

FILED

Oct 27, 2021

Disciplinary
Board

Docket # 053

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

KEVIN L. JOHNSON,
Lawyer (Bar No. 24784).

Proceeding No. 20#00023

ODC File No(s). 16-01588, 19-00249, 19-01385, and 20-00023

STIPULATION TO 12-MONTH
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to a 12-month suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Francesca D'Angelo, Respondent's Counsel Kurt M. Bulmer, and Respondent lawyer Kevin L. Johnson.

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

1 outcome more favorable or less favorable to them. Respondent chooses to resolve this proceeding
2 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
3 time, expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on June 20, 1995.

6 **II. STIPULATED FACTS**

7 2. At all relevant times, Respondent maintained a trust account with Columbia Bank,
8 ending in 0832, for the deposit of client funds. Respondent was the only authorized signatory on
9 the trust account.

10 **Facts Regarding the Grievance Filed By Nicholas Garrison**

11 3. In 2011, Nicholas and Stacey Garrison (the Garrisons) entered into a real estate
12 contract with James Jacobs (Jacobs) to buy a house in Olympia, Washington.

13 4. The Garrisons signed a lease with a purchase option agreeing to pay \$1,000 per month
14 for 20 years. The Garrisons subsequently made improvements to the property. When the
15 Garrisons tried to exercise the purchase option, Jacobs told them the lease option contract was not
16 valid and served them with a 30-day notice to pay rent or vacate the property, alleging that they
17 were \$2,000 behind in rental payments.

18 5. On February 5, 2018, Nicholas Garrison paid Respondent \$2,500 to sue Jacobs for
19 harassment and require Jacobs to honor the lease option agreement. Respondent and the Garrisons
20 did not execute a written fee agreement. Respondent did not place any of the \$2,500 received
21 from the Garrisons into a trust account.

22 6. Nicholas Garrison owns a flooring company, All Commercial Flooring. In May 2018,
23 Nicholas Garrison had a contract dispute with Marriott Del Mar Hotel for a flooring contract in

1 California.

2 7. Nicholas Garrison hired Respondent to represent All Commercial Flooring and paid
3 Respondent \$2,500 in cash. Respondent and Nicholas Garrison did not execute a written fee
4 agreement for the representation. Respondent did not deposit any of the \$2,500 received from
5 Nicholas Garrison into a trust account.

6 8. On September 7, 2018, Jacobs filed an unlawful detainer action against the Garrisons
7 in Thurston County Superior Court, Cause No. 18-2-04445-34. The complaint alleged the
8 Garrisons had failed to pay rent in June, July, and August 2018.

9 9. The Garrisons gave Respondent a check for \$2,000 to deposit into the court registry
10 for alleged past due rent. Respondent attempted to deposit the Garrisons' \$2,000 check into the
11 registry, but the court refused to accept a check. Respondent then went to Columbia Bank and
12 withdrew \$2,000 in cash from trust account 0832 to pay into the court registry.

13 10. At the time Respondent withdrew the \$2,000, the Garrisons did not have any funds in
14 trust account 0832. The \$2,000 that Respondent removed to pay into the court registry belonged
15 to one or more other clients whose funds were in Respondent's trust account.

16 **Facts regarding Client PO matter**

17 11. In or around late 2016, "PO" hired Respondent regarding a dispute with PO's
18 employer. From September 1, 2018 through March 4, 2019, PO paid Respondent advanced fees
19 or \$55,000, which Respondent placed into trust account 0832.

20 12. Between September 5, 2018 through March 2019, Respondent withdrew fees from
21 PO's funds from trust account 0832. Respondent made one or more of the withdrawals in cash.
22 Respondent did not give notice to PO through a billing statement or other document prior to
23 removing the funds. Respondent did not provide a written accounting to PO after removing the

1 funds.

2 **Facts regarding Bank Overdraft/ Trust Account Audit**

3 13. On December 31, 2019, a check was presented against insufficient funds in
4 Respondent's Columbia Bank trust account ending in 0832.

