

FILED

Oct 22 2019

Disciplinary
Board

Docket # 017

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

JAMES K. GAZORI,

Lawyer (Bar No. 19900).

Proceeding No. 19#00026

ODC File No. 18-00528

STIPULATION TO THREE MONTH
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Three Month Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Managing Disciplinary Counsel Joanne S. Abelson, Respondent's Counsel Brett Andrews Purtzer, and Respondent lawyer James K. Gazori.

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

1 outcome more favorable or less favorable to him. Respondent chooses to resolve this
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
3 avoid the risk, time, and expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to the practice of law in the State of Washington on
6 November 13, 1990.

7 2. On October 20, 2017, the Washington Supreme Court entered an order suspending
8 Respondent from the practice of law for two years, effective October 27, 2017. He remains
9 suspended as of the date of this stipulation is signed.

10 **II. STIPULATED FACTS**

11 3. On May 27, 2017, Kelly Ann Malloy hired Respondent to represent her in a family
12 law matter against her ex-husband, who was attempting to have her spousal support
13 discontinued.

14 4. Respondent and Ms. Malloy signed a fee agreement that called for a \$2,000
15 “minimum non-refundable retainer.”

16 5. Under the fee agreement, Respondent was to bill at the rate of \$225 per hour for
17 himself and \$75 per hour for paralegal/legal assistant time after the “retainer” was exhausted.

18 6. The fee agreement provided that “any fees collected may be immediately deposited
19 to Attorney’s general checking account to facilitate ongoing business expenses.”

20 7. The fee agreement did not include the language required by RPC 1.5(f)(2) to permit
21 a flat fee to be placed in a general account.

22 8. The “retainer” described in Respondent’s fee agreement actually was an advance fee.

23 9. Ms. Malloy paid Respondent \$2,000, drawn on her mother’s credit card, when she

1 signed the fee agreement.

2 10. Respondent deposited the funds into his general account.

3 11. Before she hired Respondent, Ms. Malloy had filed for bankruptcy.

4 12. Ms. Malloy's ex-husband filed papers with the bankruptcy court disputing the
5 dischargeability of certain community debts based on the same allegations he was raising in the
6 family law matter. That filing caused Ms. Malloy's family law proceeding to be placed on hold.

7 13. As a result, on or about June 22, 2017, Ms. Malloy asked Respondent to transfer the
8 remainder of her fee to her bankruptcy lawyer to be used in the bankruptcy proceeding.

9 14. Respondent did not transfer any funds to Ms. Malloy's bankruptcy lawyer.

10 15. On August 20, 2017, Ms. Malloy sent Respondent an email "officially" terminating
11 him as her lawyer and seeking a full accounting and a refund.

12 16. Respondent did not provide an accounting or refund to Ms. Malloy.

13 17. Respondent's wife, who was his office assistant, was the person familiar with
14 Respondent's accounting. During this time she was hospitalized, as set forth in Confidential
15 Attachment A.

16 18. On October 25, 2017, Respondent advised Ms. Malloy that she had no refund due
17 and actually owed him money because he had worked 12-15 hours on her case. He promised to
18 provide her an accounting "no later than next Monday."

19 19. Respondent did not keep contemporaneous time records. He reconstructed his time
20 based on his memory and file.

21 20. Respondent never provided Ms. Malloy a billing statement or an accounting.

22 21. In a November 6, 2017 email, Respondent acknowledged that Ms. Malloy was
23 entitled to an accounting. He reiterated that she had no refund due but instead owed him

1 money. He said he would be willing to forgo what she owed him unless he had to reconstruct
2 his time, in which case he would expect her to pay her balance.

3 22. Respondent states that the purpose of this comment was an effort to call matters even
4 to allow the parties to move along.

5 III. STIPULATION TO MISCONDUCT

6 23. By failing to deposit Ms. Malloy's advance fee into his trust account, Respondent
7 violated RPC 1.15A(c).

8 24. By failing to provide Ms. Malloy an accounting upon request, Respondent violated
9 RPC 1.15A(e).

10 25. By failing to provide information to Ms. Malloy about the time spent and the fees
11 earned, Respondent violated RPC 1.4 and RPC 1.5(b).

12 IV. PRIOR DISCIPLINE

13 26. In Proceeding No. 15#00097, Respondent was suspended for two years for violating
14 RPC 1.7(a) (conflict of interest).

