells Fargo's
5 summary judgment and dismissing TO's TILA rescission lawsuit.

6 232. On February 9, 2017, Respondent filed a notice of appeal in the court's decision to
7 dismiss TO's lawsuit.

8 233. On November 1, 2017, the Ninth Circuit Court of Appeals issued a decision
9 affirming the court's order granting summary judgment and dismissing the case.

10 **J. Facts Regarding Fayant's TILA Rescission Action**

11 234. In February 2015, William Fayant (Fayant) hired Respondent to pursue remedies
12 under the TILA rescission statute relating to loans that closed in 2005 and 2006.

13 235. On or about September 28, 2015, Fayant sent a notice of rescission under TILA to
14 Washington Trust Bank (WTB), US Bank and Cherry Creek Mortgage (CCM).

15 236. Respondent should have known that there was no legal and/or factual basis to file
16 rescission under TILA because the three-year period for rescission had expired.

17 237. Respondent should have known that Fayant's loan did not qualify for rescission
18 under the TILA rescission statute.

19 238. On April 29, 2016, Respondent filed Fayant's TILA rescission lawsuit against
20 WTB, US Bank, and CCM.

21 239. On June 21, 2016, the parties stipulated to dismiss CCM from the lawsuit.

22 240. On June 24, 2016, WTB filed a motion to dismiss under FRCP 12(b)(6).

23 241. On July 27, 2016, US Bank filed a motion to dismiss under FRCP 12(b)(6).

1 242. Respondent filed responses to the motions to dismiss.

2 243. On January 26, 2017, the court entered an order dismissing Fayant's lawsuit with
3 prejudice.

4 244. At Respondent's recommendation, Respondent appealed the court's decision to
5 dismiss Fayant's lawsuit knowing that the appeal had no basis in law or in fact for reversal.

6 245. On February 1, 2017, Respondent filed a notice of appeal in Fayant's TILA
7 rescission lawsuit.

8 246. On November 1, 2017, the Ninth Circuit Court of Appeals affirmed the court's
9 dismissal of Fayant's lawsuit with prejudice.

10 247. Respondent failed to reasonably communicate with Fayant regarding the outcome
11 of the appeal.

12 **K. Facts Regarding KP's Lawsuits**

13 248. In January 2011, KP filed a wrongful foreclosure lawsuit against a number of
14 defendants relating to KP's mortgage loan.

15 249. KP's mortgage loan closed in September 2005.

16 250. On February 2, 2011, KP's lawsuit in Thurston County Superior Court was
17 removed to the Federal District Court for Western District of Washington.

18 251. On July 22, 2011, the court entered an order authorizing Respondent to substitute
19 as KP's lawyer in the lawsuit.

20 252. On August 17, 2012, KP filed a Chapter 11 bankruptcy.

21 253. On April 1, 2013, KP's bankruptcy was converted to a Chapter 7 bankruptcy.

22 254. KP's pending lawsuit was property of the bankruptcy estate.

23 255. Respondent should have known that KP had no standing to pursue the wrongful

1 foreclosure action, which belonged to the bankruptcy estate.

2 256. Respondent should have known that she could not pursue any claims relating to
3 KP's wrongful foreclosure action unless she had authority from the bankruptcy court and/or the
4 Chapter 7 trustee assigned to KP's case.

5 257. On August 5, 2014, the defendants filed a motion for summary judgment to
6 dismiss the claims in KP's lawsuit.

7 258. On September 18, 2014, the court granted summary judgment to dismiss KP's
8 lawsuit.

9 259. In the order for summary judgment, the court denied Respondent's request for an
10 extension to file a response to the motion for summary judgment on the grounds that KP did not
11 have standing because his lawsuit was an asset of the bankruptcy estate.

12 260. On October 16, 2014, Respondent filed a notice of appeal of the court's order
13 dismissing KP's lawsuit knowing that the appeal had no basis in law or fact to be reversed, and
14 that KP had no standing to pursue relief in the lawsuit.

