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DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

Proceeding NO. 12 #00114

In re

Donald Roy Morrison,

Lawyer (Bar No. 18998).

WSBA File Nos. 12-00616 and 12-00959,

STIPULATION TO 60-DAY SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to 60-Day Suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Jonathan Burke, and respondent lawyer Donald Roy Morrison (Respondent).

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, expense, and publicity attendant to further proceedings.

ORIGINAL

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on November
3 16, 1989.

4 **II. STIPULATED FACTS**

5 **A. Factual Background**

6 2. On March 1, 2012, Respondent executed a stipulation to a six-month suspension
7 (First Stipulation) to resolve six grievances. The First Stipulation was approved by the
8 Disciplinary Board on May 9, 2012 and approved by the Supreme Court on June 13, 2012.
9 Respondent was suspended for six months commencing on June 20, 2012. A true and correct
10 copy of the First Stipulation is attached hereto as Exhibit A and incorporated by reference.

11 3. Paragraphs 2 through paragraph 13 in the First Stipulation contain background facts,
12 which will not be repeated and are incorporated by reference.

13 **B. Green Matter**

14 4. On or about April 18, 2011, Respondent was hired by Stephen Green (Stephen) and
15 Sandra Green (Sandra), collectively referred to as the Greens, to effectuate Stephen's stepparent
16 adoption of Sandra's minor son. During all materials times, the Greens were stationed overseas
17 because Stephen was on active duty in the Air Force. During all material times, the biological
18 father for Sandra's son was agreeable to Stephen's adoption.

19 5. Respondent prepared a flat fee agreement on April 18, 2011, but never sent it to the
20 Greens.

21 6. Respondent charged the Greens a flat fee of \$2,500 for handling the adoption.

22 7. On May 6, 2011, Respondent deposited the \$2,500 advanced flat fee received from
23 the Greens into his general account. By May 13, 2011, Respondent had withdrawn and used the
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1 \$2,500 paid by the Greens.

2 8. Respondent drafted the Petition for Termination and other pleadings and sent them
3 to the Greens. On July 25, 2011, the Greens signed the declaration in the Petition for
4 Termination and returned it to Respondent shortly thereafter.

5 9. Respondent did not diligently pursue the Greens' adoption.

6 10. The Greens left a number of telephone messages for Respondent seeking to know the
7 status of the adoption. Respondent failed to return telephone messages from the Greens and
8 failed to keep them updated on the status of the adoption.

9 11. In October 2011, Respondent moved his office to another location. Respondent did
10 not inform the Greens about his move.

11 12. On or about March 28, 2012, Sandra filed a grievance against Respondent.

12 13. On April 5, 2012, Respondent sent an email to Sandra stating that he would
13 complete the adoption in two weeks if she provided him with the biological father's address.

14 14. On April 6, 2012, Sandra provided Respondent with the biological father's address.

15 15. On May 17, 2012, Sandra sent an email to Respondent asking for the status.

16 16. On May 26, 2012, Respondent sent an email to Sandra stating that he had mailed the
17 paperwork to the biological father but that it was not returned. Respondent informed Sandra
18 that he was closing his office. Respondent referred her to another lawyer to complete the
19 adoption.

20 17. On June 14, 2012, six days prior to the effective date of Respondent's suspension,
21 Respondent filed the Petition for Termination on behalf of the Greens.

22 18. Respondent agreed to return \$2,000 to the Greens or pay \$2,000 to whoever she they
23 hired to represent them.

1 19. After Respondent was suspended on June 20, 2012, he did not promptly return
2 unearned fees to the Greens because he did not have the funds available.

3 20. The Greens hired another lawyer to handle the adoption.

4 21. Respondent eventually obtained funds. On or about August 10, 2012, Respondent
5 transferred \$2,000 to the Greens' successor lawyer.