15 V. APPLICATION OF ABA STANDARDS

16 27. The following American Bar Association Standards for Imposing Lawyer Sanctions
17 (1991 ed. & Feb. 1992 Supp.) apply to this case:¹

- 18 • ABA Standard 4.1 applies to the misconduct in ¶¶ 23-24; and
- 19 • ABA Standard 4.4 applies to the misconduct in ¶ 25.

20 28. Respondent knew he was not providing billing statements or an accounting to Ms.
21 Malloy and knew or should have known he was not handling the advance fee properly.

22 29. Ms. Malloy was injured because her funds were not protected and she was deprived

23 ¹ The applicable ABA Standards are attached as Appendix B.

1 of information necessary for her to protect her interest in the advance fee.

2 30. The presumptive sanction is suspension under ABA Standard 4.12 and reprimand
3 under ABA Standard 4.43.

4 31. Where there are multiple ethical violations, the “ultimate sanction imposed should at
5 least be consistent with the sanction for the most serious instance of misconduct among a
6 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
7 846 P.2d 1330 (1993).

8 32. The following aggravating factors apply under ABA Standard 9.22:

- 9 (a) prior disciplinary offenses [see ¶ 26];
10 (d) multiple offenses; and
(i) substantial experience in the practice of law [admitted November 13, 1990].

11 33. The following mitigating factor applies under ABA Standard 9.32:

- 12 (c) personal and emotional problems [see Confidential Appendix A].

13 34. It is an additional mitigating factor that Respondent has agreed to resolve this matter
14 at an early stage of the proceedings.

15 35. On balance, the aggravating and mitigating factors do not require a departure from
16 the presumptive sanction but support a suspension for a period of three months.

17 VI. STIPULATED DISCIPLINE

18 36. The parties stipulate that Respondent shall receive a three month suspension.

19 37. Respondent will be subject to probation for a period of two years, beginning when he
20 is reinstated to the practice of law and to run concurrently with his probation in Proceeding No.
21 15#00097. Respondent shall comply with the specific probation terms set forth below.
22 Respondent’s compliance with these terms will be monitored by the Probation Administrator of
23 the Office of Disciplinary Counsel (“Probation Administrator”). Failure to comply with a term

1 of probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

2 Practice Monitor

- 3 a) During the period of probation, Respondent's practice will be supervised by a
4 practice monitor. The practice monitor must be a WSBA member with no record of
5 public discipline and who is not the subject of a pending public disciplinary
6 proceeding.
- 7 b) The role of the practice monitor is to consult with and provide guidance to
8 Respondent regarding case management, office management, and avoiding
9 violations of the Rules of Professional Conduct, and to provide reports and
10 information to the Probation Administrator regarding Respondent's compliance
11 with the terms of probation and the RPC. The practice monitor does not represent
12 the Respondent.
- 13 c) At the beginning of the probation period, the Probation Administrator will select a
14 lawyer to serve as practice monitor for the period of Respondent's probation.
- 15 i) Initial Challenge: If, within 15 days of the written notice of the selection of a
16 practice monitor, Respondent sends a written request to the Probation
17 Administrator that another practice monitor be selected, the Probation
18 Administrator will select another practice monitor. Respondent need not identify
19 any basis for this initial request.
- 20 ii) Subsequent Challenges: If, after selection of a second (or subsequent) practice
21 monitor, Respondent believes there is good cause why that individual should not
22 serve as practice monitor, Respondent may, within 15 days of notice of the
23 selected practice monitor, send a written request to the Probation Administrator
24 asking that another practice monitor be selected. That request must articulate good
cause to support the request. If the Probation Administrator agrees, another
practice monitor will be selected. If the Probation Administrator disagrees, the
Office of Disciplinary Counsel will submit its proposed selection for practice
monitor to the Chair of the Disciplinary Board for appointment pursuant to ELC
13.8(a)(2), and will also provide the Chair with the Respondent's written request
that another practice monitor be selected.
- d) In the event the practice monitor is no longer able to perform his or her duties, the
Probation Administrator will select a new practice monitor at his or her discretion.
- e) During the period of probation, Respondent must cooperate with the named practice
monitor. Respondent must meet with the practice monitor at least once per month.
Respondent must communicate with the practice monitor to schedule all required
meetings.
- f) The Respondent must bring to each meeting a current, complete written list of all

1 pending client legal matters being handled by the Respondent. The list must
2 identify the current status of each client matter and any problematic issues regarding
3 each client matter. The list may identify clients by using the client's initials rather
4 than the client's name.