15 261. Respondent charged KP a flat fee of \$5,500 to handle the appeal.

16 262. Respondent never filed an appellate brief and the appeal was abandoned.

17 263. On March 2, 2015, the court entered an order dismissing the appeal.

18 264. In 2016, KP hired Respondent to pursue remedies under TILA rescission statute
19 relating to the 2005 loan.

20 265. Respondent charged KP \$6,500 to pursue remedies under the TILA rescission
21 statute.

22 266. Respondent knew or should have known that KP had no basis in law or fact to seek
23 a remedy under the TILA rescission statute.

1 267. On July 20, 2016, Respondent filed a TILA rescission lawsuit against "GMAC
2 Mortgage Group, LLC and its successors in interest and assigns."

3 268. Respondent did not serve the complaint by the deadline provided in the local rules.

4 269. On December 20, 2016, the court issued an Order on Notice of Intent to Dismiss
5 Complaint Against Defendant stating that the "[c]omplaint may be dismissed without further
6 notice to plaintiff, against the Defendant, on December 30, 2016 unless proof of service is filed,
7 and/or the plaintiff shows good cause, in writing, for failure to effect service upon Defendant
8 before that date."

9 270. Respondent knowingly failed to respond to the order.

10 271. On January 5, 2017, the court entered an order dismissing KP's TILA rescission
11 lawsuit.

12 272. Respondent failed to keep KP reasonably informed of the status of KP's legal
13 matters.

14 273. Under the circumstances, Respondent charged unreasonable fees to KP for the
15 TILA rescission lawsuit.

16 274. Respondent eventually refunded \$2,500 to KP in 2017.

17 275. Respondent promised to refund KP the other \$4,000 in fees, but never did so.

18 III. STIPULATION TO MISCONDUCT

19 276. By depositing advance fees and advance costs of clients, including Dahlquist, the
20 Conners, DL, and LB, , and settlement proceeds, including DL, BN, MS, and RI, into her
21 general account, Respondent violated RPC 1.15A(c).

22 277. By failing to promptly inform Dahlquist that Respondent used his debit card to
23 obtain funds from his bank account, Respondent violated RPC 1.4 and RPC 1.15A(d).

1 278. By charging unreasonable fees to Dahlquist and DL, Respondent violated RPC
2 1.5(a).

3 279. By not promptly returning funds to which Dahlquist was entitled, Respondent
4 violated RPC 1.15A(f), and RPC 1.16(d).

5 280. By not promptly providing Dahlquist with the fee agreement and other
6 information requested by Dahlquist, Respondent violated RPC 1.4.

7 281. By failing to reasonably communicate with clients, including the Conners, DL,
8 VJ, LJ, LB, MB, Fayant, and KP, Respondent violated RPC 1.4(a).

9 282. By failing to act with reasonable diligence in representing clients, the Conners
10 and DL, Respondent violated RPC 1.3.

11 283. By failing to promptly return unearned fees to KP, Respondent violated RPC
12 1.5(a) and RPC 1.16(d).

13 284. By filing TILA rescission lawsuits and/or appeals with no legal basis for clients,
14 including VJ, GN, LJ, GM, TO, BE, LB, S-C, MB, Fayant, and KP, Respondent violated RPC
15 3.1 and RPC 8.4(d).

16 285. By failing to diligently represent clients, including GN, LJ, MB, LB, BE, LJ,
17 Fayant, and KP, in TILA rescission lawsuits and appeals, and non-TILA foreclosure actions,
18 Respondent violated RPC 1.3.

19 286. By representing LJ and MB in the appeal of decisions that include sanctions
20 against Respondent personally without disclosing the conflicts of interest and obtaining
21 informed consent, Respondent violated 1.7.

22 287. By failing to timely respond to the court's orders to show cause in LJ's TILA
23 rescission action, and by failing to comply with court orders to pay sanctions in the TILA

1 rescission lawsuits filed for LJ and MB, Respondent violated RPC 3.4(c) and RPC 8.4(d).

