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FILED
AUG 03 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
ROBERT N. WINDES,
Lawyer (Bar No. 18216).

Proceeding No. 13#00036
STIPULATION TO SUSPENSION,
CONDITIONS ON REINSTATEMENT,
AND PROBATION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Suspension, Conditions on Reinstatement, and Probation is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Sachia Stonefeld Powell and by Respondent Robert N. Windes.

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 was admitted to practice law in the State of Washington on October 31,
5 1988.

6 2. On May 8, 2014, Respondent was administratively suspended for failure to comply
7 with licensing requirements.

8 3. Respondent has remained in a suspended status since May 8, 2014.

9 **II. STIPULATED FACTS**

10 4. In December 2008, Penny Jorgensen suffered a stroke soon after receiving an
11 epidural steroid injection during an elective procedure.

12 5. In approximately October 2009, Respondent agreed to represent Ms. Jorgensen in a
13 medical malpractice action against the University of Washington Medical Center and individual
14 providers.

15 6. Respondent and Ms. Jorgensen entered into a contingency fee agreement and
16 anticipated that costs, including those for expert witnesses, would be deducted from Ms.
17 Jorgensen's recovery.

18 7. During the representation, Respondent and Ms. Jorgensen met in person several
19 times, and also had many phone conversations and e-mail exchanges.

20 8. During these meetings, conversations, and exchanges, Ms. Jorgensen attempted to
21 educate Respondent on her matter and/or provide him with assistance, including:

- 22 • supplying some of the information more than once as Respondent could not locate
23 what she had previously sent,

- 1 • drafting parts of some e-mail inquiries and letters to prospective experts and
2 providing them with specific information about her matter,
3 • drafting questions to ask prospective experts,
4 • assisting Respondent with the investigation of the matter,
5 • assisting Respondent in preparing to interview prospective expert witnesses, and
6 • conducting research on medical issues applicable to her case and then summarizing
7 her research for Respondent.

8 9. These tasks were difficult for Ms. Jorgensen, as she had suffered some brain injury
9 as a result of the stroke.

10 10. During the representation, Respondent's comprehension of the matter was deficient
11 in many respects. For example, Respondent:

- 12 • did not review Ms. Jorgensen's medical records, which he had in his possession,
13 and/or did not understand the information they contained,
14 • did not understand, and/or did not attempt to figure out, essential medical terms
15 relevant to Ms. Jorgensen's matter,
16 • did not understand the medical aspects of Ms. Jorgensen's matter, and
17 • although Respondent does not agree, there are indications in his e-mail
18 correspondence with Ms. Jorgensen that he did not fully understand what medical
19 evidence was necessary to substantiate Ms. Jorgensen's claims.

20 11. Respondent never consulted with an anesthesiologist, despite the fact that the doctors
21 in question were anesthesiologists, and despite stating in an e-mail to Ms. Jorgensen: "we will
22 need an anesthesiologist expert in the case for sure." He did, however, have the name of one
23 whom he believed was able and willing to assist in the matter.

24 12. Respondent asked Ms. Jorgensen to sit in on a telephone interview of a potential
expert witness so that she could assist him during the conversation.

1 13. Ultimately, Respondent did not file an action or do anything else that advanced Ms.
2 Jorgensen's case. Respondent did, however, obtain the services of Dr. Gary Schuster, and Ms.
3 Jorgensen's subsequent lawyer was able to use the declaration of Dr. Schuster to withstand (at
4 least in part) a motion for summary judgment.

5 14. Respondent never provided Ms. Jorgensen with information regarding the cost of the
6 experts consulted, despite her requests for the information.

7 15. In October 2011, Ms. Jorgensen terminated Respondent's representation and hired
8 lawyer Carl Lopez.

9 16. At the time she hired Mr. Lopez, less than two months remained before the statute of
10 limitations expired. Mr. Lopez filed the action in December 2011, 10 days before the expiration
11 of the original statute of limitations. However, the statute was tolled for one year because
12 Respondent filed a notice of intent to sue.

