

IN THE SUPREME COURT OF MISSOURI

EN BANC

June 4, 2019

IN RE:

JOHN F. WASHINGTON,
3115 South Grand, Suite 100
St. Louis, MO 63118

Missouri Bar No. 53286

Respondent.

)
)
)
)
)
)
)
)
)

Supreme Court No. SC97715

TERM AND

CONDITIONS OF PROBATION

TERM OF PROBATION

Respondent shall be on probation for one year. The probation period shall begin pursuant to the order of the Court issued on this date in the above-entitled cause.

CONDITIONS OF PROBATION

The conditions of the probation shall be satisfied prior to termination of the probation. The conditions are:

1. Within fifteen (15) days of the date of commencement of the probation term, Respondent shall personally deliver a detailed letter of apology to St. Louis City Circuit Court Judge Michael F. Stelzer regarding Respondent's misconduct in this case. A copy of the letter of apology shall contemporaneously be provided to the Office of Chief Disciplinary Counsel.

2. Probation Monitor: The Probation Monitor for the term of probation shall be Melody Nashan of the OCDC, or such other person as the Chief Disciplinary Counsel shall designate in his stead;

3. Quarterly Reporting Responsibility:

a. Respondent shall submit written quarterly reports to the Probation Monitor concerning the status of Respondent's practice of law and the extent and nature of Respondent's compliance with the conditions of probation. The quarterly reports shall be due as of March 31, June 30, September 30, and December 31 of each calendar year during the probation term. If the first report would cover less than thirty (30) days, that report shall be submitted on the following quarter and shall cover the extended period. Each quarterly report shall include:

- (1) any address change;
- (2) any arrests of Respondent;
- (3) any criminal charges brought against Respondent;
- (4) any criminal conviction of Respondent;
- (5) any civil lawsuit filed against Respondent;
- (6) any civil judgment entered against Respondent;
- (7) a description of any disputes with clients;
- (8) a written statement under penalty of perjury regarding whether Respondent has complied with the Rules of

Professional Conduct and all conditions of probation during the preceding calendar quarter;

(9) notification to the OCDC of any investigation of the Respondent, or any action taken by the Respondent, which would raise a question as to Respondent's fitness to practice law; and

(10) a report on the status of conditions 1-10.

b. In addition to all quarterly reports, a final report containing the same information, is due no earlier than thirty (30) days or less than fifteen (15) days prior to the last day of the probation period. With the final report, Respondent may file an application with the Court for an order of successful completion of probation as set forth in Rule 5.225(g). The application shall be accompanied by an affidavit that Respondent has complied with all terms of probation. A copy of the application and affidavit shall be served on the Office of Chief Disciplinary Counsel.

4. Compliance with Rules of Professional Conduct:

- a. Respondent shall not engage in conduct that violates the Rules of Professional Conduct;
- b. Receipt of a complaint by the OCDC during the probation term alleging that Respondent has violated the Rules of Professional

Conduct does not, in itself, constitute a violation of the terms of probation;

- c. In the event that the OCDC receives a complaint during the Respondent's participation in the probation program, the term of the probation shall be extended until such charge has been investigated and a determination made by the OCDC regarding disposition of such charge.

5. Keeping Your Law Practice on Track: During the term of probation, Respondent shall attend and fully participate in all aspects of the program known as ***“Keeping Your Law Practice on Track”*** developed and offered by The Missouri Bar and the OCDC. Participation includes, but is not limited to, attendance at an in-person session, and all follow-up programs such as the Practice Improvement Discussion Group. Attendance may be counted toward the CLE requirements set forth in Rule 15.05.

6. Continuing Legal Education:

- a. Respondent shall attend the Solo & Small Firm Conference of the Missouri Bar in June 2020. Upon prior written approval of the Probation Monitor, Respondent may attend other CLE courses in lieu of this Solo & Small Firm Conference. Attendance at the Solo & Small Firm Conference may be counted toward the CLE requirements set forth in Rule 15.05.

- b. Proof of attendance at the seminars in (a) set forth above shall be provided to the Probation Monitor within ten (10) days of attendance.

7. Malpractice Insurance:

- a. Respondent shall maintain malpractice insurance in an amount of not less than \$100,000 per occurrence and an aggregate amount of not less than \$300,000.
- b. Respondent shall provide the Probation Monitor with proof of insurance within thirty (30) days of the date of commencement of the probation term.

8. Change of Employment: Respondent shall notify the Chief Disciplinary Counsel within fourteen (14) days of any change of employment.

