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FILED
NOV 28 2016
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
JAMES N. TURNER,
Lawyer (Bar No. 16199).

Proceeding No. *16-00110*
ODC File No. 15-00745
STIPULATION TO 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 Erica Temple, Respondent's Counsel Ephraim William Benjamin and Respondent lawyer James N. Turner.

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

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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 James N. Turner was admitted to the practice of law in the State of
5 Washington on October 29, 1986.

6 **II. STIPULATED FACTS**

7 State v. DR

8 1. In November 2014, DR was charged with felonies related to controlled substances
9 and firearms in Pierce County Superior Court No. 14-1-04626-1.

10 2. On March 17, 2015, Respondent substituted in as counsel for DR.

11 3. On April 9, 2015, the parties appeared for a suppression hearing. After some
12 testimony and argument, the court granted Respondent's request for a continuance to April 13,
13 2015, with the motion to resume on that date.

14 4. On April 13, 2015, Respondent did not appear, but another lawyer was present and
15 informed the court that he had been retained by DR as co-counsel and had made attempts over
16 the previous three days to reach Respondent to no avail. The court allowed the new lawyer to
17 appear as lead counsel.

18 5. On April 14, 2015, the court held a show cause hearing and Respondent again
19 failed to appear.

20 6. Respondent's failure to appear for court had an adverse procedural impact on the
21 case, because the court had to expend additional resources, but did not impact DR's final plea
22 bargain.

23 7. Respondent charged DR a flat fee for his representation.

1 8. Respondent did not have a signed written fee agreement with DR.

2 9. DR did not pay Respondent directly; Respondent received \$2,000 cash from DR's
3 prior lawyer, with the understanding that DR had access to more funds and would pay him after
4 trial.

5 10. Respondent did not adequately communicate with DR about what his fee was and
6 how he expected to be paid for his legal services.

7 11. Although Respondent eventually earned DR's fee, DR's unearned fees were not
8 protected in an IOLTA account.

9 State v. DL

10 12. In June 2014, DL was charged with Possession of Heroin with Intent to Deliver, a
11 felony, in Pierce County Superior Court No. 14-1-02112-9.

12 13. On January 26, 2015, Respondent appeared on behalf of DL.

13 14. The court set a Motion to Suppress on April 13, 2015, and Respondent did not
14 appear.

15 15. The court set the matter over to April 16, 2015, to allow for Respondent's
16 attendance but he failed to appear again. DL told the court he wanted new counsel, and on April
17 17, 2015 a new assigned counsel, appeared on his behalf.

18 16. DL's new counsel called Respondent at least three times, but received no response.
19 The new counsel was unable to obtain a client file from Respondent.

20 17. Respondent charged DL a flat fee.

21 18. Respondent did not have a signed written fee agreement with DL.

22 19. DL paid in cash installments and Respondent did not deposit the money into trust.
23 Respondent received approximately \$5,600.

24 Stipulation to Discipline
Page 3

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WASHINGTON STATE BAR ASSOCIATION
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IV. PRIOR DISCIPLINE

29. In 2010, Mr. Turner received a reprimand for violating RPC 1.3 and RPC 1.4.

V. APPLICATION OF ABA STANDARDS

30. The following American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case and are attached as Appendix A:

31. ABA Standard 4.4 is most applicable to cases involving a lack of diligence (violations of RPC 1.3).

32. ABA Standard 6.1 is most applicable to cases involving conduct prejudicial to the administration of justice (violations of RPC 8.4(d)).

33. ABA Standard 7.0 is most applicable to cases involving improper fees and improper withdrawal from representation (violations of RPC 1.5(b), RPC 1.15A(c), and RPC 1.16(d)).

34. ABA Standard 8.0 is most applicable to cases involving prior discipline.

35. Respondent acted knowingly in accepting flat fees from clients without a written fee agreement and without placing the funds in an IOLTA account.