6 **C. Buzitis Matter**

7 22. Kevin Buzitis (Buzitis) was represented by Seattle area lawyer Dimitra Scott (Scott)
8 in a marital dissolution that was filed in Lincoln County, Washington.

9 23. On October 4, 2011, Scott contacted Respondent about associating as local counsel
10 for the Buzitis dissolution. Respondent agreed to handle the matter at an hourly rate but
11 required payment of an advance fee deposit.

12 24. On December 1, 2011, Buzitis paid \$1,000 in advance fees to Respondent using a
13 credit card.

14 25. Respondent deposited the \$1,000 advance fee deposit into his general account and
15 used the funds.

16 26. During December 2011, Respondent provided at least \$1,000 in legal services to
17 Buzitis. Respondent was informed that his legal services were no longer needed after December
18 30, 2011.

19 27. On January 10, 2012, Scott sent an email requesting that Respondent send a billing
20 statement to Buzitis.

21 28. On January 30, 2012, Scott sent another email requesting that Respondent send an
22 invoice and/or refund of unearned advance fees.

23 29. On February 23, 2012, Scott sent another email requesting that Respondent provide
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1 Buzitis with a billing statement and a refund of unearned advance fees.

2 30. On May 18, 2012, Buzitis filed a grievance alleging that Respondent would not
3 respond to requests for a billing statement.

4 31. On June 26, 2012, Respondent filed a response to the grievance. Respondent
5 attached a billing statement, dated June 26, 2012, to his response. Prior to sending the June 26,
6 2012 response to the Association, Respondent never provided Buzitis with a billing statement.

7 **III. STIPULATION TO MISCONDUCT**

8 32. By failing to deposit advance fees paid by the Greens and Buzitis into a trust
9 account, Respondent violated RPC 1.15A(c).

10 33. By failing to diligently pursue the Greens' adoption, Respondent violated RPC 1.3
11 and RPC 3.2.

12 34. By failing to reasonably communicate with the Greens, Respondent violated RPC
13 1.4(a).

14 35. By failing to promptly return unearned fees to the Greens, Respondent violated RPC
15 1.16(d).

16 36. By failing to provide a billing statement to Buzitis, Respondent violated RPC
17 1.15A(e) and RPC 1.4(a),

18 **IV. PRIOR DISCIPLINE**

19 37. On June 20, 2012, Respondent was suspended for six months.

20 **V. APPLICATION OF ABA STANDARDS**

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

23 39. ABA Standard 4.1 applies to Respondent's violations of RPC 1.15A, including
24

1 Respondent's failure to deposit unearned fees into his trust account:

2 **4.1 Failure to Preserve the Client's Property**

3 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
4 client property and causes injury or potential injury to a client.

5 4.12 **Suspension is generally appropriate when a lawyer knows or should
6 know that he is dealing improperly with client property and causes
7 injury or potential injury to a client.**

8 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
9 with client property and causes injury or potential injury to a client.

10 4.14 Admonition is generally appropriate when a lawyer is negligent in
11 dealing with client property and causes little or no actual or potential
12 injury to a client.

13 40. Respondent knew or should have known that he was dealing improperly with client
14 funds when he failed to deposit unearned fees into his trust account causing actual and potential
15 injury to clients.

16 41. Suspension is the presumptive sanction for Respondent's misconduct under ABA
17 Standard 4.12.

18 42. ABA Standard 4.4 applies to Respondent's violations of RPC 1.3 (diligence) and
19 RPC 1.4(a) (communication).

20 **4.4 Lack of Diligence**

21 4.41 Disbarment is generally appropriate when:

- 22 (a) a lawyer abandons the practice and causes serious or potentially serious
23 injury to a client; or
24 (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.

25 **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.

1 4.43 Reprimand is generally appropriate when a lawyer is negligent and does
2 not act with reasonable diligence in representing a client, and causes
3 injury or potential injury to a client.

