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JAN 29 2013

DISCIPLINARY BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

PHILIP A. DUNLAP,
Lawyer (Bar No. 10636).

Proceeding No. 12#00085

STIPULATION TO 60-DAY SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to 60-day suspension is entered into by the Washington State Bar Association (Association), through Senior Disciplinary Counsel Joanne S. Abelson and Respondent lawyer Philip A. Dunlap.

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

dlb

1 **I. ADMISSION TO PRACTICE**

2 1. Respondent Philip A. Dunlap was admitted to the practice of law in the State of
3 Washington on May 12, 1980.

4 **II. STIPULATED FACTS**

5 2. Ute Michael and her ex-husband divorced in Washington in 1981.

6 3. In 2004, the spousal support order was modified to award Ms. Michael a portion of
7 Mr. Michael's military retirement pay.

8 4. In approximately 2007, Ms. Michael hired Respondent's former firm to represent her
9 with respect to a second modification of the spousal support order.

10 5. When Respondent left the firm, he took Ms. Michael's case with him.

11 6. Ms. Michael sought increased support because her ex-husband became disabled in
12 2006, so part of his retirement pay was converted to disability pay. As a result, the amount of
13 spousal support she had been receiving based on his military retirement decreased.

14 7. The trial court granted the motion to modify the spousal support order.

15 8. Mr. Michael appealed. The issue on appeal was whether the trial court erred in
16 awarding a portion of Mr. Michael's military disability pay to Ms. Michael.

17 9. In July 2008, the Court of Appeals issued a published decision remanding the matter
18 to the trial court. Among other things, the Court of Appeals ruled that the Washington Supreme
19 Court precedent that the trial court applied had been superseded by a change in federal law:
20 under the new law, Mr. Michael's full military retirement benefits will be restored over nine
21 years, so Ms. Michael's benefits will be restored in turn. The Court of Appeals directed the trial
22 court to consider whether the extent of the time-limited reduction constituted "extraordinary
23 circumstances" to justify reopening the judgment.

1 10. Months after the Court of Appeals decision, Respondent wrote opposing counsel
2 offering to settle Ms. Michael's claim for \$5,000.

3 11. In June 2009, opposing counsel rejected the offer.

4 12. In October 2009, Respondent wrote opposing counsel again about settlement, but he
5 did not provide the information opposing counsel sought to move the discussions along.

6 13. Respondent never took any action to bring the matter back to the trial court.

7 14. Ms. Michael tried to contact Respondent to obtain information from him about her
8 case but has been unable to reach him.

9 III. STIPULATION TO MISCONDUCT

10 15. By failing to represent Ms. Michael diligently after the Court of Appeals remanded
11 the case to the trial court, Respondent violated RPC 1.3.

12 16. By failing to communicate with Ms. Michael about the status of her case,
13 Respondent violated RPC 1.4.

14 IV. PRIOR DISCIPLINE

15 17. On March 19, 2012, Respondent was suspended for six months based on his failure,
16 in 2010, to represent two clients diligently and to communicate with them adequately. He has
17 not been reinstated to practice as of the date of this stipulation.

18 V. APPLICATION OF ABA STANDARDS

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

21 Standard 4.4 -- Lack of Diligence

22 4.41 Disbarment is generally appropriate when:

23 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

24 (b) a lawyer knowingly fails to perform services for a client and causes

1 serious or potentially serious injury to a client; or
2 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

3 4.42 Suspension is generally appropriate when:
4 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or
5 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

6 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
7 with reasonable diligence in representing a client, and causes injury or potential
injury to a client.

8 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
9 with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client.

10 19. Respondent knew that he was not attending to Ms. Michael's matter diligently and
11 not communicating with her adequately.

12 20. Ms. Michael was harmed because she was unable to litigate her issue following
13 remand and because she was subjected to unnecessary stress and frustration.

14 21. The presumptive sanction is suspension under Standard 4.42(a).

15 22. The following aggravating factors apply under ABA Standards Section 9.22:

- 16 (a) prior disciplinary offenses [see ¶ 17];
17 (i) substantial experience in the practice of law [admitted 1980].

