

FILED

Sep 13, 2021

Disciplinary
Board

Docket # 016

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

PATRICIA A. TOY,

Lawyer (Bar No. 20178).

Proceeding No. 21#00010

ODC File No. 20-00408

STIPULATION TO ONE-YEAR
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to One-Year Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Henry Cruz, Respondent's Counsel Kenneth Scott Kagan, and Respondent lawyer Patricia A. Toy.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct, and sanction in this case. Respondent further understands that they are entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to them. Respondent chooses to resolve this proceeding

1 now by entering into the following stipulation to facts, misconduct, and sanction to avoid the risk,
2 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 November 15,
5 1990.

6 **II. STIPULATED FACTS**

7 2. Respondent maintained an Interest on Lawyer's Trust Account (IOLTA), ending in
8 0401, at Bank of America for the deposit of client funds.

9 3. On March 3, 2020, Bank of America closed the trust account due to inactivity.

10 4. On March 4, 2020, Bank of America issued Respondent a check in the amount of
11 \$15,774.45, which represented the closing balance of the trust account.

12 5. On March 24, 2020, Respondent reported to Cheryl Heuett, Audit Manager at ODC,
13 the trust account closure and that Respondent did not know to whom the funds in the trust account
14 belonged.

15 6. On March 25, 2020, ODC opened a grievance investigation into Respondent's
16 handling of client funds and trust account.

17 7. On May 19, 2020, Respondent opened a new IOLTA trust account, ending in 6784, at
18 Bank of America and deposited the \$15,774.45 funds into that trust account.

19 **Trust Account No. 0401**

20 8. During the period December 2012 through March 2020, Respondent did not maintain
21 a complete and current check register for the trust account.

22 9. During the period December 2012 through March 2020, Respondent did not maintain
23 complete and current client ledgers for the trust account.

1 10. During the period December 2012 through March 2020, Respondent did not reconcile
2 a trust account check register to the bank statements (bank statement reconciliation).

3 11. During the period December 2012 through March 2020, Respondent did not reconcile
4 a trust account check register to client ledgers (client ledger reconciliation).

5 12. After the grievance investigation commenced, Respondent identified client matters for
6 most of the funds in the trust account, but Respondent could not identify the clients or third
7 persons to whom \$3,564.54 of the funds in the trust account belonged. These funds date back to
8 at least December 2012.

9 13. At least \$3,124.00 of the funds in the trust account were earned fees belonging to
10 Respondent.

11 14. Of the \$3,124.00 earned fees in the trust account:

12 a. \$1,324 related to the matter of client CW, which concluded in approximately
13 September 2015;

14 b. \$1,000 related to the matter of client LL, which concluded in approximately
15 April 2019;

16 c. \$800 related to the matter of client SD, which concluded in approximately
17 February 2013.

18 15. The remaining \$9,085.91 of the funds in the trust account were held for client TJS.

19 **Client TJS**

20 16. On November 5, 2013, Respondent and TJS entered a written fee agreement for
21 Respondent to represent TJS in a personal injury matter and in an estate matter for a fee of \$3,750.

22 17. On January 21, 2014, the court in the estate matter ordered \$9,085.91 of the proceeds
23 from the settlement of the estate to be distributed to TJS.

1 18. On January 22, 2014, TJS's proceeds from the estate were deposited into Respondent's
2 trust account under the terms of the fee agreement.

3 19. In 2016, Respondent asked TJS to agree to allow Respondent to take the full amount
4 of the funds in the trust account held for TJS (hereinafter "the disputed funds") as full payment
5 for legal services provided and costs incurred in multiple matters in which Respondent
6 represented TJS.

7 20. TJS refused Respondent's request.

8 21. On October 7, 2016, Respondent initiated legal proceedings to determine whether
9 Respondent was entitled to take the full amount of the disputed funds held in the trust account as
10 earned fees and costs incurred in multiple matters.

11 22. On January 27, 2017, the court dismissed Respondent's 2016 matter without prejudice
12 for failure of the parties to appear at a hearing for assignment of trial date.