2 **IV. PRIOR DISCIPLINE**

3 288. Respondent has no prior discipline.

4 **V. APPLICATION OF ABA STANDARDS**

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

7 290. **Trust Account Violations.** ABA Standard 4.1 applies to trust account violations
8 and provides as follows:

9 **4.1 Failure to Preserve the Client's Property**

10 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
11 client property and causes injury or potential injury to a client.

12 **4.12 Suspension is generally appropriate when a lawyer knows or should**
13 **know that he is dealing improperly with client property and causes injury or**
14 **potential injury to a client.**

15 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
16 with client property and causes injury or potential injury to a client.

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

20 291. Respondent should have known that she was dealing improperly with advances
21 fees, advance costs, paid by clients, including Dahlquist, the Conners, DL, and LB, and
22 settlement proceeds paid on behalf of clients DL, BN, MS, and RI.

23 292. Respondent's misconduct caused actual injury to Dahlquist because she did not
24 have the funds available to refund fees to him. Respondent's misconduct caused potential harm
to the Conners, DL, LB, BN, MS, and RI.

293. Suspension is the presumptive sanction for Respondent's misconduct under ABA

1 Standard 4.12.

2 294. **Lack of Diligence Violations.** ABA Standard 4.4 applies to violations for lack
3 of diligence and provides as follows:

4 295. **4.4 Lack of Diligence**

5 4.41 Disbarment is generally appropriate when:

6 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

7 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

8 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

9 **4.42 Suspension is generally appropriate when:**

10 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or

11 (b) a lawyer engages in a pattern of neglect and causes injury or
potential injury to a client.

12 **4.43. Reprimand is generally appropriate when a lawyer is negligent and
13 does not act with reasonable diligence in representing a client, and causes
injury or potential injury to a client.**

14 4.44 Admonition is generally appropriate when a lawyer is negligent and does
15 not act with reasonable diligence in representing a client, and causes little or no
actual or potential injury to a client.

16 296. Respondent engaged in a pattern of neglect in failing to diligently represent the
17 Conners, MB, LB, and KP causing injury or potential injury to clients.

18 297. Respondent knowingly failed to diligently pursue representation of DL, GN, LJ,
19 LB, BE, Fayant, and KP causing actual and potential injury to them.

20 298. Suspension is the presumptive sanction for Respondent's misconduct under ABA

21 Standard 4.42.

22 299. **Lack of Communication Violations.** ABA Standard 4.4, set forth above,
23 applies to violations of RPC 1.4 and violations connected to failing to communicate with a

1 client.

2 300. Respondent knowingly failed to communicate with clients regarding the status
3 of their legal matters, including Dahlquist, the Conners, LJ, and KP, causing actual and/or
4 potential harm. Suspension is the presumptive sanction for these violations under ABA
5 Standard 4.42 to Dahlquist, the Conners, LJ, and KP.

6 301. Respondent negligently failed to communicate with clients regarding the status
7 of their matter, including DL, Fayant, VJ, and MB causing actual and/or potential harm.
8 Reprimand is the presumptive sanction for Respondent's failure to communicate under ABA
9 Standard 4.43 to clients DL, Fayant, VJ, and MB.

10 302. **Conflict of Interest Violations.** ABA Standard 4.3 applies to conflict of interest
11 violations and provides as follows:

12 **4.3 Failure to Avoid Conflicts of Interest**

13 4.31 Disbarment is generally appropriate when a lawyer, without the informed
consent of client(s):

14 (a) engages in representation of a client knowing that the lawyer's interests
15 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

16 (b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes serious or
17 potentially serious injury to a client; or

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

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

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

1 **client.**

2 4.34 Admonition is generally appropriate when a lawyer engages in an
3 isolated instance of negligence in determining whether the representation of a
4 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.

5 303. LJ Matter. Respondent negligently failed to disclose the potential conflict of
6 interest and failed to obtain informed consent when she appealed the court's order of dismissal
7 in the LJ TILA rescission lawsuit and the order assessing sanctions against Respondent
8 personally and requiring Respondent to refund all fees and costs to LJ. Respondent and LJ had
9 conflicting financial interests in the outcome of the appeal. Respondent's misconduct resulted
10 in potential harm to LJ.