5 14. The cause of the overdraft was Check No. 1492 for \$1,108.75 payable to Capitol
6 Pacific Reporting on behalf of a client, TT. At the time the check was presented, TT did not have
7 funds in trust account 0832.

8 15. ODC conducted an audit of Respondent's trust account ending in 0832 for the period
9 September 2018 through May 2020 (audit period).

10 16. During the audit period, Respondent did not maintain a check register or client ledgers
11 for the trust account.

12 17. During the audit period, Respondent did not reconcile, monthly or quarterly, a check
13 register to the bank statements for the trust account, nor did Respondent reconcile, monthly or
14 quarterly, a check register to a combined total of client ledgers for the trust account.

15 18. During the audit period, Respondent disbursed funds from trust on behalf of one or
16 more clients in excess of the funds that were no deposit for those clients and used the funds of
17 one or more clients on behalf of more than one or more other clients.

18 **Facts Regarding the Grievance Filed by Dana Troy**

19 19. In 2014, Caleb DeLeeuw, Dmitri Hawkins, Gregg Shipp and Daniel Powel started
20 Delta Research, LLC ["Delta"]. Gregg Shipp provided the financial capital. DeLeeuw was the
21 company's CEO.

22 20. Shipp began to believe that DeLeeuw was not competent to act in DeLeeuw's role,
23 and requested that DeLeeuw allow access to Delta's records. DeLeeuw refused. On June 17,

24 ①

1 2016, lawyer James Randall, representing Shipp, filed suit against DeLeeuw, Delta and two
2 affiliated entities seeking declaratory and injunctive relief. *Shipp v. DeLeeuw, Delta, et. al.*,
3 Thurston County Cause No. 16-2-002372-34. On July 1, 2016, the court granted Shipp a
4 preliminary injunction. Shipp subsequently noted DeLeeuw's deposition.

5 21. On July 2016, DeLeeuw hired Respondent to represent DeLeeuw, Delta, and the other
6 defendants. There was no signed fee agreement. Respondent filed a notice of appearance on July
7 12, 2016.

8 22. In August 2016, at a special meeting, Delta removed DeLeeuw as manager of Delta,
9 and appointed Troy Dana as interim CEO. Dana and Hopkins told Respondent through calls and
10 emails that Respondent was no longer the attorney for Delta. Dana hired Jon Cushman to
11 represent Delta as attorney of record. On October 14, 2016, Cushman filed a notice of appearance
12 on behalf of Delta.

13 23. DeLeeuw refused to acknowledge being removed as Manager and CEO of Delta,
14 alleging that the other members of Delta did not have authority to fire DeLeeuw. Likewise,
15 Respondent refused to acknowledge that Respondent had been removed as counsel for Delta.

16 24. On November 10, 2016, Shipp filed an emergency motion, asking the court to
17 determine that Cushman, not Respondent, was the attorney for Delta. On November 18, 2016,
18 the court granted the motion and designated Cushman as attorney of record for Delta. Respondent
19 moved for reconsideration, which was denied.

20 25. On December 12, 2017, Cushman filed an Amended Complaint, adding Delta and its
21 affiliated entities as Plaintiffs against DeLeeuw. On February 10, 2017, the court ordered that
22 Respondent withdraw as counsel for Delta and return all Delta Research, LLC property in his
23 control to Delta's attorney of record. Respondent filed a withdrawal on February 13, 2017.

1 26. On December 29, 2017, Delta filed a lawsuit against Respondent, alleging, inter alia,
2 that Respondent's refusal to acknowledge Respondent's firing and refusal to comply with Delta's
3 request for a return of all Delta property caused damage to Delta. *Delta Research v. Johnson*,
4 Thurston County Cause No. 17-2-06799-34. The Complaint requested that Johnson return all
5 property, records and correspondence to which Delta was entitled. Respondent did not return
6 Delta's property.

7 27. On April 26, 2018, Respondent filed an answer and counterclaim against Delta
8 Research, Troy Dana, Hopkins, Shipp and Shipp's lawyer, Randall. In the counterclaim,
9 Respondent claimed that Delta owed Respondent \$18,750 in attorney fees and \$6,800 in costs
10 under a *quantum meruit* theory.