36. Respondent acted negligently in failing to appear in court and protect his client's interest upon withdrawal.

37. Respondent caused injury to his clients, whose cases were delayed. His client's unearned fees were not protected in an IOLTA account or returned upon withdrawal. He caused injury to the court, which had to expend additional resources.

38. The presumptive sanction is suspension.

39. The following aggravating factors apply under ABA Standard 9.22:

- (a) prior disciplinary offenses [in 2010, Respondent received a reprimand];
- (d) multiple offenses;
- (i) substantial experience in the practice of law [Respondent was admitted to practice in 1986].

1 40. The following mitigating factor applies under ABA Standard 9.32:

2 (c) personal or emotional problems [as documented in Appendix B, to be filed under
3 seal].

4 41. It is an additional mitigating factor that Respondent has agreed to resolve this matter
5 at an early stage of the proceedings.

6 42. With the mitigating factor documented in Appendix B, and given Respondent's
7 willingness to make his reinstatement conditioned on a fitness to practice evaluation, payment
8 of restitution, and two years of probation, a downward departure from the presumptive six-
9 month suspension is justified.

10 VI. STIPULATED DISCIPLINE

11 43. The parties stipulate that Respondent shall receive a 60 day suspension for his
12 conduct.

13 44. Respondent will be subject to probation for a period of 24 months beginning when
14 Respondent is reinstated to the practice of law and shall comply with the specific probation
15 terms set forth below.

16 45. As a condition of reinstatement, Respondent shall, at least 30 days prior to a request
17 for reinstatement, undergo an independent examination by a licensed clinical psychologist or
18 psychiatrist to be approved by disciplinary counsel. Respondent shall execute all the necessary
19 releases to permit this evaluator to obtain all necessary treatment records and make a report to
20 disciplinary counsel addressing the following issues:

- 21 • Whether Respondent has recovered from any issues identified by the evaluator as
22 influencing Respondent's performance as a lawyer;
- 23 • Whether Respondent's condition is such that he is currently fit to practice law.

- 1 • If the evaluator concludes that Respondent is not currently fit to practice law, the
2 report shall recommend a course of treatment necessary to enable Respondent to
3 return to the practice of law.

4 46. Respondent agrees to execute any necessary releases to allow disciplinary counsel
5 and the evaluator full access to all health and treatment records and reports.

6 47. If the evaluator concludes that Respondent is not currently fit to practice law,
7 Respondent (or Respondent's counsel, if Respondent is then represented) and disciplinary
8 counsel shall meet to discuss the evaluator's report and what steps can be taken to address the
9 evaluator's concerns. If Respondent and disciplinary counsel cannot reach an agreement, both
10 parties shall present written materials and arguments to the Disciplinary Board. The
11 Disciplinary Board shall decide whether and the conditions under which Respondent shall
12 return to the active practice of law.

13 48. The conditions of probation are set forth below. Respondent's compliance with
14 these conditions shall be monitored by the Probation Administrator of the Office of Disciplinary
15 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
16 herein may be grounds for further disciplinary action under ELC 13.8(b).

17 49. Respondent shall comply with any recommendations made by the evaluator.

18 50. Respondent shall take all medications as prescribed by his medical providers.

19 Practice Monitor

20 51. During the period of probation, Respondent's practice shall be supervised by a
21 practice monitor. The practice monitor must be a WSBA member with no record of public
22 discipline and who is not the subject of a pending public disciplinary proceeding.

23 52. The practice monitor shall consult with and provide guidance to Respondent

1 regarding case management, office management, and avoiding violations of the Rules of
2 Professional Conduct. While appointed as practice monitor during the probation period, the
3 practice monitor does not represent the Respondent.