11 304. Reprimand is the presumptive sanction in the LJ matter under ABA Standard
12 4.33.

13 305. MB Matter. Respondent negligently failed to disclose the potential conflict of
14 interest and obtain informed consent when she used MB's appeal to argue against the sanctions
15 imposed on Respondent personally. Respondent's misconduct resulted potential harm to MB.

16 306. Reprimand is the presumptive sanction in the MB matter under ABA Standard
17 4.33.

18 307. Violations for Failing to Comply with Court Orders. ABA Standard 6.2
19 applies to violations of court orders and provides as follows:

20 **6.2 Abuse of the Legal Process**

21 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a
22 court order or rule with the intent to obtain a benefit for the lawyer or another,
and causes serious injury or potentially serious injury to a party or causes serious
23 or potentially serious interference with a legal proceeding.

24 **6.22 Suspension is generally appropriate when a lawyer knows that he or**

1 **she is violating a court order or rule, and causes injury or potential injury to**
2 **a client or a party, or causes interference or potential interference with a**
3 **legal proceeding.**

4 6.23 Reprimand is generally appropriate when a lawyer negligently fails to
5 comply with a court order or rule, and causes injury or potential injury to a client
6 or other party, or causes interference or potential interference with a legal
7 proceeding.

8 6.24 Admonition is generally appropriate when a lawyer engages in an
9 isolated instance of negligence in complying with a court order or rule, and
10 causes little or no actual or potential injury to a party, or causes little or no actual
11 or potential interference with a legal proceeding.

12 308. LJ Matter. Respondent knowingly failed to comply with the July 18, 2016 order
13 to show cause regarding why Respondent should not be sanctioned for filing a lawsuit with no
14 basis in law.

15 309. Respondent knowingly failed to pay any of the sanctions ordered by the court on
16 August 10, 2016 and comply with the payment plan order issued on January 27, 2017 until
17 making two payments totaling \$1,300 in August 2018. Respondent also knowingly failed to
18 comply with the provisions in the January 27, 2017 order to file quarterly declarations relating
19 to the payment plan.

20 310. Respondent knowingly failed to comply with the April 3, 2018 order to show
21 cause requiring Respondent to submit a response within 15 days to address her failure to comply
22 with the January 27, 2017 order.

23 311. Respondent's conduct caused interference or potential interference by causing
24 the court to use resources.

312. Suspension is the presumptive sanction for Respondent's misconduct under ABA
Standard 6.22.

313. MB Matter. Respondent knowingly failed to comply with the order to pay

1 \$5,000 in sanctions for filing a TILA rescission action with no legal basis.

2 314. Respondent's misconduct resulted in the unnecessary waste of court resources.

3 315. Suspension is the presumptive sanction for Respondent's misconduct under
4 ABA Standard 6.22.

5 316. **Violations Regarding Unreasonable Fees.** ABA Standard 7.0 applies to
6 violations for charging unreasonable fees and failing to return unearned fees, and provides as
7 follows:

8 **7.0 Violations of Duties Owed to the Profession**

9 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
10 conduct that is a violation of a duty owed to the profession with the intent to
11 obtain a benefit for the lawyer or another, and causes serious or potentially
12 serious injury to a client, the public, or the legal system.

13 7.2 **Suspension is generally appropriate when a lawyer knowingly
14 engages in conduct that is a violation of a duty owed to the profession and
15 causes injury or potential injury to a client, the public, or the legal system.**

16 7.3 **Reprimand is generally appropriate when a lawyer negligently
17 engages in conduct that is a violation of a duty owed to the profession and
18 causes injury or potential injury to a client, the public, or the legal system.**

19 7.4 Admonition is generally appropriate when a lawyer engages in an
20 isolated instance of negligence in determining whether the lawyer's conduct
21 violates a duty owed to the profession, and causes little or no actual or potential
22 injury to a client, the public, or the legal system.

