

DEC 07 2017

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

TRACY SCOTT COLLINS,

Lawyer (Bar No. 20839).

Proceeding No. 16#00119

ODC File No. 15-01161

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Debra Slater and Respondent lawyer Tracy Scott Collins.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is 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 him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to

Stipulation to Discipline
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1 avoid the risk, time, expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November 8,
4 1991.

5 **II. STIPULATED FACTS**

6 2. Respondent maintained an IOLTA trust account at Bank of America for the deposit
7 of client funds. On June 18, 2015, a check was presented against insufficient funds in
8 Respondent's trust account, causing an overdraft.

9 3. Respondent did not maintain a check register for the trust account that listed on a
10 current basis each transaction as of the date the check was issued, the deposit was made, or
11 other transaction, or that reflected a current balance of funds in the account.

12 4. Respondent did not maintain an individual ledger or other record for each client that
13 listed all transactions for each client.

14 5. Respondent did not maintain copies of deposit slips or cancelled checks.

15 6. Respondent did not prepare a monthly reconciliation to the bank statement balance,
16 nor did he prepare a monthly reconciliation of to the combined total of all individual client
17 ledger records.

18 7. On one or more occasion, Respondent deposited earned fees into his IOLTA
19 account. On one or more occasion, Respondent disbursed funds from his trust account in excess
20 of the amount of funds on deposit in that account.

21 **III. STIPULATION TO MISCONDUCT**

22 8. By failing to hold all client funds in trust, Respondent violated RPC 1.15A(c) and
23 RPC 1.15A(h).

9. By depositing earned fees into his trust account, Respondent violated RPC 1.15A(c).

10. By disbursing funds from his trust account in excess of the amount of funds on deposit, Respondent violated RPC 1.15A(h)(8).

11. By failing to keep complete trust account records, Respondent violated RPC 1.15A(h)(2) and RPC 1.15B.

12. By failing to reconcile his trust account records, Respondent violated RPC 1.15A(h)(6).

IV. PRIOR DISCIPLINE

13. Respondent received a Reprimand on August 10, 2012, for misrepresenting to Spokane County jail staff that his client's fiancé was his legal assistant in order to provide her access to his client in the attorney visitation book, in violation of RPC 8.4(c)

V. APPLICATION OF ABA STANDARDS

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

4.1 Failure to Preserve the Client's Property

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

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

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.

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.

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.

1 15. Respondent acted negligently in failing to maintain complete trust account records
2 and depositing earned fees into his trust account.

3 16. There was potential injury to Respondent's clients but no actual injury to his clients.

4 17. The presumptive sanction is Reprimand.

5 18. The following aggravating factors apply under ABA Standard 9.22:

- 6 (a) prior disciplinary offenses;
7 (d) multiple offenses;
(i) substantial experience in the practice of law.

8 19. The following mitigating factors apply under ABA Standard 9.32:

- 9 (b) absence of a dishonest or selfish motive;
10 (c) personal or emotional problems.

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

13 21. On balance the aggravating and mitigating factors do not require a departure from
14 the presumptive sanction.

15 VI. STIPULATED DISCIPLINE

16 1. The parties stipulate that Respondent shall receive a reprimand for his conduct.
17 2. Respondent will be subject to probation for a period of two years commencing upon
18 final approval of this stipulation, with periodic reviews under ELC 13.8 of his trust account
19 practices, and must comply with the specific probation terms set forth below:

- 20 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
21 1.15B, and shall carefully review the current version of the publication, Managing
22 Client Trust Accounts: Rules, Regulations, and Common Sense.
23 b) For all client matters, Respondent shall have a written fee agreement signed by the
24 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

- 1 c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
2 Review Report," Respondent shall review the trust-account records detailed on the
form report, review the completed report, and sign and date the completed report.
- 3 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
4 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:
- 5 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
6 commencement of probation, Respondent shall provide the trust account
records from the date of commencement of probation to the end of the third
7 full month.
- 8 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
9 commencement of probation, Respondent shall provide the trust account
records from the end of the previously provided quarter through the end of
10 month six.
- 11 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
12 commencement of probation, Respondent shall provide the trust account
13 records from the end of the previously provided quarter through the end of
14 month nine.
- 15 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month
16 after the commencement of probation, Respondent shall provide the trust
account records from the end of the previously provided quarter through
17 the end of month twelve.
- 18 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
19 the commencement of probation, Respondent shall provide the trust
20 account records from the end of the previously provided quarter through
21 the end of month fifteen.
- 22 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month
23 after the commencement of probation, Respondent shall provide the trust
24 account records from the end of the previously provided quarter through
the end of month eighteen.
- 25 vii) Months 19 – 21. By no later than the 30th day of the twenty-second
month after the commencement of probation, Respondent shall provide the
trust account records from the end of the previously provided quarter
through the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of
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

1 reviewed, (c) complete individual client ledger records for any client with funds in
2 Respondent's trust account during all or part of the period being reviewed, as well
3 as for Respondent's own funds in the account (if any), and (d) copies of all trust-
4 account bank statements, deposit slips, and cancelled checks covering the period
5 being reviewed. The ODC's Audit Manager or designee will review Respondent's
6 trust account records for each period.

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

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

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

21 VII. RESTITUTION

22 22. No restitution is ordered in this case.

23 VIII. COSTS AND EXPENSES

24 23. In light of Respondent's willingness to resolve this matter by stipulation at an early
stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750.00
in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

IX. VOLUNTARY AGREEMENT

24 24. Respondent states that prior to entering into this Stipulation he had an opportunity to
consult independent legal counsel regarding this Stipulation, that Respondent is entering into
this Stipulation voluntarily, and that no promises or threats have been made by ODC, the

1 Association, nor by any representative thereof, to induce the Respondent to enter into this
2 Stipulation except as provided herein.

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

5 X. LIMITATIONS

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

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

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

21 29. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
22 his or her review become public information on approval of the Stipulation by the Hearing
23 Officer, unless disclosure is restricted by order or rule of law.

1 30. If this Stipulation is approved by the Hearing Officer, it will be followed by the
2 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
3 Enforcement of Lawyer Conduct will be made.

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

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

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11 Tracy Scott Collins, Bar No. 20839
12 Respondent

Dated: 11/16/17

13 

14 Debra Slater, Bar No. 18346
15 Disciplinary Counsel

Dated: 11/27/17