

FILED

SEP 11 2015

DISCIPLINARY
BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

RAYMOND V. GESSEL,
Lawyer (Bar No. 13787).

Proceeding No. 15#00035

STIPULATION TO DISBARMENT

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to disbarment is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Francesca D'Angelo and Respondent lawyer Raymond V. Gessel.

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

Stipulation to Discipline
Page 1

OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

011

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

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November 3,
4 1983.

5 **II. STIPULATED FACTS**

6 LT Matter- Conflict of Interest

7 2. Respondent represented LT in a dissolution matter from September 25, 2013 through
8 January 27, 2014.

9 3. During the representation, Respondent engaged in a sexual relationship with LT.

10 4. The sexual relationship did not exist at the time that the lawyer-client relationship
11 commenced.

12 5. LT subsequently reconciled with her husband and the dissolution proceedings were
13 dismissed.

14 LT Matter- Trust Account

15 6. Respondent charged LT \$6,380 for the representation.

16 7. Respondent's fee agreement termed \$6,000 of the amount charged LT as a
17 "retainer." However, the fee agreement actually provided for an advance fee in that it specified
18 that Respondent's hourly rate would be deducted from the \$6,000 and that LT would be
19 required to pay amounts in excess of the "retainer."

20 8. On or about October 1, 2013, LT paid Respondent \$6,380.00 by check.

21 9. Respondent did not place any of LT's funds into his trust account

22 10. On or about October 2, 2013, Respondent cashed the check and took the funds for
23 his own use.

1 11. On October 4, 2013, Respondent removed a total of \$336.75 from his trust account
2 for costs in the LT matter. At the time Respondent removed these funds, LT had no funds in
3 Respondent's trust account. The funds were removed from funds that Respondent was holding
4 for other clients.

5 12. In November 2013, Respondent disbursed a total of \$829.00 from his trust account
6 to himself. He attributed these funds as fees in LT's matter. In fact, Respondent was not
7 entitled to any fees from LT. At the time Respondent removed these funds, LT had no funds in
8 Respondent's trust account. The funds were removed from funds that Respondent was holding
9 for other clients.

10 13. Respondent took these funds for his own use and with the knowledge that he was not
11 entitled to these funds.

12 14. During the course of the representation of LT, respondent generated fees and costs in
13 the total amount of \$8,901.26. LT approved a discounted invoice of \$6,380.00.

14 Trust Account

15 15. From December 1, 2012 through April 30, 2014, Respondent failed to maintain a
16 complete checkbook register or individual client ledgers for his trust account.

17 16. From December 1, 2012 through April 30, 2014, Respondent failed to reconcile his
18 bank statements to his trust account records.

19 17. Apart from any funds of LT, between December 1, 2012 and April 30, 2014,
20 Respondent disbursed \$2,369.74 on behalf of clients in excess of the funds that he had in trust
21 for those clients.

22 18. In doing so, Respondent used \$2,369.74 of his other clients' funds.

23 19. Apart from any funds of LT, between December 1, 2012 and April 30, 2014,

1 Respondent disbursed \$7,951.07 to himself as payment of fees on client matters in excess of the
2 funds that he had in trust for those clients.

3 20. In doing so, Respondent used \$7,951.07 of his other clients' funds.

4 21. Respondent was not entitled to all or part of the funds that he disbursed to himself.

5 22. Respondent took the funds for his own use and with the knowledge that he was not
6 entitled to all or part of the funds that he took.

7 23. In December 2013, Respondent deposited \$8,430.00 of his own funds into his trust
8 account.

9 **III. STIPULATION TO MISCONDUCT**

10 24. By engaging in a sexual relationship with LT during his representation of her in
11 dissolution proceedings, Respondent violated RPC 1.8(j).

12 25. By failing to place LT's advance fee in his trust account, Respondent violated RPC
13 1.15A(c)(2).

14 26. By disbursing funds on behalf of clients from trust when the clients had no funds in
15 the account, Respondent violated RPC 1.15A(h)(8) and RPC 1.15A(c).

16 27. By removing funds from his trust account without entitlement, Respondent
17 converted funds for his own use in violation of RPC 1.15A(b).

18 28. By failing to maintain complete trust account records as required by RPC 1.15B,
19 Respondent violated RPC 1.15A(h)(2).

20 29. By failing to reconcile his trust account records with his bank statements,
21 Respondent violated RPC 1.15A(h)(6).

22 **IV. PRIOR DISCIPLINE**

23 30. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 31. The following American Bar Association Standards for Imposing Lawyer Sanctions

3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **4.1 Failure to Preserve the Client's Property**

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

8 **4.11 Disbarment is generally appropriate when a lawyer knowingly
9 converts client property and causes injury or potential injury to a
10 client.**

11 **4.12 Suspension is generally appropriate when a lawyer knows or should
12 know that he is dealing improperly with client property and causes
13 injury or potential injury to a client.**

14 **4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
15 with client property and causes injury or potential injury to a client.**

16 **4.14 Admonition is generally appropriate when a lawyer is negligent in
17 dealing with client property and causes little or no actual or potential
18 injury to a client.**

19 **4.3 Failure to Avoid Conflicts of Interest**

20 Absent aggravating or mitigating circumstances, upon application of the
21 factors set out in Standard 3.0, the following sanctions are generally appropriate
22 in cases involving conflicts of interest:

23 **4.31 Disbarment is generally appropriate when a lawyer, without the informed
24 consent of client(s):**

(a) engages in representation of a client knowing that the lawyer's interests
are adverse to the client's with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to the client; or

(b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes
serious or potentially serious injury to a client; or

(c) represents a client in a matter substantially related to a matter in which
the interests of a present or former client are materially adverse, and
knowingly uses information relating to the representation of a client with
the intent to benefit the lawyer or another and causes serious or
potentially serious injury to a client.