23 317. Dahlquist Matter. Respondent negligently overcharged \$1,300 to Dahlquist
24 resulting in actual harm to Dahlquist. The presumptive sanction for charging unreasonable fees
is reprimand under ABA Standard 7.3.

318. After Dahlquist filed the grievance against Respondent, Respondent knowingly
failed to promptly return the funds resulting in harm to Dahlquist for several months until
Respondent's lawyer offered to return the funds. The presumptive sanction for failing to

1 promptly return fees is suspension under ABA Standard 7.2.

2 319. DL Matter. Respondent was negligent in overcharging DL by \$2,000. After
3 ODC's analysis letter, Respondent knowingly failed to return the \$2,000 in unearned fees
4 resulting in actual harm to DL. Suspension is the presumptive sanction under ABA Standard
5 7.2.

6 320. KP Matter. Respondent knowingly failed to return unearned fees to KP.
7 Respondent eventually returned \$2,500 of the \$6,500 to KP in early 2017, but still owes \$4,000
8 to KP. Suspension is the presumptive sanction under ABA Standard 7.2.

9 321. Violations for Filing TILA Rescission Lawsuits. ABA Standard 7.0, set forth
10 above, applies to the violations of RPC 3.1, and RPC 8.4(d) for filing TILA rescission lawsuits
11 and appeals with no basis in law.

12 322. Prior to March 10, 2016, Respondent was negligent in filing the TILA rescission
13 lawsuits with no basis in law.

14 323. Respondent knowingly filed TILA rescission lawsuits with no basis in law for
15 VJ, BE, LJ, GM, TO, Fayant, and KP.

16 324. Respondent knowingly pursued appeals of the dismissal of TILA rescission
17 lawsuits with no basis in law for GN, S-C, MB, GM, TO, and Fayant.

18 325. Respondent's misconduct caused actual harm to clients and actual and/or
19 potential harm to the clients, including VJ, MB, and LJ, who were ordered to pay the opposing
20 party's attorney fees and to court system.

21 326. Suspension is the presumptive sanction for Respondent's misconduct in filing
22 TILA rescission lawsuits and appeals with no basis in law under ABA Standard 7.2.

23 327. The Supreme Court has found that, where there are multiple ethical violations,

1 the "ultimate sanction imposed should at least be consistent with the sanction for the most
2 serious instance of misconduct among a number of violations." In re Disciplinary Proceeding
3 Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6).
4 Here, suspension is the most serious presumptive sanction for Respondent's misconduct.

5 **AGGRAVATING AND MITIGATING FACTORS**

6 328. The following aggravating factors apply under ABA Standard 9.22:

7 (c) Pattern of misconduct. [Respondent engaged in several patterns of
8 misconduct, including a pattern of trust account violations, a pattern of violations
9 of RPC 1.3 and RPC 1.4, and a pattern of filing TILA rescission lawsuits with
10 no basis in law];

11 (d) Multiple offenses. [As described above, Respondent violated a number of
12 RPCs over a number of years]; and

13 (h) Substantial experience in the practice of law. [Respondent was admitted to
14 practice law in New Mexico in 1997 and was admitted in Washington in 2009].

15 329. The following mitigating factors apply under ABA Standard 9.32:

16 (a) Absence of prior disciplinary record; and

17 (b) Personal or emotional problems [During the times material to this matter,
18 Respondent suffered health problems, which are identified in the
19 Confidential Attachment to Stipulation to Suspension, attached hereto as
20 Exhibit 1];² and

21 (k) Imposition of other penalties or sanctions. [Three courts sanctioned
22 Respondent a total of \$20,000 in sanctions for filing TILA rescission
23 lawsuits with no basis in law].

24 330. On balance the aggravating and mitigating factors do not require a departure
from the presumptive sanction of suspension, but do warrant a lengthy suspension.