9. Client Trust Account Mentor:

- a. Respondent shall, within twenty (20) days of the Court's order of probation, propose to the Probation Monitor a Mentor attorney to serve as Respondent's Mentor to set up and organize a client trust account that complies with the Missouri Rules of Professional Conduct and IOLTA;
- b. The Probation Monitor shall have the authority to accept or reject any Mentor proposed by the Respondent. If rejected, the Respondent and Probation Monitor shall make every effort to agree to a mutually acceptable Mentor. If they cannot agree within twenty

(20) days of the date of the Court's order placing Respondent on probation, at that time they shall request that the coordinator of the Missouri Bar's Mentoring program designate a Mentor for Respondent.

- c. Respondent shall meet with the Mentor no later than one (1) week after the Mentor's retention. Respondent shall meet with the Mentor as often as needed so that all systems will be in place for an appropriate client trust account within twenty (20) days of the Trust Account Mentor's retention;
- d. Respondent shall meet with the Trust Account Mentor at least once every thirty (30) days thereafter to discuss issues regarding the client trust account and so the Mentor can verify that Respondent seems to be handling the trust account appropriately.
- e. The Trust Account Mentor shall advise the Probation Monitor at any time of any issues in Respondent's trust account that seem to be in violation of the Missouri Rules of Professional Conduct and IOLTA requirements;
- f. The Trust Account Mentor shall receive monetary compensation in a reasonable amount for the time involved in mentoring Respondent. If the Mentor and Respondent cannot agree on the reasonable amount of compensation, in that instance the Probation Monitor will advise Respondent of the monetary sum to be paid to the Mentor.

Failure to pay the Mentor the reasonable monetary compensation will be considered a violation of the probation terms.

10. Client Trust Account Monitor:

- a. Respondent consents and agrees to appointment of Trust Account Monitor to review Respondent's trust account records on a monthly basis throughout the probation term. The monitor shall be an accountant or bookkeeper approved by the Probation Monitor;
- b. The Probation Monitor shall have the authority to accept or reject any Trust Account Monitor proposed by the Respondent. If rejected, the Respondent and Probation Monitor shall make every effort to agree to a mutually acceptable Trust Account Monitor. If they cannot agree within twenty (20) days of the date of the Court's order placing Respondent on probation, at that time they shall request that the coordinator of the Missouri Bar's Mentoring program designate a Trust Account Monitor for Respondent;
- c. The Trust Account Monitor shall receive reasonable compensation for services rendered in monitoring the Respondent's trust account on a monthly basis. If the Trust Account Monitor and Respondent cannot agree on the reasonable amount of compensation, in that instance the Probation Monitor will advise Respondent of the monetary sum to be paid to the Trust Account Monitor. Failure to

pay the Trust Account Monitor the reasonable monetary compensation will be considered a violation of the probation terms;

- d. Respondent hereby authorizes and agrees that the Trust Account Monitor will have access to his/her law office at all reasonable times during normal business hours with or without notice;
- e. Respondent shall provide to the Trust Account Monitor, for inspection and review, all bank statements and prior reconciliations and all financial records showing the receipt and disbursement of client funds as well as any client files requested by the Trust Account Monitor. Further, in any matter in which the Trust Account Monitor believes it is necessary to fulfill obligations under the terms of the probation, Respondent shall provide to the Trust Account Monitor for inspection and review all documents and other information requested by the Trust Account Monitor. In the event Respondent receives any Bank overdraft notices the same shall be promptly delivered to the Trust Account Monitor and Probation Monitor.
- f. If Respondent does not possess any client funds, property, or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Probation Monitor for that reporting period;

- g. The requirements of this condition are in addition to those set forth in Rule 4-1.15 of the Rules of Professional Conduct.

11. Client Trust Account Audits: Respondent shall submit to audits of Respondent's trust account, conducted by OCDC or an auditor of OCDC's designation. The audits shall be at Respondent's expense and may be conducted at random times during the period of probation. The timing of any audit shall be determined by OCDC.

12. Costs of Participating in the Probation Program: Respondent shall pay all costs incurred in connection with participation in the probation program. The Office of Chief Disciplinary Counsel shall not be responsible for payment of costs.

13. Breach of Probation: Failure to comply with any of the terms of probation shall constitute a probation violation. Upon violation, the OCDC may move the Court, pursuant to Rule 5.225(f), for termination of the stayed suspension and for Respondent's license to practice law to be suspended in accordance with the Court's order.