- 5 g) At each meeting, the practice monitor will discuss with Respondent practice issues
6 that have arisen or are anticipated. In light of the conduct giving rise to the
7 imposition of probation, ODC recommends that the practice monitor and
8 Respondent discuss whether Respondent is in communication with each client,
9 whether Respondent has promptly billed each client, whether Respondent's fee
10 agreements are consistent with the RPC (including but not limited to RPC 1.5(f))
11 and are understandable to the client, and whether Respondent needs to consider
12 withdrawing from any client matters. Meetings may be in person or by telephone at
13 the practice monitor's discretion. The practice monitor uses discretion in
14 determining the length of each meeting.
- 15 h) The practice monitor will provide the Probation Administrator with quarterly
16 written reports regarding Respondent's compliance with probation terms and the
17 RPC. Each report must include the date of each meeting with Respondent, a brief
18 synopsis of the discussion topics, and a brief description of any concerns the
19 practice monitor has regarding the Respondent's compliance with the RPC. The
20 report must be signed by the practice monitor. Each report is due within 30 days of
21 the completion of the quarter.
- 22 i) If the practice monitor believes that Respondent is not complying with any of
23 Respondent's ethical duties under the RPC or if Respondent fails to schedule or
24 attend a monthly meeting, the practice monitor will promptly communicate that to
the Probation Administrator.
- 25 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
26 Association to defray the costs and expenses of administering the probation in this
27 case, as follows:
- 28 • \$250 due within 30 days of the start of the probation;
 - 29 • \$250 due within 6 months of the start of the probation period;
 - 30 • \$250 due within 12 months of the start of the probation period; and
 - 31 • \$250 due within 18 months of the start of the probation period.

32 All payments should be provided to the Probation Administrator for processing.

33 VII. RESTITUTION

34 38. Respondent shall pay restitution of \$1,000 to Kelly Ann Malloy under ELC 13.7.

35 Restitution is due within 30 days of final approval of this stipulation unless Respondent has

1 entered into a periodic payment plan. Reinstatement from suspension is conditioned on full
2 payment of restitution or full compliance with a periodic payment plan.

3 **VIII. COSTS AND EXPENSES**

4 39. In light of Respondent's willingness to resolve this matter by stipulation at an early
5 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$996 in
6 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
7 if these costs are not paid within 30 days of approval of this stipulation, unless Respondent
8 enters into a periodic payment plan. Reinstatement from suspension is conditioned on payment
9 of costs.

10 **IX. VOLUNTARY AGREEMENT**

11 40. Respondent states that prior to entering into this Stipulation he has consulted
12 independent legal counsel regarding this Stipulation, that he is entering into this Stipulation
13 voluntarily, and that no promises or threats have been made by ODC, the Association, nor by
14 any representative thereof, to induce him to enter into this Stipulation except as provided herein.

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

17 **X. LIMITATIONS**

18 42. This Stipulation is a compromise agreement intended to resolve this matter in
19 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
20 expenditure of additional resources by the Respondent and ODC. Both the Respondent and
21 ODC acknowledge that the result after further proceedings in this matter might differ from the
22 result agreed to herein.

23 43. This Stipulation is not binding upon ODC or the Respondent as a statement of all

1 existing facts relating to the professional conduct of the Respondent, and any additional existing
2 facts may be proven in any subsequent disciplinary proceedings.

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

10 45. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
11 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
12 before the Board for its review become public information on approval of the Stipulation by the
13 Board, unless disclosure is restricted by order or rule of law.


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

17 47. Respondent represents that, in addition to Washington, he also is admitted to practice
18 law in the following jurisdictions, whether current status is active, inactive, or suspended: None.

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

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


James K. Gazori, Bar No. 19900
Respondent

Dated: 9/2/19


Brett Andrews Purtzer, Bar No. 17283
Counsel for Respondent

Dated: 9/4/19


Joanne S. Abelson, Bar No. 24877
Managing Disciplinary Counsel

Dated: 9/4/19

CONFIDENTIAL

APPENDIX A

APPENDIX B

SELECTED ABA STANDARDS

ABA Standard 4.1 – Failure to Preserve Client Property

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know 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.

ABA Standard 4.4 -- Lack of Diligence

- 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.