

FILED

APR 14 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

HARVEY S. GRAD,

Lawyer (Bar No. 6506).

Proceeding No. 12#00116

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 Natalea Skvir, Respondent's Counsel Kenneth S. Kagan and Respondent lawyer Harvey S. Grad.

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

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1 | avoid the risk, time, and expense attendant to further proceedings.

2 | **I. ADMISSION TO PRACTICE**

3 | 1. Respondent was admitted to practice law in the State of Washington on May 5,
4 | 1976.

5 | **II. STIPULATED FACTS**

6 | Angie Hein matter

7 | 1. In or around December 2004, Angie Hein hired Respondent to pursue a personal
8 | injury claim on her behalf.

9 | 2. On or around August 22, 2005, Respondent filed a lawsuit in King County
10 | Superior Court on Ms. Hein's behalf.

11 | 3. On or around December 20, 2006, the lawsuit settled for \$6,000.

12 | 4. Respondent deposited the settlement check into his trust account and withdrew
13 | his \$2,100 fee and \$1,572.22 for costs shortly thereafter.

14 | 5. The remaining balance of \$2,327.78 remained in Respondent's trust account
15 | until October 2011.

16 | 6. Between approximately 2007 and 2011, Respondent did not provide Ms. Hein an
17 | annual accounting of the funds he was holding in his trust account on her behalf.

18 | 7. During this time, Respondent did not pay Ms. Hein the funds due her.

19 | 8. In October 2011, Respondent disbursed to Ms. Hein the \$2,327.78 which she
20 | was due.

21 | Trust account matter

22 | 9. During the period from July 15, 1993 through June 19, 2012, Respondent failed
23 | to completely disburse settlement funds he had received on behalf for a number of clients, at
24 |

1 times for a number of years.

2 10. As of April 28, 2013, Respondent's trust account included \$1,682.28 held on
3 behalf of clients whom Respondent either could no longer locate or could not identify.

4 11. Starting in the year 2000, Respondent did not contemporaneously reconcile the
5 monthly bank statements for his trust account with his trust account records.

6 12. Since 2006, Respondent did not provide all clients or third persons for whom he
7 was holding funds a written accounting of their funds on at least an annual basis.

8 III. STIPULATION TO MISCONDUCT

9 13. By failing to provide Ms. Hein an annual accounting of funds he was holding in
10 trust for her, Respondent violated RPC 1.15A(e).

11 14. By failing to promptly pay or deliver to his clients or third persons all of the
12 property which they were entitled to receive, Respondent violated RPC 1.15A(f).

13 15. By failing to reconcile the balance on his monthly bank statements to his trust
14 account records contemporaneously, Respondent violated RPC 1.15A(h)(6).

15 16. By failing to provide all clients or third persons for whom he was holding funds
16 an accounting of their funds on at least an annual basis, Respondent violated RPC 1.15A(e).

17 IV. PRIOR DISCIPLINE

18 17. Respondent has no record of prior discipline.

19 V. APPLICATION OF ABA STANDARDS

20 18. The following American Bar Association Standards for Imposing Lawyer Sanctions
21 (1991 ed. & Feb. 1992 Supp.) apply to this case

22 4.1 Failure to Preserve the Client's Property

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

1 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

2 4.12 Suspension is generally appropriate when a lawyer knows or should
3 know that he is dealing improperly with client property and causes injury or
potential injury to a client.

4 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.

5 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
6 client.

7 19. Respondent was negligent in dealing improperly with client funds.

8 20. Respondent's conduct actually injured his clients by depriving them of funds due
9 them, in some cases for a long period of time.

10 21. The presumptive sanction is reprimand.

11 22. The following aggravating factors apply under ABA Standard 9.22:

12 (d) multiple offenses; and

13 (i) substantial experience in the practice of law: Respondent was admitted in
14 1976.

15 23. The following mitigating factor applies under ABA Standard 9.32:

16 (a) absence of a prior disciplinary record; and

17 (b) absence of a dishonest or selfish motive.

18 24. It is an additional mitigating factor that Respondent has agreed to resolve this matter
19 at an early stage of the proceedings.

20 25. On balance, the aggravating and mitigating factors do no warrant departing from the
presumptive sanction of reprimand.

21 VI. STIPULATED DISCIPLINE

22 26. The parties stipulate that Respondent shall receive a reprimand for his conduct.