11 28. In the counterclaim, Respondent claimed that Shipp's lawyer, James Randall, had
12 interfered with Respondent's business relationship with Delta when Randall convened the
13 meeting in which DeLeeuw was fired as CEO. Respondent's counterclaim against Shipp's lawyer
14 was frivolous.

15 29. In the counterclaim, Respondent further claimed that the defendants had interfered
16 with a contractual relationship between Respondent and Delta when it removed DeLeeuw as
17 CEO, and destroyed Delta's ability to fulfill its agreement with Respondent, namely a "contingent
18 fee contract or expectancy in the amount of 9% of \$100,000,000 totaling approximately
19 \$9,000,000 US." Respondent based this claim on an oral agreement that DeLeeuw would pay
20 Respondent a fee of \$5,000 plus a 40% contingency fee. This counterclaim was frivolous.

21 30. In November 2018, Delta moved to dismiss Johnson's counterclaims. The court
22 granted the motion in part, dismissing Respondent's claims as to a contingency fee or hourly costs
23 claim, but allowed the claim for *quantum meruit* to proceed. The court also awarded costs and

1 fee to Delta research, finding that Respondent's claims were brought in violation of CR 11.

2 31. Randall also made a motion for summary judgment and for CR 11 sanctions against
3 Respondent. The court found that Respondent's claim against Randall was frivolous and
4 advanced without reasonable cause. The court ordered Respondent and Respondent's lawyer to
5 pay Randall \$1,000 each. Respondent paid the \$1,000 sanctions that the court ordered
6 Respondent to pay.

7 32. Delta also brought a motion for CR 11 sanctions against Respondent. Respondent and
8 Respondent's lawyer stipulated to pay an award of \$16,500 in sanctions, jointly and severally, to
9 Delta.

10 33. On June 19, 2020, Respondent entered into a stipulation with Delta research and the
11 third party defendants, dismissing all claims and counterclaims.

12 III. STIPULATION TO MISCONDUCT

13 34. By failing to deposit the Garrisons' advanced fees into a trust account, Respondent
14 violated RPC 1.5(f) and RPC 1.15A(c).

15 35. By removing funds from trust for use on behalf of the Garrisons, when the Garrisons
16 had no funds in the trust account and by using another client's funds on behalf of the Garrisons,
17 Respondent violated RPC 1.15A(h)(8).

18 36. By removing funds from a trust account without giving notice to the client through a
19 billing statement or other document, Respondent violated RPC 1.15A(h)(3).

20 37. By making cash withdrawals from a trust account, Respondent violated RPC
21 1.15A(h)(5).

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

1 39. By failing to maintain a check register and client ledgers, Respondent violated RPC
2 1.15A(h)(2) and RPC 1.15B(a)(2).

3 40. By failing to reconcile a check register to the bank statements and by failing to
4 reconcile a check register to client ledgers, Respondent violated RPC 1.15A(h)(6) and RPC
5 1.15B(a)(8).

6 41. By failing to maintain client funds in a trust account, by disbursing more funds from
7 the trust account than clients or third persons had on deposit, and by using one client's funds on
8 behalf of another, Respondent violated RPC 1.15A(c) and RPC 1.15A(h)(4).

9 42. By filing frivolous counterclaims in the Troy matter, Respondent violated RPC 3.1.

10 43. By failing to return Delta's property, Respondent violated RPC 1.16(d) and RPC
11 3.4(c).

12 IV. PRIOR DISCIPLINE

13 44. Respondent has no prior discipline.

14 V. APPLICATION OF ABA STANDARDS

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

17 ***4.1 Failure to Preserve the Client's Property***

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

19 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.

20 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.

21 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
22 client.

23 ***6.2 Abuse of the Legal Process***

24 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court

1 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
2 serious injury or potentially serious injury to a party or causes serious or
potentially serious interference with a legal proceeding.