4 53. No later than 15 days after probation begins, Respondent may provide to the
5 Probation Administrator, in writing, the name and contact information of a proposed practice
6 monitor. The Probation Administrator may or may not approve the proposed practice monitor.
7 If Respondent fails to propose a practice monitor within 15 days, or if the Probation
8 Administrator does not approve the proposed practice monitor, the Probation Administrator will
9 propose to Respondent a practice monitor. If Respondent objects to the Probation
10 Administrator's proposal, ODC will submit a request that a practice monitor be appointed by the
11 Chair of the Disciplinary Board. See ELC 13.8(a)(2). Respondent shall cooperate with the
12 practice monitor agreed to by ODC and Respondent or appointed by the Chair of the
13 Disciplinary Board.

14 54. During the period of probation, Respondent shall meet with the practice monitor at
15 least once per month. At each meeting, the practice monitor will discuss with Respondent each
16 of Respondent's client matters, the status of each client matter, Respondent's communication
17 with each client, upcoming deadlines, and Respondent's intended course of action. Meetings
18 may be in person or by telephone at the practice monitor's discretion.

19 55. Respondent shall use written fee agreements with all clients, and provide proof to the
20 practice monitor.

21 56. The practice monitor will provide the Probation Administrator with quarterly
22 reports regarding Respondent's performance on probation. Each report must include the date of
23 each meeting with Respondent, a brief synopsis of the discussion topics, and a brief description

1 of any concerns the practice monitor has regarding the Respondent's compliance with the RPC.
2 The report must be signed by the practice monitor. Each report is due within 30 days of the
3 completion of the quarter.

4 57. If the practice monitor believes that Respondent is not complying with any of his
5 ethical duties under the RPC or if Respondent fails to attend a monthly meeting, the practice
6 monitor shall promptly report that to the Probation Administrator.

7 58. Respondent shall be responsible for paying any and all fees, costs and/or expenses
8 charged by the practice monitor for supervision.

9 59. Respondent shall bear all costs associated with compliance with the terms and
10 conditions of the stipulated discipline and reinstatement set forth herein.

11 VII. RESTITUTION

12 60. Reinstatement is conditioned upon payment of \$2,000 restitution to DL.

13 VIII. COSTS AND EXPENSES

14 61. In light of Respondent's willingness to resolve this matter by stipulation at an early
15 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
16 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
17 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
18 from suspension is conditioned on payment of costs.

19 IX. VOLUNTARY AGREEMENT

20 62. Respondent states that prior to entering into this Stipulation he has consulted
21 independent legal counsel regarding this Stipulation, that Respondent is entering into this
22 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
23 Association, nor by any representative thereof, to induce the Respondent to enter into this

1 Stipulation except as provided herein.

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

4 X. LIMITATIONS

5 64. This Stipulation is a compromise agreement intended to resolve this matter in
6 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
7 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
8 and ODC acknowledge that the result after further proceedings in this matter might differ from
9 the result agreed to herein.

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

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

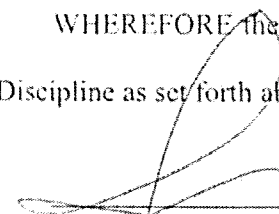
20 67. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
21 Board shall have available to it for consideration all documents that the parties agree to submit
22 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
23 form the record before the Board for its review become public information on approval of the

1 Stipulation by the Board, unless disclosure is restricted by order or rule of law

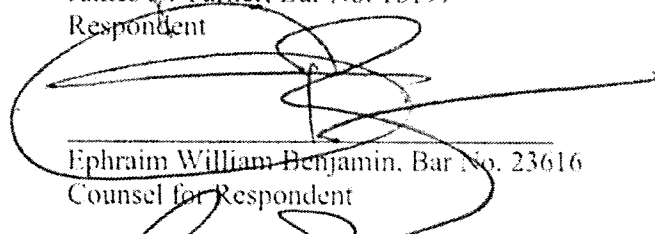
2 68. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
3 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
4 Rules for Enforcement of Lawyer Conduct will be made.

