

FILED

Sep 27, 2022

**Disciplinary
Board**

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TIMOTHY JAMES DACK,
Lawyer (Bar No. 18870).

Proceeding No. 22#00031

ODC File No. 21-00408

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Francisco Rodriguez, Respondent's Counsel Jeffrey P. Downer and Respondent lawyer Timothy James Dack.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are 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 them. Respondent chooses to resolve this proceeding

1 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
2 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 November 16,
5 1989.

6 II. STIPULATED FACTS

7 2. Rozalia and Beau Sem own a business called Groove Nation.

8 3. In 2016, Groove Nation leased space in a shopping center in Vancouver, Washington.
9 The Sems personally guaranteed payments under the lease. The shopping center was
10 subsequently purchased by the City of Vancouver ("City").

11 4. In August 2017, the City notified Groove Nation that it owed over \$77,000 in unpaid
12 rent, and in March 2018, the City sent a notice of default.

13 5. Facing possible eviction, the Sems hired attorney Scott Swindell to negotiate a
14 settlement with the City. During the subsequent negotiations, Swindell referred the Sems to
15 Respondent for a consultation regarding the option of filing for bankruptcy.

16 6. In July 2018, the Sems, then represented by Swindell, entered a written settlement
17 agreement with the City. The agreement provided that any failure to pay or perform obligations
18 under the agreement by Groove Nation and/or the Sems would constitute a material breach of the
19 agreement. If any such breach was not cured within ten days, the settlement agreement was
20 "cancelled," and the accompanying amended lease would be deemed "canceled and void."

21 7. The Sems did not make the required payments under the settlement agreement.

22 8. In December 2018, after the City sent a letter demanding payment, Rozalia Sem
23 contacted Respondent for advice.

1 9. Respondent began representing the Sems and Groove Nation in connection with their
2 dispute with the City in approximately January 2019. Respondent did not initially require any
3 fee payment.

4 10. On January 30, 2019, the City filed suit against Groove Nation and the Sems for breach
5 of contract. Respondent filed a notice of appearance in the case on February 15, 2019.

6 11. Respondent subsequently asked the Sems to pay \$5,000 for the representation, and on
7 April 4, 2019, Rozalia Sem wrote Respondent a check in that amount.

8 12. Respondent deposited the funds in Respondent's business operating account rather
9 than a trust account.

10 13. At the time the funds were deposited into Respondent's operating account, Respondent
11 had not fully earned the fee. Respondent had performed some work on behalf of the Sems but
12 substantial work remained to be completed.

13 14. Respondent never had a written fee agreement with the Sems or any other writing
14 signed by the Sems that complied with RPC 1.5(f)(2).

15 15. On April 18, 2019, Respondent filed an answer to the City's complaint, admitting that
16 the Sems had failed to pay the required rents due under the lease but indicating that they were
17 without sufficient knowledge or information to assess the City's calculation of the amount owed
18 in unpaid rent.

19 16. During the course of the litigation with the City, Respondent did not conduct
20 discovery, consult an expert, or otherwise investigate the validity of the City's damage
21 calculation.

22 17. Respondent was aware that the Sems's prior attorney had disputed the City's
23 calculation of damages, but Respondent mistakenly believed the Sems were now precluded from

1 challenging the amount owed because of the earlier settlement agreement.

2 18. Rather than defend the City's suit on the merits, Respondent focused exclusively on
3 attempting to negotiate a settlement with the City.

4 19. Negotiations were unsuccessful, however, and on August 9, 2019, the City filed a
5 motion for summary judgment. The City's motion specifically noted that under the terms of
6 settlement agreement, an uncured breach by the Sems rendered the settlement agreement "null
7 and void," and the City took the position that the settlement agreement had been "cancelled." The
8 City's motion recognized the possibility the Sems might challenge damages, requesting an
9 expedited hearing concerning the amount of damages if the amount were contested.

10 20. Despite the City's acknowledgment that the Sems might challenge the City's damage
11 calculation, Respondent did not investigate the issue of damages further or file any written
12 response to the City's motion for summary judgment.

13 21. On September 27, 2019, the court granted the City's motion for summary judgment,
14 ordering the Sems to pay the City approximately \$187,000.

15 22. The Sems subsequently consulted a forensic accountant who estimated that the City
16 had overstated the amount due by almost \$60,000.

17 23. Respondent attempted to use information from the forensic accountant to reopen
18 negotiations with the City, but the City declined, explaining that there was no legal excuse for
19 failing to challenge the amount due earlier.

20 24. On October 16, 2019, at the hearing for presentation of judgment, Respondent asked
21 the court to revisit the issue of damages and consider a declaration the forensic accountant had
22 prepared, but the court declined, explaining that Respondent had missed the opportunity to
23 challenge damages by failing to file any response to the City's motion for summary judgment.