13 17. In May 2013, the matter was settled.

14 III. STIPULATION TO MISCONDUCT

15 18. By failing to provide competent representation, Respondent violated RPC 1.1 (duty
16 to act competently).

17 19. By failing to diligently pursue Ms. Jorgensen's matter, Respondent violated RPC 1.3
18 (duty to act diligently).

19 20. By failing to provide Ms. Jorgensen with the expert witness costs she requested,
20 Respondent violated RPC 1.4 (duty to communicate).

21 IV. PRIOR DISCIPLINE

22 21. Respondent does not have prior discipline.
23

1 **V. APPLICATION OF ABA STANDARDS**

2 22. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 23. ABA Standard 4.5 is most applicable to the duty to act competently. That Standard
5 provides:

6 **4.5 Lack of Competence**

7 Absent aggravating or mitigating circumstances, upon application of the
8 factors set out in Standard 3.0, the following sanctions are generally appropriate
9 in cases involving failure to provide competent representation to a client:

10 4.51 **Disbarment** is generally appropriate when a lawyer's course of conduct
11 demonstrates that the lawyer does not understand the most fundamental
12 legal doctrines or procedures, and the lawyer's conduct causes injury or
13 potential injury to a client.

14 4.52 **Suspension** is generally appropriate when a lawyer engages in an area of
15 practice in which the lawyer knows he or she is not competent, and causes
16 injury or potential injury to a client.

17 4.53 **Reprimand** is generally appropriate when a lawyer:
18 (a) demonstrates failure to understand relevant legal doctrines or
19 procedures and causes injury or potential injury to a client; or
20 (b) is negligent in determining whether he or she is competent to
21 handle a legal matter and causes injury or potential injury to a
22 client.

23 4.54 **Admonition** is generally appropriate when a lawyer engages in an isolated
24 instance of negligence in determining whether he or she is competent to
handle a legal matter, and causes little or no actual or potential injury to a
client.

25 24. ABA Standard 4.4 is most applicable to the duties to act diligently and to
communicate. That Standard provides:

26 **4.4 Lack of Diligence**

27 Absent aggravating or mitigating circumstances, upon application of the
28 factors set out in Standard 3.0, the following sanctions are generally appropriate

1 in cases involving a failure to act with reasonable diligence and promptness in
2 representing a client:

3 4.41 **Disbarment** is generally appropriate when:

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

10 4.42 **Suspension** is generally appropriate when:

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

15 4.43 **Reprimand** is generally appropriate when a lawyer is negligent and does
16 not act with reasonable diligence in representing a client, and causes injury
17 or potential injury to a client.

18 4.44 **Admonition** is generally appropriate when a lawyer is negligent and does
19 not act with reasonable diligence in representing a client, and causes little
20 or no actual or potential injury to a client.

21 25. Respondent acted negligently in determining whether he was competent to handle
22 the matter, and in failing to communicate with Ms. Jorgensen.

23 26. Respondent acted knowingly when he failed to act with diligence.

24 27. Ms. Jorgensen suffered frustration because of the lengthy delay. The injury to Ms.
Jorgensen would have been much worse if the statute of limitations had run without action.

25 28. The presumptive sanction is suspension.

26 29. The following aggravating factors apply under ABA Standard 9.22:

- 27 (b) dishonest or selfish motive;
- 28 (g) refusal to acknowledge wrongful nature of conduct; and
- 29 (i) substantial experience in the practice of law [admitted in Washington in
30 1988; admitted in Louisiana in 1980].

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

2 (a) absence of a prior disciplinary record.

3 31. Where there are multiple ethical violations, the "ultimate sanction imposed should at
4 least be consistent with the sanction for the most serious instance of misconduct among a
5 number of violations." In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
6 846 P.2d 1330 (1993).

7 32. On balance, the aggravating and mitigating factors do not require a departure from
8 the presumptive sanction.

9 **VI. STIPULATED DISCIPLINE**

10 33. The parties stipulate that Respondent shall receive a three-month suspension for his
11 conduct.