23 27. Respondent will be subject to probation for a period of two years commencing upon
24 final approval of this stipulation, with periodic reviews under ELC 13.8 of his trust account

1 | practices, and shall comply with the specific probation terms set forth below:

- 2 | a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
3 | 1.15B, and shall carefully review the current version of the publication, Managing
4 | Client Trust Accounts: Rules, Regulations, and Common Sense.
- 5 | b) For all client matters, Respondent shall have a written fee agreement signed by the
6 | client, which agreements are to be maintained for least seven years (see RPC
7 | 1.15B(a)(3)).
- 8 | c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
9 | account records for the time period to be reviewed by ODC's audit staff and
10 | disciplinary counsel for compliance with the RPC:
- 11 | i) Months 1 – 3. By no later than the 30th day of the fourth month after the
12 | commencement of probation, Respondent shall provide the trust account
13 | records from the date of his reinstatement to the end of the third full month.
- 14 | ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
15 | commencement of probation, Respondent shall provide the trust account
16 | records from the end of the previously provided quarter through the end of
17 | month six.
- 18 | iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
19 | commencement of probation, Respondent shall provide the trust account
20 | records from the end of the previously provided quarter through the end of
21 | month nine.
- 22 | iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
23 | 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 twelve.
- v) Months 13– 15. By no later than the 30th day of the sixteenth 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 fifteen.
- vi) Months 16 – 18. By no later than the 30th day of the nineteenth 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 eighteen.
- 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.

1 The trust account records Respondent provides to ODC for each quarterly review of
2 his trust account will include: (a) a complete checkbook register for his trust
3 account covering the period being reviewed, (b) complete individual client ledger
4 records for any client with funds in Respondent's trust account during all or part of
5 the period being reviewed, as well as for Respondent's own funds in the account (if
6 any), (c) copies of all trust-account bank statements, deposit slips, and cancelled
7 checks covering the period being reviewed, (d) copies of all trust account client
8 ledger reconciliations for the period being reviewed, and (e) copies of
9 reconciliations of Respondent's trust account check register covering the period
10 being reviewed. The ODC's Audit Manager or designee will review Respondent's
11 trust account records for each period.

- 12 d) On the same quarterly time schedule set forth in the preceding paragraph,
13 Respondent will provide ODC's Audit Manager or designee with copies of any and
14 all fee agreements entered into within the time period at issue.
- 15 e) The ODC's Audit Manager or designee may request additional financial or client
16 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
17 Within twenty days of a request from ODC's Audit Manager or designee for
18 additional records needed to verify Respondent's compliance with RPC 1.15A
19 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
20 additional records requested.
- 21 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
22 or designee in reviewing and reporting on Respondent's records to determine his
23 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
24 Respondent will make payment within thirty days of each written invoice setting
forth the auditor's time and payment due.

VII. RESTITUTION

28. Respondent has, to date, restored client funds to their owners to the extent possible.
Within six months of the approval of this stipulation, Respondent shall remit any funds that
remain more than three years after the funds were received or had a last activity date to the
Department of Revenue Unclaimed Property Division in accordance with the Uniform
Unclaimed Property Act, Chapter 63.29 RCW.

VIII. COSTS AND EXPENSES

29. 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

1 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
2 13.9(1) if these costs are not paid within 30 days of approval of this stipulation.

3 **IX. VOLUNTARY AGREEMENT**

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

9 **X. LIMITATIONS**

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

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

18 33. This Stipulation results from the consideration of various factors by both parties,
19 including the benefits to both by promptly resolving this matter without the time and expense of
20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
21 such, approval of this Stipulation will not constitute precedent in determining the appropriate
22 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
23 subsequent proceedings against Respondent to the same extent as any other approved
24

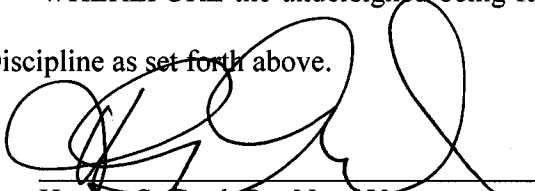
Stipulation.

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

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

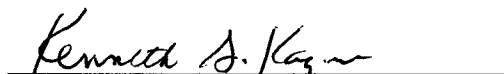
36. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action.

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



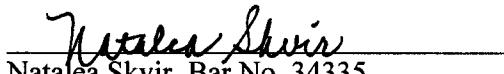
Harvey S. Grad, Bar No. 6506
Respondent

Dated: 4/8/14



Kenneth S. Kagan, Bar No. 12983
Counsel for Respondent

Dated: 4/9/14



Natalea Skvir, Bar No. 34335
Disciplinary Counsel

Dated: 4-9-14