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


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

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13 _____
14 James N. Turner, Bar No. 16199
15 Respondent

Dated: 9-11-2016

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18 _____
19 Ephraim William Benjamin, Bar No. 23616
20 Counsel for Respondent

Dated: 9.11.2016

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24 Erica Temple, Bar No. 28458
Disciplinary Counsel

Dated: 9/13/16

1 Appendix A

2 **4.4 Lack of Diligence**

3 Absent aggravating or mitigating circumstances, upon application of the factors set out
4 in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to
5 act with reasonable diligence and promptness in representing a client:

6 4.41 Disbarment is generally appropriate when:

- 7 (a) a lawyer abandons the practice and causes serious or potentially serious
8 injury to a client; or
9 (b) a lawyer knowingly fails to perform services for a client and causes
10 serious or potentially serious injury to a client; or
11 (c) a lawyer engages in a pattern of neglect with respect to client matters and
12 causes serious or potentially serious injury to a client.

13 4.42 Suspension is generally appropriate when:

- 14 (a) a lawyer knowingly fails to perform services for a client and causes
15 injury or potential injury to a client, or
16 (b) a lawyer engages in a pattern of neglect and causes injury or potential
17 injury to a client.

18 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
19 with reasonable diligence in representing a client, and causes injury or potential
20 injury to a client.

21 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
22 with reasonable diligence in representing a client, and causes little or no actual or
23 potential injury to a client.

24 **6.1 False Statements, Fraud, and Misrepresentation**

Absent aggravating or mitigating circumstances, upon application of the factors set out
in Standard 3.0, the following sanctions are generally appropriate in cases
involving conduct that is prejudicial to the administration of justice or that
involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the
court, makes a false statement, submits a false document, or improperly
withholds material information, and causes serious or potentially serious injury
to a party, or causes a significant or potentially significant adverse effect on the
legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or
documents are being submitted to the court or that material information is
improperly being withheld, and takes no remedial action, and causes injury or
potential injury to a party to the legal proceeding, or causes an adverse or
potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in
determining whether statements or documents are false or in taking remedial
action when material information is being withheld, and causes injury or
potential injury to a party to the legal proceeding, or causes an adverse or
potentially adverse effect on the legal proceeding.

1 6.14 Admonition is generally appropriate when a lawyer engages in an isolated
2 instance of neglect in determining whether submitted statements or documents
3 are false or in failing to disclose material information upon learning of its falsity,
and causes little or no actual or potential injury to a party, or causes little or no
adverse or potentially adverse effect on the legal proceeding.

4 **7.0 Violations of Duties Owed as a Professional**

5 Absent aggravating or mitigating circumstances, upon application of the factors set out
6 in Standard 3.0, the following sanctions are generally appropriate in cases involving false or
7 misleading communication about the lawyer or the lawyer's services, improper communication
of fields of practice, improper solicitation of professional employment from a prospective client,
unreasonable or improper fees, unauthorized practice of law, improper withdrawal from
representation, or failure to report professional misconduct.

8 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
9 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.

10 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
11 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.

12 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
13 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.

14 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.

15 **8.0 Prior Discipline Orders**

16 Absent aggravating or mitigating circumstances, upon application of the factors set out
17 in Standard 3.0, the following sanctions are generally appropriate in cases involving prior
discipline.

18 8.1 Disbarment is generally appropriate when a lawyer:
19 (a) intentionally or knowingly violates the terms of a prior disciplinary order
and such violation causes injury or potential injury to a client, the public,
the legal system, or the profession; or
20 (b) has been suspended for the same or similar misconduct, and intentionally
or knowingly engages in further similar acts of misconduct that cause
injury or potential injury to a client, the public, the legal system, or the
profession.

21 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the
22 same or similar misconduct and engages in further similar acts of misconduct
that cause injury or potential injury to a client, the public, the legal system, or the
profession.

23 8.3 Reprimand is generally appropriate when a lawyer:

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- (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
- (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.