3 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
violating a court order or rule, and causes injury or potential injury to a client or a
4 party, or causes interference or potential interference with a legal proceeding.

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

7 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance
of negligence in complying with a court order or rule, and causes little or no actual
or potential injury to a party, or causes little or no actual or potential interference
with a legal proceeding.

8 **7.0 *Violations of Duties Owed as a Professional***

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

11 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
that is a violation of a duty owed as a professional and causes injury or potential
injury to a client, the public, or the legal system.

12 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
that is a violation of a duty owed as a professional and causes injury or potential
13 injury to a client, the public, or the legal system.

14 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
of negligence that is a violation of a duty owed as a professional, and causes little
or no actual or potential injury to a client, the public, or the legal system.

15 46. Respondent knew or should have known that Respondent was treating client funds
16 improperly, mishandling PO's funds, and failing to maintain proper trust account records.

17 47. There was potential injury to the client(s) whose funds were used on behalf of the
18 Garrisons and to the Garrisons who did not receive a refund or accounting of funds paid to
19 Respondent, and to PO who paid Respondent at least \$55,000 and received no accounting. There
20 was potential injury to Respondent's clients due to Respondent's failure to maintain proper trust
21 account records, and whose funds were used for other clients. The presumptive sanction under
22 ABA Standard 4.12 is suspension.

23 48. ABA Standard 6.22 applies to Respondent's conduct in filing a frivolous claim and in
24

1 failing to obey the court's order to return Delta's property. Respondent's conduct was knowing.
2 There was injury to Delta, the counter-defendants, and to the court system. The presumptive
3 sanction under ABA Standard 6.22 is suspension.

4 49. ABA Standard 7.2 also applies to Respondent's conduct in refusing to return Delta's
5 property. Respondent's conduct was knowing. Delta was injured, in that they had to file suit to
6 obtain their property. The presumptive sanction under ABA Standard 7.2 is suspension.

7 50. The following aggravating factors apply under ABA Standard 9.22:

8 (i) substantial experience in the practice of law.

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

10 (a) absence of a prior disciplinary record;

11 (b) personal or emotional problems (see confidential Appendix A);

(l) remorse

12 52. It is an additional mitigating factor that Respondent has agreed to resolve this matter
13 at an early stage of the proceedings.

14 53. A significant mitigating factor is the contribution this stipulation makes to the efficient
15 and effective operation of the lawyer discipline system considering the effect the COVID-19
16 public health emergency has had on disciplinary resources and the orderly processing of
17 disciplinary matters.

18 54. On balance, the aggravating and mitigating factors do not require a departure from the
19 presumptive sanction of suspension.

20 VI. STIPULATED DISCIPLINE

21 55. The parties stipulate that Respondent shall receive a 12-month suspension.

22 Conditions of Reinstatement

23 56. Before Respondent is eligible for reinstatement, Respondent must have a one-year

1 period of sobriety as demonstrated by clean urinalysis examinations (UAs), to be obtained at his
2 own expense. Respondent must arrange to have random UAs conducted by a facility to be
3 approved by disciplinary counsel on at least a monthly basis, with reports of the UAs submitted
4 to disciplinary counsel. Respondent shall execute any necessary releases to allow disciplinary
5 counsel full access to the results of the UAs to monitor compliance with this stipulation.

6 57. As an additional condition of reinstatement, Respondent shall, at least 30 days before
7 a request for reinstatement, undergo an independent examination by a licensed clinical
8 psychologist or psychiatrist approved by ODC to evaluate Respondent's fitness to practice law.

9 The evaluator shall make a report to disciplinary counsel addressing the following issues:

- 10 • Whether Respondent continues to be in recovery from alcoholism.
- 11 • Whether Respondent is in recovery from any other issues identified by the
12 evaluator as influencing Respondent's performance as a lawyer.
- 13 • Whether Respondent should continue in treatment after reinstatement to the
14 practice of law.

15 58. Respondent shall pay all expenses associated with the examination.