13 23. On August 30, 2017, Respondent again initiated legal proceedings to determine
14 whether Respondent was entitled to take the full amount of the disputed funds held in the trust
15 account as earned fees and costs incurred in multiple matters.

16 24. On December 22, 2017, the court dismissed Respondent's 2017 matter without
17 prejudice for failure of the parties to appear at a mandatory court review hearing.

18 25. Respondent has taken no further action with respect to resolving the dispute as to
19 ownership of the disputed funds.

20 26. The disputed funds of \$9,085.91 have remained in Respondent's trust account since
21 2014.

22 III. STIPULATION TO MISCONDUCT

23 27. By failing to maintain a complete and current check register and client ledgers for the

1 trust account ending in 0401, Respondent violated RPC 1.15A(h)(2), RPC 1.15B(a)(1), and RPC
2 1.15B(a)(2).

3 28. By failing to perform bank statement and client ledger reconciliations for the trust
4 account ending in 0401, Respondent violated RPC 1.15A(h)(6) and RPC 1.15B(a)(8).

5 29. By failing to promptly pay or deliver funds that clients and third persons were entitled
6 to receive, Respondent violated RPC 1.15A(f).

7 30. By retaining earned fees in the trust account ending in 0401, Respondent violated RPC
8 1.15A(c).

9 31. By failing to take reasonable action to resolve the dispute over ownership of the
10 disputed funds in the trust account ending in 0401, Respondent violated RPC 1.15A(g).

11 **IV. PRIOR DISCIPLINE**

12 32. In May 2002, Respondent was suspended for 60 days for failing to maintain
13 contemporaneous trust fund balances, failing to maintain individual client ledgers, failing to
14 maintain a check register, and comingling lawyer funds with client funds in trust.

15 **V. APPLICATION OF ABA STANDARDS**

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

18 **4.1 *Failure to Preserve the Client's Property***

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

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

21 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
client property and causes injury or potential injury to a client.

22 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.

23 34. Respondent should have known that Respondent was dealing improperly with client
24

1 | property.

2 | 35. Respondent's conduct caused injury and potential injury to clients.

3 | 36. The presumptive sanction is suspension.

4 | 37. The following aggravating factors apply under ABA Standard 9.22:

5 | (a) prior disciplinary offenses;

6 | (d) multiple offenses;

7 | (i) substantial experience in the practice of law [Respondent was admitted to the
8 | Washington State Bar Association in 1990].

9 | 38. The following mitigating factors apply under ABA Standard 9.32:

10 | (b) absence of a dishonest or selfish motive;

11 | (e) full and free disclosure to disciplinary board or cooperative attitude toward
12 | proceedings; and

13 | (l) remorse.

14 | 39. It is an additional mitigating factor that Respondent has agreed to resolve this matter
15 | at an early stage of the proceedings.

16 | 40. On balance, the aggravating and mitigating factors do not require a departure from the
17 | presumptive sanction.

18 | VI. STIPULATED DISCIPLINE

19 | 41. The parties stipulate that Respondent shall receive a one-year suspension.

20 | VII. CONDITIONS OF REINSTATEMENT

21 | 42. As a condition of reinstatement from suspension, Respondent must complete the
22 | following steps to disburse any funds that are owed to clients or third parties and to receive
23 | additional education on how to handle client funds in compliance with the Washington Supreme

