ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Keith Y. Boyd (Respondent) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for six months, with all of the suspension stayed, pending Respondent’s successful completion of a three-year term of probation, effective on December 24, 2019, for violation of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich, OSB No. 992558
STIPULATION FOR DISCIPLINE

Keith Y. Boyd, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On October 19, 2019, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violations of RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), and RPC 5.3(a) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On February 15, 2019, Respondent reported to the Bar that he had overdrawn his trust account by $1,059 based on a check Respondent had written to himself. Respondent realized his Quickbooks and Clio data accounts had not been reconciled with his monthly trust account bank statements. Concerned, Respondent hired an accounting firm to audit his accounts.
By April 2019, Respondent had determined that a total of $10,820 in client funds had been prematurely transferred out of trust since 2011. Those funds were the funds of five clients. Respondent then deposited that amount into his trust account in order to make his clients whole.

Since the audit, Respondent has identified between ten and fifteen clients whose advanced funds were prematurely removed from his trust account before they were earned.

The premature transfers and overdraft were caused, in part, by Respondent’s bookkeeper’s and staff’s failure to reconcile his various client accounting documents. Between 2011 and 2019, Respondent made little effort to supervise his staff’s bookkeeping and accounting activities.

**Violations**

6.

Respondent admits that, by engaging in the conduct described above, he failed to safeguard client property, in violation of RPC 1.15-1(a), and removed client funds from trust before they were earned, in violation of RPC 1.15-1(c). Respondent also admits that he failed to make reasonable efforts to ensure that his bookkeeper’s and staff’s conduct was compatible with his professional obligations, in violation of RPC 5.3(a).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.15-1(b) should be and, upon the approval of this stipulation, is dismissed.

**Sanction**

7.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions (Standards). The Standards require that Respondent’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

a. **Duty Violated.** The Standards presume that the most important duties a lawyer owes are those owed to clients. Standards at 5. Respondent violated his duty to his clients to preserve client property. Standards § 4.1. Respondent also violated the duty he owed as a professional to adequately supervise his staff. Standards § 7.0.

b. **Mental State.** The Standards recognize three mental states. “Intent” is the conscious objective or purpose to accomplish a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.
“Negligence” is the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards* at 9.

Respondent’s conduct reflects a negligent mental state. Respondent negligently supervised his staff and failed to confirm that disbursements from his trust account were appropriate, which led to premature withdrawals of client funds before they were earned, and the overdraft of his trust account.

c. **Injury.** There was both actual and potential injury to Respondent’s clients when he prematurely disbursed funds before fees were earned from 2011 and 2019.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Substantial experience in the practice of law. *Standards* § 9.22(i). Respondent has been practicing law in Oregon since 1976.

e. **Mitigating Circumstances.** Mitigating circumstances include:


2. Timely good faith effort to rectify consequences of misconduct. *Standards* § 9.32(d).


8.

Under the ABA *Standards*, a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards* § 4.13. A suspension is 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. *Standards* § 4.12.

While Respondent’s mental state was negligent, given the financial total of premature transfers of client funds, the number of clients whose funds were affected, and the length of time for which the conduct occurred, the parties agree that a suspension is warranted.

9.

In comparable situations, the Disciplinary Board has approved stipulations imposing suspensions subject to probation. See, e.g.,

- *In re Lewis I. Landerholm*, 32 DB Rptr __ (2018) [stipulated one-year suspension, all stayed/three-year probation] Attorney surrendered management of his trust
account to an office manager who, based upon an audit, determined that errors had occurred and then made transfers to and from the trust account to try to reconcile the entries with information listed in other reporting documents and accounts, resulting in some client funds being removed before they were earned. Even following subsequent professional efforts, the accounting discrepancies could never be resolved. [RPC 1.15-1(a), (b), and (c), RPC 5.3(a)].