12 **VII. STIPULATED CONDITIONS ON REINSTATEMENT**

13 34. ODC believes that Respondent may suffer from issues related to alcohol abuse.
14 Respondent denies any issues related to alcohol abuse, but agrees to the following conditions.

15 35. Respondent's reinstatement to the active practice of law shall be conditioned on an
16 independent examination by a licensed clinical psychologist or psychiatrist to be approved by
17 Disciplinary Counsel and to be obtained at Respondent's own expense. Respondent shall
18 execute all necessary releases to permit the evaluator to obtain all necessary records and make a
19 report to Disciplinary Counsel addressing the following issue: whether Respondent has any
20 issues related to alcohol abuse and, if so, whether those issues render him currently unfit to
21 practice law.

22 36. If the evaluator concludes that Respondent is not currently fit to practice law, the
23

1 report shall recommend a course of treatment necessary to enable Respondent to return to the
2 practice of law.

3 37. Respondent agrees to execute all necessary releases to allow Disciplinary Counsel
4 and the evaluator full access to all health and treatment records and reports.

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

12 **VIII. STIPULATED PROBATION**

13 39. Following his reinstatement to the active practice of law, Respondent shall be subject
14 to probation under ELC 13.8 for a period of one year.

15 40. During the period of probation, Respondent shall comply with any treatment
16 recommendations arising out of the evaluation process described in ¶¶ 36-40, above.

17 41. Respondent shall execute an authorization to allow any chemical dependency
18 treatment provider to release information to the Probation Administrator, including but not
19 limited to: dates of attendance; reports of progress on treatment; incidences of relapse; results of
20 urine toxicology reports; and reports of any further violations of the RPC. The failure to have a
21 current, valid authorization for release of information to the Probation Administrator on file
22 with the chemical dependency treatment provider may constitute a material violation of
23

1 probation terms.

2 42. Respondent shall provide the Probation Administrator with the name and contact
3 information of any chemical dependency treatment provider.

4 43. If Respondent fails to comply with any of the terms or conditions of this stipulation,
5 the Office of Disciplinary Counsel may seek appropriate relief under the relevant disciplinary
6 rules.

7 44. Respondent shall bear all costs associated with compliance with the terms and
8 conditions of the stipulation set forth herein.

9 **IX. RESTITUTION**

10 45. No restitution is necessary in this matter.

11 **X. COSTS AND EXPENSES**

12 46. Respondent shall pay attorney fees and administrative costs of \$1168.86 in
13 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
14 if these costs are not paid within 30 days of approval of this stipulation unless the parties agree
15 to a payment plan under ELC 13.9(i)(3). Reinstatement from suspension is conditioned on
16 payment of costs and/or being current in his payments under any payment plan.

17 **XI. VOLUNTARY AGREEMENT**

18 47. Respondent states that prior to entering into this Stipulation he [has consulted] [had
19 an opportunity to consult] (circle one) independent legal counsel regarding this Stipulation, that
20 he is entering into this Stipulation voluntarily, and that no promises or threats have been made
21 by ODC, the Association, or any representative thereof, to induce Respondent to enter into this
22 Stipulation, except as provided herein.

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

3 XII. LIMITATIONS

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

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

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

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

27. If this Stipulation is approved by the Disciplinary Board and the Supreme Court, 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.

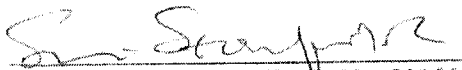
28. If this Stipulation is not approved by the Disciplinary Board and the Supreme Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in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

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



Robert N. Windes, Bar No. 18216
Respondent

Dated: June 2, 2015


Sachia Stonefeld Powell, Bar No. 21166
Disciplinary Counsel

Dated: June 2, 2015

Allison Sato

From: Sachia Stonefeld Powell
Sent: Monday, August 03, 2015 10:44 AM
To: Allison Sato
Subject: Emailing: Stipulation(00129231).PDF
Attachments: Stipulation(00129231).PDF

Please file.

Sachia Stonefeld Powell

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