16 59. Respondent shall execute all necessary releases and authorizations to permit the
17 evaluator and disciplinary counsel to obtain full access to all pertinent health care and treatment
18 records for the applicable time period, and to permit the evaluator to release information regarding
19 the evaluation to disciplinary counsel, including a written report of the evaluator's findings,
20 diagnosis, and recommended treatment plan, if any. Respondent shall provide disciplinary
21 counsel with a copy of the releases and authorizations.

22 60. If the evaluator concludes there is reasonable cause to believe that Respondent does
23 not have the mental or physical capacity to practice law, then disciplinary counsel may report to

1 a review committee as provided in ELC 8.2.

2 61. If the evaluator recommends treatment, then Respondent shall undergo treatment with
3 a treatment provider during the probation period. The conditions of treatment during the
4 probation period are set forth below.

5 62. If the evaluator does not recommend treatment, then Respondent will not be required
6 to undergo treatment and will not be subject to probation requiring mental health treatment.

7 Conditions Re: Trust Account

8 63. As a condition of reinstatement from suspension, Respondent must complete the
9 following steps to disburse any funds that are owed to clients or third parties and to receive
10 additional education on how to handle client funds in compliance with the Washington Supreme
11 Court's RPC 1.15A and RPC 1.15B:

12 a) For the time frame of June 1, 2020 up through the date of submission to ODC for
13 consideration of reinstatement, Respondent must provide to ODC, for each trust
account open during any portion of that time frame, copies of the following:

- 14
- any and all bank statements,
 - copies of any and all deposited items,
 - 15 • copies of any and all records of disbursements,
 - 16 • a complete and accurate check register identifying every transaction,
 - complete and accurate client ledgers identifying every transaction
17 attributable to a client,
 - monthly reconciliations between the check register and the bank
18 statement,
 - monthly reconciliations between the check register and the client ledgers,
19 and
 - if the Respondent maintains trust-account records in QuickBooks,
20 provide an electronic copy of the file with the trust-account records.

21 b) If Respondent's trust-account records for the time period of June 1, 2020 up through
22 the date of submission to ODC for consideration of reinstatement indicate that any
client is owed funds, then Respondent shall provide each client, in writing, with a
23 complete updated accounting of their receipt and disbursement of all funds. The
accounting shall identify the source, date and amount of all funds received, and the
24 recipient, purpose, date and amount of all funds disbursed. Respondent shall not be
eligible for a certification of completion of specific conditions of suspension under

1 ELC 13.3(b)(1)(B) unless Respondent provides ODC with proof that he/she has done
2 so, and with copies of the accountings, at least 60 days prior to seeking certification
of completion.

- 3 c) Respondent must carefully review the WSBA publication Managing Client Trust
4 Accounts: Rules, Regulations, and Common Sense, and provide disciplinary counsel
with a signed certification that they have done so.
- 5 d) Respondent must complete the WSBA continuing legal education course entitled,
6 "Managing Client Trust Accounts" (October 2014), or an equivalent 1.5 credits on
managing trust accounts in Washington State, and provide disciplinary counsel with
7 documentation showing that they have done so.
- 8 e) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide
the required documentation to disciplinary counsel at least 30 days prior to seeking
9 certification of compliance with reinstatement provisions.

9 Probation

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

14 65. If the evaluator, specified in paragraph 57, above, recommends mental-health
15 treatment, the following provisions will apply.

- 16 a) Respondent shall undergo treatment with a treatment professional approved by the
17 Probation Administrator.
- 18 b) Respondent shall comply with all requirements and recommendations of the
19 treatment provider, including but not limited to the completion of any period of in- or
out-patient treatment and aftercare, the taking of any prescribed medications,
20 abstinence/sobriety as required, and compliance with any toxicology monitoring.
- 21 c) Respondent shall continue to participate in the recommended treatment program
throughout the period of probation or until such time as the treatment provider
determines that further participation is not needed.
- 22 d) Respondent shall execute an authorization[s] allowing and directing the treatment
23 provider to take the following actions:
- 24 i) on a quarterly basis, send written reports to the Probation Administrator that
include the dates of treatment, whether Respondent has been cooperative with