18 23. The following mitigating factors apply under ABA Standards Section 9.32:

- 19 (b) absence of a dishonest or selfish motive;
20 (d) timely good faith effort to make restitution or to rectify consequences of
misconduct [Respondent has refunded to Ms. Michael all the funds he
held for her in trust, approximately \$1,600].

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

23 25. On balance the aggravating and mitigating factors do not require a departure from
24 the presumptive sanction of suspension.

1 **VI. STIPULATED DISCIPLINE**

2 26. Respondent currently is suspended for misconduct that overlapped in time with the
3 misconduct in this case. The parties agree that, for the misconduct described in this stipulation,
4 Respondent shall be suspended for an additional 60 days.

5 27. As a condition of reinstatement from suspension, Respondent shall, at his own
6 expense, undergo an independent examination by a licensed clinical psychologist or psychiatrist
7 to be approved by disciplinary counsel. Respondent shall execute all the necessary releases to
8 permit this evaluator to obtain all necessary treatment records and make a report to disciplinary
9 counsel addressing whether Respondent is currently fit to practice law.

10 28. Respondent may obtain the evaluation within 30 days of the date he would be
11 eligible for reinstatement.

12 29. If the evaluator concludes that Respondent is not currently fit to practice law, the
13 report shall recommend a course of treatment necessary to enable Respondent to return to the
14 practice of law. Respondent (or Respondent's counsel, if Respondent is then represented) and
15 disciplinary counsel shall meet to discuss the evaluator's report and what steps can be taken to
16 address the evaluator's concerns. If Respondent and disciplinary counsel cannot reach an
17 agreement, both parties shall present written materials and arguments to the Disciplinary Board.
18 The Disciplinary Board shall decide whether and the conditions under which Respondent shall
19 return to the active practice of law.

20 **VII. RESTITUTION**

21 30. No restitution is required by this stipulation since Respondent already has refunded
22 all legal fees paid to him by Ms. Michael.
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1 **VIII. COSTS AND EXPENSES**

2 31. In light of Respondent's willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
4 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
5 13.9(l) if these costs are not paid within 30 days of approval of this stipulation unless the parties
6 have entered into a payment plan.

7 32. To be eligible for reinstatement, Respondent must have paid outstanding costs or be
8 current with a payment plan.

9 **IX. VOLUNTARY AGREEMENT**

10 33. Respondent states that prior to entering into this Stipulation he had an opportunity to
11 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
12 this Stipulation voluntarily, and that no promises or threats have been made by the Association,
13 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
14 as provided herein.

15 **X. LIMITATIONS**

16 34. This Stipulation is a compromise agreement intended to resolve this matter in
17 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
18 expenditure of additional resources by the Respondent and the Association. Both the
19 Respondent lawyer and the Association acknowledge that the result after further proceedings in
20 this matter might differ from the result agreed to herein.

21 35. This Stipulation is not binding upon the Association or the respondent as a statement
22 of all existing facts relating to the professional conduct of the respondent lawyer, and any
23 additional existing facts may be proven in any subsequent disciplinary proceedings.

1 36. This Stipulation results from the consideration of various factors by both parties,
2 including the benefits to both by promptly resolving this matter without the time and expense of
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
4 such, approval of this Stipulation will not constitute precedent in determining the appropriate
5 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
6 subsequent proceedings against Respondent to the same extent as any other approved
7 Stipulation.

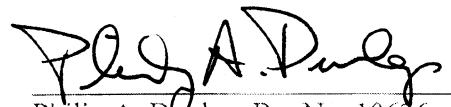
8 37. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
9 Board shall have available to it for consideration all documents that the parties agree to submit
10 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
11 form the record before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

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

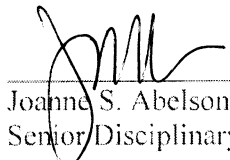
16 39. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
17 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
18 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
19 proceeding, or in any civil or criminal action.
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WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
to Discipline as set forth above.


Philip A. Dunlap, Bar No. 10636
Respondent

Dated: December 13, 2012


Joanne S. Abelson, Bar No. 24877
Senior Disciplinary Counsel

Dated: 12/13/12