**4.32 Suspension is generally appropriate when a lawyer knows of a
conflict of interest and does not fully disclose to a client the possible
effect of that conflict, and causes injury or potential injury to a client.**

**4.33 Reprimand is generally appropriate when a lawyer is negligent in
determining whether the representation of a client may be materially
affected by the lawyer's own interests, or whether the representation will**

1 adversely affect another client, and causes injury or potential injury to a
2 client.

3 4.34 Admonition is generally appropriate when a lawyer engages in an
4 isolated instance of negligence in determining whether the representation
5 of a client may be materially affected by the lawyer's own interests, or
6 whether the representation will adversely affect another client, and causes
7 little or no actual or potential injury to a client.

8 32. Respondent acted knowingly in engaging in a sexual relationship with LT while he
9 was representing her in her dissolution proceedings. The presumptive sanction for this violation
10 is suspension.

11 33. Respondent acted knowingly in withdrawing funds belonging to other clients to
12 cover expenses related to LT's matter and his own fees. There was potential injury to LT
13 because her funds were not safeguarded. There was injury to Respondent's other clients whose
14 funds were used on behalf of LT. The presumptive sanction is disbarment.

15 34. Respondent acted knowingly in converting client funds. The presumptive sanction
16 for this violation is disbarment.

17 35. Respondent acted knowingly in failing to place LT's funds into his trust account.
18 Respondent knew or should have known that he was failing to maintain adequate trust account
19 records. In doing so, there was potential injury to his clients whose funds were at risk. The
20 presumptive sanction is suspension.

21 36. The following aggravating factors apply under ABA Standard 9.22:

- 22 (b) selfish motive;
23 (d) multiple offenses;
24 (i) substantial experience in the practice of law [Respondent was admitted to
 practice in 1983].

 37. The following mitigating factors apply under ABA Standard 9.32:

- (a) absence of a prior disciplinary record.

 38. It is an additional mitigating factor that Respondent has agreed to resolve this matter

1 at an early stage of the proceedings.

2 39. On balance the aggravating and mitigating factors do not require a departure from
3 the presumptive sanction.

4 **VI. STIPULATED DISCIPLINE**

5 40. The parties stipulate that Respondent shall be disbarred for his conduct.

6 **VII. RESTITUTION**

7 41. No later than 30 days from the date of the Supreme Court's order approving this
8 stipulation, Respondent shall reconstruct¹ his trust account records for the time period of
9 December 1, 2012 to May 15, 2015 in compliance with the requirements of RPC 1.15A and
10 RPC 1.15B, using all available client records and financial records to assist in the identification
11 of funds received and disbursed. Respondent shall do so at his own expense. If the
12 reconstruction reveals a shortage in his trust account, Respondent shall replenish the funds no
13 later than 60 days from the date of the Supreme Court's order approving this stipulation. If the
14 reconstructed trust account records indicate that any client or third party is owed funds, then
15 Respondent shall provide each client, in writing, with a complete updated accounting of receipt
16 and disbursement of their funds and promptly disburse to the client or third party any funds to
17 which they are entitled no later than 90 days from the date of the Supreme Court's order
18 approving this Stipulation. Respondent shall provide the complete reconstructed trust account
19 records and copies of any updated client accountings to ODC within 120 days of the date of the
20 Supreme Court's approval of this Stipulation. Reinstatement from disbarment is conditioned on

21 _____
22 ¹ "Reconstruction" involves the preparation, for all funds put into and removed from the trust account of
23 complete and accurate client ledgers, check register, reconciliations between the check register balances
and the balances of the bank statements, and reconciliations between the check register balances and the
combined total of all ledger balances.

1 compliance with this provision.

2 VIII. COSTS AND EXPENSES

3 42. In light of Respondent's willingness to resolve this matter by stipulation at an early
4 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
5 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
6 13.9(i) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
7 from disbarment is conditioned on payment of costs.

8 IX. VOLUNTARY AGREEMENT

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

14 44. Once fully executed, this stipulation is a contract governed by the legal principles
15 applicable to contracts, and may not be unilaterally revoked or modified by either party.

16 45. The parties agree that this Stipulation shall be submitted to the Disciplinary Board on
17 August 15, 2015.

18 X. LIMITATIONS

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

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

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

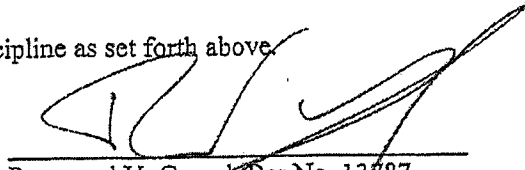
11 49. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
12 Board shall have available to it for consideration all documents that the parties agree to submit
13 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
14 form the record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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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



Raymond V. Gessel, Bar No. 13787
Respondent

Dated: 6 Jul 2015



Francesca D'Angelo, Bar No. 22979
Disciplinary Counsel

Dated: 7 July 2015