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APR 01 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RICHARD W. SWANSON,
Lawyer (Bar No. 4777).

Proceeding No. 14# 00025

ODC File No. 12-02348

STIPULATION TO SIX-MONTH
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Linda B. Eide and Respondent lawyer Richard W. Swanson.

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

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, and expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on
5 December 12, 1972.

6 **II. STIPULATED FACTS**

7 2. Since 2008, following her divorce in Texas, Melissa Craft lived in Washington State
8 with her two children. In January 2011 when her ex-husband, Christofer Craft, failed to return
9 the children following a winter break visit to Texas, Melissa filed a proposed parenting plan
10 under Snohomish County Superior Court Cause No. 11-3-00297-9. Christofer hired
11 Respondent.

12 3. Respondent answered Melissa's petition for Christofer. He also prepared and filed
13 Christofer's declaration and financial documents. At a February 24, 2011 hearing, the court
14 issued temporary orders, and it appointed a Guardian Ad Litem (GAL). A year later, on
15 March 28, 2012, the GAL filed a report. Respondent did not comment on the GAL report.

16 4. In March 2012, Respondent closed his Everett office. He intended to complete a few
17 remaining matters from his home. He failed to tell Christofer what, if anything, he would do to
18 conclude his case.

19 5. In June 2013, the court issued an order to show cause why the case should not be
20 dismissed given that a year had passed with no activity. Melissa's lawyer then set the case for
21 trial in December 2013. In August 2013, Respondent filed his notice of intent to withdraw.
22 Christofer proceeded pro se. In December 2013, the court entered a final parenting plan.

23 6. Christofer's grandmother had wired \$1,500 to Respondent to begin the

1 representation. Christofer forwarded additional payments, and Respondent issued invoices
2 showing fees earned and funds withdrawn from trust to cover his fees.

3 7. Between March 1, 2012 and August 1, 2012, Christofer forwarded five more money
4 orders for \$400 each. After Christofer filed a grievance against Respondent, in April 2013,
5 Respondent returned those uncashed money orders and issued a check for the \$1,184.20, which
6 Respondent told Christofer was "the money left in my trust account for your case."

7 8. Respondent admits that a letter he sent to Christofer in March 2012, could have been
8 clearer regarding their future relationship in view of his impending retirement, and he should
9 have simply withdrawn from the representation and refunded unearned fees at that time.

10 III. STIPULATION TO MISCONDUCT

11 9. By failing to withdraw from the representation when he closed his office in March
12 2012, by taking no further action for Christofer, by failing to adequately communicate with
13 Christofer after March 2012, and by failing to promptly refund unearned fees, Respondent
14 violated RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.16(d) (duties on termination),
15 and RPC 1.15A(f) (promptly pay client funds due).

16 IV. PRIOR DISCIPLINE

17 10. In 2007, Respondent stipulated to a three-month suspension for RPC 1.3 and RPC
18 1.4 violations by failing to communicate adequately and act diligently in two lawsuits for the
19 same client.

20 V. APPLICATION OF ABA STANDARDS

21 11. The following American Bar Association Standards for Imposing Lawyer Sanctions
22 (1991 ed. & Feb. 1992 Supp.) apply to this case: ABA Standard 4.4 is most applicable to the
23 duty to communicate and to act diligently. The failure to promptly refund unearned fees or

1 otherwise protect the client's interest at termination of the representation falls under ABA

2 Standard 7.0.

3 **4.4 Lack of Diligence**

4.41 Disbarment is generally appropriate when:

- 4 (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- 5 (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- 6 (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

7 **4.42 Suspension is generally appropriate when:**

- 8 (a) **a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or**
- 9 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

13 **7.0 Violations of Duties Owed as a Professional**

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 client, the public, or the legal system.

16 **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.**

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 injury to a client, the public, or the legal system.

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.

21 12. Respondent acted knowingly.

22 13. Respondent caused injury or potential injury because Christofer's matter was
23 delayed and his eventual refund was delayed.

1 14. The presumptive sanction is suspension.

2 15. The following aggravating factors apply under ABA Standard 9.22:

3 (a) prior disciplinary offenses [as described above, Respondent received a
4 short suspension in 2007 for lack of diligence and failure to communicate];

5 (d) multiple offenses; and

6 (i) substantial experience in the practice of law [Respondent has practiced
7 for 40 years].

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

9 (b) absence of a dishonest or selfish motive; and

10 (l) remorse.

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

13 18. On balance, the aggravating and mitigating factors do not require a departure from
14 the presumptive sanction, which is suspension, or from the presumptive minimum suspension,
15 which is six months.

16 VI. STIPULATED DISCIPLINE

17 19. The parties stipulate that Respondent shall receive a six-month suspension for his
18 conduct.

19 VII. RESTITUTION

20 20. No restitution is required, as Respondent has refunded unearned fees.

21 VIII. COSTS AND EXPENSES

22 21. In light of Respondent's willingness to resolve this matter by stipulation at an early
23 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000

1 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
2 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
3 from suspension is conditioned on payment of costs.

4 IX. VOLUNTARY AGREEMENT

5 22. Respondent states that prior to entering into this Stipulation he had an opportunity to
6 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
7 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
8 Association, nor by any representative thereof, to induce the Respondent to enter into this
9 Stipulation except as provided herein.

10 X. LIMITATIONS

11 23. This Stipulation is a compromise agreement intended to resolve this matter in
12 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
13 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
14 and ODC acknowledge that the result after further proceedings in this matter might differ from
15 the result agreed to herein.

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

19 25. This Stipulation results from the consideration of various factors by both parties,
20 including the benefits to both by promptly resolving this matter without the time and expense of
21 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
22 such, approval of this Stipulation will not constitute precedent in determining the appropriate
23 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in

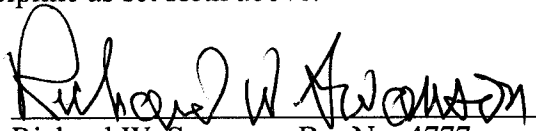
1 subsequent proceedings against Respondent to the same extent as any other approved
2 Stipulation.

3 26. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
4 Board shall have available to it for consideration all documents that the parties agree to submit
5 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
6 form the record before the Board for its review become public information on approval of the
7 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

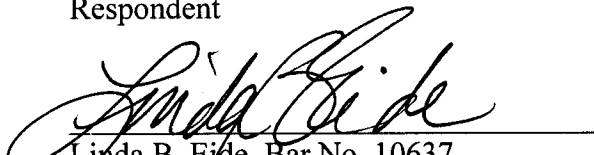
8 27. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
9 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
10 Rules for Enforcement of Lawyer Conduct will be made.

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

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

17 
18 Richard W. Swanson, Bar No. 4777
19 Respondent

Dated: 1/31/14

20 
21 Linda B. Eyde, Bar No. 10637
22 Senior Disciplinary Counsel

Dated: 2/4/14