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DISCIPLINARY BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

DRAKE DEE MESENBRINK,

Lawyer (Bar No. 16711).

Proceeding No. 09#00102

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to a three year suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Debra Slater, Respondent lawyer Drake Dee Mesenbrink, and Respondent's counsel Kurt M. Bulmer.

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.

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on May 20,
3 1987.

4 **II. STIPULATED FACTS**

5 2. In May 2007, Leif Werner ("Werner") hired Respondent to represent him in
6 resolving a construction contract claim involving Jack Donaldson ("Donaldson").

7 3. On August 16, 2007, Donaldson filed suit against Werner in Kitsap County Superior
8 Court, alleging, among other things, breach of contract.

9 4. On September 11, 2007, Respondent filed an Answer on behalf of Werner.

10 5. In April 2008, Werner terminated Respondent.

11 6. On December 11, 2008, Werner filed a grievance with the Association against
12 Respondent. One of the issues raised by Werner was that Respondent had failed to advise him
13 to settle the Donaldson suit, even though his attorney fees in defending the case would likely
14 exceed the amount Donaldson was seeking.

15 7. The Association mailed a copy of the grievance to Respondent on December 15,
16 2008.

17 8. Respondent received the grievance on December 22 or 23, 2008.

18 9. By letter dated December 23, 2008, Respondent provided to the Association his
19 response to Werner's grievance.

20 10. In his response, Respondent stated that he had met with Werner and that after the
21 meeting, he sent Werner a letter regarding the attorney fees issue and recommending he settle
22 the case.

23 11. As an attachment to his letter to the Association, Respondent included a copy of a
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1 letter dated October 9, 2007, which is the letter he stated he had sent to Werner.

2 12. The October 9, 2007 letter was not created on October 9, 2007, but actually had been
3 created by Respondent on December 23, 2008, at around the same time he prepared his
4 Response to the Werner grievance.

5 13. Respondent backdated the letter to make it appear that he had sent it to Werner
6 during the time he represented him.

7 14. Respondent knew that the October 9, 2007 letter he sent to the Association was
8 fabricated.

9 15. Respondent's statements that he had sent the October 9, 2007 letter to Werner were
10 false and Respondent knew they were false.

11 16. Respondent fabricated the letter and falsely stated that he had sent it to Werner in
12 order to benefit himself by misleading the disciplinary process and avoiding discipline.

13 17. After receiving notice of Werner's concerns, Respondent notified his malpractice
14 insurance carrier of a possible claim against him by Werner.

15 18. The Association sent a copy of Respondent's response, including the purported
16 October 9, 2007 letter to Werner.

17 19. Werner denied ever having received the October 9, 2007 letter.

18 20. Werner's reply was sent to Respondent.

19 21. Respondent replied to the Association on February 12, 2008.

20 22. In his reply, Respondent stated:

21 I drafted the letter which Mr. Werner claims he did not receive. My
22 assistant mailed the letter to the address Mr. Werner provided to my
23 office, which is the same address that all documents were mailed to Mr.
24 Werner.

23 23. The statements in Respondent's February 12, 2008 letter to the Association were

1 false.

2 24. Respondent knew that the statements were false.

3 25. Respondent made the false statement in order to benefit himself by misleading the
4 disciplinary process and avoiding discipline.

5 26. On April 20, 2009, the Association requested that Respondent provide the
6 Association with his complete client file for Werner.

7 27. On May 1, 2009, Respondent provided what he asserted was a complete copy of the
8 Werner file.

9 28. The file contained a copy of the fabricated October 9, 2007 letter.

10 29. Respondent submitted the file to the Association knowing it contained the fabricated
11 October 9, 2007 letter.

12 30. The file also contained a document purported to be a client ledger for Werner.

13 31. The client ledger contained an entry on October 9, 2007 that stated: "Letter to client.
14 Re: recommended settlement- NC."

15 32. The notation NC meant that Respondent did not charge Werner for that work.

16 33. Respondent had altered the client ledger on December 23, 2008 in order to
17 corroborate his false statements that he had created the October 9, 2007 letter on that date.