25 **VI. STIPULATED DISCIPLINE**

26 331. The parties stipulate that Respondent shall receive a three-year suspension for

27 ² The Confidential Attachment to Stipulation to Suspension (Exhibit 1) will be filed under seal.

1 her conduct.

2 **VII. STIPULATED CONDITIONS OF REINSTATEMENT**

3 332. Prior to reinstatement, Respondent shall submit to an evaluation of her fitness to
4 practice regarding the health issues identified in the Confidential Attachment to Stipulation to
5 Suspension (Exhibit 1), performed by a licensed health professional approved by ODC and to
6 be obtained at Respondent's own expense.

7 333. Respondent shall execute all necessary releases to permit the evaluator and
8 disciplinary counsel to obtain full access to all pertinent health care and treatment records for
9 the applicable time period, and to permit the evaluator to report to disciplinary counsel
10 regarding the evaluation of Respondent's fitness to practice law.

11 334. If evaluator concludes that Respondent is not currently fit to practice law, the
12 report shall recommend a course of treatment to enable Respondent to return to the practice of
13 law.

14 335. If the evaluator concludes that Respondent is not currently fit to practice law,
15 Respondent (or Respondent's counsel if Respondent is represented) and disciplinary counsel
16 shall meet to discuss the evaluator's report and what steps can be taken to address the
17 evaluator's concerns. If Respondent and disciplinary counsel cannot reach an agreement, both
18 parties may present written materials and argument to the Disciplinary Board. The Disciplinary
19 Board shall determine whether and under what conditions Respondent may return to the active
20 practice of law.

21 336. Reinstatement from suspension is also conditioned on Respondent's payment of
22 costs and restitution in accordance with ELC 13.9(i) and ELC 13.7(b).

1 **VIII. PROBATION**

2 337. Respondent will be subject to probation for a period of two years commencing
3 upon Respondent's reinstatement to the practice of law.

4 338. **Health Probation.** Upon reinstatement, Respondent will be subject to probation
5 for a two-year period and shall comply with the specific probation terms set forth below.

6 339. During the two-year probation period, Respondent will commence, participate, and
7 maintain treatment with a health professional acceptable to ODC's Probation Administrator
8 regarding the issues identified in the Confidential Attachment to Stipulation to Suspension
9 (Exhibit 1). The health professional will be provided with the Confidential Attachment to
10 Stipulation to Suspension (Exhibit 1). Respondent will follow the treatment recommended by
11 the health professional and see the health professional as often as required by the health
12 professional.

13 340. Respondent shall have the health professional submit quarterly reports to ODC's
14 Probation Administrator demonstrating compliance with the terms of probation and fitness to
15 practice. These reports will be due within two weeks of the end of each calendar quarter.

16 341. Respondent shall be solely responsible for the compensation of the health
17 professional.

18 342. **Practice Monitor Probation.** Respondent shall be subject to probation for a
19 period of 24 months beginning on the date Respondent is reinstated to the practice of law.

20 343. The conditions of probation are set forth below. Respondent's compliance with
21 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary
22 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
23 herein may be grounds for further disciplinary action under ELC 13.8(b).

1 344. Provisions regarding Practice Monitor. During the period of probation,
2 Respondent's practice will be supervised by a practice monitor. The practice monitor must be a
3 WSBA member with no record of public discipline and who is not the subject of a pending
4 public disciplinary proceeding.

5 345. The role of the practice monitor is to consult with and provide guidance to
6 Respondent regarding case management, office management, and avoiding violations of the
7 Rules of Professional Conduct, and to provide reports and information to the Probation
8 Administrator regarding Respondent's compliance with the terms of probation and the RPC.
9 The practice monitor does not represent the Respondent.

10 346. At the beginning of the probation period, the Probation Administrator will select
11 a lawyer to serve as practice monitor for the period of Respondent's probation as follows:

12 (a) Challenges:

13 i) Initial Challenge: If, within 15 days of the written notice of the selection of
14 a practice monitor, Respondent sends a written request to the Probation
15 Administrator that another practice monitor be selected, the Probation
Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.

