

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 21-85  
)  
BRAD LARSON, )  
)  
Respondent. )

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.15-1(e). Stipulation for Discipline. Public reprimand.

Effective Date of Order: November 17, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Brad Larson (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 publicly reprimanded for violation of RPC 1.15-1(e).

DATED this 17th day of November, 2021.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

**STIPULATION FOR DISCIPLINE**

Brad Larson, 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 27, 1991, and has been a member of the Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 11, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of RPC 1.15-1(e) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, the violation, and the agreed-upon sanction as a final disposition of this proceeding.

### **Facts**

5.

Respondent represented a male individual (Client) on a personal injury claim arising from a motor vehicle accident (MVA 1). Respondent and Client signed a written contingent fee agreement, which provided that, if representation ended before Client's claim was resolved, Respondent would be entitled to an hourly fee for legal services performed prior to termination.

Several months after Respondent began representing Client on MVA 1, Client was injured again in another motor vehicle accident (MVA 2). Respondent agreed to represent Client on a personal injury claim arising from MVA 2. Respondent contends that he and Client signed a new fee agreement with the same terms the agreement they signed for MVA 1, but he is unable to produce any written record of such an agreement for MVA 2.

6.

Respondent settled Client's claim on MVA 1 in March 2020. Client terminated Respondent's representation by email dated May 13, 2020. Respondent received the MVA 1 settlement proceeds on May 15, 2020, and deposited them into his trust account. From the proceeds, Respondent paid himself 27.33% as his contingent fee and \$669 in costs on MVA 1, and \$3,512.50 in hourly fees for handling MVA 2. Respondent disbursed the net proceeds to Client on June 11, 2020. Respondent provided Client an invoice showing that he had billed \$375 per hour for a variety of tasks on MVA 2, including \$1,125, on May 13, 2020 (the day Client terminated the representation), for a telephone call with Client and for preparing and mailing a settlement demand package. Client had not had the opportunity to review Respondent's legal fees for MVA 2 or to dispute Respondent's entitlement to apply Client's MVA 1 proceeds in his possession to pay his claimed fees for his work on MVA 2.

The settlement funds that Respondent used to pay his fee for MVA 2 were funds that both he and the client claimed an interest. However, Respondent mistakenly believed he was already permitted to pay himself for his work on MVA 2 using those funds.

### Violations

7.

Respondent admits that, by paying himself a fee for his work on MVA 2 from Client's MVA 1 settlement proceeds without notice to Client, who had terminated representation on MVA 2 one month before Respondent disbursed payment to himself, Respondent failed to maintain in trust funds in which both he and Client claimed interests until the dispute is resolved, in violation of RPC 1.15-1(e).

### Sanction

8.

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* (ABA Standards). The ABA 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.** Respondent violated his duty to his client to preserve client property in his possession. ABA Standard 4.1.
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with 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 be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. ABA Standards at 9.

Respondent acted negligently in not ascertaining whether he had a fee agreement for MVA 2 that allowed him to pay himself an hourly fee from client funds in his possession, and that he should have invoiced Client for the MVA 2 fees before he paid himself from Client’s funds.

- c. **Injury.** The ABA Standards take into account both actual and potential injury. ABA Standards at 6; *In re Williams*, 314 Or 530, 546, 840 P2d 1280 (1992). Client was actually injured by the lost opportunity to contest or negotiate Respondent’s fee on MVA 2 before Respondent collected it from his funds.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
  - 1. A selfish motive. ABA Standard 9.22(b).
  - 2. Substantial experience in the practice of law. ABA Standard 9.22(i).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
  - 1. Absence of prior relevant discipline. ABA Standard 9.32(a).

9.

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

10.

Public reprimand is in accord with Oregon cases involving violations of RPC 1.15-1(e):

*In re Hubbard*, 30 DB Rptr 378 (2016). Public reprimand for violations of RPC 1.15-1(d) and RP 1.15-1(e). Attorney for mother collected more funds than owed under an attorney fee award from father’s wages through garnishment, but paid the excess to mother, rather than remit it back to father. Attorney reasoned that father owed mother outstanding child support. Multiple mitigating factors outweighed aggravating factors.

*In re Petersen*, 26 DB Rptr 186 (2012). Public reprimand for violation of RPC 1.15-1(e). Attorney representing a contractor in a dispute over contractor’s work accepted funds payable to his client under the condition that he would not pay over the funds until opposing counsel informed him that the contractor had satisfactorily completed a cabinetry project. Attorney

paid over the funds to his client without first confirming that the work had been satisfactorily completed. The stipulation recited no injury, as the homeowners eventually accepted the cabinetry. Three mitigating factors outweighed aggravating factors.

11.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 1.15-1(e), the sanction to be effective upon approval of this stipulation by the Disciplinary Board.

12.

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.

13.

Respondent represents that, in addition to Oregon, he is not admitted to practice law in any other jurisdictions, whether his current status is active, inactive, or suspended.

14.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on September 11, 2021. 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 15th day of November, 2021.

/s/ Brad Larson  
Brad Larson, OSB No. 913526

EXECUTED this 15th day of November, 2021.

OREGON STATE BAR

By: /s/ Rebecca Salwin  
Rebecca Salwin, OSB No. 201650  
Assistant Disciplinary Counsel