4 4.44 Admonition is generally appropriate when a lawyer is negligent and does
5 not act with reasonable diligence in representing a client, and causes little
6 or no actual or potential injury to a client.

7 43. Respondent knowing failed to diligently represent the Greens causing actual and
8 potential injury.

9 44. Suspension is the presumptive sanction for Respondent's misconduct under ABA
10 Standard 4.42.

11 45. ABA Standard 7.0 applies to Respondent misconduct for failing to promptly return
12 client funds to Green.

13 **7.0 Violations of Duties Owed as a Professional**

14 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
15 conduct that is a violation of a duty owed as a professional with the intent
16 to obtain a benefit for the lawyer or another, and causes serious or
17 potentially serious injury to a client, the public, or the legal system.

18 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
19 conduct that is a violation of a duty owed as a professional and causes
20 injury or potential injury to a client, the public, or the legal system.

21 **7.3 Reprimand is generally appropriate when a lawyer negligently
22 engages in conduct that is a violation of a duty owed as a professional
23 and causes injury or potential injury to a client, the public, or the
24 legal system.**

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.

46. Respondent negligently failed to timely return unearned fees to the Greens resulting
in delay and potential injury to the client.

47. Reprimand is the presumptive sanction under ABA Standard 7.3.

1 48. The Supreme Court has found that, where there are multiple ethical violations, the
2 “ultimate sanction imposed should at least be consistent with the sanction for the most serious
3 instance of misconduct among a number of violations.” In re Disciplinary Proceeding Against
4 Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

5 49. Suspension is the most serious sanction for Respondent’s misconduct. Accordingly,
6 suspension is the presumptive sanction.

7 50. The following aggravating factors apply under ABA Standards Section 9.22:

8 (a) Prior discipline offenses. [Respondent’s six-month suspension constitutes
9 prior discipline. In re Disciplinary Proceeding Against Brothers, 149 Wn.2d
10 575, 586, 70 P.3d 940 (2003) (after-the-fact offense operates as prior offense
11 for aggravating factor purposes as long as the lawyer knew he was under
12 investigation for the older offense when committing the more recent offense).
13 The parties agree that this aggravating factor warrants less weight because
14 Respondent’s misconduct was contemporaneous with his prior misconduct or
15 was essentially a continuation of same misconduct that resulted in the prior
16 suspension.];

17 (b) Multiple offenses [Respondent engaged in multiple offenses that violated
18 multiple RPCs]; and

19 (c) Substantial experience in the practice of law [Respondent has been practicing
20 law since 1989].

21 51. The following mitigating factors apply under ABA Standards Section 9.32:

22 (a) Personal or emotional problems [As described in paragraph 11 of the First
23 Stipulation, Respondent was experiencing personal problems at the time of his
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1 misconduct];

- 2 (b) Timely good faith effort to make restitution or rectify consequences of
3 misconduct [Respondent paid back restitution to the Greens and filed the
4 petition for the Greens' adoption]; and
5 (c) Full and free disclosure [During the investigation, Respondent has candidly
6 admitted to his misconduct].

7 52. It is an additional mitigating factor that Respondent has agreed to resolve this matter
8 at an early stage of the proceedings.

9 53. The mitigating factors outweigh the aggravating factors warranting a shorter period
10 of suspension.

11 VI. STIPULATED DISCIPLINE AND CONDITIONS TO REINSTATEMENT

12 54. **Discipline.** Respondent shall receive a 60-day suspension for his conduct to run
13 consecutively with Respondent's current six-month suspension and subject to the conditions set
14 out below (which are the same conditions contained in the First Stipulation). Reinstatement is
15 conditioned upon repayment of costs.