16 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
17 practice monitor, Respondent believes there is good cause why that
18 individual should not serve as practice monitor, Respondent may, within 15
19 days of notice of the selected practice monitor, send a written request to the
20 Probation Administrator asking that another practice monitor be selected.
21 That request must articulate good cause to support the request. If the
22 Probation Administrator agrees, another practice monitor will be selected.
If the Probation Administrator disagrees, the Office of Disciplinary Counsel
will submit its proposed selection for practice monitor to the Chair of the
Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will
also provide the Chair with the Respondent's written request that another
practice monitor be selected.

23 b) In the event the practice monitor is no longer able to perform his or her duties, the
24 Probation Administrator will select a new practice monitor at his or her discretion.

- 1 c) During the period of probation, Respondent must cooperate with the named practice
2 monitor. Respondent must meet with the practice monitor at least once per month.
3 Respondent must communicate with the practice monitor to schedule all required
4 meetings.
- 5 d) The Respondent must bring to each meeting a current, complete written list of all
6 pending client legal matters being handled by the Respondent. The list must
7 identify the current status of each client matter and any problematic issues regarding
8 each client matter. The list may identify clients by using the client's initials rather
9 than the client's name.
- 10 e) At each meeting, the practice monitor will discuss with Respondent practice issues
11 that have arisen or are anticipated. In light of the conduct giving rise to the
12 imposition of probation, ODC recommends that the practice monitor and
13 Respondent discuss: whether Respondent is diligently making progress on each
14 client matter, whether Respondent is in communication with each client, whether
15 Respondent has promptly billed each client, whether Respondent's fee agreements
16 are consistent with the RPC and are understandable to the client, whether
17 Respondent needs to consider withdrawing from any client matters. Meetings may
18 be in person or by telephone at the practice monitor's discretion. The practice
19 monitor uses discretion in determining the length of each meeting.
- 20 f) The practice monitor will provide the Probation Administrator with quarterly
21 written reports regarding Respondent's compliance with probation terms and the
22 RPC. Each report must include the date of each meeting with Respondent, a brief
23 synopsis of the discussion topics, and a brief description of any concerns the
24 practice monitor has regarding the Respondent's compliance with the RPC. The
report must be signed by the practice monitor. Each report is due within 30 days of
the completion of the quarter.
- g) If the practice monitor believes that Respondent is not complying with any of her
ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
meeting, the practice monitor will promptly communicate that to the Probation
Administrator.
- h) Respondent must make payments totaling \$1,000 to the Washington State Bar
Association to defray the costs and expenses of administering the probation, as
follows:
- i) \$250 due within 30 days of the start of the probation;
 - ii) \$250 due within 6 months of the start of the probation period;
 - iii) \$250 due within 12 months of the start of the probation period; and
 - iv) \$250 due within 18 months of the start of the probation period.

1 347. **Probation for Trust Account.** Respondent will be subject to probation for a
2 period of two years commencing upon, with periodic reviews under ELC 13.8 of her trust
3 account practices, and must comply with the specific probation terms set forth below:

4 (a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
5 1.15B, and shall carefully review the current version of the publication, Managing
6 Client Trust Accounts: Rules, Regulations, and Common Sense.

7 (b) For all client matters, Respondent shall have a written fee agreement signed by the
8 client, which agreements are to be maintained for least seven years (see RPC
9 1.15B(a)(3)).

10 (c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
11 Review Report," Respondent shall review the trust-account records detailed on the
12 form report, review the completed report, and sign and date the completed report.

13 (d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
14 account records for the time period to be reviewed by ODC's audit staff and
15 disciplinary counsel for compliance with the RPC:

16 1. Months 1 – 3. By no later than the 30th day of the fourth month after the
17 commencement of probation, Respondent shall provide the trust account
18 records from the date of commencement of probation to the end of the
19 third full month.

20 2. Months 4 – 6. By no later than the 30th day of the seventh month after the
21 commencement of probation, Respondent shall provide the trust account
22 records from the end of the previously provided quarter through the end of
23 month six.