18 34. The fabricated letter and the altered client ledger were not part of the original client
19 file.

20 35. Respondent submitted the client ledger to the Association knowing it contained the
21 false and fabricated October 9, 2007 entry.

22 36. Respondent submitted the false client ledger in order to benefit himself by
23 misleading the disciplinary process and avoiding discipline.

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37. On May 21, 2009, Respondent submitted a copy of a second client ledger for Werner's matter. The client ledger reflected the same false entry regarding the October 9, 2007 letter.

38. Respondent submitted the second false client ledger in order to benefit himself by misleading the disciplinary process and avoiding discipline.

39. On January 14, 2010, the Association filed a Formal Complaint, alleging that Respondent made false statements to the Association during its investigation of the Werner grievance, that Respondent had provided falsified documents to the Association, and that Respondent failed to provide a truthful response to the Association during its investigation of the Werner grievance.

40. On February 22, 2010, Respondent filed his Answer to the Formal Complaint. In his Answer, he admitted that he had made false statements to the Association, provided falsified documents to the Association, and failed to provide a truthful response to the Association during its investigation of the Werner grievance.

III. STIPULATION TO MISCONDUCT

41. By submitting falsified documents to the Association during its investigation of the grievance filed by Werner, Respondent violated RPC 8.1(a), RPC8.4(c), and RPC 8.4(d).

42. By making false statements to the Association in the December 23, 2008 letter, the February 12, 2009 letter, and the Werner client ledgers, Respondent violated RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d).

43. By failing to provide a full and complete response to the Association in its investigation of the Werner grievance and knowingly making false statements of material fact in his response, Respondent violated RPC 8.1(a), RPC 8.4(l), and ELC 5.3(e).

1 **IV. PRIOR DISCIPLINE**

2 44. Respondent has no prior discipline.

3 **V. APPLICATION OF ABA STANDARDS**

4 45. The following American Bar Association Standards for Imposing Lawyer Sanctions
5 (1991 ed. & Feb. 1992 Supp.) apply to this case:

6 ABA Standard 7.0 applies to Respondent's violation of RPC 8.1(a), 8.4(c), and 8.4(l).

7 7.1 **Disbarment** is generally appropriate when a lawyer knowingly engages
8 in conduct that is a violation of a duty owed as a professional with the
9 intent to obtain a benefit for the lawyer or another, and causes serious or
10 potentially serious injury to a client, the public, or the legal system.

11 Respondent knowingly made false statements of material fact to the Association,
12 knowing submitted the fabricated October 9, 2007 letter and falsified client ledger to the
13 Association in connection with this disciplinary matter. There was serious injury to his client,
14 the public and the legal system as a result of Respondent's conduct. The public's confidence in
15 the legal system was seriously eroded because of Respondent's actions, and the legal system
16 was injured because the Office of Disciplinary Counsel was required to expend additional
17 resources to uncover what actually occurred. The presumptive sanction is disbarment.

18 ABA Standard 6.1 applies to Respondent's violation of RPC 8.4(d):

19 6.11 **Disbarment** is generally appropriate when a lawyer, with the intent to
20 deceive the court, makes a false statement, submits a false document, or
21 improperly withholds material information, and causes serious or
22 potentially serious injury to a party, or causes a significant or potentially
23 significant adverse effect on the legal proceeding.

24 Respondent intentionally submitted false documents to the Association. His actions
caused unnecessary delay in the disciplinary proceedings and imposed an additional burden on
the Association in investigating the Werner grievance. There was serious injury to the legal

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1 system and the discipline system in particular as additional investigation was required to
2 determine whether Respondent's submissions were, in fact, truthful. Creating false documents
3 to cover up misconduct prejudices the administration of justice, tarnishes the profession in the
4 eyes of the public, and unnecessarily delays the disciplinary proceedings.

5 The presumptive sanction is disbarment.

6 The following aggravating factors apply under ABA Standards Section 9.22:

- 7 (b) dishonest or selfish motive;
- 8 (d) multiple offenses;
- 9 (i) substantial experience in the practice of law [Respondent was admitted in Washington on May 20, 1987].