16 55. **Mental Health.** As a condition of reinstatement, Respondent shall submit a
17 written diagnosis of Respondent's current mental health condition from a mental health
18 professional agreeable to Disciplinary Counsel demonstrating that Respondent is fit to return to
19 the practice of law. Respondent and Disciplinary Counsel will agree on the examiner and the
20 timing of the exam. If Respondent and Disciplinary Counsel cannot reach agreement, the
21 parties shall present written material to the Disciplinary Board Chair for a determination of
22 these issues. Respondent will execute all the necessary releases to permit the evaluator to
23 obtain all necessary treatment records and make a report to Disciplinary Counsel regarding
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1 Respondent's fitness to resume the practice of law.

2 56. If the evaluator concludes that Respondent is not fit to resume the practice of law,
3 Respondent (or his counsel) and Disciplinary Counsel shall meet to discuss the evaluator's
4 report and determine what steps can be taken to address the evaluator's concerns so that
5 Respondent can resume the active practice of law. If Respondent and Disciplinary Counsel
6 cannot reach an agreement, both parties shall present written materials to the Disciplinary Board
7 Chair. The Disciplinary Board Chair shall decide the conditions under which Respondent shall
8 return to the active practice of law.

9 57. **LOMAP.** As a condition to Reinstatement, Respondent agrees to participate in the
10 Association's Law Office Management Assistance Program ("LOMAP"). Prior to
11 reinstatement, Respondent shall confer with the LOMAP Practice Management Advisor
12 ("LOMAP Advisor"), Peter Roberts, on two occasions to discuss and implement procedures
13 concerning some or all of the following issues:

- 14 • Dealing with clients and managing their expectations
- 15 • Fee agreements
- 16 • Staff communication
- 17 • Use of Outlook and networked calendars
- 18 • Time management
- 19 • Office layout and organization
- 20 • Other issues as appropriate.

21 58. The meetings with the LOMAP Advisor should take place at Respondent's office.
22 Respondent shall contact the LOMAP Advisor to schedule the first meeting at least three
23 months prior to reinstatement and the second meeting will occur prior to reinstatement. The
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1 LOMAP Advisor can be reached at 206-727-8237 or peter@wsba.org.

2 59. Respondent shall complete the LOMAP Self-Audit Checklist prior to the first
3 meeting with the LOMAP Advisor. The Self-Audit requires Respondent to provide information
4 about his prior law office practices and procedures.

5 60. Respondent shall pay all costs for LOMAP services, except travel time and cost,
6 subject to a cap of 12 hours at a rate not to exceed \$95.00 per hour.

7 **VII. RESTITUTION**

8 61. Not applicable.

9 **VIII. COSTS AND EXPENSES**

10 62. In light of Respondent's willingness to resolve this matter by stipulation at an early
11 stage of the proceedings, Respondent shall pay attorney fees of \$500 in accordance with ELC
12 13.9(i). The Association will seek a money judgment under ELC 13.9(1) if these costs are not
13 paid within 30 days of approval of this stipulation. Reinstatement from suspension is
14 conditioned on payment of costs.

15 **IX. VOLUNTARY AGREEMENT**

16 63. Respondent states that prior to entering into this Stipulation he has consulted with
17 independent legal counsel regarding this Stipulation, that Respondent is entering into this
18 Stipulation voluntarily, and that no promises or threats have been made by the Association, nor
19 by any representative thereof, to induce the Respondent to enter into this Stipulation except as
20 provided herein.

21 **X. LIMITATIONS**

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

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

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

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

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

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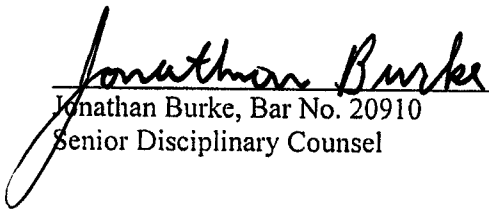
1 | admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
2 | proceeding, or in any civil or criminal action.

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

5 | 

6 | _____
Donald R. Morrison, Bar No. 18998
Respondent

Dated: 9/28/2012

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9 | _____
Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel

Dated: 9/28/2012

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