1 25. Respondent states that during Respondent's representation of the Sems, Respondent
2 had meetings with the Sems and with the City, drafted a bankruptcy petition, drafted several
3 settlement letters to the City, and drafted the Sems' answer to the City's complaint. For all legal
4 services performed after the initial consultation, Respondent charged the Sems the \$5,000 fee
5 described above.

6 III. STIPULATION TO MISCONDUCT

7 26. By failing to deposit the Sems's advance fees into a trust account, Respondent violated
8 RPC 1.15A(c)(2).

9 27. By failing to take steps to investigate and challenge the City's calculation of damages
10 in a timely manner, and by failing to respond to the motion for summary judgment, Respondent
11 violated RPC 1.3.

12 IV. PRIOR DISCIPLINE

13 28. Respondent has no prior discipline.

14 V. APPLICATION OF ABA STANDARDS

15 29. The following American Bar Association Standards for Imposing Lawyer Sanctions
16 (1991 ed. & Feb. 1992 Supp.) apply to this case:

17 4.1 *Failure to Preserve the Client's Property*

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

- 21 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
22 client property and causes injury or potential injury to a client.
23 4.12 Suspension is generally appropriate when a lawyer knows or should know
24 that he is dealing improperly with client property and causes injury or
potential injury to a client.
4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
with client property and causes injury or potential injury to a client.
4.14 Admonition is generally appropriate when a lawyer is negligent in dealing
with client property and causes little or no actual or potential injury to a
client.

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4.4 Lack of Diligence

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 a failure to act with reasonable diligence and promptness in representing a client:

- 4.41 Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

30. Respondent should have known that Respondent was mishandling the Sems's advance fee payment by failing to deposit the funds into a trust account.

31. Respondent caused potential injury to the Sems by failing to safeguard their funds in a trust account.

32. The presumptive sanction for this misconduct is suspension.

33. Respondent acted negligently in failing to investigate and challenge the City's calculation of damages in a timely manner and in failing to respond to the City's motion for summary judgment.

34. Respondent's failure to investigate and challenge the City's damage calculation and failure to respond to the City's motion for summary judgment caused potential financial injury to the Sems.

1 35. The presumptive sanction for Respondent's lack of diligence in this regard is
2 reprimand.

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

4 (d) multiple offenses;

5 (i) substantial experience in the practice of law.

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

7 (a) absence of a prior disciplinary record;

8 (b) absence of a dishonest or selfish motive;

9 (g) character or reputation.

10 38. It is an additional mitigating factor that Respondent has agreed to resolve this matter
11 at an early stage of the proceedings.

12 39. Based on the factors set forth above, the presumptive sanction should be mitigated to
13 reprimand.

14 VI. STIPULATED DISCIPLINE

15 40. The parties stipulate that Respondent shall receive a reprimand.

16 VII. RESTITUTION

17 41. No restitution is required by this stipulation.

18 VIII. COSTS AND EXPENSES

19 42. Respondent shall pay attorney fees and administrative costs of \$1,500.00 in
20 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(i) if
21 these costs are not paid within 30 days of approval of this stipulation.

22 IX. VOLUNTARY AGREEMENT

23 43. Respondent states that prior to entering into this Stipulation they have consulted

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

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

7 X. LIMITATIONS

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

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

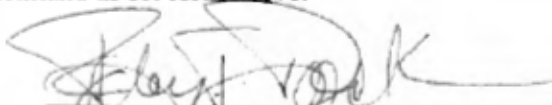
16 47. This Stipulation results from the consideration of various factors by both parties,
17 including the benefits to both by promptly resolving this matter without the time and expense of
18 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
19 such, approval of this Stipulation will not constitute precedent in determining the appropriate
20 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
21 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.
22 Under ELC 3.1(b), all documents that form the record before the Chief Hearing Officer for his or
23 her review become public information on approval of the Stipulation by the Hearing Officer,

1 unless disclosure is restricted by order or rule of law.

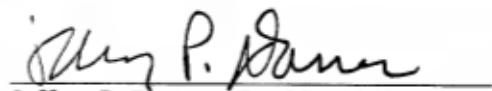
2 48. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
3 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
4 of Lawyer Conduct will be made. Respondent represents that, in addition to Washington,
5 Respondent is not admitted to practice law in any other jurisdiction.

6 49. If this Stipulation is not approved by the Chief Hearing Officer, this Stipulation will
7 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence
8 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
9 or criminal action.

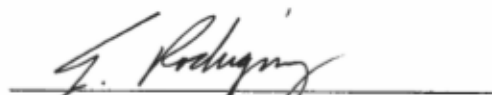
10 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
11 Reprimand as set forth above.

12 
13 Timothy James Dack, Bar No. 18870
14 Respondent

Dated: 9.26.22

15 
16 Jeffrey P. Downer, Bar No. 12625
17 Counsel for Respondent

Dated: 9/26/2022

18 
19 Francisco Rodriguez, Bar No. 22881
20 Disciplinary Counsel

Dated: 9/26/2022