10 The following mitigating factors apply under ABA Standards Section 9.32:

- 11 (a) absence of prior disciplinary records;
- 12 (b) personal or emotional problems;
- 13 (l) remorse.

14 Respondent has a history of depression and anxiety disorder, some of which stems from
15 significant childhood abuse. He experiences extreme panic attacks in response to stress. These
16 attacks manifest as extreme anxiety and include vomiting, heart palpitations, and crying.

17 After the incident that is the subject of the grievance, Respondent consulted Dr. David
18 Wait, a psychiatrist. Dr. Wait diagnosed Respondent as suffering from major depression.
19 According to Dr. Wait, the major depression and Respondent's anxiety combined to the point
20 that it interfered with Respondent's ability to make proper choices, leading to Respondent's
21 irrational and self-destructive conduct. Dr. Wait has indicated that this combination of
22 depression and anxiety likely significantly contributed to Respondent's actions in this case and
23 that the pattern of compulsive, self-abusive behavior was a considerable factor in the poor
24 choices Respondent made.

25 Dr. Wait prescribed medication to deal with the depression and therapy to deal with
26 long-standing issues that are significant in Respondent's depression. Respondent began a

1 therapeutic relationship with Emily Hart, LCPC. He also continued to see Dr. Wait. According
2 to Dr. Wait, Respondent has significantly improved. Dr. Wait also reports that with the
3 individual therapy and anti-depressants, it would be unlikely that this kind of event would occur
4 again as it is out of character for Respondent. Dr. Wait's medical records regarding Respondent
5 have been provided to the Office of Disciplinary Counsel.

6 Respondent is currently taking medication to control his depression. Because of issues
7 with his health insurance, he is no longer seeing Dr. Wait or Emily Hart. However, he
8 continues in therapy with a different doctor.

9 Respondent has been deposed by the Association and has demonstrated clear remorse
10 and understanding of the nature and character of his actions.

11 Based on the factors set forth above, the presumptive sanction should be mitigated to a
12 three year suspension.

13 **VI. STIPULATED DISCIPLINE**

14 46. The parties stipulate that Respondent will receive a three year suspension.
15 Respondent's reinstatement is conditioned on payment of all costs.

16 **VII. RESTITUTION**

17 47. Restitution is not appropriate in this case.

18 **VIII. COSTS AND EXPENSES**

19 48. Respondent shall pay attorney fees and administrative costs of \$2,750.95 in
20 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(i)
21 if these costs are not paid within 30 days of approval of this stipulation.

22 **IX. VOLUNTARY AGREEMENT**

23 49. Respondent states that prior to entering into this Stipulation he had an opportunity to
24 consult independent legal counsel regarding this Stipulation, that Respondent is entering into

1 this Stipulation voluntarily, and that no promises or threats have been made by the Association,
2 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
3 as provided herein.

4 X. LIMITATIONS

5 50. 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 the Association. Both the
8 Respondent lawyer and the Association acknowledge that the result after further proceedings in
9 this matter might differ from the result agreed to herein.

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

13 52. 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 53. 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
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1 Stipulation by the Board, unless disclosure is restricted by order or rule of law.


2 54. 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 55. 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.

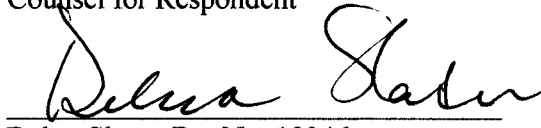
9 WHEREFORE the undersigned being fully advised, adopt and agree to the facts and
10 terms of this Stipulation to Discipline as set forth above.

11 
12 Drake Dee Mesebrink, Bar No. 16711
13 Respondent

Dated: 7-18-12

14 
15 Kurt M. Bulmer, Bar No. 5859
16 Counsel for Respondent

Dated: 7/18/12

17 
18 Debra Slater, Bar No. 18346
19 Disciplinary Counsel

Dated: 7/25/12