- **In re Allen R. Peters, 32 DB Rptr __ (2018) [stipulated eight-month suspension, all but 30 days stayed/two-year probation]**. To address a substantial trust account deficit uncovered by a returned check, respondent transferred personal funds into his trust account. Further investigation identified five transactions for four separate clients that were either mis-recorded in his ledgers and/or removed from the trust account in error. [RPC 1.15-1(a), (b), and (c)].

- **In re Shannon M. Kmetic, 30 DB Rptr 250 (2016) [stipulated six-month suspension, all but 30 days stayed/two-year probation]**. For convenience, Respondent purportedly deposited two clients’ advance cash payments into her personal account. There is no record of the deposit. Later that same day, Respondent deposited funds into her trust account, including a check drawn on her personal account, which allegedly represented her clients’ advance funds, and then drafted a check on her trust account for an expenditure unrelated to either of the clients who had provided the cash payments. Respondent’s personal check was dishonored and the bank reversed that portion of the prior deposit, drawing on the remaining funds in trust and leaving a negative balance. Two more checks were presented for payment on Respondent’s trust account against a near-zero balance. The bank honored the checks and charged overdraft fees, exhausting all remaining client funds in trust. [RPC 1.15-1(a) and (c)].

- **In re Mark O. Cottle, 29 DB Rptr 79 (2015) [stipulated 60-day suspension, all stayed/two-year probation]** Respondent received a $35,000 settlement check on behalf of a client. Respondent directed law firm staff to deposit the client’s check, along with checks from two other clients, into his trust account, for a total deposit of approximately $40,000. Law firm staff did not complete the deposit, and respondent did not verify that the deposit had been completed before writing a check a few weeks later for his fees. After the bank returned the check for insufficient funds, respondent transferred approximately $41,000 of his own funds into the firm’s lawyer trust account to correct the depositing error. [RPC 1.15-1(b) and (c), RPC 5.3(a)].

- **In re Gary B. Bertoni, 26 DB Rptr 25 (2012) [stipulated 150-day suspension]** Over an extended period, attorney negligently withdrew client funds from his law firm’s trust account before the funds were earned. Attorney also failed to maintain complete trust account records for five years, as required by the rule. In addition, attorney periodically deposited his own funds into the firm trust account in
amounts that exceeded bank service charges and minimum balance requirements. [RPC 1.15-1(a), (b) and (c)].

10.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. See also, Standards § 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct that may be corrected). In addition to a period of suspension, a period of probation designed to ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

11.

Consistent with the Standards and Oregon case law, the parties agree that Respondent shall be suspended for six months for violations of RPC 1.15-1(a), RPC 1.15-1(c), and RPC 5.3(a), with all of the suspension stayed, pending Respondent’s successful completion of a three-year term of probation. The sanction shall be effective as directed by the Disciplinary Board (effective date).

12.

Probation shall commence upon the effective date and shall continue for a period of three years, ending on the day prior to the third year anniversary of the effective date (period of probation). During the period of probation, Respondent shall abide by the following conditions:

(a) Respondent will communicate with Disciplinary Counsel’s Office (DCO) and allow DCO access to information, as DCO deems necessary, to monitor compliance with his probationary terms.

(b) Respondent has been represented in this proceeding by David J. Elkanich (Elkanich). Respondent and Elkanich hereby authorize direct communication between Respondent and DCO after the date this Stipulation for Discipline is signed by both parties, for the purposes of administering this agreement and monitoring Respondent’s compliance with his probationary terms.

(c) Respondent shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.

(d) During the period of probation, Respondent shall attend not less than 12 MCLE accredited programs, for a total of 36 hours, which shall emphasize law practice management, trust accounting, and supervising staff. These credit hours shall be in addition to those MCLE credit hours required of Respondent for his normal MCLE reporting period. (The Ethics School and Trust Accounting School requirements do not count towards the 36 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and
prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.

(e) Prior to the end of the period of probation, Respondent shall attend Trust Accounting School, offered by the Oregon State Bar twice a year in the spring and fall. Upon completion of Trust Accounting School, and prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.