1 Court's RPC 1.15A and RPC 1.15B:

- 2 a) For each of the clients listed in the Auditor Report dated October 28, 2020,
3 Respondent must provide ODC with complete documentary evidence demonstrating
4 either that the client or third party is not entitled to a return of any of the amount listed
5 and Respondent has removed that amount from the trust account, or that Respondent
6 has provided the client or third party with a complete accounting of funds and returned
7 to the client or third party any unearned amounts and/or any amounts to which
8 Respondent cannot establish entitlement.
- 9 b) For the unidentified funds listed in the Auditor Report dated October 28, 2020,
10 Respondent must provide ODC with complete documentary evidence demonstrating
11 that Respondent has remitted such funds to Washington State's Department of
12 Revenue Unclaimed Property Division, in compliance with the Uniform Unclaimed
13 Property Act, Chapter 63.29 RCW.
- 14 c) Respondent must provide ODC with complete documentary evidence demonstrating
15 that Respondent has resolved the disputed funds related to client TJS and has
16 disbursed such funds to the owner.
- 17 d) For the time frame of April 2020 up through the date of submission to ODC for
18 consideration of reinstatement, Respondent must provide to ODC, for each trust
19 account open during any portion of that time frame, copies of the following:
- 20 • any and all bank statements,
 - 21 • copies of any and all deposited items,
 - 22 • copies of any and all records of disbursements,
 - 23 • a complete and accurate check register identifying every transaction,
 - 24 • complete and accurate client ledgers identifying every transaction
attributable to a client,
 - monthly reconciliations between the check register and the bank
statement,
 - monthly reconciliations between the check register and the client ledgers,
and
 - if the Respondent maintains trust-account records in QuickBooks,
provide an electronic copy of the file with the trust-account records.
- e) Respondent must carefully review the WSBA publication Managing Client Trust
Accounts: Rules, Regulations, and Common Sense, and provide disciplinary counsel
with a signed certification that they have done so.
- f) Respondent must complete the WSBA continuing legal education course entitled,
"Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on
managing trust accounts in Washington State, and provide disciplinary counsel with
documentation showing that they have done so.

- 1 g) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide
2 the required documentation to disciplinary counsel at least 30 days prior to seeking
3 certification of compliance with reinstatement provisions.

4 VIII. CONDITIONS OF PROBATION

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

- 8 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B,
9 and shall carefully review the current version of the publication, Managing Client
10 Trust Accounts: Rules, Regulations, and Common Sense.
- 11 b) For all client matters, Respondent shall have a written fee agreement signed by the
12 client, which agreements are to be maintained for least seven years (see RPC
13 1.15B(a)(3)).
- 14 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
15 Review Report," Respondent shall review the trust-account records detailed on the
16 form report, review the completed report, and sign and date the completed report.
- 17 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
18 account records for the time period to be reviewed by ODC's audit staff and
19 disciplinary counsel for compliance with the RPC:

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

24 Months 4 – 6. By no later than the 30th day of the seventh 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 six.

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.

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.

1 Months 13 – 15. By no later than the 30th day of the sixteenth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the end of the previously provided quarter through the end of
4 month fifteen.

5 Months 16 – 18. By no later than the 30th day of the nineteenth month after
6 the commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month eighteen.

9 Months 19 – 21. By no later than the 30th day of the twenty-second month
10 after the commencement of probation, Respondent shall provide the trust
11 account records from the end of the previously provided quarter through the
12 end of month twenty-one.

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

- 23 e) On the same quarterly time schedule set forth in the preceding paragraph, Respondent
24 will provide ODC’s Audit Manager or designee with copies of any and all fee
agreements entered into within the time period at issue.
- f) ODC’s Audit Manager or designee may request additional financial or client 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.
- g) 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 their
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.

IX. RESTITUTION

44. No restitution is required by this Stipulation.

1 **X. COSTS AND EXPENSES**

2 45. In light of Respondent’s willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
4 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if
5 these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
6 suspension is conditioned on payment of costs.

7 **XI. VOLUNTARY AGREEMENT**

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

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

15 **XII. LIMITATIONS**

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

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

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

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

11 52. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
12 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
13 Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition
14 to Washington, Respondent also is admitted to practice law in the following jurisdictions, whether
15 current status is active, inactive, or suspended: U.S. District Court for the Western District of
16 Washington and Puyallup Tribal Court.

17 53. 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.

1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
2 One-Year Suspension as set forth above.

3 Patricia A. Toy
4 Patricia A. Toy, Bar No. 20178
5 Respondent

Dated: 06-21-21

6 Kenneth S. Kagan
7 Kenneth Scott Kagan, Bar No. 12983
8 Counsel for Respondent

Dated: 6/22/2021

9 [Signature]
10 Henry Cruz, Bar No. 38799
11 Disciplinary Counsel

Dated: 06/23/2021