1 treatment, whether continued treatment is recommended, and results of
2 random toxicology reports;

- 3 ii) report immediately to the Probation Administrator incidences of relapse or if
4 Respondent fails to appear for treatment or stops treatment without the
5 provider's agreement and consent prior to either termination of the treatment
6 plan or expiration of the probation period set forth in this stipulation;
- 7 iii) report immediately to the Probation Administrator if Respondent fails to
8 comply with any treatment recommendations of the treatment provider;
- 9 iv) report immediately to the Probation Administrator if Respondent otherwise
10 violates any of the terms or conditions of probation;
- 11 v) report immediately to the Probation Administrator if the provider will no
12 longer serve as treatment provider to Respondent prior to termination of the
13 treatment plan or expiration of the probation period set forth in this
14 [order/stipulation]; and
- 15 vi) report to the Probation Administrator if Respondent successfully completes
16 treatment and is discharged from further treatment.

17 Respondent shall provide a copy of the authorization[s] to the Probation
18 Administrator upon execution.

- 19 e) Respondent is responsible for paying any and all fees, costs and/or expenses of
20 chemical dependency evaluation and treatment.

21 Trust Account Requirements

- 22 a) For all client matters, Respondent shall have a written fee agreement signed by the
23 client, which agreements are to be maintained for least seven years (see RPC
24 1.15B(a)(3)).
- 25 b) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
26 Review Report," Respondent shall review the trust-account records detailed on the
27 form report, review the completed report, and sign and date the completed report.
- 28 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
29 account records for the time period to be reviewed by ODC's audit staff and
30 disciplinary counsel for compliance with the RPC:
- 31 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
32 commencement of probation, Respondent shall provide the trust account
33 records from the date of commencement of probation to the end of the third
34 full month.

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

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

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

1 records needed to verify Respondent's compliance with RPC 1.15A and/or RPC
2 1.15B, Respondent will provide ODC's Audit Manager or designee the additional
records requested.

- 3 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
4 or designee in reviewing and reporting on Respondent's records to determine their
5 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.

6 VII. RESTITUTION

7 66. If Respondent's trust-account records from June 1, 2020 up through the date of
8 submission to ODC for consideration of reinstatement indicate that any client is owed funds, then
9 Respondent is required to make full restitution to each client of all funds owed. Respondent shall
10 pay to the client interest on those funds, at a rate of 12%, calculated from the date on which the
11 client (or third party as directed by the client) was first entitled to receive the funds to the date on
12 which repayment is made. Reinstatement is conditioned on full payment of restitution, with
13 interest.

14 VIII. COSTS AND EXPENSES

15 67. Respondent shall pay attorney fees and administrative costs of \$750 in accordance
16 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(j) if these costs
17 are not paid within 30 days of approval of this stipulation.

18 IX. VOLUNTARY AGREEMENT

19 68. Respondent states that prior to entering into this Stipulation they have 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 Association,
22 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
23 as provided herein.

24 69. Once fully executed, this stipulation is a contract governed by the legal principles

1 applicable to contracts, and may not be unilaterally revoked or modified by either party.

2 **X. LIMITATIONS**

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

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

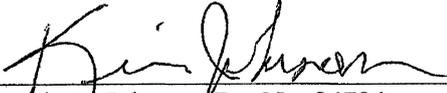
11 72. This Stipulation results from the consideration of various factors by both parties,
12 including the benefits to both by promptly resolving this matter without the time and expense of
13 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
14 such, approval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

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

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

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

5 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
6 12-Month Suspension as set forth above.

7 
8 _____
9 Kevin L. Johnson, Bar No. 24784
10 Respondent

Dated: 9-9-21

11 
12 _____
13 Kurt M. Bulmer, Bar No. 5559
14 Counsel for Respondent

Dated: 9/10/21

15 
16 _____
17 Francesca D'Angelo, Bar No. 22979
18 Senior Disciplinary Counsel

Dated: 9/10/21