24 3. Months 7 – 9. By no later than the 30th day of the tenth 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 nine.

 4. 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.

 5. 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 6. Months 16 – 18. By no later than the 30th day of the nineteenth month
2 after 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 7. 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 (e) The trust account records Respondent provides to ODC for each quarterly review of
10 his trust account will include: (a) copies of each completed “Monthly Reconciliation
11 and Review Report” referenced in sub-paragraph(c) above, (b) a complete
12 checkbook register for his/her trust account covering the period being reviewed, (c)
13 complete individual client ledger records for any client with funds in Respondent’s
14 trust account during all or part of the period being reviewed, as well as for
15 Respondent’s own funds in the account (if any), and (d) copies of all trust-account
16 bank statements, deposit slips, and cancelled checks covering the period being
17 reviewed. The ODC’s Audit Manager or designee will review Respondent’s trust
18 account records for each period.

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

22 ii. The ODC’s Audit Manager or designee may request additional financial or
23 client records if needed to verify Respondent’s compliance with RPC 1.15A
24 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.

iii. 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

348. Respondent shall pay to the court the \$5,000 for the sanctions assessed in the MB
case, and the remaining \$8,700 to the court for the sanctions assessed in the LJ case in
accordance with the January 27, 2017 order and/or any subsequent orders by the court.

1 349. Respondent shall pay \$1,300 to Dahlquist representing overcharged fees.

2 350. ODC and Respondent dispute the amount of other restitution owed to Dahlquist
3 in connection with the \$7,500 flat fee. For purposes of this stipulation, Respondent shall pay
4 \$3,750 in additional restitution Dahlquist, representing half of the \$7,500 paid to Respondent by
5 Dahlquist. This amount is in addition to the \$1,300 in overcharges.

6 351. Respondent shall pay \$2,000 to DL. Interest will accrue on the balance at the
7 rate of 6 percent per annum starting on the date the Stipulation is fully approved.

8 352. Respondent shall pay \$4,000 to KP. Interest will accrue on the balance at the
9 rate of 6 percent per annum starting on the date the Stipulation is fully approved

10 353. Reinstatement is conditioned on full payment of restitution and/or compliance
11 with ELC 13.7.

12 **VIII. COSTS AND EXPENSES**

13 354. Respondent shall pay attorney fees of \$1,500.00 and out of pocket administrative
14 costs of \$2,643.40 for a total of \$4,143.40 in accordance with ELC 13.9(i). The Association
15 will seek a money judgment under ELC 13.9(1) if these costs are not paid within 90 days of
16 approval of this stipulation. Reinstatement from suspension is conditioned on payment of costs
17 and/or compliance with ELC 13.9(i).

18 **IX. VOLUNTARY AGREEMENT**

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

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

3 X. LIMITATIONS

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

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

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

19 360. Under ELC 9.1(d)(4), the Disciplinary Board and Supreme Court review a
20 stipulation based solely on the record agreed to by the parties. Under ELC 3.1(b), all documents
21 that form the record before the Board for its review become public information on approval of
22 the Stipulation by the Board, unless disclosure is restricted by order or rule of law.

23 361. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it

1 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
2 the Rules for Enforcement of Lawyer Conduct will be made.

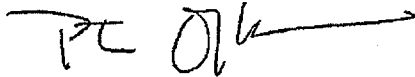
3 362. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
4 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
5 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
6 proceeding, or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

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

9 

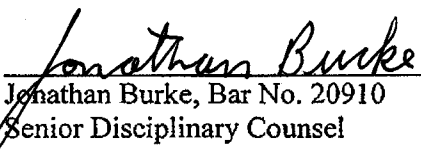
10 Jill J. Smith, Bar No. 41162
11 Respondent

Dated: 9/24/18

12 

13 Peter Offenbecher, Bar No. 11920
14 Attorney for Respondent

Dated: 9/23/18

15 
16 Jonathan Burke, Bar No. 20910
17 Senior Disciplinary Counsel

Dated: 9/24/18