(f) Throughout the period of probation, Respondent shall diligently review and approve all accounting actions of his firm relating to the disbursement, transfer, or withdrawal of client funds.

(g) Each month during the period of probation, Respondent shall:

(1) maintain complete records, including individual client ledgers, of the receipt and disbursement of client funds and payments on outstanding bills; and

(2) review his monthly trust account records and client ledgers and reconcile those records with his monthly lawyer trust account bank statements.

(h) For the period of probation, Respondent will employ a bookkeeper approved by DCO, to assist in the monthly reconciliation of his lawyer trust account records and client ledger cards.

(i) On or before December 1, 2020, and on or before December 1, 2021, Respondent shall retain an accountant to audit his lawyer trust account. Respondent’s accountant shall prepare a report of the audit and submit the audit to DCO no later than January 31, 2021, and January 31, 2022, respectively.

(j) Conde Cox shall serve as Respondent’s probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Respondent’s clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be Supervisor for any reason, Respondent will immediately notify DCO and engage a new supervisor, approved by DCO, within one month.

(k) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of:

(1) Permitting Supervisor to inspect and review Respondent’s accounting and record keeping systems to confirm that he is reviewing and reconciling his lawyer trust account records and maintaining complete records of the receipt and disbursement of client funds. Respondent agrees that Supervisor may contact all employees and independent contractors who
assist Respondent in the review and reconciliation of his lawyer trust account records.

(I) Respondent authorizes Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent’s compliance.

(m) Within seven days of the effective date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the earliest date available with PLF’s Practice Management Advisors in order to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.

(n) Respondent shall attend the appointment with the PLF’s Practice Management Advisors and seek advice and assistance regarding procedures for adequately training his staff regarding the handling of client funds. No later than thirty (30) days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall adopt and implement those recommendations.

(o) No later than 60 days after recommendations are made by the PLF’s Practice Management Advisors, Respondent shall provide a copy of the office practice assessment from the PLF’s Practice Management Advisors and file a report with DCO stating the date of his consultation(s) with the PLF’s Practice Management Advisors; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.

(p) Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least one follow-up review with PLF Practice Management Advisors on or before June 1, 2020.

(q) On a quarterly basis, on dates to be established by DCO beginning no later than 60 days after the effective date, Respondent shall submit to DCO a written “Compliance Report,” approved as to substance by Supervisor, advising whether Respondent is in compliance with the terms of this Stipulation for Discipline, including:

(1) The dates and purpose of Respondent’s meetings with Supervisor.

(2) A description of the accounting activities that Respondent reviewed and results thereof.

(3) Whether Respondent has completed the other provisions recommended by Supervisor, if applicable.
In the event that Respondent has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.

Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.

Respondent’s failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to DCO, or with any reasonable request of Supervisor, shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.

A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.

The SPRB’s decision to bring a formal complaint against Respondent for unethical conduct that occurred or continued during the period of his probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.

Upon the filing of a petition to revoke Respondent’s probation pursuant to Bar Rule 6.2(d), Respondent’s remaining probationary term shall be automatically tolled and shall remain tolled until the BR 6.2(d) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board trial panel.

Respondent acknowledges that reinstatement is not automatic on expiration of any period of suspension, if any stayed period of suspension is actually imposed. If a period of suspension is necessitated by his non-compliance with the terms of his probation, he will be required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. Respondent also acknowledges that, should a suspension occur, he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

Respondent acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement, if a suspension is imposed. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.
15.

Respondent represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: none

16.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of December, 2019.

/s/ Keith Y. Boyd
Keith Y. Boyd
OSB No. 760701

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich
David J. Elkanich
OSB No. 992558

EXECUTED this 19th day of December, 2019.

OREGON STATE BAR

By: /s/ Courtney C. Dippel
Courtney C. Dippel
OSB No. 022916
Assistant Disciplinary Counsel